

Document 2 Records on European Social Dialogue

Extracts from EU portal on Social Dialogue and the Eurofound portal, to be used as a preparatory handout. (<https://www.eurofound.europa.eu/it>).

Record 1 Val Duchesse

Val Duchesse' is the term used to describe the emergence of the European social dialogue in the mid-1980s. This was the result of an initiative taken by Jacques Delors, the incoming President of the Commission in January 1985, to invite the chairs and general secretaries of all the national organisations affiliated to the EU-level organisations of employers and workers (UNICE, CEEP and the European Trade Union Confederation (ETUC) to a meeting at the castle of Val Duchesse outside Brussels on 31 January 1985. At this historic meeting, the social partners agreed to engage in furthering the social dialogue. At a second meeting on 12 November 1985, they set up two joint working parties. This social dialogue produced three joint opinions: on 6 November 1986, 6 March 1987 and 26 November 1987.

The European social dialogue received formal recognition by the new Single European Act's insertion into the EC Treaty of a new Article 118B EC (now Articles 138 139 EC); the dialogue moved to a second phase with a meeting held at the Palais d'Egmont on 12 January 1989, which set up a political steering group. More working parties were set up and joint opinions produced in the years that followed. Between 1985 and 1995, the Val Duchesse process generated 21 joint opinions and declarations, two key agreements and seven high-level summits. Its greatest achievement, however, was the result of the negotiations at Maastricht, which produced the Treaty on European Union of 1992. Most of the substance of the provisions which eventually became the Agreement on Social Policy between 11 Member States were the result of negotiations culminating in the Agreement dated 31 October 1991 between ETUC and UNICE/CEEP on a new draft of Articles 118(4), 118A and 118B of the Treaty of Rome. With few modifications, the 11 Member States adopted this Agreement as the basis for the future labour and social law of the European Union.

Record 2 Social Dialogue

Social dialogue is the dominant feature of collective industrial relations in Europe, as the Communication 'The European social dialogue, a force for innovation and change' (COM(2002)341) of 26 June 2002, acknowledges:

The social dialogue is rooted in the history of the European continent, and this distinguishes the Union from most other regions of the world. Accordingly, in its various forms in the different Member States, the social dialogue is a component of democratic government and also of economic and social modernisation.

The term 'social dialogue' is used in different ways. First of all, it is used in the term European social dialogue to describe the institutionalised consultation procedure involving the European social partners. The term is also used to describe the processes between social partners at various levels of industrial relations.

Numerous provisions in the Treaty on the Functioning of the European Union (TFEU) and European labour law aim to strengthen social dialogue and the role of the social partners at European, national, sectoral, local and company level. While the Treaty establishes and institutionalises social dialogue at EU level (European social dialogue), several European directives, policy guidelines and recommendations also aim to enhance social dialogue between the social partners at national, local and company level.

A key distinction is made between cross-industry social dialogue and European sectoral social dialogue which takes place between sectoral employer federations and the European industry federations on the trade union side.

Depending on the actors involved, a further distinction is made between tripartite and bipartite social dialogue. Tripartite social dialogue takes place within Tripartite Social Summits and involves discussions between the European social partners and the European institutions in the areas of macroeconomics, employment, social protection and education and training. The European bipartite social dialogue takes place in the cross-industry social dialogue committee and the 43 sectoral social dialogue committees (as of 2014). The topics of bipartite social dialogue derive from the work programmes adopted by the social partners.

One important development in social dialogue is the conclusion of an agreement by a coalition of social partners from several sectors as an outcome of the European social dialogue via Articles 154–155 TFEU, as for example in the case of the 2006 crystalline silica agreement.

In the Communication ‘Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue’ (COM(2004) 557) of 12 August 2004, the European Commission proposed a typology of social dialogue outcomes at European level. The Communication distinguishes between:

- agreements implemented in accordance with Article 139(2) (now Article 155(2) TFEU), either by Council decision or by the procedures and practices specific to management and labour in the Member States;
- process-oriented texts such as frameworks of action, guidelines and codes of conduct, and policy orientations;
- joint opinions, declarations and tools;
- procedural texts laying down the rules for bipartite dialogue between the parties and the rules of procedures for the sectoral social dialogue committees;
- follow-up reports on the implementation and reporting of so-called ‘new generation’ texts.
- In terms of social partner agreements reached under Article 155(2) TFEU, the Commission took a decision in October 2013 not to give legal underpinning to the health and safety agreement in the EU-level hairdressing
- sector, which has provoked severe criticism from the social partners, who see this as jeopardising the implementation process set out in the Treaty.

A key characteristic of the ‘new generation’ texts is that the European social partners make recommendations to their affiliated member organisation and undertake to follow them up at national level. Strengthening of the interaction between the European and other levels of social dialogue, effective industrial relations systems and strong social partner capacities at national level are considered crucial for ensuring proper implementation of the so-called ‘new-generation’ texts, especially of autonomous agreements. One of the more recent autonomous social partner agreements was the 2010 framework agreement on inclusive labour markets.

In quantitative terms, the work of the various social dialogue committees has resulted in the adoption of 77 joint texts by the cross-industry social partners and 727 such texts by the sectoral social partners up to June 2014.

The scope of subjects addressed has evolved considerably and covers topics such as economic growth, quality of work, new technology, education, and vocational training, flexicurity, anticipation of change and restructuring, demographic change, working conditions, health and safety, gender equality and corporate social responsibility.

Record 3 Forms of Social Dialogue

Bipartite Social Dialogue is the autonomous dialogue between employers' organisations and workers' organisations and it refers to the discussion, consultations, negotiations and joint actions involving the two sides of industry. Bipartite social dialogue derives from the work programmes adopted by the EU social partners.

Tripartite Social Dialogue involves the European Institutions (Commissions, Council and European Council) as well as the Social Partners.

Record 4 Levels of Social Dialogue

Cross-sector/industry: brings together both sides of industry at EU level to discuss issues relating to the whole economy and the labour market in general.

Sectoral: both sides of industry discuss on sector-specific issues.

Company level: the main forums are European Works Councils (EWCs) based on an EU Directive adopted in 1997 (and revised in 2009) with the main aim of providing employees with information and consultation on transnational matters.

European Framework Agreements: EFAs have a regional (European) scope of application and are signed by European industry federations (EIFs), European Works Councils (EWCs) and/or national unions and central management.

Cross-sector social dialogue

According to the Commission's definition, cross-sector covers the whole economy and labour market and its purpose is 'to promote dialogue between trade unions and employers' organisations in key areas common to all fields of employment and social affairs'. The existence

of the social dialogue committee is central to this process. Founded in 1992, this committee brings together employee representatives (ETUC, Eurocadres and the European Federation of Executives and Managerial Staff) and employer bodies (BUSINESSEUROPE, UEAPME and CEEP). It meets 3-4 times a year to discuss employer/worker views on employment and social topics, adopt texts negotiated by both parties and plan future initiatives. The social partners have produced a number of notable cross-sector agreements, which were either transposed via directives or via the autonomous route. These include:

- Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC. In 2009, the European social partners agreed on a revision of the parental leave agreement (EU09070291).
- Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and ETUC.
- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.
- The framework agreement on telework was signed in 2002. This was the first time that the signatory parties implemented an agreement in accordance with the procedures and parties specific to the social partners in the Member States.
- The framework agreement on work-related stress (2004).
- The framework agreement on harassment and violence at work (2007).
- The framework agreement on inclusive labour markets (2010).

Sectoral Social Dialogue

European sectoral social dialogue is an instrument of EU social policy and industrial relations at sectoral level. It consists of negotiations between the European trade union and employer organisations of a specific sector of the economy. The Commission, in its Communication on 'The European social dialogue, a force for innovation and change', has expressed the view that the sectoral level 'is the proper level for discussion on many issues linked to employment, such as working conditions, vocational training and industrial change, the knowledge society, demographic patterns, enlargement and globalisation' (COM (2002) 341 final of 26 June 2002). For this reason, the Commission is committed to establishing more committees in order to ensure that all the main sectors are covered. In October 2016, there were 43 sectoral social dialogue committees, which have produced a variety of joint texts and agreements, covering over 6 million companies and 145 million workers in a range of sectors. In terms of outcomes, the number of texts adopted in the committees is extremely stable. With regard to the topics covered, an analysis of the texts shows the diversity of themes discussed, many of them directly related to the EU agenda. Overall, the analysis of European sectoral social dialogue highlights a variety of documents unevenly spread over the years but nevertheless increasing in number.

The most striking development relating to European sectoral social dialogue agreements emerged in a number of transport sectors as a result of negotiations following their initial exclusion from the Working Time Directive, Council Directive 93/104/EC (as amended by Directive 2000/34/EC). The intention was never that this should be a permanent exclusion, but that these sectors should reach social dialogue agreements at EU level adopting working time arrangements tailored to their exigencies. For example, this was accomplished by an agreement in the maritime sector on 30 September 1998, given legal effect by Directive 1999/63/EC and, for the civil aviation sector, by an agreement in March 2000, given legal effect by Directive 2000/79/EC.

According to the European Commission, a total of 905 texts have been adopted since 1998: 85 cross-industry texts and 820 sectoral outcomes (social dialogue database, November 2016). In terms of the sectoral social dialogue, 820 texts in 43 sectors have been adopted over the past few decades yet just 14 agreements, leading some experts and EU actors to argue that social dialogue needs to be more efficient. In total, the number of agreements signed equates to less than 2.5% of the texts signed.

Company-level social dialogue

European social dialogue at company level takes place through a variety of means. European Works Councils (EWCs) agreements are concluded by EWCs, standing bodies providing for the information and consultation of employees in community-scale undertakings and community-scale groups of undertakings as required by the 1994 European Works Council Directive (Directive 94/45/EC), now updated by the recast Directive (2009/38/EC).

A transnational company agreement (TCA) is, according to the European Commission in its 2012 Staff Working Document (PDF):

...an agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives. According to the 2009 Eurofound report *European and international framework agreements: Practical experiences and strategic approaches* (PDF), TCAs can be subdivided into International Framework Agreements (IFAs) and European Framework Agreements (EFAs). IFAs are signed by Global Union Federations (GUFs) and have a global scope of application, whereas European Framework Agreements (EFAs) have a regional (European) scope of application and are signed by European Industry Federations (EIFs), EWCs and/or national unions and central management.

The Commission set up a database consisting of transnational company agreements, with information sheets containing details on every company and agreement.

There are also agreements on employee involvement in a European Company, also known as a *Societas Europaea* (SE). SEs are governed by EC law directly applicable in the Member States, rather than by national law. This was established by the European Company Statute (ECS) Regulation (Council Regulation (EC) 2157/2001 on the statute for a European company (SE)).

Record 5 Legislative framework

The term 'social dialogue' is mentioned in primary EU law in the TFEU. Article 152 TFEU states: 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.'

Articles 154 and 155 TFEU provide a procedure that combines the consultation of the social partners by the Commission with the option to leave social regulation to bipartite agreement between management and labour organised at European level. Article 154(2) states that 'before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.' Article 154(3) states that 'if, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal.'

Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.' The forms and content of the responses of the social partners in this consultation phase may be very different. The Commission indicates that the 'formal consultation of the social partners provided for in Article 154(3) TFEU may lead to the adoption of opinions, recommendations or agreement-based relations (including agreements) within the social partners' sphere of competence'.

If the social partners ask to deal with the issue by bipartite social dialogue, known as the 'autonomous' route, the Commission will suspend its legislative initiative. An autonomous agreement is guided by the principle of subsidiarity, empowering national affiliates with the task of implementing such an agreement in line with national procedures and practices.

Alternatively, Article 155(2) TFEU allows social partners to request that the Commission take a proposal to the Council, which leads in practice to implementation by Council directive, including all legal consequences specific to the instrument of a directive. However, should the social partners fail to reach an agreement, a fallback position exists which allows the Commission to address the issue via the normal legislative procedure, as was the case with the European Works Council Directive in 1994.

In its 'Communication concerning the application of the Agreement on Social Policy' (COM (93) 600 final, Brussels, 14 December 1993), the Commission set out criteria for the representativeness of organisations which are still valid today. According to the Commission, organisations should: be cross-industry or relate to specific sectors or categories and be organised at European level; consist of organisations which are themselves an integral and recognised part of Member State social partner structures, have the capacity to negotiate agreements and which are representative of all Member States, as far as possible; have adequate structures to ensure their effective participation in the consultation process.

Record 6 Implementation of agreements

The implementation of agreements resulting from European social dialogue is laid down in Article 155(2) TFEU:

Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153 (i.e. in social matters for which the EU has regulatory competence), at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed. The European social partners who signed the agreement will ask the Commission to propose to the Council implementation of the agreement. The Commission provides an explanatory memorandum on any proposal presented to the Council, giving its comments and assessment of the agreement concluded by the social partners. On this basis, the Council – by qualified majority voting, or by unanimity, according to its legislative competence provided in Article 153 TFEU – will decide to incorporate the collective agreement into a Council Directive. The Council can decide not to implement the agreement by directive, but is unable to change the content of the agreement.

If the collective agreement is implemented by Council Directive, its effects will be extended erga omnes and the Member States will have to ensure the implementation of the directive. As for all directives, including those implementing European collective agreements, a Member State may opt to ensure implementation by recourse to collective agreement(s) at national level, taking into account that the Member State ultimately retains responsibility for guaranteeing the objectives established by the directive (Article 153 paragraph 3 TFEU).

Record 7 European Social Partners Organisations

The Commission regularly publishes a list of European social partner organisations which, in the Commission's view, comply with these criteria and, therefore, are consulted by the Commission under Article 154 TFEU. As of May 2014, the list includes 88 organisations (of which 81 are sectoral organisations) and is divided into five groups:

- general cross-industry organisations (CEEP, ETUC, BUSINESSEUROPE);
- cross-industry organisations representing certain categories of workers or undertakings (EUROCADRES, UEAPME, CEC European Managers);
- specific organisations (Eurochambres);
- sectoral organisations representing employers (65 organisations);
- sectoral European trade union organisations (16 organisations).

This official list of European social partner organisations is adapted whenever new social dialogue committees are set up and/or in the light of studies on representativeness which the European Foundation for the Improvement of Living and Working Conditions (Eurofound) is carrying out at the request of the Commission (see Eurofound's studies on sectoral representativeness). In 2014, Eurofound published a new study on the representativeness of the EU level cross-sectoral social partners. The European social partners are either engaged in sectoral social dialogue or in cross-industry social dialogue. In these cases, representativeness is not based on the criteria mentioned, but on the social partners' mutual recognition of their capacity to engage in collective bargaining. As of May 2014, there were a total of 43 sectoral social dialogue committees.

Record 8 Prerogatives of the European Social Partners

prerogatives of the European social partners within the policy processes at European level are defined by Articles 154 and 155 TFEU. The competences of the social partners in the social policy field are defined as follows:

- social partners are procedurally involved in the genesis of any Commission initiative in the social policy field (Art. 154.2 and 154.3 TFEU), both in the direction and the content of a proposal;
- they may decide on how they wish to implement their agreements: 'either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153 TFEU, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission' (Art. 155.2 TFEU);
- social partners may decide on autonomous agreements in all social policy fields – even those not falling under the competences of EU institutions as defined in Art. 154 TFEU (Art. 155.1 TFEU).

There is also a discrepancy between the two Commission Communications on this subject; that of 1993 (COM (93) 600 final – see above) and the 1998 Communication from the Commission, adapting and promoting the social dialogue at Community level. The decision annexed to the latter requires the sectoral social partners only to be ‘representative of several (emphasis added) Member States’. The difference may be explained by the fact that, in contrast to the cross-sectoral social dialogue, some sectoral activities exist in only some Member States (such as maritime transport). Consequently, the criterion of geographical coverage seems to be more encompassing for the cross-sectoral social partners than for sectoral EU level ones.

In practice, the European social partners have not used their rights very extensively. This is mainly due to the difficulties in reconciling different interests when it comes to formulating joint agreements. However, there are some cases of successful cross-sector agreements (on parental leave, part-time work, fixed-term work, telework, stress at work, harassment and violence and inclusive labour markets (see also EU1005011I).

However, there are also examples where the social partners failed to reach agreements (as in the cases of the information and consultation of employees, Temporary agency work, or the recasting of the directive on European Works Councils).

Record 9 European Social Partners' Work Programmes

As social dialogue is considered to be a unique and indispensable component of the European social model it has been official EU policy to extend the role of the European social partners. Over the last few decades, there have been several Commission Communications and declarations at meetings of the Council of the European Union which have all pointed in this direction. This has been willingly picked up by the social partners.

In its Communication of 26 June 2002, the Commission called on the European social partners to develop their autonomous dialogue further and to establish joint work programmes. In their second joint multi-annual work, the European social partners emphasised the contribution of the first joint work programme for 2003–2005 to implement the Lisbon Strategy, sharpening the focus of European social dialogue and enhancing the social partners’ autonomy. They highlighted the main achievements of the first programme: the framework agreements on telework and work-related stress, the framework of actions for the lifelong development of competencies and qualifications, and action on gender equality.

The second work programme (2006–2008) aimed to develop further the social partners’ autonomy. The European social partners intended to report on the implementation of the framework agreements and frameworks of actions and to ‘develop their common understanding of these instruments and how they impact at the various levels of social dialogue’. They also negotiated a ‘Framework agreement on harassment and violence at work’. In 2007, the European cross-industry social partners published a joint analysis of the ‘Key challenges facing European labour markets’. In 2008, they reached a framework agreement on parental leave, revising their first agreement and the directive which implemented it (Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC). Under the third work programme (2009–2010), the European cross-industry social partners negotiated an autonomous framework agreement on inclusive labour markets (see also EU1005011I) and managed a project on national studies on economic and social change in the EU27 in order to effectively manage change and restructuring.

The current social partners’ work programme running from 2012 to 2014 was drawn up in the context of the financial crisis. It stresses that in order to create more and better jobs Europe needs well-functioning labour markets and a labour force with the necessary qualifications. The appropriate framework conditions must therefore be established to ensure employment opportunities for all workers and to allow for the integration, retention and development of workers in European labour markets. The work programme gives priority to the issue of young people in the labour market and commits the social partners to making concrete recommendations to the EU institutions on this topic. To address specifically the issue of youth unemployment, the social partners concluded a framework of actions on youth employment in June 2013.

Other priority areas in the social partners’ current work programme are gender equality, education and lifelong learning, mobility and economic migration, the better implementation and impact of social dialogue instruments, and the influence of European economic governance on social dialogue.

Record 10 New start for Social Dialogue

More recently, the European Commission initiated a 'New start for social dialogue' in March 2015, along with the social partners, focused on the need for a more substantial involvement of the social partners in the European Semester; a stronger emphasis on the capacity building of national social partners; a strengthened involvement of social partners in EU policy and law-making; and a clearer relation between social partners' agreements and the better regulation agenda. In June 2016, a statement on a new start for social dialogue was signed by representatives of the Commission, the EU social partners and the Dutch Council Presidency.

Record 11 EU System of Industrial Relations

A system of industrial relations at European level has specific features, which relate to current economic, political and social developments in the EU. These features include European social dialogue, the Europe 2020 Strategy, the European Semester process, the Charter of Fundamental Rights of the European Union, transnational coordination of collective bargaining, the macroeconomic dialogue and European works councils. Each of these processes and systems contributes to an EU system of collective industrial relations. For example, the EU Charter promotes an EU system of industrial relations by virtue of its including rights of association (Article 12), collective bargaining and collective action (Article 28), information and consultation (Article 27). In the latter part of the 1990s, European trade unions attempted to coordinate their wage bargaining policies at EU level

in order to prevent a 'race to the bottom' in terms of wages and working conditions within the eurozone. However, these attempts were largely unsuccessful due to factors such as the heterogeneity of national trade union and industrial relations cultures.

In parallel, there has been ongoing debate on industrial relations at EU level for some years. The Commission's High- Level Group on Industrial Relations, in its report of March 2002, identified six challenges for industrial relations in Europe:

globalisation, Economic and Monetary Union (EMU) and the emergence of the eurozone, EU enlargement, technological change and the knowledge economy, demographic trends, and changes in the labour market.

In recent years, the focus has moved to the trend towards increasing globalisation, the emergence of multinational companies and the response of labour to this. Transnational collective bargaining, which takes place in multinational companies between company management and trade unions represented in the company, also supported by European trade union federations, is seen as one way of developing industrial relations in a pan-European and globalised context.

The EU supports the development of transnational company agreements through exchanges of experience, financial support, monitoring and studies. An expert group was set up by the Commission with that aim. This group met six times between 2009 and 2011. The Commission also keeps a database of transnational company agreements.

Record 12 Oper Method of Coordination (OMC)

The 'open method of coordination' (OMC) is a form of EU soft law, a process of policymaking which does not lead to binding EU legislative measures nor require Member States to change their law. The open method of coordination (OMC) aims to spread best practices and achieve greater convergence towards the main EU goals. Historically, the OMC can be seen as a reaction to the EU's economic integration in the 1990s. This process reduced the Member States' options in the field of employment policy. However, they were also reluctant to delegate more powers to the European institutions and thus designed the OMC as an alternative to the existing EU modes of governance.

Generally, the OMC works in stages. First, the Council of Ministers agrees on policy goals. Member States then translate guidelines into national and regional policies. Thirdly, specific benchmarks and indicators to measure best practice are agreed upon. Finally, results are monitored and evaluated. Because it is a decentralised approach, largely implemented by the Member States and supervised by the Council of the European Union, the European Commission has primarily a monitoring role and the involvement of the European Parliament and the European Court of Justice is very weak indeed. Although the OMC was devised as a tool in policy areas which remain a priority for national governments, it is sometimes seen as a way for the Commission to 'put its foot in the door' of a national policy area.

The employment title of the Treaty on the Functioning of the European Union, originally introduced by the 1997 Treaty of Amsterdam, is perceived as the original model of the open method of coordination, encapsulated in Article 148 TFEU. Employment policy is the paradigm case of the OMC: an annual report leads to guidelines, which the Member States 'shall take into account in their employment policies', followed by an annual report on national employment policy, reviewed in a report by the Council and Commission upon which the European Council may make (non-binding) recommendations to Member States.

However, the OMC is not restricted to the sphere of employment. It is being applied to other policy areas, such as research and development, social protection, enterprise policy and immigration. The Commission's Social Policy Agenda envisages the OMC being applied to all areas of social policy; a specific example is the Community Action Programme to combat discrimination, adopted in November 2000 (Decision 2000/750/EC) for the period 2001-2005.

The European social dialogue is not institutionally integrated into the open method of coordination (OMC) on employment as enshrined in the TFEU (Articles 148 to 150) and implementing the European Employment Strategy (EES). The social partners are consulted on both the drafting of employment guidelines and on their annual assessment by the European Employment Committee, which is a committee composed of Member State representatives assisting the Commission and the Council in the OMC procedure. They are also involved through the Tripartite Social Summit which prepares the Spring European Council. In addition, Article 146 TFEU also states that in coordinating their national employment policies, Member States should have 'regard to national practices related to the responsibilities of management and labour'.

An institutional design could integrate the best features of the European social dialogue and the OMC – for example, a social dialogue process, which replicates the processes and measures of the OMC in the form of framework agreements at EU level, implemented at Member State level through the social partners 'in accordance with the practices and procedures specific to management and labour and the Member States' (Article 155(2) TFEU). An EU-level social dialogue between EU social partners could produce guidelines in the form of framework agreements; affiliated social partners at Member State level could implement the guidelines, perhaps through intersectoral or sectoral collective agreements; these could be reviewed by EU institutions, which could supplement this action by the social partners, with recommendations in the form of EU legislative proposals where implementation was inadequate.

In its Communication of 26 June 2002, the Commission recommended adopting the OMC for the implementation of texts resulting from social dialogue. Ultimately, if joint opinions and other non-regulatory instruments continue to be ineffective, their failure may imply other, more rigorous steps towards effectiveness, including regulatory agreements and/or legislation.

Record 13 European Social Model

The Commission's 1994 White Paper on social policy (COM (94) 333) described a 'European social model' in terms of values that include democracy and individual rights, free collective bargaining, the market economy, equal opportunities for all, and social protection and solidarity. The model is based on the conviction that economic progress and social progress are inseparable: 'Competitiveness and solidarity have both been taken into account in building a successful Europe for the future.'

The former EC Treaty, the Charter of Fundamental Rights of the European Union and European labour law have established the foundation of legitimacy for the European social model.

The main pillar of the European social model features in the Treaty of the functioning of the European union (TFEU). For example, Article 8 of the TFEU states that the Union, in all its activities 'shall aim to eliminate inequalities, and to promote equality, between men and women'. Further, it states that the Union, in defining and implementing its policies and activities, 'shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9), and that the Union 'shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation' (Article 10).

The Treaty fully recognises the role of the social dialogue and the social partners in its Article 152, which states that 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy'. The TFEU also contains the legal framework for the

European social dialogue in Articles 154-155 TFEU. The Treaty's employment title embodies the 'open method of coordination' for the European Employment Strategy (Article 145 to 150 TFEU). The EU Charter, which has now been given legal force by Article 6(1) of the Treaty establishing the European Union (TEU), enshrines the fundamental rights of association, information and consultation, and collective bargaining and action, anchors the role of the social partners in EU social policy, and ascribes legitimacy to collective bargaining and collective action, and to information and consultation at the level of the enterprise. Finally, European labour law has established a general framework for improving information and consultation rights in the Member States, representing a crucial dimension of the European social model (Council Directive 2002/14), and in transnational companies with European Works Councils (Council Directives 94/45 and 2009/38). In its strategy 'Europe 2020', adopted in 2010, the European Union reiterated its commitment to the European social model by stating that it seeks to create more and better jobs throughout the EU. To reach these objectives, the European Employment Strategy encourages measures to meet three headline targets by 2020:

75% of people aged 20-64 in work; school drop-out rates below 10% at least 40% of 30-34-year-olds completing third level education; at least 20 million fewer people in or at risk of poverty and social exclusion. The actions outlined in the flagship initiative 'An Agenda for new skills and jobs' are essential to meet these targets.

The European social model is considered to be unique in its dual focus on economic and social principles. For example, in a Communication on 'Employment and social policies: A framework for investing in quality' (COM (2001) 313), the Commission contrasts the 'European social model' of public social spending with the 'US model', which relies on private expenditure, highlighting the fact that 40% of the US population lacks access to primary health care, although per capita expenditure as a proportion of GDP is higher in the US than in Europe. The Commission goes on to emphasise that it is not only the existence of jobs but also the characteristics of employment that are important to the European social model. The EU's commitment to inclusion is reiterated in the European Platform against Poverty and Social Exclusion, which forms part of the Europe 2020 Strategy, stating that combating social exclusion, promoting social justice and fundamental rights have long been core objectives of the European Union, which is founded on the values of respect for human dignity and solidarity.

The European Commission's Industrial Relations in 2010 Report highlights the fact that industrial relations at European, national, cross-industry, sectoral and company level, is crucial to the success and stability of the European social model. It also states that one of the key challenges for the European social at present is the search for the right balance between, on the one hand, efficiency and, on the other hand, equity and solidarity .

A further defining feature of the European social model, when contrasted with that of the US, is the important role attributed to organisations of workers (trade unions) and employers in Europe. Although a report from Eurofound in 2008 points to a steady decline in union membership across the European Union, it shows that the weighted average union density in EU Member States remains comparatively high, at just under 24%, according to figures contained in the Commission's Industrial Relations in Europe 2010 report, which states that over the past few years, earlier trends towards declining union density, decentralisation of collective bargaining and greater employee participation have continued, and the company level has become more prominent in terms of bargaining.

This contrasts with trade union density of 12% in the US and of 18,2% in Japan, according to the Eurofound 2008 report. The US figure is lower than any EU country with the exception of France.

The European social model is also characterised by a high coverage rate of collective agreements. The Commission's Industrial Relations in Europe 2010 Report notes that voluntary collective bargaining plays a key role in industrial relations and is a defining element in social partnership within and beyond the EU. Although, according to the Commission's report, there are large differences in the role, coverage and effectiveness of collective bargaining around the EU.

Overall, according to the report, an estimated 121.5 million of the 184 million employees in employment in the EU were covered by a collective agreement in 2008, which translates into an adjusted bargaining coverage rate of 66 %, or two-thirds of all EU employees. Over the past decade, the number of employees covered increased by more than eight million, but since employment increased much faster, the coverage has rate slipped by two percentage points. There are wide variations in coverage rates, however, ranging from virtually 100 % in Austria to less than 20 % in Lithuania.

Record 14 Joint Opinion

Joint opinions are formal expressions of the results of the social dialogue, which do not impose any obligations on the parties. They emerged as one response to complex problems requiring compromise between the parties concerned.

On the initiative of Jacques Delors, the incoming President of the Commission, the European social partners met first at the castle of Val Duchesse outside Brussels on 31 January 1985; following their second meeting on 12 November 1985, they decided to set up two joint working parties. A macroeconomic working group adopted two 'joint opinions' on 6 November 1986 and 26 November 1987, and a Working Party on New Technologies adopted a joint opinion on training and motivation, and information and consultation on 6 March 1987. Further working parties were set up and further joint opinions were produced in the years that followed. Since 1985, sectoral social dialogue committees have been set up in 40 different industrial sectors and the European social partners have adopted over 70 cross-industry and 500 sectoral joint texts.

At the outset of the social dialogue in 1985, the European social partners were ambivalent about the formal outcomes of the process of social dialogue in which they were involved. They did not necessarily undertake a commitment to what Article 118B of the EC Treaty inserted by the Single European Act 1986 characterised as 'relations based on agreement.' Almost two decades later, the process of formulating 'joint opinions' was evaluated positively in the Commission's Communication of 26 June 2002: The European social dialogue, a force for innovation and change (COM (2002) 341 final): 'enabled [the social partners] to explore and discuss together the key themes of the European venture: setting in place a cooperation strategy on economic policy, completion of the internal market, application of the Social Charter of the Fundamental Rights of Workers [1989] and preparation of economic and monetary union'.

However, the Commission's Communication of 2002 highlighted the perceived weakness of Joint Opinions: The European social partners have adopted joint opinions, statements and declarations and recommendations on numerous occasions. More than 230 such joint sectoral texts have been issued and some 40 cross-industry texts.

However, in most cases, these texts did not include any provision for implementation and monitoring: they were responses to short-term concerns. They are not well known and their dissemination at national level has been limited.

Their effectiveness can thus be called into question.

The Commission was emphatic about the need to distinguish joint opinions from other outcomes of the European social dialogue – specifically, agreements. The Commission recommended that, 'The social partners should endeavour to clarify the terms used to describe their contributions and reserve the term 'agreement' for texts implemented in accordance with the procedures laid down in Article 139(2) of the Treaty' (now Article 155(2) TFEU).

Record 15 Luxembourg process

The Luxembourg European Council of 20-21 November 1997, also known as the 'Jobs Summit', was intended to address what was perceived as an employment crisis in the EU, reflected in the adoption of the employment title by the Treaty of Amsterdam concluded in June 1997. It launched the process envisaged in the Employment Title before the Treaty of Amsterdam had been ratified. The open method of coordination envisaged by Article 128 EC (now Article 148 TFEU) of the Treaty's Employment Title thus became known as the 'Luxembourg process'. The process involves drawing up annual employment guidelines, national employment action plans and a joint employment report (Article 148 TFEU).

The Luxembourg process undertakes the coordination of Member States' employment policies in the form of employment guidelines and National Action Plans (NAPs). From 1997 to 2002, the Guidelines rested on four pillars: entrepreneurship, employability, adaptability and equal opportunities. Since the 2003 Employment Guidelines, the number of guidelines is strongly reduced and the four pillar structure is replaced by three main objectives: full employment, improving quality and productivity at work, and strengthening social cohesion and inclusion. Moreover, although the Luxembourg process continues on an annual basis, the 2003 Employment Guidelines also introduced a three-year cycle whereby the content of the guidelines will only be revised every three years, in order to allow a better assessment of implementation of the guidelines, which continues to take place every year.

Record 16 Social Policy Agenda

Social policy is a key strand of EU policy and the European Commission has initiated successive social policy agendas over the past decade. Its Social Action Programme ran from 1998 to 2000 and was followed by its Social Policy Agenda 2000-2005, further to which the Commission established a High-Level Group to identify the main challenges and opportunities facing the European Union over the period 2006-2010 in the field of employment and social policy. The findings of this group contributed to the development of the next Social Policy Agenda, which ran from 2006 to 2010 under the Lisbon Strategy. The three main challenges facing the European Union that the group identified were: enlargement, the ageing of the population and globalisation and the Social Policy Agenda 2006-2010 focused on providing jobs and equal opportunities for all and ensuring that the benefits of the EU's growth and jobs drive reach everyone in society. By modernising labour markets and social protection systems, it aimed to help people seize the opportunities created by international competition, technological advances and changing population patterns, while protecting the most vulnerable in society.

In July 2008, the Commission adopted a renewed social agenda, covering the final years of the Lisbon Strategy. This agenda contained 19 initiatives in the area of employment and social affairs, concentrating on: children and youth; managing change; supporting longer and healthier lives; fighting discrimination; strengthening legal instruments; shaping the international agenda; and combating poverty and social exclusion.

The Lisbon Strategy came to an end in 2010 and was followed by the Europe 2020 Strategy, which contains a range of targets in the employment and social policy field.

The three flagship initiatives of the Europe 2020 strategy that fall under the areas of employment, social affairs and inclusion are:

- Youth on the move which aims to improve young people's chances of finding a job by helping students and trainees gain experience in other countries, and improving the quality and attractiveness of education and training in Europe;
- An agenda for new skills and jobs which aims to give fresh momentum to labour market reforms to help people gain the right skills for future jobs, to create new jobs and overhaul EU employment legislation;
- and European platform against poverty and social exclusion which aims to bolster work at all levels to reach the agreed EU headline target of lifting at least 20 million people out of poverty and exclusion by 2020.

In July 2011, a report on the social dimension of the Europe 2020 Strategy examined actions to promote inclusion and reduce poverty, in line with the strategy's headline targets. The report concentrates on actions in the areas of sustainable and adequate reforms of social protection systems, active inclusion strategies, well-designed universal and targeted benefits for families and groups at risk, future pension adequacy and long-term financial sustainability of pensions, and increased effectiveness of health care and long-term care.

Record 17 Concertation

In their Contribution to the Laeken European Council on 7 December 2001, the ETUC, UNICE (now BUSINESSEUROPE), UEAPME and CEEP distinguished 'tripartite concertation between the social partners and European public authorities' from 'bipartite work by the social partners'. This was spelled out in detail in Section 3:

- tripartite concertation to designate exchanges between the social partners and European public authorities;
- consultation of the social partners to designate the activities of advisory committees and official consultations in the spirit of article 137 of the Treaty (now Article 154 TFEU);
- social dialogue to designate bipartite work by the social partners, whether or not prompted by the Commission's official consultations based on article 137 and 138 of the Treaty (now Articles 154 and 155 TFEU).

A Council Decision of 6 March 2003 formally established a new 'Tripartite Social Summit for Growth and Employment' to support reinforcement of the concertation between social partners and European institutions on economic and social policies. This institutionalises meetings at least once a year, just before the spring European Council, between the social partners and the head of state or government of the present and two subsequent Presidencies of the Council and the Commission.

The first formal Tripartite Social Summit for Growth and Employment took place on 20 March 2003, co-chaired by the Greek Prime Minister, then current President of the EU Council of Ministers, and the President of the European Commission, and attended by high-level representatives of the social partners, the Social Affairs Commissioner and the Ministers of Labour from Greece and those of the Member States holding the next two Presidencies (Italy and Ireland). The establishment of the Tripartite Social Summit by Council Decision represented an important political step, which set European-level tripartite concertation within a new framework, with the Tripartite Social Summit acting as a bridge between the different processes of concertation. The aim is to ensure greater consistency in tripartite concertation, and to enable the social partners to contribute in an integrated way to the different components of the Lisbon Strategy.

There are now four fields in which tripartite concertation takes place: macro-economics, employment, social protection and education and training. Each comprises both a technical and a political level. The macroeconomic dialogue, aimed at encouraging growth and employment, involves regular exchange of views between the representatives of the Commission, the Council, the European Central Bank and the social partners. The tripartite dialogue on employment takes place along the lines of the macro-economic dialogue.