



With financial support  
from the European Union

# Mechanism of Social Dialogue in the Liberal Professions

Mechanism of Social Dialogue in the Liberal Professions

caosfera

|

c|s

Completed in November 2019

This publication reflects only the author's view and the Commission is not responsible for any use that may be made of the information it contains

Caosfera Edizioni



caosfera

**Mechanism of  
Social Dialogue  
in the Liberal Professions**

## Contents

1. Social Dialogue as a tool for addressing and managing digitalisation in the professional sector	9
1.1 Social Dialogue and the main challenges of the 21 <sup>st</sup> century: an introduction	9
1.1.1 The impact of Digitalisation in professional sectors	15
1.1.2 The role of Social Dialogue in tackling digitalisation	22
1.1.3 Social Dialogue for managing the growth potential of Digitalisation	26
1.1.4 Social Dialogue for addressing concerns regarding Digitalisation	29
1.1.5 Social partners' statements on digitalisation	29
1.1.6 Outcomes	37
1.1.7 The importance of Social Dialogue in tackling digitalisation: an empirical analysis	39
1.2 General Conclusion about Social Dialogue and Digitalisation	46
1.3 The development of collective bargaining in the professional sectors	47
1.3.1 The importance of collective bargaining: a semantic perspective	48
1.4 Collective bargaining and professions: an introduction	61
1.5 Critical points and Enabling conditions	64
1.6 Redundancies trends in the professions: a taxonomic introduction	75

1.6.1 Digitalisation and redundancies: causes and factors	79	2.5.5 Value of social dialogue	159
1.6.2 Economic crisis and redundancies	83	2.6 The role of Social Dialogue in addressing redundancies in the professional sector	161
1.6.3 Globalisation and redundancies	84	2.6.1 Social Dialogue efficiency in due to economic crisis and recession	163
1.6.4 The opportunity of collective bargaining: critical factors	85	2.6.2 Social Dialogue efficiency in addressing redundancies due to Globalisation	172
1.7 Conclusion	88	2.6.3 Social Dialogue efficiency in addressing redundancies due to Digitalisation	176
2. Social Dialogue: legal framework and Social pillar	91	2.7 Role and importance of Social Dialogue	177
2.1 Introduction	91		
2.2 Social dialogue: towards the evolution of the legal framework	97		
2.2.1 The Evolution of Social Dialogue through the Treaties - Stages of Development	99		
2.2.2 The Current Legal Framework: the Lisbon Strategy	111		
2.2.3 Achievements in pursuing Social Dialogue	114		
2.2.4 Other relevant Acts	116		
2.2.5 Results Produced by Social Dialogue	118		
2.2.6 Role of the European Parliament	121		
2.3 Social Dialogue as part of the European Social Model	124		
2.4 Social Dialogue and the European Pillar of Social Rights	131		
2.5 Social Dialogue and the European Pillar of Social Rights: opportunities and limits	137		
2.5.1 The concept of social dialogue and its evolution	141		
2.5.2 The evolution of social dialogue	151		
2.5.3 Towards the European definition of social dialogue: differences between social dialogue and collective bargaining	154		
2.5.4 The differences of social dialogue methodology	158		

# **1. SOCIAL DIALOGUE AS A TOOL FOR ADDRESSING AND MANAGING DIGITALISATION IN THE PROFESSIONAL SECTOR**

## **1.1 Social Dialogue and the main challenges of the 21<sup>st</sup> century: an introduction**

Social dialogue has always played a fundamental role in every socio-economic governance mechanism, in its twofold dimension of both tripartite and bipartite level, despite of the lack of a unique and clear definition. Currently, it can be described, pursuant to either International or European standards, as all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement.

Social dialogue is a core value, and a key objective of the International Labour Organization (ILO). At European level, it has been boosted in the last decade, especially by the advent of the Lisbon Treaty: one of the main goals of social dialogue was to promote consensus building and

democratic involvement among the main stakeholders in the world of work.

As a matter of fact, since the beginning of the *Lisbon Strategy for Growth and Jobs*, first adopted in 2000 and then enacted over the years<sup>1</sup>, the common ambition of the EU has been drawn to “become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion”.

Furthermore, its evolution, as well as its importance, has been enhanced by the new improvement of the European Social Model, as a chance to rebalance the EU’s economic and social dimensions<sup>2</sup>: as a matter of fact, the importance of social dialogue has been stressed by the connection with the European Social Pillar; as a consequence, for as long as the Pillar has been enacted, Social Dialogue has been achieved in addressing the challenges triggered by the most important drivers of change.

In brief, social dialogue mechanisms have also become prominent as an important element for the sustainability of free market economy in the representative democracy.

Initially conceived of as a “market-correcting” tool and “then gradually widened through increased legislative

---

1 See <https://ec.europa.eu/social/BlobServlet?docId=6107&langId=en>.

2 CESI (2016) Consultation of the European Commission, towards a European Pillar of Social Rights launching, implementing and enforcing, Brussels, European Confederation of Independent Trade Unions; see also Caniard E. (2016) *Socle européen des droits sociaux: une nouvelle chance pour l’Union Européenne?*, 14 December 2016. <http://www.alterecoplus.fr/etienne-caniard/socle-europeen-droits-sociaux-une-nouvelle-chance-lunion-europee/00012790>.

competence (...) it never developed as an all-encompassing and comprehensive European social policy”<sup>3</sup> Moreover, this new frontier can be considered as the result of previous theoretical and empirical findings by several research initiatives<sup>4</sup>: these made it clear that the success of the European Union depends on the progress of its social dimension.

In this regard, it is deemed to analyze the reason why social dialogue can be considered extremely important in addressing current social challenges, referring to work conditions and the labour market as a whole.

Currently, the current European socio-economic system has been facing very tough challenges, mainly due to<sup>5</sup>:

- Globalisation;
- Digitalisation;
- Economic loss.

During the last decade – especially between 2008 and 2013 –, structural and crisis-driven economic and labour market transformations in Europe have resulted in an increase in non-standard work and new forms of self-employment as well as an upsurge in transitions from one labour market status to another – with great variations between countries, sectors, age groups and gender. In this context, European social protection sys-

---

3 R. ZAHN, *Trade Unions and the challenges of EU enlargement: ‘the kind of laws the Union ought to want’*, in *European labour law journal*, 2016, 3, 387 ss.

4 Above all, see [http://www.eurocadres.org/archives/ARCHIVES/doc/0111\\_EN.pdf](http://www.eurocadres.org/archives/ARCHIVES/doc/0111_EN.pdf).

5 Wolfgang Daubler, *Challenges to Labor Law*, 2016 *Law: J. Higher Sch. Econ.* 189 (2016).

tems are facing growing challenges in covering social risks for workers.

As a major consequence, all these factors contribute to the increasing diversity among Member States, thus, making it more difficult for the social partners to defend the interests of all workers and employers.

Although in recent years (especially in 2017) European Member States improved their economic solidity, certain labour market challenges persist<sup>6</sup>.

Above all, one the main drivers of change is, beyond any reasonable doubt, Digitalisation. Digitalisation can be considered one of the major challenges that professionals are facing in the 21st century: even if technological – as well as industrial – revolutions have been achieved during the ages, the digitalisation process distinguishes itself from other revolutionary innovation paths, due to its disruptive effects. For this reason, it is necessary to proceed to a brief description of the main features of digitalisation; this would create the ground to discuss the possible involvement of Social Dialogue.

### **A brief overview of Digitalisation**

Digitalisation is a broader concept: it can refer to the expansion of the digitalised sector as a whole, that of ICT (Information and Communication Technology) activities only, or beyond the ICT sector to the digitisation of industry and services. In this regard, Digitalisation is a broader phenomenon, whose amplitude is stressed by the inclusion in many other phenomena. Thus, other denominations are

---

6 Kenney M. and Zysman J. (2016), ‘The rise of the platform Economy’, *Issues in Science and Technology*, 22(3), <https://issues.org/the-rise-of-the-platform-economy/>.

industry 4.0, enterprise 4.0, work 4.0, office 4.0, smart offices, Internet of Things, but there is no agreed terminology; often online platforms, sharing economy, collaborative economy are to be included as well<sup>7</sup>.

Digital transformation is a series of intertwined factors including technological convergence, and the servicification and platformisation of economies, which in some way affects individuals, as professionals and their employees in the exercise of their professional role. Actually, digitalisation enabled the entrance of a new player onto EU labour markets: digital labour platforms.

There are several indicators of the current state of digitalisation in the EU. One of them is the Digital Economy and Society Index (DESI)<sup>8</sup>, which is structured across the five principal areas and sub-dimensions and indicators.

As previously said, the EU countries that most improved their digital economies in 2018 were Denmark, Sweden, Finland, and the Netherlands. At the bottom of the list were Romania, Greece, Bulgaria, and Italy. For digital public services, Finland had the highest score, followed by Estonia, Denmark and Spain, while Greece, Hungary and Romania had the lowest scores<sup>9</sup>.

Likewise, the semantic extent, also the effects of the digitalisation on work and employment can best be described as both mixed and multifaceted.

---

7 In a larger sense, digitalisation is perceived as an “economic and social transformation triggered by the massive adoption of digital technologies to generate, process, share and transact information”: Katz, R., Koutroumpis, P., & Callorda, F. (2014). Using a digitization index to measure the economic and social impact of digital agendas. *Info*, 16 (1), 32– 44.

8 <https://ec.europa.eu/digital-single-market/en/desi>.

9 European Commission, Digital Economy and Society Index (DESI) 2018 (2018), <https://ec.europa.eu/digital-single-market/en/de>.

The digital economy can provide disruptive effects by manipulating all traditional socio-economical axes, thus replacing traditional society's models and affecting every aspect of life<sup>10</sup>.

In this regard, the general goal of this section is to analyze the role of social dialogue in the face of digitalisation, as well as its role in the face of restructuring processes driven by digitalisation.

The analysis of digitalisation trends is twofold emblematic:

- On one hand, the future of professions goes alongside the development of digitalisation;

- On the other hand, as a consequence of the statement above, the effects of digitalisation should be placed at the centre of social dialogue, as explicitly provided for by European Institutions, as well as their strategies to ensure social rights.

The concept of digitalisation, however, provides a possibility for societal stakeholders (government agencies, regional authorities, municipalities, associations, non-governmental organisations and social partners), both at European and national level, to address wider societal issues and policy concerns, in order to create a vision of a new society and the role of the state in such a society.

---

10 European Commission, A Digital Single Market Strategy for Europe, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2015) 192 final, Brussels, 6 May 2015, 3-4.

### 1.1.1 The impact of Digitalisation in professional sectors

Professions are considered very broad categories<sup>11</sup>, even though they are too elusive to be defined. However, they share common characteristics in terms of:

- degrees of autonomy from the state in their regulation;
- professions of service of the public interest;
- shared knowledge and training;
- professional ethics and codes;
- restrictive practices<sup>12</sup>.

Professionals are currently facing a new era, i.e. a “*technology-based Internet society*”; in this regard, they share common features. Thus, professions are affected by (i) automation efficiencies that limit the number of people needed for many traditional professional tasks and (ii) innovation which creates new ways of sharing practical expertise<sup>13</sup>.

In order to understand the role of social dialogue, it is necessary to briefly describe the possible main impacts of digitalisation in the professional sectors. As will be illustrated below, the impact can be both considered in an empirical and legal perspective: the former addressing the consequences of the digital diffusion in professional sectors; the latter addresses the link between many strat-

---

11 Greenleaf, Graham, Review Essay – Technology and the Professions: Utopian and Dystopian Futures (February 24, 2017). (2017) 40(1) UNSW Law Journal 302-321; UNSW Law Research Paper No. 17-29. Available at SSRN: <https://ssrn.com/abstract=2973244>.

12 Justine Rogers, Dimity Kingsford Smith and John Chellew, ‘The Large Professional Service Firm: A New Force in the Regulative Bakrgain’ (2017) 40 University of New South Wales Law Journal 218.

13 Susskind and Susskind, The Future of the Professions, cit., p. 270.

egies that have arisen over time in digital innovation, the role of professions and the future of work<sup>14</sup>.

### *The impact of Digitalisation from an empirical perspective*

With about 4% of GDP, the ICT sector in Europe represents an important share of the economy, employing more than 6 million people<sup>15</sup>. The value added of this sector in the EU (production of digital goods), spanning from components to software products is above 580 B€<sup>16</sup> and represents close to 10 % of the added value of industrial activity overall.

Recent studies<sup>17</sup> have estimated that digitisation of products and services will add more than 110 B€ of revenue for industry per year in Europe in the next 5 years. Just in Germany, further digitisation of industry is expected to bring up to 8% of productivity growth over ten years and a revenue growth of about 30 B€ per year. It will also lead to a 6% increase in employment. Close

---

14 Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, 2015). For an impressive selection by the publisher, see Oxford University Press, *The Future of the Professions: Reviews and Awards*.

15 Communication from the commission to the european parliament, the council, the european economic and social committee and the committee of the regions, *Digitising European Industry Reaping the full benefits of a Digital Single Market*, {SWD(2016) 110 final}, COM(2016) 180 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016D-C0180&qid=1557415244541&from=IT#footnote2>.

16 PREDICT is.jrc.ec.europa.eu/pages/ISG/PREDICT.html.

17 PwC, *opportunities and Challenges of the industrial internet* (2015), and Boston Consulting Group: *the future of productivity and growth in manufacturing industries* (2015).

to a third of the growth of the overall industrial output in Europe is already due to the uptake of digital technologies<sup>18</sup>.

In this regard, four main impacts of digitalisation on work and employment have been identified as follows by academics<sup>19</sup>:

- Job creation: new sectors, new products, new services;
- Job change: digitalisation, human/intelligent machine interface, new forms of management;
- Job destruction: automation, robotisation;
- Job shift: digital platforms, crowdsourcing, “sharing” economy.

Above all, it must be pointed out that technological innovation has its own neutral attitude: this means that every negative consequence cannot be reduced to a mere technological trend; on the contrary, it depends on human interplay with technology.

In conclusion, digitalisation can produce both positive and negative consequences. Against this backdrop, social dialogue can be considered a twofold instrument for interacting with the most important challenges:

- On the one hand, it can be used to manage the hidden potential coming from innovation;
- On the other hand, it can be considered an appropriate tool to prevent and address the negative consequences

---

18 Estimates by LIFE + series of studies 2016.

19 Degryse, C. (2016). *Digitalisation of the economy and its impact on labour markets*. Working paper. ETUI, Brussels, ISSN 1994-4446, ISSN 1994-4454 (pdf). 80 pages. Available at <https://www.etui.org/Publications2/Working-Papers/Digitalisation-of-the-economy-and-its-impact-on-labour-markets>. See also [http://diresoc.eu/wp-content/uploads/2019/04/Diresoc\\_WP1\\_Transversal\\_Analysis-1.pdf](http://diresoc.eu/wp-content/uploads/2019/04/Diresoc_WP1_Transversal_Analysis-1.pdf).

coming from an irrational management of the phenomenon itself. Thus, digitalisation can be considered an important longlasting challenge, because of its disruptive effects for professionals: as a matter of fact, the digitalisation of professions means multilevel involvement and confidentiality with technological tools; for this reason, all professionals will be required to have basic IT skills and certain professions must have specific training in certain areas of digitalisation and advanced skills to handle this process.

Building appropriate competence ranks as important for professionals, especially in light of preventing *lock-in* effects: as a matter of fact, the professional has to build up competence to be able to give proper advice to clients.

This can be considered quite necessary in certain sectors: in the health sector, for example, the professional may be required to give advice on how to use certain apps, machines and portable devices.

In brief, digitalisation can both bring chances and boundaries:

- Digitalisation stimulates economic growth by creating new jobs, increasing savings by both individuals and public and private companies, improving productivity; it thus offers new possibilities for personal expression and motivation<sup>20</sup>. As a consequence, new forms of employment have been emerging, mainly in the field of the platform economy, but also in the traditional services sectors: Digitalisation can free up a professional from mechanical issues and hence allow them to use their expertise elsewhere.

---

20 Sabina Hodzic, Tax Administrative Challenges of the Digital Economy: The Croatian Experience, 16 eJTR 762 (2019).

In this context, new forms of self-employment – such as “dependent self-employment” – may present new job opportunities, notably for the young. New graduates, actually, are often told they are not sufficiently qualified for certain jobs due to a lack of soft skills.

Moreover, the increased use of technology is having a positive impact on continuous professional development (CPD) as is being used by individuals to update their training, facilitate meetings - through teleconference - between different entities and embark on long-distance learning. Online updated material is easier to access.

- Despite all the advantages as mentioned above, there may be several concerns.

- A larger number of professionals may not be covered against the risks of unemployment<sup>21</sup>. As the European Commission has highlighted since 2016, “There are “grey zones”, such as “dependent” and “bogus” self-employment, leading to unclear legal situations and barriers to access social protection’ and while ‘more transitions will take place’ ‘access of self-employed or workers who are not on full-time and permanent contracts to paid family-related leave or insurance schemes remains uneven [across Member States and] the self-employed and those in atypical employment [...] experience higher [...] adequacy risks and lower coverage’, for which reason, inter alia, ‘the participation of the self-employed in insurance

---

21 European Commission (2017): Access to social protection for people working on non-standard contracts and as selfemployed in Europe. A study of national policies, <https://ec.europa.eu/social/main.jsp?langId=en&catId=1135&newsId=2798&furtherNews=yes>.

schemes shall be encouraged”<sup>22</sup>. For this reason, given also the decreases in terms of organisational density and representativeness, the European Commission invited social partners to further build their capacities to engage in a better-functioning and effective social dialogue;

- Moreover, digitalisation can lower the value of some tasks<sup>23</sup>, thus putting down critical differences in outcomes, such as wages. This feature can cause strong inequality among professionals and, above all, have strong repercussions on the whole of society. People who have no sufficient living income but are able to work get the minimum benefit:

- Thirdly, it can increase workload and the intensity of work<sup>24</sup>;

- Again, digitalisation is blurring the distinction between sectors as well as between the online and offline economy, posing challenges to employer representation. Digitalisation enables professionals to diversify their activities and therefore operate in sectors where they were not previously present.

Generally speaking, many other major topics, regarding digitalization and its effects on the professionals' world of work, can be listed:

---

22 European Commission, communication from the commission to the european parliament, the council, the european economic and social committee and the committee of the regions Launching a consultation on a European Pillar of Social Rights, COM (2016) 127 final, [www.europa.eu](http://www.europa.eu).

23 World Economic Forum (2016), “The Future of Jobs report”, p. 13, available at [http://www3.weforum.org/docs/WEF\\_Future\\_of\\_Jobs.pdf](http://www3.weforum.org/docs/WEF_Future_of_Jobs.pdf).

24 DGB-Index Gute Arbeit: Digitale Arbeit – Arbeitshetze und Arbeitsintensivierung bei digitaler Arbeit – Mai 2017 [www.dgb-index-gute-arbeit.de](http://www.dgb-index-gute-arbeit.de).

- The changes in job tasks and content, and related skills requirements<sup>25</sup>: amongst the benefits of digitalisation could be a potential liberation from dangerous, monotonous and repetitive tasks, which would be increasingly replaced by tasks of process monitoring and process enhancement, thus strengthening the capacity of teams to act and the capacity for autonomous self-regulation<sup>26</sup>;

- The legal status of workers who provide labour services through online platforms;

- The impacts on wages and working conditions;

- The effects on social protection;

- The role of industrial relations.

In brief, digitalisation can bring both opportunities and legal concerns. The evolution of work and labour condition can be observed in two different dimensions<sup>27</sup>:

- on the one hand, the controversy about the scale of job losses due to the increasing implementation of robotics and automatization, with the traditional polarization between “optimists” and “pessimists”;

- on the other hand, the debate about the potential job creation linked to the expected improvement of productivity and the development of new products and services.

---

25 Accenture (2016). The new delivery reality. Achieving High Performance in the Post and Parcel Industry 2016. Retrieved July 23 from [https://www.accenture.com/t00010101T000000Z\\_\\_w\\_/au-en/\\_acnmedia/PDF46/Accenture-The-New-delivery-Reality-HP-Post-and-Parcel-research-2016-AU.pdf](https://www.accenture.com/t00010101T000000Z__w_/au-en/_acnmedia/PDF46/Accenture-The-New-delivery-Reality-HP-Post-and-Parcel-research-2016-AU.pdf).

26 European Trade Union Confederation resolution on digitalisation: “towards fair digital work”, [https://www.etuc.org/sites/default/files/document/files/en-resol.digitalisation\\_adopted.pdf](https://www.etuc.org/sites/default/files/document/files/en-resol.digitalisation_adopted.pdf).

27 A. Branch, *The Evolution of the European Social Dialogue Towards Greater Autonomy: Challenges and Potential Benefits*, *Int. Journ. Comp. Lab. Law*, 2005, spec. pag. 327.

Thus, although the impending change holds great promises, such as the patterns of consumption, production and employment created by it, these also pose major challenges requiring proactive adaptation by corporations, governments and individuals. For this reason, it is important to understand the most relevant implication of social dialogue in the future of professions, in order to better appreciate the role of social partners at both EU and national level, pursuant to the specific application aforementioned.

### **1.1.2 The role of Social Dialogue in tackling digitalisation**

This section analyzes to what extent social dialogue can be considered valid in tackling challenges coming from the digitalisation process.

From a legal perspective, it is possible to argue that social dialogue can be considered - especially at European level - the most appropriate way to manage either positive or negative consequences due to digitalisation.

Actually, the improvement of the European social dimension, thanks to the constitution of the European Pillar of Social Rights, identified social dialogue as the way to enforce social rights: as a matter of fact, 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, social dialogue is a component of democratic government and also of economic and social modernisation, as set out in the Lisbon strategy, the agenda that

will take us to the end of the decade. In this regard, it reaffirmed consultation rights on economic, social and employment policies, the right to and support for collective bargaining, and the autonomy and need for capacity building of social partners.

Social dialogue has thus been considered the driving force behind successful economic and social reforms: the Lisbon strategy emphasises its role in addressing key challenges facing Europe, such as enhancing skills and qualifications, modernising work organisation, promoting equal opportunities and diversity and developing active ageing policies. Negotiations among social partners are the most suitable way forward on questions relating to modernisation and change management.

Social dialogue at all levels is considered by the European Commission to be a core part of Europe's response to processes that deeply affect the world of work such as digitalisation, globalisation and demographic change<sup>28</sup>. The involvement of social partners in labour market reforms and sector or company restructuring has shown to yield positive results as their involvement ensures ownership of reform processes and promotes trust and partnership. In addition, permanent channels for social dialogue can help anticipate and address the needs and expectations arising from the challenges associated with an ageing workforce and occupational health and safety or with regard to skills and work-life balance.

Moreover, the importance of Social Dialogue can be also recognized by the attention stressed by European Institutions towards the impact of professionals upon

---

28 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0292&qid=1557415244541&from=IT#footnoteref6>.

the European economy. Actually, since 14 February 2013, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, has been paying attention to the role of professions – especially liberal professions – by drawing up an own-initiative opinion on *The role and future of the liberal professions in European civil society 2020*<sup>29</sup>: the Economic and Social Committee emphasized how the liberal professions<sup>30</sup> are a component of any democratic society, and offer significant potential for growth in terms of employment and GDP and are one of the pillars of pluralism and inde-

---

29 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013IE1748&qid=1557305267277&from=IT>.

30 The term ‘liberal professions’ is not used in all Member States, but the concept, and the associated societal problems and solutions, can be found throughout the EU. There are significant differences between Member States in the definition of the term ‘liberal profession’, and some do not use the term at all. In some countries, only a small group of occupations are regarded as liberal professions: medicine, advisory professions such as law, tax consultancy and auditing, employment consultancy and engineering and architecture. In other Member States artistic activities are also counted as liberal professions. Generally, a liberal profession is characterised by: provision of a valuable intangible service that is distinctly intellectual in nature, based on advanced (academic) training; a service that is in the public interest; substantive and economic independence in executing tasks; provision of services in a personal capacity, on the provider’s own responsibility and in a professionally independent manner; a particular relationship of trust between the client and the service provider; a focus on providing the best possible service rather than on maximising profit; and compliance with precise, strict professional regulations and codes of professional ethics.

pendence in society and fulfil roles in the public interest<sup>31</sup>. For more than five years, the European Economic and Social Committee has outlined that liberal professions play a significant role in establishing and maintaining key social infrastructure. Furthermore, it affirmed that approximately one in six self-employed people work in sectors dominated by liberal professions, and that figure had been rising: this is quite common in the current context, due to the creation of new professional figures driven by digitalisation needs. Thus, the role of Social Dialogue is very relevant, since it has to balance Professional regulations with Europe’s fundamental freedoms, in particular with freedom to provide services, freedom of establishment and freedom of movement. They must therefore be non-discriminatory, proportionate, and serve an imperative requirement in the general interest, and also be compatible with national law.

In all Member States, professional organisations or associations represent the interests of their profession and play an advisory - or sometimes formative - role in State regulation. Through ongoing active cooperation with the institutions, they safeguard the general interests of the public. Administrative simplification is a priority for members of the liberal professions, who devote both economic and human resources to it without receiving any form of compensation from State offers.

Besides, since the digital transformation is structurally changing the labour market and the nature of work, several concerns have been raised, whereas these changes

---

31 P5\_TA(2003)0572 Market regulation and competition rules for the liberal professions European Parliament resolution on market regulations and competition rules for the liberal professions, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003IP0572&qid=1557305267277&from=IT>.

may affect employment conditions, levels and income distribution. Addressing these challenges requires a comprehensive dialogue on the social aspects of digitisation that engages all stakeholders involved in all aspects of work, education and training. The European social partners have recognised that digitisation is not just a technological issue, but it has wider social, work and economic implications. It is also a question of economic development and social cohesion. In line with the recognition of their fundamental role, the Commission invited the social partners to include the Digital Single Market in their social dialogue at European level and they have responded positively.

### **1.1.3 Social Dialogue for managing the growth potential of Digitalisation**

The full potential of digital innovation must be harnessed through comprehensive analysis of the most important policy discussions, at both International and European level.

#### **Most relevant policy discussions**

Innovation is usually considered such an important factor of competitiveness, productivity and the growth potential for all stakeholders<sup>32</sup>: it enables the production and business models to spread across most sectors on an unprecedented scale and might change how and where we work. In this section, both International and European policy discussions will be analyzed.

---

<sup>32</sup> Jukka AHTELA, Social dialogue for innovation in digital economy, <https://www.eesc.europa.eu>.

### **A. International level discussions**

International policy discussions on digital transformations and the future of work (FoW) are well underway and will soon result in recommendations at EU level with multiple opinions issued and consultations in place, at the G20 and G7, the OECD and not at least at the ILO, where three trade union commissioners contribute to the FoW centenary initiative. Across the board, trade unions are consulted and input actively.

### **B. European Union level discussions**

Europe and its Member States thus need to reinforce the competitiveness and fairness of the social market economy. In this context, social dialogue can promote the right conditions for job creation and job quality by contributing to increased competitiveness and improved working conditions. Some of the most relevant benefits coming from Social Dialogue can be listed as follow:

- a better match between the demand for and the supply of labour;
- the creation of a working environment more conducive to investment and sustainable growth;
- Social Dialogue can also facilitate the structural reforms that are needed to respond to the challenges of globalisation, technological, demographic and climate changes.

The importance and description of social dialogue as a core value has been reinforced by European bodies for several years.

At an entrepreneurial level, Business Europe has published several position papers on digitalisation related issues, some of their main messages being summarized below.

Above all, in 2015 Business Europe published “*Recommendations for a successful digital transformation in Eu-*

rope”. In this document, it is claimed that Europe requires an over-riding shift towards becoming the most dynamic digital growth region in the world, taking into account the digital economy’s global nature and business integration in global value chains, requiring more global convergence of rules and standards.

Albeit the focus of this document is on business development and opportunities, its relevance lies in the fact that it also addresses the labour markets and skills: it underlines the presence of great opportunities for workers, in terms of higher levels of autonomy and flexibility in work organisation, more possibilities to balance work and private life, more learning opportunities as well as access to more potential work opportunities.

Moreover, it predicts how some existing jobs and areas of activity will evolve; some jobs will disappear, but new activities will appear, leading to overall employment gains. For this reason, Business Europe recommends flexibility and re-skilling, as well as the essentiality of increasing work flexibility levels, because Europe must assess how best to adapt labour markets and work organisation in order to derive maximum benefits from digital transformation.

Besides, social dialogue is vital to playing an important role for fair socio-economic growth. As mentioned by the European Commission, “An industrial relations system based on social dialogue is the cornerstone of the competitive social market economy that inspires the European social model”<sup>33</sup>.

---

33 European Commission (2015). Industrial Relations in Europe 2014, p. 9.

#### **1.1.4 Social Dialogue for addressing concerns regarding Digitalisation**

As well as the array of benefits that may come from digitalisation processes, technological developments are also expected to have dramatic effects on labour markets. For this reason, it is necessary to understand how digitalization and restructuring are addressed in social dialogue. Moreover, the online platform economy blurs the distinction between employer and employee. Online platforms act as intermediaries between service users and providers, sharing certain characteristics with the temporary work agency model. The providers of services on online platforms are considered self-employed by the platform, even though the relationship between service providers and platforms often has features of an employment relationship, as it is based on subordination. Platform work itself challenges the traditional collective organisation: many service providers do not develop a professional identity as platform workers and seem unaware that solidarity with colleagues would be an option.

#### **1.1.5 Social partners’ statements on digitalisation**

The improvement and institutionalization of social dialogue has a direct relationship with the representative capacity of social partners at each level: from a management perspective, the engagement of social partners at EU and national level is crucial for the success of design and implementation of economic and social policies, including efforts to safeguard employment in periods of economic downturns.

European Institutions have been considering Social Dialogue as a valid effort, as the right way to discuss both how to take advantage of digitalisation opportunities and how to manage negative effects on employment, jobs and working conditions. The active involvement and participation of the social partners is an essential condition for the success of the European Union strategy for a smart, sustainable and inclusive growth<sup>34</sup>.

Consequently, a more effective promotion of social dialogue at all levels, in particular at a transnational level is essential, since a general supranational vision should avoid any possible social dumping or discriminatory process.

Principle 8 of the European Pillar of Social Rights establishes that the social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices<sup>35</sup>. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action.

This conclusion, however, should be balanced with national backgrounds. In Nordic countries there is a tradition of active participation in education reforms by the social partners. The same thing happens with the European Qualifications Framework, in the development of which social partners in Nordic countries are actively involved through working groups. This involvement

---

34 Staff di Statistica Studi e Ricerche sul Mercato del Lavoro – SSRMdL, *Il Dialogo Sociale in Europa. La partecipazione delle Parti Sociali nella scelta delle politiche del lavoro*, <http://banca-dati.italialavoro.it/bdds/download?fileName=02d9f764-cd0d-494c-aebd-8e686d84ce44.pdf&uid=02d9f764-cd0d-494c-aebd-8e686d84ce44>.

35 Proclamation of the European Pillar of Social Rights of 17 November 2017.

from the Scandinavian social model is characterized by a high level of social dialogue, trade unionism and a tradition of collective agreements. Moreover, the trade unions of Nordic countries are organized differently: there is a different union for each level of qualification.

As a consequence, European bodies and social parties<sup>36</sup> have been analyzing new opportunities and challenges coming from the digitalisation of professional service firms. In this regard, it is necessary to understand the role of social parties in facing new challenges coming from Digitalisation: these new digital challenges make workers' information, consultation, board-level participation and collective bargaining even more important, and they require strengthening.

The Commission introduces its new Communication "Digitising European Industry, by reaping the full benefits of a Digital Single Market"<sup>37</sup> with a positive note: it claims that European industry is playing an important role in putting Europe's economy back on track, but at the same time is turning a blind eye to the high level of unemployment, low investment, and low growth.

In its opinion, large disparities exist between regions and the level of digitisation varies across sectors, mainly between high-tech areas and traditional ones, but also between individual Member States. Nevertheless, it would act faster and more ambitiously, as a successful inclusive transition towards Industry 4.0. This is not a matter of wishful thinking or declarations but of action and investment.

---

36 BusinessEurope, CEEP, SMEunited and ETUC (and the liaison committee Eurocadres/CEC).

37 <https://ec.europa.eu/digital-single-market/en/news/communication-digitising-european-industry-reaping-full-benefits-digital-single-market>.

Pursuant to the legal framework drawn up after the Lisbon reform, social partners have achieved a unique role under the Treaties to come to agreements for which implementation can be requested through EU legislation based on a proposal by the Commission (Articles 153 – 155 TFEU), although the European organisation representing liberal professions, CEPLIS, is not part of the European social dialogue<sup>38</sup>. This role entails a responsibility for social partners and for the EU institutions involved: they have to ensure that the resulting legislation is aligned with the shared objective of better, simpler and less burdensome EU regulation.

Furthermore, the inclusion of Social Dialogue in the achievement of the European Social Pillar contributed to enforcing the debate towards it during the last year. For this reason, 2016 was such a crucial year for the development of social dialogue and the involvement of social parties.

Digital transformation is structurally changing the labour market and the nature of work. There are concerns that these changes may affect employment conditions, levels and income distribution. Addressing these challenges requires a comprehensive dialogue on the social aspects of digitisation that engages all stakeholders in-

---

38 The legitimacy and effectiveness of the social-partner consultation is based on their representativeness. The requirements in respect of representativeness vary in accordance with the nature of the responsibilities conferred on the players; (they are limited in the event of simple consultation, but more binding where the social partners can lay down rules which become law). As part of its task of promoting the European social dialogue, the Commission has laid down rules: see COM (93) 600 final and COM (98) 322 final, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX-%3A51998DC0322>. In 1998, a study was conducted on the social partners' representativeness and its main conclusions confirm that the social partners' European structures have become stronger.

involved in all aspects of work, education and training. The European social partners have recognised that digitisation is not just a technological issue, but has wider social, work and economic implications. It is also a question of economic development and social cohesion. In line with the recognition of their fundamental role, the Commission invited the social partners to include the Digital Single Market in their social dialogue at European level and they have responded positively<sup>39</sup>.

In brief, since 2016, Social dialogue has been considered the right way to discuss both how to take advantage of the digitalisation opportunities and how to manage negative effects on employment, jobs and working conditions.

Social dialogue is an essential element of the European social model, in order to provide clear benefits and wealth: whereas social dialogue is strong, economies are more competitive and socially resilient. The involvement of social partners in the design and implementation of policies is crucial to strengthen competitiveness and fairness, and is a prerequisite for the functioning of Europe's social market economy. The Commission is committed to strengthening social dialogue, at all levels.

---

39 "Better regulations for innovation-driven investment at EU level". SWD of the EC, 2016.

This is why it initiated the “New Start for Social Dialogue” in 2015 and recently reaffirmed in 2018<sup>40</sup>.

Currently, the main European political stages can be stated as follows:

- At first, the European Social Partners declared in a Statement on Digitalisation - for the Tripartite social summit of 16 March 2016 - that the European employment policy agenda, while underpinning digitalisation, “should, at the same time, aim to maximise quality employment opportunities”;
- In June 2016, the European Trade Union Confederation (ETUC) adopted a resolution on digitalisation, which developed a position towards digitalisation aimed at stressing the need to ensure the inclusiveness of the transition while acknowledging its advantages;
- In this context, the sixth autonomous work programme of the European social partners supports the objectives of the 2016 quadri-partite statement on “A New Start for Social Dialogue”<sup>41</sup> to strengthen social dialogue at Euro-

---

40 Report from the commission to the european parliament, the council and the european economic and social committee, Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), {SWD(2018) 187 final}, COM(2018) 292 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0292&qid=1557415244541&from=IT>.

41 <http://ec.europa.eu/social/BlobServlet?docId=15738&langId=en>. See also the European Commission Report of the Directorate-General for Employment, Social Affairs and Inclusion (European Commission), A new start for social dialogue, One year after, <https://publications.europa.eu/en/publication-detail/-/publication/2d1df4a6-66ae-11e7-b2f2-01aa75ed71a1>.

pean and national levels; to foster the role and influence of national social partners in the European semester; and to step up capacity building support to national social partners, notably through the European Social Fund;

- Moreover, in the same year, Member States started joining the Eurofound’s 2016 Foundation Seminar Series<sup>42</sup>. Participants discussed:

- a. the changes taking place in the world of work arising from digitalisation, focusing particularly on the rise of new business models such as online platforms that employ workers from across the globe on ad-hoc basis;
- b. the implications for the employer–employee relationship and working conditions;
- c. the blurring of boundaries between work and home life enabled by technology;
- d. the need for education and training systems to keep pace with demand for a skilled ICT workforce.

In this context, furthermore, the 2019-2021 Work Programme addresses Digitalisation among one of the six following priorities for the development of social dialogue<sup>43</sup>, such as:

- Digitalisation;
- Improving the Performance of Labour Markets and social systems;
- Skills;
- Addressing psycho-social aspects and risks at work;
- Capacity building for a stronger social dialogue;
- Circular economy.

---

42 <https://ec.europa.eu/social/main.jsp?langId=en&catId=1226&newsId=2708&furtherNews=yes>

43 [https://www.buinessurope.eu/sites/buseur/files/media/reports\\_and\\_studies/v2\\_sd\\_work\\_programme\\_2019-2021.pdf](https://www.buinessurope.eu/sites/buseur/files/media/reports_and_studies/v2_sd_work_programme_2019-2021.pdf).

Furthermore, the role of the Commission as a facilitator of social dialogue should be reconsidered in light of today's challenges.

The European social partners may decide to tackle other issues than those contained in this work programme and consider other means of actions following European Commission consultations in accordance with articles 154-155 of the Treaty on the European Union.

Before, many other initiatives occurred - in light of the strategy for a Digital Single Market - proposing transformational actions for the European economy and society. Starting in 2013, the European Commission initiated the Grand Coalition for digital jobs<sup>44</sup> as a cross-European, multi-stakeholder initiative to increase the provision of digital skills through stakeholder pledges, offering ICT training, apprenticeships, placements, actions to facilitate mobility and/or carrying out awareness-raising activities to encourage young people to study and pursue careers in ICT. The initiative has been successful in attracting over 60 pledges from more than 100 stakeholders, largely from the ICT sector, to train hundreds of thousands of people in new digital skills. It has also led to the development of 13 national and local coalitions, with more being planned. Going forward, the forthcoming New Skills Agenda will build upon the success of these Coalitions and set out specific actions to increase digital skills in Europe.

Despite the major involvement of social parties, some criticism can be made. The changing structure of the economy provides significant challenges to social partner organisations. This challenge is particularly press-

ing in those Member States where social partners' capacity is limited.

### 1.1.6 Outcomes

Several theoretical and empirical findings have shown several options to bear in mind and to support from a policy viewpoint:

- Direct involvement of trade unions in digitalisation, industrial, employment and related policy frameworks;
- Collective bargaining agreements at all levels to ensure quality jobs and decent wages;
- Freedom of association and workers' voice (also in the digital economy);
- Ensuring data privacy and protection, as well as appropriate levels of surveillance on the job (off- and online);
- Updating OHS standards for new technologies, algorithms and new materials;
- Co-creating ethical and organisational standards on the development and use of AI;
- Collectively agreeing on transition frameworks and insurance schemes;
- Designing, overseeing and co-financing training programmes and workplace innovation;
- Co-funding trade-union led exchange platforms, career guidance and e-training to workers.

Previously, in 2002 cross-industry social partners successfully negotiated a Framework Agreement on Telework, which is considered to have achieved greater success, in the sense of being largely implemented; the agreement focuses on regular telework and therefore does not provide much guidance on e.g. mobile or occasional telework.

---

44 <https://ec.europa.eu/digital-single-market/en/grand-coalition-digital-jobs>.

At sectoral level, European social partners in the insurance sector have, through a joint declaration, confirmed that a change in working arrangements (time and place) is necessary for companies to remain competitive and for employees to keep their jobs.

In a legal perspective, we can argue that the European Commission has been focusing attention on the relationship between social dialogue and digitalisation for several years. In this regard, the importance of taking full advantage of the opportunities brought about by some of the current changes, such as digitalisation, is emphasised. Safeguarding the fundamentals of the European social model for future generations requires action in a wide range of areas, notably:

- ensuring sustainable and adequate pension and long-term care systems in the face of population ageing and changing private and family life patterns;
- supporting people over longer and more diverse careers, and increasingly frequent work-life transitions;
- raising the skills level and providing relevant life-long learning opportunities to ensure the competitiveness of our economies;
- promoting the benefits of diverse societies, while ensuring social inclusion and equal opportunities for all.

Currently, the European Commission has underlined the possible involvement of European legislative bodies, in order to ensure much more uniformity across Member States. For this reason, it pointed out the presence, among several articles of the Lisbon Treaty that address social dialogue, of so-called “passerelle clauses”: Article 153(2) TFEU, last subparagraph, contains a specific passerelle clause for social policy measures currently subject to voting by unanimity and the special legislative

procedure in the areas covered by Article 153(1)(d), (f) and (g) TFEU.

This point is very relevant for measures supporting and complementing Member States’ activities in the following fields:

- the protection of workers where their employment contract is terminated (dismissals);
- the representation and collective defence of workers’ and employers’ interests;
- conditions of employment for third-country nationals legally residing in the Union.

As a consequence, any switch to the ordinary legislative procedure in these fields is subject to unanimous agreement in the Council, on the basis of a proposal from the Commission and further to consultation of the European Parliament. Pursuant to European Commission opinion, in order to facilitate the development of equal protection against discrimination, with effective redress mechanisms for all, the use of the passerelle clause could be considered in the near future.

### **1.1.7 The importance of Social Dialogue in tackling digitalisation: an empirical analysis**

Digitalisation is changing the world of work and re-shaping the professional features. In this regard, the wide array of chances and boundaries briefly underlined can be considered very close to European bodies. These have tried to trace the relation between digitalisation, professions and social dialogue. As a result, they have stressed the importance of social dialogue in addressing the impact of digitalisation in professional sectors.

For this reason, some examples of initiatives will be provided. The former deals with the financial sector; the second one is about insurance.

Digitalization will challenge professional service firms to rethink internal structures and thereby better deliver services and maximize profits in an increasingly digitalized age. A recent study by the University of Oxford and Deloitte suggests that by 2035, many employee roles in the services economy will be automated<sup>45</sup>. At the same time, it will also be necessary to consider how automation will impact jobs: overall the workforce composition is changing, with more and more jobs being occupied by a talented network - contingent workers, freelancers, independent contractors and subcontractors, and SOW-based labor. In this regard, while it can appear typical of professional service firms to hire freelancers and subcontractors to perform part of the work, the emphasis is usually on augmentation rather than primary reliance on external talent to lead the work. Industry experts predict that by the end of 2017, nearly 45% of the world's total workforce will be comprised of contingent workers.

### *The role of social dialogue in addressing the effects of digitalisation in the financial sector*

The Financial Sector constitutes one exemplary professional sector, strongly impacted by digitalisation. Innovation in the financial sector is taking place on the Internet, with online banking, big data, artificial intelligence, the blockchain, cybersecurity, etc. Data is exchanged at high speed, enabling risk assessments and

---

45 <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/Growth/deloitte-uk-insights-from-brawns-to-brain.pdf>.

financial decision-making to be carried out on the basis of algorithms and big data.

In this regard, it represents a useful example to testify what has been examined above.

The effects of Digitalisation and innovative business models in the European financial sector has been put at the centre of European bodies' Opinions: the most descriptive can be considered the Opinion of the European Economic and Social Committee in 2017<sup>46</sup>.

In the last few decades, the banking and insurance sector have continued to be reinvented by technology, regulation, and changing customer needs and expectations. New models of investments, savings, insurance, and fund transfers are allowing the widest range of people to participate in projects of different sizes, leading the creation of Fintech. In this regard, the need to restore trust and stability in the financial sector, with management of the transition from the old (traditional banking system) to the new system being crucial.

In this respect, the EESC played an important role. As a matter of fact, the Committee:

- calls for the appropriate legislation to be put in place in the EU context of an integrative process of the Banking Union and the Digital Single Market, allowing for growth and innovation while also ensuring protection for consumers and employees in the finance industry;
- emphasises that digitalisation must never replace good personalised advice from a qualified human advisor;

---

46 Opinion of the European Economic and Social Committee on the 'Digitalisation and innovative business models in the European financial sector, impact on employment and customers' (own-initiative opinion), (2017/C 246/02), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016IE5526&qid=1557495008048&from=IT>.

- Understands that FinTech requires new skills from all kind of stakeholders, such as regulators, supervisors, financial ecosystem stakeholders and the population as a whole. In order to take advantage of one of the main potential benefits of FinTech as a driver of financial inclusion, EU Member States have to strengthen financial education and digital literacy, anticipating the new scenarios. This needs to start in schools, and should embed information about financial products in the context of how they are presented online and their relationship with the development of the Internet of Things;

- Observes that Digitalisation in the financial sector threatens many jobs, and this is forcing employees to update their competences and skills. The EESC advocates ensuring that skills training and further education take place on two levels. Internally, by allowing employees to take on new tasks and create a cross-over between current financial employees from 'traditional institutions' and FinTech/InsurTech companies, and externally by preparing employees who cannot remain in the sector for jobs in other sectors.

As a consequence, the EESC calls on the European Social Fund to provide specific training programmes within the new flagship initiative "Digital Skills and Jobs Coalition"<sup>47</sup>, to support the up-skilling and retraining of the financial sector's workforce to prepare them for new digital technologies.

As the digital advances, continuous and consistent investment in the development of skills and qualifications will be required. This should be considered as a cornerstone for professionals: many studies of profes-

sionals, professionalism, and professionalisation, from Carr-Saunders and Wilson onwards, has shown that professions are characterised by specialist knowledge<sup>48</sup>. Which skills are needed for the current finance employees to stay relevant in the future and how these skills can be taught should be explored case by case. There are increasing concerns about working hours in connection with the launch of on-line working and the many jobs which are already being cut. It is already apparent that more financial activities will be relocated within the EU and outside Europe to countries with low labour costs and low levels of social protection.

Collective bargaining and social dialogue have to focus on the importance of adjusting vocational training to future needs and to make this training possible, as well as providing details of the way new technology is already being used in the sector.

The EESC emphasizes that digital solutions should always serve people and help to improve social standards and working conditions. Due to the specific context, the Committee highlighted the importance of sectoral social dialogue to be stepped up at all levels, including at the European level, to pinpoint the best solutions and thus prevent social upheaval. At a sectoral level and in each company, employers must endeavour to enter into negotiations with trade union representatives to ensure that effective measures are taken in terms of income, working conditions, social protection, training and support for internal geographical and occupational mobility, and outplacement. These measures have to take place

---

47 <https://ec.europa.eu/digital-single-market/en/digital-skills-jobs-coalitionbargaining-and-soc>.

---

48 Flood, John A., *Legal Professionals of the Future: Their Ethos, Role and Skills* (January 15, 2019). Available at SSRN: <https://ssrn.com/abstract=3315855> or <http://dx.doi.org/10.2139/ssrn.3315855>.

as soon as possible in advance of restructuring processes, not just when jobs start to be lost.

### *Insurance*

As digitalisation develops at an accelerated pace, investments by companies in further training measures are essential. While digitization is a challenge, it also contributes to creating opportunities.

The social partners aim to create a win-win situation for all through social dialogue. The Joint Declarations on demography and telework already contain many elements that can be used in this context. This declaration only aims to describe the specifications created by digitalization of the working world.

Making employees ready for the digital age requires good training and good training requires investments. Given that technological changes follow on from each other very quickly and involve many uncertainties, social dialogue takes on an even more important role. Key factors to address the new challenges are timely information and consultation.

For this reason, the European social partners in the insurance sector signed a joint declaration on the social effects of digitalisation on 12 October 2016<sup>49</sup>. They stated that it is important to raise employees' awareness of the necessity to engage in further training measures in order to maintain/promote their employability in the digital age. To enable employees to adapt their own further training (in accordance with the provisions of collective agree-

ments) to the specificities of the digital transformation of their sector and/or company, it is important that the company's digital strategy and/or sectors' developments is discussed with the social partners and announced in time and in a clear and understandable manner, thereby explaining at an as early as possible stage the specific skills that will be needed in the future. Employees should be informed in a transparent way about available training opportunities and measures that will allow them to follow this strategy or developments.

In addition, the possibilities provided by digital technology should be used to give professionals and their employees a better understanding of the competences needed in their current and future position, to quickly recognise the necessity of implementing further training measures and to explain this necessity to employees at an early stage and in a transparent manner.

This solution would be improved by social partners' discussions on a national level.

Social partners found that training, especially on digitalisation, must be made a topic of social dialogue at all levels, but especially at company level. Therefore, the social partners should consider whether it is appropriate to create a forum in order to build expertise.

---

<sup>49</sup> <https://www.insuranceeurope.eu/sites/default/files/attachments/Follow%20up%20to%20the%20Joint%20declaration%20on%20the%20social%20effects%20of%20digitalisation.pdf>.

## 1.2 General Conclusion about Social Dialogue and Digitalisation

Digitalisation represents a next frontier for Social Dialogue. In this regard, the meaning can be considered twofold:

- On the one hand, social dialogue has to face new issues and consequences coming from digitalisation. In this regard, it has to manage both chances and boundaries;
- On the other hand, either social dialogue is strictly influenced by digitalisation: currently, the digital revolution more broadly represents a huge socio-economic transformation; this means that some issues can be analyzed and be the argument of the dialogue from a different point of view.
- For instance, working time rules are again on the agenda of social dialogue, triggered by new technological possibilities, changing life-styles and economic considerations. While in the past trade unions argued in favour of a general reduction in working time, now discussion is increasingly about solutions tailored to the needs of companies and employees<sup>50</sup>.

---

50 E.g. the discussion on the 35-hour week, particularly in France but also in Germany and Italy. For an overview of working time developments see [http://www.handelsblatt.com/politik/international/arbeitszeiten-so-arbeitet-die-welt/v\\_detail\\_tab\\_print/13379278.html](http://www.handelsblatt.com/politik/international/arbeitszeiten-so-arbeitet-die-welt/v_detail_tab_print/13379278.html).

## 1.3 The development of collective bargaining in the professional sectors

European social dialogue is becoming more diversified and broader in scope, particularly as a result of implementation of the strategy for economic and social reform decided upon in Lisbon and confirmed in Barcelona in March 2002<sup>51</sup>. Massive, unceasing efforts must be devoted to providing information and study on the different partnership systems and practices in Europe. The forthcoming enlargement will further increase this diversity in the systems.

This section aims at verifying collective bargaining in professional service firms; in particular, its purpose is to verify the importance of collective bargaining among the variety of social dialogue instruments.

The real value of collective bargaining in fostering parties' autonomy, as well as the most appropriate way to ensure social rights, can be considered as an extension of the general question, raised regarding the relationship between social dialogue and collective bargaining. In this regard, arguments will be constituted by the creation of two different perspectives, that will provide an answer to the wider question.

---

51 Before that date, see Commission Communication, Adapting and promoting the Social Dialogue at Community level, COM(1998) 322 final; Communication from the Commission, The European social dialogue, a force for innovation and change, COM(2002) 341 final.

For this reason, the methodology will be twofold:

- First of all, the question will be analysed from a general perspective;

- Secondly, the importance of collective bargaining in professional firms will be highlighted

Focusing the attention on the first cornerstone:

- On one hand, the core value of collective bargaining will be underpinned as the most relevant expression of social dialogue, from a semantic point of view;

- On the other hand, the social value of collective bargaining, as aligned to the recent European social model will be highlighted.

### **1.3.1 The importance of collective bargaining: a semantic perspective**

From a semantic point of view, the concept of social dialogue lacks a definitive approach.

As a matter of fact, there is no common definition of social dialogue, both on a national and international level, as well as the absence of referential standards for the definition of social dialogue indicators, both at the level of international trade union organizations and at academic level. Thus, it has been described as a label, which can be held at different levels and may take different forms according to the national context<sup>52</sup>.

Based on the I.L.O. and European Union general defini-

---

52 E. Béthoux, *Transnational Agreements and Texts negotiated or adopted at Company Level: European Developments and Perspectives*, Background document for the facilitation of a meeting of the Restructuring Forum devoted to transnational agreements at company level, July 2008.

tion, which reflects a wide variety of actions and practices from around the world, we can firstly argue that social dialogue includes all types of negotiations, consultations or information.

Moreover, the relevance of such opinion might lay on the fact that both ILO and the European Union provided a graduation of such initiatives, due to the growing binding effects and the intensity of dialogue coming from the instrumental variety.

Currently, negotiations are considered as the most relevant facet of social dialogue, due to its accuracy and intensity.

We can thus argue:

1) Negotiation: is considered not only an integral – and one of the most widespread – forms of social dialogue, but the most relevant one, because parties can engage in collective bargaining at the enterprise, sectoral, regional, national and even multinational level; as a consequence, negotiation is the most formal and binding form of social dialogue, and is mostly institutionalized.

2) Consultation: similar to negotiation, it requires an engagement by the parties through an exchange of views, which in turn can lead to more in-depth dialogue. The parties participating in tripartite or bipartite bodies can engage in negotiations and the conclusion of formal agreements. Some of them are only consultative and information bodies, others are empowered to reach agreements that are binding on the parties (e.g. governments, workers and employers);

3) Information-sharing: This is one of the most basic and indispensable elements for effective social dialogue. In itself, it implies no real discussion or action on the issues but it is nevertheless an essential part of those processes by which dialogue and decisions take place. Thus,

even if this is not considered one of the strongest activities, this does not mean that it does not provide any benefit: to the contrary, even if the exchange of information is the simplest form of social dialogue, it implies a certain degree of confidence between the parties, as an essential starting point of more substantive debates and discussions, as well as negotiations.

The European perspective does not diverge very much from the ILO definition and ideal division: as a matter of fact, in a common European sense, social dialogue can be defined as negotiations, consultations, joint actions, discussions and information-sharing involving employers and workers. From a semantic point of view, the European definition lists the possible manifestations of social dialogue by placing them in order pursuant to their importance.

In this regard, collective bargainings can be included into the Negotiation definition: moreover, in ILO explanations, collective bargainings are explicitly mentioned<sup>53</sup>. It also points out that “social dialogue processes are broadly similar in these countries. Especially in Western European countries, there are processes that begin at the workplace and enterprise level, then get shaped by collective bargaining at different levels between the workers’ and employers’ organizations and are finally completed through a tripartite social dialogue which brings social partners and the State together”<sup>54</sup>.

However, it is important to stress that negotiation and

collective bargaining have not been considered to be the same: traditionally, they do not respond to the same logic.

As a matter of fact:

- Collective bargaining was traditionally seen as a competitive process of discussion, in which the representative of employees and management determine the employees’ wages and benefits;
- Negotiation, in a broader sense, covers all cooperative processes, with a view to reach a mutually acceptable agreement.

The goal of collective bargaining is to conclude a collective agreement. The ILO defines collective agreements as “all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more representative workers’ organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other”.

Moreover, the traditional concept of collective bargaining, which was based on antithetic perspectives, is changing gradually: as a matter of fact, through the improvement of a system of relations based on a collaborative-participatory model, it is to contribute, regarding efficiency and modernization, to the development of professionalism and develop new and more effective organizational models of work, capable of strengthening employment stability for the sector’s employees and of increasing the abilities of competitive professional offices.

---

53 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_231193.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_231193.pdf).

54 [https://www.ilo.org/wcmsp5/groups/public/@europe/@ro-neva/@ilo-ankara/documents/publication/wcms\\_666546.pdf](https://www.ilo.org/wcmsp5/groups/public/@europe/@ro-neva/@ilo-ankara/documents/publication/wcms_666546.pdf).

## Legal perspective

As mentioned before, social dialogue constitutes an important tool for both professionals and their employees. For employees, social dialogue offers an opportunity to exercise their right to collective bargaining for better working conditions, higher wages etc. Employers may see it as a long-term investment for increased productivity as well as for stability and peace in the labour market. Both parties may see it as an opportunity to influence, for example, government labour laws and other policies shaping conditions in the labour market.

Moreover, negotiation is the most formal and binding form of social dialogue, which in most cases is institutionalized.

Furthermore, it can provide many benefits despite any unilateral acts: as a matter of fact, negotiation is more democratic than unilateral imposition.

Tripartite negotiations aim at achieving agreements between the government and the social partners.

Collective bargaining, as a declination of the wider concept of negotiation, has a double dimension:

- The first one is a procedural dimension: this enables employee participation and managing conflict;
- The second one is substantive: it addresses regulatory challenges, such as distributing gains, improving working conditions and work organization.

Collective bargaining can create general consensus by negotiation, avoiding typical bias, coming from a recognition that too conflictual a relationship carries the risk of unacceptable reciprocal damage. Thus, it is necessary to dialogue in order to ensure long – lasting cooperation and coexistence.

In this regard, collective bargaining represents the most suitable key instrument: it is the concretization of dialogue and mutual positions among social parties, an iterative process in which the rules of the game are developed interactively as the nature of the game itself evolves.

From a legal perspective, the confirmation of collective bargaining as the most important expression of social dialogue rooted in different legal foundation.

Collective bargaining can help to create a culture of dialogue between parties.

For this reason, it will be analyzed the International and European backdrop.

### A. International Legal Framework

At international level, collective bargaining is defined in the Collective Bargaining Convention, 1981 (No. 154), as “all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for:

- (a) determining working conditions and terms of employment;
- (b) regulating relations between employers and workers;
- (c) regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations”.

Pursuant to the ILO definition, collective bargaining is considered a particular form of bipartite social dialogue, which can help to create a culture of dialogue between trade unions and employers and/or their organizations<sup>55</sup>, especially under particular circumstances, such as crisis. As claimed by ILO, “*Especiall*

---

55 ILO. 2011. Promoting Collective Bargaining Convention No. 154.

*in times of heightened social tension, strengthened respect for, and use of, mechanisms of social dialogue, including collective bargaining, where appropriate at all levels, is vital. Social dialogue is an invaluable mechanism for the design of policies to fit national priorities. Furthermore, it is a strong basis for building the commitment of employers and workers to the joint action with governments needed to overcome the crisis and for a sustainable recover*<sup>56</sup>.

Moreover, Article 7 of the ILO Labour Relations (Public Service) Convention, 1978 (No. 151), promotes collective bargaining and other forms of social dialogue in the public services.

Furthermore, the Declaration of Philadelphia, was adopted by the International Labor Organization in 1944, acknowledging dialogue's formula and participation between employers and employees at different levels. It also led to the adoption of many standards in the form of international conventions. Treaty No. 144 concerning tripartite consultations between government, employees' and employers' representatives. Collective bargaining is on top of bilateral dialogue between employers and employees adopted by the Declaration of Philadelphia as a right for employees.

## **B. European law**

In debates upon its ability in contributing to implementation of the European strategy for economic and social modernisation, social dialogue can draw on

---

56 ILO, Recovering from the crisis: A Global Jobs Pact adopted by the International Labour Conference at its Ninety-eighth Session, Geneva, 19 June 2009, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_115076.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_115076.pdf).

experience and tools which have demonstrated their worth, both at sectoral and intersectoral level.

The role conferred on social dialogue by the 1993 Agreement on Social Policy is the most striking example: it provides for mediation between the role of the public authorities and the place of negotiated agreements.

However, the greatest expansion of social dialogue has not reached its acme yet; in this regard, social dialogue should now expand its agenda, as requested by the Commission on numerous occasions.

Along the lines of the initiatives developed successfully in most Member States over time, notably through pacts, social dialogue can encourage the establishment - at European level - of a favourable climate for improving competitiveness, innovation and social cohesion; at the same time, it can help to guide the adaptation process in the candidate countries, offering avenues and strategic orientation for reforms.

European social dialogue could constitute a tool for the modernisation, announced at the Lisbon European Council, for all key issues on the European agenda.

Issues often raised deal with:

- preparing for entry into the knowledge society by recognising the vital role of lifelong learning and the acquisition of skills;
- incorporating mobility and career pathways into discussions on working conditions;
- active ageing;
- promoting equal opportunities;
- taking into consideration employment and wider access to the labour market, promoting sustainable development;
- incorporating quality as a factor in global performance both in aspects of work organisation and in health and

safety, and also worker involvement and negotiated anticipation of change.

In order to achieve these points, social partners can use a wide range of tools, from opinions to exchanges of good practices, from setting in place coordinated operations to the negotiation of agreements. In this way they can put forward principles for action which can associate all the levels concerned, taking account of the complexities and links between the areas.

The Commission takes the view that, as a rule, negotiation is the most appropriate means for settling questions related to work organisation and employment relations at both multisectoral and sectoral level<sup>57</sup>. Thus, it believes that the agreement recently concluded by the social partners on telework is highly significant.

The social partners are requested to make better use of their European bargaining area by concluding, on the basis of experience acquired, agreements incorporated into Community law or implemented in accordance with their own national procedures and practices in the light of their initial experience with telework.

Social partners have an important influence on (above all):

- Labour legislation;
- Determination of minimum wages;
- Definition and extent of social protection policies;
- Definition of non-wage labour costs;
- Employment policies;
- Training and life-long learning policies;
- Labour market institutions.

---

<sup>57</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0341:EN:HTML>.

Without retracing the stages of evolution of social dialogue, from the Treaty of Rome up to the Treaty of Lisbon, it is possible to note that the new provisions of the Treaty of Lisbon strongly enhance the role of collective autonomy. After the improvement due to Lisbon Strategy, the right to collective bargaining is considered to be now formally guaranteed by the primary law of the EU, together with other collective social rights: this has therefore found fulfillment with the express recognition of the right of collective bargaining in art. 28 of the Nice Charter, which, after the Lisbon reform, reached the “same legal value as the Treaties”<sup>58</sup>.

This is a very important standpoint: this implies that the European legal system does not just recognize freedom of collective bargaining, but also its affirmation and protection, considering it a right that should not be simply activated, but possibly promoted.

As a matter of fact, the art. 152 TFEU determines a qualitative shift in the nature of social dialogue towards greater autonomy to social parties<sup>59</sup>.

The European Commission considers social dialogue

---

<sup>58</sup> M. D’Amico, *Trattato di Lisbona: principi, diritti e “tono costituzionale”*, in P. Bilancia, M. D’Amico (a cura di), *La nuova Europa dopo il Trattato di Lisbona*, Milano, 2009, pagg. 70-71; B. Caruso, *I diritti sociali fondamentali dopo il Trattato di Lisbona (tanto tuonò che piovve)*, WP C.S.D.L.E. “Massimo D’Antona”. INT - 81/2010; A. Alaimo, B. Caruso, *Dopo la politica i diritti: l’Europa “sociale” nel Trattato di Lisbona*, in AA.VV., *L’Unione europea dopo il Trattato di Lisbona*, a cura di N. Parisi, V. Petralia, Atti del Convegno di Catania, 9-10 aprile 2010, Torino, 2011, pag. 201.

<sup>59</sup> Pursuant to article 152 TFEU: “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 Tripartite Social Summit for Growth and Employment shall contribute to social dialogue”.

as encompassing both the bipartite and the tripartite processes between the European social partners themselves and between the two sides of industry and the Commission. These processes are rooted in Articles 154 and 155 TFEU and may lead to legally or contractually binding agreements<sup>60</sup>.

Strengthening the national social partners and their capacity to engage in bipartite and tripartite dialogue can be instrumental in the success of the New Start for Social Dialogue. Of course, there are a number of preconditions for social dialogue to exist and prosper. These include respect for basic values and fundamental rights and notably the right to freedom of association and collective bargaining<sup>61</sup>. Moreover, Article 155 (1) TFEU has been considered to recognize, without regulating it, a system of voluntary contractual relations between social partners<sup>62</sup>: pursuant to article 155 “1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements”.

Social dialogue is widely recognized as one of the principles underlying what is known as the European social model, based on good economic performance, a

---

60 See also Communication from the commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions towards a Quality Framework on Traineeships Second-stage consultation of the social partners at European level under Article 154 TFEU /\* COM/2012/0728 final \*/ , <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012DC0728&qid=1558174194206&from=IT>.

61 European Charter of Fundamental Rights of 2009 (art. 12 and 27); European Community Charter of the Fundamental Social Rights of Workers of 1989 (art. 11-15); ILO Conventions N°97 of 1948 and N°98 of 1949.

62 Anna Alaimo, Bruno Caruso, *Dialogo sociale e negoziazione collettiva nell'ordinamento europeo (parte II)*, in *ADL* 1/2013, pp. 32 ss.

high level of social protection and education and social dialogue to foster social cohesion. In Europe, the concept of dialogue between governments, employers' and workers' organizations is generally accepted as a part of good governance, even if its modalities and its extent may differ substantially from one country to another and are often sensitive to electoral cycles.

Before the recent implementation of the European Social Pillar, several opinions of European bodies and public organization stressed the vitality of social dialogue.

Among others:

- The European Commission argued that “As a driving force for modernisation of the European economy and the European social model, the social dialogue holds a crucial, unique position in the democratic governance of Europe”<sup>63</sup>

- ETUC and ETUI claimed that “The European social dialogue is acknowledged as an essential component of the European model of society and development.... European social dialogues, alongside European social legislation, are regarded as driving forces of successful social reform”<sup>64</sup>. The ETUC, had always wanted social dialogue to have a bargaining side to it: from the 1990s, indeed, it proposed that the social partners should contribute to the treaty's reform in order to open up a negotiated regulatory area<sup>65</sup>.

---

63 European Commission. 2002. The European social dialogue: A force for innovation and change (COM), pp. 341, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0341:FIN:EN:PDF>.

64 ETUI/ETUC .2009. Benchmarking working Europe 2009, (Brussels), <https://www.etui.org/Publications2/Books/Benchmarking-Working-Europe-2009>.

65 <http://www.institutdelors.eu/wp-content/uploads/2018/01/europeansocialdialogue-lapeyre-jdi-jan15.pdf?pdf=ok>.

- EPSU - European Federation of Public Service Unions has been arguing since 2009 that collective bargaining and social dialogue needed to be developed and defended as part of the European social model<sup>66</sup>. EPSU claims that collective bargaining is a key tool to defend and protect workers' rights in the face of digitalisation<sup>67</sup>.

In brief, European countries are the most advanced in terms of social policies and are the most respectful to employees' fundamental rights, paving the way for the development of social dialogue in an intensive way and its ascension to ethical cooperation between social partners<sup>68</sup>. Globally, social dialogue and bilateral and tripartite process, both on national and European levels, suggested a socio-economic strategy ending with an agreement on "Social Europe" aiming at the following:

- Promote employment and improve living and work conditions;
- Social protection and professional security;
- Well-structured dialogue between production stakeholders;
- Develop and qualify human resource for a better long-term work quality;
- Fight social and economic exclusion;
- Sustainable training strategies.

---

66 EPSU Congress 2009 R.2. Collective Bargaining and Social Dialogue, [https://www.epsu.org/sites/default/files/article/files/R2\\_Collective\\_Bargaining.pdf](https://www.epsu.org/sites/default/files/article/files/R2_Collective_Bargaining.pdf).

67 <https://www.epsu.org/article/shaping-digitalisation-through-collective-bargaining>.

68 [http://medsocialdialogue.org/wp-content/uploads/2018/09/1.1.1\\_Social\\_-Dialogue\\_-Indicators\\_VF.pdf](http://medsocialdialogue.org/wp-content/uploads/2018/09/1.1.1_Social_-Dialogue_-Indicators_VF.pdf).

## **1.4 Collective bargaining and professions: an introduction**

As shown above, collective bargaining constitutes the peculiar instrument capable of reconciling the needs of market renewal with the more immediate demands of professionals and their collaborators, through the provision of negotiating welfare able to offer a wide range of protections through the participatory action of the bilateral bodies. The most important goal is to codify the real needs that arise from the studies overcoming the difficulties that professionals encounter daily in their activity, trying to govern the changes that the evolution of the professional market imposes.

It is thus necessary to define a model of a contractual structure suitable for managing the effects deriving from the reform process of the sector and for regulating the matters pertaining to the specificities of the different professional areas. As a matter of fact, the whole structure that arose over the years both from an empirical and legal perspective, shed light on industrial relations. This framework, as a consequence, cannot be considered properly suitable for the professional sector, which lacks a similar solid and longlasting culture on the enforcement of social dialogue and collective bargaining, whereas in the absence of harmonisation, Member States are free to decide on the regulation of professions, provided the national measures are transparent, non-discriminatory, justified and proportionate. In this

regard, both the European Parliament and the European Commission have been starting to pay attention to the role and the importance of professional firms.

For this reason, they adopted several soft law acts over the last three years:

- The European Commission adopted a Communication in 2016, containing a Proposal for a directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions<sup>69</sup>;

- Later, the European Parliament, on the ground of such a proposal and the European Directive 2005/36/EC on professions, adopted a Resolution in 2018<sup>70</sup>, stressing the importance of renew the legal framework of professional services.

In those cases, the only concrete conclusion is that in the absence of harmonised requirements at EU level, the regulation of professional services remains a prerogative of the Member States, within the limits of the principles of non-discrimination and proportionality.

At the same time, the importance and the vitality of professional sectors for the whole of Europe has been made clear. As argued by the European Parliament:

- Which stressed that regulated professions play a fun-

---

69 European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a proportionality test before adoption of new regulation of professions, COM(2016) 822 final, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/COM-2016-822-F1-EN-MAIN-PART-1.PDF>.

70 European Parliament resolution of 18 January 2018 on the implementation of Directive 2005/36/EC as regards regulation and the need for reform in professional services (2017/2073(INI)), [http://www.europarl.europa.eu/doceo/document/TA-8-2018-0019\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0019_EN.html).

damental role in the EU economy, making a major contribution to the employment rate, as well as to labour mobility and added value in the Union; considers;

- Furthermore, that high-quality professional services and an effective regulatory environment are of paramount importance for preserving the EU economic, social and cultural model and for strengthening the competitiveness of the EU in terms of growth, innovation and job creation;

- Moreover, it recalled that there are over 5 500 regulated professions across the EU, with significant variations between Member States, representing 22 % of the labour force in all sectors of activities, such as health and social services, business services, construction, network services, transport, tourism, real estate, public services and education.

The European Commission suggested to consider the implementation of a new EU Directive as the better instrument to enact the reform of the professional sector: in its opinion, it should significantly facilitate the obligation for Member States to comply with the proportionality principle and would guarantee that Member States implement the proportionality test in an equivalent manner at all levels of regulation in order to avoid fragmentation of the Single Market.

However, the Directive can establish general principles, in order to create a level playing field; on the contrary, it is not able to manage and give quick responses to possible changes. Furthermore, it would be inconsistent with the traditional background of liberal professionals: Liberal professions are characterized by two constitutive components, i.e. (i) their collective organization and (ii) their strong self-regulatory tradition.

## 1.5 Critical points and Enabling conditions

Professions – especially liberal professionals – are considered as a value for the European socio – economic model<sup>71</sup>. As a matter of fact, professionals increase the existing stock of knowledge, by applying scientific or artistic concepts and theories, teaching about the above in a systematic manner or engage in any combination of these activities<sup>72</sup>. Professional services are indeed a key sector of the European economy and are entrusted with the delivery of services of considerable public importance<sup>73</sup>.

Professional services are a driver of a competitive, knowledge-based society which suggests their potential importance as future providers of new, sustainable jobs and contributors to economic growth. In the creation

---

71 EESC, The role and future of the professions in European civil society 2020, <https://www.eesc.europa.eu/our-work/opinions-information-reports/opinions/role-and-future-professions-european-civil-society-2020>.

72 <https://ec.europa.eu/esco/portal/occupation?uri=http%3A%2F%2Fdata.europa.eu%2Fesco%2Fisco%2FC2&conceptLanguage=it&full=false#&uri=http://data.europa.eu/esco/isco/C2>.

73 Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - Professional Services - Scope for more reform - Follow-up to the Report on Competition in Professional Services, COM(2004) 83 of 9 February 2004 (SEC(2005) 1064) /\* COM/2005/0405 final \*/, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52005DC0405&qid=1558174194206&from=IT>.

of value added through knowledge-based services, the competitiveness of the economy can reap significant benefits from strong liberal professions whose work is based on highly specialized knowledge and skills.

Moreover, liberal professional services, although provided primarily for the service recipient, are always fundamentally linked to the public interest<sup>74</sup>.

The needs of liberal professions were addressed in the Entrepreneurship Action Plan 2020 that established a working group ‘Bolstering the Business of Liberal Professions’ in 2013. In 2014, within the framework of the Entrepreneurship 2020 Action Plan, a working group entitled ‘Bolstering the Business of Liberal Professions’ was set up with a view to assessing the specific needs of liberal profession entrepreneurs, such as simplification, internationalisation and access to finance.

At the Conference on Liberal Professions of 9 April 2014, the working group presented its action lines, namely<sup>75</sup>:

- (1) Education and training for entrepreneurship;
- (2) Access to markets;
- (3) Access to finance;
- (4) Reduction of regulatory burden;
- (5) Strengthening representation and participation at European level.

---

74 European Economic and Social Committee, University of Cologne. European Centre for Liberal Professions (ECLP), The state of liberal professions concerning their functions and relevance to European civil society, <https://publications.europa.eu/en/publication-detail/-/publication/f106f20b-36f7-4425-8e07-33db339da6e6>.

75 Parliamentary questions, 24 June 2015, O-000080/2015, Question for oral answer O-000080/2015 to the Commission, Rule 128, [http://www.europarl.europa.eu/doceo/document/O-8-2015-000080\\_EN.html](http://www.europarl.europa.eu/doceo/document/O-8-2015-000080_EN.html).

Also, in its 2013 resolution on “Reigniting the entrepreneurial spirit in Europe”<sup>76</sup>, the European Parliament also emphasised the importance of the liberal professions in terms of entrepreneurship in Europe. Moreover, the adoption of Directive 2006/123/EC on services in the internal market and its implementation by Member States eliminated a significant number of barriers to the provision of services in the internal market.

Liberal professions are exposed to the emergence of new economic and social developments that bring - as for any other entrepreneur - new business opportunities but also challenges. This includes changing career patterns and working conditions, increased competition, changing regulations, the ageing population as well as the recent economic and social crisis.

By opening up this new dimension, liberal professionals should grasp the opportunities of the single market in the 21st century and weather competitive challenges<sup>77</sup>.

As the starting point, five areas in which concrete actions could be undertaken have been identified:

- Education and Training for Entrepreneurship;
- Access to Markets;
- Reduction of Regulatory Burden;
- Access to Finance;
- Strengthening Representation and Participation at European Level.

---

76 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0512&language=EN&ring=B7-2013-0466>.

77 European Commission, FINAL REPORT OF THE WORKING GROUP ACTION LINES FOR BOLSTERING THE BUSINESS OF LIBERAL PROFESSIONS, <http://ec.europa.eu/DocsRoom/documents/15134/attachments/1/translations>.

Liberal professionals face difficulties in expanding beyond the European Single Market due to different levels of standards and regulations in countries outside the EU. The European systems of collective regulation of professions show a strong differentiation among Member States. As a consequence, many States – like France – provide several collective agreements for each working category. In particular, through the activity of negotiating representation - with the signing, as of the 1980s, of national contracts with the most representative workers’ union representatives - a collective regulation was produced for the entire sector valid for all employees and for each employee, employed in studies and in professional and intellectual activities. The collective agreement for the employees of professional offices has, in fact, uniformly regulated employment relationships and collaborations in the field of professional activities (regulated or not), also in the form of associated study. This is due to the different evolution of professional issues against the backdrop of European organization and governance. While national professional relations have been built up over more than a century in individual ways in each one of our member countries on the basis of the given historical context, through different struggles and in different ways, European social dialogue first saw the light of day in a voluntary manner a mere thirty years ago and aspired to play an active role in the construction of Europe<sup>78</sup>.

This background can no longer be considered valid: currently, the strong impact of globalisation, together with the digitalisation process, requires new frontiers of

---

78 <http://www.institutdelors.eu/wp-content/uploads/2018/01/europeansocialdialogue-lapeyre-jdi-jan15.pdf?pdf=ok>.

safeguarding for professionals, in order to face future challenges profitably.

As will be more thoroughly explored in the following section, an improvement of collective bargaining can thus produce several benefits.

### **Collective bargaining to reduce inequalities**

Currently, we can affirm that the empirical framework in use is characterized by existence of the following factors:

- Globalisation;
- European enlargement;
- Digitalisation trends;
- Strong competitiveness in the professional sector;
- Freedom of professional services.

These have severely impacted professions, especially liberal professions. As a matter of fact, many opportunities should be taken into account, to avoid the proliferation of such inequalities<sup>79</sup>. This is not a remote possibility: as a matter of fact, the new global development agenda, enshrined in the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, has been accompanied by the slogan and ambition to “leave no one behind” since the early days of its negotiation. For workers and the union movement this means recognising and taking action on the ever-increasing inequalities people face, within and between countries.

As a result, the integration of national economies into global markets and the expansion of global supply chains have, due to many factors listed above, intensi-

---

79 <https://sustainabledevelopment.un.org/content/documents/10512Sectoral%20Paper%20HLPF%20WTUMG%20Final.pdf>.

fied competition and caused leading firms to cut labour costs through restructuring, outsourcing and off-shoring, and lay-off / redundancy trends. For this reason, the implementation of negotiation among social partners, through collective agreements, might achieve several goals towards sustainable development, in order to obtain decent work levels.

As pillars of social dialogue, freedom of association and collective bargaining are considered as cornerstones for reducing inequality. This position is also released by OECD<sup>80</sup>: rising income inequality is no longer just an ethical or normative issue – it has economic costs and restrains a broad-based and sustainable recovery. There are also serious long-term consequences. High inequality leads to low inter-generational mobility. The capture of the policy agenda by top income earners through their excessive domination of political funding in some countries is leading to a serious distortion of public policy and builds inequity into economic growth models. As the OECD has stated, the rise of inequality “can affect economic growth, weaken social cohesion and sap trust in markets and institutions”.

This is done by improving working conditions and ensuring fair employment relations and innovation, but also by optimising democratic institution-building more generally. It is clear that social dialogue has a key role to play in managing societal change.

Inequalities can be influenced by both income or outcome factors. In this regard, Unions and collective

---

80 The role of collective bargaining as part of a comprehensive strategy to reduce income inequality tuac background paper oecd week 2015 (june 1-4, 2015), [https://members.tuac.org/en/public/e-docs/00/00/10/6D/document\\_doc.phtml](https://members.tuac.org/en/public/e-docs/00/00/10/6D/document_doc.phtml).

bargaining institutions reduce inequality by raising wage floors. Collective bargaining also reduces inequality among groups of workers such as women and men, high-skilled and low-skilled workers, and workers with a regular contract and those with temporary contracts.

In research carried out by ILO and OECD, it is possible to observe that countries where a higher percentage of employees have collectively determined wages are also those with lower wage inequality. On the other hand, countries where fewer workers are covered by collective bargaining tend to have higher wage inequality<sup>81</sup>.

These studies have supported the importance of collective bargaining in tackling inequalities.

Thus, two steps have been drawn:

- A first step is to protect two fundamental and enabling workers' rights: freedom of association and the right to collective bargaining;
- A second step is to provide support for collective bargaining.

### **The importance of collective bargaining in ensuring democracy**

Furthermore, collective bargaining can be considered an enabler of democracy. As stated by the OECD, "Collective bargaining has served as a cornerstone institution for democracy, a mechanism for increasing workers' incomes, improving working conditions and reducing inequality, a means for ensuring fair employment relations and a source of workplace innovation".

---

81 <https://iloblog.org/2015/03/03/want-to-tackle-inequality-shore-up-collective-bargaining/>.

In brief, Collective bargaining has a key role to play in managing change. It can also boost democracy, because it is the product of a wider path, despite of unilateral impositions.

It can also provide some benefits, in order to overcome the phenomenon that in recent years, also due to the effect of abolishing the tariffs, has characterized the procedures for awarding professional services and which has seen many Administrations foresee compensation not correctly parameterized to the quality and quantity of the services requested \,or even symbolic compensation.

Another important matter relating to the negotiation process at all levels of dialogue, which was raised by many respondents to the consultative Communication, was the question of participation and representativeness in contractual relations: in this regard, representativeness of the partners to deal with professionals' topics may also be questioned.

The Commission cannot intervene in the negotiations. It is up to the social partners to decide who sits at any negotiating table and it is up to them to agree on necessary compromises. The respect of the right of any social partner to choose its negotiating counterpart is a key element of social partners' autonomy. At the same time, it is crucial that the social partners at both cross-industry and sectoral level find the best ways to maintain the dynamic character of their dialogue, allowing it to continue to develop towards greater co-operation and openness in order for it to be able to play an even more constructive role by ensuring optimum representation. Such a process is necessary in order to make the results of social dialogue widely acceptable. In this context, the Commission would stress that the current situation is jeopardizing future developments and that a political

solution is needed to prepare the ground for the future. The absence of a state-imposed minimum wage also explains the importance of collective bargaining. With minimum wage regulations, employers could avoid bargaining by simply offering the minimum wage as defined by the government. Thus, the absence of minimum wage regulations implies that employers need to come to agreements with trade unions about wages.

The diversity of national systems has increased substantially with successive enlargements of the European Union. The differences concern not only the institutional frameworks, but also differing levels of operational capacity of social partner organisations in different countries. Moreover, another problematic question has already been mentioned: how does the essentially voluntary process of social dialogue interconnect with mandatory regulation by government?

Joint regulation by the 'social partners' confronts the issue not only of the potential unwillingness of one party to agree to effective rules but also of collective action problems. Even if the national (or cross-national) representative organizations on each side can agree, to what extent can their agreements be effective in standard-setting? Even in Western Europe, trade unions and employers' associations in several countries cover only a minority of the labour market; in Eastern Europe the proportions are in most cases smaller still, and in other continents usually significantly below European levels. How are the regulatory gaps to be filled? This is necessarily a task for government. In some countries, agreements may be given *erga omnes* (or generally binding) effect; in others (as for example is typically the case in Belgium) they may provide the basis for legislation. But unless governments are prepared to give statutory back-

ing to bipartite agreements – and indeed, to promise (or threaten) legislative action in the absence of an appropriate agreement – the devolution to voluntary action by the 'social partners' may simply be a recipe, perhaps deliberately so, for inaction.

### **The legal foundation**

In order to strengthen social dialogue, to ensure its effectiveness, it must be based on a solid foundation. This is provided by a body of International Labour Standards, including Conventions, Recommendations and Protocols. Freedom of association and the effective recognition of the right to collective bargaining provide the cornerstones. The normative foundations for these fundamental principles and rights are established in two key instruments, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) and the Right to Organise and Collective Bargaining Convention, 1949 (No.98). These are considered as instrumental 'enabling rights', the realisation of which makes it possible to promote and realise other workers' rights. These fundamental principles and rights at work are applicable to all ILO member states<sup>82</sup>.

### **Research activities carried out on the importance of collective bargains**

There is an economic case for collective agreements in ensuring fairer outcomes and higher productivity. Decades of research have proven the positive role of coordi-

---

82 Alemán J. (2010), *Labour Relations in New Democracies*, Palgrave MacMillan, Basingstoke and New York.

nated bargaining and strong labour market institutions on economic performance. This is now also acknowledged by the OECD. Policies such as:

I) minimum wages (both in terms of hourly real minimum wage and the minimum relative to average wages of full-time workers);

II) employment protection legislation (strictness of employment protection for both individual and collective dismissals);

III) trade union density and;

IV) coordination in wage setting have the intended consequence of reducing wage dispersion and hence overall inequality<sup>83</sup>.

## **1.6 Redundancies trends in the professions: a taxonomic introduction**

From a methodological point of view, redundancies represent a transition path of the worker figure, who shifts from being considered as a “resource”, to being considered useless.

Normally, when the human resource is qualified as “redundant”, it is because the company is no longer involved in a phase of corporate crisis with forecast recovery, manageable through agreements trade unions or social safety nets, of the ordinary or extraordinary supplementary fund, or solidarity contracts, but are faced with a structural and irreversible situation of surplus staff, which must be addressed.

For professionals, this assumption sounds quite similar, even if the context differs.

From an objective point of view, redundancies in the professional sectors can be reduced, on the one hand, to some disruptive happenings which, to some extent, determine the redundant trend: this could be, for example, redundancy trends due to digitalisation. On the other hand, however, some professional sectors are exposed to physiological redundancy, because of the strong asymmetry between supply and demand. In such cases, these two alternative scenarios can occur simultaneously: digitalisation, for example, can redefine the demand, which becomes more accurate in requiring high-qualified standards of professional services; as a consequence,

---

83 Bridging the Gap: Inclusive Growth 2017 Update Report, p. 32.

it can be considered, beyond any reasonable doubt, as a disruptive and unstoppable event, making many professionals inadequate to recent times and demands.

From a subjective perspective, moreover, professionals may become redundant in a dual main sense and in a residual one:

- At first, they might become redundant due to the change of some circumstances which influence their position or competitiveness in the market: in this sense, they are redundant in the sense of “being obsolescent” or less competitive;
- Secondly, they might be redundant due to a physiological asset of each professional sector: an example is the lack of symmetry between demand and supply, since the score of professionals registered in official registers could be higher than the effective demand;
- Finally, in a residual hypothesis, redundancy can occur because of the insolvency of a company where the professional is employed.

Moreover, another classification could be placed pursuant to the moment when redundancy happens:

- Redundancy can occur *ex ante*, because of many entry barriers, which HINDER access to the market. The analysis of the economic effects of regulation shows that depending on the occupation, there could be between 3 and 9 % more people working in a given profession if access requirements were made less stringent<sup>84</sup>.
- It can OCCUR *ex post*, due to many circumstances able to mitigate the current service balance.

---

84 M. Koumenta and M. Pagliero (2016), “Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU”. See: <http://ec.europa.eu/DocsRoom/documents/20362>.

As can be seen from this list, redundancy in professional sectors appears quite different from general workers’ cases. However, similarities can be traced in terms of effects: in any case, the professional is not as attractive as others, since he or she does not have the required skills to be competitive on the market.

The impact of both digitalisation and globalisation has been changing the whole socio – economic labour structure. Currently, the globalised world is characterised by an ever-increasing interconnectedness and interdependence of world markets. In this regard, the European Union has historically sought to balance the objectives of social rights and economic growth through a mix of treaty provisions, legislation and soft social policy mechanisms and the advancement of the Single Market.

Albeit the interplay between and mutual effects of open trade, technological change or other factors like the transition to a low carbon economy, it is increasingly difficult to single out a specific factor that causes job displacements<sup>85</sup>. Furthermore, several studies reveal more than one in ten (11%) think it is likely they will be offered redundancy in 2019<sup>86</sup>.

The purpose of reducing redundancy levels is aligned with the realization of the European Social model, together with general principles of the European Social Pillar; in this regard, we argue that attention paid to redundancy trends, as well as the implementation of appropriate professional and employment guidelines, need to contribute

---

85 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Globalisation Adjustment Fund (EGF) {SEC(2018) 273 final} - {SWD(2018) 289 final}, [https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-globalisation-adjustment-fund-regulation\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-globalisation-adjustment-fund-regulation_en.pdf).

86 <https://www.lhh.com/lhhpenna/en>.

towards a greater balancing of the macroeconomic rules and a Social Europe. The European Pillar of Social Rights is effectively a political declaration committing the EU to 20 key principles, which represents the EU's new overarching commitment to a Social Europe.

The Pillar is accompanied by a social scoreboard in which there are 14 headline indicators that assess employment and social trends.

From a legal perspective, the employment guidelines have been a feature of the EU policy mix since 1997.

The legal basis is found in Article 148 of the Treaty of the Functioning of the European Union (TFEU): 'the Council ... shall each year draw up guidelines which the Member States shall take into account in their employment policies'.

From an empirical background, it is possible to affirm that professions have been strictly impacted by the diffusion of economic crises that have occurred since the first decade of the 21st century. Over the last five years, new digital technologies have promised to dramatically change work outcomes and work experiences for professionals of all sorts—manual workers, knowledge workers and managers alike – across a wide array of sectors.

The changes that have occurred in recent years in the labor market have led to a new structure in the occupational and professional structure. Some professions have seen their demand for labor reduced to benefit others which, even in the face of the crisis, have experienced an increase in employment.

In this regard, ten years after 2008, the occupational level of the pre-crisis period has been exceeded but the structure of the labor market – especially the Italian one

– is now profoundly transformed<sup>87</sup>.

In brief, it is possible to affirm that the conjunction of economic, technological and political factors induced severe consequences in terms of redundancy; in particular, the technological innovation made some professions sensitive to the risk of obsolescence. In addition, the widespread of trends towards liberalisation of national surveying markets resulting from the European Union's Internal Market rules.

### **1.6.1 Digitalisation and redundancies: causes and factors**

Technological revolution is without a doubt transforming the future of work. Digitalisation is transforming business landscapes and the world of work, and redefining the boundaries of production, consumption and distribution. Advances in digital technology – including robotics, software and machine learning, sensors and analytical tools – will lead to newer and more creative ways for humans to work in concert with intelligent machines. As a consequence, intelligent digital processes open up new options in work organization, which were not practical a few years ago or, furthermore, were inconceivable. The overall consequences on labour markets are, however, still highly uncertain, which is reflected in the wide variation in the outcomes of the existing research<sup>88</sup>.

Design engineers engage in web-based, real-time ex-

---

<sup>87</sup> Statistica Focus Istat 2018 "Il lavoro indipendente".

<sup>88</sup> See the research carried out by EESC, <https://www.eesc.europa.eu/resources/docs/qe-02-17-763-en-n.pdf>.

changes with customers as they experiment with new infotainment system options<sup>89</sup>.

Digitalisation can transform existing jobs, demanding new skills to carry out new tasks, which may imply that the current work force has to be retrained or replaced by workers who already have these skills. Several drivers of change can be listed, as:

- high-speed mobile internet;
- artificial intelligence;
- widespread adoption of big data analytics;
- cloud technology.

As a consequence, Digitalisation gives rise to new jobs, while others become redundant. Findings show that nearly 50% of companies expect that automation will lead to some reduction in their full-time workforce by 2022, based on the job profiles of their employee base today. However, 38% of businesses surveyed expect to extend their workforce to new productivity-enhancing roles, and more than a quarter expect automation to lead to the creation of new roles in their enterprise<sup>90</sup>.

As a result of digitalisation, the organisation of work is characterised by increased flexibility, which affects when, where and how tasks are performed. In this context, the possession of such features, as “elasticity”, “creativity” and “resilience”, have been considered as “protective factors” against the crisis and the loss of jobs:

---

89 [https://www.accenture.com/t20150523T023643Z\\_w\\_/us-en/\\_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Dualpub\\_11/Accenture-Impact-of-Technology-April-2014.pdf](https://www.accenture.com/t20150523T023643Z_w_/us-en/_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Dualpub_11/Accenture-Impact-of-Technology-April-2014.pdf).

90 World Economic Forum, The Future of Jobs Report 2018, available at [http://www3.weforum.org/docs/WEF\\_Future\\_of\\_Jobs\\_2018.pdf](http://www3.weforum.org/docs/WEF_Future_of_Jobs_2018.pdf).

- Elasticity means the reactivity towards new events or, generally speaking, innovation;
- Creativity stands for the propension to learning, managing the innovation by obtaining value;
- Resilience underpins a specific attitude towards adaptation of new features.

These features can however exist differently for each professional sector, due to the specific professional physiognomy.

Thus, the European Parliament has highlighted the importance of education, skills development and entrepreneurial training in order to ensure that professionals in the EU remain competitive and able to face the transformational changes that are affecting the liberal professions as a consequence of innovation, digitalisation and globalisation, stressing the close connection between the knowledge of a professional and the quality of service provided<sup>91</sup>. Moreover, it has stressed that regulations on professional services must be fit for purpose and should be reviewed regularly in order to take account of technical innovation and digitalisation.

As technological breakthroughs rapidly shift the frontier between the work tasks performed by humans and those performed by machines and algorithms, global labour markets are undergoing major transformations. These transformations, if managed wisely, could lead to a new age of good work, good jobs and improved quality of life for all, but if managed poorly, pose the risk of widening skills gaps, greater inequality and broader polarization.

Apart from all disadvantages coming from a non-rational usage of technology, it is important to point out that, under some circumstances, technological innovation

---

91 European Parliament resolution of 18 January 2018, cit., p. 27 – 30.

can induce a rethinking of qualitative standards, thus shifting from redundancy trends to dismissal concerns. This could be considered consistent in those countries where there is a professional law requirement for a particular form of quality assurance. An exemplary case could be providing health care under the state social security system / public health insurance.

In Austria, for example, members of the dental profession must regularly conduct a comprehensive quality evaluation and report the results to the Austrian Dental Chamber (cf. § 22 of the Austrian Dental Law - ZÄG). Should the evaluation fail to take place for reasons within the responsibility of the professional, and should the evaluation or control find an immediate threat to health, this is considered a “serious breach of professional duty” within the meaning of § 22 section 2 ZÄG; and a reason for dismissal under the General Law on Social Security (ASVG), as a result of which the dentist in question may be excluded from treating patients in the public health care system.

Additionally, German pharmacists are required to take appropriate measures designed to ensure the quality of pharmaceutical practice; this include several activities, such as the participation in recommended inter-laboratory tests, the implementation of quality assurance guidelines of the Federal Chamber of Pharmacists or the establishment of a certified system of quality management and more over<sup>92</sup>. In this case, empirical standards, as well as guidelines, can be strongly influenced by technological innovation, which could make required standards much higher, with any consequent difficulty for those professionals who are not very keen on new trends.

---

92 Pharmacy Act, Regulation on Operation of Pharmacies.

## 1.6.2 Economic crisis and redundancies

European economies were suffering from the aftermath of the financial crisis and its impact on public finances, especially during the first decade of the 21st century. This conjunction was truly recognized by both national and European bodies: throughout the Single Market, national governments have been considering how to stimulate employment creation and restore economic growth.

From the European bodies' perspective, they have been trying to addresses these issues and calls for a new strategy that requires each Member State to actively perform a review and to modernise their regulations. In this regard, since its June 2012 Communication on the Implementation of the Services Directive, the Commission stressed the importance in this context of ensuring that the regulatory framework for professional services remains fit for its purpose<sup>93</sup>.

Large-scale reforms of the regulated professions are taking place in a number of Member States (e.g. Spain, Poland, Portugal, and Slovenia) and both the Commission and other international organisations are calling for such reviews of national regulations. The OECD, which has developed indicators measuring the regulatory restrictiveness of certain Member States for a selected number of professions and sectors, has underlined the distortive nature of these regulations

As a response to the challenges of the crisis, trade unions and employers have used collective bargaining as a

---

93 Communication on the implementation of the Services Directive “A partnership for new growth in services 2012-2015”, available at [http://ec.europa.eu/internal\\_market/services/docs/services-dir/implementation/report/COM\\_2012\\_261\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/report/COM_2012_261_en.pdf).

tool to craft packages of short- and longer-term measures aimed at mitigating the adverse effects of the recent economic crisis on workers by limiting redundancies and stabilizing employment.

### 1.6.3 Globalisation and redundancies

In 2009, the scope of the EGF programme was enlarged to redundancies resulting from “*the global financial and economic crisis*”. When the EGF legislation was revised again in 2013, it was decided that during the 2014-20 budgetary period, the scope of the programme would continue to cover situations arising from the “continuation of the global financial and economic crisis [...] or as a result of a new global financial and economic crisis”. The rules applicable to financial contributions from the European Globalisation Adjustment Fund (EGF) are laid down in Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006<sup>94</sup>.

In order to establish the link between redundancies and the global financial and economic crisis addressed in Regulation (EC) No 546/2009<sup>95</sup>, Italy, citing a study of the Italian parliament on work relationships at call centers in Italy, argues that the effects of the economic

---

94 OJ L 347, 20.12.2013, p. 855.

95 REGULATION (EC) No 546/2009 of the European Parliament and of the council of 18 June 2009 amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund, <https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0026:0029:EN:PDF>.

and financial crisis do not seem to have lowered the demand for marketing services and assistance to buyers of goods and services, but it has significantly affected the remuneration offered for such services (pressure on prices), with evident negative effects on the margins of profitability of the services providers. The restrictions imposed by the crisis and the need to rationalize expenditure for the acquisition of goods and services have often led to the award of contracts on the basis of maximum price reductions.

### 1.6.4 The opportunity of collective bargaining: critical factors

In light of the above, it is necessary to reflect upon the most suitable instrument, able to face the complexity of professional redundancies by promoting, meanwhile, an adequate guarantee rate.

In this regard, collective bargaining could be seen as an appropriate instrument:

From a legal perspective, it is a flexible tool, able to face the most relevant challenges and concerns in the professional sector. Despite such agreements, a rule-making process could seem too restrictive: as pointed out by the European Commission, excessive regulatory barriers to professions could create a market distortion, as well as generating higher prices which could deter consumers who are not prepared or who cannot afford to pay under these

conditions<sup>96</sup>. There can often be less burdensome ways to regulate which still ensure a good quality of services and could lead to better prices. As a consequence, consumer choice would be increased and social inequalities amongst consumers may be reduced. On the other hand, as shown before, collective bargaining is the most appropriate way to guarantee professionals from any inequalities concerns; Since 2016, the European Commission has evaluated that 70 million Europeans lack adequate reading and writing skills, and even more have poor numeracy and digital skills, putting them at risk of unemployment, poverty and social exclusion<sup>97</sup>.

In this regard, adequate skills constitute a pathway to employability and prosperity. This means:

- Strengthening the foundation, i.e. basic skills;
- Building resilience to create key competences and higher, more complex skills.

The European Commission seeks to identify the main challenges these professionals face and help create an environment where they can further develop their skills, through:

- education and entrepreneurial training;
- access to markets;

---

96 Communication from the commission to the European Parliament, the Council and the European Economic and social committee on Evaluating national regulations on access to professions /\* COM/2013/0676 final \*/, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013DC0676&from=IT>.

97 Communication from the commission to the European Parliament, the Council and the European Economic and social committee and the committee of the regions, a new skills agenda for Europe, Working together to strengthen human capital, employability and competitiveness, {SWD(2016) 195 final}, COM(2016) 381 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0381&qid=1558174194206&from=IT#footnoteref2>.

- reduction of the regulatory burden, including the need for clearer and simpler rules governing professions;
- access to finance;
- lack of representation and participation at the European level.

Even before, recognising the entrepreneurial potential of liberal professions, the European Commission:

- established a Working Group of representatives of national and European associations of Liberal Professions from EU Member States in 2013, to identify potential recommendations in terms of policies to be developed at European level<sup>98</sup>;
- Has also supported EU countries, regions and education and training institutions to help young people acquire the entrepreneurial competences which can help them to set up their own business or social enterprise. EU programmes such as Erasmus+, COSME, and the European Social Fund already provide financial support to this end.

In addition to the targeted support of liberal professionals, the European Commission has also pointed out the need to formalise representation of the European Liberal Professionals at the DG Internal Market, Industry, Entrepreneurship and SMEs conferences, or other meetings.

---

98 European Commission, Action lines for liberal professions, [https://ec.europa.eu/growth/content/action-lines-liberal-professions-0\\_en](https://ec.europa.eu/growth/content/action-lines-liberal-professions-0_en).

## 1.7 Conclusion

Social dialogue can be considered as the crossroads in enabling an effective European social model. Albeit several criticisms can be made, both European and International bodies have been appreciating the core value of social dialogue in tackling and managing major drivers of change. This is quite evident for digitalisation, which is disrupting all services. This induces us to focus great attention on the status of liberal professions, that can be considered to be really requiring appropriate guarantees. This induces us also to rethink about the current legal asset of liberal professions, in order to reform the sectors and align them with new requirements and needs. In this regard, Social dialogue is considered the right way to discuss both how to take advantage of the digitalisation opportunities and how to manage negative effects on employment, jobs and working conditions.

The construction of social dialogue progressively at workplace level, sectoral level, national level, as well as its progressive integration into the European legislation process can be considered as the technical method of preventing negative effects, which globalizing and digitalizing the economy have created on working relations, as much as possible and in a balancing way.

Social dialogue can be considered the right way to manage current challenges and Institutional diversity of each Member state.

In this regard, collective bargaining can be considered the driver of change. It has been becoming therefore, the particular tool able to reconcile the needs of market renewal with the more immediate demands of freelancers and their collaborators, through the provision of negotiating aimed at offering a wide range of protections through the participatory action of bilateral bodies.

Empirical evidence shows that every socio-economic system is changing. This renewal trend has been also influencing collective bargaining too, through the improvement of a system based on a collaborative-participatory model. It is to contribute, in key to efficiency and modernization, to the development of professionalism and develop new and more effective organizational models of work, capable of strengthening the employment stability of the sector's employees and increasing the capacity of competitive professional offices.

## **2. SOCIAL DIALOGUE: LEGAL FRAMEWORK AND SOCIAL PILLAR**

### **2.1 Introduction**

Social dialogue is considered worldwide as a very useful tool. Its importance is especially enhanced with reference to the solving of serious social problems, mainly consequences of globalization; apart, it is also used to establish how the resources are distributed, the costs and benefits of economic exchanges.

Actually, it has been widespreading both at International and European level.

Social dialogue on European level is considered as an important tool to promote the maintenance and increase of jobs, the improvement of working conditions and therefore an increase in the well-being of transnational companies' workers thanks to innovative solutions, while maintaining the autonomy of collective bargaining.

Thus, social dialogue is considered also as a fundamental component of the European social model: actually, it enables the social partners - as representatives of management and labour - to contribute actively for the design of the European social and employment policy.

As will be mentioned and looked into in depth at a later stage in this paper,, one of the particularities of social dialogue lies in the fact that it differs from other ways of

governing labour relations through the types of output it produces and the means to achieve them: social dialogue creates tangible and effective output, such as collective bargaining agreements and social pacts. Furthermore, it can also involve the co-determination of policies, or the tripartite governance of certain policy areas, such as (just to mention some) human resources development, employment policies, redundancies and more over.

Thus, another cornerstone is that the output will typically be achieved through negotiations or cooperation between government and social partners (tripartite), or between social partners (bipartite), which is fundamentally different from unilateral decisions taken by government on labour-issues (eg. labour legislation on minimum wages), or no-go or conflict strategies, such as protests, strikes, or lock-outs.

In order to reach these goals, many tools have been necessary, including agreements.

Currently, European social dialogue is used to refer to discussions, consultations, negotiations and joint actions involving organisations able to represent the two sides of industry, i.e. employers and workers.

Its evolution has taken the floor, over the years, along two main different forms:

- a tripartite dialogue involving the public authorities,
- a bipartite dialogue between the European employers and trade union organisations. This takes place at cross-industry level and within sectoral social dialogue committees.

Over time, social dialogue has evolved generously, adopting a selected perspective. Thus, sectoral social dialogue has developed considerably, increasing consistently: as a matter of fact, from just 19 economic sectors in 1999 to 43 committees in 2016. It has also produced six framework

agreements that have been implemented by as many directives (for example on maritime and rail transport, on civil aviation, hospitals, health care and the streets inland waterways). The work of the committees is determined by program work, as agreed by the social partners<sup>99</sup>.

This study is part of a wider research path, which aims at shedding light upon the role of social dialogue in the field of liberal professions. In order to provide specific and appropriate answers to the research questions, it will be necessary to provide an appropriate legal framework about the birth and the development of social dialogue, in order to comprehend the way it has improved over time, as a declination of broader social policy at European level. Actually, the current morphology of European Union policy and its legal framework has gone far away from the first purposes risen during the middle of the 20th century, when the first Organization at European level was created by the Treaty of Rome. In this regard, the analysis of European sources of law will provide and show the evolution of European policies, together with their shift from an economic perspective, to a more social and inclusive system, in which the social dialogue is included.

As was promptly shown above, social dialogue is a functional instrument to ensure social rights and fundamental freedoms. Currently, the EU is considered by its Institutions (especially European Commission) as a socio-economic ecosystem, in which social protection systems can be considered one of the most advanced of all the world.

---

<sup>99</sup> *Il Dialogo Sociale in Europa. La partecipazione delle Parti Sociali nella scelta delle politiche del lavoro a cura dello Staff di Statistica Studi e Ricerche sul Mercato del Lavoro – SSRMdL*, available at <http://bancadati.italialavoro.it/bdds/download?fileName=24c09f3c-5e66-41df-b91f-2b9d2fca0ee4.pdf&uid=24c09f3c-5e66-41df-b91f-2b9d2fca0ee4>.

This is due to current and large public initiatives, referring to best practices and social innovations, in order to face appropriate current social challenges. Although economic and social conditions in Europe have improved and employment has reached high levels never touched before, the aftermath of the crisis of the last decade is still wide-ranging, from youth and long-term unemployment to the risk of poverty in many parts of Europe.

In brief, we can affirm that:

- Social dialogue has been considered to be an important tool in European policies for many years;
- Its evolution, however, has been ongoing concomitantly with European ideas to constitute a more inclusive and social Europe;
- In this regard, social dialogue evolution and improvement is directly related to the improvement of the social dimension in European Union.

In this regard, a review of the policy evolution – i.e., the legal framework – and the literature towards this topic will be provided.

Besides, the development – together with the complete expression – of Social dialogue can be considered undulatory, due to both social and technological factors. The balances achieved in the field of social dialogue have shown significant signs of change in recent years, under certain circumstances, such as:

- Economic loss<sup>100</sup>;
- Consequent economic instability;
- Huge impact of digitalisation in all sectors of life and work, also for liberal professions.

---

100 *Le relazioni sindacali in Italia e in Europa. Rapporto 2008-2009*. CNEL.

The European Union has experienced several crises since 2008; these have exposed not only structural weaknesses, but also created a major concern for social cohesion in the European Union, with high unemployment, more people living at risk of poverty or social exclusion and growing disparities between and within Member States. In this regard, the transformations have been affecting industrial relationships and the very needs of protection and representation expressed by the representatives. These changes appeared to be particularly relevant when referring to work. While the labor market has lost the traditional elements of stabilizing economic cycles, and social protection has suffered from an anchorage to standardized functioning mechanisms no longer adequate to support the protection of the changing work, the role of the trade union organizations in European systems has also been subject to change.<sup>101</sup>

For this reason, European Institutional bodies stated that Social dialogue has been impacted by this very challenging socio-economic context. At Union level, there has been a growing recognition of the importance of involving the social partners at different levels with a view to obtaining an inclusive and sustainable recovery: in its Opinion of 2014, the European Economic and Social Committee emphasized that social dialogue constitutes an inherent part of the European project and of the growth and employment policies and measures aimed at overcoming the crisis; in this regard, this project must necessarily be based on the

---

101 European Council, *A new start for a strong Social Dialogue* - Council Conclusions (16 June 2016), 9891/16 SOC 384 EMPL 259, available at [www.europa.eu](http://www.europa.eu).

wealth of social dialogue at every level (national, sectoral, regional and company)<sup>102</sup>.

---

102 Opinion of the European Economic and Social Committee on the *Structure and organisation of social dialogue in the context of a genuine economic and monetary union (EMU)* (exploratory opinion) (2014/C458/01), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014AE1506&qid=1554279918560&from=IT>.

## **2.2 Social dialogue: towards the evolution of the legal framework**

Social dialogue has been rooted in the history of the European continent: this distinguishes the Union from most other regions of the world.

Accordingly, in its various forms in the different Member States, social dialogue is a component of democratic government and also of economic and social modernisation, as set out in the Lisbon strategy.

The legal basis of social dialogue has been growing slowly in the European context, due to the pervasiveness of the economic perspective.

During the first decades of the birth of the first Institution, actually, the Institutionary perspective was only projected onto economic issues as the only way to ensure the progress and welfare of the whole community.

In order to verify the connection of social dialogue with the European Social Pillar, as well as the recognition of the both social and economic European integration, it is fundamental to describe and analyze the evolution of the legal framework, up to the current legal basis in the Treaty of Lisbon.

Historically speaking, we may say that the process of establishment and development of social dialogue proceeded in parallel with the development of the European Union, that is, it was an integral part of that process. The legal framework can be differentiated basically on the different sources of law. Since social dialogue

evolved over time, as well as European Union policies and relationship among their Institutional bodies, this issue has been tackled by either *hard* or *soft* law acts.

The first priority, actually, dealt with the recognition of social dialogue, in order to point out the outstanding content, for European Institution, to take their action: as a matter of fact, the birth of the first European Institution did not deprive each Member State of their sovereignty; on the contrary, social matters were their own exclusive competence.

Thus, after the first period, when only the Council could make any observations about it, the emancipation of the European Union, in the twofold sense of democratization and European integration process, laid the foundation for a major involvement of the other European bodies, *i.e.* the European Parliament and the European Commission. The latter, indeed, has been particularly involved during the last decades, because of its new role given by the treaties; in this regard, the major involvement of the European Commission caused the proliferation of Communications and many other *soft law acts*, such as Guidelines, Communications and White Papers.

That documentary production can be considered very relevant, because the European Commission has been used to tackle other relevant issues, such as Growth, Competitiveness and Employment. The effort coming from those acts was very decisive, especially during the enlargement of the amount of European member states: as a matter of fact, despite many member states joining the European Organization, there was still significant ground to make up in the field of social dialogue; in this regard, since the function of the Treaties has expired, for the recognition of such rights and issues to be complete,

it was still necessary to effectively implement those principles mentioned in those primary sources of law.

In brief, soft law act has been extremely important in enforcing the achievement of social dialogue appropriate levels for all Member states.

The history of social partner involvement in the development of the European project, from the ECSC to EMU, is thus characterised by this basic commitment and shows the decisive role that social partner organisations have played and must continue to play in the current phase of EMU in order to address the cyclical challenges of the crisis and the structural changes facing our countries.

### **2.2.1 The Evolution of Social Dialogue through the Treaties - Stages of Development**

- Treaty of Rome: According to the 1957 Treaty of Rome, one of the Commission's tasks was to promote close cooperation between Member States with regard to the right of association and collective bargaining between employers and workers. In this regard, pursuant to the original statement mentioned in the Treaty of Rome, the Commission had, among other matters, the task of fostering close collaboration between Member States regarding the right of association and collective bargaining between employers work and workers.

However, this provision started to apply only after many years.

This was caused, at the same time, by some structural problems which occurred sooner, due the lack of legitimacy: as a matter of fact, the creation of the legal framework was made only by Institutions, apart from any participa-

tory democratarian processes of social parties; moreover, the European organization of trade unionism was not yet well defined, both for employees and employers.

According to the 1957 Treaty of Rome, one of the Commission's tasks was to promote close cooperation between Member States with regard to the right of association and collective bargaining between employers and workers. It took many years, however, until this provision would be implemented.

The creation of the Economic and Social Committee played a strategic role in the development of social dialogue within the framework of the European Union: this body was founded in 1957 on the tripartite principle and was composed of representatives of government, employers and trade unions.

Over time, the Economic and Social Committee has covered seven sections within its field:

- (a) economic, financial and monetary issues;
- (b) foreign relations;
- (c) trade and development;
- (d) social, family, educational and cultural issues;
- (e) protection of health, environment and consumers' interests;
- (f) agriculture and fisheries;
- (g) regional development, industry, crafts, services, transport and communications, energy, nuclear issues and research.

In brief, during the first two decades after the Treaty of Rome, the attention paid to social dialogue, as well as the valorization of social rights, was too weak, especially during the 60's. Apart from the Treaties, the European Social Chart of 1961 only recognized the "*joint consultation*", but it was too far from the most modern idea of social dialogue;

- During 1970s, after the Werner Report (1970)<sup>103</sup>, the redundancy of economic integration, totally divorced from any kind of social integration. There was, as a matter of fact, a strong asymmetry between the advanced economic integration and the lack of social cohesion;

- The real birth of social dialogue is generally placed in 1985, with the launch of bipartite social dialogue promoted by Jacques Delors<sup>104</sup>, president of the Commission: in that time, indeed, social dialogue at Community level evolved into a genuine European forum for negotiation, able to bring about progress through agreements. This was called – because of the name of the place where they met - the "Val Duchesse" social dialogue process: it was initiated in 1985 by Commission President Jacques Delors, aimed to involve the social partners, represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Public Enterprises (CEEP), in the internal market process. A number of joint statements on employment, education, training and other social issues resulted from this process.

This choice was carried out by UNICE, CEEP and ETUC in 1985, which paved the way for inclusion of the social partners' role in the Treaty.

This was considered such an opportunity; it enabled these organisations 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

---

103 [http://ec.europa.eu/economy\\_finance/publications/pages/publication6142\\_en.pdf](http://ec.europa.eu/economy_finance/publications/pages/publication6142_en.pdf).

104 Delors J., *La nouvelle société*, in Preuves, 1970, pp. 95 ss.

the Fundamental Rights of Workers and preparation of economic and monetary union.

This initiative, however, brought to an end earlier, informal attempts at consultation and concertation. In brief, this has been considered an initial exploratory phase in European social dialogue, primarily aimed to forge a shared bargaining culture; this introductory phase was thus crucial even if the documents published were to have only a minor impact on implementation at national level.

- Later, with art. 118 B of the European Single Act of 1987 on dialogue between social partners at community level (started in the early 60s with the constitution of some joint advisory committees of sector and relaunched by the Commission, on the initiative of President J. Delors, in the mid-eighties with the historical and mentioned meetings of Val Duchesse<sup>105</sup> between CES, UNICE and CEEP), the matter of social dialogue experienced an important conventional route to discipline of social policy, with entrustment to the Commission of the task of developing a dialogue between the social partners at European level that could lead, if the same considered appropriate, to Conventional reports.

Besides, the European Single Act created a legal basis for the institution of a “*social dialogue having a community dimension*”.

Moreover, Article 118B in the Single European Act stipulates that “*the Commission shall endeavour to develop*

---

<sup>105</sup> ‘Val Duchesse’ is the term used to describe the emergence of the European social dialogue in the mid-1980s, the inaugural meeting of which was held in the Brussels-based manor of ‘Val Duchesse’. This was the result of an initiative taken by Jacques Delors, President of the Commission, in January 1985, to invite the chairs and general secretaries of all the national organisations affiliated to the EU social partners (UNICE (today BUSINESSEUROPE), CEEP and ETUC).

*the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement*”, while Article 3 in the Maastricht Social Protocol affords consultative priority to the social partners in connection with the Commission’s social initiative projects and it allows them the possibility of negotiating the issues involved. The new Article 118A in the Maastricht Treaty’s Social Protocol states that the Commission must “take any relevant measure to facilitate social dialogue, providing balanced support for both sides of industry.”

- Besides, in 1986, the Single European Act created a legal basis for the development of *Community-wide social dialogue* and European social dialogue began to develop: this was made possible firstly with the establishment of a steering committee, which in 1992 became the Social Dialogue Committee (SDC), the main forum for bipartite social dialogue at European level. The Social Dialogue Committee meets three to four times a year.

Furthermore, with the Single European Act, the Council and the European Parliament openly recognize the social dimension of the Single Market, which rightly exists alongside the economic dimension. This is reflected, however, in a very limited way in the letter of the founding Treaty, also in its most recent version, which it took through the Single European Act. The harmonization of labor law is marked by a twofold purpose of policy of law: on the one hand, the EEC sets itself the goal of setting the Member States’ labor law in a neutral manner with respect to competition; on the other hand, the EEC, as a union, also a social one, wants the formation of a common material nucleus of labor law disciplines and thus of a minimum common denominator from a substantial point of view.

- In June 1988, the European Council reaffirmed the importance of the Single Market's social aspect, which gave Jacques Delors the opportunity, in a joint letter drafted with Commissioner Manuel Marin on 9 November 1988, to seek an opinion from the European Economic and Social Committee (EESC) regarding the potential content of a "*Community charter of fundamental social rights for workers*". That opinion was to be adopted by a broad majority, after some lively debating, on 22 February. The Community Charter of the Fundamental Social Rights of Workers was thus adopted on 9 December 1989 by a declaration of all Member States, with the exception of the United Kingdom. It established the major principles on which the European labour law model is based and shaped the development of the European social model in the following decade. The fundamental social rights declared in the Community Charter have been further developed in the Charter of Fundamental Rights of the European Union that became legally binding with the ratification of the Treaty of Lisbon on 1 December 2009<sup>106</sup>.

The concept of "collective bargaining" started to come into force with the Charter of fundamental social rights of 1989: pursuant to point 12, it is recognized that social dialogue can evolve - if the parties deem it appropriate - in real contractual relationships. This charter is first and foremost a political act couched in the terms of a solemn declaration;

- The adoption of the Community Charter of the Funda-

---

106 See Community Charter of the Fundamental Social Rights of Workers, <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/community-charter-of-the-fundamental-social-rights-of-workers>.

mental Social Rights of Workers and of a Social Action Plan gave a fresh boost to the Commission's initiatives in the field of social legislation, long hampered by the unanimous voting rule. The social partners reached a key milestone with their agreement of 31 October 1991, which would subsequently be incorporated in the Treaty of Maastricht's Social Protocol<sup>107</sup>. They affirmed their willingness to take part in the EU's social governance by themselves becoming regulators, by means of negotiation, alongside the legislative dimension.

This marked a revolutionary step in the development of European social dialogue: the social partners decided to structure their dialogue by establishing a permanent Social Dialogue Committee (SDC) in July 1992 to take the place of the steering committee previously set up. The purpose of such establishment was to organise work on identified labour-related issues, to track and assess the results and extensions of that work, to submit the results of social dialogue to the various authorities and to be kept informed on the development of sectoral social dialogue. Moreover, the Community Charter of Fundamental Social Rights of Workers, likewise, qualified the Social Dialogue as the preparatory moment to collective bargaining<sup>108</sup>.

-The Joint Declaration between CES, UNICE and CEEP of 10/31/1991 constitutes the nucleus then transposed into the Agreement on social policy (APS) annexed to the Maastricht Treaty in 1992. This joint request was ac-

---

107 Treaty on European Union, signed at Maastricht on 7 February 1992, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:1992:191:TOC>.

108 G. Tesaurò, *Le procedure di consultazioni delle Parti sociali nel Protocollo sociale*, in *Protocollo sociale di Maastricht : realtà e prospettive*, Roma, 1995, p. 134.

knowledge in the Agreement on Social Policy annexed to the Maastricht Protocol on Social Policy, which was signed by all Member States except the United Kingdom. At national level, the social partners were thereby given the opportunity to implement directives by way of collective agreement. The role conferred on the social dialogue by the 1993 Agreement on Social Policy provided for mediation between the role of the public authorities and the place of negotiated agreements. The social dialogue should now expand its agenda, as requested by the Commission on numerous occasions:

- Subsequently this Agreement, in 1997, the Maastricht Treaty was revised and gave way to the new Treaty of Amsterdam<sup>109</sup>. During these revisions, the social dimension of the European Union seemed to be given special attention: with the Treaty of Amsterdam of 1997, it is incorporated in the articles 136 and following of the TCE. Social protocol - which had previously been merely annexed to the Treaty - became fully integrated and there was an unprecedented emphasis on employment policy, dedicating an appropriate Title in the Treaty, Title VIII. The participation and the importance of social partners is recognized in the Treaty of Amsterdam by Art.137, asking Member States to provide a dialogue between employees and employers or, in any case the framework required for such a dialogue.

The process of institutionalizing social dialogue is expressed in the direct involvement of the parties in the community legislative process. Thus, the Commission had the task of promoting the consultation of the social partners and of taking “every useful measure to facilitate dialogue by providing balanced support for the parties”

(Article 138.1 TEC). In particular, it was envisaged that the consultation of social partners on the possible orientation of a community action, will intervene both before the Commission presents proposals in the social policy sector (Article 138.2 TEC), and in a subsequent and possible phase relative to the contents of the planned proposal; in this second phase the social partners can formulate an “opinion” or, if they deem it appropriate, a “recommendation” (Article 138.3 TEC).

Social dialogue has constituted such a fundamental element for the development of the European social model: in this regard, the reformation process of Amsterdam can be appreciated for its added value, i.e. social dialogue has acquired full recognition in the treaties: thus, in 1997, this major reform, which was based on an agreement between the social partners, was truly incorporated into the Amsterdam Treaty (Articles 138 and 139 of the Treaty establishing the European Community). Thus, social dialogue received official institutional recognition: as a consequence, the social partners (employers’ and workers’ representatives) have been, therefore, able to actively contribute to the elaboration of European social policy.

The main body of the Treaty of Amsterdam gives considerable powers and responsibilities to the social partners, as well as displaying an increasing interest in the development of dialogue at European level. The social partners obtained the official right to be consulted twice by the Commission on all initiatives of European social policy making, first regarding the possible direction of an initiative and then regarding the content of the proposal. They were also given the privilege of negotiating and concluding binding framework agreements to be implemented at European and national levels, pursuant to Article 138.

---

109 <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>.

Thus, they are able to replace legislative activities of the public authorities with their own negotiated legislation. Furthermore, this new institutional arrangement included a substantial change of decision making in the Council of Ministers: the voting quorum change, from unanimity to qualified majority in selected policy areas (notably, protection of workers' health and safety, working conditions, information and consultation of workers, equality between men and women, among others, pursuant to Article 137) was established.

Previously, in September 1996, the Commission adopted a consultation Communication in order to gather as wide a range of views as possible on the means to be employed to promote and develop European social dialogue<sup>110</sup>.

The Treaty of Amsterdam (1997) incorporated the Agreement on Social Policy, finally establishing a single framework for social dialogue in the EU.

As a result, those initiatives and cross-industry results of this process were the framework agreements on parental leave (1995), part-time work (1997) and fixed-term work (1999), all of which were implemented by Council directives.

Dialogue with the social partners has been the cornerstone of the European social model. Its part was mentioned in the manpower occupancy strategy and in the European Manpower Occupancy Pact.

- In 1992 the Social Dialogue Committee (CDS) was established as the main forum for the bipartite dialogue between the social partners at European level.

- Since 2000, the so-called Lisbon strategy has aimed to make the EU the most dynamic and competitive knowledge-based economy in the world by 2010, capable of

sustainable economic growth with more and better jobs and greater social cohesion.

This ambitious goal for economic and social development requires integrated joint action by public authorities and the social partners. Later, with the Laeken European Summit in 2001, the social partners agreed on a joint declaration about their future role in European governance, which they envisaged as being characterized by more autonomous and independent, bipartite social dialogue on a legally non-binding, purely voluntary basis instead of tripartite concertation including public authorities leading to the conclusion of binding framework agreements<sup>111</sup>. As a consequence, the Commission was no longer supposed to be the agenda-setter for social dialogue.

- Since the advent of the Treaty of Lisbon (2007–2009), the Social Dialogue legal basis has been enacted through Articles 151-156 of the Treaty on the Functioning of the European Union (TFEU).

The Treaty played a very important role in boosting the importance of Social Dialogue, making it one of the pillars of the social model of European Union and Structural funds<sup>112</sup>.

Social dialogue and the quality of industrial relations have been placed at the centre of the European social

---

111 ETUC and UNICE and UEAPME and CEEP, 'Work programme of the European social partners 2003-2005', Brussels, ETUI, 2002.

112 On the basis of Article 5(6) of Regulation (EU) No 1303/2013 (Common Provisions Regulation), the Commission set up an expert group with partners at EU level in the field of the European Structural and Investment Funds (ESI Funds), for the programming period 2014-2020. COMMISSION DECISION of 26.6.2014, Setting up the European Structural and Investment Funds structured dialogue group of experts, available at [https://ec.europa.eu/regional\\_policy/sources/informing/dialog/2014/1\\_commission\\_decision\\_2014\\_4175.pdf](https://ec.europa.eu/regional_policy/sources/informing/dialog/2014/1_commission_decision_2014_4175.pdf).

---

110 COM(96) 448 final of 18 September 1996 concerning the development of the social dialogue at Community level.

model. As well as at the Laeken and Barcelona European Councils and the preceding social summits, the Heads of State or Government, the social partners and the Commission emphasised the role of the social dialogue at all levels in promoting modernisation and change within the Union and in the candidate countries. The Treaty made the Commission responsible for promoting and supporting European social dialogue, since Social dialogue has been considered as the driving force behind successful economic and social reforms.

The Lisbon strategy emphasises its role in addressing key challenges facing Europe, such as enhancing skills and qualifications, modernising work organisation, promoting equal opportunities and diversity and developing active ageing policies. Negotiations between the social partners are the most suitable way forward on questions related to modernisation and management of change.

In brief, the long path towards the evolution and recognition of social dialogue has achieved its most important goals since the last years of the 20th century: To date, as mentioned before, three confederal agreements have been reached and have become European law, one on parental leave in 1996<sup>113</sup>, another on part-time work in 1997<sup>114</sup> and a third on fixed-term contracts in 1999. Four independent agreements have been reached: on teleworking in 2002, on stress in 2004, on harassment and violence in the workplace in 2007 and on inclusive labour markets in 2010.

---

113 This agreement/directive which established a new right in some member states (United Kingdom, Ireland, Belgium, Luxembourg and Greece) was to be revised by the social partners in 2009 in an agreement on 18 June extended by a Council directive on 18 September 2009.

114 This right has improved the circumstances of 6 million workers in the United Kingdom and in Ireland.

However, an analysis of the transposition of these independent agreements into national law reveals an uneven and occasionally disappointing outcome<sup>115</sup>.

The initial idea was that their implementation by legal or contractual means would have reached equal value by giving all European workers statutory rights. A series of assessments conducted both by the social partners and by the Commission have revealed a very uneven transposition of the independent agreements, and in some countries the social partners have completely ignored them, thus undermining their effectiveness and their legitimacy in terms of legislation<sup>116</sup>.

### 2.2.2 The Current Legal Framework: the Lisbon Strategy

As mentioned before, the Treaty of Lisbon mainly emphasized the recognition and the role of Social Dialogue, by providing a score of six articles which can be considered the legal foundation of European social dialogue, from Article 151 to Article 156 of the Treaty on the Functioning of the European Union (TFEU).

One of the most important issues is that the European Union recognises social dialogue as one of the pillars of the European social model, and a tool of social cohesion. This was confirmed with the entry into force of the Lisbon Treaty: the new Article 152 of the Treaty on the Functioning of

---

115 <http://www.institutdelors.eu/wp-content/uploads/2018/01/europeansocialdialogue-lapeyre-jdi-jan15.pdf?pdf=ok>.

116 See *Report on the implementation of the European social partners' Framework Agreement on Telework*, SEC (2008) 2178, Commission Staff paper.

the European Union (TFEU) highlights the Union's commitment to promoting the role of European social partners, and supporting social dialogue. It also acknowledges the autonomy of European social partners.

The Lisbon Treaty (2009) further underlined the role of the social partners (Article 152 TFEU), emphasising the need to facilitate dialogue while respecting their autonomy and diversity.

- Under Article 151 TFEU, the promotion of dialogue between management and labour is recognised as a common objective of the EU and the Member States. The aim of social dialogue is to improve European governance through the involvement of the social partners in decision-making and implementation.

One of the most important features of the new conceptualization of social dialogue, however, relies on the fact that social dialogue is also integrated into the legislative machinery.

- Article 152 of the Treaty on the Functioning of the European Union confirms the EU's commitment to supporting European social dialogue and recognises European social partners' autonomy. Since 1998<sup>117</sup>, with the Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level, the Commission has created over 40

---

117 98/500/EC: Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (notified under document number C(1998) 2334) (Text with EEA relevance), Official Journal L 225 , 12/08/1998 P. 0027 – 0028, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31998D0500&from=IT>.

sectoral social dialogue committees. They cover some 150 million workers in the EU in sectors such as different modes of transport, agriculture, construction, commerce, public services, construction of machinery and equipment, hotels and restaurants, and banking.

The dialogue has led to the agreement on around 900 texts of varying legal status.

- Article 153 TFEU also gives Member States the possibility to entrust the social partners with the implementation of a Council decision adopted on the ratification of a collective agreement signed at European level.

- At EU level, according to Article 154 TFEU, the Commission must consult the social partners before taking any action in the social policy field. The social partners may then choose to negotiate among themselves an agreement on the subject of the consultation and stop the Commission's initiative.

The negotiation process can take up to nine months and the social partners have the following possibilities:

a) they may conclude an agreement and jointly ask the Commission to propose that the Council adopts a decision on implementation;

b) having concluded an agreement among themselves, they may prefer to implement it in accordance with their own specific procedures and practices and those of the Member States (voluntary or, later on, autonomous agreements);

c) they may be unable to reach an agreement, in which case the Commission will resume work on the proposal in question.

- Pursuant to Article 155, - "*Should management and labour so desire*" -, the dialogue between them at Union level may lead to contractual relations, including agreements.

Agreements concluded at Union 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, 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 Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153(2).

### 2.2.3 Achievements in pursuing Social Dialogue

The Development of Social Dialogue in Europe experienced both bipartite and tripartite social dialogue. Bipartite social dialogue may be exercised at sectorial, inter-sectorial (or multi-industrial) and inter-professional level. The last situation is particularly important at European level where the issue regarding national diverging opinions (even within the same association) cannot be controlled. These three levels of application use different procedures and generate separate outlets. From 1970 to 2003, one of the key tripartite social dialogues at European level was the Standing Committee on Employment. On the basis of a joint contribution from the social partners, the standing committee was replaced in 2003 by the Tripartite Social Summit for Growth and Employment, which brought together high-level representatives of the incumbent EU Council presidency, the two upcoming presidencies, the Commission and the social partners with the aim of facilitating ongoing consultation. It meets at least twice a year before the spring and autumn European Council summits.

In this regard, the Communication from the Commission - the European social dialogue, a force for innovation and change<sup>118</sup>, stressed the attention upon the role of social dialogue as the driving force behind successful economic and social reforms, a key to better governance. One of the forms of great impact of social dialogue at European level consists of European Sectorial Dialogue, which constitutes a level of discussion and negotiation that allows a better understanding of the issues that are specific for each sector, managed by the representatives of owners and of European employees, grouped by economic activity sectors.

In the legislative framework, European Sectorial Dialogue is regulated by Decision 98/500/CE of the Commission of May 20, 1998 on the constitution of sectorial dialogue committees, intended to promote dialogue between social partners at European level, according to which the social partners in a professional sector may submit a common petition to incorporate a sectorial dialogue committee. These committees are consulted in terms of community evolutions with social implications, and they also promote the sectorial social dialogue.

---

118 European Commission, Communication from the Commission - The European social dialogue, a force for innovation and change /\* COM/2002/0341 final \*/, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52002DC0341&from=IT..>

## 2.2.4 Other relevant Acts

- Council Resolution of 6 February 2003 on Social Inclusion – through social dialogue and partnership<sup>119</sup>: it invited the Commission to continue to promote social dialogue and partnership in the context of an enlarged Union as a means of promoting social inclusion at national, regional and local levels; particular emphasis should be placed on prevention, including keeping people in jobs, and remedial measures;
- Communication of the European Commission (2004) entitled *Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue*<sup>120</sup>: the purpose was the promotion of awareness and understanding of the results of the European social dialogue, to improve their impact, and to promote further developments based on effective interaction between different levels of industrial relations. The Commission put forward a series of proposals to enhance synergies at different levels (European, national, sectoral, company) and to strengthen the structures of social dialogue while boosting its effectiveness and impact;
- Opinion of the European Economic and Social Committee (2006) on social dialogue and employee participation, essential for anticipating and managing industrial change<sup>121</sup>: this Opinion highlighted the importance of social dialogue, and of worker involvement and participation, as the key to effective management of industrial change, and to draw conclusions for the future development of social dialogue and Community measures;

---

119 Council Resolution of 6 February 2003 on Social Inclusion – through social dialogue and partnership, Official Journal C 039, 18/02/2003 P. 0001 – 0002, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003G0218\(01\)&qid=1554555131149&from=IT](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003G0218(01)&qid=1554555131149&from=IT).

120 COM (2004) 557 final.

Opinion of the European Economic and Social Committee on Flexicurity (2007)<sup>122</sup>: it aimed to broaden the flexicurity debate in three ways, to emphasise that the role of the social partners in this debate, and in labour market reforms in general, has to be strengthened, to give more attention to gender differences, and to the category of young people on the labour market, and finally to achieve adaptability, facilitate lifelong learning, improve productivity and foster innovation, vital dimensions of the Lisbon process.<sup>123</sup>

---

121 Opinion of the European Economic and Social Committee on Social dialogue and employee participation, essential for anticipating and managing industrial change (2006/C 24/17), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52005IE1073&qid=1554555131149&from=IT>.

122 Opinion of the European Economic and Social Committee on ‘Flexicurity (Internal flexibility dimension — Collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets)’, (2007/C 256/20), <https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:52007AE0999&from=IT>.

123 See The role of the social partners in reconciling working, family and private life’ SOC/271, (rapporteur: Mr Clever) and SOC/273 ‘Employability and entrepreneurship — role of civil society and local and regional bodies from a gender perspective’ (rapporteur: Mr Pariza Castaños).

### 2.2.5 Results Produced by Social Dialogue

The social dialogue procedure described in the current Articles 154-155 TFEU has produced four agreements at cross-industry level, signed by the European social partners that have been transformed into directives.

In this regard, it is possible to mention:

- The framework agreement of December 1995 on parental leave: it gave all employees an individual, non-transferable right to at least three months' parental leave until their child reaches a given age (to be defined at national level) of up to eight years. The agreement was implemented by Directive 96/34/EC that the Member States had to transpose by June 1998 (or by the time of accession for Member States that joined the EU later);
- In June 2009, the social partners signed a revised version of their 1995 parental leave agreement.
- Several changes occurred, such as an increase in the minimum parental leave entitlement from three to four months per employee, with at least one month being non-transferable between parents. The agreement was implemented by Directive 2010/18/EU, repealing and replacing the 1996 Directive, which the Member States were obliged to transpose by March 2012;
- The framework agreement of June 1997 on part-time work: this established the principle that part-time workers must not be treated less favourably than comparable full-time workers solely because they work part time.
- It was implemented by Directive 97/81/EC that had to be transposed at national level by January 2000;
- The framework agreement of March 1999 on fixed-term work laid down the principle that fixed-term workers must not be treated less favourably than comparable workers on open-ended contracts solely because they

have a fixed term contract. The Directive 1999/70/EC implemented these results.

Furthermore, sectoral agreements have also been implemented by directives; in the field of working time in different transport sectors (seafarers; civil aviation; railway, inland waterways), in maritime transport with the implementation of the Maritime Labour Convention and in the hospital and healthcare sectors (prevention of sharp injuries).

Apart from these very wider and general initiatives, there have been four other autonomous agreements at sectorial level, such as:

- telework in 2002;
- stress at work in 2004;
- harassment and violence at work in 2007;
- inclusive labour markets in 2010.

As can be well observed in this list, the agreement on teleworking was the first to be implemented as an autonomous agreement. It was followed by other autonomous agreements on work-related stress, on the European licence for drivers carrying out a cross-border interoperability service (both 2004), on harassment and violence at work (2007), and on inclusive labour markets (2010). A framework agreement from March 2017 on active ageing and an intergenerational approach will also be implemented in this way.

A framework of action on youth employment was also implemented. In this regard, the EU cross-industry social partners signed a framework of action on youth employment in June 2013, in order to promote solutions to reduce youth unemployment and called upon national social partners, public authorities and other stakeholders to also actively work towards that goal.

In these cases, the social partners established a general framework at EU level obliging their affiliated organisations to implement the agreement in accordance with the national procedures and practices specific to management and labour and the Member States.

Even if many goals have been achieved by the Social Dialogue, this cannot be considered a principle always in force. On the contrary, the social partners were unable to reach agreement in a number of cases, such as:

- Negotiations on a framework agreement on temporary agency work ended in failure in May 2001. Thus, in March 2002, the Commission proposed a directive based on the consensus that had emerged among the social partners and in 2008 the corresponding directive (Directive 2008/104/EC) was adopted. Similarly, after the social partners expressed their unwillingness to engage in negotiations, in 2004, the Commission proposed a revision of the working time directive (Directive 2003/88/EC).
- The Parliament, the Commission and the Council failed to reach an agreement in 2009 and a year-long negotiation process between the European social partners also broke down in December 2012 due to major differences over the treatment of on-call time. In 2013, the Commission resumed the review and impact assessment process, with a public consultation in 2015 and an implementation report in 2017, as well as an interpretive communication.

From a national perspective, the involvement of social parties laid down several agreements in the European legal framework.

For example, dependent self-employment has been addressed by social partners in Italy, Austria and Belgium under the holistic approach to dealing with non-standard employment.

- In Belgium, the social partners agreed in 2009 and set up a joint committee, which dealt with wages and working conditions for a number of liberal professions.

- In Austria an inclusive approach was adopted by the social partners. In brief, a number of collective agreements have been signed that not only regulate pay and working conditions, but also limit the use of atypical employment contracts, e.g. setting the conditions under which dependent self-employed have to be offered regular employment contracts.

- In Italy the discussion on the status of dependent self-employed usually takes place through collective agreements (e.g. in the call-centre sector). Thus, social partners established a bipartite institution providing maternity, training and sickness benefits to the dependent self-employed.

## 2.2.6 Role of the European Parliament

The Social Dialogue Legal Framework cannot be described sufficiently if the role of the European Parliament is not mentioned, even if the attention is always pointed to the European Council and the Council. Hence, since it has taken the view that social dialogue is an essential element in the traditions of the Member States and has called for a greater role for it at EU level. In this political framework, the European Parliament played an important role: as a matter of fact, the Parliament's Committee on Employment and Social Affairs<sup>124</sup> has extended frequent invitations to the social partners at EU level to present their views.

---

124 <http://www.europarl.europa.eu/committees/it/empl/home.html>.

In addition, it has also often reminded the Commission of the need for a coherent EU industrial policy, in which the social partners should play a key role.

With the reformation enacted by the Lisbon Treaty, this one introduced the right for the Parliament to be informed about the implementation of collective agreements concluded at Union level (Article 155 TFEU), as well as about Commission initiatives to foster cooperation between the Member States (Article 156 TFEU), including in matters relating to the right of association and collective bargaining.

Moreover, the European Parliament acted in enforcing and boosting the role of social dialogue during the midst of the economic crisis: in this regard, the European Parliament pointed out in a resolution that social dialogue is vital in order to achieve the employment targets of the Europe 2020 strategy<sup>125</sup>.

In January 2012, it was stressed that by prioritising fiscal consolidation, the Annual Growth Survey's recommendations would hamper not only job creation and social welfare, but also social dialogue; later, in its resolution of 13 March 2014<sup>126</sup> on employment and social aspects of the role and operations of the Troika (ECB, Commis-

sion and IMF) with regard to the euro area programme countries, it stressed that the social partners at national level should have been consulted or involved in the design of programmes.

Its activities went further: a resolution dated 15 February 2017 on Single Market Governance within the European Semester 2017 called for reinforcement of the role of social partners in the new economic governance process, whose involvement at EU level has increased since 2014, although the trend varies at national level and social partners at both levels consider their involvement to be informative rather than genuinely consultative.

---

125 As again emphasized in the European Parliament resolution of 13 March 2019 on European Semester for economic policy coordination: Employment and Social Aspects in the Annual Growth Survey 2019, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0202+0+DOC+XML+V0//EN&language=EN>.

126 See European Parliament resolution of 13 March 2014 on Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries (2014/2007(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0240>.

### 2.3 Social Dialogue as part of the European Social Model

While considering the issue of social dialogue at the European Union level, this should be seen in the wider context of social politics of the Union, since the interaction between the participants in the work relations and the settlement of any specific divergences are by definition a social matter.

As a matter of fact, the importance of social dialogue has been stressed by the European Commission over time: in this regard, the Commission has not just focused its attention upon the role of social dialogue in working issues, but it has made the former as functional to ensure fundamental rights.

As affirmed by the European Commission in 2004, “The European social model places great emphasis on the need for social dialogue and it is widely recognised that successful economies in the 21st century will not be possible without a modern system of labour relations and efficient strategies for managing change proactively”.

In a political perspective, social dialogue was intended to be a unique and indispensable component of the social dimension of the internal market or, in more recent terminology, the “European social model” which has been conceptualized differently from the concept of societal development in the EU and most of the English-speaking world.

Basically, social dialogue can be of a bilateral nature, between the social partners, or trilateral, including the pub-

lic authorities, especially the European Commission<sup>127</sup>. European countries have been considered as the most advanced in terms of social policies, as well as the most respectful of employees’ fundamental rights, paving the way for the development of social dialogue in an intensive way and its ascension to ethical cooperation between social partners.

On this trend, the social dialogue and its organization as a bilateral and tripartite process both on national and European levels suggested a socio-economic strategy ending with an agreement on “Social Europe” aiming at the following goals:

- Promote employment and improve living and work conditions;
- Social protection and professional security;
- Well-structured dialogue between production stakeholders;
- Develop and qualify human resource for a better long-term work quality;
- Fight social and economic exclusion;
- Sustainable training strategies.

From a historical point of view, as already mentioned before, the launch of the Val Duchesse social dialogue in 1985 represents a fundamental event in the series of efforts aimed at giving new life to the European Economic Community and giving reality to the idea of free

---

127 T. Schulten and R. Bispinck (eds.), *Collective bargaining under the euro. Experiences from the European metal industry*, Brussels, ETUI, 2001; T. Schulten, *Europeanisation of collective bargaining: Trade union initiatives for the transnational coordination of collective bargaining*, in B. Keller and H.-W. Platzer (eds.), *Industrial relations and European integration. Trans- and supranational developments and prospects*, Aldershot, Ashgate, 2003, pp. 112-136.

movement of people, goods and services, in this way representing an important goal.

Thus, the social dialogue and the quality of industrial relations have been put at the centre of the European social model<sup>128</sup>.

Currently, the qualification of Social dialogue as a fundamental element of the European social model, has rooted – as mentioned before in the historical background section – with the reform of Amsterdam, by which it acquired full recognition in the treaties. The social partners (employers ‘and workers’ representatives) are therefore able to actively contribute to the elaboration of European social policy.

Since the treaty of Amsterdam, the European social dialogue was able to represent an autonomous source of law in social issues<sup>129</sup>. At the Laeken and Barcelona European Councils and the preceding social summits, the Heads of State or Government, the social partners and the Commission emphasised the role of social dialogue at all levels in promoting modernisation and change within the Union and in the candidate countries. The European Social Charter (both in its initial form, signed in Turin in 1961, and in its revised form, in 1996), the White Book, *European Social Politics* (1993)<sup>130</sup>, as well

---

128 Eza Report, *Condizioni e criteri per il dialogo sociale in Europa: la prospettiva dei lavoratori. Dalle prove scientifiche alle linee guida orientate alla pratica*, [https://www.eza.org/fileadmin/system/pdf/Buch\\_Kriterien\\_f%C3%BCr\\_guten\\_SD/Executive\\_Summary\\_Kriterien\\_guter\\_SD\\_it.pdf](https://www.eza.org/fileadmin/system/pdf/Buch_Kriterien_f%C3%BCr_guten_SD/Executive_Summary_Kriterien_guter_SD_it.pdf)

129 BEVORT A., JOBERT A., *Sociologie du travail. Les relations professionnelles*, Armand Colin, Collection U, Paris, 2011, p. 227.

130 See [http://europa.eu/rapid/press-release\\_P-94-44\\_en.htm](http://europa.eu/rapid/press-release_P-94-44_en.htm); also Reflection paper on the social dimension of Europe, [https://ec.europa.eu/commission/publications/reflection-paper-social-dimension-europe\\_en](https://ec.europa.eu/commission/publications/reflection-paper-social-dimension-europe_en).

as the Community Charter on fundamental social rights (1989), established the objectives of social politics, which include, among others, the provision of a social dialogue between employees and employers.

The strict relationship between Social Dialogue and European social model has been emphasized and confirmed by European bodies, which affirmed that “Social Dialogue is a distinctive trait of the European social model, which means that the employees and the employers (and the organizations representing them) play an important part in coordinating economic and labour market reform, as well as in the building of social politics”<sup>131</sup>.

The European social model places great emphasis on the need for social dialogue and it is widely recognised that successful economies in the 21st century will not be possible without a modern system of labour relations and efficient strategies for managing change pro-actively.

As a part of the European Social Model, it also “reflects the democratic principle (included in Article 11 of the Treaty on European Union – TEU) that representative associations should be able to express their views, to be consulted by, and hold dialogue with the public authorities”, and that workers and employers should be “involved in decision-making on issues that affect them closely”<sup>132</sup>.

This key point has been stressed over the years.

---

131 M. Dumitru, *Cooperare gi conflict in rela tiile industriale: Rolul dialogului social, (Cooperation and conflict in industrial relations: Part of social dialogue)*, in the Magazine Calitatea Vietii, issue 1-2/20 10, p. 180.

132 European Union (2012): *Social Europe Guide*, Vol. 2/Social Dialogue, Luxemburg: Publication Office of the EU, p. 12.

In October 2013<sup>133</sup>, the European social partners adopted 10 principles to underpin their involvement in EU economic governance. Focusing on the second principle, it states as follows: “Social dialogue and well-developed industrial relations at all levels are a crucial element of the European social model and democratic government. Appropriate involvement of social partners in economic and employment policies is thus essential”<sup>134</sup>.

Pursuant to the Charter of Fundamental Rights, Article 12 and Article 27 set out, respectively:

- Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
- Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28 of the Charter of Fundamental Rights sets out: *Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.*

Currently, the Lisbon strategy emphasises the role of social

---

133 <https://eur-lex.europa.eu/legal-content/IT/TXT/?qid=1554279918560&uri=CELEX:52014AE1506>.

134 [http://www.etuc.org/sites/www.etuc.org/files/other/files/lay-out\\_declaration\\_governance\\_21\\_10\\_13\\_clean\\_3.pdf](http://www.etuc.org/sites/www.etuc.org/files/other/files/lay-out_declaration_governance_21_10_13_clean_3.pdf).

dialogue in addressing key challenges facing Europe, such as enhancing skills and qualifications, modernising work organisation, promoting equal opportunities and diversity and developing active ageing policies; thus, by considering it as the driving force behind successful economic and social reforms<sup>135</sup>. Negotiations between the social partners are the most suitable way forward on questions related to modernisation and management of change.

As mentioned before:

- Article 151 TFEU states the Union and the Member States shall have as their objective the promotion of dialogue between management and labour;
- Article 152 TFEU provides that the Union recognises and promotes the role of social partners and shall facilitate dialogue between them;
- Article 153 TFEU sets out that the Union shall adopt minimum requirements, as well as support and complement the activities of the Member States in the field of information and consultation of workers and representation and collective defence of the interest of the workers and employers;
- Article 154 and 155 TFEU give management and labour a role in the legislative process.

Currently, the European Social Model is based on a balance of economic and social principles which makes it unique at international level.

---

135 Conclusions of the Barcelona European Council, point 22. Communication from the commission The European social dialogue, a force for innovation and change Proposal for a Council decision establishing a Tripartite Social Summit for Growth and Employment, Brussels, 26.6.2002 COM (2002) 341 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0341&rid=1>.

However, it is important to remember the main features dealing with social issues in the European context: as a matter of fact, social policy is among the competences shared by the Member States and the Union, and in some of its components the Union is called only to coordinate national politics, while in others, it may initiate measures whose actual application modes are left in the hands of the Member States: this is the main reason why Social Dialogue can be considered very important, since it can reach goals not otherwise achievable.

In conclusion, it is possible to argue that the European institutional debate itself, on the will of the Commission, engages social dialogue in the perspective of “governance”: such involvement refers to a political concept, now including the social parties in the most heterogeneous dimension of civil society and therefore configuring social dialogue as a declination of the principle of participatory democracy, now taking it as an example of an alternative mechanism to traditional regulation, in the context of action aimed at an improvement in legislating (better regulation that is, as lastly requalified in the 2020 agenda, *smart regulation*). Therefore, this is strictly argued by some authors, who declare that Article 152 has given legal foundation to the participatory democracy attitude of social dialogue<sup>136</sup>.

---

136 Caruso B. (2010a), *I diritti sociali fondamentali dopo il Trattato di Lisbona (tanto tuonò che piovve)*, WP CSDLE “Massimo D’Antona”.INT, 81/2010 ([www. lex.unict.it/eurolabor/ricerca/wp/wp\\_int.htm](http://www.lex.unict.it/eurolabor/ricerca/wp/wp_int.htm)).

## 2.4 Social Dialogue and the European Pillar of Social Rights

In light of outlining a strategy aimed at remedying more effectively the limits and criticalities of the EU socio-economic framework, the European institutions have launched the proposal<sup>137</sup> of establishing a European Pillar of Social Rights; whose aims were supporting markets, together with fair and well-functioning workable conditions and appropriate social protection systems. In this regard, the European Pillar should serve as a compass for a new process of convergence towards better living and working conditions in Europe.

The purpose of the Pillar is to express a number of essential principles to support well-functioning and fair labour markets and welfare systems. The Pillar is designed primarily for the Eurozone States, but is applicable to all EU Member States wishing to join it.

The European Pillar of Social Rights has been playing an important role in ensuring and enforcing social dialogue. The Pillar has been drawn to renew the process of

---

137 Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, launching a consultation on a European Pillar of Social Rights, {SWD (2016) 50 final}, {SWD (2016) 51 final}, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0127&qid=1554573477178&from=IT>.

convergence towards better working and living conditions across Europe<sup>138</sup>.

It was primarily conceived solely for countries belonging to Euro area, although it has always predicted its enforceability to all EU Member States wishing to be part of it; as a matter of fact, the Pillar has no binding effect, due its legal nature. Thus, even if there are no direct legal constraints for pillar Member States, it can be considered a useful starting point to tackle social concerns in the European landscape. In its resolution of 19 January 2017 on a European Pillar of Social Rights, Parliament called for the updating of European social standards, including the provisions on working time. In the same vein, in its resolution of 19 April 2018 on the proposal for a Council decision on guidelines for the employment policies of the Member States, Parliament called on the Commission and the Member States to step up concrete support for genuine social dialogue, going beyond mere consultation. The Pillar established 20 principles, which have been conceived as social rights of individuals towards each Member State<sup>139</sup>. In this regard, it is possible to affirm that the Social Pillar of European Union has been taking care of social rights, as well as the Charter of Fundamental Rights.

Despite the Pillar, the Charter of Fundamental Rights – whose scope also dealt with the the formulation and establishment of social rights– has been drawn up in such a way to bind the Union bodies and the Member States only in the cases in which they apply European

---

138 [https://ec.europa.eu/italy/news/20170426\\_pilastro\\_sociale\\_ce\\_it](https://ec.europa.eu/italy/news/20170426_pilastro_sociale_ce_it).

139 M. Höpner, (2017): *I diritti individuali prendono il posto di una politica sociale comune?*, Makroskop, 22/05/2017.

law<sup>140</sup>. However, it is necessary to remember that even the Charter was not binding, at the start: actually, it was initially only proclaimed; later, the reform enacted by the Treaty of Lisbon included the Charter in the primary law of the Union, which thus became mandatory<sup>141</sup>.

Besides, the Social Pillar represents the cornerstone for a more complete and concrete comprehension of social concerns by European bodies, especially the European Commission: through the implementation of the Pillar, the European Commission has shown its awareness, by the explicit recognition of the importance of the social dimension in Europe.

In this regard, the Social Pillar should implement the European social *acquis*. For this reason, however, since the pillar is essentially descriptive, limited to summarizing the EU social *acquis*, it cannot be expected to stimulate large improvements: this is due to some factors, which cannot contribute to enforce the social dimension, such as:

- The vagueness of the terminology adopted;
- Lack of explanation of any concrete goal to be reached;
- Uniformity of sources of law [general principles of the Treaty (as gender equality art. 157 TFEU), Charter of Fundamental Rights, ILO Conventions].

Although some of these sources of law are also a part of primary European law, with binding value, none of them led to creating a social Europe; therefore, it cannot be certain that the pillar will be able to succeed in the enterprise.

---

140 J. Heuschmid, (2011): *L'azione sindacale nel diritto dell'UE*, in W. Däubler (ed.): *Diritto sindacale, Manuale di pratica giuridica*, Baden-Baden, p. 153–219.

141 Rasnača, Z. (2017): *Bridging the gaps of falling short? The European Pillar of So-cial Rights and what it can bring to EU-level policymaking*. ETUI Working Paper 2017.5, Brüssel.

By the way, the pillar can contribute to tackle concerns raised towards the lack of appropriate social standards: in this regard, it could be very fruitful to put in place a common European policy. Thus, it could constitute a prior step in ensuring equal standards, e.g. appropriate standards about minimum wages or social care and assistance; it could level social conditions in every Member State, but also enforcing those countries which lack an appropriate standard or discipline.

In this regard, since the Pillar does not provide a functional legal or political mechanism for this implementation, the role of Social Dialogue can become very relevant, because it can be considered as an Inter-institutional mechanism, which can also allow the implementation of legal rules. Therefore, social dialogue can contribute to the development of the best suited measures, close to the needs of both employers and employees; it can boost employment skills and strengthen mutual trust, which is another essential element to cope with social challenges and modernizing European labor markets<sup>142</sup>.

The Pillar builds on previous initiatives of this Commission and a broad public consultation.

It enshrines principles and rights in the field of:

- Equal opportunities and access to the labour market: it covers aspects of fairness related to education, skills and lifelong learning, gender, inequality and social mobility, living conditions and youth;
- Dynamic labour markets and fair working conditions: these points cover the functioning of labour markets,

---

142 Business Europe (2014), *Future of Social Europe. Challenges and the Way Ahead*; Lapeyre J. (2015), *European Social Dialogue: 30 Years of Experience and Progress but what does the Future hold?*, in Notre Europe. See also 1 <https://www.eurofound.europa.eu/news/spotlight-on/social-dialogue/overview-social-dialogue-in-europe>.

support for employment and transitions, and, on the other hand, the fairness dimension with conditions of work and wages. It aims to set an adequate and reliable balance of rights and obligations between workers and employers, as well as between flexibility and security elements, to facilitate job creation, job take-up and the adaptability of firms, and promoting social dialogue;

- Social protection and inclusion: it covers fair outcomes through public action and/or social protection.

Firstly, the European Commission has played a pivotal role in providing these goals. Mostly, it has focused so much attention upon the re-launch of social dialogue since the beginning of its mandate.

The European Commission, indeed, has been promoting social dialogue as a crucial key instrument for better governance and more effective social and economic reforms. In this regard, in order to support the implementation of the Pillar, the European Commission has provided some electronic and monetary tools:

- an online social scoreboard<sup>143</sup>: it is aimed at tracking trends and performances across EU countries. This will not only feed into the European Semester of economic policy coordination, but also serve to assess progress towards a “social triple A” for the EU as a whole;
- the European Social Fund: will support the implementation of the European Pillar of Social Rights.

---

143 See Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, Establishing a European Pillar of Social Rights, SWD (2017) 200 final, <https://composite-indicators.jrc.ec.europa.eu/social-scoreboard/>.

The social partners have played a key role in the preparation of the European Pillar of Social Rights, a key role which is also stressed in the Pillar itself.

According to the European Commission, the social situation assessment framework will be able to be used, within the European Semester, to create stronger macrosocial coordination and to promote convergence, even if it could not be considered binding. The European Semester dedicates increasing attention to social dialogue. In 2017, a first fully-fledged multilateral surveillance exercise on the involvement of social partners in reforms and policies was held in the Employment Committee, institutionally underpinned by the Employment Guidelines.

On that occasion, national social partner representatives were present and provided their view on the state of play. Furthermore, according to the European Commission, any reform program should envisage, not just an assessment of the sustainability of budget, but also a social impact assessment.

## **2.5 Social Dialogue and the European Pillar of Social Rights: opportunities and limits**

As well as the strong relationship between Social Dialogue and the European Social Model, there is also a strict relationship between the European Social Pillar and the implementation of Social Dialogue.

This position is exemplified by the European Union's *New Start for Social Dialogue*<sup>144</sup>: Social Dialogue is considered, at all levels, a prerequisite for the functioning of Europe's social market economy and crucial to promote both competitiveness and fairness, which reinforces social dialogue as a pillar of Europe's social market economy and the Global Deal, a multi-stakeholder partnership that seeks to enhance social dialogue around the world.

A) At first, from a simple literal interpretation, Preamble n. 8 of the Pillar is about "*Social dialogue and involvement of workers*".

Pursuant to this provision:

- The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices.
- They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while

---

<sup>144</sup> European Commission, *A new start for Social Dialogue*, August 2016, [www.europa.eu](http://www.europa.eu).

respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States.

- Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies. Support for increased capacity of social partners to promote social dialogue shall be encouraged.

Besides, Preamble n. 20 explains in brief the functionality of both social dialogue and social partners.

In this regard:

- Social dialogue plays a central role in reinforcing social rights and enhancing sustainable and inclusive growth;  
- Social partners at all levels have a crucial role to play in pursuing and implementing the European Pillar of Social Rights, in accordance with their autonomy in negotiating and concluding agreements and the right to collective bargaining and collective action.

B) Secondly, from a legal perspective, social dialogue can boost the implementation of social rights, proclaimed through the Pillar, as follows:

b.1.) as a matter of fact, the Pillar should be considered as a first step towards the uneven path for a more social and inclusive Europe. Since it is not binding in its principles, in order to ensure a more effective protection of social rights in the EU, Social Dialogue can be considered such an appropriate measure;

b.2.) furthermore, even if the Pillar could be considered, to some extent, as a statement of existing social rights,

which should have already been respected, this respect would imply the end of unfair interventions in national social policies and collective bargaining, with the production of catastrophic effects on the social rights of millions of workers;

b.3.) lastly, implementing the principles and rights of the Pillar represents a common duty of the EU institutions, Member States and the social partners. Moreover, the Pillar establishes an indicative framework of reference for the future action of the participating Member States, which have consequently the duty to implement those general principles<sup>145</sup>. Thus, in order to stimulate the production of a common ground in all Member States, social dialogue can be very relevant in ensuring coherence with EU objectives and standards, by guaranteeing fundamental rights.

C) Thirdly, from an empirical background, during the last year several goals have been reached by negotiations carried out in light of social rights: thus, the balance between professional activity and family life, information for workers and access to social protection have been continued. In April 2018, the Commission proposed to limit workers' exposure to five carcinogenic chemicals, an initiative that would improve working conditions for over 1,000,000 EU workers and avoid more than 22,000 cases of occupational diseases.

In conclusion, social dialogue can be considered an instrument for upwards convergence in Europe, especial-

---

145 See also Judgment of 16 March 2006, Robinson-Steele and Others (C131/04 and C257/04, EU:C:2006:177, paragraph 57), and of 20 January 2009, Schultz-Hoff and Others (C350/06 and C520/06, EU:C:2009:18, paragraph 28).

ly to cover some areas lacking uniformity throughout Member States in addressing some concerns, such as digitalisation, globalisation, redundancies and demographic change.

Social dialogue has been moved, therefore, to be considered as an important key point in ensuring general principles of democracy. This is a common perspective with liberal professions: as a matter of fact, the liberal professions have been considered to be a component of any democratic society for several years, and offer significant potential for growth in terms of employment and GDP, as well as playing an important role in establishing and maintaining key social infrastructure<sup>146</sup>. In this regard, it is useful to remember that the liberal professions, wherever they are in the world and whatever their specificities, naturally play a constructive role in achieving the four strategic objectives of ILO (gender equality, creation of jobs, guarantee of labor rights and extension of social protection with the promotion of social dialogue).

### **Literature towards Social Dialogue**

The matter of social dialogue at European and international level has been and continues to be of maximum interest for doctrine and European and specialized legal practice.

Academic production regarding Social Dialogue deals with several aspects of it, which can be listed as follows:

- The concept of Social Dialogue and its evolution;

---

146 The state of Liberal Professions concerning their functions and relevance in the European Civil Society 2020, EESC/COMM/05/2013, [http://www.clge.eu/documents/events/161/14\\_03\\_25\\_EESC\\_Opinion.pdf](http://www.clge.eu/documents/events/161/14_03_25_EESC_Opinion.pdf).

- The difference between Social Dialogue and many other involvements of social parties;
- The different methodological approach of Social Dialogue, due to different involvement of Member States and social counterparts;
- The Value and Efficiency of Social Dialogue.

### **2.5.1 The concept of social dialogue and its evolution**

The definition of “social dialogue” represents an intentionally generic expression<sup>147</sup>, in order to define an array of practice and legislation of European Union, together with the result of a crystallization of the ways in which the institutions communities have built a social dimension.

At the same time, however, both European and International Institution haven't contributed to provide an explicit definition of Social dialogue. A guidebook published by the International Labor Organization in 2013<sup>148</sup> states that “there is no common definition of social dialogue”.

However, owing to all the above-mentioned, the initial position in the definition of the notion of social dialogue must be dynamic and developmental, rather than static. This means that social dialogue is not a static system or mechanism; it is not a condition, but a social process.

Besides, it is crucial to differentiate social dialogue from civil dialogue.

---

147 Romagnoli, *La concertazione sociale in Europa: luci e ombre*, in Lav. Dir., 2004 p. 277.

148 [https://www.ilo.org/wcmsp5/groups/public/@ed\\_dialogue/@dialogue/documents/publication/wcms\\_231193.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@dialogue/documents/publication/wcms_231193.pdf).

Even if they exist side by side, they cannot be merged, but neither can they fail to influence one another.

- Bipartite social dialogue is focused on salaries, employment, organisation of work, health and safety, etc. through collective bargaining at all levels.

- Civil dialogue covers a wide range of subjects ranging from the environment, consumption, family policy, discrimination and combating poverty to human rights, and is part of the process for resolving societal problems.

The social partners have already broadened their spheres of activity as part of a more open and people-friendly approach, as reflected in their agreement on 'Inclusive labour markets' of March 2010<sup>149</sup> and the specific activities they undertake with European NGOs and associations working on environmental protection, consumer protection, disabled people's rights, women's rights and gender equality, the fight against poverty, and for social inclusion, and more over.

At the moment, no universally agreed definition of social dialogue exists. The main reason is due to the fact that social dialogue can take place at different levels and in various forms, depending on either national or international contexts. There is no universal model of social dialogue. It is a flexible concept enough to be adapted to the most diverse situations. Content and impact on real social and economic life are what should be assessed.

Social dialogue is widely recognized as one of the principles underlying the European social model, based on good economic performance, a high level of social pro-

---

149 This agreement acknowledges the need for social partners to work together with the third sector in order to support people experiencing particular difficulties in connection with the labour market (<http://www.etuc.org/framework-agreement-inclusive-labour-markets>).

tection and education and social dialogue. In Europe, the concept of dialogue between governments, employers' and workers' organizations is generally accepted as a part of good governance, even if its modalities and its extent may differ substantially from one country to another and are often sensitive to electoral cycles.

The concept of social dialogue has experienced a great change over time across literature.

- Pursuant to a first opinion, some authors believe that the term "social dialogue" frequently used in the European Union and now extremely widespread, covers interactions and interrelationships amongst social partners that surpass, improve upon or enhance the traditional framework of classical collective bargaining and the central role of the collective agreement in labour relations<sup>150</sup>;

- Other academics regard it as one of the "various possible forms of interest intermediation"<sup>151</sup>;

- It has also been described in terms of its usefulness as "a way and method of processing the varying social interests so as to arrive at basic understandings as to how to build the Social State"<sup>152</sup>.

From an Institutional point of view, there are two main definition of social dialogue.

---

150 M. Rodriguez Pinero, *Diálogo Social, Participación y Negociación Colectiva*, Relaciones Laborales No. 23, December 1995, Madrid.

151 Berndt Keller and Fred Henneberger. Prospects for social dialogue in the public sector. European Confederations, sectoral federations and forms of interest intermediation. TRANSFER 1/97.

152 D. Martinez and M. Simon in the Foreword of *EI Diálogo Social en los Países Andinos: Nuevo Camino Para Los Sindicatos?* J. M. Sepulveda and M. L. Vega. ILO, Lima, 1999.

-The former has been coined, at International level, by ILO, i.e. the International Labour Organisation. The concept of social dialogue is approached differently at international level: it defined social dialogue as a concept “including all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy”<sup>153</sup>. Social dialogue is both a means to achieve social and economic progress and an end in itself, as it gives people a voice and a stake in their societies and workplaces. Social dialogue is central to the functioning of the ILO itself and is embedded in practically all of the ILO Conventions and Recommendations and in the Decent Work Agenda.

It can take place at national, regional, sectoral or company level.

It can exist as a bipartite or tripartite process. In the latter case, the government acts as an official party to the dialogue; in the former case, it may consist of bipartite relations only between labour and management (or trade unions and employers’ organizations), with or without indirect government involvement. Activities going under dialogue can consist of exchanges of information between, or among, representatives of governments, employers and workers as subjects of tripartite process is a better way of solving the problems in the world of work, than one-sided decisions by one, stronger side, anticipated employer, regardless of whether that is the government as employer or not. Concertation can be informal or institutionalized, and often it is a combination of the two.

153 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/-dialogue/documents/publication/wcms\\_231193.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/-dialogue/documents/publication/wcms_231193.pdf)

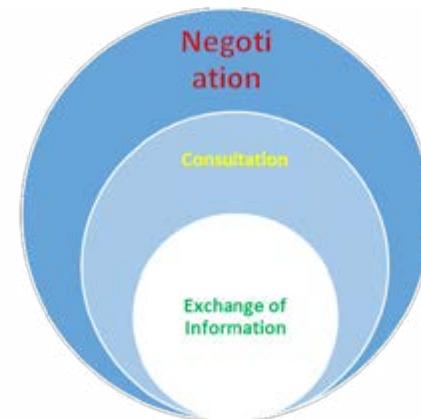
According to the ILO, successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress.

From a territorial perspective, social dialogue can take place at a national, regional or at enterprise level.

From the matter and issues-related perspective, it can be inter-professional, sectoral or a combination of all of these. Social dialogue is based on principles of solidarity, participation and responsibility. It represents more civilized, modern ways of solving problems and becoming more and more important instrumentally for making various interests come true, but through negotiation and not expression of force.

In this regard, ILO’s broad working definition reflects the wide range of processes and practices that are found worldwide; thus, social dialogue includes the use of each kind of means depending on the major dialogical attitude grade:

*Fig. 1 - Levels of social dialogue  
Representation of each kind of instrument used for practising social dialogue*



There are three important papers or instruments of ILO that promote tripartism and social dialogue, which require effective consultation between government, employers' and workers' representatives at each level, international and national<sup>154</sup>

That is:

- Tripartite Consultation (International Labour Standards) Convention No.144 from 1976;
- The Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152);
- Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113).

In brief, through the analysis of the whole ILO's activities and acts, it is possible to conclude that:

- Many authors argued that the ILO does not provide an explicit contribution towards the definition of social dialogue; As a matter of fact, it does not provide it in a strictly theoretical sense, but solely in a descriptive sense: as a matter of fact, social dialogue is defined by the ILO to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy<sup>155</sup>. Thus, it proposed a *work definition* for social dialogue, reflecting processes and practices that are found in various countries, and which sees social dialogue as an intentional act of information, con-

---

154 Tripartite Consultation: Ratify and apply Convention no. 144, ILO, <http://www.ilo.org> (1. 12. 2009).

155 Bruno Moslavac, *Social Dialogue in the Heart of Measures Provided by Global Jobs Pact*, 27 *Pravni Vjesnik* 127 (2011).

sultation and negotiation of social agreements between partners, as well as of negotiation of collective bargaining agreements<sup>156</sup>;

- Social dialogue plays an important role in enforcing social rights, by facing common and frequently bad consequences coming from the wave of economic crisis, which caused strong working conditions and loss of positions;
- In this regard, the truly social purposes underlying social dialogue emphasizes that it can be considered a very powerful political instrument to solve working and professional concerns. As a matter of fact, social dialogue has been considered an important goal to achieve, by providing opportunities for employment, ensuring respect for rights at work, providing social protection and promoting participation and social dialogue among governments and employers' and workers' organizations<sup>157</sup>: successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress;
- Among the most relevant issues, a minimum wage is considered one of the most crucial matters that social dialogue can help to review and adapt, due to certain concrete circumstances. Besides, this is proved by the ILO's Global Jobs Pact (GJP), a resolution designed to be a response to the global economic crisis: in its 12th Principle, it states that social dialogue, alongside collective bargaining and statutory or negotiated minimum

---

156 Ioan Morariu, *Social Dialogue at European and International Level*, 2015 *Law Annals Titu Maiorescu U.* 155 (2015).

157 From The Decent Work Agenda, available at <http://www.ilocarib.org.tt> (3. 12. 2009.). See also Rychly, L., *Social dialogue in times of crisis: Finding better solutions*, (2009), Industrial and Employment Relations Department, International Labour Office Geneva.

wages, should be a guide in order to avoid deflationary wage spirals; as a consequence, it can be considered necessary for reducing poverty and increasing employment, especially in time of global economical crises, when minimum wages should be more often reviewed and, if necessary, adapted;

- In order to boost the strength and power of social dialogue, it is necessary to develop an appropriate cultural level towards it: in this regard, the culture of social dialogue must be built in people ranging from the latest higher education, because that is when, for example, future managers get the first concrete gain knowledge about the real social issues (e. g. wages, minimum wages, unemployment). Therefore, a collective action is required in a way to identify priorities (minimum wages, social security, creating jobs, saving jobs etc.), to work out propositions for acting and finally to take action. GJP in its 15th Principle suggests that especially in times of heightened social tension, strengthened respect for, and use of, mechanisms of social dialogue, including collective bargaining, where appropriate at all levels, is vital: actually, it is probably the best time for one-sided decisions for representatives of governments, so emphasising social dialogue as a first mechanism of designing of policies to fit national priorities is a very brave solution.

- The latter has been coined by European Institutions<sup>158</sup>: social dialogue is currently defined by provisions of Articles 152, 154 and 155 of the Treaty of the Functioning of the European Union (TFEU). These articles provide

---

158 Marco Peruzzi, *L'autonomia nel dialogo sociale europeo*, (doi: 10.1441/33668), *Lavoro e diritto* (ISSN 1120-947X), Fascicolo 4, autunno 2010.

European social dialogue with a framework and basic principles for its functioning. Thus, social dialogue at European level covers discussions between the European social partners, joint action and possible negotiation between them, as well as discussions between the social partners and the institutions of the European Union.

Before implementation of the current European legal framework, however, it had already played an important role in policy development and policy implementation ever since the establishment of the European Coal and Steel Community. It has allowed social partners to communicate their views to the EU institutions, and reciprocally to inform their members of initiatives of direct interest to them. This has improved the quality of political decisions and facilitated the implementation of policies in the economic and social field.

The European Union faces a diversity of national social dialogue systems, so there is no one-size-fits-all model. These differences are mainly related to divergent institutional frameworks and operational capacities of social partner organisations, contributing to important differentials in the quality of social dialogue.

At European level, the dimension delimited by the concept of social dialogue has taken on a breadth that varies depending on whether the defining criteria chosen by the European Commission are used or those identified by the social partners.

- In its communications, the Commission refers to the concept of “social dialogue” as the discussions between the European social partners, the shared actions and the possible negotiation between them, as well as the discussions between the social partners and institutions of

the European Union<sup>159</sup>. At the same time, some other authors underline that the European Commission considers social dialogue as encompassing both the bipartite and the tripartite processes between the European social partners themselves and between the two sides of industry and the Commission<sup>160</sup>.

- Otherwise, in its joint declaration to the European Council of 2001<sup>161</sup>, Unice / Ueapme, Ceep and Etuc “insist on the importance of making a clear distinction between” tripartite dialogue”, “consultation of the social partners” and “social dialogue”, the last one to define only “the bipartite activity of the social partners, be it whether or not induced by official Commission consultations pursuant to articles 137 and 138 of the Treaty” (now Articles 153 and 154 TFEU).

- In their joint declaration to the Laeken European Council of December 2001, the European social partners clarified their views on the conceptual differences between tripartite concertation, consultation and social dialogue:

- tripartite concertation indicates exchanges between the social partners and European public authorities;
- consultation of the social partners refers to the activities of advisory committees and official consultations in the spirit of Article 153 TFEU;
- social dialogue is a bipartite work by the social partners, whether or not it is prompted by the Commission’s of-

---

159 [http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20%20communication%20from%20EU%20Commission/20110726-103516\\_COM\\_96\\_448itpdf.pdf](http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20%20communication%20from%20EU%20Commission/20110726-103516_COM_96_448itpdf.pdf)

160 Eckhard Voss, *European Social Dialogue: Achievements and Challenges Ahead*, <http://erc-online.eu/wp-content/uploads/2014/04/2011-01000-E.pdf>.

161 ETUC, UNICE, UEAPME, CEEP: *Joint Contribution by the social partners to the Laeken European Council*, Brussels 2001.

ficial consultations based on Article 153 and 154 TFEU. Thus, the European social partners use a narrow definition, since they reserve the notion of social dialogue for their bipartite, autonomous work. Whenever European public authorities are involved, the social partners prefer to speak of tripartite concertation. The structure established by the Commission, integrating the “trilateral consultation” into the definition perimeter and expressly specifying the locations (institutional) of the so-called “Bipartite social dialogue” - the cross-industry social dialogue committee and the different sectoral social dialogue committee -, postpones to a conceptual approach that enhances the configurability of dialogue social as a model of governance with marked (neo) corporate features<sup>162</sup>. On the contrary, the definition promoted by the social partners seems to imply, instead, a precise political meaning or the claim of a greater independence from the Community institutions and primarily from the Commission. This assumption, however, when read more closely, reveals the need for some clarifications, having to distinguish, on the one hand, the different position of labor and management and, on the other, the different articulation of the issue at an intercategorical and sectoral level<sup>163</sup>.

---

162 Falkner G. (1998), *Eu Social Policy in the 1990s: towards a corporatist policy community*, European Public Policy Series. London: Routledge; see also Treib O., Bahr H., Falkner G. (2005), *Modes of Governance: A Note Towards Conceptual Clarification*, European Governance Papers, n. 05-02.

163 Marco Peruzzi, *L'autonomia nel dialogo sociale europeo* (doi: 10.1441/33668), in *Lavoro e diritto* (ISSN 1120-947X) n. 4/2010.

## 2.5.2 The evolution of social dialogue

Besides the definition of social dialogue, legal literature attempted to show the evolution of social dialogue. It has been argued that social dialogue moved along the side the evolution of the social dimension of the European Union: it is enough to recall the tripartite meetings of Val Duchesse, which seemed to overcome that “social frigidity”, considered by many opinions as a sort of original sin of the founding Treaty<sup>164</sup>. In political terms, social dialogue was intended to be a unique and indispensable component of the social dimension of the internal market, which has recently appealed as the European social model that is the key difference between the concept of societal development in the EU and most of the English-speaking world. Literature has pointed out the three most important stages in the development of social dialogue, by the results obtained:

- At first, the first stage dealt with the “Traditional Social Dialogue”. The results of the first stage consisted entirely of purely voluntary agreements (joint opinions) between the social partners. This strictly non-binding character of over 40 joint texts was supposed to be overcome by the new opportunities of Social Protocol;
  - The second stage deals with the innovation opened by the Maastricht Regulatory System: since 1993 consultation procedures pursuant to Article 138 have been used about once a year.
- The Commission’s official strategy to refrain from its own initiatives on legislative action - if the social partners manage to negotiate and to conclude voluntary

---

164 Nunin, *Il dialogo sociale europeo*, Milano, 2001, 8.

framework agreements - has proved to be realistic only in a limited number of regulatory projects.

In the majority of cases, the Commission has had to step back in and to finalize its draft Directive by traditional legislative means.

Empirical evidence demonstrates that the Commission has to be considered the main character of this variant of social dialogue: its implicit threat to take legislative action in case of the social partners’ failure to conclude voluntary framework agreements, by constituting the necessary prerequisite to avoid regulatory minimalism. Substantive improvements of existing regulations at national level have usually been limited to a small number of Member States<sup>165</sup>. Various exemptions from broad framework regulations and frequent special provisions create ample opportunities for ‘opt-outs’ by individual Member States.

- The third stage deals with Autonomous Agreements. The first was the framework of actions on the lifelong development of competencies and qualifications (2002) to be implemented by the open method of coordination. In this case, this stage was carried out by establishing goals or guidelines at European level using the open method of coordination, which are followed up by regular national reports and systematic assessment of progress achieved in their implementation. The framework agreement on telework (2002) constituted an important test case for implementation by other means. The agreements on work-related stress (2004) and harassment and violence at work (2007) are the most recent ones. It has been affirmed that these initial results of new gen-

---

165 B. Bercusson, *The dynamic of European labour law after Maastricht*, ILJ, vol. 23, 1994, p.20.

eration texts have plenty of potentially strategic importance because they set the stage for all future processes of procedural structuring<sup>166</sup>.

At the same time, some implementation problems were identified. In this regard, at first, there is a need to distinguish explicitly between the conclusion, transposition and implementation of framework agreements<sup>167</sup>.

### **2.5.3 Towards the European definition of social dialogue: differences between social dialogue and collective bargaining**

The European doctrine also contains a concise definition, making the distinction and the conceptual delimitation between the notion of social dialogue and that of collective negotiation<sup>168</sup>.

---

166 European Commission, *Recent developments in the European inter-professional social dialogue 2002-03*, Luxembourg, Office for Official Publications of the European Communities, 2004b.

167 G. Falkner, O. Treib, M. Hartlapp and S. Leiber, *Complying with Europe? Theory and practice of minimum harmonisation and soft law in the multilevel system*, Cambridge, Cambridge University Press, 2005.

168 V. Jelle, *Beneath the Surface of Stability: New and Old Modes of Governance* in *European Industrial Relations*, *European Journal of Industrial Relations*, 11, no. 3 (2005), pp. 287-306. For a more detailed assessment of these differences, see Weiss, M. *Social Dialogue and Collective Bargaining in the Framework of Social Europe*, in Spyropoulos, G. and Fragnibre, G. (eds.) *Work and Social Policies in the New Europe*, Brussels 1991, p. 59 et seq. (62-64).

As a matter of fact, the European definition of social dialogue has changed over time: at first, it was differentiated from negotiation and bilateral/trilateral agreements; over the years, however, these distinctions have overlapped.

This mixture can be dated back to 1991; since then, the areas for concertation between the social partners and the European institutions have multiplied. In addition, the term “social dialogue” has progressively been used to designate any type of activity involving the social partners. In this regard, the concept and scope of social dialogue has contained either negotiation and other activities<sup>169</sup>. Thus, one of the major arguments was the difference between social dialogue and collective bargain: Currently, some Authors affirmed that, within the framework of the European Union it would be more correct to talk about social dialogue, rather than collective bargaining<sup>170</sup>, because the former has traditionally been considered a logical antecedent of the latter. Furthermore, it is not possible to trace a unique trajectory of both social dialogue and collective bargains, because the political evolution of European Union and its institutional bodies swung from promotion to regulation purposes and viceversa; in this regard, as mentioned before, during the first decade since the birth of the CECA, in the 1960s the EU institutions took on a regulatory rather than a promotional attitude towards collective bargaining. The intent was to define a European disci-

---

169 M. Roccella, T. Treu, *Diritto del lavoro dell'Unione Europea*, Milano 2014, p. 491.

170 Veneziani B., *Dal dialogo sociale alla contrattazione collettiva nella fase della trasformazione istituzionale dell'Unione europea*, in RGL, 1998, n. 2, p. 254

pline of collective agreement<sup>171</sup>.

In brief, academic literature written on the concept of social dialogue argued that:

- Social dialogue is something wider than collective bargaining, because the former is a broader concept, which contains the latter. This attitude has been enforced over time by Article 118 B, introduced by the Single European Act: in this regard, it is argued that this article is characterized by a wide and open meaning; as a consequence, it reveals all its attitude to include all the possible negotiating outcomes in which the social dialogue could eventually lead. If there is no doubt that Article 118 B allowed the inclusion of social dialogue in the Treaty, it is only with the Agreement on Social Policy that it will take place in the specific collective bargaining capacity;
- Social dialogue is a preliminary phase for collective bargaining. According to this approach, collective bargaining could be considered as the next and possible moment of social dialogue;
- Simultaneously, social dialogue is self-driving for collective bargaining: as a matter of fact, the common will of the parties, emerged during the conduct of social dialogue, could lead them to the conclusion of

---

171 Mengoni L., *Il contratto di lavoro nel diritto italiano*, in AA.VV., *Il contratto di lavoro nel diritto dei paesi membri della CECA*, 1965; Giugni G., *L'evoluzione della contrattazione collettiva nelle industrie della Comunità 1953- 1963*, Serv. pubbl. delle Comunità europee, Lussemburgo 1967; Lyon Caen G., *Droit social européen*, 1969; Lyon Caen G., *Droit social international et européen*, Dalloz, Paris, 1974; Mengoni L., *Il contratto collettivo nell'ordinamento giuridico italiano*, in AA.VV., *La contrattazione collettiva: crisi e prospettive*, Franco Angeli, Milano, 1976; Ilati A., *La contrattazione collettiva europea*, in *Diritto del lavoro. Commentario diretto da Franco Carinci*. Le Fonti. Il diritto sindacale (a cura di) ZOLI C., UTET, I, 2007, pp. 337-338.

real collective agreements<sup>172</sup>;

- Moreover, social dialogue is regarded as something more than collective bargaining: it is considered to be a problem-solving mechanism and as a means to achieve social equity, economic efficiency and democratic participation. It is important for protecting labour rights, facilitating wage determination, improving working conditions and promoting sustainable enterprises.

As well as the definition itself, its basic content has been considered flexible enough to be adapted to different situations, at company, sectoral, regional or national level, in order to understand to what extent social dialogue influences social and economic governance. The purpose and depth of social dialogue can vary greatly depending on the degree of commitment of the various social partners. From a historical point of view, social dialogue and collective bargaining developed very slowly over time: the first official recognition and mention of “collective bargaining” dates back to 1989, with the Charter of fundamental social rights; pursuant to point 12, it was recognized that social dialogue could evolve - if the parties deemed it appropriate - in real contractual relationships. Legal literature thus far conveyed that originally the expression “social dialogue” had a specific meaning

---

172 Guarriello F., *Ordinamento comunitario e autonomia collettiva. Il dialogo sociale*, Franco Angeli, Milano, 1992, p. 130; Sciarra S., *Il dialogo fra ordinamento comunitario e autonomia collettiva. Il dialogo sociale*, Franco Angeli, 1992; Lo Faro A., *Funzione e finzioni della contrattazione collettiva comunitaria*, Giuffrè, 1999; NUNIN R., *Il dialogo sociale europeo: attori, procedure, prospettive*, Giuffrè, 2001; Caruso B. – Alaimo A., *Il contratto collettivo nell'ordinamento dell'Unione europea*, in WP CSDLE “Massimo D’Antona”.INT, n. 87/2011, pp. 4-5.

only in francophone countries, in which this expression was used to refer to the dialogue and the comparison between the social parties that allows them to reach a dynamic balance between social needs and economic constraints.

#### 2.5.4 The differences of social dialogue methodology

Before the rise of social dialogue, the Treaty of Rome encouraged the parties' involvement using the "*Open method of coordination*". In this regard, some stated that such a contamination between social dialogue and open method of coordination occurred, with reference to both content profiles and regulation techniques. OMC was of major importance in the European Employment Strategy. According to official statements since the Lisbon summit in 2000<sup>173</sup>, OMC is now supposed to play a crucial role in heterogeneous policy areas (among them, social protection including pensions, health care, immigration and social inclusion). Employment relations and especially the recent forms of social dialogue are supposed to constitute important examples for its application. The decisive question is whether this constitutes a realistic perspective. At least for the time being, major caveats remain: OMC may produce not only more but also more effective outcomes in some policy areas and/or Member States than in others. Its preliminary results in the most prominent area of application, the European employment strategy, have been mixed.

---

173 European Council, 'Lisbon European Council, Presidency Conclusions, 23-24 March 2000.

The implementation of the Open Method of Coordination (OMC) completed the Union's tools for moving forward with a common approach without the need to legislate. Unfortunately, this method became almost the Commission's sole way of operating, leaving Member States with the task of achieving goals set in common, via a mutual monitoring system.

#### 2.5.5 Value of social dialogue

As mentioned before, European social dialogue may be considered such a strong instrument for improvement of work conditions and for the establishment of minimum standards common to all Europe; it has manifested its positive part by creating common practices in this field. The importance of social dialogue is also seen at international level, particularly as instruments of implementation of the tripartite system of social dialogue.

In this regard, many authors stressed the important value of social dialogue<sup>174</sup>. As a matter of fact, it plays a crucial role in social policies and challenges, as well as in ensuring legislative efficiency.

- At a first glance, social dialogue has been considered appropriate to address some paradigmatic social changes, due to globalisation and digitalisation. In this regard, a wider social dialogue should ensure that the modernization of work is beneficial to employees as well as

---

174 Ioan Morariu, Social Dialogue at European and International Level, 2015 Law Annals Titu Maiorescu U. 155 (2015).

to employers. It would provide greater flexibility for workers as well as businesses<sup>175</sup>.

- Moreover, the importance of social dialogue is emphasised in ensuring participation<sup>176</sup>: the same perspective finds a “constitutional” landing in the Treaty of Lisbon, in the aforementioned art. 152 TFEU, if read in combination laid down in art. 11, paragraphs 2 and 3, TEU.

Another important issue refers to the important role of social dialogue in the legislative process. This is enhanced as one of the most crucial issues, because it gives straight value to social dialogue as being integrated into the legislative process.

According to Article 154 TFEU, the social partners are to be consulted twice by the Commission:

- In the first case, on the question of *whether* a specific piece of legislation on subject matters listed in Article 153(1) TFEU should be initiated;

- Secondly, on the question of *how* such a piece of legislation should look. In the latter consultation, the social partners are entitled to take away the project from the Commission, and are invited to try, within a certain period, to reach agreement by themselves. Such an agreement by the social partners can be brought via the Commission to the Council, which may transform it into a Directive.

---

175 Celine Lafoucriere, *Negative Social Dialogue versus Positive Social Dialogue*, 3 Eur. J. Soc. Sec. 87 (2001).

176 Caruso B. (2010a), *I diritti sociali fondamentali dopo il Trattato di Lisbona (tanto tuonò che piovve)*, WP CSDL E “Massimo D’Antona”.INT, 81/2010 ([www. lex.unict.it/eurolabor/ricerca/wp/wp\\_int.htm](http://www.lex.unict.it/eurolabor/ricerca/wp/wp_int.htm)).

## 2.6 The role of Social Dialogue in addressing redundancies in the professional sector

The energy transition (towards a low-carbon economy) and digital transition (paradigm shift caused by simultaneous technical progress: Big Data, connected objects, and more) are both presenting considerable challenges for Europe and its citizens. This is especially so in the case of professional sectors and employment, even if the impact differs according to the sector and the country: destruction, creation, changes across all job descriptions, skills and training needs.

Worldwide, social dialogue is considered to be a very useful tool in solving serious social problems, consequences of globalization. It is also used to establish how the resources are distributed, the costs and benefits of economic exchanges.

Social dialogue has been always considered as an important instrument to face both economic and social challenges. The attention paid by European Institutional bodies also encompasses the role of social dialogue in facing globalisation and digitalisation effects on professions: as a matter of fact, over the last decades, the world of work has been experiencing profound changes.

As already mentioned in the Communication of the European Commission (2002), the European integration process has been encouraging companies to develop on a transnational scale. For this reason, it is necessary to reinforce European or transnational dialogue among

firms, which has become a fundamental challenge for the future issues, particularly in regard to mobility, pensions and equivalence of qualifications.

Moreover, since the impact of the Lisbon Strategy from the first lines put down in 2005, there has been a different form of employability aiming to reduce the skill gaps between the different Member States by investing in jobs and learning opportunities<sup>177</sup>. As a matter of fact, the Lisbon Strategy concentrated on the important aspect of lifelong learning as a basic element of the European social model. More job rotation and more flexible management to reform the European social model were set as goals.

It has been necessary to strengthen social dialogue, in terms of its autonomy and the importance of its contributions so as to be able to rise to the challenges of current times<sup>178</sup>. As a consequence, firstly from a theoretical point of view, since social dialogue is thought to be able to solve many general problems, it is important to face problems in the professional sector as a whole. In this regard, European bodies have encouraged the deepening of the social dialogue contractual dimension: at difficult times, every kind of instrument available (agreements transposed by directives or implemented autonomously, action frameworks, joint declarations, etc.) should be

---

177 Lisbon European Council on 23 and 24 March 2000 Presidency Conclusions, to be consulted at [www.europa.eu](http://www.europa.eu).

178 For a comparative overview with International sources see Baccaro, L., and S. Heeb. (2011). *Social dialogue during the financial and economic crisis: Results from the ILO/WB inventory using a Boolean analysis of 44 countries* (Dialogue Working Paper No. 31). Geneva, ILO; Campbell, D. (2001). "Social dialogue and labor market adjustment in East Asia after the crisis", in G. Betcherman and R. Islam (eds.), *East Asian labor markets and the economic crisis: Impacts, responses and lessons*, (pp.423–65). Washington, D.C./Geneva, World Bank/ILO.

deployed to put forward effective solutions, particularly with respect to employment and quality of work.

A number of challenges have been prompting by social dialogue's key actors over time. Among them:

- the changing nature of work and employment relationships (including those stemming from technological innovation, digitization and automation);
- the weakening of labour market institutions<sup>179</sup>;
- low levels of formal-job creation and income security; Redundancies in the professional sector can mainly result from:
  - Economic crisis and recession;
  - Globalization;
  - Inadequacy of the professions or their workers due to digitalisation.

In this regard, we will analyze each factor, in order to verify whether social dialogue can be considered appropriate to tackle these issues.

### **2.6.1 Social Dialogue efficiency in addressing redundancies due to economic crisis and recession**

In recent years, the European social partners have found a difficult environment in which to conduct their discussions and achieving their goals. In recent years, find-

---

179 J. Berg: *Labour market institutions: The building blocks of just societies*, in J. Berg (ed.) *Labour markets, institutions and inequality: Building just societies in the 21st century* (Geneva, ILO and Edward Elgar, 2015), pp. 1–38.

ings<sup>180</sup> noticed that even in the countries where social dialogue was functioning comparatively well, the crisis had a negative impact on its effectiveness and ability to deliver, particularly in the later stages of the recession. As a matter of fact, during the last decades the international financial crisis constituted a main source of a significant deterioration of the situation on the labour market at international level, including Europe. Social effects of the crisis became a source of tensions and a crisis of trust which obviously negatively impacted the effectiveness and intensity of the social dialogue. However, this feature did not depend on the inadequacy of social dialogue: to the contrary, the compression of social dialogue development came from a different political attitude, aimed at concentrating the attention upon many other issues rather than social dialogue.

Due to the economic and financial crisis, social dialogue came under increased pressure and it was weakened by its decentralisation, a decline in bargaining coverage and state intervention in the area of wage policy.

For this reason, a *New start for social dialogue* was announced at a high-level conference in March 2015; after that, in June 2016 a joint statement on the “new start” was signed, agreeing with social partners to involve them more in the European Semester and in policy and law-making in general.

At the Social Summit for Fair Jobs and Growth held in Gothenburg in November 2017, Parliament, the Commission and the Council proclaimed the European Pillar of Social Rights. In the Opinion of Eurofund, the proclamation of the European Pillar of Social Rights on

---

180 Employment and Social Developments in Europe 2015, <https://ec.europa.eu/social/BlobServlet?docId=14951&langId=en>.

17 November 2017 has added more institutional weight to the role of social dialogue and the involvement of the social partners<sup>181</sup>.

It provides for the respect of autonomy and the right to collective action of social partners and recognises social partners’ right to be involved in designing and implementing employment and social policies, including by means of collective agreements.

As a consequence, the global crisis cannot be considered due to the inefficiency of social dialogue.

Furthermore, from an institutional point of view, since the global economic and financial crisis the EU has been suffering from high unemployment, an investment gap and a lack of competitiveness. In this regard, the European Commission has stated that the goal towards the creation of a European social model will not be sustainable in the future if growth remains at its current level<sup>182</sup>: for this reason, since social dialogue has been considered very important in the European Social Model, it is possible to argue that it could appear very functional in enforcing and tackling challenges due to inadequacies of working conditions and redundancies in the professional sector, as a consequence of the new European

---

181 [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef18028en1.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18028en1.pdf).

182 Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Next steps for a sustainable European future European action for sustainability, COM/2016/0739 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1508946507982&uri=CELEX%3A52016DC0739>.

2030 Agenda<sup>183</sup>. As a matter of fact, the Commission Staff Working Document of the European 2030 Agenda said that “The Commission is moreover working towards a concrete European pillar of social rights, which will identify a number of essential principles which will serve as a compass for upwards convergence as regards social and labour market performances, focusing on the needs and challenges in the field of employment and social policies. Main areas covered are equal opportunities and access to the labour market, fair working conditions, adequate and sustainable social protection and promoting social dialogue, with a view to establishing an adequate and reliable balance of rights and obligations between workers and employers.”

The research question is whether social dialogue can be considered appropriate to foster professionals in working dynamics.

In order to answer appropriately, it is necessary to point out the legal foundation, by whom social dialogue can legitimately operate.

As mentioned before, Social dialogue has been recognized by the Treaty of Lisbon. In this regard:

- Article 151 TFEU sets out that the Union and the Member States shall have as objectives proper social protection and the combating of exclusion;
- Article 153 TFEU sets out that the Union shall support and complement the activities of the Member States’ in

---

183 Commission staff working document, *Key European action supporting the 2030 Agenda and the Sustainable Development Goals Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Next steps for a sustainable European future: European Union action for sustainability*, SWD/2016/0390 final.

the social security and social protection of workers, the modernisation of social protection systems and the integration of persons in the labour market.

Besides, The Treaty on European Union states that “Member States and the Union shall [...] work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union”<sup>184</sup>. These shifts in focus or priority to issues related to working conditions can also be seen in recent history: while the European Employment Strategy in 1997 was exclusively focused on the employment rate and job creation, the focus is now shifting to working conditions. Currently, we can generally affirm that if social dialogue is able to face economic and social challenges, it can face professional redundancies too.

This argument has recently been affirmed by the European Commission in its 2018 Joint Employment Report<sup>185</sup> accompanying the Communication from the Commission on the Annual Growth Survey 2019. This standpoint had been already mentioned in its Communication of 2002, where it emphasized the role of European social dialogue, as a force which promotes change through its positive management, playing a part in the return to full employment.

---

184 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union’, Official Journal of the European Union, C83, 30 March 2010.

185 Draft joint employment report from the commission and the Council accompanying the Communication from the Commission on the Annual Growth Survey 2019, Brussels, 21.11.2018 COM(2018) 761 final, <https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2018:0761:FIN:EN:PDF>.

Thus, the Communication of 2002 stated that social dialogue can come up with responses that are appropriate, as they bring in new forms of flexibility and security, to the challenges routinely faced, such as developing lifelong learning, improving mobility, active ageing and also promoting equal opportunities and diversity.

In this respect, social dialogue (whether bipartite or tripartite) is defined as a key element of the European social market economy, as it enables promoting agreements and policy measures that balance the interests of both sides of industry. Moreover, the European Commission has always argued that the European social dialogue could constitute a tool for the modernisation announced at the Lisbon European Council for all key issues on the European agenda.

Topics often raised include: preparing for entry into the knowledge society by recognising the vital role of lifelong learning and the acquisition of skills; incorporating mobility and career pathways into discussions on working conditions; active ageing; promoting equal opportunities; taking into consideration employment and wider access to the labour market, promoting sustainable development; incorporating quality as a factor in global performance both in aspects of work organisation and in health and safety, and also worker involvement and negotiated anticipation of change.

Effective social dialogue finds solutions that are acceptable and agreed by the involved partners, and thus reduces conflicts in the society and strengthens social cohesion. This is possible if such conditions are allowed, as the mutual respect and trust between the partners, which comes along with the experience of previous good cooperation and the value added of such negotiated results. To allow for such negotiations, the social

partners need to be independent of each other and of the government (autonomy of social partners).

Hence, social dialogue is to the advantage of professionals, employers and governments. The *New Start for Social Dialogue* initiative launched in March 2015, together with the Council conclusions and the Quadripartite Statement signed by the European social partners, the Commission and the Netherlands Presidency on behalf of the Council on *A new start for a strong social dialogue*, both adopted in June 2016, induced the Member States to closely involve social partners in the design and implementation of relevant reforms and policies, in line with national practices. The European Pillar of Social Rights and the new Employment Guideline 7, after all, restate that social dialogue is a core value of the European Union.

The importance of cooperation and negotiation in managing transitions is better developed in joint rather than in unilateral statements

Moreover, the attention of the European Institution has shifted over time. In the last decade, indeed, several studies about the role of social dialogue underline that it can provide better conditions in the event of job losses by professionals. In this regard, it was stated that the increase in unemployment would have been even bigger if the social partners and governments in the 27 Member States had not taken measures to prevent job losses.

Since the outbreak of the crisis the European cross-sectoral social partners have made proposals on how to deal with its effects, and how to support the recovery. At the onset of the crisis they defended their common interests, such as:

- the need for the coordination of public actions across Member States;
- an economic and fiscal stimulus to support the recovery;

- the importance of taking into consideration climate change as an essential element in any recovery process. These common positions emerged from their reaction to the European Economic Recovery Plan<sup>186</sup>: in this Communication, the European Commission stated the importance of social dialogue, by saying that (p. 10) “In addressing the employment and social impact of the financial crisis, Member States should actively involve the social partners. [...] The implementation of active inclusion and integrated flexicurity policies, focused on activation measures, re-training and skills upgrading, are essential to promote employability, ensure rapid re-integration into the labour market of workers who have been made redundant and avoid long term unemployment.” As such, discussions among the social partners resulted in a number of common policy approaches developed by both BusinessEurope and the European Trade Union Confederation (ETUC), as reported in the EC’s ‘Industrial relations in Europe, in 2010’<sup>187</sup>. In May 2009, the European social partners issued joint recommendations on how to optimise the role of the European Social Fund in times of crisis<sup>188</sup>. This initiative was followed a year later by a joint statement on the Europe2020 strategy, expressing the need for collective responsibility to achieve the objective of growth, employment, and sound fiscal sustainability. The joint

---

186 Communication From The Commission To The European Council A European Economic Recovery Plan, COM(2008) 800 final, [http://ec.europa.eu/economy\\_finance/publications/pages/publication13504\\_en.pdf](http://ec.europa.eu/economy_finance/publications/pages/publication13504_en.pdf).

187 <https://ec.europa.eu/social/BlobServlet?docId=6607&langId=en>.

188 Joint recommendations on support to economic recovery by the European Social Fund, [http://ec.europa.eu/employment\\_social/esf/docs/090507\\_recommendations\\_esf\\_employment\\_summit\\_en.pdf](http://ec.europa.eu/employment_social/esf/docs/090507_recommendations_esf_employment_summit_en.pdf).

work programme of the social partners then focused on the challenges related to the crisis and recovery.

Besides, social dialogue should be fostered, by taking into account that – pursuant to a longstanding Opinion of the European Economic and Social Committee<sup>189</sup> – the liberal professions play a significant role in establishing and maintaining key social infrastructure, as well as being considered an important pillar of Europe’s economy<sup>190</sup>.

Approximately one in six self-employed people work in sectors dominated by liberal professions, and that figure is rising. As well as enforcing technical and ethical requirements for the provision of professional services, it is also necessary to maintain and strengthen the competitiveness of the liberal professions and their ability to innovate. The challenge they currently face is that of being able to deal with different national standards and to compete with colleagues from other EU countries in an increasingly integrated single market.

Professional regulations must be compatible with Europe’s fundamental freedoms, in particular with the freedom to provide services, freedom of establishment and freedom of movement. They must therefore be non-discriminatory, proportionate, and serve an imperative requirement in the general interest, and also be compatible with national law.

In brief, the relevance of social dialogue can be considered twofold: at first, it has the potential to identify “win-

---

189 European Economic and Social Committee, *The role and future of the professions in European civil society 2020*, <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/role-and-future-professions-european-civil-society-2020>.

190 *Liberal Professions – Potential for both growth and consumer protection*, <https://www.eesc.europa.eu/en/news-media/press-releases/liberal-professions-potential-both-growth-and-consumer-protection>.

*win solutions*<sup>191</sup> for workers and employers; secondly, it can promote a sustainable and inclusive recovery by the social involvement in the design and implementation of several major reforms and policies.

The importance of cooperation and negotiation in managing transitions is better developed in joint than in unilateral statements: Social partners can play a key role in managing the transition to the future world of work and strengthening workers' labour market adaptability. Thus, some authors suggest the reason for this void is the complexity of European social dialogue and the requirement at national level for the social partners to interact with a large number of national member organisations, each with their own national characteristics<sup>192</sup>.

### **2.6.2 Social Dialogue efficiency in addressing redundancies due to Globalisation**

Apart from the financial crisis, globalisation, the decline of manufacturing sector, as well as the expansion of flexible forms of work have also played their part. As a matter of fact, even the rise and expansion of globalisation has generated gains as well as losses. Europe is at a crucial point in time where its relevance and success in the dec-

---

191 For case studies in the financial professions see [http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20studies%20from%20EURO-FOUND/20110526-034356\\_Eurofound\\_Social\\_dialogue\\_wc\\_May11pdf.pdf](http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20studies%20from%20EURO-FOUND/20110526-034356_Eurofound_Social_dialogue_wc_May11pdf.pdf).

192 [http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20studies%20from%20EURO-FOUND/20121005-084813\\_Eurofound\\_social-partner\\_Sep12pdf.pdf](http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20studies%20from%20EURO-FOUND/20121005-084813_Eurofound_social-partner_Sep12pdf.pdf).

ades to come will be determined by its ability to remain competitive in the global economy and ensure high levels of employment, education and training, health, social inclusion and active participation in society<sup>193</sup>.

In this regard, the European bodies have supported redundancy events, in order to establish the return to employability: thus, the European Globalisation Adjustment Fund was established over a decade ago to support people who have lost jobs due to shifts in global trade patterns. Since 2007, 150.000 redundant workers have been helped by the fund to retain and find work. The fund can be used for vocational training, it provides subsidies to create new businesses or offers incentives to employers who take on workers following redundancy. There is quite a varied scope for the use of the fund so workers do not lose their employability. These are people who were working. They need to get back into employment as quickly as possible, so they don't fall out of the job market. MEPs also want workers who lose jobs in smaller firms to be able to benefit from the fund. But that's not all.

Workers who have been made redundant because of advances in technology would also be eligible for these funds. These could be redundancies either through technological progress within their industry or because of changes due to ecological reasons. Under the new plans, requests for support from the fund would become simpler with less red tape. And the budget would be increased.

The relevance of redundancies has been strengthened by European bodies: due to the achievement of the new Euro-

---

193 In these terms see European Commission, Proposal for a regulation of the European parliament and of the council on the European Social Fund Plus (ESF+), COM/2018/382 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1540387032605&uri=CELEX%3A52018PC0382>.

pean social model, European Union has been moving towards the goal to ensure the European social dimension<sup>194</sup>. For the next long-term EU budget, the Commission proposes to further strengthen the Union's social dimension with a renewed European Social Fund, the 'European Social Fund Plus' (ESF+), and a strengthened and more effective European Globalisation Adjustment Fund (EGF). This Fund will focus on investment in people and support the delivery of the European Pillar of Social Rights. This helps to respond to global challenges, maintain social fairness but also to drive Europe's competitiveness forward. The Globalisation fund may represent an evolution of the European Social Fund, which has been provided since the Treaty of Amsterdam to ensure both economical and social cohesion. It is meant as a complement to the European Social Fund (ESF), e.g. by implementing measures that would be too long and too costly or not eligible under the ESF, and stakeholders are thus expected to look for complementarity among national, ESF, and EGF measures; however, this feature – which is currently provided by articles 162 – 164 of the TFEU (previously the Regulation 1083/2006<sup>195</sup> and 546/2009<sup>196</sup>) – is very limited:

- at first, it deals with workers, but the fund is not able to prevent redundancies for each kind of workers and for

---

194 [http://europa.eu/rapid/press-release\\_IP-18-3923\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3923_en.htm).

195 Council regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R1083&from=IT>.

196 Regulation (EC) No 546/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0026:0029:EN:PDF>.

all of them: as a matter of fact, in the experience of the European Commission, it has been pointed out that the score of recipients of the fund does not involve all the real amount of redundancies;

- secondly, it has changed its nature, because it has been used to limit negative consequences coming from economic crisis;
- moreover, empirical evidences show the inadequacy of this measure: (i) on one hand, the fund has been considered such an instrument not able to stimulate relevant and necessary changes, but just able to contain the negative situation; (ii) on the other hand, this measure has been considered able to provide just short-term benefits<sup>197</sup>.

Also, social partners at EU level pointed out that the degree of their direct involvement in the EGF implementation is not completely satisfactory, and should be improved. Moreover, also the involvement of social partners at Member State level should be further encouraged as the potential contribution of social partners at any level in the design, implementation, and monitoring/evaluation of the whole EGF intervention would be relevant.

In this regard, it is possible to understand the relevance of social dialogue:

- despite these funds, social dialogue does not provide economic funds, but promotes strategies to lay the basis for future legislation or agreement; generally speaking, this allows the promotion of long-lasting initiatives,

---

197 Eurochambers, Assessment of the European Globalisation Adjustment Fund from a gender equality perspective, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571358/IPOL\\_STU\(2016\)571358\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571358/IPOL_STU(2016)571358_EN.pdf).

able to effectively foster changes in the both social and economic pattern;

- moreover, since the huge amount of practices which social dialogue covers, it is possible to notice that it is much more appropriate to provide effective solutions, which are intimately tied to the concrete working conditions and concerns.

### **2.6.3. Social Dialogue efficiency in addressing redundancies due to Digitalisation**

Digitalisation can be considered both a disruptive element and an opportunity. The whole world<sup>198</sup>, and particularly Europe, is currently facing a fundamental transformation in the world of work. As a consequence, European bodies and social parties<sup>199</sup> are analyzing new opportunities and challenges coming from the digitalisation of professional service firms.

Since 2016, Social dialogue has been considered the right way to discuss both how to take advantage of the digitalisation opportunities and how to manage negative effects on employment, jobs and working conditions. In 2016, indeed, Member States joined the Euro-

---

198 See the Report “Shaping innovation and creating quality jobs – The need for social dialogue in the digital age”, Trade Union Statement to the G7 Innovation and Employment Ministerial Montreal, 27-28 March 2018, [https://tuac.org/wp-content/uploads/2018/03/1803t\\_L7-statement\\_joint-G7-Labour-and-Innovation-Min.pdf](https://tuac.org/wp-content/uploads/2018/03/1803t_L7-statement_joint-G7-Labour-and-Innovation-Min.pdf).

199 BusinessEurope, CEEP, SMEunited and ETUC (and the liaison committee Eurocadres/CEC).

found’s 2016 Foundation Seminar Series<sup>200</sup>

Participants discussed:

- the changes taking place in the world of work arising from digitalisation, focusing particularly on the rise of new business models such as online platforms that employ workers from across the globe on ad-hoc basis;
- the implications for the employer–employee relationship and working conditions;
- the blurring of boundaries between work and home life enabled by technology;
- the need for education and training systems to keep pace with demand for a skilled ICT workforce.

In this context, furthermore, the 2019-2021 Work Programme addresses Digitalisation among one of the six following priorities for the development of social dialogue<sup>201</sup>. Furthermore, the role of the Commission as a facilitator of social dialogue should be reconsidered in light of today’s challenges.

### **2.7. Role and importance of Social Dialogue**

This brief has drawn together key information on social dialogue and the transition to formality – why it is important, its legal basis, the challenges it confronts.

Social dialogue has been evolving for a long period of time, in order to tackle both social and economic challenges, especially when these were very difficult to face with the ordi-

---

200 <https://ec.europa.eu/social/main.jsp?langId=en&catId=1226&newsId=2708&furtherNews=yes>.

201 [https://www.besnesseurope.eu/sites/buseur/files/media/reports\\_and\\_studies/v2\\_sd\\_work\\_programme\\_2019-2021.pdf](https://www.besnesseurope.eu/sites/buseur/files/media/reports_and_studies/v2_sd_work_programme_2019-2021.pdf).

nary legal instruments. Even if the integration of social dialogue into the legislative machinery of the EU leads to many problems, its practical impact should not be overestimated. As a consequence, taking into account the new role revitalized by the Treaty of Lisbon, the role and the importance of social dialogue remains highly relevant in the changing world of work and professions as a whole.

The insight that a fair balance between social and economic objectives is beneficial for the whole of society may need to be further cultivated. As in other areas, non-cooperative, individualistic behaviour is likely to produce significantly worse results than a functioning social dialogue. It is very important to recognise that good economic performance, trustful labour relations and high social cohesion are often interlinked.

However, it seems important to give this development a chance for an organic growth of a multi-level system in which European and national actors are closely linked together. In any case, this kind of growth cannot be considered so organic, such an organic growth cannot be promoted by giving European agreements too much legal effect before the actors in the Member States are convinced of such a need.

Social dialogue invokes a new way to legislate and solving issues, which can be more suitable than a one-sided decision: on the contrary, this kind of approach is currently losing its importance, since it is not considered anymore the unique way to solve important issues or problems in a world of work and dialogue between social partners is more and more getting its deserved place and role.

Interests of participants in social dialogue at any level of negotiation are not necessarily conflicting or opposite, subsequently it just shows the social dialogue as the

easiest and best way of solving urgent social problems, what they really are during the recession.

The European social dialogue may be a strong instrument of improvement of work conditions and of establishment of minimum standards common for the entire Europe, and it has shown its positive part by creating common practice in this matter.

Nevertheless, like any other system, the European social dialogue may also be subject to improvements, as we have shown, particularly as regards the assimilation and provision of mechanisms that guarantee the tripartite character in the development of the social dialogue. It has also been proven that the social dialogue favours social peace and stability in the society, economic and social development, and it contributes to overcoming the economic crises and to the replacement of conflict relations with a climate of trust.

Recent initiatives, such as the European Pillar of Social Rights and the revised 2018 Employment Guidelines could contribute to strengthening social dialogue and the relationship between the social partners and governments at national level. In This regard, the role of the Commission as a facilitator of social dialogue should be reconsidered in light of today's challenges.

Even if the Commission, as well as other EU institutions and Eurofound, have a role to play in the promotion of social dialogue, it is crucial to respect the autonomy of the social partners<sup>202</sup>. However, in order to empower the role of social parties involved in social dialogue, it is necessary that National Governments play their role effectively: as a matter of fact, the Government has a crucial role to play in

---

202 *Exploring the connections between EU- and nationallevel social dialogue*, available at <https://eurofound.link/ef18030>.

establishing the legal and political environment for national social dialogue. It should be democratic and it should ensure the rule of law, by enacting and enforcing the fundamental rights of freedom of association and collective bargaining, and guaranteeing the independence of social partners.







Printed in November  
for Caosfera Edizioni