

8. EUROPEAN SOCIAL DIALOGUE AND EUROPEAN LABOUR LAW

In 2007, the European social dialogue was marked by the adoption, by the European social partners, of not only the third autonomous framework agreement on violence and harassment at work but also the European social partners' first joint analysis of the 'key challenges facing European labour markets', included in their second autonomous work programme 2006-2008. Achievement of this analysis entailed a difficult and far-reaching discussion cut across by other pivotal debates on flexicurity issues, such as the Green paper on Modernising Labour Law.

Meanwhile, the interprofessional social dialogue also produced further implementation reports on the framework agreement on stress at work and the framework of actions on gender equality, while the ETUC issued the first report on the implementation of the harassment and violence at work agreement. Here again experiences gained in the reporting procedures and the actual results achieved will influence the debate on the future of the European social dialogue. From a 'procedural' point of view also, new breakthroughs have been achieved. There is, firstly, the creation of two new European sectoral social dialogue committees (ESSDC) for the catering and gas sectors, bringing the current number of committees to 35. Two pending new applications, in the non-ferrous metals and automotive sectors, will thus raise the total number of these committees to 37. Secondly, the interprofessional autonomous work programme 2006-2008 provides for the implementation – or continuation – of several important capacity-building actions geared, in particular, towards social partners in the new member states and candidate countries. It also lays the foundations, in its so-called 'action point 8', for the elaboration of a common [and better] understanding of the different instruments of the social dialogue and of the impact entailed at the various levels of social dialogue. This should provide for a framework of discussions clarifying the rights and obligations linked to each instrument, ways of increasing the quality and impact of the social dialogue, while also filling in some missing links, such as the need to put in place appropriate mediation and conciliation systems designed to ensure that the EU social dialogue grows into, and becomes consolidated as, an inherent component of the much needed system of EU industrial relations.

Accordingly, this chapter will not only take stock of recent developments in the EU social dialogue and of the latest developments in the sphere of EU labour law, but will also highlight (some of) these debates and their (logical but necessary) interlink with the EU social dialogue. For the results achieved so far, and their implementation, as well as the debates foreseen, show very clearly that the EU social dialogue is the forum that has already made a substantial contribution to ensuring that the setting of high labour standards in the European Union is the benchmark used in the stock-taking exercise designed to measure social realities and the extent to which collective solutions to the promotion of better working conditions have been delivered.

Themes

- 8.1. Consultation of the social partners under Article 138(2) EC Treaty
- 8.2. Results of the autonomous interprofessional European social dialogue
- 8.3. Results of the European sectoral social dialogue
- 8.4. Trends in European labour law
- 8.5. Conclusions

8.1. CONSULTATION OF THE SOCIAL PARTNERS UNDER ARTICLE 138 (2) EC TREATY

ANY CONCRETE PROPOSALS?

Under the Title XI of the EC Treaty on social policy, education, vocational training and youth, the European social dialogue procedure of Article 138 enables management and labour to respond to the European Commission initiatives, either by delivering opinions or recommendations or by informing the European Commission of their wish to initiate negotiations that may lead to contractual relations including agreements (Article 139). As Figure 1 shows, no negotiations have taken place between the European Social Partners in 2007, but, as a follow-up to the consultation on reconciliation of professional, private and family life, the social partners informed the Commission, in a joint letter, that they will evaluate all elements of their framework agreement on parental leave, as well as other arrangements supporting parents and work-life balance, in order to assess whether joint action needs to be taken.

As Figure 1 shows, 2007 was, compared to previous years, quite an active year with regard to consultation under Art. 138 (2) EC Treaty. Once again, however, no consultations on concrete legislative proposals are to be found. Only the consultation on cross-border transfers of undertakings or businesses deals with the question of whether the related Directive should be amended to clarify its application to cross-border transfers of undertakings.

 Figure 1

Consultation process under Art. 138 (2) EC Treaty in 2007/2008

ISSUES	REACTIONS: SOCIAL PARTNERS / COMMISSION
GREEN PAPER: MODERNISING LABOUR LAW TO MEET THE CHALLENGES OF THE 21ST CENTURY	1 st consultation 11/06 – concluded 03/07 - separate opinions – follow-up COM communication 10/07
MUSCULOSKELETAL DISORDERS	2 nd consultation 02/07 – separate opinions
CARCINOGENS, MUTAGENS AND REPROTOXIC SUBSTANCES	2 nd consultation 03/07 – separate opinions
RECONCILIATION OF PROFESSIONAL, PRIVATE AND FAMILY LIFE	2 nd consultation 05/07 – separate opinions but a joint letter
CROSS-BORDER TRANSFERS OF UNDERTAKINGS, BUSINESSES	1 st Consultation 06/07 – separate opinions
FLEXICURITY	1 st consultation 07/07 – separate opinions
DISCRIMINATION - DOES IT MATTER?	Consultation 07/07
ACTIVE INCLUSION OF PEOPLE FURTHEST FROM THE LABOUR MARKET	2nd consultation 10/07 - to be concluded in February 2008
EUROPEAN WORKS COUNCILS	2 nd consultation to come

Source: ETUI-REHS (2007)

The consultation of the green paper on Modernising labour law to meet the challenges of the 21st century (COM(2006) 708 final) was concluded in March 2007 and the communication on this subject was published the following October. The Commission is very clear in its message that no follow-up – in the sense of a white paper or more concrete legislative action – is planned.

After years of standstill – but continuous lobbying by the ETUC – the revision of the Directive on European Works Councils finally returned on to the agenda with the Commission's work programme for 2008. Therefore the second consultation of the social partners on this topic should be imminent, assuming the requisite political will is forthcoming, for the European employers are trying very hard to get this subject taken off the agenda.

8.2. RESULTS OF THE AUTONOMOUS INTERPROFESSIONAL SOCIAL DIALOGUE

IMPLEMENTATION OF THE 2ND WORK PROGRAMME OF THE EUROPEAN SOCIAL PARTNERS 2006-2008 - STATUS DECEMBER 2007

As mentioned in the previous *Benchmarking Working Europe* reports for 2006 and 2007, the European cross-sectoral social partners had opted for a “limited but more qualitative” approach as the guiding principle underlying their second autonomous social dialogue work programme 2006-2008, which they submitted to the Tripartite Social Summit of 23 March 2006 (see: <http://www.etuc.org/r/656>). Whereas in 2006 the most concrete result consisted of the adoption of the third autonomous framework agreement on harassment and violence at work, officially signed on 26 April 2007 following the approval of the respective decision-making bodies of ETUC, BUSINESSEUROPE (former UNICE), UEAPME and CEEP (available at: <http://www.etuc.org/a/3574>), 2007 was marked by the adoption of the “Joint analysis of the European social partners of key challenges facing European labour markets”, presented by them to the Tripartite Social Summit of 18 October 2007 (currently available in EN only at: <http://www.etuc.org/r/1158>).

The core message of this joint analysis is that the social dimension of the internal market requires urgent strengthening, for example by closing existing loopholes in the design of labour law and job protection which allow employers to turn flexibility into precarious work. The opinion is not to be regarded as dealing with flexicurity alone, as it looks at a very broad set of challenges facing the European labour market, such as the need for macro-economic policies, an agenda on quality of jobs and the reinforcement of social protection policies. A main part of the analysis is found in chapter IV which consists of recommendations from the European social partners to the EU institutions and member states regarding issues such as active labour market policies, education and training, tax and benefit systems, social cohesion and inclusion, social dialogue, labour law and contractual arrangements, etc. Furthermore, this text is intended to form the basis for several other actions defined in the work programme, including the negotiating of a new autonomous agreement on either lifelong learning or the labour market integration of disadvantaged groups. These concrete follow-up actions are currently being discussed by a specific EU social partners working group which will report on its outcomes to the Social Dialogue Committee (SDC) of February 2008.

Secondly, in relation to the debate on “developing a common understanding” of the instruments of the social dialogue and the positive impact they can entail, no concrete joint action took place. However, it is important to point out that in the framework of this exercise the European social partners did prepare and adopt their 2nd annual joint table on the implementation of the work-related stress agreement as well as their 2nd joint follow-up report on the Framework of Actions on gender equality. Furthermore, the Commission intends to finalise, by end 2007, its own-initiative implementation report on the telework agreement which will form the basis for a Commission Working Paper assessing the implementation and impact of the framework agreement. Finally, it should also be noted that the European social partners, in the framework of the Commission’s consultation on reconciling private, family and working life, agreed to set up an ad hoc working group which, among other things, will review the implementation and impact of the Parental Leave Directive/framework agreement to assess whether there is a need for renegotiation of the agreement. The information and experience gained from all these “side” exercises will surely also be valuable for the general “common understanding” discussion.

Finally, further important joint steps have been taken in relation to the continuous endeavour to enhance the capacity building of the social partners in the new member states and candidate countries. All of the steps are targeted at the full integration of these social partners in the European social dialogue structures and the implementation of framework agreements and other texts resulting from it.

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 FIGURE 2	
FORESEEN ACTIONS	ACTIONS UNDERTAKEN
<p>EU SOCIAL PARTNERS WILL UNDERTAKE JOINT ANALYSIS OF THE KEY CHALLENGES FACING EUROPE'S LABOUR MARKETS (...)</p>	<ul style="list-style-type: none"> Ad hoc Working Group on "Labour Market Challenges" set up at SDC of 28/6/06 Joint text reached at meeting of 18/09/07, signed and presented by the EU cross-sectoral social partners at Tripartite Social Summit of 18/10/07 Text available at: http://www.etuc.org/a/4119 (EN only for the moment)
<p>ON THAT BASIS: THEY WILL DECIDE 1) APPROPRIATE JOINT RECOMMENDATIONS TO BE MADE TO EU AND NATIONAL INSTITUTIONS, 2) DEFINE PRIORITIES TO BE INCLUDED IN A FRAMEWORK OF ACTIONS ON EMPLOYMENT BY THE SOCIAL PARTNERS, 3) NEGOTIATE AN AUTONOMOUS FRAMEWORK AGREEMENT ON EITHER THE INTEGRATION OF DISADVANTAGED GROUPS ON THE LABOUR MARKET OR LIFELONG LEARNING.</p>	<ul style="list-style-type: none"> At the SDC of 7/11/2007, it was decided to set up a small working group to reflect more concretely on these different actions, in particular on the choice of the issue for the negotiating of an autonomous framework agreement; this working group is due to report back to the SDC of February 2008
<p>NEGOTIATION OF A FRAMEWORK AGREEMENT ON HARASSMENT AND VIOLENCE IN 2006</p>	<ul style="list-style-type: none"> (see subchapter on the framework agreement on harassment and violence) agreement signed on 26/04/07 to be implemented by 26/04/10. ETUC follow-up project in 2008.
<p>COMPLETION OF THE NATIONAL STUDIES ON ECONOMIC AND SOCIAL CHANGE IN THE EU10, ENLARGE THEM TO THE EU15 AND TO PROMOTE AND ASSESS THE 'ORIENTATIONS FOR REFERENCE ON MANAGING CHANGE AND ITS SOCIAL CONSEQUENCES' AND THE JOINT LESSONS LEARNED ON EWCS</p>	<ul style="list-style-type: none"> Joint project "Integrated Programme of the EU Social Dialogue 2006-2008" -Subproject II: "<i>Joint Study on restructuring in EU15 MS – Phase 1 (10 countries)</i>"- National seminars took place in FR, GR, IE, IT & NL; in 2008 in AT, DK, ES, SE & UK; BE, DE, FI, LU & PT are scheduled for integrated programme of 2008-2009; Synthesis Seminar foreseen May 2008
<p>CONTINUATION OF THEIR WORK OF CAPACITY-BUILDING FOR THE SOCIAL DIALOGUE IN THE NEW MEMBER STATES, EXTEND IT TO CANDIDATE COUNTRIES, AND EXAMINE HOW THE EMPLOYERS AND TRADE UNION RESOURCE CENTRES PROVIDING TECHNICAL ASSISTANCE TO THE 10 NEW MEMBER STATES COULD PROVIDE HELP TO SOCIAL PARTNERS OF ALL EU COUNTRIES</p>	<ul style="list-style-type: none"> Joint project "Integrated Programme of the EU Social Dialogue 2006-2008": Subproject I: "<i>Joint project on 'Social partners' participation in the European social dialogue: What are Social Partners' needs?' in Romania, Bulgaria, Croatia and Turkey – phase 1</i>" - 4 national seminars in 2007: BG, HR, RO & TR; EU conference on 23-24/01/2008 – Brussels; Phase 2 is for next integrated programme 2008-2009 with again 4 seminars to see how results/conclusions of 1st seminar were implemented Subproject III: "<i>Resource Centres – services and websites</i>" - ETUC resource centre website under re-design; available in new version before end 2007 www.resourcecentre.etuc.org (Mentoring programme; Translation Fund for joint EU social dialogue texts in 23 EU languages)
<p>REPORTING ON THE IMPLEMENTATION OF THE TELEWORK AS WELL AS THE WORK-RELATED STRESS AGREEMENTS AND ON THE FOLLOW UP TO THE FRAMEWORK OF ACTIONS ON GENDER EQUALITY</p>	<p>Telework:</p> <ul style="list-style-type: none"> Joint EU social partners final implementation report adopted at 28/06/2006 (available at: http://www.etuc.org/a/579) Commission conducted its own implementation report by end 2007; basis for a Commission "Working Paper"; EU social partners involved in whole process <p>Stress at work: (see subchapter on work-related stress agreement)</p> <p>Gender equality: 1st joint follow-up report 2006" adopted at SDC of 07/11/06; 2nd joint follow-up report 2007 adopted at SDC of 7/11/07 (available at: www.etuc.org/r/704); further specific and general dissemination actions</p>
<p>BASED ON THE IMPLEMENTATION OF THE TELEWORK AND STRESS AGREEMENTS AND THE FRAMEWORKS OF ACTIONS ON THE LIFELONG DEVELOPMENT OF COMPETENCES AND QUALIFICATIONS AND ON GENDER EQUALITY, FURTHER DEVELOP THEIR COMMON UNDERSTANDING OF THESE INSTRUMENTS AND HOW THEY CAN HAVE A POSITIVE IMPACT AT THE VARIOUS LEVELS OF SOCIAL DIALOGUE.</p>	<ul style="list-style-type: none"> Confirmation of the importance of this action in the conclusion of the joint implementation report on Telework following the lessons learned in the implementation process No further concrete joint action yet started.

Source: ETUI-REHS (2007). The table has to be read in conjunction with Figure 2, chapter 9.2 of *Benchmarking Working Europe* report 2007: 117.

8.2. RESULTS OF THE AUTONOMOUS INTERPROFESSIONAL SOCIAL DIALOGUE

IMPLEMENTATION OF THE ETUC-UNICE/UEAPME-CEEP AGREEMENT ON WORK-RELATED STRESS

STATE OF PLAY: DECEMBER 2007

FIGURE 3

	INITIATIVES				RESULTS	
	TRANSLATION	DISSEMINATION	JOINT ACTIONS	NEGOTIATIONS	AGREEMENTS	LEGISLATIVE CHANGES
CROSS INDUSTRY SOCIAL DIALOGUE	All ETUC affiliates in member states except in English speaking countries (UK, IE, Malta)	Awareness-raising campaigns websites, brochure, training schemes in almost all member states	Declaration of commitment (MT), Agenda item in Economic and social committee (LU), Working group (NO), Project (PL), International Congress for Occupational Safety and Health (DE)	CZ, FI, FR, HU, IE, IT, IS, LU, NO, PL, RO, SE, PT (2007)	Joint guidelines (AT) OSH policy (BG) Joint implementation strategy (LT) Update of national joint declaration on work pressure (NL) Joint recommendations (FI) National collective agreement (IS) Joint agreement with guidelines (SE)	Royal Decree extending national collective agreement private sector to the whole public sector (BE) Chapter on work-related stress in new Labour Code (CZ)
SECTORAL SOCIAL DIALOGUE		Public sector: education, health, public administration (BG)	Project in Railways sector and with a bank (PT) Agenda item of the Intersectorial Agreement for the Collective Bargaining 2005 (SP), guide on "Work-related stress (UK private sector), Joint programmes of agencies social insurance for occupational accidents in GE.	DK (private sector; regions and municipalities) FI, IE, IT, municipalities (SE), (UK private sector)	Collective agreement in public sector, and public local and regional sector workplaces (DK); in 2007 accompanied by further concrete implementation projects Joint agreement with guidelines – public sector (SE) Collective agreement local enterprises (SE)	Other activities Special joint guideline in <i>Berufsgenossenschaften</i> (social insurance organisations for occupational accidents private sector –DE) Joint brochure between social partners and Labour Inspectorate (NO) Agreement at EDP Produção (PT)
EU SECTORAL SOCIAL DIALOGUE			Joint Declaration Electricity sector (EPSU & EMCEF – 07/02/2007) Joint Recommendation Construction sector (EFBWW and FIEC – 10/01/2006)			

Source: ETUI-REHS (2007)

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STATE OF PLAY: DECEMBER 2007

By 8 October 2007, the member organizations of ETUC, UNICE/UEAPME and CEEP had to implement the autonomous cross-industry framework social dialogue agreement on work-related stress and this in accordance with the procedures and practices of management and labour, as well as by the member states, as stipulated in Article 139 of the Treaty.

In the *Benchmarking Working Europe 2007*, it was already described how the ETUC, in close cooperation with the ETUI-REHS, tried to assist as much as possible its affiliates in the dissemination, awareness-raising and actual implementation of the framework agreement via a comprehensive project, supported the European Commission, entailing a wide range of complementary actions and tools such as seminars, interpretation guides in different languages and a specific website section (<http://www.etuc.org/a/2377>) Monitoring and impact assessment were, as said, further tasks of the ETUC and ETUI-REHS towards a qualitative analysis during, as well as at the end of the process, on which regular reports were given in the European social dialogue committee. The joint European social partners' annual implementation tables for 2006 and 2007, as adopted at the SDC, can be found at the abovementioned website section.

With the implementation dead line having officially passed, the implementation can be considered as overall positive. In particular if one takes into account that indeed many countries had already a regulatory and/or contractual framework in place, either as part of an overall health and safety protection policy or as a policy specifically targeted on the issue.

Compared to the information provided in the Benchmark report of 2007, important steps and results in the implementation were achieved in Belgium (extension by Royal Decree of the national private sector collective agreement to the whole public), Finland (joint recommendation at cross-sectoral level), Iceland (a national cross-sectoral collective agreement) and Romania (where the new national collective agreement 2007-2010 contains a chapter incorporating several rights and obligations as set out in the European framework agreement). Furthermore, negotiations have been launched or are continuing in several countries such as France and Hungary (tripartite negotiations).

In the course of 2008 the signatory parties to the European framework agreement will, as prescribed by the agreement, prepare and elaborate their final joint implementation report. Although the official implementation period is thus passed, it is clear –as for the implementation of the telework agreement, that the implementation will continue as a kind of mainstreaming process and that a genuine impact assessment of the added value of the agreement at the work places and for the health and safety of the workers will only be possible after several years.

8.2. RESULTS OF THE AUTONOMOUS INTERPROFESSIONAL SOCIAL DIALOGUE

ETUC 2007 IMPLEMENTATION REPORT ON THE AGREEMENT ON HARASSMENT AND VIOLENCE AT WORK

 ETUI-REHS		FIGURE 4
COUNTRY	IMPLEMENTATION RESULTS /INITIATIVES	
BELGIUM	Law of 10 January 2007 (complemented by a Royal Decree of 17 May 2007) reframes and considerably reinforces the applicable legislation on the protection against violence and (moral and sexual) harassment at the workplace. The law deals with the “prevention of psychosocial burdens” related to violence and harassment. With the help of a prevention advisor, employers must make a risk assessment (determine the factors that can influence situations of psychosocial burdens and foresee different prevention measures relating to the work organisation, the group of workers and the individual workers). The law also reinforces the protection of victims and witnesses (no dismissal or unilateral modification of the employment contract as reprisal for a complaint, even complaints submitted to the police or other judicial public authorities). The law seeks furthermore to improve the functioning of the internal procedures (a two-phased procedure to last not longer than three months)	
CZECH REPUBLIC	Joint translation	
DENMARK	Joint translation in process. The trade union FTF (white-collar workers) has prepared its own translation.	
FINLAND	Translation by SAK	
IRELAND	Code of best practice (published by the Health and Safety Authority on 4 April 2007) on the prevention and handling of conflicts relating to moral harassment at work, as practical application of the Safety, Health and Welfare at Work Act of 2005, thus extending legal protection to moral harassment.	
POLAND	Translation of the EU agreement into Polish is being prepared.	
SLOVENIA	New social agreement of 16 September 2007, (negotiated by all representative social partners’ organisations at national level as well as the government) states that: “The signatory parties agree to implement the European agreement on violence and harassment at workplace by concluding special agreements, as well as a ‘tripartite agreements on stress management and harassment at the workplace.” A joint translation into Slovenian is under preparation within a working group in the framework of the National Social-Economic Council, but this has not yet been finally agreed upon.	
SPAIN	A translation done by CC.OO	
UNITED KINGDOM	Although not directly related, it is worthwhile mentioning that in early 2007, the UK government issued a consultation paper proposing a single equality bill and that it will explore the possibility of extending the prohibition of harassment in service provisions and public functions to all strands of discrimination.	
CANDIDATE COUNTRIES		
CROATIA	A Draft Act on Harassment and Violence is intended to complete amendments to the labour code, now through parliamentary procedure. UATUC translation into Croatian. Planned negotiations with Croatian Employers’ Association (HUP) to reach a national agreement.	
EUROPEAN SECTORAL SOCIAL DIALOGUE		
EDUCATION	ETUCE project (Oct. 2007 to July 2008). Key topics to be dealt with are exchange of best practices concerning tackling violence in schools based on the autonomous framework agreement on harassment and violence at work. A booklet on the framework agreement with an ETUCE interpretation guide will be produced and disseminated to all ETUCE member organisations.	
ELECTRICITY	Joint Declaration on Harassment and Violence at Work adopted by EPSU, EMCEF (for the trade union side) and Eurelectric on 7 December 2007 (available at http://www.emcef.org/Committees/cmt-show.asp?job=SDArcE)	
GAS	Joint Declaration on Violence at Work adopted by EPSU, EMCEF and Eurogas on 15 November 2007 (available at: http://www.emcef.org/Committees/cmt-show.asp?job=SDArcG)	
HORECA	Integrated third-party violence as an issue to work on in their work programme	
OTHER CROSS SECTORAL DEVELOPMENTS	2007 Initiative of the European Commission for promoting sectoral initiatives linked to third-party violence at work and for a possible multi-sectoral initiative, thus based on the European framework agreement. Sectors involved are banking, commerce, horeca, local governments, postal services and private security.	
OTHER EU INSTITUTIONS		
COMMISSION	Formal requests to 14 member states (Spain, Sweden, Czech Republic, Estonia, France, Ireland, United Kingdom, Greece, Italy, Latvia, Poland, Portugal, Slovenia and Slovakia) to fully implement EU rules banning discrimination on the grounds of race or ethnic origin (Race Equality Directive of 2000/43/CE,). Failing to reply will lead to ECJ.	
EUROPEAN PARLIAMENT	Opinion of 11 May 2007 of the EP Committee on Employment and Social Affairs on the Commission Communication on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The opinion refers to the EU framework agreement.	
ECJ	Reference for a preliminary ruling from Employment Tribunal (London South) made on 10 July 2006 - S. Coleman v Attridge Law, Steve Law (Case C-303/06) in respect of discriminating treatments of workers who, though they are not themselves disabled, are treated less favourably or harassed on the ground of their association with a person who is disabled? Positive AG Opinion of 31/01/08.	
ETUI-REHS	HESA (ETUI-REHS)’s website: special information kit on abuses of violence and harassment at work. (See: http://hesa.etui-rehs.org/uk/dossiers/dossier.asp?dos_pk=21 (EN) http://hesa.etui-rehs.org/fr/dossiers/dossier.asp?dos_pk=21 (FR))	

Source: ETUI-REHS (2007)

8.2. RESULTS OF THE AUTONOMOUS INTERPROFESSIONAL SOCIAL DIALOGUE

ETUC 2007 IMPLEMENTATION REPORT ON THE AGREEMENT ON HARASSMENT AND VIOLENCE AT WORK

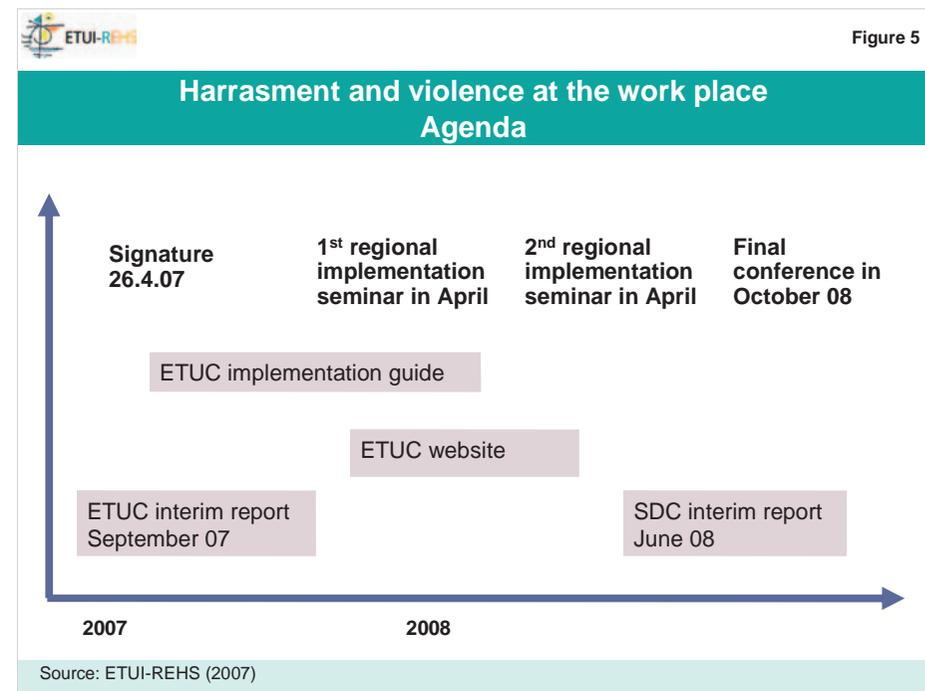
Following the Work Programmes of the European Social Partners 2003-2005 and 2006-2008, in which it was foreseen that the European social partners will negotiate a framework agreement on harassment and violence at work, negotiations in the framework of Article 139 (2) of the EC Treaty took place in 2006 and led to the signature of the cross-sectoral framework agreement on harassment and violence at work on 26 April 2007, by ETUC, BUSINESSEUROPE/UEAPME and CEEP after approval by the respective decision-making bodies of these organisations.

Based on the mutual recognition that harassment and violence can have serious social consequences as well as economic repercussions, the European social partners complete existing legislation both at EU and national level with an action-oriented reference instrument that can be used and adapted by social partners at local, sectoral and national levels according to their needs. The major aim is to have harassment and violence tackled collectively at the workplace by workers and their representatives as well as by management and their representatives.

The agreement on harassment and violence will focus on the following points: 1. The recognition of three different forms of violence – physical violence, moral harassment / psychological violence (also referred to as mobbing or bullying) and sexual harassment, 2. The agreement covers all workers having a contract or employment relation, whether in the private or public sector. However, the fact that certain target groups and sectors are more prone to (external or third party) violence will be recognised; 3. The agreement seeks to establish a number of general principles, objectives and concrete measures to prevent, combat and eliminate violence at work. Based on the obligation to have a zero tolerance position/policy towards harassment and violence in each enterprise or organisation, the parties agreed to act collectively to develop on one hand general measures (raising awareness and training for managers and workers), but also to elaborate specific measures and procedures (joint nomination by management, workers and their representatives of a trusted person, a non-exhaustive list of actions that should be part of the procedure established at company level, disciplinary actions against the perpetrator, supportive measures for the victim such as reintegration at the workplace) in order to prevent, identify and manage problems of harassment and violence at the workplace.

Finally it contains improved provisions for implementation, monitoring and evaluation, in comparison with the former framework agreements, in which the role of the Social Dialogue Committee (SDC) in the implementation and follow-up procedures has been emphasised (a yearly report to be adopted at the SDC). Already in December 2007, the ETUC launched the monitoring of the agreement in elaborating its first implementation report. As figure 4 shows, most actions started by the translation of the agreement into national language and references to the agreement were made in official national texts. Some sectors at EU level refer to the agreement to launch sector specific actions against violence at the work place, whereas the agreement was referred to by European Institutions such as the Commission or the European Parliament.

The agreement must be implemented by all member organisations of ETUC, BUSINESSEUROPE/UEAPME and CEEP in accordance with the procedures and practices specific to management and labour as specified in Article 139 of the Treaty until before 26 April 2010. To support and monitor domestic implementation measures, as shown in Figure 5, in 2008 the ETUC will launch a follow-up project comprising a specific website, an interpretation guide regional meetings, and a closing conference. As Figure 4 shows, a first ETUC implementation report is available. Furthermore, as the European framework agreement leaves scope for sectoral social partners to take action on violence from third parties, the European Commission took the initiative of a meeting in June 2007 to discuss sectoral initiatives linked to violence at work and on a possible multi-sectoral initiative especially linked to third-party violence.



8.3. RESULTS OF THE EUROPEAN SECTORAL SOCIAL DIALOGUE

UPDATE OF EUROPEAN SECTORAL SOCIAL DIALOGUE ACTIVITIES IN 2007

SECTORS	ACTIVITIES
AUTOMOTIVE INDUSTRY	A new 'European partnership for the anticipation of change in the automotive industry' was formed by the European Commission, the European Automobile Manufacturers' Association, the European Association of Automotive Suppliers and the European Metalworkers' Federation. The aims of the partnership are to monitor developments in the industry and to exchange know-how on managing restructuring in a socially responsible way. Pending application of EMF and CLEPA to the EU Commission to create a European sectoral social dialogue committee
CATERING	Launch of a European sectoral social dialogue committee
COMMERCE	UNI commerce and EuropeCommerce launch of negotiation round on violence at work in the commerce sector
CONSTRUCTION	International framework agreement signed on 11 April between BWI (Building and Woodworkers International), FNV and CNV (Dutch trade unions) and Royal Balm on core labour standards
ENERGY	European framework agreement signed 28 March between EMCEF, FECER and FECCIA and Multinational Total on support for creating or expanding small and medium-sized enterprises near the Group's main European facilities
GAS	Launch of the 34. European sectoral social dialogue committee on 15 March 2007 between EMCEF, EPSU and Eurogas
NON-FERROUS METALS	Pending application of EMF and EUROMETAUX to the EU Commission to create a European sectoral social dialogue committee
MEDIA	International framework agreement signed on 4 July 2007 by the International Federation of Journalists (IFJ), the European Federation of Journalists (EFJ) and the German-based Westdeutsche Allgemeine Zeitung (WAZ) Media Group on the defence and promotion of freedom of the press, quality journalism and good labour relations in companies of the group
WATER, WASTE AND ENERGY SERVICES	International framework agreement of 3 July 2007 signed by EPSU and Suez management on profit-sharing, advance planning of staff development, and equality and diversity.
METAL	European agreement of July 2007 between Schneider Electric and EMF on 'Anticipating change' represents another key development in the emergence of a European industrial relations system.
METAL	International framework agreement between Amicus (UK) and IGMetall (Germany Metalworkers' Union), along with the US trade union organisations, the United Steelworkers (USW) and the International Association of Machinists (IAM) to address international social dumping
METAL	International framework agreement of 13 April 2007 between IFM (International Metal Federation), AMWU (Austrian Trade Union) and Brunel Multinational (international service and manpower provider in engineering) on core labour standards
POSTAL SERVICE	Joint declaration of 22 June on specificity of the postal services, employment and working conditions in the view of the liberalisation of the postal service.
TELECOMMUNICATION	International framework agreement between UNI Global and Telefonica on the respect of labour law and the promotion of social dialogue within the Multinational

Source: ETUI-REHS (2008)

8.3. RESULTS OF THE EUROPEAN SECTORAL SOCIAL DIALOGUE

UPDATE OF EUROPEAN SECTORAL SOCIAL DIALOGUE ACTIVITIES IN 2007

In 2007, several significant initiatives were taken in the ESSD, confirming and consolidating the importance of the ESSD in tripartite and bilateral negotiations at European level (Figure 6). The total number of European sectoral social dialogue committees has now increased to 35 and this may be raised to 37 in the next months, depending on the outcome of the applications pending in the non-ferrous metal and automotive sectors. The initiative for both applications was taken by the EMF (already present in two other committees – shipbuilding since 2003 and steel since 2006). In 2007 two new ESSD committees were created: in the catering sector, EFFAT and FERCO consolidated a longstanding informal social dialogue relationship reflecting the specificities of a sector that provides food management services covering contract-catering and canteens (consisting in the outsourcing, by a firm or a collective organisation, of their restaurant services by a specialized company, on a contractual base).

Today, around 30% of firms or collective organisations have a contract with a contract-catering company. The sector is prospering; with a turnover of €22 billion, it employs 600,000 persons in Europe and delivers around 6 billion meals each year. This represents 67 million consumers served every day, one in four meals taken outside the home, and more precisely one in every two meals taken at the workplace, more than one in four meals at school and more than one in ten in the healthcare or social sectors.

The second new ESSD committee was launched in the gas sector: this sector has undergone major changes in the past few years as a consequence of the EU liberalisation of network industries since the second half of the 1990s. The first steps in this direction were taken after adoption of Council Directive 98/30/EC, which came into force in August 2000. In 2003, Directives were adopted setting deadlines for the full opening of the EU energy market (1 July 2004 for business customers and 1 July 2007 for households). The gas sector remains in transition in many European countries, where liberalisation, restructuring and privatization (EU12) are still continuing.

This process has a profound impact on employment; statistics in the gas sector point to a 12-13% decline in jobs between 2001 and 2005 as a result of the ongoing restructuring, privatization (EU12) and liberalization of the gas market. Finally, in the energy policy field, a top EU priority, in 2007 the European Commission published its “Energy Package”, an integrated set of proposals to tackle climate change and create a new Energy Policy for Europe, in the context of which a number of issues are directly addressed to the gas industry.

Furthermore, and to support the European Commission’s interest in promoting sectoral social dialogue at European level, the European Foundation for the Improvement of Living and Working Conditions launched a series of studies on representativeness in order to identify the relevant national and supranational social partner organisations in the field of industrial relations in selected sectors. The initiative for these studies arises from the European Commission’s aim of recognising the representative social partner organisations to be consulted under the EC Treaty provisions. Hence, these studies are designed to provide the basic information needed to establish sectoral social dialogue. In 2007, two new studies were devoted to the agricultural sector and the telecommunications sector. Two additional studies on the importance and specificity of the sectoral social dialogue in the postal services and the public sectors have been finalised by the Foundation.

8.3. RESULTS OF THE EUROPEAN SECTORAL SOCIAL DIALOGUE

UPDATE OF EUROPEAN SECTORAL SOCIAL DIALOGUE ACTIVITIES IN 2007

Finally, and as a new feature of the international and/or European sectoral social dialogue dynamic, several international and European framework agreements were signed in 2007. Amongst the most interesting, the first ever agreement to be concluded in the media sector was signed by IFJ Secretary-General, Aidan White, and WAZ Managing Director (MD), Bodo Hombach. This international framework agreement underlines the mutual interest of WAZ, IFJ and EFJ in the sustainability of media and publishing enterprises worldwide. It also aims to foster the supply of high quality, professional and ethical media and information services. Furthermore, the agreement stresses the value of internationally accepted labour relations and human resources practices. According Aidan White, the agreement represents: ‘a breakthrough, which paves the way for similar initiatives with other transnational enterprises. Social dialogue in favour of quality in journalism will secure the future for all media’. He adds that ‘this is the first step in our work to ensure that global media companies set standards worldwide to provide for quality reporting and decent working conditions’. The agreement has also been supported and welcomed by the European Commission as an industry-based effort to strengthen quality journalism in Europe.

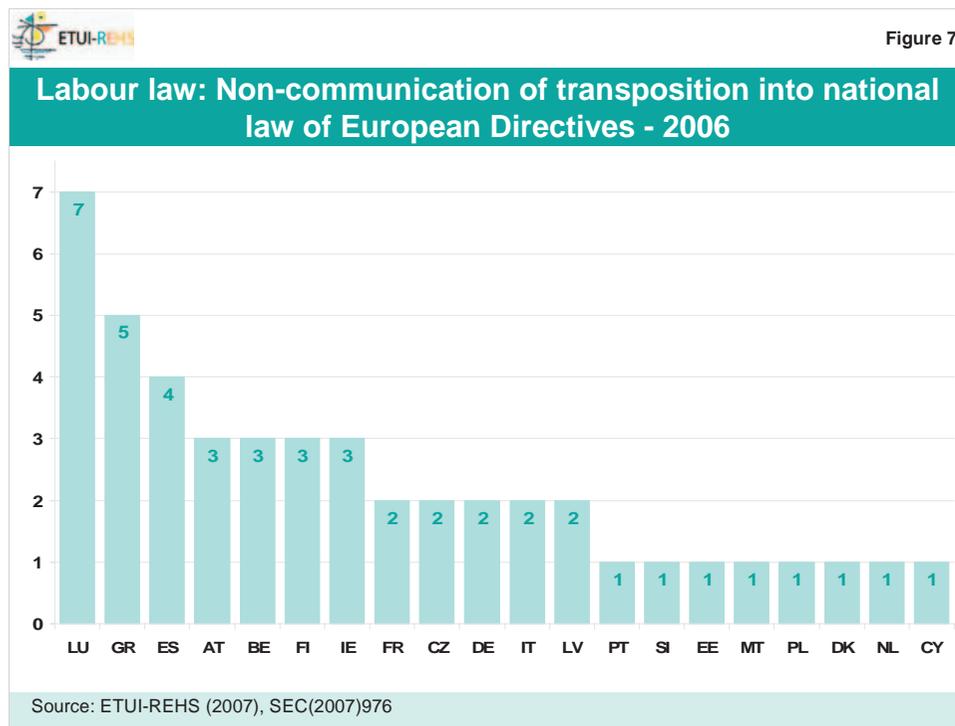
In the water, waste and energy services multinational Suez, negotiations with employee representatives led to the signature of an international framework agreement on various issues concerning the group’s CSR (corporate social responsibility). In February 2006, the Suez European Works Council used the occasion of the announced merger with the French company Gaz de France to ask management to enter into negotiations on a range of issues, which were agreed upon on 3 July 2007 between a committee of workers’ representatives selected by the EWC French trade unions and the European Trade Union Confederation (ETUC), represented by the European Federation of Public Service Unions (EPSU) and Suez management, in an effort to define the group’s social policy at corporate level. Three international framework agreements were concluded, covering the areas of profit-sharing, advance planning of staff development, and equality and diversity. Still outstanding issues include the proposal by the employee side to improve trade union rights and to ensure training measures for employee representatives. Another open point for discussion concerns mechanisms to be adopted in order to guarantee the purchasing power of wages.

The agreement reached in July 2007 between Schneider Electric and the European Metalworkers’ Federation on ‘Anticipating change’ represents another key development in the emergence of a European industrial relations system. This European framework agreement is designed to ensure that change involves the social partners, and is not detrimental to Schneider’s employees. In particular, the agreement commits the company to promote lifelong learning.

In a move to address the problem of social dumping at international level, two of Europe’s largest trade unions, Amicus in the UK and the German Metalworkers’ Union, along with the US trade union organisations, the United Steelworkers and the International Association of Machinists, have signed an agreement designed to encourage closer working relations between the four trade unions by which a total of around 7.6 million members are represented.

8.4. TRENDS IN EUROPEAN LABOUR LAW BETTER IMPLEMENTATION?

Better regulation is one of the selling products of the Barroso Commission, the idea being to cut red tape on the EU level in order to boost growth. In a better regulation agenda enforcement of the *acquis* communautaire must be key, as legislation without enforcement does not give any added value to the people of Europe. Yet the Commission's focus is not necessarily on this point. Not until 2007 did the Commission finally turn its attention to the aspect of application of European law. In its communication (COM(2007)502 final) it proposed ways to improve application, such as prevention, efficient and effective response, improving working methods and enhancing dialogue and transparency. None of these areas involves the proposal of very hands-on solutions. Attached is an Annex listing regulations for evaluation in which one Directive (2000/43/EC on equal treatment irrespective of racial or ethnic origin) in the social field is mentioned. The future will show what such evaluation might mean.

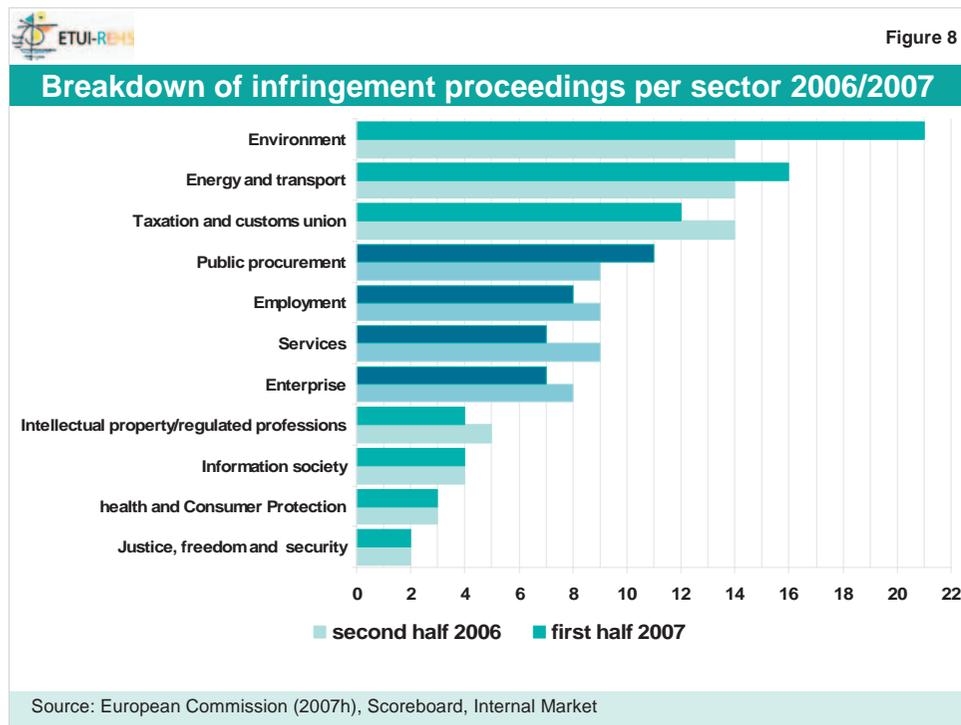


With regard to enforcement of European Directives, the Commission wants to focus on key categories of cases such as non-communication of national measures transposing Directives, breaches of European law having particularly far-reaching negative impact for citizens or business, as well as non-compliance with Court judgements (COM(2006) 689 final). However, who is going to judge whether the breaches detected have a far-reaching impact and which elements are going to be taken into consideration? These issues remain unclear.

Figure 7 shows the situation of non-communication of the transposition of EU Directives by country in the area of labour law in the year 2006. Only five countries transposed and communicated the transposition to the European Commission in good time, the worst performer being Luxembourg which failed in relation to seven Directives out of ten, followed by Greece and Spain.

But is non-communication really a key problem? What can a communication or non-communication tell us? It may be that information has simply not yet been provided to the EU institutions or, on the other hand, that, in order to avoid proceedings for non-communication, imprecise information is supplied in order to conceal a standstill in the member state.

8.4. TRENDS IN EUROPEAN LABOUR LAW BETTER IMPLEMENTATION?



It is much more essential to examine the content and quality of transposition and application of EU Directives at national level. If there are lapses in this respect, the Commission should take infringement proceedings towards the specific countries.

The Commission states itself that “member states appear to pay much less attention to transposing and then applying those Directives correctly: the number of infringement proceedings for incorrect transposition or incorrect application of Directives or violation of Treaty rules has increased year after year and continues to rise” (European Commission 2007h: 6).

This can be interpreted as bad or good news. On the one hand, incorrect transposition of EU Directives is a clear sign of lack and/or loss of respect for EU legislation or of the desire to reduce the impact of EU legislation on domestic law at a time of increasing protectionism. On the other hand, it does not necessarily mean that more problems are arising on the national level; it might just as well mean that problems are more often followed up by the Commission.

Figure 8 gives a breakdown on infringement proceedings per sector. However, it is disconcerting to discover that information on such proceedings in the social field is included on that scoreboard. This is to be explained by the very worrying fact that the Commission classifies all labour law Directives as Internal Market Directives, hence placing them all on the same level (http://ec.europa.eu/internal_market/score/docs/relateddocs/list-dir/im-directives_en.pdf).

The sectors most closely linked to the world of work, and therefore to labour law (enterprise, public procurement, services, employment – in blue in Figure 8), have remained rather stable (changes of 1 to 2 %) with regard to infringement procedures, if one compares the second half of 2006 and the first half of 2007. However, proceedings in employment have climbed to 11%, with 35 new infringement cases having been opened, thereby making this area the “*fourth most important source of incorrect transposition/application of EU Internal Market rules*” (European Commission 2007h: 20). This is the case even though fewer Directives were scheduled for transposition in the first half of 2007. Yet nearly half of the cases might be explained by the fact that 14 member states received a formal request concerning the same Directive (2000/43/EC on Racial Equality). This would prompt a conclusion that 35 cases in the field of employment is actually a quite small number and certainly far from the reality of transposition problems in the labour law field.

Another indicator on the question of whether the Commission is living up to its role as guardian of the Treaty and is following up on infringement procedures is the referral (on non- or wrong transposition) to the European Court of Justice under Art. 226 TEC.

In 2007 the ECJ handed down 14 judgements in the social field to nine different member states, and it is striking that those are all EU15 states (Figure 8). Thirteen of the judgements were pronounced on the grounds of non-transposition within the prescribed period and only one on the grounds of incorrect transposition. Two judgements were on the insolvency Directive, five on the information and consultation Directive, three on the working time Directive in road transport and four in the field of health and safety. Seven new applications on transposition of European Directives were registered with the ECJ, three of which have already been removed and two judged within the same year.

It is obvious that cases of non-transposition in the prescribed period are more easily and more quickly handled by the Commission – insofar as the information is to hand – than are cases on incorrect transposition. Nevertheless, this is an unsatisfactory situation, as it is the transposition and application on the national level that is of importance to workers in Europe and there are still too many examples of outstanding problems, e.g. wrong transposition of the working time Directive at national level.

8.4. TRENDS IN EUROPEAN LABOUR LAW

WHAT IS THE TREND IN LABOUR LAW?

 **Figure 9**

Work programme European Commission 2008

SUBJECT	YEAR	METHOD
DIR 80/987/EEC – INSOLVENCY OF THE EMPLOYER	2007	Codification - Proposal
INFORMATION AND CONSULTATION DIR	2007	Codification?
DIR 2002/23/EC – TRANSFER OF UNDERTAKINGS	2008	Revision
DIR 95/95/EC – EUROPEAN WORKS COUNCILS	2008	Revision
DIR EQUAL TREATMENT OUTSIDE EMPLOYMENT	2008	Proposal for new legislation
DIR 92/85/EEC – PREGNANT WORKERS	2008	Amendments
DIR 90/269/EEC 90/270/EEC MUSCULOSKELETAL DISORDERS	2008	Recast
ANTICIPATING AND MANAGING CHANGE	2008	Communication
A RENEWED COMMITMENT TO SOCIAL JUSTICE IN EUROPE: DEEPENING THE OMC IN SOCIAL PROTECTION AND SOCIAL INCLUSION	2008	Communication
DIR CONDITION OF ENTRY AND RESIDENCE OF SEASONAL WORKERS	2008	Proposal for new legislation
DIR ENTRY OF ICT AND TRAINEES	2008	Proposal for new legislation
MIGRATION AND EDUCATION	2008	Green paper

Source: ETUI-REHS (2007)

Figure 9 gives a somewhat rosier picture for 2008 than was the case for the preceding years. Three proposals for new legislation are planned: a Directive on equal treatment outside employment, which will have a broad scope of application, and two proposals for Directives with a very specific scope on seasonal workers and ICT (Intra-Corporate Transferees) and remunerated trainees. Two revisions are foreseen (transfer of undertakings and EWC), one amendment (pregnant workers) and one recast exercise (musculoskeletal disorders). Recasting means the creation of a legally binding new act, repealing the acts that it is replacing. Figure 9 also mentions codification as a working method: this means to bring together, in one binding legal act, provisions of one act and its amendments or of several acts. This new text replaces the old provisions but without changing their substance.

Now reality needs to live up to the plans and expectations. Nevertheless it is more than disappointing that no concrete legislative proposals for the new work programme have developed from the green paper on labour law.

The European social dialogue belongs within the set of common values shared by the European member states and commonly conceptualised as the European social model (COM (94) 333). This was first popularised, in the mid-1980s, by Jacques Delors, president of the European Commission from 1985 to 1993. The European social dialogue gained its *lettres de noblesse* in the course of the 1990s by anchoring social cohesion in a quasi-legislative way in the European *acquis communautaire*. In its twofold function – associating consultation of the social partners at EU level with the social partners’ right to negotiate, among themselves, agreements that can either be given binding legal effect or place obligations on the signatory parties and their member organisations – the European social dialogue built up, between economic and social actors, a partnership that enables effective adaptation to structural change. Thanks to the strength and recognition gained as a result of these achievements, the European interprofessional and sectoral social partners continue to work for greater autonomy.

Evaluation of the latest developments is, as the chapter shows, twofold. On the one hand, 2007 was a year of important achievements in a difficult economic and social context. At interprofessional as well as sectoral level, significant results testify to the dynamism and the will of social partners to make use of competences allocated to them by the EC Treaty to tackle workers’ rights. Furthermore, social partners, in particular the ETUC, made great endeavours to disseminate exiting autonomous framework agreements as well as assist trade union affiliates in the implementation of these instruments. Additionally, the ETUC devoted very considerable efforts to monitoring the instruments of the autonomous social dialogue with the support of/or in cooperation with the ETUI-REHS.

On the other hand, European social dialogue is under great pressure. Notwithstanding the difficulties stemming from the uncertain nature of the instruments it produces and the resulting lack of legal enforceability in terms of implementation, as well as the challenges encountered in the context of the eastwards enlargement, the European social dialogue seems to be the only way to get social rights recognised and the social *acquis communautaire* reinforced, insofar as the Commission’s agenda on social issues remains void of significant content.

Interestingly, however, there was in 2007, as in 2006, no possibility to embark on any legally binding discussion / negotiation with the employers’ association at European interprofessional level.

Following our conclusion in *Benchmarking Working Europe 2007*, the lack of initiatives from the Commission on social issues becomes even more worrying when considering the drastic change of approach represented by the Barroso Commission’s initiative on ‘Better regulation for Growth and Jobs in the European Union’ (COM(2005) 97 final) to boost economic growth and create more jobs in Europe. The search for a high standard of qualitative, effective and clear European legislation can, in principle, only be welcomed, but the ‘better regulation’ agenda of the Commission is much too focused on a quantitative rather than a qualitative approach. Many examples can be given of the need to adopt a qualitative approach to better regulation. The working time Directive and the impossibility of its revision are failing to ensure protection of the health and safety interests of European workers at large and the lack of regulation on temporary agency work is another example where better regulation would have required the European Commission to take the negative aspects of non-regulation into consideration and to become proactive. The only faint ray of sunshine in the Commission’s social legislation agenda is provided by the second round of consultation on the revision of the European works councils Directive, due since 1999. What is more, the Commission’s tendency to prefer soft forms of regulation undoubtedly has major repercussions in the social field, especially insofar as the modernisation of labour law is mentioned as a contribution to the better regulation agenda in the green paper on modernising labour law (COM(2006)708 final).