

# Chapter 4

## Once upon a time there was the European social dialogue

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‘We no longer believe that truth remains truth when the veil is withdrawn from it.’  
Friedrich Nietzsche, *The Gay Science*, preface to the second edition (1887).

### Introduction<sup>1</sup>

This chapter concerns the so-called ‘European social dialogue’: the institutional arrangements and system of actions and relationships via which European-level employer organisations, trade unions and European institutions interact to set labour standards and come up with policies and initiatives linked to economic and social developments in the European Union. This interaction can be tripartite or bipartite, formal or informal, and can take the form of concertation, negotiations or joint action (European Commission 2012).

This volume of *Social policy in the European Union: state of play* (hereafter *Bilan social*) aims to provide an overview of 20 years of Social Europe. As its contribution to this project, this chapter takes a historical approach. It begins by describing the context in which the European social dialogue was established, the issues it was intended to address, and the aims behind it. It then examines how it has evolved over the last two decades with reference to these contexts, issues and aims.

Such an approach requires me to divide up the analysis into time-periods. I have decided to examine the evolution of the European social dialogue with reference to the successive stages in European integration represented by the various European Commissions since 1985. Though purely indicative, such sequencing does have its own logic: it reflects the fundamentally tripartite nature of the European social dialogue as it was established, i.e. a joint invention of the European Commission (hereafter referred to as ‘the Commission’) and the cross-sector European social partners. Though the latter have, over time, developed bipartite and sectoral forms of social dialogue, it is the tripartite cross-sectoral social dialogue which has given the European social dialogue its distinctive features enabling it to be institutionalised in the European treaties. Within this European social dialogue, the Commission has played a key role: first – and widely acknowledged (Didry and Mias 2005) – on its inception under the Delors Commissions (1985–1995), but also later on, because social concertation involves both the social

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1. This text is part of wider research into changes in European social policy over the period 1985–2020. It reflects solely the views of its author, and not those of the institutions in which he previously worked, in particular the European Commission. The author would like to thank the various experts in European social policy, particularly the researchers at the European Social Observatory and the European Trade Union Institute, who agreed to comment on the initial versions of this text and thus helped to improve it. He would also like to thank in advance any readers who might wish to send in their comments and criticisms (jptricart@gmail.com).

partners and the Commission and because the institutional European integration process is largely centred on the Commission's power of initiative.

My decision to structure this presentation of the history of the European social dialogue with reference to the successive European Commissions in no way means that I underestimate the power of the social partners to be proactive in developing their own initiatives. Neither does it mean that I will only describe the momentum given to this dialogue by these successive Commissions. The Commissions, rather, are used to reflect the various phases of the European integration process, with their key paradigms reflecting both the political balances in the Union at the time and the major issues helping to explain each of these stages in political development.

Essentially, the European social dialogue was 'invented' at a time when the European integration process was being relaunched with a focus on the prospect of completing the single market, as endorsed by the Delors Commissions. In view of this prospect, a political need was seen to give the single market a 'social dimension', making it acceptable and possible. The invention of the European social dialogue – itself a symbolic concept<sup>2</sup> – made it possible to involve the social partners in the European integration process, especially by establishing arrangements for social concertation and by creating a space for contractual relations at European level. This tripartite cooperation process continued, although its development was far from linear, through the Santer (1995–1999) and Prodi (1999–2004) Commissions.

Over the last twenty years, the European social dialogue has developed in very uneven and often contradictory ways: progress has been made, but there have also been setbacks, and overall the dialogue has slowly deteriorated in two main stages. At the beginning of the 2000s, while the political need to develop the 'social dimension' of European integration was still widely recognised and still had its champions and sources of support, new paradigms gradually emerged in the fields of social and employment policy. These turned their back on legislation as a way to bring about change, instead promoting flexible forms of political coordination (see Vanhercke, this volume). Despite these developments, the European social dialogue was able to maintain its social concertation role. However, its role as regards collective bargaining, linked in the past to mechanisms enabling the adoption of legislation implementing the collective agreements reached, suffered as social legislation fell out of favour, although it could still develop other types of agreements – the so-called 'autonomous' agreements.

However, under the Barroso Commissions (2005–2014), and particularly with the onset of the Eurozone crisis in 2009, there was a clear deterioration of European social dialogue as a whole, since it then no longer fitted easily into the European economic

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2. Traditionally, the social sciences have used an 'industrial relations' analytical framework to examine relations between employers' and workers' organisations, and between these organisations and the public authorities. The concept of 'social dialogue' does not come from this analytical tradition; rather, it is related to those political, normative or prescriptive approaches which tend to favour consensus-based, more peaceful relations and which downplay their conflictual side, or refer to it merely euphemistically. The notion of 'European social dialogue' first appeared in the official vocabulary of the European institutions in 1984. It was then systematically used by the Delors Commissions and those which followed.

and social policies and governance. This was a time when the Union was developing the austerity policies it deemed necessary under its interpretation of the causes of the crisis, was strengthening European coordination of budgetary policies and structural reforms, and was firmly encouraging the decentralisation of social dialogue to company level; meanwhile, social concertation at European level on the economic and social developments taking place increasingly became a dialogue of the deaf.<sup>3</sup> And the very essence of European collective negotiations was challenged by the distrust, even growing hostility, of the Commission towards the progress of social legislation resulting from agreements between the European social partner<sup>4</sup> (Bandasz 2014; Degryse 2015; Dorssemont *et al.* 2018; Vogel 2018; Tricart 2019).

Recognition of this deterioration led the Juncker Commission (2015–2019), from the very beginning of its mandate, to ‘relaunch’ the European social dialogue as part of its stated aim to restore the social dimension of EU policies. By so doing, it undoubtedly set the scene, once more, for social concertation to take place at European level, although the effects of this concertation and of the reorientation of EU policies are, to date, uncertain. Even so, the Juncker Commission continued the approach followed by the second Barroso Commission, discouraging the legislative implementation of agreements reached by collective bargaining at European level. This approach caused the European Public Service Union (EPSU) to bring an action to the Court of Justice of the European Union (CJEU),<sup>5</sup> tarnishing the record of the relaunch of the European social dialogue in 2015.

At the end of his book on the European social dialogue in the period 1985–2003, Jean Lapeyre asks the following question: ‘Should we be nostalgic about this period spent constructing the European social dialogue?’ (Lapeyre 2017: 249). This question is often asked by participants in or observers of the European social dialogue, particularly given that the years when this European social dialogue was invented are generally considered to be its ‘golden age’ (Pochet and Degryse 2016).

The existence of this ‘golden age’ notion shows that the history of the European social dialogue is made up of both a factual history of actual stages in its development and a story accompanying these facts; a real history and a mythical story. This mythical story is encouraged both by the European social partner organisations and by the European institutions, especially the Commission: between 1993 and 2004, the Commission produced five communications on the European social dialogue (European Commission 1993, 1996, 1998, 2002 and 2004) and regularly organised commemorative events with

3. While Presidents Delors and Santer held regular ‘social dialogue summits’ between the social partners and the Commission, high-level informal European social concertation also involving the Council presidency was established in 1997. This informal concertation was institutionalised in 2003, in the form of a ‘Tripartite social summit for growth and employment’ (TSS). Under the second Barroso Commission, the TSS meetings became highly confrontational and extremely tense.
4. In the 2010s, the European sectoral social dialogue resulted in the conclusion of several agreements which the signatories wished to see implemented in legislation. The Commission, busy with an ambitious programme to simplify and cut back on European legislation, including social legislation, was very reticent in its reaction to these demands, even hostile at times; this led to growing tensions with the signatories to the agreements.
5. Case T-310/18. This action was brought by the European Public Service Union (EPSU) following the Commission decision, in March 2018, not to submit a proposal to the Council for legislative implementation of an agreement concluded in December 2015 between the social partners in the central administration sector.

the European social partners, recalling key moments in its history. In 2015, moreover, when the Juncker Commission wished to relaunch the European social dialogue, it referenced the ‘golden age’ story by linking the initiative to a commemoration of the meeting organised by President Delors in 1985 to found the European social dialogue<sup>6</sup>. This story, with its mythical dimension, is an integral part of the history which is examined in this chapter.

## **1. The Delors Commissions (1985–1995): creation of a contractual relations area at European level**

The relaunch of the European integration process driven by the Delors Commissions (1985-1995) gained much of its momentum from the emphasis on completion of the single market (1992), and then from the preparations for the Economic and Monetary Union (EMU). This required, however, support from as broad a range as possible of pro-European political, economic and social forces. For while the prospect of the single market was attractive to Member States as a way to help drag the Community out its lethargy, its precise content was the subject of much disagreement and opposition, threatening to undermine the whole project. Political powers were divided as to the nature and desired extent of European integration; business circles and the trade unions disagreed on how to manage the economic and social consequences of opening up the markets. President Delors was convinced that the single market could not be completed without a strengthening of social cohesion and that support from the employers and unions was essential if the project was to succeed.<sup>7</sup> For this reason, the Delors Commissions made ongoing efforts to involve the social partners in the moves towards greater European integration; the strategy was to support the economic transformation process inherent to the single market project by offering first the trade unions, but also the employers, the prospect of a ‘social dimension’ to be developed jointly with them (Commission of the European Communities 1988; Venturini 1988). In this way, the creation of the social dialogue was both one of the components of the ‘social dimension of the internal market’ and a way to develop this dimension further: the social dimension was both a specific programme for the promotion of certain social rights and policies which were European in nature and scope, and a piece of political rhetoric to give legitimacy to the European integration process – just like, at the time, the concept or ‘story’ of ‘Social Europe’ or the ‘European social model’. Adoption of the Community Charter of the Fundamental Social Rights of Workers (1989) and the Commission’s presentation of an ambitious programme to implement this Charter<sup>8</sup> were tangible evidence of this emphasis on the social dimension (Commission of the European Communities 1989).

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6. Meeting of 31 January 1985, Château de Val Duchesse (in the Brussels–Capital Region).

7. See, for example, the personal account given by J.-M. Baer, an advisor to J. Delors, quoted by Lapeyre (2017: 30).

8. This action programme contained 47 initiatives, including 18 legislative initiatives (labour law, working conditions, and occupational health and safety).

The invention of the European social dialogue and the efforts made to promote the social dimension of the single market in the years 1985–1995 can be seen as a slow process of developing, negotiating and implementing a form of ongoing cooperation and interaction between the Commission – and, via the Commission, the European institutions and Member States involved in constructing the single market – and the social partners, employers and unions. At the time, the latter two had not yet achieved a high degree of organisation at European level, and their interests and views on Europe diverged in many ways, although in general they were in favour of further European integration. This form of cooperation was also a political ‘deal’ between the Commission, the employers and the unions. It was not necessarily presented as such, and its elaboration and conclusion were instead developed over a period of several years, including times of tension and uncertainty; nevertheless, this was the deal which ensured that the social partners, particularly the unions, would support the single market project.<sup>9</sup>

The need for such a deal on the social dimension of the single market was due, above all, to the misgivings and potential resistance of the trade union side, particularly among organisations active in those sectors which would be hardest hit by the prospect of the single market. These were the energy, rail and air transport, and postal services sectors, and, more broadly, all those sectors threatened by privatisation and whose workers perceived their public servant status to be at risk; they were also sectors with high rates of union membership and strong potential for collective resistance via large-scale social movements. The Commission, therefore, saw the need to only open up these sectors to competition in a gradual and negotiated fashion and above all to make it clear to all trade unions, via specific initiatives, that, in the integration process, it intended to consider the social consequences of opening up the markets, the rights of workers and social dialogue (Mias 2004; Didry and Mias 2005).

The years 1985–1995, therefore, were the period when this deal between political, economic and social forces was developed, negotiated and implemented. Throughout these years, the stakeholders involved identified the social issues linked to the single market and to European integration and discussed the institutional mechanisms and policies needed to respond to these social issues (a long process, as this triggered differences of opinion, while the results of the confrontations were often uncertain). During the same period, the social partner organisations were developing structurally, merging and forming alliances at European level – both on the employer and on the union side (this also took time and gave rise to conflicts). And little by little throughout the period, the divergent expectations regarding the European social dialogue came closer, a process in which the Commission played a vital role: in general, the unions wanted the social dialogue to lead to a recognition of social rights at European level, thus forming a framework for implementing these in the Member States, while the employers wished the European social dialogue to be merely a forum for consultation and exchange, not resulting in binding obligations. It is therefore hardly surprising that the participants in this process of inventing the social dialogue speak, in their accounts,

9. A good example of how the union movement came around to the prospect of the single market is the changing attitude of the UK’s Trade Union Congress (TUC) as of 1988 (Lapeyre 2017: 55–59).

of a ‘social innovation’ (Lapeyre 2017), emphasising the tenacity needed to engage in these political battles throughout these years.

On taking up his post in January 1985, President Delors invited the leaders of the national social partner organisations to a concertation meeting on the single market. This was referred to as the ‘Val Duchesse social dialogue’, named after the place where the meeting was held. But although it was, first and foremost, a *concertation* meeting between the Commission and the social partners, the Val Duchesse dialogue was far more significant than this. After all, there were already social concertation bodies at European level (which had had, incidentally, very varying degrees of success, though for the most part were rather disappointing) (Lapeyre 2017: 19-23). Also, and most importantly, President Delors had already, in previous declarations, spoken of the prospect of a ‘space for contractual relations at European level’,<sup>10</sup> a prospect reflecting the expectations of the European Trade Union Confederation (ETUC) but not at all attractive to the employers, represented in particular by the Union of Industrial and Employers’ Confederations of Europe (UNICE<sup>11</sup>).<sup>12</sup>

This prospect emerged clearly in the text of Article 118b of the Single European Act, which the Delors Commission proposed a few months later, specifically to support the implementation of the single market project. This Act, adopted in 1986, stated that ‘the Commission shall endeavour to develop 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 the wording is very cautious and gives the social partners the freedom to choose whether or not to develop relations based on agreement, it clearly points to one way in which the European social dialogue could develop. At the same time, again extremely prudently, this wording does not specify the potential outcome of these relations (i.e. agreements) and does not indicate what status these would have. Nevertheless, it does open up the possibility of such contractual relations.

In practice, one result of the Single European Act was that the European social partners drafted ‘joint opinions’, though these remained very general in scope. The prospect of an area for contractual relations at European level gradually took hold – i.e. among the employers, as the unions were already in favour – though only because the Commission and the Council clearly stated, particularly in the 1989 Charter and the action programme for its implementation, their wish to promote social legislation and to recognise workers’ rights at European level. The employers therefore considered that the European social dialogue could help them to ensure that the future legislative changes envisaged were

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10. In his speech to the European Parliament on 14 January 1985, President Delors asked: ‘When will we see the first European collective agreement?’ (Didry and Mias 2005; Lapeyre 2017).

11. UNICE became BusinessEurope in 2007.

12. The other employers’ organisation involved in the development of the European social dialogue was the European Centre of Enterprises with Public Participation (CEEP), directly concerned by the prospect of the single market and the opening to competition of the sectors largely dominated by its members, which held monopoly positions. The European Association of Craft, Small and Medium-sized Enterprises (UEAPME) refused to be involved in setting up the European social dialogue and later brought an action before the Court of Justice of the EU. This was rejected, and the association later joined the European social dialogue as part of the UNICE delegation.

as much as possible to their liking.<sup>13</sup> One key event was the conclusion of the Agreement of 31 October 1991 by the ETUC, UNICE and CEEP, drawn up with active help from the Commission departments; this constituted the contribution of the European social partners to the Intergovernmental Conference tasked with preparing the Maastricht Treaty. This Agreement is rightly considered to be one of the most important (maybe the most important) of the founding texts of the European social dialogue. The incorporation of its provisions into the Agreement on Social Policy (ASP) attached to the Maastricht Treaty marked the recognition of European-level collective bargaining and of the power of the social partners to conclude agreements at that level. Such agreements, moreover, could be transposed, if the social partners so requested and on a Commission proposal, into European legislation (the preferred form of implementation at the time), or could be implemented by their affiliated organisations in accordance with national practices.<sup>14</sup>

Although the United Kingdom distanced itself from the ASP, these new treaty provisions on European collective negotiation emphasised the role that the social partners could play, as fully-fledged participants and not just as lobbyists or pressure groups, in the development and implementation of social policy and European social legislation.<sup>15</sup>

The Commission involved the European social partners in working out the implementation arrangements for the new treaty provisions taken from their 1991 Agreement. The process of incorporating this Agreement into the treaties and into the Commission's legislative practice confirmed that the European social dialogue was the result of converging initiatives from the European social partners – both employers and trade unions – and the Commission (and, through it, the Council and Member States). This should really be described as a form of joint action: although there was no deliberate or explicit coordination between the various players at each point of their interaction, there was a collective history and de facto cooperation via the successive adjustments to the positions and initiatives of the various parties. The European social dialogue has been described as a 'marker' of European identity (Pochet and Degryse 2016), precisely because it was a product of this collective history and this de facto cooperation between the Commission and the European social partners, a cooperation characterised by trust between the various players and maintained by a constant striving to find arrangements on which all could agree.

The setting up of the European social dialogue under the Delors Commissions, then, reflected the trust placed by the European institutions of that time in the legitimacy, accountability and capacity of the social partners to help build Europe by means of collective negotiation, to combine fairness and efficiency in the modernisation of the labour market, and, more generally, to help forge the Union's social dimension (Degimbe

13. For a long time, the need for unanimity within the Council for the adoption of social legislation enabled the employers and liberal governments (particularly the UK government) to hold up such legislation. The shift to qualified majority voting in this area changed the whole situation and required the employers to prepare for the extension of social legislation.

14. This other, 'autonomous' implementation process was added to the Agreement of 31 October 1991 at the request of the Danish social partners. This mechanism was not used in interprofessional social dialogue until 2002. The employers proposed its use during the negotiations on telework: the scope of its provisions was reinterpreted for this purpose (Lapeyre 2017; Tricart 2019).

15. On the terms 'lobbyist' and 'pressure group', see Lapeyre (2017), chapter 4 'From lobbyists to active players'.

1999). This expression of the Commission's trust in the social partners was echoed in a message of trust from these partners to the European institutions, precisely as the task of the European Commission was, after all, to promote the European social dialogue, to provide balanced support to the two sides of industry, and thus to take account of both economic and social interests in its initiatives relating to European integration.

This trust was, naturally, not blind trust – neither for the social partners nor for the Commission. Each party was aware of differing views, differing responsibilities, and even of the 'red lines' which could, at any time, obstruct the relations between them.<sup>16</sup> However, the very way in which the European social dialogue was conceived shows that all the parties involved trusted in the added value it could provide as an instrument of governance and a tool to manage changes related to European integration. And since this mutual trust had become firmly established during the Delors years, each of the parties had been able to develop structures for involvement in this system of interaction between the Commission and the European social partners. The organisations' European secretariats began to structure their work to take advantage of the opportunities for contractual relations now available at European level; the Commission departments developed expertise and know-how in promoting the European social dialogue and gradually evolved practical arrangements for the provision of Commission logistical and financial support to this dialogue.

## **2. The Santer and Prodi Commissions (1995–2004): affirmation of the European social dialogue by collective negotiation and high-level concertation**

The momentum generated under the Delors Commissions would be consolidated and diversified under the Commissions headed by Jacques Santer (1995–1999) and Romano Prodi (1999–2004), thus helping to forge the idea of a 'golden age' of European social dialogue. However, this dialogue came up against various difficulties during the period 1995–2004. The golden age was also a time of uncertainties, sometimes of disillusionment.

I shall begin by listing developments which show the momentum behind the European social dialogue in the period 1995–2004. Firstly, there was the implementation of the consultation and negotiation arrangements set out in the ASP attached to the Maastricht Treaty. These resulted in the conclusion of three major agreements by the cross-sector social partners: on parental leave (1995), on part-time work (1997) and on fixed-term contracts (1999), three agreements which were later transposed into European directives (Council of the EU 1996, 1997 and 1999). The rapid success of the negotiation on parental leave, and the equally speedy legislative implementation of the agreement concluded, show that at that time there was a very broad consensus between the European social partners and the European institutions: all parties wished to show evidence of the added value of the ASP provisions, thus encouraging their incorporation

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16. These 'red lines' were particularly important for the employers, especially with regard to issues linked to the management of industrial restructuring and the information and consultation of workers.

into the text, then under preparation, of the Amsterdam Treaty. The conclusion of the two other negotiations consolidated this form of involvement of the social partners in the production of European social legislation, demonstrating their capacity to address and regulate flexible and atypical forms of employment.

The Commission's 1998 Communication on social dialogue confirmed this broad consensus and the Commission's wish to strongly encourage collective negotiations at European level (European Commission 1998). It was accompanied by a decision setting out a new formal framework for the development of sectoral social dialogue (*ibid.*). This was then given significant support, as shown by the setting up of new sectoral committees, and by the uneven but significant success of the negotiations concerning sectoral working time agreements in some transport sectors (agreements later implemented by legislation).

In the ten-year period 1995–2004, European social dialogue developed not only via the formal consultation and negotiation procedures set out in the treaty but also in the form of various technical or political concertation meetings related to the economic and social policies adopted. The sectoral social dialogue committees<sup>17</sup> were the main forum for concertation on the Commission's sectoral policies, particularly on their effects on jobs and working conditions. Since 1992, cross-industry social concertation has mostly taken place in the Social Dialogue Committee, which meets three times a year, with the Commission and representatives of the national and European social partner organisations taking part. Other forms of technical concertation also developed, such as the macro-economic dialogue, in which the European social partners could discuss wage moderation and questions linked to EMU preparation. The fora for concertation varied, as did the outcomes, i.e. the documents agreed on by the social partners during these meetings or through their bipartite relations. To clarify the terminology used in relation to these documents, and to encourage their recording and follow-up, the Commission proposed a typology of the various documents produced by the European social dialogue.<sup>18</sup>

The ten-year period 1995–2004 was, all in all, a time of progress on Social Europe. This was particularly true after 1997, when Tony Blair came to power in the UK and Lionel Jospin in France and when the Union gained Sweden, Finland and Austria as new members – three countries with long-standing, strong social models often held up as examples. At the end of the 1990s, two-thirds of the then fifteen EU Member States were led by social democratic governments or centre-left coalitions: the Council

17. These committees are created by the Commission on the basis of a joint request from the European social partners in these sectors, once the representativeness of these partners has been verified. In 2019 there were 43 sectoral committees, with sectoral social dialogue covering more than 80% of employees in Europe. For an overview, see European Commission (2010).

18. In 2002, the Commission emphasised in a Communication the need to clarify the terms used to describe the nature and scope of the texts agreed on by the social partners, particularly the term 'agreement' (European Commission 2002). In 2004, the Commission proposed, in another Communication, a typology to be used to classify the various texts emerging from the European social dialogue in a database (European Commission 2004). Between 2000 and 2014, the Commission presented a biannual Report on Industrial Relations in Europe, including a chapter describing recent developments in the European social dialogue. (From 2015, this biannual report was replaced by a chapter on the topic in the annual report 'Employment and Social Developments in Europe').

was thus in favour of striking a new, more social balance in European policy and of considering how to modernise European social policy. In fact, 1997 saw the adoption of the Amsterdam Treaty, which incorporated the provisions of the Maastricht Treaty's Social Policy Agreement and which enhanced the Union's capacity to act in the areas of employment and discrimination. In 1999, following the successful establishment of the European Employment Strategy in 1997, European cooperation in the areas of social protection and tackling social exclusion, until then limited and sometimes controversial, received a new impulse<sup>19</sup>: the work which had begun in this context with the Member States fed directly into the preparation of the Lisbon Strategy, which the European Council adopted in 2000.

This Lisbon Strategy reflected the new balance just mentioned. It also gave formal status to the Open Method of Coordination, a flexible way of coordinating national policies on employment, social protection and the combating of social exclusion, based on the setting of shared objectives and the monitoring of indicators.<sup>20</sup> The Committees established to manage this flexible coordination essentially involved the national authorities, though a role was assigned to the European social partners.

Moreover, because the Open Method of Coordination became so important in European social policy, the Commission began work on the future of the traditional social policy instruments. In particular, expert groups began working on the future of European labour law and of industrial relations.<sup>21</sup>

In 1997, in light of these various developments, the Commission and the successive Council presidencies had begun the practice of holding a high-level, informal meeting with a delegation from the European social partners once every six months, just before meetings of the European Council. As part of the European Council's follow-up of the Lisbon Strategy, and particularly when it was decided that the spring European Council meeting should be used to discuss this follow-up, the question of the formalisation of this top-level concertation between the European institutions and the European social partners was raised.

On 13 December 2001, the European social partners submitted their Laeken Declaration to the European Council. It contained proposals as to their role in the new forms of governance resulting from the European Employment Strategy and the Lisbon Strategy (ETUC *et al.* 2001). These proposals from the social partners led to the formal decision to hold a regular Tripartite Social Summit for Growth and Employment (TSS) on the

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19. In 1992, the Council adopted a Recommendation on the convergence of social protection objectives and policies (Council of the European Union 1992). During the 1990s, this cooperation was limited, in practical terms, to analytical, rather than political, documents produced by the Commission (the biannual report 'Social protection in Europe' and the Commission communications concerning the future of social protection in the EU; see European Commission 1995 and 1997). The political context at the end of the 1990s enabled considerable momentum to be given to this cooperation on social protection, and a working group was set up within the Council, tasked with preparing cooperation arrangements inspired by the European Employment Strategy.

20. For more information, see Vanhercke (2016).

21. See the report prepared under Alain Supiot (1999) and the report of the high-level group chaired by Maria João Rodrigues (Rodrigues *et al.* 2002). The 2002 Commission Communication on social dialogue) was based on the latter report, as well as on the European social partners' Laeken Declaration (ETUC *et al.* 2001).

basis of a 2002 Commission proposal and a 2003 Council Decision.<sup>22</sup> For the social partners, this institutionalisation of the TSS was an acknowledgement by the European institutions of the active social partner involvement in the design and monitoring of economic and social policy – as long as, of course, their proposals were heard and taken into account in the TSS. The setting up of this top-level concertation also reflected the wish of those involved – the European institutions and the social partners – to conclude ‘pacts’ with a view to achieving common objectives, a practice already existing in some Member States. This high-level concertation also seemed to be a guarantee that social partner participation in the more technical concertation fora would result in genuine consideration of their proposals.

The preparation of the draft constitutional treaty, from 2003, was a chance to reaffirm the importance which the Union wished to give to the European social dialogue. However, as well as these expressions of the dynamism of the European social dialogue, signs also began to emerge, in the years 1995–2004, of its fragility, stemming from differences of opinion between the players involved. Also, from the end of the 1990s, there were signs that the dialogue was beginning to run out of steam after its initial momentum: in many ways, the golden age was very short, or, rather, it was not free from disappointments.

The European social dialogue, as established under the Delors Commissions, was closer to the trade unions’ expectations than to those of the employers: the latter had never hidden the fact that they would have preferred the European social dialogue to be essentially a forum for discussions on changes in the labour market, with no capacity to set standards or affect legislation.

It was not, therefore, surprising that the employers had always been highly circumspect and selective when choosing whether to engage in the negotiation of agreements to be transposed into legislation. Some subjects were too sensitive for the employers for agreement to be possible (the ‘red lines’ mentioned earlier, such as the information and consultation of workers, or the management of industrial restructuring). More generally, the national employer organisations were aware of their members’ reactions to past negotiations and were therefore hesitant to engage in new negotiations if their members had previously criticised these. The negotiations on temporary agency work, for example, which started up after much hesitation, ended in failure (2001). Even more importantly, the employers, from the time these difficulties arose in the late 1990s, distanced themselves from the very idea of negotiating agreements to be implemented through legislation. In 2001, during discussions with the unions on the issue of telework, they therefore proposed the negotiation of a ‘voluntary’ agreement, i.e. a solemn commitment which would not be legally binding but would be monitored by their members. They also suggested that this was a possible interpretation of the option to implement agreements ‘in accordance with national practices’, described in

**22.** Institutionalisation of the TSS was proposed by the social partners in Laeken (2001) and was addressed in a Commission proposal (2002). The Council adopted the Decision formally establishing the TSS on 6 March 2003. It was planned to introduce a reference to the TSS on the occasion of the revision of the treaties, and such a reference was contained in the draft constitutional treaty; as the latter failed to be ratified, however, the reference to the TSS was only formally enshrined in 2007, with the Lisbon Treaty.

the social partners' Agreement of 31 October, and included as such in the very text of the treaty (now Article 155 TFEU). This was a total reinterpretation of this provision, which originally meant something quite different. But the trade unions agreed to it on a trial basis, basically as a way to salvage the telework negotiations.

After telework (2002), the European social partners concluded another autonomous agreement, this time on stress (2004). The employers wished to avoid legislation on this topic at all costs, as they feared that doubts surrounding the definition of stress could lead to legal uncertainty. By negotiating an autonomous agreement, they avoided such legislation and also managed to avoid any binding commitments. Once again, the unions accepted this form of agreement, as they were not sure that they could obtain more protection from a Commission legislative initiative. Of course, not all discussions between the social partners resulted in agreements, even autonomous agreements, because of the sensitivity of the subjects (for example, restructuring has been a 'no go' throughout the history of European social dialogue).

The employers' usual misgivings concerning social legislation were reinforced by the development of new European social policy paradigms at the end of the 1990s and the beginning of the new century. Under the growing influence of neoliberal theories, even in social democratic circles, the emerging paradigm of choice was to shape social policy as a 'productive factor', prioritising measures which could be seen as incentives to 'adapt' and 'activate' the 'European social model', and encouraging so-called 'integrated' policies, in the hope that these would allow 'mutual reinforcement' of economic and social objectives. Priority was also given to 'soft' instruments, incentives rather than obligations, and governance by targets rather than governance by legislation. By taking this approach, the Commission sent out a clear message which encouraged the employers – and Member States – to be circumspect as to European social legislation.

European trade unions' acceptance to conclude autonomous agreements was probably due to the fact that such agreements were preferable to no negotiations at all (and because without negotiations, they did not expect, or no longer expected, the Commission to submit ambitious legislative proposals). But it was also because, at the end of the 1990s, they wished to examine with the employers the possibility of adopting 'autonomous work programmes', i.e. work programmes separate from Commission initiatives (although they could, of course, complement such initiatives).

This affirmation of the autonomy of the European social partners, expressed, *inter alia*, in their Laeken Declaration (ETUC *et al.* 2001), can be interpreted in various ways. It obviously reflected the social dialogue situation in many Member States, where 'bipartite' dialogue was often as well-developed as, or more than, 'tripartite' dialogue. It also reflected the social partners' wish to distance themselves from the priorities set by the Commission, and, even more so, to free themselves from the Commission's supervisory role and guardianship, now that the social dialogue had reached adulthood.<sup>23</sup>

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23. Luca Visentini, General Secretary of the ETUC, emphasises the results obtained by means of the autonomous social dialogue, in the form of autonomous framework agreements, action frameworks and social dialogue work programmes established 'by the social partners and for the social partners' (Lapeyre 2017: 253-255).

The Declaration also reflected a concern to maintain, as far as possible, the potential of European-level collective bargaining at a time when European social policy was shifting towards ‘soft’ instruments and when the Commission’s support for legislative initiatives was less certain. But given the misgivings of most employers as to the development of a substantial autonomous programme and their unwillingness to make credible commitments concerning the effective implementation of these autonomous agreements, the union attitude was in some ways a retreat from their initial ambitions, at the risk of accepting, de facto, a less far-reaching European social dialogue.

In practice, the shift of the European social dialogue towards texts implemented autonomously did not result in any outcome as significant as the agreements transposed into legislation. This was not because the autonomous agreements were of lesser quality but, rather, because their implementation was often partial, uneven or limited. Sometimes there could even be unexpected side-effects. The existence of an autonomous agreement on a particular issue could give the impression that the issue had been resolved at European level, giving the European institutions (and the employers) an argument to do no more and to reject any legislative initiative, despite the fact that there was still no guarantee that the minimum protection expected from this agreement would be implemented throughout the Union; indeed, there was nothing to stop certain national organisations stubbornly refusing to implement an agreement. This would at times result in disappointments and disillusionment, especially after the enlargements of 2004 and 2007: it was particularly in the new Member States that the autonomous agreements concluded at European level would scarcely be applied or, when it was, applied very unevenly.<sup>24</sup>

The European social dialogue experienced other difficulties during this period – the failure, for example, of the European Centre for Industrial Relations (ECIR) at the end of the 1990s, highlighting the limited support shown by the European Parliament to the European social dialogue.<sup>25</sup> It is noteworthy, however, that the various problems listed above have not affected the overall positive image of this period in the eyes of the participants. As well as the failures, there were major successes in their view throughout this period, both for the social dialogue and for European social policy. These included the Amsterdam Treaty, the directives based on the cross-sector agreements between the social partners (see above), the Lisbon Strategy, the promotion of ‘integrated’ policies, the institutionalisation of the TSS, and European social policy progress on the issues of employment, social protection and discrimination.

Outside observers of the social dialogue, however, have voiced doubts and critical comments, as suggested, for example, by the titles of the chapters in the *Bilan social* examining the social dialogue: ‘breathlessness and hesitation’ in 2002 (Degryse 2002) and ‘transition or stagnation?’ in 2004 (Degryse 2004).

24. The Commission’s evaluations of the telework and stress agreements highlighted the uneven implementation of these agreements (European Commission 2008 and 2011). This was due, in particular, to weaknesses in the social partner organisations in some countries, notably certain new Member States, and because the employers frequently perceived the autonomous agreements as agreements which they were not obliged to implement.

25. The aim of the ECIR was to promote the same European social dialogue culture within the national employer and union organisations. The national organisations were not really convinced by this idea, and the European Parliament required the ECIR to become self-funding within a short period of time, which turned out to be impossible.

### **3. The Barroso Commissions (2005–2014): first tensions, then exasperation**

Compared to what is still considered to be the golden age of the European social dialogue, the years 2005–2014 appear as a time of growing tension. Participants in the European social dialogue and observers of its development seem, moreover, to pass rapid judgment on this period. On the union side, Jean Lapeyre describes the Barroso years as a ‘catastrophe’ (Lapeyre 2017: 195), while the title of the social dialogue chapter in the 2012 *Bilan social* (Degryse and Clauwaert 2012) is ‘Taking stock of European social dialogue: will it fade away or be transformed?’ As for the Commission, President Juncker’s announcement at the end of 2014 that he intended to ‘relaunch’ the European social dialogue seemed to be, at the very least, an implicit admission from the highest level of the Commission of the serious deterioration of that European social dialogue during his predecessor’s terms of office.

One should not, however, accept this entirely black picture of these years: during the period 2005–2014, the European social dialogue achieved some results, leading to a number of agreements which showed that it still had significant potential. These achievements are particularly noteworthy since, for the Union and the European social partners, this period was one of major challenges. The first of these was the general transformation of the Union following its enlargement first to 25, then to 27 Member States. The next was the international economic crisis, followed by the Eurozone crisis and then by controversies related to the political responses to these crises. With the return of right-leaning or centre-right coalitions in most of the Member States, most countries reacted to the crises with neo-liberal-inspired policies. Over this whole period, however, the consensual European social dialogue process seemed to be running out of steam, to be replaced by an increasingly confrontational approach.

In the initial years of the first Barroso Commission (2005–2009), the earlier, consensus-based dynamic retained the upper hand, as reflected in the Lisbon Strategy and its Social Agenda, and, in terms of cross-sector social dialogue, the establishment of autonomous work programmes. During this time, the European social partners carried out a joint analysis of changes in the labour market (2007) and agreed to explore together how the flexicurity principles proposed by the Commission and Council could be applied.<sup>26</sup> Also, during the first phase of the international economic crisis in 2007–2008, the European social partners backed the recovery and employment support plans involving the use of flexible work arrangements within companies.

The situation regarding European cross-sector collective bargaining remained broadly similar; as discussed above, its emphasis had shifted, at the beginning of the 2000s, towards autonomous agreements, largely due to the attitude of the employers. This shift led to the conclusion of autonomous agreements on harassment and violence at work

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26. Following on from a Commission communication on ‘flexicurity’, the Council adopted ‘common principles’ (European Commission 2007; Council of the EU 2007). The European social partners presented their joint analysis of European labour markets (ETUC *et al.* 2007a) and carried out a joint study on the implementation of these common principles and on the role of the social dialogue in the new context of the crisis (see ERC 2011; Voss *et al.* 2011).

(2007), then on inclusive labour markets (2010); also, after much hesitation, a new agreement was negotiated on parental leave (which, by its very nature, could only be implemented via legislation).<sup>27</sup> In the meantime, a dynamic of negotiations developed in the sectoral social dialogue – a sign of the maturity of the sectors involved – resulting in agreements negotiated with a view to legislative implementation: on adapting European labour law to the International Labour Organisation’s (ILO) Maritime Labour Convention (2008) and on occupational health and safety in hospitals (2009).<sup>28</sup>

These developments, however, took place almost entirely in the early years of the first Barroso Commission, before the Eurozone crisis. From the very beginning of this crisis, which highlighted the weaknesses of the original Eurozone architecture and which raised the question of the sustainability of sovereign debt, differences of view and tensions grew between the employers and the unions, and between the European social partners and the European institutions. These tensions would intensify under the second Barroso Commission.

The tensions first emerged in relation to the responses to the Eurozone crisis. They were sparked, in particular, by the guidelines adopted by the European Council and by the Commission recommendations on economic governance, budgetary discipline and structural reforms, and by the conditions and financial assistance arrangements granted to the most vulnerable Eurozone countries. While the employers generally supported the guidelines adopted, many of which reflected their long-held wishes, the unions were very critical of what seemed to them to be austerity measures exacerbating unemployment and inequalities, imposed under a technocratic and financial logic. They called for the Union’s social dimension to be considered, particularly the social dimension of the Economic and Monetary Union. The unions also opposed the role of the ‘Troika’ (made up of the European Central Bank, the International Monetary Fund and the Commission) and that of the Commission within this Troika; they were unhappy with the policies imposed on the countries receiving assistance and with the undermining of social partner autonomy in collective negotiations, including collective bargaining on pay (on these last points, the criticisms voiced by the trade unions were echoed by the employers who were always careful to defend the autonomy of collective bargaining).<sup>29</sup>

These criticisms were voiced insistently in the various European social dialogue bodies, particularly at the TSS meetings attended by the highest-level representatives of the European social partners and European institutions. The unions also took these complaints to the bodies in the ILO and the Council of Europe responsible for monitoring labour standards. However, their appeals did not result in any significant change to the policies followed, except for some minor formal adjustments made to

27. In its 2004 communication on European social dialogue, the Commission indicated that autonomous agreements should not be used to revise an existing directive (European Commission 2004).

28. The agreement of May 2008 on maritime transport was implemented by Council Directive 2009/13/EC. The July 2009 agreement on injuries from sharp objects in hospitals was implemented by Directive 2010/32/EU (Council of the EU 2009 and 2010).

29. Financial assistance was made dependent on a vast programme of structural and public finance reforms, steered and monitored by a ‘Troika’ which was criticised for its ‘lack of democratic legitimacy’ and ‘indifference to the social consequences’ (see, for example, Papadakis and Ghellab 2012).

protect the Commission from condemnation by these international bodies.<sup>30</sup> In the same way, the TSS lost its role as a forum for effective social concertation at the highest level, becoming an arena for a ‘dialogue of the deaf’ repeated every semester. For the purposes of external communication, however, appearances of concertation were kept up.

Some of the Commission’s employment initiatives were well received by the social partners, especially those targeting the young (the Youth Employment Initiative, the Youth Guarantee and support for apprenticeships). But these initiatives were not enough to convince the trade unions of the Commission’s continued commitment to promoting the Union’s social dimension: this dimension was not taken into account in the various reforms made to the Eurozone structure, and the Commission only presented a communication on this aspect very late in the day, in 2013.<sup>31</sup> Moreover, the structural reform policies encouraged by the Council and the Commission were explicitly liberal in tone; this undermined union participation in their discussion, thus also weakening some of the initiatives launched by the European social partners under their common work programme, such as the difficult joint work on flexicurity principles. As European proposals or recommendations began to insist on greater flexibility in the labour markets and to turn their back on measures safeguarding career paths, the concept of ‘flexicurity’ was revealed as mere rhetorical window-dressing of traditional flexibility measures – and thus lost all credibility. The unions therefore de facto withdrew from the flexicurity agenda. The Commission would repeatedly reproach the European social partners, particularly the unions, for not having ‘shouldered their responsibilities’ to promote flexicurity.

In the same way, following the collapse of the cross-sector negotiations on working time (2012), the Commission criticised the European social partners for not doing their bit to promote the structural reforms which it deemed necessary. The social partners obviously refuted this criticism, recalling that the failure to revise the working time directive was, first and foremost, a failure of the Council and the European Parliament, which had been unable to agree on a final text in the mid-2000s.

Another reason for the exceedingly hostile relations between the Commission and the trade unions under the second Barroso Commission concerned the disputes surrounding the Commission initiatives to simplify and streamline European legislation, including social legislation. The most controversial initiatives were the so-called REFIT<sup>32</sup> and ‘Smart Regulation’ programmes, the suspension of legislative initiatives on occupational health and safety pending prior evaluation of the ‘acquis’, and then the Commission’s increasing opposition to legislative implementation of

30. Because of its role in the Troika, the Commission was accused of not respecting the Charter of Fundamental Rights or the European Social Charter and of undermining the autonomy of the social partners of the countries receiving assistance. When President Juncker took up his post, he underscored the need to replace the Troika with a ‘more democratic’ mechanism and to carry out a prior analysis of the social impact of the reforms imposed.
31. The ETUC proposals (2012) and the work done by experts on the social dimension of the EMU were not taken into account in the so-called ‘Six-Pack’ and ‘Two-Pack’ reforms. However, in 2013, after many calls for such a measure, the Commission presented a communication aimed at strengthening the social dimension of the EMU, by the establishment, in particular, of a ‘Social Scoreboard’ as part of the European Semester (European Commission 2013a).
32. Regulatory fitness and performance (REFIT) programme.

social partner agreements, particularly those concluded in the sectoral social dialogue. From 2012, these agreements were subject to long and suspicious impact assessments; the time needed to transpose them into legislation increased from around six months to around thirty months. Sometimes the agreements even became completely bogged down, against a backdrop of distrust and hostility (Tricart 2019).

The trade unions also took the disputes resulting from these developments to the European social concertation bodies, particularly the TSS. Although the disagreements essentially affected the sectoral organisations, they also helped poison the atmosphere of discussions in the concertation bodies, where there were often stormy debates, particularly on the occupational health and safety agreement in the hairdressing sector, which thus became a symbol of Commission hostility to agreements emerging from the sectoral social dialogue (Vogel 2018).

There was deep-seated hurt behind this deterioration of social concertation into a shouting-match. These disputes reflected the erosion of the mutual trust which had previously characterised the tripartite European social dialogue: the Commission's trust in the responsibility and legitimacy of the social partners and the trust of the social partners in the Commission and in its eagerness to promote both economic and social progress.

This breakdown in trust, or, more specifically, this emergence of *distrust*, was also the result of changes in the social and cultural system which had helped make the European social dialogue possible. Previously, between and within the Commission 'Cabinets' (private offices) and departments, and the European social partner organisations, there had been a wealth of accumulated knowledge, a collective memory and a series of individuals, networks and information channels enabling the parties to relate informally, to explore possible agreed ways forward, to pre-empt and prevent conflicts or manage them effectively, to preserve some forms of communication even on sensitive issues, and to maintain trust throughout this process.<sup>33</sup> This social and cultural infrastructure, this collective memory and know-how, were gradually diluted during this period – within the social partner organisations, partly as a result of enlargement, but also within the Commission, as a new generation with new profiles came to the fore, and, above all, with the reorganisation of the Commission departments and the handling of staff mobility.<sup>34</sup>

**33.** For the European social partners, the social dialogue was largely managed by a few hundred individuals who had developed collective know-how, networks for discussion and cooperation, and a European negotiating culture which enabled them to act together and link the national and European levels (with the successive enlargements, however, it became clear that much 'capacity-building' work was needed, to encourage the participation of the newcomers and ensure that their interests were considered). Within the Commission and its departments, support for the European social dialogue was provided by a few individuals, their collective know-how, their institutional memory, the tending of long-term relationships of trust, and the development of effective arrangements for formal and informal communication.

**34.** The Commission adopted a policy of staff rejuvenation and mobility which made it more difficult for experience to be built up and passed on. It also undermined the institutional memory and networks vital to promoting the European social dialogue. Changes in the arrangements for the political coordination of the Commission departments, with, in particular, a growing role assigned to the Secretariat-General, were also partially responsible for these changes.

Although the second Barroso Commission took certain initiatives able to contribute to restoring positive relations with the European social partners (for example, proposing, rather late, in 2013 to include a ‘social scoreboard’ in the European Semester), it ended in an atmosphere of mutual exasperation between the social partners and the Commission. The latter accused the social partners, particularly the unions, of failing to shoulder their responsibilities and of neglecting to help with the implementation of the labour market reforms needed to restore the competitiveness of the EU economy. The social partners accused the Commission of trying to use them and of dictating a reform agenda without respecting their autonomy (while the trade unions criticised the Commission even more for having opted for unjust and socially destructive neoliberal policies).

#### **4. The Juncker Commission (2014–2019): uncertain times – expectations, hopes and disappointments**

Given the situation of the European social dialogue at the end of the second Barroso Commission, it is not surprising that participants and observers initially saw the installation of the Juncker Commission as very good news. They maybe even perceived it as the ‘last chance Commission’, as President Juncker himself described it at the beginning of his mandate, emphasising people’s disenchantment with the European integration project. It was maybe also perceived as an opportunity for the European social dialogue to shake off the paralysis into which it had gradually fallen and for the European social partners to escape, when wishing to implement their agreements, the more-or-less overt hostility from the Commission, or at least from some of its departments.

One of the first measures announced by President Juncker was the ‘relaunch’ of the European social dialogue<sup>35</sup> (which was a way of acknowledging the deterioration which had taken place). He also gave new momentum to the idea of Social Europe (a concept which was, at the time, very rarely heard at that level), emphasising the notions of fairness, a ‘social triple A rating’ and even social rights. This was clearly a break with the previous Commission and a return to the basic principles behind the foundation of the European social dialogue under Delors; it was even a rehabilitation of those Delors years, which, under Barroso, the higher levels of the European administration were happy to denigrate or relegate to an obsolete past. President Juncker, however, had lived through that time and appreciated it.<sup>36</sup> This attitude also reflected a wish to respond to the loss of confidence among the general public and more specifically among workers in the European integration process. The Commission wished to counter the ‘populist’ moods (a concept which is surely more polemical than objective) by emphasising social

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35. See the first speech made by J.C. Juncker as Candidate for President- of the Commission: ‘A new start for Europe’ (Juncker 2014).

36. President Barroso never valued the social achievements of the Delors Commissions. Informal discussions with Commission officials confirm that, under the Barroso Commissions, the general line was to consider the themes and ‘language’ from that time as obsolete. President Juncker, however, spoke openly of his past cooperation with J. Delors and his Commissions. He reinstated some of the vocabulary used then, such as the concept of a basic pillar.

cohesion – although the composition of the Juncker Commission suggested that not all its members necessarily shared the social aims stated by its President.

Incidentally, when the Juncker Commission, in March 2015, organised the conference intended to mark the ‘new start’ for the European social dialogue, it was under the aegis of the 30<sup>th</sup> anniversary of the European social dialogue meeting organised in 1985 by President Delors at Val Duchesse. Preparations for the conference did not include a detailed analysis of the reasons why the Commission felt it necessary to relaunch the European social dialogue, and to do so by means of a Commission initiative, thus favouring a tripartite approach. Such an analysis would have required the Commission to look critically at its own actions and to acknowledge the part played by its past policies or attitudes in the deterioration of relations between the social partners and the European institutions. This is not common practice within the Commission.<sup>37</sup> The conference was really a political relations exercise. For the Juncker Commission, its purpose was first and foremost to convince the European social partners that times had changed with the end of the second Barroso Commission and that the Commission now intended to invest more in the social dialogue and to adopt an economic and social policy which showed greater concern for social ‘fairness’. It thereby hoped to regain the trust of the European and national social partners at cross-sector and sectoral levels, and thus to win their support for the governance instruments of this economic and social policy, particularly the European Semester.<sup>38</sup>

The conference was a success and resulted in some specific changes to the functioning of the concertation bodies between the Commission and the European social partners, particularly the TSS. It was also followed by an extension of the areas for consultation with the social partners, beyond social policy and employment. The conference also involved the Council and Member States in the initiatives to relaunch the European social dialogue, particularly in the preparation of a Quadripartite Statement to be issued by the cross-sector social partners, the Commission and the Council.<sup>39</sup> As is often the case, this statement was above all a list of good intentions. But it certainly encouraged greater consultation of the national social partners concerning the implementation, at national level, of the European Semester (Sabato *et al.* 2017). It also sent out the consensual message that the various players were willing to cooperate under the new Commission and beyond.

37. The Commission rarely criticises its own actions in public. It may at times say that mistakes were made, though without acknowledging that the institution itself might have been behind these mistakes or actively involved in them. In his speech, mentioned above, ‘A new start for Europe’, President Juncker refers to past errors, but without mentioning or examining the involvement or possible responsibility of those preparing or implementing these policies.

38. Today, the major challenge faced by the Union is how to coordinate national policies, particularly economic and budgetary policies. The main tool for doing so is the European Semester. In parallel, the Commission wishes to reduce law-making in the Union, including social legislation. For this reason, it is now encouraging the social partners to become involved essentially through social concertation. Yet there is no incentive for the social partners to surrender their power to intervene in the legislative process in exchange for an expansion of the concertation arrangements linked to the European Semester (the effects of which on national economic and social policies also reduce the potential and scope of collective bargaining).

39. See European Commission 2016.

There was one cloud in the Commission's sky: the statement contained very little support from the European social partners for the guidelines set out in its 'Better Regulation' programme, presented a few months previously – guidelines which expressed its wish to only legislate, in the future, on a restrictive and selective basis, thus continuing the approach developed under the second Barroso Commission. This approach involved a (unilateral) reinterpretation of the provisions in Articles 154 and 155 TFEU concerning the European social dialogue, particularly the provisions relating to the legislative implementation of agreements reached by the European social partners. It was no surprise that the Commission had not involved the social partners in the preparation of the Better Regulation provisions relating to these agreements. From then on, it aimed to apply strict limitations to the involvement of the social partners in the European legislative process, making it clear that it considered itself to have total freedom in its assessment of requests for implementing social partner agreements. In particular, the Commission felt entitled to 'reject' any agreement with which it was unhappy.<sup>40</sup> Its aim was to avoid the sort of disputes sparked under the second Barroso Commission by the agreements concluded in the context of the sectoral social dialogue (in particular the 2012 'hairdressing' agreement; see Dorssemont *et al.* 2018; Tricart 2019).

This aspect went virtually unnoticed at the time of adoption of the Quadripartite Statement. It reminds us, however, that the disputes over the legislative implementation of sectoral agreements did not disappear with the end of the second Barroso Commission and the relaunch of the social dialogue by the Juncker Commission. They reared their head once again a few months later, when a major disagreement broke out between the Commission and the signatories of an agreement concerning the central administration sector – a disagreement which would result in an action being brought before the Court of Justice of the EU (case T-310/18).

For the Juncker Commission, the relaunch of the European social dialogue was part of a broader initiative to reinforce the social dimension of European integration and of the EMU (Degryse 2018). This broader initiative included, in particular, the proclamation of a 'European Pillar of Social Rights'<sup>41</sup> (hereafter the 'Pillar'), greater consideration of social issues in European policies, and the objective of promoting 'upward convergence' in the Eurozone.

While all observers and participants agree on the symbolic and political importance of the proclamation of the Pillar, opinions are divided as to the added value of its content (a statement of principles rather than of rights). And opinions are above all divided on its potential impact, since the Pillar is largely to be implemented via initiatives to be taken by local and national authorities, the social partners and civil society, with possible support from the Union. In practice, the Commission only presented three (not

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40. The concept of 'rejection' has emotional connotations, unlike, for example, the term 'refusal'. It is not used in any of the five communications on the European social dialogue presented by the Commission between 1993 and 2004. Its repeated use from the time of the disputes on the sectoral agreements suggest that these generated strong feelings (Tricart 2019).

41. For an overview of discussions on the European Pillar of Social Rights, see Vanhercke *et al.* (2018).

very ambitious) legislative proposals together with the Pillar; this is very little compared to previous initiatives.<sup>42</sup>

The Commission's decision to de facto deny itself the use of legislation to promote social rights may seem surprising. However, supporters of the Pillar emphasise that the aim is to make use, for its implementation, of the European Semester and the future European funds, thus involving all Union economic and social policies. This of course assumes that these instruments and policies are the most efficient tools to promote social rights; such an assumption is far from certain and ignores the possibility that the logic behind these policies and tools may in fact hamper promotion of these rights and do nothing to reduce inequalities and disparities in the Union (ETUI 2017). It is, however, too soon to evaluate the impact of the various social initiatives taken under the Juncker Commission.

With regard, more specifically, to the European social dialogue, the Juncker Commission certainly created the conditions for closer consultation of the social partners, and especially the cross-sector organisations, in the setting of European policies. The Juncker Commission, by presenting itself as ready to listen to the social partners, also encouraged them to seek common positions on various issues related to the labour market. At cross-sector level, they carried out another joint analysis of the challenges facing the labour market, adopting joint statements on topics such as apprenticeships, industrial policy, digitalisation, the integration of refugees, vocational training and the multiannual financial framework for the European budget. The social partners also concluded an autonomous agreement on active ageing (2017).<sup>43</sup> Of course, they avoided the most sensitive issues, as well as, generally, anything which might result in social legislation. Nevertheless, these achievements show that restoring the conditions for tripartite social dialogue at European level can also stimulate bipartite social dialogue at the same level.

Despite these developments, however, the Juncker Commission and its relaunch of the social dialogue did not dispel the tensions concerning the legislative implementation of social partner agreements. Indeed, these tensions were stirred up by the Better Regulation programme, particularly for some sectoral social dialogue organisations, to such an extent that they threatened to permanently undermine collective negotiations at European level.

As I have said, the second Barroso Commission had expressed its opposition to implementing the 2012 'hairdressing' agreement by means of EU legislation. The Juncker Commission inherited this controversial dossier (on which all work had stopped) and, on revising their agreement in 2016, the social partners confirmed

**42.** While the action programme for implementing the 1989 Charter listed 47 initiatives, including 18 legislative ones, the presentation of the Pillar was accompanied by three initiatives. The mission letter of Commissioner Nicolas Schmit includes a call for an action plan to implement the Pillar (von der Leyen 2019): this may seem to be an acknowledgement of the fact that, two years since proclamation of the Pillar, no such plan has yet been drawn up.

**43.** As part of their autonomous work programme, the European interprofessional social partners have presented, in recent years, several joint reports and joint statements, as well as one autonomous agreement (see, for example, ETUC *et al.* 2015, 2016a, 2016b, 2016c, 2017a, 2017b, 2018a and 2018b).

their request for legislative implementation. The Commission also had to examine the request for the legislative implementation of an agreement on the information and consultation of workers in the central administration sector, concluded in late 2015.<sup>44</sup> Both these dossiers, however, received a hostile reaction from the Commission and its departments, which had no desire to propose social legislation on these issues. President Juncker said that the Commission should be dealing with ‘bigger’ things than the agreement on occupational health and safety in the hairdressing sector – a comment which shocked the signatories to this agreement. Work on these issues stagnated, while relations between the Commission and the signatory organisations deteriorated, with some strong language and accusations recalling the Barroso years.

In early 2018, to break the stalemate, the Commission made a proposal to the social partners in these two sectors. They were asked to withdraw their requests for legislative implementation, in return for financial and political support for the autonomous implementation of their agreements – a proposal going completely against the principle that the choice between legislative and autonomous implementation of an agreement falls entirely within the autonomy of social partners. While the social partners in the hairdressing sector agreed to begin discussions with the Commission on this autonomous implementation, the signatories to the central administration sectoral agreement turned down the Commission’s proposal. The Commission then decided to formally reject the request from the social partners in this sector. This was an unprecedented step: the agreement had been negotiated following formal consultation of the Commission which had explicitly invited the social partners to consider these negotiations.

The sensitive political nature of this dispute, and the varying expert opinions as to the rule of law on this point, led the European Public Service Union (EPSU), the main union signatory to the agreement, to bring an action against the Commission before the Court of Justice of the EU – another unprecedented move from a union organisation in relation to the social dialogue. A great deal was at stake for the whole European social dialogue, since the provisions relating to the agreements applied to both the sectoral and the cross-sector dialogue. As we have seen, the capacity of cross-sector social partners to conclude agreements to be implemented through legislation had already declined. But the Commission’s decision to make the implementation of social partner agreements subject to cumbersome, suspicious procedures, and the intense controversy surrounding Article 155.2 TFEU, more or less stamped out any last wish of the sectoral social dialogue organisations to enter into negotiations.<sup>45</sup>

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44. The agreement on information and consultation rights of civil servants and employees of the central administrations was concluded on 21 December 2015 between TUNED (Trade Union’s National and European Delegation) and EUPAE (European Public Administration Employers).

45. In the course of the ten years 2005–2014, seven directives were added to European labour law, as opposed to 23 and 24 new directives, respectively, during the two previous ten-year periods (not counting revisions and geographical extensions). Of these seven directives, four are transpositions of agreements by the European social partners (Silva 2015). This explains the Commission’s hostility to these agreements, as it wishes to reduce the amount of new social legislation. The Better Regulation provisions and the disputes related to agreements in the hairdressing and central administration sectors have deterred the sectoral organisations from entering into this type of collective negotiation at European level.

In October 2019, the Court of Justice rejected the action brought against the Commission,<sup>46</sup> but EPSU appealed against this first judgement. The very existence of this dispute blots the copybook of the Juncker Commission with regard to the relaunch of European social dialogue – and this dossier is still very sensitive within the Commission.<sup>47</sup> All in all, the Juncker Commission managed to restore the Commission's 'pro-social' image. But it considerably weakened collective negotiations at European level by making it more difficult to achieve the legislative extension of the agreements stemming from these negotiations. At cross-sector level, bipartite social dialogue was hampered by the refusal of the employer organisations to commit to binding agreements. This, for the Commission, reduced the European social dialogue to a form of social concertation. Though such concertation may well come in multiple forms, it can only have the impact allowed by the institutions: as recent history shows, this impact may be no more than the sending out of a political message. Such a situation may suit the employers, whose priority has always been to oppose any initiative which would establish new rights through legislation. But it certainly does not satisfy the trade unions with their greater expectations from this dialogue, who are having to resign themselves given the current balance of power. The risk is, however, that if European social dialogue is reduced to tripartite social concertation, even extended concertation, and to bipartite actions or declarations on only the least controversial issues, then it is unlikely to be able to rally the lasting and strong involvement of the national organisations, whether on the employer or union side.

## Conclusion

Common Market, single market, Economic and Monetary Union: the European integration process has essentially followed an economic rationale. European economic integration, however, has only ever been politically and socially acceptable, and therefore possible, when given a certain 'social dimension', the content and extent of which have thus been the subject of ongoing discussion and compromise: Europe had to be social in nature, at least to some extent. For some, a 'Social Europe' was the only meaningful outcome. For others, however, this social dimension should only exist and develop to the extent strictly necessary to render European economic integration generally acceptable (Pochet 2019).

It was because of this challenge, inherent to European integration, that the European social dialogue was invented, in the particular historical context of the Delors years. It then essentially took the form of a tripartite cross-sector social dialogue – between European employers' and workers' organisations structured specifically for that purpose, but also with the Commission, which had been granted a specific mandate by the Treaty to promote this dialogue. The European social dialogue, therefore, did not develop from the long history of industrial relations, which were basically confrontational and

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46. CJEU, Judgment of the General Court, 24 October 2019, Case T-310/18. See the EPSU comments (EPSU 2019).

47. The publication of his recent study on the legislative implementation of agreements between the European social partners (Tricart 2019) showed the author of this chapter how politically sensitive this issue was within the Commission services.

bipartite and which gradually moulded national social dialogue traditions. Rather, it emerged from the brief history of attempts to seek consensus on social concertation mechanisms and contractual relations at European level to support the development of a Social Europe, within the limits of the ambitions which could be given to this Social Europe in a particular historical context. This process of inventing the European social dialogue enabled the social partners to become key players in the ongoing debates and compromises required by the prospect of this social Europe, or by the social dimension of European integration. And ever since the Val Duchesse social dialogue in 1985, all Commission presidents have, in one way or another, affirmed that the European social dialogue is part of the Union's DNA. In this way, they have made their contributions to the 'story' told by the social partners themselves: that the social dialogue is inherent to European integration and necessary for its success.

The European social dialogue has proved to be very resilient over the course of its history. Initially strengthened by the support it received from the Delors Commissions and from most of the then-Member States, which recognised that it was vital to the construction of the single market, it was able to overcome the disagreements between employers and unions concerning the need for social regulations and its possible role in generating European social legislation. Strengthened by the resolve to modernise European social policy as enshrined in the European Employment Strategy and the Lisbon Strategy, it was able to enhance its social concertation role, even at a time when the evolution of social policy paradigms tended to reduce its potential contribution to the production of European social standards, as well as curtailing the role of social legislation. It was, however, seriously weakened when the European institutions, particularly the Commission, stopped providing political support to all its functions – consultation, as well as negotiation – and switched to providing very selective support, i.e. only to social partner initiatives in line with their policies.

Appealing to the crisis, the EU organised its governance around a neoliberal economic rationale which gradually reduced social concertation to a cosmetic exercise and which undermined the impact of collective bargaining at European level. The European social dialogue had been developed in a climate of trust between the social partners and the institutions, particularly the Commission; distrust and exasperation now characterised these relations. And, with no real prospect of developing the tripartite dialogue, bipartite dialogue lost its influence: the unions could no longer achieve any sufficiently meaningful outcomes from it, while the employers stood to gain more by direct interaction with the European institutions which usually held similar views to theirs. Given the deterioration of the social dialogue in the mid-2010s, the relaunch of the European social dialogue came at a good time, particularly as it was linked to the prospect of relaunching the social dimension of Union policies. In this way, the Juncker Commission was able to restore trust in concertation with the social partners. It did not, however, change its hostile attitude towards the legislation emerging from European collective negotiations – an attitude which had developed at the time of the Barroso Commissions – and thus seriously weakened the negotiating role core to the invention of the European social dialogue.

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