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TWENTY YEARS OF SOCIAL DIALOGUE IN EUROPE: IS THERE A EUROPEAN SOCIAL MODEL

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Introduction

I am very happy to participate in your conference today and to share some views on the European social dialogue. The question I want to address is: Twenty years of social dialogue in Europe: is there a European social model? Twenty years because the first discussion started at the request of Mr Jacques Delors in 1985.

On the question, is there a EU social model?, many of you will expect me to answer a straight yes or a clear no. However, as a good lawyer, I will explain why there is some truth both in a negative and in a positive response.

My attempt to confuse you will be structured in three chapters

- A brief reminder of what distinguishes Europe from the rest of the world,
- A summary of differences between national systems in 5 key areas,
- An explanation of how the EU social dialogue has developed over the last twenty years building on the pre-existing national systems.

What distinguishes Europe from the rest of the world ?

European countries are characterised by the existence of well-developed systems of social protection and industrial relations, in more of the cases based on social dialogue and collective agreements. However, each of these national systems has been shaped in the light of the specific features of the economies and societies in which they were created. In that sense, one can surely say that there is no such thing as a single European social model but only a variety of national systems with distinct strengths and weaknesses. However, beyond those important differences, these national systems have at least two common characteristics which distinguish Europe from other regions of the world :

- private companies have organised the defence of their interests collectively via widely representative organisations which are mandated to speak on behalf of companies of all sizes and all sectors of activities,

- in addition to lobbying decision-makers, these organisations exercise a direct responsibility on labour markets in their capacity as “social partner”, mirroring the way in which trade unions are organised. Conditions for the development of a social dialogue are the existence of strong, representative organisations on both sides. This concerns the principle of the reliable partners.

What distinguishes these national systems from each other ?

Concerning the organisation of social protection and social security, there is certainly not a single model but rather 5 groups of countries: the Anglo-Saxon countries where private insurance play a big role, the Scandinavian group, continental European countries, Mediterranean countries and the central and eastern European countries. And within each group, there are big differences. For example, in the field of pensions, The Netherlands, a continental European country, has more in common with the United Kingdom given the importance of private occupational pensions in both countries.

But let me now focus on industrial relations and give you a flavour of the differences between national systems in 5 key areas.

First area : the level at which collective bargaining takes place. In the United Kingdom or in Ireland, collective bargaining mainly takes place at the company level, notably because, on the workers' side, the collective defence of interests is organised around company unions; i.e. closed shop. In other countries like Germany, Italy, Belgium, The Netherlands or France, employers and workers delegate the negotiation of employment conditions to their representative organisations but the level at which collective bargaining takes place varies: i.e. regional sectoral level in Germany, national sectoral level generally combined with national cross sectoral negotiations in countries like Belgium, Italy or France.

Second area : the room left for collective bargaining by the legislator. In Denmark for example, trade unions and employers concluded an agreement of mutual recognition more than a 100 years ago. Employment conditions in the private sector are almost exclusively defined by collective agreements and there is practically no legislation applicable to firms in the private sector. Labour law is reserved for the public sector. By contrast, in France, state intervention is a deeply rooted tradition and a key obstacle to the development of a genuinely autonomous social dialogue. The law on the 35-hours week is a striking illustration in this respect. The minimum wages fixed by the government is another.

Third area: the nature of the agreements negotiated and their relation with legislation. In the United Kingdom, there is relatively little social legislation and collective agreements have no legal value. They are simply « gentlemen's agreements » but those who sign them respect the commitments made. In Denmark, the agreements are only applicable to the workers and entreprises affiliated to the organisations signing them. Market mechanisms apply in a way to collective bargaining. Members who are unhappy with the services provided by their negotiators can sanction them by leaving the organisation concerned. In more « Latin » countries, agreements concluded between employers and trade unions can be made universally applicable through legislation or an executive decree: e.g. in Belgium, by Royal degree. There is therefore a certain link between negotiations and legislation. This would be totally unthinkable in Germany where the principle of "Tarifautonomie" is enshrined in the constitution.

Fourth area: degree of autonomy of social partners. There are countries where social partners have a total autonomy of negotiation. There is no state intervention and when negotiations encounter difficulties or fail conflict resolution mechanisms are purely voluntary and rely above all on the power relations between the two sides; e.g. : Denmark. Other countries have a semi-autonomous system. Even though the state is not a party in negotiations of national agreements, it can have an influence on the outcome because a failure in negotiations can lead either to the legislator taking over or compulsory arbitration. Belgium, France, Spain or Italy are part of this group. Finally, there are also countries like Ireland or Luxembourg, where, in addition to collective bargaining as such which takes place

at company level, broad tripartite pacts are negotiated by the social partners and the government at national level.

Fifth and last area: nature of and limits on the right to strike. The way in which the right to strike is defined is crucial for the power relations underpinning collective bargaining. Here also big differences exist. In many European countries, the right to strike is a collective right and not an individual one. Consequently, during the whole validity period of a collective agreement and as long as the commitments made are respected, a strike is illegal. An important exception is France, where the right to strike is an individual right guaranteed by the constitution which cannot be suspended.

Taking into account all those differences, if one tried to harmonise Europe's social models by working on one of those parameters at EU level, one would put into question very subtle national balances designed to prevent and manage social conflicts in a given context. This was explicitly acknowledged by the Treaty on the European Union for example, by foreseeing that the right to strike or impose lock-outs is excluded from EU competences.

So as you see, European social policy and the European social dialogue do not start from a tabula rasa but are built on the basis of a complex set of national systems, which are increasingly diversified in a European Union of 25 (and tomorrow 27) countries.

How was the EU social dialogue built on these national systems?

Let me now turn to the European social dialogue and the system that was put in place by the Treaty to allow social partners to continue to play their role in matters, which are traditionally their competence in Member States, and on which EU institutions want them to act at the EU level.

Since 1992, the role of social partners has been officially recognised by the EU Treaty. Before proposing a directive in the social field, the Commission is obliged to consult social partners in two stages. The first consultation questions the need to act on a given issue at the EU level. Is the decision to act is taken, the second consultation relates to the content of envisaged legislation. It is during this second consultation that the social partners can decide to start negotiations. If they do, the right of initiative granted to the Commission by the Treaty is frozen. The social partners have nine months to come to an agreement.

If the negotiations are successful, the agreement can be implemented:

- either by the national members of the signatory parties in accordance with their national industrial relations systems, which means that the agreement can have a different value or nature depending on the country,
- or by asking the Commission to transmit the agreement to the Council so that it transforms it into a directive which will guarantee its legal value across Europe.

If the negotiations fail, the Commission can reactivate its right of initiative and the normal legislative procedure is launched: proposal of the Commission, discussions in Council and European Parliament.

This procedure of the Maastricht Treaty is a genuinely new model which takes into account the differences between national systems. It was "invented" by the European social partners, UNICE and ETUC, and included in the Treaty at their joint request.

The reasons for UNICE to pursue that route were the following. The employers saw on the horizon of the European Union an important extension of qualified majority vote in the social field. Indeed, the Maastricht treaty foresees that issues which are traditionally negotiated between social partners in Member States would fall in the area of competence of the European legislator : working conditions, worker information and consultation, etc. To reduce the risk of seeing harmful legislation developed at EU level, it was necessary to put into place a mechanism which would allow social partners to negotiate at EU level in order to keep those competences in their own hands.

This procedure has led to six rounds of negotiations and five agreements. Three agreements were implemented by a European directive: the first on parental leave, the second on part-time work and the third on fixed-term work contracts. Unfortunately negotiations on temporary agency work failed and the Commission drafted its own proposal for a directive, currently blocked in Council. Two agreements, respectively on telework and work-related stress, were implemented by the voluntary route, i.e. by our own members in accordance with national industrial relations practice and not through a Council directive. The voluntary route however does not prevent the national organisation to act. There is no free ride.

Let me however underline that negotiating agreements is neither the only, nor the most frequently used tool of the European social dialogue. Joint opinions or recommendations from the social partners to the Council or the Commission also help to influence European social policy. More than 50 joint text of this type have been adopted by the social partners since the mid-1980s. They deal with issues as diverse as economic policy, labour market adaptability, education and training, the fight against racism, restructuring, European works councils, etc.

In 1997, the inclusion of a new chapter on employment in Amsterdam Treaty opened new perspectives to the European social dialogue. In Maastricht, the EU had instituted a procedure to coordinate budgetary policies in the run up to the Euro. In Amsterdam, it decided to coordinate national policies for employment around European employment guidelines. European social partners are not only consulted on the content of these guidelines. They are also invited to contribute to their successful implementation in Member States, for example through joint actions on training.

In 2002, the European social partners adopted a framework of actions for the life-long development of competences and qualifications. This text identifies four priority areas for actions:

- identification of skills needs,
- validation of competences through vocational qualifications,
- 'information and support to enterprises' and workers' efforts to develop competences,
- mobilisation of resources.

The social partners are committed to promoting these priorities for action in their respective countries and report every year at the EU level on the actions taken.
This year we signed a framework of actions on gender equality.

Half way through a joint opinion and an agreement, framework of actions open up new way for social partners to jointly act at the EU level as a catalyst for social partners' initiatives across Europe in a way which fully respects national industrial relations traditions.

Europe is at a turning point. A refocusing on growth and jobs is urgently needed. UNICE and ETUC underlined this jointly in a message addressed to the last European Council. By doing so, we gave strong support to the Barroso Commission. We also announced we would soon start to discuss a new work programme of the EU social dialogue work programme since the current one expires at the end of 2005.

Since March, the European Council has decided to work on an integrated work method, the "Integrated Guidelines". UNICE welcomes the presentation of the Broad Economic Policy Guidelines and the Employment Guidelines in a single package and the cross-references made between the macroeconomic, microeconomic and employment guidelines. In general UNICE is broadly satisfied with the content of the Integrated Guidelines.

Conclusion

The route of the European social dialogue has not been without bumps and we will certainly encounter difficulties again. Yet its achievements demonstrate that social dialogue is a common feature of the EU social model.

Being in France and 10 days before the referendum, it seems to me indispensable to conclude with a few words on the ratification of the Constitutional Treaty. Let there be no mistake: this ratification is essential to create a strong Europe of 25 Member States, capable of defending the interests of its citizens and its companies on the international stage, and of pursuing the policies necessary to foster growth and jobs. The European social partners participated as active observers in the work of the Convention that resulted in the signature by EU Member States of a Constitutional Treaty for the EU in Rome on 29 October 2004. Both the workers' and the employers' side decided to support the compromise reached because they both believed that the Constitutional Treaty provides a balanced basis for shaping EU policies in the future.

For instance, article 3.3 of the Constitutional Treaty provides amongst other principles that – I quote:

"The Union shall work for sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance…"

Social dialogue is an important feature of Europe's economies and societies. On 14 January 2003, in the midst of the Convention's work, the European Social partners present as observers adopted a joint contribution in order to obtain a clear reference in the part one of the constitution. That has been the case with the introduction of article I.48 which reads as follows:

"The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue."

The Constitutional treaty will allow a better functioning of the enlarged European Union by adapting its decision-making process to its new membership. It clarifies national and European competences, simplifies legal instruments and the decision-making process. It reinforces the democratic aspect of the EU by giving enhanced power to the European Parliament and to national parliaments while preserving the Community method.

The Constitutional Treaty gives legal personality to the European Union and improves Europe's capacity to defend and promote European interests at international level.

Employers and trade unions do not always agree. We have very different views on how to draft a European directive on the internal market for services or a revised directive on working time. However, these proposals were made under the present Treaty provisions. Differences of opinions on these important but completely distinct issues must not be confused with the debate on the Constitutional Treaty.

I have dwelled on this issue because the capacity of European social dialogue to further develop also depends on the capacity of decision-makers to rally around a shared project targeting growth and viable jobs. I sincerely hope that the ratification process will allow this to happen.

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