

SUMMARY OF ALL THE 9TH BIENNIAL DISCUSSIONS

Jacques Freyssinet

September 19 2008

INTRODUCTION

(i) The aim of this summary is to raise once again the main subjects of the discussions that took place, not only on the occasion of the two days of the 9th biennial, but also throughout the whole preparation process. Certain themes, to which particular importance had been attached during the proceeding stages, were not taken up again in detail during the final phase.

For example:

- the greying of the population and the prospects for immigration, examined during the *preparatory seminar* which was held at Saint Etienne in October 2006;
- the relationship between flexicurity, putting career paths on a solid footing and the development of qualifications, analysed during the Brussels seminar held last January;
- the development of the social dialogue in the new member states, discussed during the seminar held in Sofia last April.

These subjects will have to be reintroduced in questions which have been earmarked for the final meeting.

(ii) It should also be noted that the 9th biennial is part of Lasaire's long-term approach. The ongoing objective of these biennials is to place the social actors and social regulations at the heart of attempts at European integration.

The idea is certainly not to isolate the social aspect which is regarded as an independent domain and, consequently, of secondary importance, in the process of integration. Instead the thinking behind it is to identify the close but complex interactions which operate between the economic, social and environmental aspects in a context of choice and the balance of power which are basically political.

For example:

- the issue of wages is at the heart of economic policy, the imperatives of collective bargaining and determining the criteria for living conditions and inequality;
- the energy and transport dossier does not only cover protection of the climate and the environment, it also covers employment and industrial policy, regional development and defending public services.

It is not enough to note the existence of interdependency. We also have to consider the order of importance of objectives and the strategies of the actors who determine which ones to choose.

(iii) This presentation is inevitably provisional. It reflects the discussions which took place on 18 and 19 September 2008 in a context dominated by a dual uncertainty:

- the first one concerns the prospects for the medium term and the extent of the economic downturn;

- the second is the complete unpredictability, even in the very short term, of how the global financial crisis will develop.

While it is impossible to ignore the impact which these upheavals will have on long-term developments, it is not necessary to suspend with the analysis of the major trends which characterise the current period until better information can be obtained. With this in mind, four main themes were tackled:

- the questioning of national social models,
- fixing wage levels in the interest of competitiveness,
- employment at the heart of the trade-off between industrial and environmental policy,
- prospects for employee representation and collective bargaining.

1. THE QUESTIONING OF NATIONAL SOCIAL MODELS

The term 'model' is not used here to designate a type of ideal organisation but a simplified representation of various national configurations whose specific features have not been altered by European integration.

In France, the impact of all the planned negotiations is measured against the agreement of 11 January 2008 on the 'modernisation of the labour market'. The discussions, ongoing or future, mainly on the forward-looking management of employment and competencies, on life-long learning and on unemployment benefits, will deeply affect the regulation of the wage ratio. We also have to add to this reform of retirement systems, the creation of a solidarity-based income, the reorganisation of the public employment services, the development of the *portage salarial* (umbrella company acting as an employer) and sector negotiations based on the transferability of employees' rights.

When one speaks of putting career paths on a solid footing, professional social security or flexicurity, the movement concerns all the components of the social model. Even though it has varying vocabulary and contents, this movement concerns all the European countries. We will concentrate on two cases which have been examined in detail this morning, those of Germany and Italy. We will add elements relating to the new member states brought to our attention by the seminar in Sofia and lastly, we will reflect on the impact that the European institutions have on the national trends.

Germany

The developments seen in Germany are particularly important because, along with the Scandinavian model, the German social model has become a reference when reflecting on the construction of a European social model. It seems that a rather radical questioning is now in operation. This possibly appeared before reunification but has been drastically accelerated by it and by problems of competitive restructuring that the country has had to deal with.

- The amount of coverage for employees laid down in collective agreements has been reduced due to the effect of various employer strategies and especially the impact of the transformation of productive structures.
- The employment relationship has been subject to segmentation, not only due to the aforementioned phenomenon, but also to the increase in the possibilities of recourse to precarious forms of low-wage employment. 'Mini' jobs and one Euro jobs are extreme examples of this.

- Employment benefit has decreased accompanied by a redefinition of 'expedient' employment that the unemployed are forced to accept.

Even if local or sectorial protests have been effective, the German trade unions do not hide their concern faced with a development which questions the post-war social compromise.

Italy

In 1993, the Italian trade unions signed an historic agreement with employers and the State. To clean up the economy and public finances and to ensure entry into the Euro zone, salary moderation was accepted with a distribution of tasks between national, interprofessional and sectorial negotiations followed by corporate or regional negotiations. The implementation of this device resulted in the near stagnation of purchasing power, accompanied by a reduction in the share of salaries in national income and by an increase in inequality.

So when they consider using a new approach when it comes to negotiation to combat these negative tendencies, the unions come up against employers' organisations which uphold the Anglo-Saxon model of decentralised social regulation.

The new member states

The diagnosis is more complex for the countries of Central and Eastern Europe. Belonging to the European Union and reinforced by the intervention of the ILO when it came to the social model, they were partly able to escape advocacy of total liberalism originating from the World Bank and the IMF. Formally, a system of industrial relations had been created which included tripartite consultation bodies and collective bargaining at several levels. This achievement should not be underestimated. However, it cannot be ignored that the weak implantation of the trade union movement coupled with the absence or fragmentation of employers' organisations give rise to doubts about the effectiveness of social dialogue and the reality of the social model that has been officially adopted.

Impact of the European institutions

In 2007, the Council, the European Parliament and the Economic and Social Committee accepted, rather reluctantly, the concept of flexicurity which had been enthusiastically promoted by the Commission. We will not be dealing here with the open discussions on this wilfully ambiguous term other than to say that the ESC, in particular in a joint report presented together with the employers' organisations, had agreed to be included. Agreement on the choice of words should not mask the deep concerns shown by many players of the European trade union movement on the objectives pursued. These concerns are reinforced by some recent events.

- The French u-turn enabled adoption by the Council by a qualified majority of a new draft proposal on working hours which offers the possibility of customisation of overtime by collective bargaining. The possibility of *opting out*, up till now popular with the British, could end up being accepted by everyone. It is vital that the European Parliament reacts to this threat of serious degradation of the collective rights of employees.
- Recent judgments by the European Court of Justice on several collective conflicts are so complex that it is difficult for all their long-term consequences to be appreciated. However, an arbitration principle has been laid down of, on the one hand, the right to strike and on the other, freedom of establishment or international service provision. The Court also confirmed its right to judge the legitimacy of recourse to strike and its proportionality to the interests that it aims to defend.
- The modest scope of the social agenda and the ambiguities of the French position on this matter leads us to fear a return of these matters to state responsibility.

The risks of *social dumping* are undoubtedly increased by the conjunction of these developments. This has once again led to regrets about the blocking of the adoption of the new Treaty which prevents integration of the EU's bill of rights by the member states. The European institutions are not directly responsible for this blocking but the direction of their policy in recent years has certainly not been without influence on the development of public opinion with regard to the projects of the Treaty and on the negative results of certain referenda.

2. FIXING WAGE LEVELS IN THE INTEREST OF COMPETITIVENESS

There are no real new elements in this domain but it should be noted that development trends could result in major threats in the context of the economic recession that we are currently facing. Two aspects were particularly emphasised.

The member states

- Every member state has its own terms and conditions for negotiation, inherent in its history. Even if grouped under the heading 'model', for example, the 'Scandinavian model', there are noticeable differences between countries. Nevertheless, apart from the UK where negotiations are completely decentralised at company level without any national framework, in all the other countries there are at least two levels of negotiation – at national level (sectorial and sometimes interprofessional) and at a more decentralised level (regional and/or company). An important distinction should be made between those countries where wage bargaining exclusively deals with the autonomy of the social partners and those where agreements are laid down by law. Recent judgements (Viking, Laval, Rüffert, etc.) of the European Court of Justice clash directly with the first system of negotiation while it only threatens the second system more indirectly by emphasising wage competitiveness between the member states.
- Unstable work and low wages are a fact throughout the European Union. They are often not covered by any agreements in countries with free wage bargaining. There is also the matter of introducing a minimum wage in, for example, Germany where the unions have refused it in the past.
- The problem of inflation in wage bargaining is evident in all countries. Should imported inflation be taken into account? Adding increases in productivity to increases of the cost of added value would mean stabilising the wage bill in added value. Adding increases in productivity to increases in the consumer price index would mean enhancing the wage bill in added value which happens if the price index rises faster than the price of added value, which is what happens when the price of imports shoots up. In the latter case, the question is to know to what extent companies can pass on wage increases to prices to avoid a loss of profits.

The European Union

Regarding information, the trade unions have a wage observation system which compares the situation in the various EU member states. Recent national actions are mentioned in *Benchmarking Working Europe 2008* (Chapter 5 - *Wage Developments*) and in the 2006 *Annual Report on coordination of collective bargaining in Europe*. Sectorial statistics are collected by the European federations, in particular the EMF, which underlines the importance of setting up networks to detail and interpret the contents of the developments noted in the various countries.

Comparative statistical data should be consolidated and developed, subject to regular joint examination (every six months?) of wage developments in the member states, and impact studies on national policies with regard to other EU countries developed which would open the door to researching joint solutions which could be mutually advantageous.

Several diagnostic elements were highlighted.

- Globally, a decrease in the wage share has appeared in recent years especially in the Euro zone.
- Wage negotiation was never part of social bargaining between the social partners at Community level (Article 137 of the CAP), which has lost a lot of its dynamism since the departure of Jacques Delors.
- The Cologne process has been replaced by the tripartite social summit in the spring which had a mixed reception. The pessimists termed it an 'inconsistent seminar' while the optimists said it would allow the ESC to make known its positions regarding socio-economic policy in the context of the Lisbon strategy. However, the objective of the Cologne process according to which 'fiscal and monetary policy and wage development should be interactive and mutually supportive' seems to have somehow lost its way.
- There seems to be no thinking on the influence that the salary policy of one member state has on the others, especially on socio-economic policy in terms of employment, balance of payments and inflation. In this respect, the member states which do not take account of other countries policies are depriving themselves of the benefits that they might obtain if they acted together. This lack is particularly regrettable in the Euro zone where exchange rates cannot offset development in competitiveness costs.
- As the Sofia seminar demonstrated, wage differences between eastern and western EU members are often seen by workers in the western EU countries as a source of possible transfer of industrial activities which hinders concession negotiations. However, would it be fair to ask the new member states to renounce, without any alternative proposals, an element which is often decisive in job creation? The emergence of significant conflicts, even if these are exceptional events like that of Dacia in Romania, shows that it is industrial success which creates the conditions for wage demands. There would be no point in recommending a reversal of the process. It is therefore economic recovery which will provide the solution to the problem. It requires establishing specific European solidarity which can only develop in full on the basis of economic dynamism throughout the European Union.

* * *

The trade unions, finding themselves in an unfavourable balance of power and under the threat of unemployment, have until now not found an effective counter strategy, especially after the disappointing results of coordination procedures at European level on wage demands. Nowadays, we are far from the prospects set out in 1993 by the white paper entitled *Growth, Competitiveness and Employment* and expanded in 2000 by the *Lisbon strategy*. Faced with the cloud of recession, which may well be considerable and long lasting, the demand for another strategy, strongly recommended on several occasions during our biennial meetings, is now particularly pressing. It should propose an active economic policy, coordinated industrial policies and mechanisms to fight fiscal dumping.

3. EMPLOYMENT AT THE HEART OF ARBITRATION BETWEEN INDUSTRIAL AND ENVIRONMENTAL POLICY

Three cross-sectorial priorities have been identified in this regard:

- the need for public intervention which can coherently explain action taken by the EU, the member states and the regions;
- attaching equal importance to implementing long-term objectives and management of transitional procedures,
- the creation of specific mechanisms to guarantee the funding of infrastructure development.

A more in-depth analysis of two sectors, railway transport and energy, has been carried out which in the latter case, has thrown the spotlight on electricity provision. The idea is to highlight the interdependence of matters that require explicit and consistent political choices at European level. Four main areas for action have been identified.

- 1. In the two cases mentioned above, the type of activities carried out requires a harmonised industrial policy at branch level, i.e. a policy that includes the provision of equipment, research and development and services. Some European countries, for instance Germany and France, have made different choices in the field of energy provision and therefore have specific comparative advantages. How can we benefit from similar national advantages without increasing inequality and interdependence?
- 2. These activities are crucial for environmental policy especially in terms of greenhouse gases, climate change and sustainable development.
- 3. These sectors have a public service mission and contribute to satisfying the basic needs of the population. Moreover, they are subject to national and European policies, competition and privatisation which are purely dominated by market forces. This weighs heavily on consumers, especially in terms of price and price fluctuations and sometimes, as in the case of electricity, results in disruptions to supply.
- 4. Linked to the last point and taking account of their network activities, the two sectors, by their choice of accessibility and rates, play a central role in regional development policy.

While the European Union has produced analyses and definitions of guidelines, operational decisions are still fragmented and remain dominated by intensification of competition while in practice oligopolies are on the rise.

- Both sectors should be the chosen area for the implementation of European policies to make industrial and environmental policy match the development of the regions and the public services.
- These policies should also benefit the emergence of cooperative national strategies. Should we not bring back the mechanisms which have proved effective in the framework of the ECSC or should we be promoting the creation of other types of European mechanisms? It is, after all, on this basis that the project for a European railway network has been set out.
- The EU should be an effective tool for regulation, with the choice between setting up European regulatory institutions or coordination of national regulators remaining an open question.

Globally speaking, the increased cost of energy, likely in the years to come whatever the fluctuations in the short term, will result in the phenomenon of 'energy poverty' and will aggravate the problem of income distribution both domestically and worldwide. The link between the two matters set out above is therefore a close one.

4. PROSPECTS FOR EMPLOYEE REPRESENTATION AND COLLECTIVE BARGAINING

After examining the general tendencies observed within the EU, the discussions also centred on specific problems faced by the multinationals.

General trends

At national level, the specific nature of the regulations on employee representation and collective bargaining has not changed and is not showing any signs of convergence.

A potentially very positive aspect is the setting up in the new member states of legislative provisions to guarantee, at least formally, conditions to deal with these two matters. Referring to this point, the Sofia seminar also highlighted the difference in policy carried out by multinationals in their local branches – social dialogue organised both in the context of national legislation and on the basis of *ad hoc* terms and conditions chosen by their respective managements.

Generally, causes of concern come from the trends observed in many countries with regard to the shrinking of the scope of collective agreements and the growing doubts about their effectiveness if the unions operating at the workplace are weak or even absent.

Regarding worker representation at the workplace, participants mentioned the interest shown in the German model of *Mitbestimmung* as a component of an overall system of representation, intervention in management and collective bargaining. It is important to defend this idea from attacks which are on the rise. In other countries, the same functions are covered by various institutional devices which are needed to strengthen them as an instrument of the Europeanisation of companies.

At European level, the trend is rather positive even if certain weaknesses cannot be ignored. *Work programmes* adopted by employers' organisations and trade unions have enabled widening the scope and diversification of the terms of social dialogue which in the future will be cover periods of several years. However, the disappearance of interprofessional agreements validated by a directive and underpinned by voluntary agreements remains a problem. Will it result in an increase in the autonomy of the social actors or a switch to so-called *soft law* or an open method of cooperation? Rigorously evaluating the effectiveness of these voluntary agreements nationally still has to be carried out.

- Sectorial social dialogue has been extended to new branches and has resulted in a number of agreements that cannot be ignored. In this case, too, beyond analysing texts, evaluation of specific effects is indispensable.
- After a particularly long and contentious process, the status of the *European limited liability company* was adopted in 2001, and completed by a directive on the 'involvement of workers'. Up till now, there have been few elements available to measure the effects but it is obvious that the creation of such European companies renews the terms for an in-depth discussion on the place of workers in the corporate decision-making process and, more generally, on their governance (*stakeholders versus shareholders*).

To sum up, at European level institutional devices do exist and social dialogue has produced an impressive collection of texts. The need to evaluate their effectiveness is now essential.

The case of the multinationals

There have been considerable developments recently in this field. However, an interpretation of the often ambiguous interlinking between the various legal forms of social dialogue which traditionally have been separate remains difficult.

Let us take the example of the *European works councils*:

- these were the result of a directive which met with opposition from employers;
- they were set up by participants in negotiations who were not always clearly defined;
- legally, they only have the right to information and consultation but in practice take part in negotiations with multinationals;
- after refusal by the ESC to participate in the negotiation proposed by the Commission, revision of the directive in question was done following the traditional institutional route. Nevertheless, trade union organisations and European employers' organisations came to accept the Commission's project as a basis for discussion by jointly defining the proposals for modification.

It would be absurd if the demands of judicial stringency would obstruct such an innovation which has given us such positive results. On the contrary, we should be asking why these councils do not exist in 70% of cases where they should be operating.

Furthermore, it is the responsibility of the trade union movement to ensure that within these works councils a *de facto* privileged access to information and influence does not manifest itself for the benefit of country representatives.

Another example of a major innovation whose impact is still uncertain is the *agreements signed by multinationals* outside any pre-existing legal framework.

- Their contents vary. They mainly concern the rights and means granted to employee representatives, procedures to be followed in the event of restructuring and respect for the basic rights of the ILO within the group and are often applicable to all or some sub-contractors and suppliers.
- The absence of a legal basis makes the effectiveness of these agreements uncertain. It is linked to internal balances of power, to the interest of the company to present a positive social image and to perceived pressures from civil society.
- Negotiation and follow-up of the agreements give rise to delicate problems of coordination between international and European federations, European works councils and those national trade unions more directly concerned.

In this case, too, it would be absurd to pursue a legalistic attitude or *a priori* doctrines, for example with regard to the risk of corporatism. While these moves towards collective agreements are to be encouraged, they need to be analysed in detail so as to draw lessons from them on a permanent basis.

CONCLUSIONS: LESSONS LEARNT

Throughout the successive processes of reflection led by *Lasaire*, we can highlight some lessons learnt with regard to both immediate priorities and medium-term trends.

- At the risk of being repetitive, the main concern which is continually broached during our biennial meetings is that the European Union should not just be a vast market but also support **an active macroeconomic policy**, with extensive coordination of national policies. Political will is indispensable in this case and should underpin European instruments. The threat of recession which is encroaching day by day, gives this demand particular urgency. For the time being, the European Central Bank remains obsessed with the fight against inflation. Neither at EU level nor at Euro zone level do we see any sign of a willingness to engage in joint action to rise to the occasion.
- This active economic policy is a pre-condition - certainly not enough on its own but necessary nonetheless - to sustain social models and social protection systems which are currently under threat. While their diversity should be recognised, a **strong basis**

should be established, with social dialogue and collective bargaining. The individual and collective rights of workers should be adapted and consolidated. For example, mention could be made of the objectives recently recalled in the *trade union memorandum* presented by the ESC to the French Presidency:

- asserting the primacy of fundamental rights of workers underpinned by democratic principles in a free market only concerned with questionable considerations of economic efficiency;
- making demands for mandatory working time standards, whether laid down by law or agreement, applicable to workers in all countries;
- improving the rights of European works councils and their effective establishment within all the groups concerned.
- Sustainable development is based on the linkage between economic, social and environmental policies. While there has been considerable progress within the European Union, the means of action remain fragmentary. Specific mechanisms should guarantee the consistency of industrial, regional development and public service policies. Drastic restructuring, necessary and often desirable, should not be carried out at the expense of the weakest members of society. This also requires tariff policies which meet basic needs and support professional mobility. While coordination of national policies is necessary, it does not release us from the obligation to set up **European regulatory instruments.**

As indicated in the beginning, the fact that in the course of this biennial the focus has been on a number of specific subjects means that attention has been given only to some of the overall challenges of giving a new impetus to European integration within the context of globalisation. Nevertheless, it enables us in certain key areas to define the nature of responsibilities that the social actors must assume.
