

The current state of European social dialogue: developments and challenges

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Riassunto. Il saggio presenta un'analisi dell'attuale stato del dialogo sociale europeo, dopo la battuta d'arresto segnata dal formale *revirement* della Corte di giustizia sul caso EPSU, con una lettura dell'art. 155 TFUE che non garantisce alle parti sociali firmatarie di un accordo europeo di ottenerne la trasposizione in direttiva. Dopo la pronuncia della Corte, le istituzioni europee hanno cercato di ristabilire il rapporto di fiducia tra Commissione e parti sociali attraverso dichiarazioni solenni in cui è stato riaffermato il valore fondativo del dialogo sociale, comunicazioni e raccomandazioni agli stati membri e il Patto sul dialogo sociale, in cui la Commissione si impegna a consultare le parti sociali anche su materie non rientranti nel capitolo sociale del Trattato, a designare un responsabile del dialogo sociale in ogni direzione generale, a rispettare l'autonomia delle parti sociali e a definire congiuntamente modalità di recepimento di accordi collettivi in atti normativi europei che attribuiscono loro efficacia generale. Nella situazione di grave incertezza determinata dalle molteplici sfide da affrontare, il rilancio del dialogo sociale europeo costituisce un'opportunità e una risorsa per assicurare coesione sociale attraverso forme democratiche di partecipazione a decisioni strategiche di dimensione continentale. Ciò richiede un salto di qualità alle parti sociali, chiamate a rispondere a sfide di dimensione transnazionale con meccanismi più efficaci di espressione di volontà negoziale.

Parole chiave: Dialogo sociale europeo; Parti sociali europee; Accordi collettivi europei; Requisiti di rappresentatività; Doppia transizione; Competitività; Lavoro di qualità.

Abstract. *The current state of European social dialogue: developments and challenges.* The essay presents an analysis of the current state of European social dialogue following the setback marked by the Court of Justice's formal reversal in the EPSU case, with an interpretation of Art. 155 Tfeu that does not guarantee the social partners who sign a European agreement that it will be transposed into a directive. Following the Court's ruling, the European institutions sought to restore trust between the Commission and the social partners through solemn declarations reaffirming the fundamental value of social dialogue, communications and recommendations to member states, and the Social Dialogue Pact, in which the Commission undertakes to consult the social partners even on matters not covered by the social chapter

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of the Treaty, to appoint a social dialogue officer in each directorate-general, to respect the autonomy of the social partners and to jointly define ways of transposing collective agreements into European legislation that gives them general effect. In the situation of serious uncertainty caused by the many challenges to be faced, the relaunch of European social dialogue is an opportunity and a resource for ensuring social cohesion through democratic forms of participation in strategic decisions at continental level. That calls for a qualitative leap on the part of the social partners, who are called upon to respond to transnational challenges with more effective mechanisms for expressing their willingness to negotiate.

Keywords: European social dialogue; European social partners; European collective agreements; Representativeness requirements; Twin transition; Competitiveness; Quality Job.

1. Premise: discovering the foundations of Social Dialogue. 2. The *EPSU* ruling: a severe setback for social dialogue. 3. Restoring trust between the social partners and the European Commission. Ongoing developments 2023-2025. 4. The future of the European social dialogue: challenges as opportunities. 5. A qualitative leap towards an integrated European perspective.

1. The opening of the European Union archives after thirty years provided a unique opportunity to develop a multidisciplinary research project aimed at documenting and analyzing the role of the social partners in setting up the European social dialogue process through the Maastricht Social Policy Agreement. The ShaPE project “The Social Partners as shapers and makers of Social Europe: discovering foundations and futures”, a two-year EU-funded research initiative, examines how European social partners have shaped Social Europe in the past and how they can be empowered to address the profound challenges now confronting the European Union. The project generated an unprecedented body of historical knowledge on the role of social partners in EU integration, notably in Treaty-making and social policy law-making, and drew on these insights to formulate concrete recommendations for strengthening social dialogue and reviving the EU’s social governance framework.

The research project was divided into three steps. The first step of a historical-legal nature reconstructed through extensive archival research in Florence, Brussels and Amsterdam the pivotal role played by ETUC, UNICE and CEEP in negotiating the Social Policy agreement annexed to the Maastricht Treaty. A digital exhibition and meta-archive make these materials accessible to the public and scholars, while academic publications reveal in new ways that the social partners were active co-drafters whose proposals strongly shaped the final outcome. The work done on this topic modify dominant interpretations of EU Treaty-making and indicates alternative Social Europe pathways that were considered at that time, but not adopted.

The second step analyses through a legal and industrial relations method applied to multiple case studies why the implementation of the European social dialogue has been so inconsistent after the first decade, despite the favorable Treaty framework. It calls into question the Commission’s and Court of Justice’s interpretations of the Treaty provisions, that have often constrained social partner autonomy and hindered a strong co-regulatory European social dialogue.

Finally, the third step analyzes how to prepare Europe for future transitions by identifying major socio-economic transformations, such as AI driven technological change, the green transition, demographic decline, migration dynamics, evolving social rights claims that will reshape European labour markets. Since the current Treaty provisions are considered insufficient to manage these transitions in a socially fair way, targeted Treaty adjustments are proposed to restore a balance between economic and social dimension to anchor the EU's strategies in democratic worker-centred governance. These proposals include establishing upward social convergence as an explicit Treaty objective; expanding legal bases for EU action on the future of work, skills and platform labour; granting social partners structured, guaranteed follow-up so that agreements become binding EU law when requested; redefining representativeness criteria to reflect actual negotiating capacity; supporting cross-border collective bargaining through recognition of transnational agreements. In this context, this paper intends to take stock of the current state of European social dialogue by putting forward proposals aimed at its effective relaunch, after the setbacks of recent seasons.

2. The analysis is based on awareness of the major changes prompted by the twin transition, the ageing of the population and the need to train new skills for new jobs, the imperatives of improving competitiveness and addressing security challenges as well as on the awareness of convergences and divergences trends of collective bargaining in the member states. The writing aims at: assessing the current state of the European social dialogue; highlighting recent developments and critical challenges; connecting these trends to historical foundations and future prospects of European social dialogue; adapting the Treaty and the European social dialogue to the future of work perspectives, as illustrated by the ILO¹, according to which social dialogue is essential to address challenges by technological, demographic, and environmental transformations and negotiate policies that promote social justice, peace, and dignity in the world of work.

The reflections move from the *EPSU* ruling of the EU Court of Justice², a turning point with respect to the quasi-legislative notion of social dialogue, rooted in the historical origin of the social dialogue designed by the Maastricht Social Policy Agreement and the practice since then followed by the European Commission³. The *vulnus* caused by this judgement in terms of implications for European social dialogue and its legal-political impact consists in a threat to the autonomy of social partners because it weakens the procedural guarantees of Art. 155 Tfeu and in casting doubt on the binding nature of negotiated agreements. Furthermore, it shifts the balance of power by increasing the discretionary role of the Commission and reducing the co-legislative influence of social partners causing potential chilling effect that discourages future negotiations whether social partners cannot rely on institutional follow-up. Indeed, the ruling was accompanied by reactions and criticism, raising

¹ ILO, 2019.

² Cjeu 2.9.2021, *Epsu and Goudriaan v. European Commission*, C-21/656.

³ Kilpatrick, Steiert, Cellini, 2025; Dorssemont, 2025.

broad concern among trade unions and academic commentators⁴ as it was perceived as a political setback for the structured and autonomous development of European social dialogue and seen by many as weakening trust and credibility in the EU-level negotiation framework.

The attempt to break the impasse is marked by possible responses and remedies such as calls for Treaty revision to clarify the legal obligations under Art. 155 Tfeu, proposals to introduce procedural guarantees or criteria for Commission decision-making, emphasis on restoring trust through new political commitments between Commission and social partners. This writing aims to explore the issues underlying an effective relaunch of the European social dialogue as a regulatory mechanism of social relations in the face of new challenges.

A first response from the Commission to the upheaval created by the *EPSU* case is in the European Social Pillar Action Plan implementing Principle 8 on strengthening social dialogue. Based on Nahles report⁵, the EU Commission on 25 January 2023 published a communication⁶ and a Proposal for Recommendation⁷ to member states, approved by the Council on 12 June 2023. These are soft law instruments without binding effects and intended to operate in the national and European dimensions, in the spirit of cooperation between different levels of regulation envisaged by the European Social Pillar. In the statements introducing the two interrelated acts, a tribute to the social dialogue is celebrated by recalling that European social dialogue is a cornerstone of the European social model that must be strengthened at both national and European level to ensure its fruitfulness and effectiveness in addressing the ongoing changes, from digital to green transition and climate change. The two interrelated acts aim to strengthen the various forms of social dialogue, from consultation with public authorities to bilateral collective bargaining at cross-sectoral, sectoral and company level. The focus on national social dialogue stems from awareness of the weakening rate of collective bargaining coverage in the member states and the very fragility of social partners in many countries, where social dialogue practices tend to be reduced to merely formal consultation processes⁸.

Thus, the recommendation to member states is to strengthen social dialogue as a policy-making tool and to support collective bargaining, especially at multi-employer level, marking a sharp U-turn from the country-specific recommendations

⁴ See: Alaimo, 2020, 495 ss.; Ales, Delfino, 2022; Borelli, Dorssemont, 2020; Carré, Steiert, 2022, 315 ss.; Dorssemont, 2020, 519 ss.; 2022, 43 ss.; Dorssemont, Lorcher, Schmitt, 2019, 571 ss.; Guarriello, 2021, 703 ss.; Guarriello, Lo Faro, Zoppoli, Bavaro, Izzì, 2020, 331 ss.; Lo Faro, 2018, 165 ss.; Lyon-Caen, Jeammaud, 2021, 37 ss.; Rainone, 2020; 2022; Tricart, 2019, 1 ss.; Van Mallegheem, 2020, 557 ss.; Veneziani, 2011, 243 ss.; Villani, 2012, 327 ss.

⁵ Nahles, 2021.

⁶ European Commission, Communication on Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions, COM(2023) 40 final, 25.1.2023.

⁷ Council Recommendation on strengthening social dialogue in the European Union, C/2023/1389, 12.6.2023.

⁸ Pedersini, Leonardi, 2025, forthcoming.

and memoranda of understanding sent to member states during the austerity phase⁹, in which instead the dismantling of sectoral bargaining was urged¹⁰.

It is important to note that the recommendation put pressure on member states to ensure the respect of ILO Conventions n. 87/48 and n. 98/49 respectively on freedom of association and the effective right of collective bargaining, to foster capacity building of social partners in weaker member states, to encourage experimentation with new forms of representation for new jobs, in particular digital jobs, to ensure institutional support for cross-sectoral agreements and promote research and data on evolving labour relations.

The progress realized in the field will be monitored and assessed within the framework of the European Semester procedures through the recently introduced social scoreboard and the social convergence framework, a mechanism based on a set of social indicators similar to that used for country-specific recommendations addressed to member states in the context of macroeconomic governance. This soft law mechanism aims to give visibility to the measures taken by member states to strengthen collective bargaining coverage, in accordance with Art. 4 of Directive 2022/2041 on adequate minimum wages, and to monitor countries that have not made significant progress.

For its part, the Commission undertakes to maintain logistical and technical financial support for interprofessional and sectoral social dialogue at European level and to introduce a new social dialogue officer in each directorate general as a link figure. The reference to the consultation procedure of the social partners under Art. 154-155 Tfeu implicitly confirms the recent *EPSU* ruling. No backward step is announced on the exercise of the Commission's discretionary power to submit a proposal for a directive based on the social partners' agreement. In fact, a further source of disappointment comes from rumors about the Commission's willingness to disengage from technical support to the social dialogue inferred from the request to the social partners to draw up the minutes of meetings themselves and to conduct them possibly remotely in order to reduce costs and the environmental footprint¹¹. Between the lines of its communication, one can glimpse a certain lack of confidence on the part of the Commission regarding the regulatory role of the social partners and the ritual nature of social dialogue meetings, which often do not lead to any useful results¹² as is evident from the data collected and monitored on the Commission's website¹³. However, the Commission does not go so far as to analyze the reasons

⁹ Kilpatrick, 2018, 737 ss.; 2019, 147 ss.; Beukers, De Witte, Kilpatrick, 2017.

¹⁰ Glassner, Keune, Marginson, 2011, 303 ss.; Keune, 2015, 283 ss.; Marginson, 2016, 75 ss.; Marginson, Keune, Bohle, 2016, 103 ss.; Leonardi, 2016, 147 ss.; Guarriello, 2017, 97 ss.

¹¹ Interviews with social partner representatives within sectoral social dialogue committees.

¹² Confirmed by the analysis made by Lafuente, Degryse, Parker, Vitols, 2025, 155 ss.; Keune, 2025.

¹³ See joint texts published on the European Commission website: *employment-social-affairs.ec.europa.eu/policies-and-activities/eu-employment-policies/social-dialogue/social-dialogue-texts-database_en*.

why the European social dialogue has become so unproductive¹⁴, probably so as not to run the risk of undermining the principle of collective autonomy enshrined in Art. 152 Tfeu.

3. The latest developments in social dialogue (2023-2025) show a renewed political commitment by the EU institutions, social partners, and civil society to strengthen the social dimension of the EU and ensure a fair and inclusive transition in the interinstitutional declaration made on the occasion of the 40th anniversary of the launch of the Val Duchesse meetings at La Hulpe in April 2024¹⁵ and in the signing of the Pact for European Social Dialogue in March 2025 (see below).

The political debate in the run-up to the European elections in June 2024 was marked by the reference to the indications coming from the Letta report on the internal market and the Draghi report on competitiveness. Enrico Letta's report¹⁶ on the future of the European single market, presented in April, suggests deeper integration in sectors such as energy, telecommunications, financial services together with the introduction of a "fifth freedom" for research, innovation, data, skills and artificial intelligence, suggesting the use of regulations rather than directives to ensure greater legal clarity and consistency across the single market. Mario Draghi's report on the competitiveness of the European Union¹⁷, released in September, focuses its analysis and proposals on how to recover the EU's competitiveness gap through massive investments with European resources in strategic and innovative sectors, in energy autonomy, as well as in the simplification of rules. The report emphasizes the need for a comprehensive approach to enhance competitiveness while maintaining the EU's social model.

The interpretation given by the European governance to the Draghi report mainly emphasized the need to reduce the regulatory burden that results in an excessive cost for European businesses reducing their competitiveness. Although the report focused on the issue of competitiveness, in light of the clarifications made by its author in public presentations, it is possible to give it an interpretation compatible with maintaining the European social model. Key points of a different reading of the Draghi report relate to:

1. investment in human capital: Draghi advocates for significant investments in education and skills development to address the emerging skills gap. This aligns

¹⁴ There are many reasons for this, but the main obstacle lies, as is well known, in the lack of interest on the part of employer's organisation BusinessEurope in regulating labour matters through negotiation rather than legislation, as was the case in the 1990s. This means that the main employers' organization prefers to act as a lobby rather than as a social partner making use of the prerogatives granted to it by the Treaty.

¹⁵ The declaration aims to set the future social agenda for the 2024-2029 period and reaffirm the European Pillar of social rights as the guiding compass for EU social policy in the coming years. The declaration was not signed by BusinessEurope.

¹⁶ Letta, 2024.

¹⁷ Draghi, 2024.

- with the role of social dialogue in shaping education and training policies that meet the evolving needs of the labor market;
2. quality employment: the report stresses that competitiveness should not come at the expense of workers' rights and job quality. Social dialogue is crucial in ensuring that labour standards are upheld, and that economic growth translates into better working conditions, including wages;
 3. inclusive policy development: Draghi highlights the importance of involving social partners in the policymaking process to ensure that economic strategies are inclusive and equitable¹⁸.

This underscores the value of social dialogue in fostering policies that balance economic objectives with social considerations. These elements suggest that reinforcing social dialogue is integral to achieving a competitive and socially responsible European Union.

Commission President Von der Leyen took many suggestions from the Draghi report. Among them the mandate given to the new Commissioner for Social Affairs and Executive Vice-President Roxana Mînzatu: social dialogue is a central pillar of her portfolio on Social Rights, Skills, Quality Jobs, and Preparedness. A new European Social Pillar Action Plan is scheduled in the programme for 2025, while the Pact on European Social Dialogue intends to ensure that digital and green transitions are accompanied by adequate skills development and quality working conditions, as well as the Union of Skills¹⁹ document enhances its role in tackling skills shortages and labour migration.

The uncertainties of the present time, heightened by international geopolitical instability, provide a formidable opportunity to consolidate the European model and focus on social cohesion by responding to citizens' concerns and the disruptive criticism of populism. Social dialogue must also play its part in making Europe more cohesive and inclusive addressing the dilemma of improving competitiveness without renouncing ESG objectives but focusing on their achievement by means of fair transitions.

Social dialogue faces strategic opportunities that make it an essential tool for finding shared solutions to epochal challenges. Embedding social dialogue in EU industrial and transition policies aiming at relaunching competitiveness (robotics, generative AI, clean energy production, biotechnologies, aerospace) demands a qualitative leap forward from the European social partners, linked to continental scale of the challenge and massive investments requested at EU level. It requires

¹⁸ In chapter 2.3 Safeguarding social inclusion, after emphasizing the need to update cohesion policies, the Draghi report stresses: «Leaders and policymakers should engage with all actors in their respective societies to define objectives and actions for the transformation of the European economy. More effective and proactive citizen engagement and social dialogue bringing together trade unions, employers and civil society actors will be key to building the consensus needed to drive change. Transformation can only lead to prosperity for all if accompanied by a strong social contract».

¹⁹ European Commission, Communication on The Union of Skills, COM(2025) 90 final, 5.3.2025.

enhanced cross-border coordination of social partners and their greater role in European economic governance.

In fact, both transitions entail profound changes in the labour market, production models and required skills. Social dialogue is essential to support the professional requalification, ensure a just transition, build adaptation strategies with the involvement of sectoral and territorial actors, avoid exclusion and prevent social conflict that could hinder innovation processes. At the same time demographic decline and population ageing pose serious challenges to the sustainability of welfare systems, labour organization, productivity and intergenerational balance. On these issues social dialogue can contribute to promoting shared solutions on pensions, active aging policies, migrant integration; helping make the labour market more inclusive for women, youth, people over 55; negotiating flexible and sustainable work models, balancing productivity and quality of life.

Promoting an integrated European perspective and assigning a specific role to social dialogue at transnational and European level is crucial as many decisions are taken at the EU level. In areas of strategic interest, such as climate change, AI infrastructure, energy security, emerging technologies, etc. the European social dialogue has the potential to generate innovative avenues for joint regulatory frameworks, eventually backed by targeted financial support; it helps prevent competition among member states from resulting in social or environmental dumping; it strengthens the European Pillar of Social Rights balancing market dynamics.

It is strategic to grant social dialogue an autonomous, structured, and proactive role at the European level. This helps ensure that transitions are governed in a democratic and inclusive way, while also strengthening social cohesion and the legitimacy of European integration in the face of global challenges. New regulatory framework (adequate minimum wage, platform work, pay transparency, AI regulation, corporate sustainability reporting, human rights due diligence) explicitly refers to the role of social dialogue and collective bargaining. The role of social dialogue should be coordinated and developed based on this framework, giving space and priority to collective agreements and action plans jointly defined by the social partners to give visibility to more robust collective relations on a European scale.

It is to be hoped that the trend towards fragmentation and avoidance of the role of collective organizations will be overcome as of the expected ruling of the Court of Justice on the directive on adequate minimum wages, in particular on its Art. 4 on national measures to support collective bargaining²⁰; the simplification/deregulation legislative initiatives (omnibus package 1) aimed at postponing the implementation deadlines of the CSR and CSDD directives, reducing the administrative burden by

²⁰ Kilpatrick, Steiert, 2024, 437 ss. After this report was finalized, the Court of Justice issued its ruling on Denmark's appeal for annulment of the Adequate Minimum Wage Directive on 11 November 2025 (*Kingdom of Denmark v. European Parliament and Council of the EU*, C-19/23). With regard to the specific issue raised by Art. 4, the Court dismissed the appeal, confirming the legitimacy of the provisions of Art. 4, §§ 1 and 2, as they do not amount to a direct interference by the European Union in the competence of the member states and in the autonomous role of the social partners.

25% and exempting a large number of companies from compliance burdens²¹; the ambiguities regarding the new simplified legal framework for start-ups and scale-ups in order to ensure competitiveness and to attract global tech companies (the EU Startup and Scaleup Strategy)²².

In conclusion, in the current phase it is not enough to ritually confirm the essential role of the European social dialogue, but to act for a qualitative leap to meet emerging challenges. The fact that the scale of new challenges needs responses at continental level would require the European dimension of social partners develops a stronger and autonomous identity. European social dialogue should become capable to give responses at the continental level overcoming the fragmentation of national interests to steer ongoing transformations, the capacity to negotiate and conclude European collective agreements, including those of a regulatory nature, being supported through a renewed commitment by EU institutions to their adoption as Council decisions, if requested by the social partners. Moreover, positive conditionality – such as access to EU funding or public procurement – should be employed to encourage companies to implement such agreements.

4. The proposal to strengthen a truly European dimension of the social dialogue in the face of global challenges is based on the consideration that these challenges are transnational in nature and can only be adequately addressed from a continental perspective: climate change, environmental protection, the use of AI, demographic decline and migration, the competitiveness and innovation gap, the multiple dimensions of security²³ (defense, energy, wars at Europe's borders, security of supply chains, threats to information systems, etc.). It is therefore necessary to strengthen European decision-making mechanisms in the field of common policies and resources, as well as joint regulation mechanisms in the field of social policies, as expression of horizontal subsidiarity.

How? By recovering the original idea behind the institutionalization of social dialogue as a process of participation of civil society actors in the decision-making

²¹ The European Parliament on 13 November 2025 adopted its negotiating position on the Omnibus 1 package, more negative than that of the Commission and the Council. The agreement finally reached in the trilogue on 9 December and formally approved on 16 December provides for a much narrower scope of due diligence and sustainability reporting obligations, the removal of transition plan for climate change mitigation and of the EU harmonized liability regime, the postponement of the transposition deadline to July 2028 and the companies implementation to July 2029. While the role of workers' representatives remained unchanged, the role of other civil society organizations has been significantly reduced in the due diligence process. It is worth noting that these directives were adopted on the legal basis of the internal market, not social policy. Nevertheless, they have a considerable impact on social and working conditions in companies, subsidiaries and their global value chains: without effective dialogue with workers' representatives, the social dimension of ESG objectives risks remaining marginal or completely irrelevant.

²² European Commission, Communication on The EU Startup and Scaleup Strategy. Choose Europe to start and scale, COM(2025) 270 final, 28.5.2025.

²³ Degryse, 2024.

process of the European institutions, recognizing to the organized representations of economic-professional interests (management and labour) a special status that gives them not only consultative functions, but also joint regulation on matters falling under Art. 153 Tfeu through collective agreements. The ability to negotiate, i.e. the ability to regulate through collective agreements the working conditions of entire categories of workers or all workers covered by the agreement, constitutes the essential and distinctive prerogative of the social partners (trade unions and employers' organizations) vis-à-vis other civil society organizations.

The objective of relaunching the European social dialogue, through the recovery of the original idea of a mechanism of democratic participation and foundation of social democracy, proclaimed by Commission President Juncker since his inauguration speech in 2014, reaffirmed by the Porto and La Hulpe declarations and the recent Social Dialogue Pact, in order to become effective and not merely a proclamation (“parole parole parole”), needs concrete actions that will realize at European level a new season of support for the social dialogue, as requested by the 2023 recommendation to member states. While there is no doubt that the European social dialogue is fed from the bottom up by the health of the national social dialogue, forty years after the first practices of European social dialogue and more than thirty years after its institutionalization thanks to the Social Policy Agreement, which was the result of an agreement between European social partners, there is an urgent need to review the mechanisms for recognizing the special status of the European social partners, granting quasi-legislative prerogatives to social actors.

If the use of the term *relaunch* implies at least a dubious assessment of the vitality and effectiveness of the European social dialogue, described as fruitless by observers carefully following its developments²⁴, there is an urgent need to understand the reasons for this stalemate and to act as a stimulus to the social actors, specifically the employers' organization BusinessEurope, which is reluctant to engage in European agreements, including through mechanisms of a rewarding nature. The institutional framework designed by the Treaty allows the Commission, with unchanged arrangements, to review its function of providing balanced support for the social dialogue while respecting the collective autonomy of the social partners and recognizing the diversity of industrial relations systems in the member states. Mention should be made here of the communications in which the Commission defined the criteria for the representativeness of the social partners at interprofessional and sectoral level²⁵, the subject of periodic monitoring entrusted to the European Foundation for the improvement of living and working conditions²⁶.

It might prove useful to review by means of a legally binding instrument the criteria of representativeness of the European cross-sectoral and sectoral social partners, considering the actual negotiating capacity at European level²⁷.

²⁴ Lafuente, Degryse, Parker, Vitols, 2025, 155 ss.

²⁵ European Commission 600/1993; European Commission 448/1996; European Commission 500/1998.

²⁶ See: Eurofound, 2023, in addition to number of reports on the representativeness of social partners at sectoral level.

²⁷ It should be noted that the Commission's assessment of the sufficient cumulative

Since the representativeness of European organizations is a result of the representativeness attributed according to various criteria at national level to affiliated organizations, many decades after the Commission's first communication setting out the criteria of representation of the European social partners for the purposes of access to the double consultation provided for in Art. 154 Tfeu, it seems appropriate to revise and supplement these criteria²⁸ in order to emphasize not only structural adequacy but also, and above all, the activity actually performed at European level by these organizations.

The statutory verification of the collective bargaining power held by the European social partner organizations through the statutory provisions laying down the terms of reference for the negotiating delegations and the voting procedures on agenda and draft agreements can no longer be sufficient, nor can the verification of the actual participation in the sectoral social dialogue committees be based on the number of meetings held and the number of participants per country, without taking into account the outputs of these meetings in terms of joint actions, work programs, agreements. Therefore, the periodic review carried out by Eurofound, which is very useful for checking changes over time and the degree of interest representation while paying attention to the fundamental distinction between the representation of companies as employers' organizations and as business associations, is not adequate to appreciate the dynamic representativeness of the social partners.

5. In order to relaunch the European social dialogue, the representativeness of the social partners can no longer be solely derived from the national affiliated organizations²⁹, at least from a functional point of view: the dependency link with the affiliated organizations must be softened, otherwise the latter retain the power of control and veto over the activity of the second-level organization (a process similar to the relationship between member states and the Union).

representativeness of the social partners is, on the one hand, bureaucratic in nature, as it is based on criteria that are not enshrined in a legislative act; secondly, it is based on data that must be interpreted with great caution, as it is largely based on criteria that may differ from country to country and are subject to considerable margins of approximation. Finally, it concerns a predominantly static notion of representativeness, which emphasizes only the structural data of the European vocation of the social partners, not the functional one: see the explanatory note accompanying the study prepared by the Commission on the European social partners, based on the report of 11 national experts in preparation for the 1993 Communication.

²⁸ In its consultation on Commission Communication 96/448, the European Parliament proposed adding two further requirements to the representativeness requirements: 1) European organizations should be composed of associations representing workers or employers that are voluntarily affiliated *at both national and European level*; 2) European organizations should have a *mandate* from their members authorizing them to represent them in the European social dialogue and should *demonstrate* their representativeness. These additional criteria, aimed at making social dialogue procedures more effective and increasing the Europeanisation of the social partners, were not accepted at the time, perhaps because they were considered too selective: see Guarriello, 1999, 248 ss.

²⁹ It is also useful to verify over time the permanence of structural requirements and continuity of action.

Genuine European criteria for the recognition of second-degree organizations are: effective participation in consultation processes, the exercise of collective autonomy through the negotiation and signing of European agreements, work programs, guidelines, monitoring actions and the implementation of autonomous framework agreements, joint requests for transposition into Union directives, mobilization actions, active participation in social dialogue in policy-making processes. The actual exercise of the prerogatives recognized to the European social partners by the Treaty (recognition of their autonomy ex Art. 152 Tfeu, consultation in the legislative process ex Art. 154 Tfeu, pre-emption of the agreement directly negotiated between them ex Art. 155 Tfeu) must become the most relevant criterion, also in order to channel the resources to support social dialogue to those organizations that actually play the special role recognized to them by the Treaty.

Balanced support for social dialogue, as referred to in Art. 154 Tfeu, implies, on the one hand, that the Commission supports organizations with less economic and lobbying power, and, on the other hand, that it gives priority to those who actively and constructively participate in social dialogue³⁰, by exercising their prerogatives as negotiating parties. The so-called European social partners, who are the recipients of the Commission's double consultation on regulatory initiatives, must be reserved for historical or newly formed organizations that are not only potentially able but also actually able to prove that they carry out real activities of a trade union nature at European level.

In this regard, it is appropriate to give relevance to the trade union nature of the activity carried out for the purpose of the collective regulation of working conditions and the defense of economic-professional interests of categories of workers and employers through the exercise of collective autonomy. The mere lobbying activity, exercised by any interest group to influence the European institutions to obtain the approval, amendment or withdrawal of legislative or political acts, cannot be included in the notion of social dialogue. Although trade unions also use lobbying, their history is marked by the evolution from a purely lobbying function at the European level to that of social actors exercising the prerogatives deriving from the principle of trade union freedom³¹.

The trade union nature of the activity carried out, which can be deduced from the associative statute of the European organizations and from the actual carrying out of activities related to the protection of the interests of workers and employers as their natural counterparts, distinguishes these organizations from civil society organizations, which are the recipients of civil dialogue with the European

³⁰ Secondary legislation uses the general clauses of good faith or constructive spirit when it refers to the finalization of the dialogue between the social partners with a view to the signing of a collective agreement (e.g. on the establishment of the European Works Council or the body representing employees in the European Company; on the joint examination of corrective measures on the gender pay gap; on consultation in good time with a view to reaching an agreement or seeking an agreement on collective redundancies and company transfers).

³¹ Sciarra, 1990, 653 ss.; 1996, 189 ss.; Guarriello, 1992; Lo Faro, 1999; Didry, Mias, 2005; Ciampani, Gabaglio, 2010; Lapeyre, 2017.

institutions and of specific legislation affecting them as the bearers of diffuse interests in specific sectors, such as environmental protection, consumer protection, and the defense of victims of discrimination and the violation of human rights.

Although the most recent legislation brings some fundamental labour rights into the category of human rights by empowering human rights organizations to intervene with public authorities on social policies concerning decent work, the right to housing, education and training, health, minimum income, the means by which non-profit organizations act (information campaigns, mobilizations, hearings, reporting, etc.) remain distinct from the prerogatives of a strictly trade union nature³². Interesting in this respect is the debate opened within the ILO on the tripartism of the international organization specializing in labour issues, on the possible opening up to different components representing civil society³³, opposed by the representatives of workers' and employers' trade unions, despite the fact that there are areas not covered by traditional trade union representation, such as child and forced labour, certain discrimination factors, informal work, protection of the environment and the health of populations, etc.

Another condition for relaunching social dialogue and making the negotiation of agreements attractive to the most reluctant social partner organizations is to establish conditionalities for the use of European funds. Social conditionalities have already been used in both the European and national dimensions to reserve or prioritize access to European funds for companies applying collective agreements. In relation to new global challenges (climate change, green transition, digitization and the impact of AI on work, competitiveness and innovation, quality work), the use of dedicated funds should be reserved for companies applying company or sectoral collective agreements implementing regulatory frameworks agreed at European level: see the proposal for the European Competitiveness Fund (ECF), which includes specific defense research programs and technological innovation activities in strategic sectors critical to European competitiveness, as outlined in the Letta and Draghi reports and the Competitiveness compass delivered in January 2025.

Among the key factors for the recovery of the competitiveness gap of the Union, the proposal mentions innovation capacity, decarbonization, reduction of over-dependencies and improvement of security, while among the enabling factors, besides simplification, removal of barriers in the single market, financial instruments and better coordination, the "social" objective of improving skills and quality work stands out.

This strategic objective recalls the fundamental mediating and regulating role of the social partners, who could at a cross-sector and sectoral level build the regulatory framework for the work revaluation. They can do it through the provision of training leave, pathways for the upgrading and adaptation of skills, employment stability, forms of participation in company decisions linked to productivity improvement objectives, talent attraction and retention strategies, promotion of professional

³² This distinction is reiterated in the Pact for European Social Dialogue of 5 March 2025.

³³ The ILO has registered more than 150 NGOs in its special list covering a wide variety of fields, such as the promotion of human rights, poverty alleviation, social security, professional rehabilitation, gender issues, and youth matters.

equality, active ageing and work-life balance measures linked to people's different needs, good wages, creation of a professional statute for workers on digital platforms and in general for remote work, according to best practices in some countries and on the basis of the regulatory support provided by existing directives³⁴ or new ones in the pipeline³⁵. Joint action programs, guidelines, collective agreements of an autonomous nature or transposed into regulatory instruments ensuring their *erga omnes* effect could redesign and revive the role of social dialogue as an instrument of social regulation.

On the other hand, from the point of view of the Union's institutions, the scale of the challenges to be faced in the present situation of global disorder calls for all available resources to be called upon, using the proactive recourse to joint regulation as a leverage effect of the support given to companies, also highlighting the practices of the transnational company agreements signed by European multinationals (TCAs). All dimensions and levels at which social dialogue operates are mobilized by the challenges of the twin transition, climate change and the recovery of competitiveness and innovation in the European economy. The Commission's strong backing for social dialogue, including through financial support, is essential in the current uncertainty to tackle the many challenges facing social and labour regulation.

Finally, the European Commission in the Pact for European Social Dialogue signed on 5 March 2025 commits itself to define with the social partners a procedure for submitting a proposal for a directive to the Council when the European social partners jointly request it³⁶.

This internal procedure aimed at restoring trust between the Commission and the social partners should prevent the agreement from being rejected by providing a system of alerts from the Commission to the social partners regarding aspects of the agreement that could cause political problems with its implementation. This would allow the social partners to resume negotiations, if necessary, to address the Commission's concerns. This would be an internal, practice-based adjustment to avoid the unfortunate misunderstanding occurring in the *EPSU* case, where an agreement resulting from an initial phase of consultation with the social partners was rejected by the Commission for transposition into a directive. Regarding the procedure under Art. 155 Tfeu, to address the Court of Justice's objections, it would be advisable to involve the European Parliament more fully in the submission of proposals for directives resulting from social dialogue, thus reintegrating it into the law-making process. Regarding matters that have a significant impact on the powers granted to

³⁴ See: Kilpatrick, 2023; Keune, Pochet, 2023, 173 ss.

³⁵ This refers to the forthcoming directive on the right to disconnect, to the very recent Commission Communication Quality Job Roadmap, COM(2025) 944 final, and the launch of consultation with the social partners pursuant to Art. 154 Tfeu on possible direction of EU action to improve working conditions, health and safety at work and implementation of workers' rights – Quality Jobs Act, C(2025) 9944 final, of 4 December 2025.

³⁶ «The Commission will organize an exchange with social partners, after the adoption of the Pact, on its procedure as set out in its 2023 Communication on social dialogue for the implementation of EU social partners agreements through EU law at the request of social partners».

the regions (environment, sustainable development, social services), the Committee of the Regions could also be involved in the legislative transposition process.

Last but not least, the long-standing problem of the Union's competences in social matters, most recently the subject of an appeal unsuccessfully brought by Denmark for the annulment of the directive on Adequate Minimum Wages, comes to the fore. The issue of competence in the social field requires a review of those competing between the Union and the member states, given the epochal challenges that are having a direct impact on the lives of workers and citizens. In order to keep the promise of an upward convergence of living and working conditions, the major upheavals triggered by climate change must be taken into account, as well as the conversion to a green and circular economy and the digital transition. This conversion assumes awareness of the limits and exhaustibility of the planet's resources and aims to find alternative solutions with a lower impact, based on reliable scientific data. In the context of a future reform of the treaties, the values that inspire the actions of the European Union and its objectives cannot fail to impact social co-regulation by extending the scope of social competencies to include the ongoing transitions.

The Commission seems to be aware of the unavoidable social dimension of these changes, as evidenced by its commitment to consult social partners in the Social Dialogue Pact «in a timely and meaningful way on policy initiatives that do not fall under the scope of article 153 and 154 but are of *particular relevance* for social partners». In this regard, the very establishment of social dialogue coordinators in each directorate-general aims «to promoting a better understanding of social dialogue and a coherent approach across Commission services», just as upstream the establishment of a European Social Dialogue Envoy is assigned the task of «contribute to improving awareness and understanding the role of social dialogue within the Commission, promote timely and meaningful consultation of social partners on initiatives and policies relevant to them».

Over the next few months, we will be able to evaluate the progress of the renewed focus on strengthening social dialogue, which aims to enhance the long-term competitiveness of European companies while promoting quality employment and social justice.

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