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European social dialogue as multi-level governance: Towards more autonomy and new dependencies

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Abstract: Almost twenty years ago the Maastricht Treaty introduced procedures for European Social Dialogue, as part of a larger package of measures to strengthen the social dimension of European integration. Through the Treaty provisions (articles 154-155 Treaty on the Functioning of the European Union), the European social partners received the competence to become, in principle, co-regulators of the European labour market. The conventional reading of the evolution of European social dialogue since its inception is that it has evolved from a relationship of dependency of the European social partners on the European institutions for the implementation of their framework agreements, towards a more autonomous position in which the social partners themselves take charge of implementation. Since the early 2000s, the argument continues, the social partners have taken a more proactive and independent stance and opted to focus on autonomous framework agreements, and other 'new generation texts', including joint reports, recommendations, compendia of good practices, etc., which are not directed at the European institutions in order to secure implementation. In this paper we want to challenge and move beyond this rather linear and one-dimensional conceptualisation of the evolution of European social dialogue. Empirically, we will show that there has not been a straightforward move away from the 'implementation through Directive' mode in favour of autonomous agreements. Whereas this may seem the case if we take a view of the cross-sector dialogue only, the picture changes when we have a closer look and include developments in the European sector social dialogue in the analysis.

Analytically, we will argue that framing the issue in terms of dependency or autonomy does not do justice to the complexity of relationships that are involved in the European social dialogue and the European sector social dialogue, and in the implementation of framework agreements and other new generation texts. Also it accords little attention to the role of power in the relationships involved. We draw on a multi-governance perspective to analyse the dynamics of European social dialogue, which allows us to capture the relevant multiple horizontal and vertical relationships, or interdependencies, between the European and national, and public and private, actors involved. Interdependency implies the presence of both autonomy and dependence in a relationship, and our central proposition is that these interdependencies simultaneously enhance and limit the capacity of the European social partners to make and implement agreements.

Keywords: cohesion policy; structural funds; fiscal federalism; multilevel Governance; lobbying; political economy; methodological issues; political science.

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Introduction

Almost twenty years ago the Maastricht Treaty introduced procedures for European Social Dialogue, as part of a larger package of measures to strengthen the social dimension of European integration. Through the Treaty provisions (articles 154-155 TFEU), the European social partners received the competence to become, in principle, co-regulators of the European labour market. Two principle modes of governance were institutionalised. First, the European social partners have the right to negotiate framework agreements and then jointly request the Commission to start a process to convert these agreements into EU Directives such that they become formally incorporated into law. Secondly, they can conclude so-called autonomous framework agreements, the enforcement of which is not dependent on the European institutions but is their own responsibility. According to article 155 TFEU, implementation of these autonomous agreements should be in accordance with the procedures and practices specific to management and labour and the Member States. These two modes of governance apply both to the cross-sector European social dialogue (ESD) which involves the peak level European social partners, and the European sector social dialogue (ESSD), which today concerns some 40 sectors.

The conventional reading of the evolution of European social dialogue since its inception is that it has evolved from a relationship of dependency of the European social partners on the European institutions for the implementation of their framework agreements, towards a more autonomous position in which the social partners themselves take charge of implementation (Branch 2005; Smismans 2008; Clauwaert 2011). It is argued that in the second half of the 1990s several framework agreements were negotiated by the European social partners in the 'shadow of hierarchy' of the European Commission (Smismans 2008) and implemented through EU Directives. This pointed to a double dependency on the EU institutions: first on the 'threat of legislation' to reach an agreement and second on EU Directives to get it implemented. Since the early 2000s, the argument continues, the social partners have taken a more proactive and independent stance and opted to focus on autonomous framework agreements, concluded under TFEU articles 154 and 155, and other 'new generation texts', including joint reports, recommendations, compendia of good practices, etc., which are not directed at the European institutions in order to secure implementation. Autonomous agreements and other new generation texts are often considered to be 'soft' forms of governance since they do not rely on 'hard' European legislation. They are also taken as an indication of growing social partner autonomy since they rely on the social partners themselves for implementation (Weber 2010).

In this paper we want to challenge and move beyond this rather linear and one-dimensional conceptualisation of the evolution of European social dialogue. Empirically, we will show that there has not been a straightforward move away from the 'implementation through Directive' mode in favour of autonomous agreements. Whereas this may seem the case if we take a view of the cross-sector dialogue only, the picture changes when we have a closer look and include developments in the ESSD in the analysis. Analytically, we will argue that framing the issue in terms of dependency or autonomy does not do justice to the complexity

of relationships that are involved in ESD and ESSD, and in the implementation of framework agreements and other new generation texts. Also it accords little attention to the role of power in the relationships involved. We draw on a multi-governance perspective to analyse the dynamics of European social dialogue, which allows us to capture the relevant multiple horizontal and vertical relationships, or interdependencies, between the European and national, and public and private, actors involved. Interdependency implies the presence of both autonomy and dependence in a relationship, and our central proposition is that these interdependencies simultaneously enhance and limit the capacity of the European social partners to make and implement agreements. We will show that the implementation of so-called autonomous agreements entails multiple relations of dependency on national social partners and governments that limit the autonomy of the European social partners.

The structure of the paper is as follows. In section 1 we discuss the added value a multi-level governance approach has for the analysis of European social dialogue, as well as the limitations of such an approach. In section 2 we present the horizontal and vertical relationships involved in ESD and ESSD. Section 3 summarises the types of agreements made to date under ESD and EESD to establish if a shift from dependent to autonomous agreements has taken place. Section 4 draws on secondary sources and existing literature to examine the experience with the autonomous agreements under the ESD from a multi-level governance perspective while section 5 does the same with the new generation joint texts of the ESSD. The final section presents conclusions.

1.   Dependency and autonomy in European social dialogue: A multi-level governance perspective

In this section we will address the question if autonomous agreements provide the European social partners with increased autonomy compared to the dependency inherent in the implementation of agreements through Directives. Autonomy here refers to self-government, to the possibility for a group, here the European social partners, to govern the actions of their own members through a collectively elaborated system of rules without the intervention from an external authority over which they cannot exercise control. In the case of agreements implemented through Directives this external authority refers to the European institutions involved in adopting such Directives, most importantly the European Commission and the European Council. These external actors are indispensable for the transformation of a framework agreement into legal rules and hence its implementation, something which the European social partners cannot do by themselves. Hence, in this sense they become dependent on the European institutions, which seems to limit their autonomy. In the case of autonomous agreements the European social partners do not depend on the European institutions for implementation. This then seems to increase their autonomy. But is this really the case? To better understand these questions a multi-level governance perspective is required to get a grip on the relationships involved in European social dialogue and the implementation of its outcomes.

1.1. European social dialogue as multi-level governance

Because it captures essential features of contemporary European industrial relations, a multi-level governance perspective has considerable analytical potential for understanding the development of the European social dialogue as well as European industrial relations more generally (Leisink and Hyman, 2005; Marginson and Sisson, 2004). Multi-level governance is both an 'outcome' of the effects of European integration on industrial relations, but it is also an intervening variable. As such it provides industrial relations actors who are grappling with the challenges and consequences of European integration with multiple options for regulatory intervention (and innovation), and choices between these. At the same time, applying a multi-level governance perspective to the European social dialogue holds the promise of contributing to the elaboration of the underlying concept. Analysis of the choices made by industrial relations actors in the face of multiple options invites consideration of power relations. Yet, 'the [multi-level] governance approach … has a strong bias towards effective and efficient problem-solving, and almost completely ignores questions of political power' (Jachtenfuchs (2001) cited by Leisink and Hyman (2005: 279).

What, then, are the potential, and limitations, of the concept of multi-level governance for analysing European social dialogue? Originating in political science and European studies, two linked developments underpinned its elaboration as a conceptual framework: the emergence of new levels of governance at supra-national level, including the EU, and the associated tendency of sub-national - regional and territorial - governmental authorities to by-pass national government when dealing with the supranational institutions (Hooghe and Marks, 2001); and the growing role of non-state actors in policy decision-making (Rhodes, 2000). Accordingly, the multi-level governance concept contains both vertical and horizontal dimensions. Vertically it refers to increased interdependence between governance mechanisms at different levels, whilst horizontally it refers to growing interdependence between governmental (public) and non-governmental (private) actors (Marks and Hooghe, 2004).

In terms of 'multi-level', the relevance to European social dialogue is readily apparent. European social dialogue as it developed after 1992 is in addition to, and does not displace, forms of social dialogue at national and sub-national levels. Moreover, multiple EU-levels are involved – cross-sector, sector and (multinational) European-scale company – with multiple linkages to national and sub-national levels. In this paper we focus on the cross-sector and sector dimensions of European social dialogue.

Concerning 'governance', the distinction typically made between government and governance (Jessop, 2004; Sisson, 2007) helps establish the relevance of the concept. Unlike government, governance is not nationally-bound, and involves the supra-national and also the sub-national. Governance involves private institutions, which may be associations or individual organisations (e.g. corporations) as well as the public institutions of government. It therefore

involves a range of social actors as well as the public authorities[1]. Regulation can be negotiated (via associations) or unilateral (via corporate hierarchies) as well as legally-framed. Linkages between levels are not necessarily hierarchical, and links – or 'coupling' – between them tends to be loose rather than tight. In addition, the multi-level governance literature exhibits a focus on changing forms of governance, and associated scope for experimentation and innovation (Léonard et al., 2007). This includes changes in the nature and use of 'traditional' forms (see Barbier and Colomb in this special issue), including legal enactment and collective agreement, and the emergence of newer forms, such as 'soft' forms of joint regulation, including framework agreements and joint texts associated with European social dialogue, and the 'open method of coordination' (OMC) associated with EU employment and social policy (see Hartlapp in this special issue).

Specific features of the EU context, and of that framing European social dialogue, accentuate the relevance of the multi-level governance concept. As Leisink and Hyman (2005) observe, the EU has no executive apparatus of government, which raises uncertainty over who is the agent of governance and simultaneously creates scope for a range of private and public actors to exercise governance functions, including the social partners through European social dialogue. Second, the relationship between authority at the EU level and that at the national level is non-hierarchical, focusing attention on interaction between levels (Hooghe and Marks, 2001). Reflecting this, the EU does not possess a vertically integrated industrial relations system which mirrors the national arrangements found in the majority of the former EU-15. The corollary for European social dialogue is that there is no necessary relationship with forms of social dialogue at national and sub-national levels; the nature and extent of any interaction becomes crucial. Given this, attention needs to be paid to bottom-up dynamics, from national and sub-national levels to the European, as well as top-down ones. Third, is the diversity in industrial relations institutions and governance arrangements across the member states, which has increased noticeably following the 2004 and 2007 eastern enlargements. An implication of such differences on the horizontal plane is that they shape the nature and extent of interactions between the European and national and sub-national levels. For example, the possible dynamics between the European level and the national level will differ if in a specific country the coverage rate of collective agreements is high or low, since this determines the capacity of the national level social partners to implement agreements in their national context through such collective agreements.

In combination, these contextual features help account for the role of European social dialogue in experimenting with and developing some of the newer forms of governance on which the multi-level governance literature has focused. These include both the 'harder' binding agreements, which entail unparalleled rights for private actors in drawing up

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[1] Cf the work of authors like Hollingsworth, Crouch and Streeck (e.g. Crouch 2005; Hollingsworth and Boyer 1997; Hollingsworth et al. 1994). They argue in a broader way that economic action is co-ordinated through a series of coexisting modes of governance, ranging from the state and the market, to micro-hierarchies (firms, organisations), networks, associations and community.

generally applicable measures, and 'softer' measures such as joint texts and autonomous agreements.

1.2. Limitations of the multi-governance approach

If the multi-level governance concept has evident potential for comprehending European social dialogue, under its current formulation it also has limitations. Chief amongst these is the absence of consideration of power relations. Accounting for the rise of multi-level governance as a prominent characteristic of contemporary European political systems, Marks and Hooghe's (2004) explanation is essentially based on the notion of scale efficiencies, augmented by democratic considerations. Their efficiency rationale is situated in the varying scope of the externalities arising from the provision of public goods. These can range from being global in scale, as in the case of climate change, to local in scale, as with municipal services. The scale of governance needs to reflect the varying scope of these externalities: accordingly, multi-level arrangements will be more efficient than a single level of governance. By implication, multi-level governance will also involve a separation of competencies across levels. However, under a different line of transactions cost reasoning, competency on any given issue can be distributed across levels. A prime instance in European industrial relations is 'organised decentralisation' (Traxler, 1995). This involves a centrally framed solution, or 'steer', which maps out the main principles but leaves the details to be determined at other levels, according to national and/or local circumstances. In this way the local parties do not each incur the transactions costs of drawing up the main principles of a solution, whilst also avoiding the those arising from central specification of the details and mode of implementation. Put another way, similarity of interest on the issues of principle co-exists with differences of interest on the details and modes of implementation. Concerning the European social dialogue, the option of implementation through national procedures and practices under Article 155 TFEU could be viewed as corresponding to this logic.

The democratic considerations identified by Marks and Hooghe (2004) relate to the enhanced capacity of multi-level arrangements to reflect heterogeneity of preferences amongst citizens, and to the benefits that may derive in terms of innovation and experimentation from having multiple governance units at any given level. Yet as Regalia (2007) observes, democratic – or participation – advantages of multi-level governance do not necessarily equate with efficiency in economic terms, as they may increase overall transactions costs. For instance, the legitimacy of measures may be enhanced by the involvement in the governance process of (more) actors at more levels, although the more complex procedural arrangements which this requires necessarily increases transactions costs. In turn, this alludes to the role of power relations within multi-level governance arrangements.

The evolving multi-level framework of governance in European industrial relations presents actors with multiple options for regulatory interventions both horizontally (different combinations of private and/or public actors) and vertically (various levels). Actors' choices – or manoeuvres - may well be informed by the efficiency and democratic considerations

outline above, but they will also be informed by power ones. Advantages can be secured in terms of power relations by pursuing one option rather than another. Moreover, the actors involved have differing power resources.

It follows that governance arrangements may well become a focus for contestation between the parties, as each strives to secure advantage. The optional European framework for transnational collective bargaining, proposed by the European Commission in the Social Agenda 2006-2010 provides an example of such contestation (see Keune and Warneck 2006). The European Commission proposed to develop such a framework to provide for the possibility to conclude transnational collective agreements at either enterprise level, i.e. in multinationals with companies in more than one EU country, or sectoral level, i.e. covering a certain sector in multiple EU countries. Its objective was to provide an innovative governance tool adapted to the increasingly transnational character of economic activity and labour relations and give legal status to transnational collective agreements. Within the context of the ESD the Commission started a consultation process with the European social partners on the issue. The European trade unions initially regarded the initiative with a certain degree of scepticism, but after internal debate, the unions by and large support it, arguing that it will increase their capacity to act at this ever more important level. They did set out a number of basic conditions the framework should meet. From the outset, however, the European employers argued against a measure since it aimed to facilitate collective bargaining above the national level. As such it was contrary to established employer preferences favouring further decentralisation of collective bargaining and, more generally, against further legal regulation of industrial relations. The employers' contestation of the initiative proved to be powerful enough to force the Commission to shelve its plans.

There may also be differences in preferences between the actors at European and national or local level, which will impinge both on the mandate to negotiate any European agreement and on its subsequent implementation, questions to which we return below. Alternatively, moves by actors in one sphere of governance may be connected to securing change in others. For example, the European Metalworkers Federation (EMF) developed its initiatives in cross-border bargaining coordination in the first instance to strengthen the bargaining position of metal workers unions; however, an additional rationale for EMF's initiative appears to have been to place indirect pressure on the Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET) to change its stance on engaging in European social dialogue for the sector (Marginson and Sisson, 2004).

The scope for, and reality of, contestation underlines that there is no shared vision of the governance arrangements that should prevail within Europe's multi-level industrial relations framework. A further corollary is that the pattern of governance within this multi-level framework may not be consistent, as according to a calculus of power advantage, local solutions are opted for on some issues, national on others and supranational on further ones. Put differently, multi-level governance arrangements are themselves a source of governance uncertainty, but also offer multiple options or solutions that can be pursued by the different actors involved.

Introducing power relations into the multi-governance framework has implications for the evaluation of dependency and autonomy. Power relations are always two-directional, involving autonomy and dependency for both sides, even where power is distributed unevenly Giddens (1979). A consequence of this is that severing a relationship of dependency may implicate a loss of autonomy as well. In the case of European social dialogue, dependence on the European institutions to implement the outcome of negotiations via a Directive at the same time implies autonomy for the European social partners in relation to their national affiliates in order to realise implementation. The autonomy the European social partners attain through taking responsibility for implementing the agreements they conclude at the same time increases their dependence on their national affiliates. For instance, national affiliates which were reluctant to agree a mandate for a given negotiation are now also in a position to frustrate its implementation.

2.   Multi-level governance and European social dialogue

Drawing on above analysis leads us to consider European (sector) social dialogue as a constellation of horizontal and vertical relationships as pictured in Figure 1. At the horizontal (EU) level ESD and EESD first of all concern horizontal relationships between European cross-sector and sector employers' organisations and trade unions. From the dynamics between these two sides, framework agreements (and other texts) may result. As mentioned earlier, two types of horizontal dependency relations with the European institutions are of importance. One is that the 'shadow of hierarchy' may play a crucial role in agreements coming about in the first place. Second, the European institutions are needed if the social partners want to achieve the transformation of their agreement into a Directive. In addition, a more basic dependency exists between the private actors which constitute the ESD and ESSD on the one hand and the EU's public institutions, in particular the European Commission, on the other. Both the ESD and the ESSD are dependent on the Commission for the resources that makes their functioning possible in the first place. The Commission finances their meetings, studies and other activities without which ESD and ESSD committees would not be able to meet and operate. In the ESSD the dependence on the Commission has an additional dimension, concerning the mix of private and public actors involved (Léonard 2008). In formal terms, the ESSD is – like the ESD - a bi-partite process involving private actors. Yet public authority, in the form of the Commission, is deeply implicated in its functioning. The establishment of ESSD in any given sector is dependent on Commission authorisation, according to criteria established by the Commission.

The vertical concerns relationships between the ESD-ESSD and the member state level. In formal (de jure) terms, the ESD relies on national (cross-sector) social partners for the mandate to engage in a European-level negotiation and, in the case of autonomous agreements, the subsequent implementation of the resulting outcome. In equivalent vein, the ESSD relies on the sector social partners at national level in respect of mandate to negotiate and subsequent implementation (if relevant). Yet, the relationship between the European and

national social partners is non-hierarchical and, as established above, there is no top-down articulation mechanism. Indeed, social partners at the national level may have different preferences or priorities to their European counterparts. Hence, implementation is not guaranteed and ESD and ESSD are dependent on the cooperation, preferences and resources of national level actors that they cannot exercise control over and that will differ substantially across the EU.

Figure 1: European social dialogue – European sector social dialogue as multi-level governance
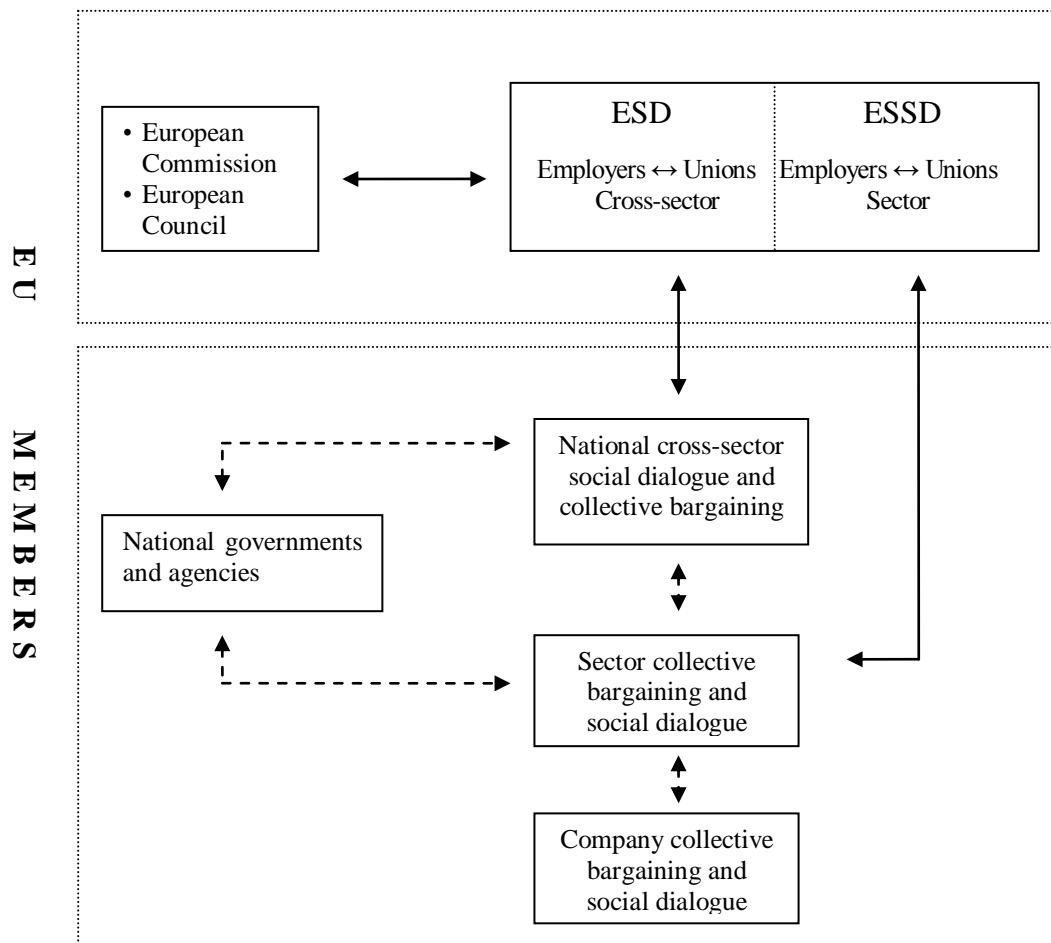
Moreover, de facto, the national social partners directly implicated by an autonomous agreement emanating from the ESD or ESSD, respectively, may be reliant on actions by other parties not involved in the process to secure implementation. Whether, and to what extent, this is the case depends on national institutional arrangements, which vary considerably. Under the ESD such a situation may arise where there is no institutional capacity or formal competence for negotiation at national, cross-sector level, and implementation rests on the actions of social partner organisations at sector level, or the parties at company level. Under the ESSD, the equivalent situation arises where there is no institutional capacity for negotiation at sector level nationally, and implementation rests on the actions of the parties at company level. In either instance, national social partners turn to their national governments and request them to implement agreements through national legislation; a request to which

governments may or may not respond favourably[2]. National implementation may also have to rely on specialised national agencies like occupational insurance bodies or labour inspectorates.

From this analysis we can conclude that insofar as autonomous agreements increase the autonomy of the European social partners in respect of the European institutions, that they also entail relationships of dependency for their implementation, on social partners and governments in the member states. This seriously questions the prevailing reading of the evolution of the European social dialogue as moving from dependency to autonomy, something which is reinforced by the following section's review of the trajectory of agreements concluded under the ESD and ESSD. In the next section we will examine if there is indeed a shift from dependent to autonomous agreements. We then turn to demonstrate the potential of a multi-level governance perspective in informing analysis of the dynamics of the ESD and ESSD with a more empirical illustration of the issues discussed above. For the cross-sector level we will focus on the experiences with the autonomous agreements, whereas at the sector level we will examine the experiences with the new generation joint texts.

3.   From dependent to autonomous agreements?

A first issue to be resolved is if there is indeed a move from agreements implemented by Directives to autonomous agreements. Table 1 provides an overview of the agreements resulting from ESD and ESSD. Where the ESD is concerned, three Directives were adopted based on framework agreements in 1996, 1997 and 1999, while in 2009 an agreement was negotiated to revise the 1996 Directive on parental leave. Four autonomous agreements have been agreed, all in the 2000s. At first sight, this indeed suggests a move from a practice of implementation of ESD agreements through Directives to one of autonomous agreements. The 2009 agreement on the parental leave Directive to some extent contradicts such a trend, even though it concerns the revision of an earlier agreement. However, for the moment only four agreements of either type have been concluded and the conclusion of one further agreement to be implemented through a Directive would fatally undermine the linear portrayal.

Moreover, the picture changes substantially when we consider also the EESD. Here six agreements have been implemented through Directives in the period 1998-2011 and six through the national procedures and practices mechanism. Yet two of the most recent framework agreements, concluded in 2009 and 2010 respectively, have both been implemented through a Directive. In short, there is no evidence of any shift from binding to autonomous agreements under the ESSD. Hence, taking the ESD and ESSD agreements together in terms of the number of agreements concluded, we cannot speak of a clear trend

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[2] In such a national adoption process it is of course possible that actors renegotiate the original agreement to some extent.

from agreements implemented through a Directive to autonomous agreements. In terms of scope, it might argued that the Directives emerging from the ESSD are of less importance since they each cover only a small part of the economy and labour market. Nonetheless the ESSD experience clearly indicates that in the future we may expect new Directives to emerge from framework agreements.

Table 1:   Framework agreements resulting from European social dialogue–European sector social dialogue

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Cross-sector ESD

Agreements implemented by Council Directive
- Framework agreement on parental leave (revised) (2009)
- Framework agreement on fixed-term contracts (1999)
- Framework agreement on part-time work (1997)
- Framework agreement on parental leave (1996)

Autonomous agreements
- Framework agreement on inclusive labour markets (2010)
- Framework agreement on harassment and violence at work (2007)
- Framework agreement on work-related stress (2004)
- Framework agreement on telework (2002)

Sector ESD

Agreements implemented by Council Directive
- Framework agreement on prevention from sharps injuries in the hospital and healthcare sector (2010)
- Framework agreement on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (2009)
- Framework agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (2005)
- Framework agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation (2000)
- Framework agreement on the organisation of working time of seafarers (1999)
- Framework agreement on some aspects of working time of rail workers (1998)

Autonomous agreements
- Framework agreement on competence profiles in the chemicals industry (2011)
- Framework agreement on the implementation of European hairdressing certificates (2009)
- Framework agreement on the reduction of workers' exposure to the risk of work-related musculo-skeletal disorders in agriculture (2006)
- Framework agreement on workers' health protection through the good handling and use of crystalline silica and products containing it, 14 industrial sectors (2006)
- Framework agreement on the European licence for drivers carrying out a cross-border inter-operability service (2004)
- European agreement on vocational training in agriculture (2002)

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4. EU cross-sector social dialogue: Autonomous agreements

Experience of the negotiation and implementation of the autonomous agreements on teleworking (2002) and work-related stress (2004) concluded under the European cross-sector social dialogue[3] underscores the challenges posed by non-hierarchical multi-level governance arrangements in framing and enacting measures which have the effects intended. Of particular interest from a multi-level governance perspective are the consequences and problems arising from the coupling of the European and national levels involved in Article 155's implementation mechanism via 'national procedures and practices specific to management and labour and the Member States'.

Interaction between the European and national levels occurs at different stages of the Article 154-155 negotiation and implementation procedures: the framing of the substantive negotiations; the procedural decision between the two possible implementation routes under Article 155 (giving an agreement binding force via a Directive or invoking 'national procedures and practices'); and the subsequent implementation of autonomous agreements within member states. The framing of the negotiations requires national member organisations to give their respective European social partners a mandate to negotiate on the issue in question. On telework, negotiations were prompted by proposals originally initiated by the Commission. The incentive for the social partners to contemplate negotiated European-level regulation on this, and the subsequent topics of work-related stress and workplace violence and harassment, probably lies in their status as newer industrial relations issues which are not (yet) subject to comprehensive regulation at national level. There are transaction costs advantages for national employer organisations and trade unions in framing a common approach at European level, and avoiding the additional resources involved in developing parallel initiatives in each member state (Léonard et al., 2007; Marginson and Sisson, 2004). In the case of teleworking, the reasons why the social partners opted to negotiate with a view to implementation via the hitherto unused 'national procedures and practices' route reflected power, but also other considerations. According to Larsen and Andersen (2007), BusinessEurope (then UNICE) and CEEP would not countenance a binding agreement, whilst ETUC was initially divided between one group of affiliates which sought a binding agreement and another which preferred an autonomous agreement. The choice of implementation method, however, seems also to have 'reflected social partners' common wish to achieve increased autonomy from the European Commission and to show that they still had a role to play despite their failed attempt to reach an agreement on agency work [in 2001]' (Larsen and Andersen, 2007: 184).

As a coupling mechanism, the 'national procedures and practices' implementation route is – by design – framed so as to accommodate diverse forms of implementation across countries,

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[3] Reports on the implementation of the 2007 agreement on harassment and violence at work have yet to become available; whilst the 2010 agreement on inclusive labour markets has yet to become the focus of any evaluation of its implementation.

reflecting the diversity of national industrial relations arrangements. From a multi-level governance perspective the mechanism is consistent with the efficiency principle underpinning 'organised decentralisation' within national systems (Traxler, 1995): the central actors agree on the principles and/or provide a steer, and leave decisions on the detail and implementation – which because of national diversity and therefore complexity risk jeopardising central-level agreement on the principles - to actors at lower levels. Consistent with this, both the 2006 joint evaluation of the implementation of the teleworking agreement undertaken by the social partners and the European Commission's own subsequent assessment find considerable variation in the mode of implementation amongst the 25 member states concerned (implementation in Bulgaria and Romania was still underway) (European Commission, 2009: Table 5.2). The diversity apparent also points to differing mixes in terms of the respective roles of private actors – the social partners – and the public authorities. These different modes include national legislation, including incorporation in the Labour Code (e.g. Czech Republic, Hungary, Poland); inter-sector collective agreements, subject to legal extension (e.g. Belgium, France); sector collective agreements (e.g. Denmark); joint guidelines intended to prompt sector- and/or company-level negotiations (Finland, Spain); drawing-up model company agreements (e.g. Germany – some sectors only); adoption of joint guidelines and codes of good practice (e.g. Sweden, UK). Considerable variation in implementation mode is also evident from both the social partners 2008 joint evaluation of the implementation of the work stress agreement, and the European Commission's (2011b) own subsequent evaluation report. Legislation was again the main implementing instrument in several member states (e.g. Czech Republic, Hungary, Poland); binding inter-sector agreements featured in others, subject to legal extension (e.g. Belgium, France, Romania); joint recommendations intended to prompt sector- and/or company-level negotiations featured in two (Finland, Spain); adoption of joint guidelines and codes of good practice were adopted in several (e.g. Sweden, the UK). Whilst in almost all countries the preferred mode of implementation was the same for both agreements (European Commission, 2011: Box 6.6), the fact that social partners in four countries – Bulgaria, Estonia, Lithuania, Malta - have not reported on the implementation of either agreement underlines the dependence of the European social partners on the subsequent (in)action of their national affiliates.

This diversity of modes of implementation is, however, only partly attributable to the diversity in what might normally be considered 'national procedures and practices' (Larsen and Andersen, 2007; Visser and Ramos Martin 2008; Deakin and Koukiadaki 2010; Prosser, 2011). This draws attention to problems with operationalisation of 'national procedures and practices' as an implementation mechanism. Four kinds of problem have been identified (Larsen and Andersen, 2007; Prosser, 2007, 2011).

First, are countries where the implementation mode adopted would seem to differ from conventional notions of the 'national procedures and practices' concerned. In this respect Larsen and Andersen cite Germany, where a mix of methods have been used, including sector collective agreements (e.g. local government and metalworking, corresponding to the conventional procedures and practices), drawing up model company agreements, joint

declarations and the adoption of guidelines, and Sweden, where joint guidelines agreed at cross-sector level encouraged, but did not require, the conclusion of sector-level collective agreements (seen as the conventional procedure and practice). Indirectly this raises the second problem, which particularly arises in countries where sector-level agreements are a cornerstone of labour market regulation. 'National procedures and practices' may rely largely on (sector-level) actors not involved in the negotiation and implementation of the autonomous agreement. Conversely, the cross-sector social partners who are directly implicated may not have domestic competence to conclude collective agreements. This applies to Denmark, as well as Germany and Sweden, where Prosser (2007) details how contestation arose between the national social partners over whether to conclude a cross-sector agreement recommending that their sector affiliates negotiate agreements. Ambiguities in the framing of the implementation mechanism thereby create scope for power relations to come into play. Third, Prosser (2007) goes onto show how these ambiguities were exacerbated by previous interaction between European and national levels, since in Denmark the practice of a cross-sector 'follow-up' agreement, as eventually concluded in the case of telework, was itself introduced into the Danish system as a means of implementing earlier binding agreements.

Fourth, are countries where national procedures and practices are not well-defined, leaving scope for contestation to emerge over implementation mode but also for choice and for innovation. Prosser (2011) cites the UK and many of the central east European member states as corresponding to this situation. These countries have neither strong national-level social dialogue structures and traditions, nor are sector-level collective agreements a central form of labour market regulation – either of which would constitute a well-defined national procedure and practice. Implementation of the teleworking and work-related stress agreements in the Czech Republic and Hungary was, at the request of the social partners, effected through the Labour Code. This choice was in fact consistent with established practice in both countries of social partner consultation over changes to the Labour Code. In contrast, in what amount to an innovatory departure, the UK social partners concluded advisory guidelines on both occasions. On both occasions, the views of the peak employers' (CBI) and trade union (TUC) organisations differed: the TUC's proposal for an inter-sector agreement was opposed by CBI on the grounds, amongst others, that there was no such tradition in the UK. The TUC was unable to mobilise the pressure required to secure its preferred course of action, and the alternative approach of agreeing non-binding guidelines – equally unfamiliar to UK tradition – was adopted (Prosser, 2011). Crucially, the absence of well-defined national practices and procedures meant that the national social partners in these countries face choices, which they exercised differently – with power relations shaping outcomes.

In addition to the dependency relationship between the European social partners and their national affiliates which is central to the national procedures and practices implementation mechanism, consideration of problems arising in its operationalization bring to the fore the indirect dependencies depicted in Figure 1. These include sectoral employer and trade union organisations and also national governments.

Even if these various shortcomings in specifying the coupling between European and national levels were to be addressed (and it is not at all clear how the fourth, the absence of well-defined national procedures and practices, might be dealt with), the effect on policy and practice within companies and organisations would continue to rely wholly within the province of national level actors, underlying the dependency of the European social partners on their national counterparts. On this issue, the 2005 multi-sector agreement on crystalline silica, concluded under Article 155, but which does not rely on the 'national procedures and practices' transposition and implementation mechanism, goes considerably further (European Commission, 2008; Léonard et al., 2007). Concluded between European employer and trade union federations representing 14 sectors, the agreement specifies a range of good practices to be implemented at sites across these sectors. To this end it directly implicates the company level in implementing and monitoring the agreement, through the establishment at each site of a joint monitoring committee comprised of employer and employee representatives charged with promoting the good practices identified in the agreement, and periodically reporting to the European-level parties. In this way, the coupling between the European and national levels by-passes the national (sectoral) organisations, reaching down instead to the local level.

5.   European sector social dialogue: New generation joint texts

The experience of the ESSD points up the further challenges that are posed in giving effect within member states to regulatory initiatives which do not come under the negotiation and implementation provisions specified in the Treaty. Reviewing findings from two studies of the European sectoral social dialogue (ESSD), Léonard (2008) draws attention to two problematic features. First, concerning the governance potential of ESSD, Léonard reports that the social partners tend to hold rather different notions of the concept of 'social dialogue'. Employers' organisations tend to interpret dialogue as an exchange of views with a general presumption that it should not lead to regulation, whereas trade unions see dialogue as extending to negotiation and hold the aspiration that it may result in regulatory measures which have effects[4]. These differing perspectives are consistent with the idea of contestation over the role and outputs of these sector-level governance arrangements.

Second, is the relationship with national industrial relations structures, and the social partners' national member organisations. Léonard highlights the nature of the coupling between national and European levels, which – as with the ESD - is non-hierarchical in nature being two-directional rather than top-down. ESSD committees are constrained in the scope of their agenda and their capacity to contemplate regulatory initiatives on the mandates that national member organisations are prepared to give them (as well as on the resources made available by these organisations, and by the Commission). In turn, transposition and effective implementation of any joint texts and agreements concluded by ESSDs 'largely depends on

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[4] This equally applies to the ESD.

domestic dynamics over which the European social partners have little influence' (Léonard 2008: 408).

It is against this context that the period since 1998, when the ESSD was formally reconstituted by the Commission, has seen the emergence of 'new generation joint texts' characterised by increased emphasis on follow-up procedures involving monitoring and peer review, aimed at better ensuring transposition and effective implementation at national level (European Commission, 2004). According to the Commission, the development embraces both framework agreements concluded under Articles 154 and 155 – either binding or autonomous – and 'process-oriented' texts such as frameworks of action, codes of conduct and guidelines. Whilst it remains the case that no more than ten framework agreements have been concluded under the ESSD (see Table 1.1), 55 process-oriented texts were concluded between 1999 and 2009 (Pochet et al., 2009; Weber, 2010), with the incidence accelerating over the period, although the number of committees also increased from 24 to 40 in this period. Six types of follow-up procedure, sometimes used in combination, are identified by Pochet et al. (2009) amongst the texts concerned, which vary in the extent of the obligation they introduce on member organisations to report on implementation. At the 'harder' end of the spectrum are annual or periodic written reports, which through transparency and peer review, entail the strongest obligation to demonstrate follow-up, whilst at the 'softest' end of the spectrum are presentations of good practice. Pochet et al. (ibid.) note that the extent of the follow-up obligation tends also to be related to the nature of the process-oriented text, being strongest for frameworks of action and least so for guidelines.

In multi-level governance terms, these procedures aim, to differing extent, to tighten the coupling between European and national levels. Indeed, Léonard (2008) confirms such intention of on the part of the parties at European level: representatives of both employer and trade union federations interviewed saw transposition and effective implementation at national level as crucial for the long-term credibility of the ESSD. Yet practice would seem to fall some way short of intentions. In a study of ESSD in the electricity and commerce sectors, Weber (2010) concludes that inadequate 'level linkages' of two kinds are a major impediment to implementation of new generation texts in these sectors. Concerning the linkage between EU and national levels, she identifies the key role of the secretariats of sectoral European-level trade union and employer organisations in informing and communicating with national affiliates, and in steering their implementation activity. However, such activity tends not to be reciprocated in the other direction: the European-level organisations encounter considerable difficulty in eliciting information from national affiliates when monitoring implementation. This relates to the nature of a second, horizontal, linkage at national level. Frequently awareness of ESSD is low or minimal, being confined to a single department or individual official in national affiliates. Put differently, ESSD would seem to remain detached from the mainstream activity of national social partner organisations.

Insofar as the follow-up procedures have the effects intended these are likely to be more apparent in some countries than others, reflecting the diversity of industrial relations arrangements in any given sector across the EU. Attitudes to non-binding agreements and

texts are, for example, more positive amongst affiliates in Denmark, where collective agreements are not legally binding but widely upheld, than they are amongst their counterparts in Germany, where collective agreements are legally binding and non-binding texts tend to be viewed as optional (Weber, 2010). In those member states where sectoral structures for social dialogue and/or collective bargaining – and even member organisations - are weak or absent, including many of the central eastern European countries, but also the UK, the capacity to ensure transposition and implementation is evidently limited. In contrast, in those countries where sector social dialogue and/or collective bargaining are well established such capacity exists and can be mobilised, as, for example, evidenced by the negotiations prompted in several countries by the 2002 agricultural sector agreement on vocational training (Léonard, 2008).

Conclusions

The evolution of European social dialogue since its inception is often interpreted as a process that is moving from dependency on the European institutions, towards more autonomy based on autonomous agreements. In this paper we have shown that such a linear and one-dimensional view does not correspond to either empirical reality or the complexity of relationships that constitute the European social dialogue and the negotiation and implementation of its agreements.

Empirically, taking together the experience of the ESD and ESSD we cannot observe a trend away from agreements implemented by Directives and in favour of autonomous agreements. Even if the observation is confined to the ESD, the 2009 Directive giving effect to the revised parental leave agreement disrupts the trajectory which would constitute such a trend.

Whilst the negotiation and implementation of autonomous agreements may entail more autonomy from the European institutions, we have shown that their implementation also involves new dependencies on social partners and governments in the member states, reflected in a wide diversity of modes of implementation. The dependency or autonomy dichotomy presented in the conventional reading is a false one: negotiated regulation emanating from the European social dialogue rests on two-directional relations, between the European and national levels involving autonomy and dependency at the same time. It also involves differing forms of horizontal interdependency between private actors – the social partners – and the public authorities according to the different institutional arrangements which prevail in member states. Further, implementation can also – in certain member states – rest on indirect dependencies in the shape of actors which are not directly implicated in the process, such as sectoral employer and trade union organisations. Power relations, which are conspicuously absent in the conventional reading, are integral to the playing out of the multiple interdependencies which characterize European social dialogue as a mode of governance.

Grounding our analysis in a multi-level governance perspective has enabled us to capture key features of the two-directional vertical and horizontal relationships which European social dialogue involves. These include the central implication of the non-hierarchical vertical relationship between the European and national levels, which renders implementation of autonomous agreements dependent on the variable institutional geometry of national industrial relations; and the ambiguities in the specification of the coupling between the European and national levels which have arisen in operationalizing the Treaty's 'national practices and procedures' implementation provision. The analysis also indicates ways in which the horizontal and vertical planes of interdependency which epitomise multi-level governance interact. As compared to binding agreements implemented through a Directive, autonomous agreements entail less horizontal interdependency at the European level (dependence of the European social partners on the European institutions) but greater vertical interdependency between the European and national levels, and possibly also increased horizontal interdependency at national level to the extent that national governments are called on to act. The outcome of these interactions is not predetermined, but shaped by the preferences and power resources of the actors; contestation is an inherent feature of multi-level governance arrangements, as our analysis has demonstrated. For this reason, multi-level governance arrangements are also a source of uncertainty in terms of the regulation that eventually results.

The central implication of our analysis of European social dialogue for existing conceptual work accounting for multi-level governance (e.g. Hooghe and Marks, 2001) flows from the attention accorded to power relations, and hence the interplay between autonomy and dependency, in shaping governance arrangements and outcomes. Insofar as multi-level governance arrangements provide actors with choices and attendant scope for manoeuvre, our analysis concludes that outcomes will be contested with actors deploying their respective power resources to secure relative advantage. Considerations of power, as well as those of transactional efficiency and democracy, are essential to understanding the dynamics of multi-level governance arrangements.

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