

# The European Social Dialogue facing Digitalising

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# The European Social Dialogue

- **Definition**

*European social dialogue refers to discussions, consultations, negotiations and joint actions involving organisations representing the two sides of industry (employers and workers). It takes two main forms:*

- *a tripartite dialogue involving the public authorities,*
- *a bipartite dialogue between the European employers and trade union organisations. This takes place at cross-industry level and within [sectoral social dialogue committees](#).*

<https://ec.europa.eu/social/main.jsp?catId=329&langId=en>

# The European Social Dialogue

- Two levels of Dialogue
- A variety of outputs

# The interprofessional level

- Relevant interprofessional agreements :

*-Framework agreement on Telework (2002)*

TELEWORK is a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employers premises, is carried out away from those premises on a regular basis. (reversibility, equipment, health and safety, equality, data protection, privacy, workers' representation)

*-Framework Agreement on Work related Stress (2004)*

# The interprofessional level

- Prospects

Social Partners Work Programm **2019-2021**

## 1. Digitilization

*In the world of work, digitalisation can be an opportunity and a challenge. The whole world, and particularly Europe, is currently facing a fundamental transformation in the world of work. Many aspects of the ongoing digitalisation process are not yet clear or understood. The European social partners will organise a joint **fact-finding seminar** where they will explore different experiences relating to issues, such as the **acquisition of digital skills, work organisation, including possibilities and modalities of connecting and disconnecting, and working conditions**. They will negotiate an **autonomous framework agreement on digitalisation***

# The interprofessional level

## 3. Skills

*A skilled workforce is one of the main assets of the European social and economic model. Rapid labour market changes such as the industry 4.0 revolution, digitalisation, social, demographic and environmental transitions and global challenges require joint actions on improving education and training systems in a way that fosters innovation and enhances employees' re-skilling and up-skilling. Social dialogue and collective agreements play an important role in the governance of training systems, in creating training opportunities and in improving the relevance and provision of employee training. In this context the European social partners, building, amongst others, upon their joint work in the framework of actions for the lifelong development of competencies and qualifications, will undertake a project on innovation, skills, provision of and access to training. **A fact-finding seminar** will be organised in 2019 and a **research report** will be prepared by end of 2021.*

- See also :
- [https://www.etuc.org/sites/default/files/publication/file/2019-04/2019\\_new%20trade%20union%20strategies%20for%20new%20forms%20of%20employment\\_0.pdf](https://www.etuc.org/sites/default/files/publication/file/2019-04/2019_new%20trade%20union%20strategies%20for%20new%20forms%20of%20employment_0.pdf)

# The interprofessional level

- BOTH agreements are autonomous in view of their genesis and implementation
- COM (2008) 421 final

*Autonomous agreements cannot guarantee uniform outcomes, binding status and full coverage in all countries; they simply provide an overall framework and cannot enforce minimum labour standards or fundamental social rights*

Not part of the *acquis communautaire*, no CJEU case law

# The sectoral level

- Two relevant sectoral committees :
  - a) Insurance
  - b) Banking
- Two topics :
  - a) Telework
  - b) Digitalisation
- One type of document : *Joint declaration*



# The sectoral level

- *In liminis* : Joint Declaration

- Suggestion of an analysis by social partners, of a description rather than of a set of prescriptive provisions, reflections
- Joint Declaration on Telework (insurance) sector refers to Annex 2 COM (2004) 557 final

**Joint opinions** This category includes the majority of social partner texts adopted over the years such as their joint opinions and joint statements, which are generally intended to provide input to the European institutions and/or national public authorities. These include texts which respond to a Community consultation (green and white papers, consultation documents, Communications), which adopt a joint position with regard to a given Community policy, which explicitly ask the Commission to adopt a particular stance, or which ask the Commission to undertake studies or other actions.

**Declarations** This category refers to texts which are essentially declarations – usually directed at the social partners themselves - outlining future work and activities which the social partners intend to undertake (e.g. the organisation of seminars, roundtables, etc).

- Joint Declaration on the social effects of digitalization (“intends to frame potential further dialogue at national level and stimulate public debate”)

# The sectoral level

- BUT :

Some of the analyses are legal analyses

Some of the instruments contain commitments for signatory partners and describe rights and obligations for employers and workers

- NONE of these instruments has been implemented by a directive

# Issue 1 : Telework

- Follow up of the Interprofessional Agreement (2002)

Insurance : 2015

Banking : 2017

- Definition :

Tasks performed from home or in satellite offices or any other fixed location on a continuous basis (outside a locally fixed employer environment), with exclusion of smart work (B)

Or

Reference to Telework Agreement (2002) (I), including in-house employees working at distance and ùmobile sales workers and loss adjudicators

# Telework I

- Voluntary and reversible (if not part of initial description)
- Recognition of managerial prerogative to accept demands for telework
- Working conditions should be clarified and equivalent
- Health and Safety concerns can be specific, but access to telework needs to be guaranteed

# Telework B

- Voluntary and reversible (employer and employee)
- The employee has a right to demand
- Working conditions should be clarified and equivalent
- Health and Safety concerns can be specific, but access to telework needs to be guaranteed

# Telework I

- Very precise provisions on equipment :
  - employer's or employees?
  - support facility
  - compensation of costs of employee's equipment
- There is an issue of Privacy , Data protection (GDPR) versus monitoring and cybersecurity
- A right to training

# Telework B

- Less prolific on equipment (just rules stated in advance)
- There is an issue of Privacy , Data protection (GDPR) versus monitoring and cybersecurity
- A right to training (including how to deal with isolation)

# Telework I

- Collective rights
  - No limits on communication with reps
  - teleworker is technically assigned to an establishment
  - they can stand and vote
  - they count for the sake of thresholds
  - Introduction of telework needs to be made subject to INFO and CONS

# Telework B

- Collective rights : less substantiated
  - they can stand and vote
  - they count for the sake of thresholds

# Issue 2 : Digitalization

- No reference to previous intersectoral social dialogue, but perhaps a source of future inspiration?
- Insurance Sector (2016) more prolific
- Banking Sector (2018)
- The joint declarations are much less legalistic than the instruments on telework
- No genuine definition of digitalization
- Digitalization is linked to the introduction and the recourse of platforms and eco-environments, AI

# Issue 2 : Digitalization

- Labour law Issues linked to Digitalization :
  - Data protection and Privacy (cf GDPR) : a joint responsibility to uphold the GDPR
  - there is a huge responsibility for the employers to uphold the employability of their workforce through (re) training, including managers (I)
  - Digitalization is disruptive for the Time and Place of Work : a balance is needed between interests of customers, workers and employers
    - a) More work outside business hours and outside work premises
    - b) Working time regulations need to be respected
  - Digitalization is a challenge to the organization of the workforce