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The EU's Promotion of Social Dialogue in the New Member States

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Introduction

Although the Treaty on the Functioning of the European Union (TFEU) provides explicit competence for the EU to promote social dialogue only in relation to the European level, the Union has also encouraged such dialogue at the national level. This has been particularly the case in relation to the development of industrial relations systems in the candidate and new Member States (NMS). In this paper we will first look at why the EU got at all involved with IR in the enlargement countries (section 2). It is argued that a developed social dialogue is considered a stabilising factor for economic and social cohesion in these countries and in the single market, as well as a necessary condition for the European social dialogue to function effectively. The (lack of) strong industrial relations infrastructure in the countries of Central and Eastern Europe (CEE) has proven particularly challenging in this respect.

Social dialogue has therefore been proposed to the candidate countries as a criterion to join the EU. However, there are inherent limits to how social dialogue can be set as a conditionality requirement for EU membership; due to a lack of a single industrial relations model and a coherent normative theory; and because of the principle of autonomy of industrial relations and a weak binding social acquis on IR (section 3). In section 4 we analyse how the EU, and in particular the European Commission, has nevertheless given a maximalist interpretation to the 'social acquis', mainly by reference to the 'administrative' or 'institutional acquis' needed to implement it. In this way, the Commission aimed to strengthen the IR infrastructure in the candidate countries, although it was more a practice of persuasion than a stringent condition to join the EU. Having an established IR infrastructure has never been a stringent condition for membership in a way that for instance political and judiciary institutions and principles of free market economy have been.

The inherent limits in requiring such an infrastructure and the fact that IR systems cannot simply be established by decree but require bottom-up development imply that the EU has paid particular attention to providing funding for capacity building. With the support of the European and national social partners organisations the social partners' representatives in the candidate and new Member States are expected to learn from their counterparts in the old Member States (section 5).

Why the EU got involved in promoting IR in candidate and new Member States

The state of industrial relations in CEE¹

There are significant differences between the various CEE States (the EU10) in the way industrial relations are structured. It is beyond the scope of this paper to deal with all these countries separately. However, one can identify some common characteristics that make social dialogue and social partnership in these countries considerably distinctive from that in the old Member States (Mailand and Due 2004), which can explain why the EU has been concerned with promoting social dialogue at the national level particularly in the context of enlargement. Industrial relations in the EU10 are characterised by the weakness of the social partners and the strong dominant position of the state; a preference for national level tripartite action and the absence or underdevelopment of social dialogue at sectoral and company level (Pérez-Solórzano Borragán 2006). This state of affairs is explained by the 'reaction to and a legacy of the communist system of the past, and as the expression of a highly individualistic neo-liberal approach' (Weiss 2004:7) but also by the very dynamics of post-communist politics that brought about the decline of trade unions that lost membership, density, workplace influence and bargaining power (Ost 2011:169).

Trade unions have moved from a monistic system controlled by the communist party to a situation of economic pluralism where they are unable to achieve representation in the small enterprises that have proliferated since economic liberalisation. This is problematic in terms of the representativeness and salience of trade unions as these small enterprises are at the core of the new free market economy and employ the largest share of the labour force. At the company level this translates into very limited direct workers' participation in typical consultative fora such as

¹ The geographical remit of this paper is concerned only with the new members from Central and Eastern Europe, thus not including Cyprus and Malta.

works councils. This absence of sufficient workplace representation is one of the factors explaining the low levels of unionisation², a dynamic that is also evident in the EU15³ but that is more exacerbated in the EU10. Employers' organisations face similar challenges with very low levels of membership particularly amongst the small business entrepreneurs in the private sector, although membership density is higher than that of the trade unions. The employers' organisations also often lack the authorization of their affiliates to undertake binding commitments. They focus their efforts on lobbying policy rather than developing dialogue with trade unions (European Foundation for the Improvement of Living and Working Conditions 2008:12). Both trade unions and employers' organisations lack sufficient resources and organisational capacity. While the available financial resources are sufficient to maintain daily operations, there is not sufficient funding to allow social partners to pursue crucial aspects of capacity building such as modernisation, education or the development of international partnerships (European Foundation for the Improvement of Living and Working Conditions 2008:15). Social partners often lack sufficient expertise and knowledge about the relevant employment legislation to meaningfully engage in social dialogue although the situation is worse among trade unions.

As a consequence, the government retains a dominant position within the weakly developed industrial relations systems of the EU10. Collective bargaining takes place mainly at the level of national tripartite action. With the exception of Hungary⁴, the national economic and social councils are the main structures in which tripartite social dialogue takes place in the EU10. However, such councils have an advisory function, dealing with issues such as minimum wages, pensions; taxation; employment politics and legislation; and administration of social insurance systems and vocational training programmes (European Foundation for the Improvement of Living and Working Conditions, 2008:7), but are not suited for adopting binding cross-sectoral agreements. Even in countries where social pacts have been concluded, such as Hungary or Poland, the commitment to implementation is very low.

² While there is a general tendency to a decrease in trade union membership across the EU, trade unions in Lithuania, Estonia, Slovakia, the Czech Republic and Poland have experienced the largest decline in membership since 2000 in percentage terms with trade union density in 2008 varying from 68.8 % in Sweden to 7.6 % in Estonia (European Commission 2011:9).

³ The old Member States who joined the EU in several waves before 2004.

⁴ Hungary is the exception as the main tripartite forum is the National Interest Reconciliation Council while there is no legislation regulating social dialogue. (European Foundation for the Improvement of Living and Working Conditions, 2008:27)

Collective bargaining in the EU10 in fact affects a very small portion of workers, around 37%, as opposed to 72% in the EU15. Only Slovenia has a solid infrastructure for the adoption of bipartite binding cross-sectoral agreements. At the sectoral level the situation is even more problematic, with most countries having a weak sectoral dialogue, and others lacking such a dialogue all together. Company-level collective agreements are more important than sectoral collective agreements, but are most common in medium to large enterprises, in particularly in the larger formerly state-owned enterprises (European Foundation for the Improvement of Living and Working Conditions, 2008:75; Vaughan-Whitehead 2007:57).

Why the state of IR in CEE is a matter of concern for the EU

The industrial relations systems in CEE were a cause of concern for the EU at the time of enlargement and remain a challenge today. Firstly, although industrial relations systems vary considerably from country to country, most old Member States consider social partnership an important aspect of social cohesion in modern democracies. The absence of well developed industrial relations systems is perceived as being at the expense of the stability of the politico-economic system. Secondly, involvement of employers' organisations and trade unions in aspects of policy-making is also thought to increase governability, not only in terms of social and political stability but also in terms of better policy implementation. Social partners play an important role in the implementation of policies of different nature, in particular in the economic and social domain. In some of the old Member States the social partners have, for instance, been assigned a role as service provider in the distribution of welfare benefits, or ensure the control and monitoring of health and safety protection. Thirdly, in the same way that social partners can play a role in the implementation of national policies, they are equally expected to contribute to the implementation of the *acquis communautaire*. Without the involvement of the social partners, the implementation of the *acquis communautaire* risks to be limited to the transposition of European regulation into national legislation without putting it into practice. As Weiss suggests 'the legalistic approach still commonly founded in the CEE States, whereby a problem is regarded as having been solved if a law or regulation has been passed to deal with it' (Weiss 2004: 10). European social policy legislation frequently assigns a role for the social partners to implement European legislative provisions by way of bipartite action allowing for tailor made solutions. While such European

legislation leaves social partner initiative generally as an option rather than an obligation, the absence of strong bipartite structures to take up this option reduces much of the European legislator's flexibility placing the responsibility finally entirely on the national governments. Moreover, European policy-making is increasingly relying on policy instruments, such as the Open Method of Coordination, which depend on the involvement and persuasion of stakeholders, rather than on prescriptive rules that can be sanctioned in court. If these stakeholders, such as the social partners in relation to employment policy, are not effectively organised to ensure their involvement bottom-up, such types of 'persuasive policy-making' risk to remain without any useful effect.

Finally, the weakness of IR in the (new) Member States did not only constitute a risk for socio-economic stability as well as a problem for the successful implementation of the *acquis communautaire* in these countries. Uneven implementation of European policies obviously puts at risk the realisation of the internal market. Moreover, the EU's engagement with promoting social dialogue in the new MS was also inspired by the fact that their weak IR systems may undermine the social dialogue at the European level. The weak organisational features of the social partners in CEE undermines the representativeness and action capacity of the European social partners and puts into doubt the representative nature of their collective agreements. At the same time, the weak IR infrastructure in CEE makes the implementation of European collective agreements more problematic. This is particularly the case for autonomous agreements, when implementation is left to the voluntary means of IR, although experience with the first autonomous agreements shows some remarkable willingness of several NMS to compensate for their weak IR infrastructure by implementing such European autonomous agreements by legislative action.

The difficulties to set requirements for IR in the candidate countries

While the state of IR in the countries of CEE was surely a concern for the EU, it was less clear how and to what extent the EU could formulate the existence of a functioning IR system as a requirement for EU membership. More particularly, it is

unclear what would be the ‘template of IR’ that could be set as example or benchmark.

Industrial relations systems in the EU15 have developed within the specific historical context of the nation state and show important differences in balances between tripartite and bipartite action, and between cross-sectoral, sectoral and company level IR structures. Although it is possible to identify different country groups showing common features – namely, the Nordic, Rhineland, Latin and Anglo-Saxon groups – each industrial relations system is unique. Therefore there is not a commonly agreed model of IR in the EU that may become a template for the EU10 to imitate or transpose.

While this is also the case when it comes to providing the EU10 with templates for political, administrative or judicial systems, the social dialogue suffers from particular normative limitations due to the absence of a coherent normative theory on the desirability and format of IR. The EU’s Copenhagen criteria, for instance, require a candidate country to have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. While there are different ways to comply with such requirement - either through a presidential or a parliamentary system, a majoritarian or proportional electoral system - the commitment to the rule of law, human rights, multi-party system, free and fair elections are all part of a long standing and extensive tradition of democratic thought and theory. However, in the case of IR such common ground is absent. IR systems have developed as a matter of fact without strong accompanying normative theoretical arguments. Although in most of the ‘EU15, the role of trade unions and employers’ organisations in governing socio-economic issues and in dealing with labour market issues within a certain autonomous remit is generally accepted as non-opposed and complementary to modern democratic regimes, their role is accepted rather as a matter of fact than as a matter of theory.⁵

⁵ Corporatist theorists of the 1920s and 1930s got discredited by fascist abuse of it. Theoretical considerations of post world war II development of industrial relations were particularly made in the 1970s and 1980s, but even neo-corporatist writings, which came most close to making normative arguments, would claim ‘defining corporatism in terms of its praxis’ so that ‘the concept is liberated from its employment in any particular ideology or system of ideas’ (Schmitter 1979: 8). See Smismans 2002: 106.

In the absence of clear and agreed theoretical considerations on the desirability and format of social dialogue and social partnership, the task to persuade the EU10 to comply with the industrial relations traditions of the old member states may prove to be more difficult than persuading them to implement criteria of democratic organisation. Vague Commission statements on social partnership being a common tradition or an ‘expression of European democracy’⁶ may not be sufficient.

The desire for democratic reform – and economic prosperity – has been central to the demise of communist rule. In this way, the bottom-up demands coincide with the criteria set by the EU. Such coincidence cannot be assumed in relation to systems of industrial relations. The idea of social dialogue and partnership is not inherent in the common package of democratic thought that inspired changes in CEE. Rather, some aspect of social dialogue and partnership might recall the communist past people wanted to get rid of. Requirements for workers consultation at enterprise level, for instance, are often received with some reluctance, as they may be perceived as re-establishing communist ‘worker-control’. While the free market ideology may fit well with the basics of democracy, there is no automatic evidence for the new Member States that social partnership would equally fit that picture. Moreover, the state of industrial relations in Western Europe points to a ‘post-industrial’ order where trade unionism, collective bargaining and institutionalisation of the employment relationship are in decline. Thus the EU10 have neither a normatively agreed model nor an obvious winning model of IR to imitate (Meardi 2007: 504).

The absence of a clear template for IR, and of an agreed normative discourse to justify it, is coupled with a weak European legal framework for IR at the national level. As we will analyse in more detail in the following section, enlargement conditionality has foremost been constructed on the requirement to implement the EU’s *acquis communautaire*, i.e. the entirety of EU law’s binding provisions. However, in relation to IR infrastructure at the national level, the EU’s binding *acquis* is limited. Although the EU has been given the competence to adopt Directives in the field of ‘representation and collective defence of interests of workers and employers, including determination’(art.153 TFEU) such action is extremely difficult as it requires unanimity in the Council, which is nearly impossible to reach given the

⁶ Commission, Employment and Social Affairs, ‘Promoting Social Dialogue in an Enlarged Europe’, Conference Ljubljana 9-10 January 2004.

divers approaches to IR in the Member States. Hence, the legally binding acquis on IR is mainly limited to provisions on information and consultation of workers at company level, for which the Treaty allows qualified majority voting (art.153 TFEU). There is thus no established binding acquis to impose a particular and overall structure of IR at cross-sectoral, sectoral and company level.

The absence of such a detailed template is obviously also due to the nature of IR. Industrial relations constitute a complex social reality which relies largely on bottom-up processes from civil society. IR cannot simply be created by legal decree. Although State intervention is needed to provide some institutional framework within which industrial relations can operate, the latter is also precisely established to create some autonomy from State intervention and it can only operate as far as the societal forces can provide the bottom-up dynamics for it.

Faced with these limitations, the EU has developed a two-track approach to IR in the candidate and New Member States. On the one hand, and despite the lack of a full and legal template, the European Commission has attempted to influence IR in the candidate countries by giving a broad interpretation to the concept of ‘social acquis’, which we will analyse in the next section. On the other hand, the EU has aimed at contributing to the bottom-up building of an IR infrastructure by supporting capacity-building initiatives for social partners during and after accession, which will be analysed in the final section of this paper.

Social dialogue as conditionality for enlargement: the Commission’s maximalist interpretation of the ‘social acquis’

Despite the lack of a clear template for IR, the EU, and in particular the European Commission have tried to influence the shaping of IR in the candidate countries in the context of the enlargement conditionality process. The EU’s traditional method of enlargement would require the candidate country to adopt the *acquis communautaire*, i.e. the entirety of European binding norms. With the fifth enlargement, the EU developed a more extensive and complex set of conditions for the candidate countries going beyond ensuring the transposition of the legal acquis. The new ‘enlargement acquis’ includes conditions ‘partially designed to address transformation problems and weaknesses of the candidates’ (Dimitrova 2002:175), and refers in particular to an

‘administrative acquis’, i.e. a set of institutions and administrative structures needed to successfully implement the legal acquis, even if there is no explicit legally binding requirement for such institutional infrastructure. In this manner the EU has been able to exercise a substantial influence over the socio-economic and political systems of the countries of CEE as the attractiveness of membership has allowed the Union ‘to pursue broader political goals through its enlargement policy’ (Sedelmeier 2011). However, going beyond the legal acquis, the enlargement requirements become increasingly prone to discretion by the EU institutions. The Commission in particular can act here as a policy entrepreneur in framing criteria for enlargement. This is exactly what happened in relation to the criteria for an IR framework at the national level. The Commission has acted as a decisive policy entrepreneur going beyond the criteria for enlargement set by the Council and building rather discretionary on the legal normative framework of the EU. We will first clarify that requirements for IR have never been part of the core political and economic conditions for enlargement. Moreover, such requirements received only minor attention in the EU’s screening of the ‘administrative acquis’. It has mainly been the Commission’s DG for Employment and Social Affairs which has aimed to frame requirements regarding IR institutions as part of the ‘social acquis’. However, as that social acquis does not include many legally binding provisions regarding IR at the national level, the Commission has developed an extensive interpretation of the social acquis, referring to an institutional or administrative acquis implicitly required to implement the social acquis.

No mention of IR in the political and economic criteria for EU membership

The European Council at Copenhagen in 1993 laid down three groups of conditions for the countries of CEE to join the EU, namely:

- stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities (the political criteria);
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union (the economic criteria);
- the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. This criterion refers to the implementation of the *acquis communautaire*.

An initial reading of the accession criteria shows that the establishment of social dialogue and industrial relations systems at the national level is hardly a priority for accession. Although social dialogue has an important role in socio-economic governance of modern democracies, it has not been included among the political criteria. As argued above, while it is difficult to deny the importance of interactions between government and social partners and the autonomous governance action that the latter may develop, their role has not been thought of thoroughly in terms of democratic theory. As a consequence, the enlargement criteria do not include social dialogue among the political criteria against which a well structured screening exercise takes place.⁷

Neither did social dialogue become part of the economic criteria for membership, which have been further defined in Agenda 2000 for the existence of a functioning economy. These criteria include institutional requirements as an enforceable legal system, a consensus about economic policy, and a sufficient amount of human and physical capital. Despite the strong interrelation between economic governance and systems of industrial relations, and social partners' role in providing consensus on economic policy and building social capital for economic governance, these economic criteria have not explicitly included conditions on industrial relations.

Absent from the political and economic criteria explicitly defined by the European Council, the IR requirements only enter the enlargement criteria by way of the third Copenhagen criterion, namely the implementation of the *acquis communautaire*, and more in particular by a very entrepreneurial interpretation of the *acquis* by the European Commission.

IR having only a minor place in the screening of the administrative acquis

⁷ In order to evaluate the extent to which candidates meet the political criteria, the Commission not only provides a description of their various institutions (Parliament, Executive, and Judiciary), but examines how the various rights and freedoms are exercised in practice. With regard to human rights, the Commission analyses the way in which the candidate countries respect and implement the provisions of the major human rights conventions, including in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms. As regards respect for minority rights and the protection of minorities, the Commission devotes particular attention to the implementation of the various principles laid down in the Council of Europe Framework Convention for the Protection of National Minorities. Measures undertaken by the countries in order to fight against corruption are also examined.

The 1995 Madrid European Council stressed that it is not enough for the candidate Member States to transpose European legislation into national laws, but they need also to ensure the administrative and judicial infrastructure to implement the *acquis communautaire*. The administrative capacity condition for accession means that a candidate country must bring its institutions, management capacity and administrative and judicial systems up to Union standards with a view to implementing the *acquis* effectively in good time before accession. The administrative *acquis*, also termed ‘institutional and administrative *acquis*’ since 1997 (European Commission (1997)) has been characterized by a the lack of clarity about what specifically it implies and what its measurement criteria are, and by the need to develop new horizontal instruments to reinforce the institutional capacities of the candidate countries in the absence of specific legal or institutional templates that would allow for tighter top-down enforcement (see Tulmets 2005, Dimitrova 2002, Malovà and Haughton 2002). This is due particularly to the EU lacking the specific sets of enforceable rules and a specific administrative and institutional model to transfer to the candidate countries given the variations between different member states. At the general level, this requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and effective judicial system to effectively apply the *acquis communautaire*. In practice it also requires ‘a sectoral capacity’ to implement the *acquis* in each policy area and the development of European integration co-ordination structures (Dimitrova 2002:179).

The systematic assessment of the candidate countries' administrative and institutional capacity takes place in the framework of the Commission's Regular Reports. To identify possible criteria, the Commission drew on a number of sources in particular the OECD's SIGMA baseline assessment tool and its own framework developed in the *Agenda 2000* and its *Guide to the main administrative structures required for implementing the acquis* (updated in 2005). However, the concept of administrative and institutional *acquis*, which is more extensive than the legally binding *acquis*, opens the door to the Commission's discretion, and the formulation and implementation of criteria which have neither been explicitly defined through democratic procedure, nor been applied to screen the old Member States' compliance. To safeguard its position, the Commission states in the front page of its *Guide* that it is an ‘informal working document for guidance only’ and it specifies in its

introduction that ‘it should not in any way be construed as committing the European Commission’(Commission 2005). However, the template put forward is systematically used in assessing candidate countries’ progress towards membership.

The guide for administrative reform to implement the *acquis* focuses on the necessary administrative set up of public authority. Interactions between public administration and civil society actors, or more broadly, governance mechanisms relying on private actors obtain only marginal attention in the document. As a result, social dialogue mechanisms, with their traditional dimension of autonomous bipartite interaction, are not considered a central issue of concern. Social dialogue appears only as an issue under the chapter regarding the *acquis* of ‘social policy and employment’. Most of this chapter, again, focuses on how *public authorities* [our emphasis] should adapt to implement the European social *acquis*, for instance, by creating labour inspectorates to control the implementation of health and safety regulation, or by setting up an ‘equality body’ to implement Directive 2002/73/EC to ensure equality between men and women.

The guidelines for administrative reform only mention social dialogue in one paragraph stating in very general terms that ‘there should be representatives of the two sides of industry, including social partners’ organisations’, ‘in view in particular of their role in the elaboration and implementation of Community legislation’, but that ‘it is entirely for each Member State to decide which structure it will use, provided that the effect of implementing the requirements of the *acquis* is achieved’ (European Commission 2005: 64). Focused on the reform of public authorities, the administrative *acquis* guide fails to give any indication on how social partners could or should play a role in national cross-sectoral, sectoral and company level bargaining.⁸ Neither does it specify what the implementation of the (social) *acquis* would entail in terms of national IR infrastructure.

IR as a central part of an extensive interpretation of the social acquis

While the guidance document for administrative adjustments remains vague on the issue of social dialogue, other actors within the Commission have been more explicit

⁸ The paragraph, on administrative adjustment to implement European employment policy and the European Social Fund, does not even mention the social partners.

in defining social dialogue as part of the ‘social acquis’ and in particular the ‘administrative or institutional acquis’ needed to implement it.

For instance, when the European social dialogue was incorporated into the European Economic Community Treaty by the Treaty of Amsterdam, the Commission stated that this ‘consolidates the position of the social dialogue as a major component in Community social policy which new Member States have to take into account in incorporating the *acquis communautaire* into their legislation’ (European Commission 1998:20).

In 2000, the DG for Employment and Social Affairs published a special issue of the European Social Dialogue Newsletter in an attempt to ‘become a reference document and prove useful to the various political, economic and social players concerned in their preparations for enlargement’. It argues that that social dialogue ‘forms an integral part of the Community acquis’. Elsewhere in the document it is said that ‘the social dialogue has a key role in the Community acquis. It has been built up gradually on a dual basis, legislative and institutional.

The legislative dimension is further clarified in the document, providing (non-exhaustive) examples of the legal acquis that include obligation for consultation of the social partners. However, cases of legal obligations are (mainly) limited to requiring consultation of workers’ at company level.⁹ One can rightly argue that European legislation provides important binding requirements that structure industrial relations at company level (such as the EWC Directive and the Information and Consultation Directive 2002.). This social legal acquis must without any doubt be implemented by the EU10. However, there is no European legislation with legally binding requirements structuring industrial relations above the company level. There are no legal requirements to create an infrastructure for bipartite negotiation at national cross-sectoral or sectoral level.

The Commission in its guidance document attempts to create such a requirement by referring to the concept of ‘institutional acquis’. The document argues that the social dialogue ‘should be regarded as an integral part of the institutional *acquis*’ for several reasons:

⁹ A number of Directives have provided an important legal framework for workers’ consultation at the level of the enterprise, in particular in enterprises of a European dimension namely: 98/59/EC on collective redundancies; 2001/23/EC on transfers of undertakings; 89/391/EEC on safety and health at work; 94/45/EC on European Works Councils; 2001/86/EC supplementing the European company statute with respect to workers’ participation; 2002/14/EC on informing and consulting employees.

- 1) Many directives specify that they may be implemented in the Member States by agreements between the social partners (option also provided by the Treaty)
- 2) The social dialogue procedure of Articles 154-155 TFEU
- 3) The role of the social partners in the employment strategy
- 4) The existence at Community level of advisory committees with representatives from national social partner organisations.

However, this reasoning shows the entrepreneurial action of the Commission in providing a very extensive interpretation of the social acquis, deducing pro-actively some institutional IR requirements from EU law and soft law provisions that do not impose such conditions explicitly or in a binding way. Firstly, while directives *may* be implemented by social partners at the national level, it should be recalled that these directives do not state that they *must* be implemented by social partner agreement. Secondly, Articles 154-155 TFEU provide indeed a binding institutional infrastructure for the European social dialogue, but how far does it imply requirements for IR infrastructure at the national level? In the case of implementation of European collective agreements by Council Directive, national implementation can occur through national legislation. In that case the ‘institutional acquis’ of the European social dialogue does not imply the existence of national collective bargaining infrastructure (although implementation by agreements is allowed). In the case of ‘voluntary implementation’, a developed system of industrial relations at the national level is necessary to ensure implementation. The logical implication of Article 154 is then indeed that Member States need a system of industrial relations that allows for bipartite agreements (implementing the European ones). However, with reference to Article 154 TFEU, a declaration to the Amsterdam Treaty states that MS have no obligation to apply these European voluntary agreements directly or to work out rules for their transposition or any obligation to amend national legislation in force to facilitate their implementation. Put differently, when introducing the social dialogue procedure into the Treaty, the MS wanted to make sure that this did not imply any obligations on them to adjust their national industrial relations systems. Arguing some years later that the EU10 must adapt their industrial relations systems to comply with the ‘institutional acquis’ of the European social dialogue seems a rather discretionary and maximalist interpretation by the Commission. Thirdly, regarding the role of the social partners in the employment strategy, except for a legal obligation for the Employment Committee to consult the European social partners, there is no

binding legal requirement on the involvement of the social partners. The employment guidelines do include a strong rhetoric on the involvement of the national social partners. However, they are not binding. Moreover, given that participation of the social partners in the European employment strategy is problematic in several of the EU15, it does not seem fair to include this as condition to join the EU. Finally, the required presence of national social partner organisations representatives in Community level advisory committees only expects the EU10 to send their national social partner representatives to these committees, which requires the existence of social partners' organisations, but does not imply any structure of collective bargaining.

In the absence of strong legally binding requirements, the Commission's discourse on social dialogue as part of the social *acquis* functions as an element of persuasive policy-making rather than a legally enforceable threat to condition accession to the EU.

IR as part of the social *acquis*: a promoting discourse rather than sanctioning membership condition

To sum up, social dialogue, although routinely framed by the Commission as 'an integral part of the Community *acquis*,' is above all a non sanctioned normative discourse with which the Commission hopes to influence the framing of institution building in the EU10, rather than as a stringent condition to join the EU. Requirements on IR infrastructure were not part of the high profile political and economic criteria for EU membership; neither did they take a central place in the screening on the administrative *acquis* that focused on public authorities. Although Commission documents define social dialogue as part of the 'social *acquis*' and deduce from the latter some implications for IR at the national level, no systematic and thorough screening has taken place. When it came to assessing the readiness of the then candidate countries to join the European Union via the Commission's regular reports, only a few lines were devoted to the social dialogue, and while noting mainly advancement in relation to the legal *acquis* in the social field, remarks on the more problematic 'institutional *acquis*' were mainly limited to a repeated: 'the bipartite dialogue should be improved'. In the end, the poor state of bipartite structures in the EU10 has not stopped them from joining the EU since as argued earlier, there was only so much pressure that the Union could exercise over the national systems of

industrial relations because at the end of the day there are only limited legal requirements, a full template is missing, the normative justifications for IR systems are not well established, and, last but not least, IR systems require the formation of the societal forces that can shape and give substance to an institutional framework that otherwise remains entirely void of any function.

Hence, while the EU has developed a discourse on ‘social dialogue as part of the social acquis’ as a way to promote in a soft way IR infrastructure at the national level in the context of enlargement, it has at the same time taken initiatives to strengthen bottom-up the societal forces that constitute the living practice of IR. These are discussed in detail in the section below.

Supporting initiatives for social dialogue in the EU10

In its 1998 Communication on the European Social Dialogue, the European Commission outlined its three-pronged strategy to address the challenges of IR in the candidate countries; firstly, assistance to the social partners in the EU to develop links with and support the development of independent, representative trade union and employers' organizations in the candidate countries; secondly, support for the political and administrative bodies in the applicant countries to adapt the national legal frameworks to promote the development of the social dialogue structures; and thirdly support to involve social partners from the applicant countries in the European social dialogue structures to help them learn about its underlying principles (Commission 1998:20-21). Aware that capacity-building is essentially a bottom-up process the Commission stresses that , the mechanisms to develop the organisational, financial and personnel capacities of social partner organisations, should be driven by the social partners themselves (Commission 2004:9). The European Union has supported the social dialogue in the candidate countries through funding and technical assistance. These have been financed via the PHARE programme, the European Social Fund and the European Social Dialogue budget lines. Equally the European cross-industry social partners (ETUC, BUSINESSEUROPE, CEEP and UEAPME) have developed their own initiatives even before the accession process took place. What follows is a review of how the three main funding instruments namely PHARE the ESF and the European social dialogue budget lines have provided financial backing for projects and initiatives aimed at strengthening the social dialogue in the

New Member States. The final part of this section deals with the European social partners-led initiatives. They play a key role in the capacity-building process given the autonomous nature of industrial relations.

European Union-Led Initiatives

Starting with PHARE¹⁰, support to strengthen the social dialogue was initiated in 1993 (Weber 1997), but its success prior to 1997 when the programme became a fully-fledged pre-accession instrument, is questionable. At the time very few social dialogue projects were submitted by the governments of the candidate countries while the social partners were excluded by the governments in the recipient countries who in turn managed to secure financial support for government-sponsored tripartite bodies in which the autonomy of the social partners was questionable (see Langewiesche 1995 and 1997 and Vaughan-Whitehead 2000). After the reform of PHARE following the Essen and Luxembourg European Councils funds focus entirely on the pre-accession priorities highlighted in the Road Maps and the Accession Partnerships which establish the priorities the candidate country must fulfil before accession and the resources required to do so. Following the logic of the institutional acquis discourse outlined above, support for the social dialogue responds to one of the three PHARE objectives namely to strengthen public administrations and institutions to function effectively inside the European Union. These initiatives are part of the PHARE National Programmes and use twinning has been the main instrument. Twinning is a horizontal mechanism that involves the secondment of EU Member State experts in the implementation of the acquis to the candidate country (but also to new Member State, or potential candidate country) to facilitate the transposition, enforcement and implementation of EU legislation through the exchange of expertise and experience. The experts typically come from more than one member state and may be public servants or members of employers' organisations or trade unions. The projects last up to two years and are built around jointly agreed EU policy objectives (in line with Road Maps and the Accession Partnerships) with the beneficiary country retaining ownership and a commitment to ensure that the

¹⁰ The PHARE (Poland and Hungary: Action for the Restructuring of the Economy) programme, originally created in 1989 to assist Poland and Hungary is one of the three pre-accession instruments financed by the EU to assist the applicant countries in their preparations to join the Union.

relationship is one of partnership rather than client-contractor (Directorate General for Enlargement 2006: 9-10).

Initiatives under PHARE have ranged from the elaboration of expert analysis of the strengths and weaknesses of the social dialogue structures in the candidate countries and good practice guides to encourage social partners at the national at regional, sector, company and branch levels to adapt best practice, to the raising of public awareness of the social dialogue, support for the creation of new social dialogue mechanisms and wider discussions about health and safety or supporting management capacity building to participate in other funding programmes. These have been implemented through workshops, conferences, specifically tailored training programmes and study visits. For example PHARE project SR 0006.01 set up to develop social dialogue in Slovakia twinned Dutch and British experts from governments, employers' organisations and trade unions with colleagues. Focused on two pilot sectors, the chemicals industry and construction, the project aimed to: reinforce social dialogue at national, sector and company level; increased knowledge of EU decision-making processes and of the implementation of EU Directives; improved capacity-building of each party in the bipartite and the tripartite social dialogue; improved positions for employers' organisations and trade unions and the involvement of works council. The project involved a start-up conference, a two-day training course on social partner organisations' membership and services led by employers' organisation and trade union experts from the Netherlands and UK followed by the creation of a specialist subgroup to better communicate social dialogue and two-week training cycle targeted at social partners involved in collective bargaining and social dialogue (Czírja: 2003). Another typical PHARE twinning project worth EUR 2 million of PHARE contributions was set up in 2002 with the aim to create an institutional structure for sectoral social dialogue in Hungary. This time the project was drafted by a Hungarian committee involving social partners and government representatives to respond to the Commission's repeated criticism of the weakness of social dialogue in the country. The twinning partners were the Hungarian government and the Danish Labour Market Authority. An interesting conclusion of the opening conference which resonate with our earlier discussion was the need to develop tailor-made solutions suitable to the Hungarian context as 'the practices of European-level sectoral social dialogue or those of any of the Member States cannot be copied, even if they were successful in their own environment'

(Neumann and Tóth 2002). While projects like these were evaluated positively upon completion, and even though they have yielded some positive results, they have not remedied the weakness of the dialogue at sectoral level as the evidence earlier in the chapter shows. This may be explained in part by the limitations of twinning as mechanism of knowledge and expertise exchange to support the implementation of the *acquis*. For example, the selection of partners from the Member States is not necessarily guided by rational criteria but framed by issues such as national affinity or successful pre-existing bilateral relations (Tulmets 2005:665). Thus the national model provided by the experts from the Member State is not necessarily the best one while once the evaluation of a twinning programme is considered positive, the candidate country is not obliged to adopt the national model template in full. As Tulmets argues the creation of the new organisations or structures in the candidate countries and NMS are a hybrid between those of the twinning partners in the MS and the organisational traditions and exiting capabilities in the latter (Tulmets 2005:671). An illustrative example of this dynamic is the new collective agreements register set up in Slovenia in 2006 on the recommendation of a 2003 twinning project that brought together German and Slovenian partners to improve social dialogue in the country. The register only partially reproduces the system of registration in Germany due to capability restrictions. Similarly the idea of partnership has not always necessarily worked well in practice as at times experts from the MS were perceived as arrogant and the twinning procedure as excessively bureaucratic and requiring a large mobilisation of resources. (Tulmets 2005:671). Finally there is evidence of candidate countries mentioning the completion of twinning projects in specific areas to help the closing of chapters in the accession negotiations even if the project had not been successful or the recommendations not taken up (Tulmets 2005:672). For example a 2002 PHARE project aimed to establish bipartite sectoral social dialogue committees in 18 industries in Hungary proposed legislation to establish representativeness criteria for the social partners as well as co-determination. The legislation was halted in 2006 by the then President, László Sólyom who referred the draft laws on social dialogue to the Constitutional Court. The 2008 ruling (four years after accession) revoked the co-determination right of social partners on certain issues but enacted representativeness criteria (Berki and Neumann 2009). This pattern is likely to be more widespread in the case of the social dialogue given the absence of

sanctioning mechanisms for what is not a defining condition to join the Union, as explained above.

DG Employment, Social Affairs and Inclusion's support for social dialogue capacity-building is channelled through the European Social Fund (ESF) and the European Social Dialogue budget headings. The ESF finances joint actions and networking of social partners as well as support for the social partners themselves to improve their capacity and their cooperation in the MS and beyond. A good example of how this type of projects support social partners in the NMS are two 2006 initiatives in Latvia. The project 'Strengthening the Capacity of the Free Trade Union Confederation of Latvia' allowed the trade unions to expand their activities outside Riga by explaining the importance of social dialogue and trying to attract new members; and 'Strengthening the Capacity of the Employer Confederation of Latvia' to develop innovative entrepreneurship in the country. These however have not stopped the weakening of the social dialogue in the country due to the break-down of tripartite discussions on critical socio-economic issues (Karnite 2006).

The European social dialogue's contribution to capacity building is financed through the budget headings 'industrial relations and social dialogue'¹¹ and 'information and training measures for workers' organisations'¹² (DG Employment Social Affairs and Inclusion 2011). The industrial relations and social dialogue budget line is intended to co-finance the participation of social partners in the European Employment Strategy. It provides grants to promote social dialogue at cross-industry and sectoral level. One of its key priorities is Measures to strengthen the capacity of social partners to contribute to the European social dialogue with particular attention to New Member States and Candidate Countries through information and training seminars. Applicants can be European social partners, national or regional members of European social partners, European social partners

¹¹ Each year around 80 projects are supported. The total funding available under this budget heading in 2010 was EUR 16 million (European Commission 2011:198). This supports actions to implement measures outlined in the European Commission's Communication on The European social dialogue, a force for innovation and change (COM (2002) 341 final) 171 and in the Communication Partnership for change in an enlarged Europe -Enhancing the contribution of European social dialogue (COM (2004) 557 final) 172 as well as the EU Lisbon Strategy the Commission's Communication on the Renewed Social Agenda (COM (2008) 412 final) 173.

¹² Each year around 30 projects are supported. The total funding available under this budget heading in 2010 was EUR 16.4 million (European Commission 2011:198).

dealing with activities related to European social dialogue, organisations linked to industrial relations, public authorities and international organisations active in the fields of social dialogue and/or industrial relations. In any case applicants need to provide a minimum contribution from their own resources of 5%-20% of the total project) (European Trade Union Institute 2010:158-162). The budget line information and training measures for workers' organisations is intended to finance information and training measures for workers' organisations, including representatives in the candidate countries. A key priority is to improve the level of participation from the new Member States and candidate countries. Applicants, who will need to cover up to 10% of the total costs of the project can be social partner organisations, representing workers at European, national, regional or local level (European Trade Union Institute 2010: 162-164).

A key initiative co-financed by the EU through the European social dialogue budget are Integrated Programmes (IP) set up in 2003 by the cross-industry social partners ETUC, BUSINESSEUROPE, CEEP and UEAPME as part of their programme to develop European social dialogue more autonomously from the Commission in the aftermath of the Laeken European Council. In their common statement the European social partners envisaged the joint work programme to include several instruments such as European framework agreements, opinions, recommendations, exchange of experience, awareness-raising campaigns and open debates. The IP are co-financed by the EU through and managed by ETUC and BUSINESSEUROPE on behalf of all European social partners. The first pilot IP was launched in 2003 involving social partners in the Czech Republic, Lithuania, Hungary, Poland and Slovakia to prepare them to contribute to the European Social dialogue. The 2004-2006 integrated programme was extended to all new MS while the 2006-2008 round was extended to the EU15 as well as the candidate countries. The 2008-2010 round developed a focus on South-East European countries without overlooking other MS.

The integrated programmes aim to improve industrial relations at the national level and strengthening their interaction with the European social dialogue. They involve four types of initiatives: two rounds of seminars in each country which assess the needs of national social partner organisations; the development of studies and seminars on the role of social partners in social and economic change; the creation of

resource centres for trade unions and employers to provide (mainly online) information; and the development of targeted training and mentoring to representatives from the new member federations. As agreed at the first conference on the social dialogue in an enlarged Europe in 2004, the main objectives of the European social partners are (1) to demonstrate that social dialogue is a key dimension of EU governance; (2) to foster a better balance between tripartite and bipartite social dialogue; and (3) to reinforce the representativeness and the capacity for negotiation of the social partners in the acceding countries through good practice and social partner autonomy (European Foundation for the Improving of Working and Living Conditions and European Commission 2004:14). The experience of the IP has highlighted the need for mentoring and training of social partners, better coordination between the social partners at the national and European levels, and the requirement of specific funding to translate the results of the European social dialogue to all EU languages (European Commission 2008:156-157). The impact of these initiatives is not yet obvious beyond the evident enduring weakness of particularly bipartite concertation in the NMS, while it is questionable whether leaving capacity building in the hands of the social partners may also have its downsides. In particular, one can question the commitment of employers' organisations to a multi-level system of industrial relations in the NMS. They may be interested in supporting employers' organisations in Central and Eastern Europe, but may not be strong supporters of social dialogue at national and sectoral levels given employers' preference for decentralisation of bargaining at the company level, for example. Moreover, European employers have never been in favour of developing a strong industrial relations system at EU level, so it is difficult to identify their incentive to support industrial relations in new countries in order to save European social dialogue.

European Social Partners-led Initiatives

The European social partners have been very active in developing relationships with their counterparts in Central and Eastern Europe even before accession at cross-sectoral level and in individual sectors while adapting their internal organisational and governing structures and policy agendas to accommodate the new arrivals (Blavoukos and Pagoulatos 2008; Pérez-Solórzano Borrágán 2003 and 2004). This has been challenging particularly when trying to identify the relevant partner organisation in CEE as there were concerns regarding their representativeness and their lack of

awareness of and ability to voice their concerns at the EU level (Pérez-Solórzano Borragán, N. 2004). For example CEEP was initially unable to find suitable member organisations in the Baltic States to match trade union partners (Smallbone, Balckburn and Hart 2005: 34). In the early 1990s the social partners were involved mainly in awareness raising by disseminating information about the European social dialogue. The ETUC first created a trade union forum in 1990 as a setting for member organizations to meet with organizations from the CEE and the Balkans. Later it granted observer status for ten central confederations from Poland, the Czech Republic, Hungary, Bulgaria and Romania and in 1994, opened up to trade unions from countries that had agreements with the Union. The European social partners opened the membership to social partners from the candidate countries in 2000 while roundtables, conferences (such as the joint social dialogue conferences organised in Warsaw -1998- and Bratislava -2001-) and training visits have been essential instruments to socialise the Central and Eastern European social partners into 'the values of free enterprise, competition, wealth creation' (De Buck 2002), but also integration in a large internal market while exchanging expertise and experience on the development of industrial relations. Training partners in the CEE was regarded as a key priority to ensure their reliability and readiness for accession. This relationship has been typically asymmetric as social partners from CEE have been dependent on European peak associations' expertise while the Eastern European input is based around the provision of information on the state of national industrial relations systems (Pérez-Solórzano Borragán, N. 2004: 252).

Similarly from a policy perspective the European social partners have regularly expressed their commitment to enlargement and their request to the European Commission and the governments of the candidate countries to acknowledge their role at that of the national social partners in the enlargement process. Already in 1999 *BUSINESSEUROPE* (then *UNICE*) was involved in the Industrial Forum on Enlargement, aimed at exchanging information and experience on industrial aspects of the pre-accession strategy and at giving concrete recommendations to national authorities and to the European Commission and the in the Social Partners Conference on Enlargement and the yearly Round Tables of Employers' and Industrial Organisations of EU member states and candidate countries (*UNICE* 1999). A year later the employers association set up a Task Force on Enlargement to provide its

assessment of each candidate countries' progress towards EU accession from a business perspective (UNICE 2000). In terms of capacity building, between June 2003 and December 2004 the UNICE-BOSMIP programme (which was co-financed by the European Commission) became the employers' federation's tool to train business association in the candidate countries through a series of seminars. It involved the exchange of experience and expertise between business federations in the EU15 namely Austria, France, Germany, Greece, Italy, the Netherlands and Spain and business federation in Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia (UNICE-BOSMIP 2004).

The ETUC (European Trade Union Confederation) established an Eastern Europe Forum that allowed its affiliates in the accession countries to participate as observers. In 1997, before accession negotiations began the ETUC set up national integration committees in each accession country and cross-border exchanges of information including EU policies, health and safety and equal opportunities were arranged via an organised inter-regional trade union network. The trade union federation proposed the first social dialogue conference and has played a key role in involving trade union from the candidate countries in policy development such as social protection and the promotion of the European social model (ETUC 1998).

UEAPME, the European Association of Craft, Small and Medium-sized Enterprises became involved in building the capacity of employer's associations that expressed an interest in becoming members in 1991 and granted observer status to its counterpart associations in the candidate countries before accession. Much of UEAPME's work has been to train SMEs through its business support programme, partially funded by PHARE. The focus has been on the transfer of expertise related to the general management and services of an SME, adaptation to specific legislation in the field of environment, company law and completion law and helping SMEs set up European departments. In a parallel move, the Association also developed a specific project, UEAPME ENTER– Enterprises and Enlargement, to raise awareness amongst SMEs in the EU15 of the impact of EU enlargement and in relation to capacity building to promote synergies between companies in the EU and the accession countries. This was undertaken through seminars and information campaigns (UEAPME ENTER 2004).

Conclusions

This chapter has discussed the initiatives launched by the European Union to strengthen the European Social dialogue in light of the challenges posed by the accession of the countries from Central and Eastern Europe. The social dialogue constitutes a particularly challenging case of policy transfer given the absence of commonly agreed normative principles about the desirability of IR as well as models of industrial relations systems to define the templates and benchmarking criteria that the acceding countries would be expected to incorporate and conform to. At the same time IR are inherently autonomous and can only operate as far as the societal forces can provide the bottom-up dynamics for it, which explains the reluctance of public authority to intervene in the sphere of industrial relations. Similarly despite a long-lasting discourse about the social dialogue being an integral part of the *acquis communautaire* its explicit absence of the Copenhagen criteria explains the European Commission's maximalist interpretation of the social *acquis* which justifies its incorporation as part of the institutional and administrative *acquis*. This however is problematic as unlike other institutional requirements the European Commission lacked explicit monitoring mechanisms to deploy during the screening process as well as sanctioning instruments in the case of non-compliance. Therefore, social dialogue, although routinely framed by the Commission as 'an integral part of the Community *acquis*,' is above all a non sanctioned normative discourse with which the Commission hopes to influence the framing of institution building in the EU10, rather than as a stringent membership condition.

The EU's strategy for social dialogue capacity building reflects its perceived stabilising role and the need to develop an efficient national system of industrial relations that secures the good functioning of the European Social Dialogue. But it is also a reflection of Commission's recognition of the autonomous nature of IR which consequently requires the social partners to provide the bottom-up dynamics that ensure its autonomy. Thus as the final section of this paper shows, the EU's intervention is mainly limited to financing a capacity building process which is actually implemented and managed by national and European social partners themselves. Yet leaving capacity building so strongly in the hands of the social partners may also have its downsides particularly as it is not obvious that employers'

organisations have a real interest in supporting a multi-level system of industrial relations in the CEE. The weakness of industrial relations in the NMS offers limited evidence of the success of these initiatives which have been criticised for being too focused on supporting formal industrial relations structures given that ‘despite the EU’s formal support of social dialogue, the resurgence of industrial relations in the NMS is not coming from Brussels, but from the grassroots—and even often against Brussels’ (Meardi 2007:505)

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