

**Is the ‘new phase’ of the European Social Dialogue the
development of an autonomous and effective form of
social dialogue?**

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Editor's introduction

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In this paper, Thomas Prosser, a PhD student at IRRU, reviews the development of the 'new phase' of the European social dialogue. He outlines the movement from a Commission-led process to a dialogue where the Social Partners set and execute their own agenda; identifies the politico-economic currents that led to its development; and examines the norms that characterize it as a distinctive mode of European governance. Drawing on a review of the literature and first-hand interviews with senior players in the social dialogue, he argues firstly that the 'new phase' owes its origins to the development of the European Commission's Lisbon Strategy; the onset of the 'open method' of governance; and enlargement of the European Union. Secondly and relatedly, the new phase is distinguished from the Maastricht Dialogue by its emphasis on topics related to 'employability', its 'integrative' form and a 'soft' mode of implementation. Throughout the paper, he notes the problems as well as potential of the 'new phase' as a tool for the promotion of Social Europe.

Jim Arrowsmith

Abstract

This paper is concerned with an analysis of the ‘new phase’ of the European social dialogue that has emerged over the last few years. The paper identifies its politico-economic origins and the norms that characterize it as a mode of regulation. The development of the ‘new phase’ has its origins in (1) the development of the Commission’s Lisbon Strategy, (2) the onset of new modes of governance, and (3) enlargement of the European Union. It is also argued that three features characterize the ‘new phase’ as a style of governance. These are, (1) its emphasis on topics related to ‘employability’, (2) its ‘integrative’ style of social dialogue, and (3) its use of ‘soft’ law. These, we contend, set it apart from its predecessor, the Maastricht dialogue. Finally, we also discuss its effectiveness as a form of European social policy. We conclude by offering a cautiously positive assessment of the flexibility afforded by the ‘new phase’, yet also note some of the dangers associated with ‘soft’ and non-binding forms of regulation.

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List of acronyms used

CBI – Confederation of British Industry (UK Employers’ Association and member of UNICE)

CCM – Classic Community Method (the traditional means of European law-making, involving specified roles for the European Commission, European Parliament, and Council of Ministers)

CEEP - European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (European-level Employers’ Association representing public enterprises and recognized European-level Social Partner)

DA - Dansk Arbejdsgiverforening (Danish Employers’ Association and member of UNICE)

EES – European Employment Strategy (European-level strategy aimed at encouraging growth and employment)

ETUC – European Trade Union Confederation (European-level Trade Union organization and recognized European Social Partner)

EWC – European Works Councils

OMC – Open Method of Coordination (a form of European governance that uses ‘soft’ procedures like ‘naming and shaming’ and ‘peer review’)

TAW – Temporary Agency Work

TUC – Trades Union Congress (UK Trade Union organization and member of ETUC)

UEAPME - Union Européenne De L’Artisanat et des Petites et Moyennes Entreprises (European-level Employers’ Association representing small and medium enterprises and recognized European-level Social Partner)

UNICE - L'Union Des Industries de la Communauté Européenne (European-level Employers’ Association and recognized European Social Partner)

Contents

1/	Introduction	6
	<i>Context</i>	7
2/	The political economy of the ‘new phase’	9
	<i>The Development of the Commission’s Lisbon Strategy</i>	9
	<i>New modes of governance</i>	11
	<i>Enlargement of the European Union</i>	12
3/	The ‘new phase’ as a mode of governance	14
	<i>An agenda related to employability</i>	14
	<i>Integrative forms of dialogue</i>	15
	<i>‘Soft’ modes of implementation</i>	17
4/	Conclusions	18
	Appendix. Output of the ‘new phase’ of the European Social Dialogue	20
	References	21

1 Introduction

The annexation of the Social Protocol to the Maastricht Treaty in 1991 allowed for the conclusion of legally-binding European-level collective agreements by the Social Partners. The Social Protocol laid down, via articles 136 to 140 of the protocol, a set of procedures for the consultation of the European Social Partners over the direction of European Social Policy, and enabled the Social Partners to conclude EU-level collective agreements, known as framework agreements, that could be either implemented as Directives via Council decision, or voluntarily through the Social Partners' national member organizations. However, a mere three framework agreements emanated from the procedure in the following decade, and the collapse of the Social Partner negotiations on the issue of Temporary Agency Work in May 2001 seemed to be symptomatic of a procedure that had reached its apogee. The Dialogue had its defenders (Falkner, 1998; Kim, 1999), but they were increasingly being outflanked by critics who highlighted the poor record of the Dialogue and its reliance on the role of the European Commission (Keller and Sorries, 1998).

A 'new phase' of the Social Dialogue arose from this change of context. First alluded to in the European Social Partners' *Laeken Declaration* of December 2001, the 'new phase' commits the Social Partners to a more autonomous and flexible dialogue. Thus far, the output of the 'new phase' appears relatively impressive (see appendix). Two non-binding framework agreements on Telework (2002) and Stress (2004) have been concluded, and a further two Frameworks of Action on Lifelong Learning (2002) and Gender Equality (2005) have been issued by the Social Partners. This is in addition to a range of other texts on issues as diverse as restructuring and the employment of the disabled. Central to the progress of the 'new phase' has been the publication of two Social Partner Work Programmes. The first covered 2003-5, and set the agenda for the Social Partners' autonomous activity through this period. The Second Work Programme, recently issued, covers 2006-8, and includes proposals for activity on employment, lifelong learning, harassment and violence, the integration of disadvantaged groups into the labour market, and capacity building in the new member states.

It should be stressed that, rather than displacing the Maastricht Dialogue, the 'new phase' co-exists with it as a mode of regulation. The Social Partners' *Laeken Declaration* made this clear. As we will go on to argue, issues like EWC Directive revision lie outside the scope of the 'new phase' because, by virtue of their ability to divide the Social Partners, they put a severe strain on the autonomy of the 'new phase'. Issues such as EWC Directive revision will therefore continue to be subject to either the Maastricht Dialogue procedures or by the Classic Community Method (CCM) of regulation. What markedly distinguishes the 'new phase' from the Maastricht Dialogue is the independent engagement of European-level capital with the process. UNICE, CEEP, and UEAPME have acted in a pro-active and autonomous manner when formulating the agenda for the 'new phase' (Branch, 2005). The regulatory lethargy that increasingly characterized the Maastricht Dialogue (Keller, 2003) does not therefore appear to afflict the 'new phase'.

This apparent conversion of European employers to the process of social dialogue presents a series of questions about the character of the 'new phase'. Given the deep

reluctance of employers to participate in the Maastricht Dialogue, it is likely that (1) the nature of the 'new phase' as a form of governance is clearly distinct from the Maastricht Dialogue, and that (2) a series of structural factors have made this transformation possible. With these questions in mind, this paper is concerned with (1) the norms that characterize the 'new phase' and distinguish it from the Maastricht Dialogue, and in particular those that have made it more palatable to European employers, and (2) the politico-economic factors that have led to the emergence of the 'new phase' in the first place. The paper will also seek to appraise the extent to which the 'new phase' is a viable means of promoting Social Europe, in so far as it is likely to effectively and equitably regulate European workplaces and labour markets.

Context

After the Protocol on Social Policy and its Agreement was annexed to the Maastricht Treaty on European Union in 1991, two distinct academic schools of thought emerged on the European Social Partners' new procedural right to be consulted over the direction of social policy and to conclude European collective agreements. The 'Euro-optimists' regarded this development as likely to give rise to an era of Euro-corporatism. Exponents of this view included Biagi (1998) and Kim (1999). The quality of the rights granted to the social partners were expected to lead to a new era involving some forms of European-level collective bargaining.

The most eloquent exposition of the Euro-optimist view came from Gerda Falkner. In her 1998 work, *EU Social Policy in the 1990s*, Falkner argued that a 'corporatist policy community' had emerged at the European-level as a result of the Social Protocol. It was asserted that the inter-governmentalist approach to European integration and social policy had been found wanting by the Social Protocol and the European collective agreements that followed in its wake, and that genuine supra-nationalist structures of industrial relations were emerging. Jensen et al argued a similar position in a 1999 article. These authors acknowledged that the social dialogue had thus far failed to significantly change industrial relations in member states, and differed procedurally from some national systems, yet still asserted that a robust system of European industrial relations was emerging at these levels.

Several criticisms were made of this analysis by a group of scholars who have been described by Berndt Keller (2000) as 'Euro-pessimists'. One point that was repeatedly offered was the low probability of UNICE, CEEP and UEAPME engaging in a meaningful social dialogue. Streeck (1994) and Keller and Sorries (1998) asserted that the policy interests of European-level capital were fundamentally antithetical to any centralized European regulation of the employment relationship, and argued that the political and social pressures that forced national-level employers to enter into dialogue with national trade unions were largely lacking at the European-level. This view was bolstered by an analysis of the factors that circumscribed the likelihood of European employers being compelled to the bargaining table. One was the indispensability of the role of the Commission (Gold, 1998; Keller, 2003). It was contended that the entry of UNICE, UEAPME and CEEP into dialogue took place in the Commission's 'shadow',

and that, given the limited number of legislative proposals put forward by the Commission, this ‘shadow’ was rather small. Another factor highlighted was the exclusion of key industrial relations issues from the social dialogue (Kirton-Darling and Clauwaert, 2003; Streeck, 1994). As many pointed out, the issues of pay, freedom of association, and the right to strike were all specifically excluded from the Social Protocol, and it was argued that the exclusion of these issues also limited the capacity of the Commission and ETUC to induce European employers to negotiate with ETUC.

By the time that European sector-level discussions on Temporary Agency Work (TAW) stalled in 2001¹, several factors had been identified by the ‘Euro-pessimists’ explaining the difficulties that the Maastricht Dialogue was experiencing, most of which centered around European capital’s practical ‘veto’. It is therefore important to identify why European employers, opposed to the Maastricht Dialogue throughout the 1990s, are now prepared to participate in a dialogue that is autonomous. An analysis of the factors pertaining as to *why* this is so will not only help us understand the ‘new phase’ as a mode of European governance more clearly, it will also suggest its likely effectiveness as a form of social regulation.

Only a limited amount of research exists on the ‘new phase’, due to the little time that has elapsed since its inception. Some of the initial appraisals have been positive. Marginson and Sisson (2004) offered the view that the ‘new phase’ of the peak-level social dialogue was likely to encourage the stimulation of social dialogue at lower levels. Branch (2005) pointed out that the ‘new phase’ could address ongoing and ‘bottom-up’ issues like capacity building in the new member states that were better managed by social dialogue than European legislation. It could potentially also better manage issues that were difficult to handle on a legislative basis because of impediments in the political process, and would be able to address issues that the social partners jointly wanted to see addressed. She argued that UNICE were, at least in the extent to which they had been engaged in the First Joint Work Programme and the process of capacity building, ‘genuinely convinced of the merits of autonomous bilateral dialogue’ (Branch, 2005: 336). In contrast, others have been more skeptical: De Boer, Benedictus and van der Meer (2005) argued that the onset of the ‘new phase’ of the Social Dialogue merely represented a recognition of the inadequacies of the traditional approach to social dialogue, whilst Keller (2003) noted that voluntary bipartite agreements had been possible in the past, but in practice had not occurred. He questioned why UNICE’s traditional reluctance to engage in bilateral negotiations should have changed at all.

This paper has three objectives. The first is to consider the nature of the ‘new phase’ and identify its key components. The second is to briefly discuss its context and the dynamics that led to its emergence. The third is to offer an assessment of what the ‘new phase’ amounts to in terms of effectiveness as a mode of regulation. It is argued that the ‘new phase’ social dialogue is of a substantially different nature from the Maastricht Dialogue. Its autonomy effectively secures European employers’ commitment to the

¹ According to Arrowsmith (2006: 1-2), ‘The primary sticking point was the issue of comparability and equality of terms and conditions of employment, particularly pay, between agency workers and direct employees in the client firm, and the qualification period required for TA workers to benefit from such equal treatment. The Commission therefore took the initiative to propose a draft directive on TAW in 2002... but little progress was made due to the objections of certain member states’.

process, and thus answers Keller's (2003) query as to why bipartite agreements and action, uncommon in the past, now characterize the 'new phase' as a mode of governance. The primary research was carried out on the basis of eight semi-structured interviews including Deputy General Secretary of ETUC Maria Helena Andre, Jørgen Rønne, UNICE's Chief Negotiator for the Framework Agreement on Telework (who, as a representative of DA also separately discussed their general take on the 'new phase' with us) and Jackie Morin, Head of the European Commission's Social Dialogue Unit. Six out of the eight interviews were conducted in Brussels on a face-to-face basis between 4th and 6th July 2005, whilst the interview with Neil Bentley of the CBI was conducted face-to-face in London in June 2005 and the interview with Jørgen Rønne of DA over the phone in August 2005. Extensive documentary analysis of the output of the 'new phase' also underpins the research. The focus is on the European inter-professional social dialogue rather than the European Sectoral Social Dialogue, largely due to time and resource constraints.

2 The Political Economy of the 'new phase'

The emergence of the 'new phase' is, it is argued, associated with three key shifts in the political economy of Europe. These are the development of the Commission's 'Lisbon Strategy'; the onset of the OMC mode of governance; and the enlargement of the European Union.

(1) The Development of the Commission's Lisbon Strategy

The first pillar of the 'new phase' was the launch of the European Commission's Lisbon Strategy in 2000, which aims to turn Europe into the 'world's most dynamic and competitive economy' by 2010. To achieve this goal, member states are set a series of targets related to productivity, employment rates, and social inclusion. The strategy was inspired by the mass unemployment that blighted areas of Europe in the 1990s, and which contributed to the European Employment Strategy (EES) of 1997. Emerging parallel to the EES were the Cardiff, Luxembourg and Cologne Processes², all of which pertained to economic development, and like the EES, relied on governance methods such as 'benchmarking' and 'peer review' to achieve its goals. Along with the EES, these processes combined to form the Lisbon Strategy, which also makes extensive use of 'soft' (non-legalistic) modes of governance.

A particular significance of the Lisbon Strategy in relation to the Social Dialogue lies in the role that the Social Partners have assumed in its fulfillment. Both the Commission

² The Luxembourg process, initiated at the 1997 Luxembourg summit, involves the coordination of member states' labour market policies. The Cardiff Process was established in 1998 at the Cardiff summit, and aims to develop 'knowledge-based' economies in the member states. The Cologne process dates from the 1999 Cologne summit, and specifies the coordination of member states' budgetary, monetary and incomes policies.

and the Social Partners were keen to make the delivery of Lisbon a subject of social dialogue. A 2002 Communication by the Commission to the Social Partners set out this view,

‘The communication emphasizes that the attainment of the strategic objectives defined at Lisbon – full employment, sustainable economic and social development and increased social cohesion – depend to a considerable extent on action by the social partners at all levels.’

The Social Partners adopted a similar position. Their 2001 Laeken Declaration stressed their commitment to the implementation of the Lisbon Agenda. In our interview, Liliane Volozinskis of UEAPME commented upon this,

‘After the adoption of the Lisbon strategy the Social Partners discussed how to contribute in a positive way to the implementation of the Lisbon Strategy. This led us to our first autonomous Work Programme’

The social dialogue thus became a vehicle for the Lisbon Strategy. What is noteworthy is the nature of the programme pursued by the Social Partners in their drive to implement the Lisbon Agenda. The key concern for the Social Partners is, as section three will outline in greater detail, the issue of employment and employability. Ms Volozinskis also added,

‘By far the biggest priority [of our Work Programme] is employment. For all of us this is a priority – trade unions and employers.’

In short, Lisbon made the issue of employability a subject of European-level social dialogue. This concern with employment did not, admittedly, incorporate contentious issues like the revision of the Working Time Directive, but, rather, addressed issues on which the Social Partners were more likely to reach a consensus. These topics, like lifelong learning and gender equality, are partly linked to a supply-side economic agenda, and as a result, have been consistent with the policy interests of European employers. This adjoining of the process of social dialogue to a policy goal that was palatable to European-level capital effectively procured the commitment of UNICE, CEEP and UEAPME to the ‘new phase’. Our interviews revealed that European Employers *actively advocated* the social dialogue as a policy tool when it concerned itself with employability issues linked to the Lisbon Strategy. Neil Bentley of CBI, Jeanne Schmitt of UNICE, and Liliane Volozinskis of UEAPME all stressed that this was case. This concern of the ‘new phase’ with an agenda that is conducive to the goals of European employers forms part of the basis of its autonomy and is likely to do so in the future.

It is, however, worth reflecting upon the fault lines on which the Social Partner consensus on ‘employability’ rests. The separate and sometimes contradictory policy interests of European-level capital and labour, well documented in the literature (Keller, 2003), are still present in the ‘new phase’ notwithstanding its autonomy, and it is thus quite possible that ETUC and UNICE perceive the meaning and implications of ‘employability’ differently. Trade unions, for example, might read ‘employability’ as pertaining to commitments to workforce training and equality, whilst employers’ associations might refer to ‘flexibility’ in labour markets and workplace management. Any such differences are likely to become more marked when it comes to implementation at lower levels,

where ‘soft’ European-level commitments may be translated into ‘hard’ national or sectoral agreements (Marginson and Sisson, 2004). Certainly, therefore, an autonomous and consensus-based Social Partner management of ‘employability’ issues exists, but the potentially fragile nature of this consensus should not be forgotten.

Another aspect of Lisbon that nurtured the development of an autonomous Social Dialogue was the devolved mode of delivery that the Lisbon Strategy entails. As indicated above, implementation of the Lisbon Strategy relies upon the actions of societal actors at lower tiers of governance. The methods associated with the Maastricht Dialogue, where the social partners largely rely upon the initiative of the Commission, were rejected in favour of an ongoing, flexible, and partnership-based approach. The governance regime that the Lisbon Agenda promoted then, aided the development of a ‘new phase’ that was flexible and placed a premium on implementation at lower levels. To this end, we would argue that employers were concerned not to scupper the emergence of the ‘new phase’ by undue obduracy. Our interviews and other research (Branch, 2005) have strongly suggested that the commitment of European employers to the ‘new phase’ takes a positive form in order to secure support for the Lisbon goals and its devolved mode of delivery. As Jørgen Rønneast asserted,

‘UNICE are very committed to the success of the Lisbon strategy and we wanted to avoid creating any problems for its implementation by being difficult on the subject of the European Social Dialogue. The Social Dialogue can be seen as a means of getting support for the Lisbon strategy from the trade unions. Without union support the Lisbon strategy would be in trouble.’

Nevertheless, this does not preclude the possibility that the ‘new phase’ assumes multiple functions for European-level capital, some of which are tactical, and some of which are might involve more wholehearted commitment.

(2) New Modes of Governance

A second factor that encouraged the onset of the ‘new phase’ was the development of the ‘Open Method of Coordination’ (OMC) mode of European governance. As Sisson and Marginson (2001) noted, ‘soft’ instruments like ‘framework agreements’ and ‘codes of conduct’ increasingly proliferated at various levels of industrial relations in the 1990s. At a more general policy level, the OMC entails a fourfold process: first, the Council of Ministers agrees on overall goals; member states then translate these policy goals into National Action Plans (NAPs); and benchmarks are agreed upon to gauge best practice across Europe. Finally, the implementation of the various NAPs is monitored and appraised. Emerging symbiotically with the EES and Lisbon, the OMC is now used by European policy makers in areas as diverse as employment, pensions and immigration (De La Porte and Pochet, 2002). The OMC style of policy is notable for its non-binding nature and absence of financial and legal sanctions. Instead, the ‘soft’ tools of ‘benchmarking’, ‘peer review’ and ‘naming and shaming’ are utilized to encourage compliance (Arrowsmith, et al, 2004). Whilst many have argued that this enables neglect and poor compliance (Chalmers and Lodge, 2003), others have vouched for the

effectiveness of these tools (Jacobsson, 2002). Member states are largely free to adopt solutions that are appropriate for their particular set of national challenges (Hodson and Maher, 2004).

The parallel emergence of the OMC alongside the Commission's Lisbon Strategy thus also helped make the 'new phase' possible (European Commission, 2002). The significance of the relationship between the 'new phase' and Lisbon was in Lisbon's bequeathal of an agenda related to 'employability' over which European employers thought it worthy of engaging in dialogue. In terms of its status as a non-binding and flexible method of governance that employers instinctively find acceptable (Streeck, 1994; Keller, 2003), the OMC achieves a similar feat. The Lisbon Agenda brought a set of issues to the fore that employers considered proper subjects for autonomous dialogue; the OMC, meanwhile, provided European employers with a governance technique that they felt was appropriate for the management of these issues. The influence of the wider fashion for 'soft' law across Europe in the last decade should also be borne in mind when considering the origins of the 'new phase'.

Again, there are different academic evaluations. Hodson and Maher (2004) were skeptical about the ability of the OMC to make a difference at the national level, arguing that the non-binding sanctions utilized by the OMC were not hardy enough to substantially alter the economic policies of national governments. Others have noted that the success of the OMC is contingent upon the form of national system it is being implemented in and, therefore, poor implementation is likely in states where certain conditions are not met (De La Porte and Pochet, 2002; Lopez-Santana, 2006). This point is particularly pertinent with regards to the 'new phase'. Keller (2003) argues that the successful implementation of the 'new phase' is largely contingent upon the industrial relations structures of the states in which its output is implemented. The highly decentralized nature of employment relations in the UK, for example, would likely realize only piecemeal and sporadic outcomes.

Other analysts have been more positive about the impact at member-state level (Jacobsson, 2003). The OMC certainly appealed to policy makers, with for example the Belgian Minister of Pensions and Social Affairs Franck Vandebroucke (2001) lauding its flexibility and ability to manage diverse viewpoints and broad policy areas. In our interviews, the manner in which the OMC allows local actors to adopt appropriate solutions was praised by UNICE representative Jeanne Schmitt and Liliane Volozinskis of UEAPME. It is consistent to assert that, for employers, OMC represents a more acceptable style of European governance than the traditional Classic Community Method (CCM) that influenced the framing of the Maastricht Dialogue.

(3) Enlargement of the European Union

The Enlargement of the European Union from 15 to 25 states in 2004 also precipitated a reform of the social dialogue. As well as greater divergence in labour standards and norms, enlargement introduced the problem of under-developed social dialogue structures and institutions in the new member states (Vaughan-Whitehead, 2003). In the face of this

it becomes more difficult to reach consensus, and the regulatory route of legally-binding minimum standards risks alienating both those states with highly evolved systems of social protection, and those with very low levels. At peak-level, enlargement has also exacerbated what Sisson and Marginson (2001) describe as the European ‘collective action’ problem. The social partner organizations have a substantially greater number of members post-enlargement; this has made the vertical dimension of collective action more problematic given the wealth of views that exist among members. In our interview, Maria Helena Andre acknowledged this point, and various writers on the OMC have also recognized the pressure that enlargement has put on the CCM method of governance (Chalmers and Lodge, 2003). Enlargement therefore also made the ‘soft’ coordination of industrial relations that the ‘new phase’ entails relatively more attractive in terms of viability.

Furthermore, enlargement may also have led for calls *within* the Social Partners for a more flexible and autonomous dialogue, a point gleaned in the interview with Jørgen Rønne. Mr. Rønne gave the example of the work that was done on Harassment in the First Work Programme, and recalled that many of the social partner organizations from the new member states (from both sides of industry) regarded the activity as superfluous. Jeanne Schmitt of UNICE confirmed this. In our interview, she asserted that UNICE’s members in the accession states favoured topics related to employment and youth employment rather than the management of stress or harassment and violence at work. This example demonstrates the pressure for ‘soft’ regulation that has been unleashed by enlargement of the Union. Clearly, a binding Framework Agreement on the subject on Harassment and Violence is less realistic given the diversity of opinion that exists within the Social Partner organizations. The approach taken by the ‘new phase’, i.e. a non-binding framework agreement on the topic as proposed in the 2006-8 Work Programme, was seen as more viable in the post-enlargement social dialogue.

A final consideration refers to the notion and activity of ‘capacity building’ in terms of social dialogue structures in the new member states. In our interviews, both sides of industry repeatedly stressed their commitment to this process. An analysis of the content of both Work Programmes confirms this. The 2003-5 Programme contained six topics related to enlargement, whilst the recently issued 2006-8 Programme commits the Social Partners to ‘continu[ing] their work of capacity building in the new member states’. This process of ‘capacity building’ involves establishing structures and procedures for dialogue between management and labour in the new member states. The project of ‘capacity building’ in the new member states is presented as a technocratic and apolitical (mutual gains) process but we would argue that the very process of local ‘capacity building’ makes an ‘integrative’ dialogue based on collaboration more likely, or at least proceeds on such assumptions. This is particularly relevant for a ‘new phase’ that is largely predicated on a consensus driven form of dialogue. Enlargement, then, promotes another tenet of the ‘new phase’; the ‘soft’ mode of implementation, as well as generation, of output.

3 The ‘new phase’ as a mode of governance

In section two, we examined the politico-economic factors that had made possible the emergence of the ‘new phase’. We now discuss in more detail the nature of the ‘new phase’ as a mode of governance, both in terms of the predominant characteristics that distinguish it from the Maastricht Dialogue, and in the manner in which these characteristics make it a more palatable tool for European employers. These revolve around an agenda based on ‘employability’; an ‘integrative’ form of dialogue; and a ‘soft’ mode of implementation.

(1) An Agenda Related to Employability

The relationship between the development of the European Commission’s Lisbon Strategy and the ‘new phase’ was explored above. Essentially, the ‘new phase’ represents a vehicle for the implementation of the Lisbon Strategy and many of the employment targets associated with it. This is clearly indicated by the output to date of the ‘new phase’, and echoes the verdict of Liliane Volozinskis, who asserted in our interview that the greatest concern of the Social Partners was employment. Both of the Social Partner Work Programmes are primarily concerned with this theme, reflecting the employability/competitiveness agenda of the Lisbon Strategy. As the Social Partners emphasized in their Laeken Declaration, one of the foremost goals of the 2003-5 Work Programme was to ‘make a useful contribution to the European strategy for growth and employment’.

This concern with employability and competitiveness has produced a discourse that has informed and inspired much of the key output of the ‘new phase’. The 2002 Framework of Actions on Lifelong Learning is illustrative of this. This text opened with the statement that globalization had made the acquisition of workforce skills a crucial precondition for a competitive European economy, and continually asserted that the economic health of European firms and economies was contingent upon a skilled workforce. The document’s debt to the Lisbon Agenda was also directly referred to (section two): the focus of the initiative on lifelong learning was to

‘make an effective and specific contribution to the realization of lifelong learning in the context of the strategic objectives established at the European Councils of Lisbon and Feira on employment, social cohesion and competitiveness.’

The two Framework Agreements that emanated from the First Work Programme have related concerns. The 2002 Telework Agreement was formulated, as the document acknowledged, ‘in the context of the European employment strategy... [and through the Social Partners’ dedication to] preparing the transition to a knowledge-based economy and society as agreed by the European Council in Lisbon.’ Even the 2004 Framework Agreement on Stress aimed to achieve ‘greater efficiency’ as well as ‘improved occupational health and safety, with consequent economic and social benefits for

companies, workers and society as a whole'. Likewise, the 2006-8 Work Programme promotes a similar agenda. The social partners have publicly expressed their desire to continue contributing to the implementation of the Lisbon Strategy, and in their March 2005 'Joint Declaration on the mid-term review of the Lisbon Strategy' asserted that they were 'fully conscious of the need to firmly embed [the 2006-8 Work Programme] in the Lisbon Strategy'. The content of the Work Programme largely fulfills this pledge. The document opens with the statement that the Social Partners 'want to contribute to and promote growth, jobs and the modernization of the EU social model', and, in terms of the issues it addresses, relates to a similar agenda as the first Work Programme. Action on the issues of employment, harassment and violence, lifelong learning and the labour market integration of disadvantaged groups is proposed by the Work Programme. These issues are, as we argued above, related to the achievement of the Lisbon Agenda. In our interviews, the representatives from European employers associations also communicated a commitment to the 'new phase' in terms of implementing the Lisbon strategy. Liliane Volozinskis of UEAPME spoke positively of the autonomous social dialogue in these terms, whilst Neil Bentley of CBI argued that the Work Programme had demonstrated the value of the Social Dialogue's role in the European policy making process.

(2) An 'integrative' form of dialogue

A second characteristic of the 'new phase' is thus an agenda of topics that potentially advance the policy interests of both sides of industry. This may be described as an 'integrative' form of dialogue. For example, both European-level management and labour perceive gains in the development of workforce skills via a text such as the Framework of Actions on Lifelong Learning. As we stated above (section 2.1), the perception of relative potential gains may differ amongst the Social Partners, but the management of such issues can still be driven by a concern to advance the interests of both parties. In contrast many of the topics addressed by the Maastricht Dialogue reflect 'distributive bargaining' (Walton and McKersie, 1965), where negotiations on issues such as parental leave, European Works Councils, and TAW entail greater trade-offs.

The 'integrative' nature of much of the 'new phase' activity is a crucial precondition to the autonomous operation of the 'new phase', sidestepping the prospect of veto that has dogged the Maastricht Dialogue. This is achieved by concentrating on topics of greater potential joint interest, centred on the themes of employability and competitiveness. Consider the example of the 2002 Framework of Actions on Lifelong Learning. Part of the premise of the text is that a globalized economy has created the need for industry as a whole to act jointly to bolster the competitive position of Europe. The document thus states,

'the focus of this initiative by the European social partners is to ... give impetus so that the development of competencies and the acquisition of qualifications are perceived as a shared interest by both enterprises and employees in each member state'

Such sentiments were, admittedly, espoused over issues such as European Works Councils that we have argued did not advance the interests of both sides of industry so complementarily. The diplomatic form of language used in the text on Lifelong Learning does not fully reveal the potentially divergent views that exist on workforce training between management and labour. Employers may, for example, be wary of investing heavily in workforce training if it leads to demands for higher pay or leads to workers with more portable skills. Disagreements of this form may well become apparent at lower dialogue levels, and, whilst texts like the Framework of Actions on Lifelong Learning are propelled by an 'integrative' motor, they should also be considered with this caveat in mind. One should be wary, therefore, of taking the highly politicized language that can characterize 'new phase' documents at face value.

Nonetheless, we would contend that the extent to which such a discourse of joint interest is infused within 'new phase' documentation sets it apart from the Maastricht Dialogue. The Framework of Actions on Lifelong Learning, for example, goes on to stress the manner in which the acquisition of skills by employees aid the goals of both sides of industry, and throughout emphasizes the gains that can be made by both unions and employers through effective dialogue on the issue of lifelong learning. A similarly 'integrative' dynamic is also at work in the case of the other 'new phase' texts, the majority of which take the need to make Europe a dynamic and competitive economy as their starting point, and emphasize the dividend that exists for both management and labour through the prescriptions that are offered. The 'Declaration of the Social Partners for the European Year of People with Disabilities' stresses the 'shared interest [of] both enterprises and employees' in integrating people with disabilities into the labour market, whilst the 2005 'Framework of Actions on Gender Equality' makes a similar case for the greater integration of female workers into the labour market.

The work done by the Social Partners on the topic of enlargement is also best described as a form of 'integrative' dialogue. Whilst the creation of social dialogue structures in the member states is secondary to the issue of employment as a concern of the 'new phase', it nevertheless forms a key component of it. The issue figured prominently in the first Work Programme, and also features substantially in the second. The process of capacity building in the new member states is seen as largely a technical one. It does not involve the distribution of resources from one side of industry to the other, and thus promotes a form of industrial relations that is integrative in scope and 'soft' in form, a combination that tends to reinforce each other (Sisson and Marginson, 2001). Our interviews revealed the extent to which both sides of industry are committed to the process of capacity building in the new member states. ETUC Deputy General Secretary Maria Helena Andre stressed her organisation's commitment to the process, and representatives from UEAPME and UNICE were equally enthusiastic.

The 'integrative' nature of the 'new phase' thus forms the second pillar of the autonomy of the 'new phase' and is another reason why, as a mode of governance, it is distinct from its predecessor. As Jeanne Schmitt explicitly stated in our interview, the social partners *have* to agree on an issue for it to be included in their Work Programme. An implied pre-condition of this is that the issues on which autonomous work is conducted must at least potentially yield beneficial results for both sides of industry. It should also be noted that the 'integrative' form that the 'new phase' tends to assume carries the danger, for trade

unions at least, of producing a dialogue that is essentially unitarist and employer-led, geared towards output that is acceptable to European employers. As we will discuss in more detail in the conclusion, there is an issue over the quality of social regulation that the ‘new phase’ promotes, given its largely ‘integrative’ nature.

(3) ‘Soft’ modes of implementation

A third characteristic of the ‘new phase’ is its reliance upon ‘soft’ modes of implementation, by which we mean non-binding obligations upon the parties. This form of implementation has characterized all of the output of the ‘new phase’ and, based on the 2006-8 Work Programme, looks set to do so in the future. Marginson and Sisson’s (2004) typology of the forms of ‘hard’ and ‘soft’ regulation classifies the ‘new phase’ as the ‘softest’ and most ‘flexible’ of all practiced, though in practice various shades of ‘soft’ law characterize the ‘new phase’. Documents like the ‘Joint Contribution on the EU Youth Initiative’ and the ‘Declaration on the employment of disabled workers’ are of a lighter hue, in that these texts are somewhat vague about follow-up action and reporting, and thus can be considered ‘best-practice’ documents and statements of intent. Framework Agreements and Frameworks of Action are more substantial. The 2002 Framework Agreement on Telework, for example, clearly states that the Social Partners will implement the agreement within three years, and the document also commits the signatory parties to monitoring arrangements. The Frameworks of Action on Lifelong Learning and Gender Equality also committed the Social Partners to the review of the texts. In the case of the Framework of Action on Lifelong Learning, three annual follow up reports were produced that culminated in an Evaluation Report in 2006 that provided a comprehensive analysis of the implementation work of national-level social partners.

The generally ‘voluntarist’ nature of the ‘new phase’ sidesteps the dislike and opposition of European-level capital to legally-binding regulation (Streeck, 1994; Keller, 2003) and helps secure their commitment to the process. Jeanne Schmitt of UNICE argued that the diverse and flexible range of instruments offered by the ‘new phase’ was more suitable at European level, whilst Liliane Volozkinskis said that UEAPME’s member organizations had also reacted positively to the flexibility afforded by the First Joint Work Programme. Significantly, ETUC are also largely satisfied with the ‘soft’ mode of implementation, at least when confined to these sorts of issues.³ Whilst noting that there was a risk of non-implementation, Maria Helena Andre argued that,

‘The difference between the last phase of the Social Dialogue and the new phase is that in most of the results in the ‘new phase’ there’s an obligation to report and evaluate and we didn’t have that before. There was nothing wrong with the old joint opinions but they didn’t engage the Social Partners at any level... That there is now a process attached to the results of the Social Dialogue means that we will be confronted with results or lack of results.’

³ In our interview, Maria Helena Andre stated that ETUC would not accept voluntary implementation of any revision of the EWC Directive; the degree to which ETUC will tolerate ‘soft’ implementation is therefore limited.

Nevertheless, the question of the extent to which ‘new phase’ texts are being implemented effectively is still an open one. No academic or policy research seems to have been carried out on this yet, and it is therefore a blind spot in our knowledge. In our interview, Peter Coldrick, the British TUC’s representative in Brussels, expressed concern about the capacity of non-binding framework agreements to penetrate national systems as the legally binding framework agreements of the 1990s had done. This view is admittedly expressed in the context of the de-centralized UK industrial relations system, where procedures to implement ‘new phase’ texts via integrated bargaining levels do not exist as they do in other states. Others have also raised this question however (Keller, 2003) and, for the moment, many have worries about this aspect of the ‘new phase’.

4 Conclusions

We proposed in this paper that the ‘new phase’ is characterized by, and, indeed, contingent upon three factors that make it, as a mode of regulation, distinct from the Maastricht Dialogue, not least by securing employers’ active participation in what amounts to an autonomous process. First, the ‘new phase’ concentrates on issues that are typically related to ‘employability’, and in a form acceptable to employers. This is because the ‘new phase’ is closely linked to the achievement of the European Commission’s Lisbon Strategy, which links employability to the pursuit of competitiveness. Second, and linked to the first point, the topics addressed by the ‘new phase’ tend to be ‘integrative’ rather than ‘distributive’ in nature. The management of issues such as Lifelong Learning and Harassment tend to promote the mutual advancement of both sides of industry or, at least, tend not to involve zero-sum outcomes. Finally, the ‘new phase’ involves a voluntary mode of implementation, which is the final pre-condition for the willing participation of European employers. We also argued, in common with the European Commission’s 2002 Communication, that the ‘new phase’ is the result of three key shifts in the political economy of Europe. The development of the Lisbon Strategy was the first of these shifts, which, as we have already described, bequeathed to the Social Dialogue a set of issues that European capital considered worthy engaging about. The second, the onset of new modes of governance, such as the OMC, provided European employers with an attractive means for implementing the issues raised by Lisbon. Finally, the enlargement of the European Union also helped undermine the case for a ‘hard law’ approach to European regulation.

As we have tried to stress throughout our paper, the ‘new phase’ represents a qualitatively new social dialogue paradigm. Whether this represents a milestone on the road to a socially regulated Europe is another issue. As noted, various scholars (De Boer et al, 2005; Keller, 2003) have criticized the ‘new phase’ for its management of ‘weak’ topics that are, in any case, implemented by means that are likely to lead to sporadic coverage of the workforce. Many of these criticisms are pertinent, and, as we have stated throughout, that the ‘new phase’ is made a more palatable form of governance to European employers sets it apart from the Maastricht Dialogue. Social progressives have real and rational grounds to worry about the potential of the ‘new phase’ to socialize an enlarged Europe.

Yet we come to a more generous assessment of the ‘new phase’. That the European social partners have risen to the challenge set by the Commission in their 2002 Communication on the social dialogue is no small achievement, and the body of activity that the output of the ‘new phase’ represents is testament to the proactive and independent role that the social partners now play in European governance. The output of the ‘new phase’ has also delivered a laudable level of progress for the European trade union movement. Issues like Stress and Telework, hitherto absent from European-level social policy, are now managed on an European-wide basis, and agreements on these topics are also subject to formal monitoring and evaluation mechanisms. The potential of the ‘soft’ output of the ‘new phase’ to stimulate ‘hard’ regulation at the national-level should also not be forgotten (Marginson and Sisson, 2004). The preliminary evidence from the implementation of the Telework Agreement suggests that national-level Social Partners in many countries have incorporated the European-level text on Telework into national collective agreements (Maddaloni and Pedersini, 2004), or have incorporated it into the national body of labour law (Robin, 2005). The ‘new phase’ can therefore make a real and substantial difference to social regulation at lower levels.

There is also a case for arguing that the ‘new phase’ represents the only realistic option for the European trade union movement with regards to European-level social dialogue. The ‘hard’ and Commission-led Maastricht Dialogue was the product of a different European-policy milieu, one in which the Union was considerably smaller, and where governance via the CCM was more accepted if not universally embraced (De La Porte and Pochet, 2002). Enlargement has helped to promote a growing interest in more flexible forms of governance. Vandembroucke (2002) argued that the OMC represented the ‘best hope for social Europe’. Perhaps a similar verdict applies to the ‘new phase’. The CCM looks increasingly remote in the wake of the TAW failure and in the light of the Commission’s ‘better regulation’ initiative - the centrepiece of its ‘Partnership for Growth and Jobs’ that renewed the ‘Lisbon Strategy’ in spring 2005 – to reduce its legislative proposals.

A major challenge for researchers remains to ascertain the extent to which the ‘new phase’ is being implemented effectively. The Second Work Programme alludes to this issue, dedicating two of its eight points to the desirability of monitoring the implementation of the texts on Telework, Stress and Gender Equality, and to better understanding how effectively the various tiers of social dialogue were implementing the output of the ‘new phase’. As of yet, no comprehensive scholarly study of ‘new phase’ implementation exists and, as Keller (2005) remarked, this represents a considerable blind spot in our knowledge of the ‘new phase’. Until the issue of implementation is more systematically addressed, our positive appraisal of the ‘new phase’ as a form of social dialogue must therefore remain provisional.

Appendix. Output of the ‘new phase’ of the European Social Dialogue

2001

Joint declaration to the Laeken European Council – December 2001

2002

Framework of actions for the lifelong development of competencies and qualifications (LLL) - February 2002

Framework agreement on Telework - July 2002

Multi-annual work programme 2003-5 - December 2002

2003

Declaration on the employment of disabled workers - January 2003

First follow-up report on the framework of actions for the lifelong development of competencies and qualifications (LLL) - March 2003

Orientations for reference on restructuring October 2003

2004

Second follow-up report on the framework of actions for the lifelong development of competencies and qualifications (LLL) - March 2004

First report on social partner actions to implement the European employment guidelines - March 2004

Framework agreement on work-related stress - October 2004

2005

Third follow-up report on the framework of actions for the lifelong development of competencies and qualifications (LLL) – March 2005

2005 Report on social partner actions on employment in Member States – March 2005

Framework of actions on gender equality – March 2005

Joint contribution on the EU Youth Initiative – March 2005

Joint declaration on the mid-term review of the Lisbon strategy – March 2005

Lessons learned on European Works Councils - April 2005

2006

Evaluation report of the framework of actions for the lifelong development of competencies and qualifications (LLL) - January 2006

Work Programme of the European Social Partners 2006-2008

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