

Future outcome of the Test Phase on European social dialogue in central government administrations

TUNED contribution in view of DG/TUNED meeting on 18 June 2009, Prague

Introduction

TUNED wishes to make an initial contribution to the joint process of deciding upon the outcome of the Test phase on *“work forms and content of a formal social dialogue”* in central government administrations. It should be seen as complementary to the ongoing evaluation of the Test Phase carried out by Ramböll management for the end of the year. Whilst reiterating our commitment to establish a European sectoral social dialogue committee in central government administrations, we wish to briefly review progress over the past 18 months, identify remaining problems and suggest solutions in a spirit of cooperation and transparency. This contribution will form the basis for further discussions between TUNED and EUPAN members in the next 6 months.

Almost 20 years of dialogue between EUPAN and TUNED

Informal exchanges of views between EUPAN and the trade unions - at the time, EPSU, CESI and EUROFEDOP¹- started in the early 90s, including a first joint seminar in 1994. Under the French EU Presidency in 2000, the EU Ministers for public administration adopted a resolution on social dialogue calling upon the DGs to develop a social dialogue with representative trade unions and deepen the question of the employers' representativity on the basis of a list of social dialogue subjects. Partly due to internal trade unions divisions, the potential of this resolution was not maximised.

In February 2005, the establishment, through a cooperation agreement between EPSU and CESI, of a single trade union delegation, TUNED, led to an improved dialogue with EUPAN under the Luxembourg Presidency. Under the UK Presidency, in December 2005, a first joint statement was reached on equality and diversity, followed by another one on mobility and on leadership under the Austrian and Finnish Presidencies respectively. Denmark initiated a joint methodology for preparing the EUPAN/TUNED conference on equality and diversity in October 2007.

¹ EPSU is the European Federation of Public Services Unions, member of the ETUC. CESI is the European confederation of independent trade unions. Eurofedop became a member of CESI in 2008. The cooperation agreement between EPSU and CESI provides for a joint trade union delegation on the basis of majority national representativity criteria. TUNED has members in all EU member states' central administrations except Slovenia.

This was progress, as the trade unions moved from a status of “guest” to “equal partner”. In June 2007, the Berlin Ministerial declaration endorsed the proposal for a 2-year test phase on “work forms and content of a formal social dialogue”. Whilst an EIPA report commissioned by EUPAN had concluded that advantages of formalization outweighed disadvantages, EUPAN opted for a pilot phase before taking a decision.

TUNED has been ready to formalise since 2005. We, however, have welcomed the test phase as a helpful transitory step towards formalisation, notably through the following elements agreed jointly under the Portuguese presidency:

- Rules of procedure allowing equal partnership
- 2-year work programme allowing planning and continuity
- Focused content and follow-ups, including a report on third-party violence at work, a common position on stress at work, and EU-funded Trust project consisting of a research report, a seminar and a conference.

Overall, we shared the conclusions of the mid-term evaluation of the test phase carried out by EIPA (Kaeding report). Within one year, we fully agreed that the efficiency, participation rate and trust between both sides had much improved. Importantly, overall it has also strengthened the national relationships between the trade unions and employers on EU matters. In some cases it has helped anticipate new or emerging social dialogue issues at national level.

However, a number of problems remain, some of which are identified in the Kaeding report, with strong implications in terms of workload, coordination of views, participation rate of TUNED delegates as well as the overall added-value of social dialogue:

1. Exclusion from EU decision-making process
2. Ad-hoc resources
3. Absence of a structured employers’ organisation
4. Misunderstandings on the meaning of formalisation.

The first two issues will automatically be solved via formalisation, as explained below.

The 3rd one needs to be tackled *prior* to formalisation. In full respect of EUPAN’s autonomy we suggest a possible way forward without the informal nature of EUPAN being challenged.

The last point suggests that further clarification be provided with a view to share a common understanding of formalisation. Below is an attempt to do so.

Steps towards formalization

The Commission Decision of 1998 (98/500/EC) provides the framework for establishing sectoral social dialogue committees. 11 years later, there are 37 sectors including, as far as public services are concerned, hospitals, local and regional government, gas, postal services and electricity. Within and with the help of these structures, the European social partners identify and tackle a very wide range of themes of common interest, such as the challenges and future prospects for the sectors, questions concerning human resources, working conditions and work organisation or Community initiatives likely to affect the social and economic situation in an area of activity.

Formalizing means the setting up of a sectoral social dialogue committee at EU level. To do so, employers and trade unions have to submit a joint request to the European Commission who then ascertains the legitimacy and representativity of the EU partners according to the 3 following criteria:

- relate to specific sectors or categories, and be organised at European level
- consist of organisations which are themselves an integral and recognised part of Member State's social partner structures, and have the capacity to negotiate agreements, and which are representative of *several* Member States
- have adequate structures to ensure their effective participation in the work of the committees²

In some sectors, employers, and in some cases trade unions, faced representativity or structural problems not in line with the above EU criteria. These have been solved through a practical approach. For instance, in the hospital sector, the employers are represented through HOSPEEM, the outcome of an agreement between HOPE (the European hospitals and healthcare federation) and CEEP³, one of the three cross-sectoral employers' organisations. Due to its cross-sectoral nature, CEEP was obliged to set up a specific sectoral organisation. To note, the main reason why HOPE decided to establish a social dialogue committee was to be more influential at EU level.

A similar solution is currently being explored for the education sector. In some transport sectors CEEP is involved in cooperation with categorial employers' organisations.

CEEP is increasingly profiling itself as *the* public sector employers, both at sectoral and cross-sectoral levels, which it sees are mutually reinforcing.

² <http://ec.europa.eu/social/main.jsp?catId=480&langId=en>

³ further information@ <http://www.hope.be/03activities/humanresources-socialdialogue.html>

Clarification of formalisation in central government administration

Despite the regular exchange of views over the past decade and numbers of reports on EU social dialogue, TUNED is convinced that a number of misunderstandings remain on the real implications of formalisation.

- **Recognition & involvement in EU decision making process**

In line with article 138 of the EC treaties, formalisation of social dialogue would mean political and legal recognition by EU institutions of central government administration as a sector in its own right. It would require the Commission to inform and consult us on initiatives affecting our sector. It would not entail an obligation to negotiate, but to respond jointly to the consultation. Whether we like it or not, EU integration impacts central government administrations. Our view is that we have more to gain by being inside than outside EU decision-making process. In any case developments at EU level are not, and will not be, prevented by an informal set up; conversely, formalizing will not necessarily lead to more Commission-led initiatives in our sector. The Lisbon treaty, if ratified, will include new provisions on Services of general interest, administrative cooperation and social dialogue. A number of subjects would benefit from a formal social dialogue such as:

- Initiatives relating to public administrations e.g. Implementation of the services in the internal market directive; Better regulation agenda; Quality public finance agenda; anticipating application of Lisbon Treaty articles on administrative cooperation and social dialogue
- Influencing content of social directives currently debated in Parliament and Council: Revision of the maternity directive; directive on anti-discrimination in the access to goods and services (including public services)
- Feeding into cross-sectoral and sectoral agendas: global economic crisis; ageing society
- Implementing cross-sectoral agreements such as recently revised parental leave agreement (2009) and evaluating implementation of past agreements such as telework, part-time, fixed-term contracts etc..
- Responding to Commission's pending Communications, e.g. sectoral social dialogue; guide on social criteria in public procurement (currently finalized with inputs from trade unions)

- **Cross-sectoral social dialogue and sectoral social dialogue: complementary relationship**

At present, the **recognised** social partners' organisations at cross-sectoral level are the ETUC for the trade unions, and Business Europe (private sector), CEEP (companies with public participation) and UEAPME (SMEs) for the employers. As a member of the ETUC, EPSU takes

part in the cross-sectoral social dialogue; the same applies to the 7 administrations affiliated to CEEP (Austria, Denmark, Finland, Italy, Netherlands, Sweden and the UK).

Some EUPAN members *see* their involvement in the cross-sectoral social dialogue through CEEP as sufficient to defend their sectoral interest. This stands in sharp contrast with CEEP's ongoing efforts to develop sectoral social dialogue committees, in parallel to its work at cross-sectoral level. It also contrasts with most EU national industrial relations consisting of both a cross-sectoral and sectoral social dialogue (in addition to workplace/local levels). Undertakings and some public services (local and regional government, hospitals, postal services...), like organisations representing workers, are largely affiliated to federations, organised in accordance with their sector of activity. The main value is to adapt or complement cross-sectoral agreements closer to the needs of a given sector and develop a proactive approach on working conditions and work organisation of a given sector.

- **Funding, red tape, effectiveness**

In line with article 138 of the EC Treaties, formalisation would give access to financial balanced support for management and labour. In practice, it would mean, availability of EU funding for meeting rooms (in Brussels), translation and interpretation, travel and accommodation expenses for up to 54 EUPAN and TUNED delegates (more limited for working groups). The Commission would be charged with mailing the meeting invitations to social partners, logistics and interpretation. It would mean less red tape for EUPAN and TUNED who will be able to free up time for content rather than organizational matters. Funding is important not only for TUNED but also for EUPAN members. It would alleviate the cost and administrative burden that each EU presidency has to bear for organizing social dialogue meetings. It would improve the quality of the dialogue between TUNED and EUPAN through interpretation in different EU languages, choice of which will have to be agreed by both sides.

- **Autonomy and flexibility**

A guiding principle of social dialogue is the autonomy of social partners in terms of subjects, instruments, outcomes, methodology. Formalisation ensures that both sides, as equal partners, are free to define priorities, work programme and most appropriate instruments depending on the sought outcomes, e.g. statements, recommendations, opinions, studies, guidelines, agreements etc. To note, article 137 of the EC Treaty⁴ provides a list of subjects *only* in case of binding agreements that have to be transposed into directives; we remain free to discuss other topics should we wish so. The wide spectrum of social dialogue instruments ensures a good

⁴ For full text of the article please see, http://europa.eu/eur-lex/pri/en/oj/dat/2002/c_325/c_32520021224en00010184.pdf

degree of flexibility. Whilst the possibility to negotiate binding agreements should not be discarded experience in other sectors shows it is very rare⁵.

- **Informal nature of EUPAN**

Formalisation does not entail formalisation of EUPAN's existing structures, all it requires is a **formal employers' platform**, which could be linked to EUPAN but does not have to rest only on EUPAN. Depending on its future employers' structure, the existing format of EUPAN and its working groups can in fact remain intact should its members wish it so. We would however encourage links between social dialogue working groups and EUPAN working groups, as TUNED is already doing with its own structures, for the sake of coherence and consistency.

- **Centralisation, decentralization**

It is understood that some EUPAN members are concerned that a sectoral social dialogue at EU level will recentralise social dialogue which many governments have been at pains to decentralize (in some cases with the support of trade unions, in others without). However social dialogue is about developing common analysis, joint principles, minimum social standards, frameworks, either on subjects of our own choice or in response to EU initiatives, not detailed guidelines on working conditions or work organisation in a given sector. Based on a democratic process and exchange of good practices, outcomes of EU social dialogue in fact help protect gains at national level not jeopardise them.

To conclude, TUNED is willing and ready to formalise. As of today, and pending the outcome of the evaluation by Ramböll management, our view is that TUNED does not need to be "tested" any further. We, however, consider that the structure of an employer's platform for central government administrations is where the attention should focus on with a view to finding a satisfactory solution. At present, neither EUPAN nor CEEP can offer on its own a representative and structured employers' organization for central government administrations, a possible solution might therefore lie in a combination of the two.

We invite the EU Directors General for public administration to encourage discussions between EUPAN, the Commission and CEEP on the best way forward to establish an employers' platform, on the basis of examples in other sectors. A Joint Representative Task Force could be set up to this effect as soon as possible.

U:\Diane-Gassner\TUNED\2009 1st half Czech Presidency\18 June Plenary\Mailing 2 14 June

⁵ Out of 300 joint sectoral texts at EU level, only a couple are binding agreements transposed into EU directives (transport sector, soon in hospitals sector)