

**Akdeniz University
Institute of Social Sciences**

**University of Hamburg
School of Business, Economics and Social Sciences**

Fatma ÇETİN

**DEVELOPMENT OF SOCIAL DIALOGUE AT THE EU LEVEL AND IN TURKEY -
EFFORTS TO PURSUE MORE AUTONOMOUSLY IN THE EU AND
CHALLENGES TO CONSOLIDATE THE SITUATION IN TURKEY-**

Joint Master's Programme European Studies Master Thesis

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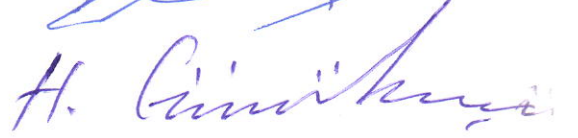
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Tez Başlığı:

Avrupa Sosyal Ortaklarının Sosyal Diyalog Üzerindeki Rolü ve Türkiye'deki Sosyal Diyalog alanındaki Gelişmeler

Development of Social Dialogue at the EU level and in Turkey – efforts to pursue more autonomously in the EU and challenges to consolidate the situation in Turkey

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TABLE OF CONTENTS

ABBREVIATIONS.....	iii
ACKNOWLEDGEMENTS.....	v
SUMMARY.....	vi
ÖZET.....	vii

CHAPTER 1

INTRODUCTION

1.1 Objectives of the Study.....	2
1.2 Methodology.....	2

CHAPTER 2

EUROPEAN SOCIAL MODELS

2.1 Nordic Model.....	6
2.2 Anglo-Saxon Model.....	6
2.3 Continental Model.....	6
2.4 Mediterranean Model.....	7

CHAPTER 3

SOCIAL DIALOGUE

3.1 Defining Social Dialogue.....	9
3.2 Social Dialogue at the EU Level.....	10
3.2.1 Defining Social Dialogue at the EU Level.....	11
3.2.2 Development of Social Dialogue at the EU Level.....	12
3.3 European Social Partners.....	17
3.3.1 Defining European Social Partners.....	17
3.3.2 Overview on General Cross-sectoral Organisations.....	19
3.3.3 Businessseurope.....	19
3.3.4 European Association of Craft, Small Medium-sized Enterprises (UEAPME)	22

3.3.5 European Centre of Employers and Enterprises providing Public services (CEEP).....	23
3.3.6 European Trade Union Confederation (ETUC).....	24
3.4 Evaluation of Social Dialogue at the EU Level.....	27
3.4.1 Consultation and Negotiation Procedure for the European Social Partners.....	28
3.4.2 Outcomes of Social Dialogue at the EU Level.....	32
3.4.3 Commission’s Role Within Social Dialogue at the EU Level.....	36
3.4.4 Contributions of Social Dialogue at the EU Level to the Lisbon Strategy.....	38
3.5 Mid-term Evaluation of Social Dialogue at the EU Level.....	40

CHAPTER 4

SOCIAL DIALOGUE IN TURKEY

4.1 Development of Industrial Relations and Social Dialogue in Turkey.....	42
4.1.1 Prior to the Proclamation of the Republic.....	42
4.1.2 After Proclamation of the Republic.....	44
4.2 Social Dialogue Platforms in Turkey.....	47
4.2.1 Economic and Social Council (ESC).....	47
4.2.2 Tripartite Consultation Board (TCB).....	48
4.3 Turkish Social Partners.....	49
4.3.1 Employee Side.....	49
4.3.2 Employer Side.....	50
4.4 Present Challenges within Turkish Social Dialogue.....	50
CONCLUSION.....	56
BIBLIOGRAPHY.....	59
CURRICULUM VITAE.....	68
DECLARATION OF AUTHORSHIP.....	70

ABBREVIATIONS

BASK	Confederation of Independent Public Servants Unions
BDA	Confederation of German Employers' Associations
BDI	Federation of German Industries
CCRW	The Coordinating Committee on Retired Workers
CEC	European Confederation of Executives and Managerial Staff
CEC	The Commission of the European Communities
CEEP	European Centre of Employers and Enterprises providing Public services
CESL	Confederation of Independent Trade Unions
CIC	International Confederation of Managers
CNPF	National Council of French Employers
COM	Communication
DISK	Confederation of Progressive Trade Unions
EC	European Community
ESC	Economic and Social Council
ETUC	European Trade Union Confederation
ETUCO	European Trade Union College
ETUI	European Trade Union Institute
ETUI- REHS	The European Trade Union Institute for Research, Education, and Health and Safety
ETUS	European Trade Union Secretariat
EU	European Union
EUROCADRES	Council of European Professional and Managerial staff
FEDIL	Business Federation Luxembourg
FERPA	European Federation of Retired and Elderly Persons
FIET	International Federation of Commercial, Clerical, Professional and Technical Employees

HAK-IS	Confederation of Real Trade Unions
ILO	International Labour Organisation
IRTUC	Interregional Trade Union Councils
ITKIB	General Secretariat of Istanbul Textile & Apparel Exporters' Associations
KAMU-SEN	Confederation of Public Employees Unions
KESK	Confederation of Public Workers Unions
MEMUR-SEN	Confederation of Civil Servants Unions
MESS	Metal Employers Unions
MS	Member States
SME	Small Medium Sized Enterprises
TCB	Tripartite Consultation Board
TISK	Turkish Confederation of Employers
TUC	Trades Union Congress
TURK-IS	Confederation of Turkish Trade Unions
TUSIAD	Turkish Industrialist and Businessmen Association
TUTB	European Trade Union Technical Bureau for Health and Safety
UEAPME	European Association of Craft, Small Medium-sized Enterprises
UK	United Kingdom
UNICE	Union of Industrial and Employers' Confederation of Europe
US	United States
WCL	World Confederation of Labour

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SUMMARY

DEVELOPMENT OF SOCIAL DIALOGUE AT THE EU LEVEL AND IN TURKEY- EFFORTS TO PURSUE MORE AUTONOMOUSLY IN THE EU AND CHALLENGES TO CONSOLIDATE THE SITUATION IN TURKEY-

In the globalization process, social dialogue brings employee and employer side together in order to find common solutions, which may satisfy both sides, regarding economic and social policies. Thereby, various interest groups are represented.

Social dialogue at the European Union (EU) level is one of the most important key stones of the European Social Model, which provides for the joint involvement of the representatives of the organisations of management and labour in European policy-making, since the participation of social partners has been granted with the constitutional framework. However, in recent years European social partners have emphasized that they wish to conduct a more autonomous social dialogue. As a requirement of accession process, Turkey needs to adopt EU's *acquis communautaire*, revising related policy fields in order to harmonize national legislation. Since the social policy and social dialogue as a component of it, Turkey overrates social dialogue in the agenda, despite its weak industrial relations history.

This paper is concerned with the analysis of the social dialogue at the EU level, changing structure of the European social dialogue in the course of time and providing data on the current social dialogue in Turkey and consequently to find out challenges within the social dialogue system in Turkey.

ÖZET

AVRUPA BİRLİĞİ (AB) VE TÜRKİYE'DE SOSYAL DİYALOĞUN GELİŞİMİ - AB'DE DAHA ÖZERK BİR YAPILANMA İZLEMELERİ İÇİN ÇABALAR VE TÜRKİYE'DE MEVCUT DURUMU SAĞLAMLAŞTIRMANIN ZORLUKLARI-

Küreselleşme sürecinde, sosyal diyalog iki tarafı da tatmin edecek ekonomik ve sosyal politikalarla ilgili ortak çözümler bulabilmek için işçi ve işverenleri biraraya getirir. Böylece farklı çıkar grupları temsil edilmiş olur.

Sosyal diyalog, sosyal ortakların katılımının anayasal çerçevede garantilenmiş olması nedeniyle Avrupa Birliği (AB) düzeyinde yönetici ve işçi organizasyonlarının temsilcilerinin ortak katılımını sağlayan politikalar geliştirilmesinde Avrupa Sosyal Modeli'nin en önemli yapı taşlarından birisidir. Bununla birlikte, son yıllarda Avrupa sosyal ortakları daha özerk bir sosyal diyalog gerçekleştirmek istediklerini vurgulamaktadırlar. Türkiye'nin, üyelik sürecinin bir gereksinimi olarak, ulusal mevzuatını uyumlu hale getirmesi için ilgili politika alanlarını revize ederek *topluluk müktesabatını* kabul etmesi gerekmektedir. Sosyal politika ve sosyal diyalogun bu mevzuatın bir parçası olması nedeniyle, zayıf işçi-işveren ilişkileri geçmişine rağmen Türkiye de sosyal diyalogu gündeminde oldukça önemsemektedir.

Bu çalışma sosyal diyalogun AB düzeyinde analizi, Avrupa sosyal diyalogunun zamanla değişen yapısı ve Türkiye'de sosyal diyalogun mevcut durumu hakkında bilgi sunmak ve sonuç olarak Türkiye'de sosyal diyalog sistemi ile ilgili sıkıntıları ortaya koymak amacıyla hazırlanmıştır.

CHAPTER 1

INTRODUCTION

Industrial relations are one of the core elements of social and economic life almost in all European countries, including EU Member States (MS) and candidate countries. Various institutional features of national industrial and labour relations loom large place within the European Social Model which is equally major part of the EU-level system of industrial relations. Industrial relations system on the European level has some crucial components which ensure the smooth functioning system.¹ Social dialogue is one of the main components of this entirety, European social model, as a part of the Treaty establishing the European Community (TEC). European social dialogue is an important tool for the joint involvement of the representatives of the organisations of management and labour in European policy making, since the participation of social partners has been granted with the constitutional framework. However, in particular, since Laeken Declaration the alteration within the European social dialogue can be clearly seen. Likewise for the EU, social dialogue takes an important place within the industrial relations of Turkey, despite its weak historical development and weak implementations. After negotiation process started officially in 2005, it became one of the main tasks of Turkey, harmonizing its national legislations and implementations with EU *acquis communautaire*, including social-related issues.

In this paper it is assumed that European social partners desire to pursue a more "autonomous social dialogue" whereas Turkish counterparts still struggle to establish a "culture of cooperation" implying negotiations with both the government and among themselves.

Undertaking whole paper, there are mainly two layers, namely European and Turkish. In the European part of the paper, it makes sense to introduce European social model before laying the social dialogue bare, this is because it is well known that social dialogue is one of the core elements of the European social model, one which has key role in better governance of the EU. Social dialogue, which takes place at both the cross-sectoral and the sectoral level,

¹ Wiebke Warneck sets five elements of an industrial relations system on the European level; namely social dialogue, collective bargaining, worker participation, regulation of working conditions, collective action. See W. Warneck, W., Challenges to a "European industrial relations system", A background paper for the ETUC/ETUI-REHS top level summer school- London, p. 11, 2008.

will be analysed in its macro form, since the evaluation of the social dialogue at sectoral level requires additional efforts and it is not in the line with the purpose of this paper.²

After the introduction of social dialogue, social dialogue at the EU level will be evaluated wellrounded, regarding its historical development, European social partners, evaluation of the consultation procedure and outcomes, Commission's role and the lastly the link between social dialogue and Lisbon Strategy. Before going through the Turkish part we will offer a mid-term evaluation of the social dialogue at the EU level. In the second main part of the paper we will examine the place of social dialogue in Turkey; historical development, Turkish social partners, the social dialogue platforms in Turkey and present challenges. Consequently, under the light of the given informations we will draw conclusions.

1.1 Objectives of the Study

The objective of this study is to assess the changing attitudes of European Social Partners within European social dialogue in the course of time and provide data on the current social dialogue in Turkey and consequently to find out where Turkey holds its place.

1.2 Methodology

Relying on published research documents, integrated projects of European Social Partners and Turkish social partners, reports, analysis and interviews with representatives of European and Turkish social partners, attention, firstly, will be given to the functioning of European social dialogue and change in social dialogue at the EU level focusing on attitudes of the European social partners and secondly it will be analysed the historical development, Turkish social partners and current challenges of Turkey's social dialogue.

² For the detailed evaluation of development of the sectoral dialogue, See Mangenot, M., Polet, R., European Social Dialogue and Civil Services, Europeanisation by the back door? European Institute of Public Administration, p. 39-44, Netherlands, 2004. Keller, B., Social Dialogue-the Specific case of the European Union, The International Journal of Comparative Labour Law and Industrial Relations, Volume 24, Issue 2, Kluwer Law International, p. 212-224, 2008.

CHAPTER 2

EUROPEAN SOCIAL MODELS

European social partners can deliver opinions or recommendations or inform the European Commission when they require initiating negotiations, which may lead to agreements, under Title XI of the EC Treaty- Social policy, education, vocational training and youth. European social partners acquire this right from the Article 138 of the EC Treaty. European social model, distinguishing character of Europe, displays the production and distribution process and originality of the institutions and rules that introduce and regulate this process. Many definitions of the model are to be seen in the academic literature and the political field, in which various perspectives are handled and different characteristics are emphasized.³

Jacques Delors coined the term ‘European social model’ in the mid-90s to designate an alternative to the American form of pure-market capitalism.⁴ European social model stands out with, compared with the American, high levels of trade union density and interest organisations and the consequent coverage of collective bargaining, active and participatory democratic traditions, comprehensive negotiations between the government and the social partners over conflicts of social and economic issues, high levels of workplace, employment and social protection, stable industrial relations, which resultant leads to the economic growth combined with social cohesion. (Welz/Kauppinen, 2004, p.10; Vaughan-Whitehead, 2003, Hemerijck, 2002, p.174)

In 1994, core values of the model introduced as democracy, human rights, independent collective bargaining, market economy, equal opportunity principle, solidarity with a social welfare by the European Commission in its White Paper. (CEC, 1994, p.2)

Joerges and Rödl represent the key elements of the social model as democratic governance concept and social protection and denote these two elements inseparable parts of European culture. (Joerges/Rödl, 2004, p.2)

Hemerijck, deals with three distinguishing features of the European social model. (Hemerijck, 2002, p.1-2) They are social justice, economic efficiency and development,

³ For the detailed assesment of the European Social Model see Benchmarking Working Europe 2006, The European Social Model, Chapter 1, ETUI-REHS, ETUI publications, Brussels, 2006.

⁴ For the reference see Jepsen, M., Pascual,A.S., The European Social Model European Panel, 3-4 February 2004, ETUC, Berlin, 2004.

which social justice brings with it, high degree interest representation and comprehensive negotiations between the government and the social partners.

Referring Wickham, he declares the main features of the model, social and economic citizenship, restriction on the working hours, relatively equal income distribution and the role of the state as guarantor of the social cohesion. (Wickham, 2007) Besides he emphasizes the common commitments of European states on these topics.

According to the European Trade Union Confederation (ETUC), European Social Model is a vision of society that combines sustainable economic growth with ever-improving living and working conditions and at the same time brings about full employment, good quality jobs, equal opportunities, social protection for all, social inclusion, and involving citizens in the decisions that affect their lives.⁵ Moreover ETUC emphasizes that in addition to collective bargaining and workers. protection, social dialogue is crucial factor for the improvement of the European Social Model. Five main characteristics of the Model identified by the ETUC:

- fundamental social rights, including freedom of association, collective agreements, the right to strike, protection against unjustified dismissal, fair working conditions, equality and non-discrimination;
- social protection, delivered through highly developed universal systems (compared to the US or other world regions), and wealth redistribution measures such as minimum income or progressive taxation;
- social dialogue, with the right to conclude collective agreements, to workers' representation and consultation, and national and European Works Councils;
- social and employment regulation, covering, for example, health and safety, limits on working time, holidays, job protection and equal opportunities;
- state responsibility for full employment, for providing services of general interest, and for economic and social cohesion.

In addition to these characteristics a strong complementary European dimension has been developed over recent decades.⁶

As for Europe's political leaders, the European social model "is based on good economic performance, a high level of social protection and education and social dialogue."⁷

⁵ See < <http://www.etuc.org/a/111>>

⁶ See < <http://www.etuc.org/a/2771>>

It is not easy to sum up the characteristics of such a question of common concern. One can come across other important features of the European social model, i.e. another distinctive characteristic of the European social model is that it attributes a central role to social dialogue at the EU and national levels in the form of social partnership. Even it would be a radical deviation from the European social model for the Commission to modernize labour law by separating EU labour law on individual employment from EU collective labour law. (Papadakis, 2008, p.138)

There is a large debate in academic and political fields has focused on whether it is possible to talk about a single European Social Model, or whether there are different models or how much social the model is. One can observe common characteristics of the European Social Model across the MS, but the model is implemented in many different ways through legal and institutional structures. Also there are some scholars advocates that European social model surpasses the Anglo-Saxon Model. (Jepsen/Pascual, 2005, p.232-233) It does not make sense to dwell on this topic since to analyze this question would overreach our paper's purpose.⁸ However, it is necessary at least to introduce the main characteristics of different European social models.

Literature on this topic shapes around the work of Gosta Esping-Andersen called *Three Worlds of Welfare Capitalism*. (Esping- Andersen, 1990) He uses threefold classification, Anglo-Saxon the liberal regime which allocates resources to the needy-indigent persons, Continental, the corporatist regime which classifies risks according to the statues and Scandinavian, the universal social democrat regime which has the desire to get all society under one umbrella. In addition to these three models Mediterranean model was annexed. This new model resembles highly corporatist model, however the features that make this model original unfold universal qualified national health services, pioneering role of the family within the market- family-state triangle, income support mechanism differentiate registered or unregistered.

⁷ See §22 of the Presidency Conclusions of the March 2002 Barcelona European Council

⁸ For more information on the debate See Diamantopoulou, A., *The European Social Model – myth or reality?*, Address at the fringe meeting organised by the European Commission's Representation in the UK within the framework of the Labour Party Conference, 2003.

Since different states focus on different aspects of the model, it has been argued that there are four noticeable social models in Europe, namely the Nordic, Anglo-Saxon, Continental and the Mediterranean.⁹

2.1 Nordic Model

By some scholars, it is perceived as the most efficient and equitable model. (Sümer, 2009, p.110-125) The Nordic model refers to the social model of the Nordic countries; namely, Iceland, Norway, Sweden, Denmark and Finland which is based on highly developed and government-funded welfare state. However this model even varies within the countries, i.e. low (Denmark) to high (Sweden) levels of employment protection. General characteristics of the model are classified by citizenship based universal entitlements, protection of human rights, more decentralized governance, high quality education, broad supply of service beyond health and education, stable economy, high women's integration in the labour market, high unemployment benefits and low income disparity. Moreover, the collective bargaining system was traditionally highly centralized in these countries and the model is founded on social dialogue and a social partnership approach in which much of the role of the state in terms of labour market intervention is determined by the social partners. (Winterton/Strandberg, 2004, p.38-39)

2.2 Anglo-Saxon Model

In comparison with most of Western Europe, those countries that have this model experience low levels of employment protection, however suffer from high inequalities and poverty. The Anglo-Saxon model is characterized by underdeveloped public social services beyond health and education, universal single payer health service, poor family services, not qualified vocational training and education. Adopted by United Kingdom (UK), Ireland, Canada the Anglo-Saxon tend to have utilitarian market principles, low replacement rates in transfer programmes, uncoordinated industrial relations with moderately strong unions, decentralized wage-bargaining and low levels of collective bargaining coverage.

2.3 Continental Model

Continental model can be perceived as middle layer between the Anglo-Saxon and Nordic model. Carried out by Austria, France, Germany, Belgium, the Netherlands, Luxembourg, the model relies on employment related social insurance, very modest levels of public social services beyond health and education, conventional male breadwinner family,

⁹ The introductions of the models was compiled from Hemerijck,A., *The Self-transformation of European Social Models*, (eds.) Esping-Andersen, 2002.G., Gallie, D., Hemerijck , A., Myles, J., *Why we need a new welfare state?*, Oxford University Press, p. 178-18, Oxford, 2002.

generally strict levels of employment protection, comprehensive systems of vocational education and training, particularly in Germany, Austria and The Netherlands. Moreover, the model tends to have coordinated industrial relations with a predominance of sectoral wage bargaining, high levels of bargaining coverage and strong unionization rights. Collective bargaining is mainly focused at the sectoral level, with regional negotiations in the private sector and national negotiations in the public sector. (Ibid, p.39)

2.4 Mediterranean Model

Outstanding countries that use this model are Italy, Spain, Greece, Portugal and even France can be considered part of this group even if it also has some characteristics of Continental model. This model is similar to the Continental model, however relies on large state pensions. Other characteristics of this model can be given as very low employment rates especially among women and older employers, inflexible labour market, high job protectionism, poverty within the society. Moreover, collective bargaining was underdeveloped in these countries because employers were reluctant to negotiate and trade unions were more inclined towards direct militant action to force political concessions from the government. (Ibid, p.41)

CHAPTER 3

SOCIAL DIALOGUE

Imposing our thoughts or proving our views to others, to our counter partners, does not compose a dialogue. On the contrary, dialogue is sharing our views, at the same time benefiting from others views, which leads to activate, enrich and increase the number of negotiation platforms.¹⁰ Regarding social dialogue roots, it is known that first forms of social dialogue mechanisms, aiming to solve bipartite disputes, appeared in Scandinavian in the world at the end of the nineteenth beginning of the twentieth century. However, in Europe social dialog mechanisms became an important tool particularly after the World War II. In this period, forms of social dialogue developed to participate in solving economical and social problems, strengthen the consistency and the dialogue between government, employees. and employers. side. Even nowadays, in many European countries, in terms of the success of socioeconomic policies governments consider consultation social partners and cooperate with social partners in taking socioeconomic decisions and implementing them as significant. (Görmüş, 2007, p.46)

There is a positive correlation between the persistent peace, stability in the working life and economic growth, social development of a country. While determining least common denominators in industrial relations, it should be taken into account social partners. needs and facilities and public benefits. One of the very often enounced notions in the working life is social dialogue. This notion is mostly handled from the point of conciliatory relations in the working life and generally this affirmative aspect is emphasized in the definitions of the social dialogue. Moreover, one can claim that main objective of social dialogue is trying to solve questions related to social life however; it deals with the all kinds of problems related to society of a country, namely social, economical, labour-market policies, like a coordination tool.

In the literature it is difficult to find out a word-wide valid social dialogue definition, because of the variety in institutional formulations, legislative sources, traditions, annals and practices. Actually, in some countries social dialogue takes a bipartite form, as is the case in collective bargaining¹¹, only between employees and employers representatives whereas in

¹⁰ Former Turkish Minister of MoLSS describes dialogue referering to social dialogue, Başesgioğlu, M., “Sosyal Diyaloğun Kurumsallaşması Çalışma Hayatında Kalıcı Barışı Sağlayacaktır”, Mercek Dergisi, Volume 39, 2005.

¹¹ However, social dialogue should by no means be confused with collective bargaining. The main issues of the collective bargaining are wages, salaries as well as strikes and lock-outs, the threats of industrial action, are

others takes a tripartite form including public authorities and besides in some countries takes multilaterally by joining of representatives of non- governmental organisations to this tripartite structure. In terms of EU, it is again hard to define European social dialogue, since the degree of participation differs from one member state to another, depending on their national social dialogue traditions. In this part of the paper the definitions of the social dialogue by the various scholars and institutions will be announced and the characteristic thereof will be examined.

3.1 Defining Social Dialogue

Social dialogue is defined, recently, by the International Labour Organisation (ILO) *to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.*¹²

In this respect, Rösner defines social dialogue as a coordination tool accorded by the government in reaching common goals the courses of actions of politically and economically social groups. (Rösner, 1996, p.103)

For some academics, social dialogue is a democratic consultation and concertation process which government and social partners along with other interest organizations seek to determine economic and social policies. (Görmüş, 2007, p.115)

Işığık discusses social dialogue in the widest sense as the participation of social partners with the representatives of other organized interest groups in determining and as well as implementing main economical and social policies in the countries that adopted democratic political regime. (Işığık, 1999) In other words, social dialogue is the special mechanism gives the possibility to the representatives of social partners and other interest groups to participate in determining and implementing of economical and social policies at macro level. Some scholars define social dialogue as a notion, whereas others determine some criteria to discuss the entity of social dialogue. For instance, Şahin states crucial points for the entity of the social dialogue (Şahin, 2003, p.59-60); in a general framework social dialogue:

- embraces the entity of societal participants with different interests and envisages that they are organised,

explicitly excluded from the procedural arrangements for social dialogue (Article 137). Moreover, collective bargaining takes place at national level only, unless the dream of the Euro-optimists materialize. For more information on the difference see Keller,B., Social Dialogue: the specific case of the European Union, the International Journal of Comparative Labour Law and Industrial Relations, Volume 24, Issue 2, Kluwer Law International, 2008.

¹² See <<http://www.ilo.org/public/english/dialogue/themes/sd.htm>>

- inholds the priority that the government utilize its resources on the social purposes and it keeps the same distance for each party,
- requires that all parties involved should have sufficient equipments in order to solve problems and power to act on behalf of the society they represent,
- requires that parties involved, especially workers. side, should be independent both of the state and the capital. For instance, if trade unions. side is subordinated to the state or political parties, the process will not develop a genuine social dialogue.

One can identify a set of preconditions for good functioning social dialogue, irrespective of the form it takes and the level at which it happens. As above mentioned the parties involved must be independent of the government but also of each other. Besides, it is crucial that the distribution of power between the parties should be balanced, which does not let to strongest party decline to make compromise or in direct contradiction weakest party may feel obliged to compromise too much.

Social dialogue takes place at working place, local, regional, sectoral, national and as well as European level which will be introduced in the coming part. Bipartite social dialogue brings together employers and trade union organisations, both at cross-industry level and within sectoral social dialogue committees, whereas tripartite dialogue involves the public authorities or in terms of EU, EU authorities, European Commission and Council of Ministers.

3.2 Social Dialogue at the EU Level

Social dialogue at the EU level goes along with the *acquis communautaire* as an emerging value since the Treaty of Rome, 1957. The Economic and Social Committee, established with the Treaty of Rome, has the characteristics of a committee composed of social segments and is consulted and delivers opinion on socioeconomic subjects. The involvement of organizations with different interests in policymaking has been present for some time in the European arena, providing expertise and support in the implementation of European policies, mostly informally. (Reale, 2003, p.3) However, in the field of EU social policy the participation of social partners has been granted with the constitutional framework (Articles 138 and 139 of the EC Treaty) which turns the procedure into a formal way. Therefore, the participation of social partners has been worthwhile to investigate in the scholastic field. The social dialogue at European level has been one of the most crucial elements in the development of Community social policy. (Neal, 2002, p.27) As one of the fundamental features of the European Social Model, social dialogue tags employers and

employees side together. Moreover, by way of integrating organisations of management and workers into European policy-making, European social dialogue also has played an important role in the context of European Employment and Industrial Relations System. Besides, this new form of policymaking was commented to contribute to a unique European path that can combine economic progress with social involvement at the same time. (Lecher/Platzler/Rüb/Weiner, 2002; Gold/Cressey/Leonard, 2007)

3.2.1 Defining Social Dialogue at the EU Level

According to the definition of European Commission, *social dialogue refers to discussions, consultations, negotiations and joint actions involving organisations representing the two sides of industry (employers and workers)*.¹³ In other words, social dialogue, according to the Commission, is the driving force behind successful economic and social reforms and must be embedded at different levels of EU activity.

With regard to European social dialogue, Eurofound¹⁴ describes it as the *consultation procedures involving the European social partners, Union of Industrial and Employers' Confederations of Europe (BUSINESSEUROPE), the European Centre of Enterprises with Public Participation (CEEP) and European Trade Union Confederation (ETUC)*.¹⁵ In broadest way, Eurofound interprets European social dialogue as institutionalised consultation of the social partners by the Commission and other Community institutions.

According to a recent European Economic and Social Committee definition; *social dialogue is the term used to describe the consultation procedures involving the European social partners: BUSINESSEUROPE, CEEP, ETUC*.¹⁶

Scholars define European social dialogue generally in the similar scope. Namely, the European social dialogue provides for the signing of collective agreements between employers, associations and trade unions organized at the European level. (Smismans, 2008, p.161)

In 2001, ETUC, UNICE and CEEP decided to develop a precise definition of social dialogue since the concept was being used to refer any kind of activity in which social partners were involved. Therefore, they envisaged the following definitions:

¹³ See <<http://ec.europa.eu/social/main.jsp?catId=329&langId=en>>

¹⁴ Eurofound is a European Union body, one of the first to be established to work in specialised areas of EU policy. Specifically, it was set up by the European Council (Council Regulation (EEC) No. 1365/75 of 26 May 1975), to contribute to the planning and design of better living and working conditions in Europe, <<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeansocialdialogue.htm>>

¹⁵ European Social Partners will be introduced deeply in the next coming parts.

¹⁶ See <http://eesc.europa.eu/smo/prism/moreinformation/glossary/index_en.asp>

- Tripartite concertation to designate exchanges between the social partners and European public authorities;
- Consultation of the social partners to designate the activities of advisory committees and official consultations in the spirit of Article 137 of the EC Treaty;
- Social dialogue to designate bipartite work by the social partners, whether or not prompted by the Commission's official consultations based on Articles 137 and 138 of the EC Treaty. (Kirton-Darling/Clauwaert, 2003, p.248)

Bipartite social dialogue at European level takes place between the employer and trade union organisations in the committees and in working groups. The topics discussed either affect industry as a whole or specific sector of the economy. The European Commission can act as facilitator and mediator in bipartite dialogue.

In tripartite European level social dialogue, employers, workers, representatives meet together with representatives of the EU institutions (Commission, Council of Ministers) at the biannual Tripartite Social Summit, as well as in regular talks on a technical and political level on macro-economics, employment, social protection and education and training. After giving basic definitions and features of European social dialogue, it makes sense to review the historical development of social dialogue at EU level.

3.2.2 Development of Social Dialogue at the EU level

Since the 1980s, the European Commission has been aware of that the emergence of a developing European area of employment relations required some crucial elements. There are many motives behind the emergence of the European social dialogue as an important element of the European social policy. For instance, the decision-making process in the European social policy was somehow problematic. In the 1980s, the complexity of intergovernmental bargaining which required, in most cases, unanimous decisions in the Council of Ministers, raised terrific difficulties if not stops to develop social integration. The right to veto was widely used by different countries, and, particularly, by the UK. (Keller/Sorries, 1999, p.112) Nevermore, the European social dialogue has not been taking place since 1980s with no previous experience. Actually, some MS, i.e. Belgium have been performing this kind of method which manages labour relations for a long time. (Mangenot/Polet, 2004) Besides, the roots of informal social dialogue at European level by Commission expert committees and ad hoc sectoral committees can be traced back to former times. For instance, European Commission established joint committees responsible for the consultation of European social partners. Members of these committees, equal numbers of employers and employees, were

assigned by the Commission and sectors covered by the committees were mines (1952), agriculture (1963/1974), road transport (1965), inland waterways (1980), fishing (1974) and railways (1972) sea transport (1987), civil aviation (1990), telecommunications (1990) and postal services (1994). Apart from the joint committees, informal working parties were created at the request of social partners. (Pochet, 2007, p.3)

However, first formal recognition of Community level social dialogue gets on the stage later. In 1985 at the castle of Val Duchesse outside Brussels, the then European Commission President Jacques Delors formally launched the bipartite European Social Dialogue between the social partners.¹⁷ Thenceforth the term “Val Duchesse” represents the emergence of the European Social Dialogue in the mid-1980s.¹⁸

During the year 1985, social partners agreed to carry forward the social dialogue and made some initiatives. The Val Duchesse social dialogue brought together the three European organisations who represent the main interprofessional employer and trade union confederations. This meeting was the first time that social partners (UNICE for private industry, CEEP for public employers and ETUC for trade unions) discussed economic and social policy in the light of the European Single Act and declared a common position on social dialogue. However, despite Article 118 B EC declared that relations based on agreement, at that time it led to only some joint opinions and did not eventuate in the conclusion of binding agreements without imposing any obligations on the parties. Between 1985 and 1991 the bipartite activities resulted in the adoption of resolutions, declarations and joint opinions, without any binding force. Nevermore, Val Duchesse system allowed the social partners to give their views on developments in European social policy. In 1986, by the new Single European Act’s insertion into the EC Treaty of a new Article 118B EC (now Articles 138 and 139 of the EC Treaty, Maastricht consolidated version) European social dialogue got first important formal recognition.¹⁹

Treaty on the European Union, outcome of the negotiations at Maastricht, had a Protocol including an “Agreement on Social Policy”, the result of negotiations between the

¹⁷ Some scholars argues the case starting from the Standing Committee on Employment created by Council Decision 70/532/EEC of 24 December 1970 as the official start of European social dialogue, see Kirton-Darling, J., Clauwaert, S., European Social Dialogue: an instrument in the Europeanization in industrial relations, Transfer European Review of Labour and Research, Volume 9, Number 2, p. 249, 2003. This Committee was the response to a wish expressed by the representatives of employers' and workers' organisations at the conference on employment problems held in Luxembourg on 27 and 28 April 1970. More information is available at <http://europa.eu/legislation_summaries/other/c10233_en.htm>.

¹⁸ See<<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/valduchesse.htm>>

¹⁹ For the current Articles 138 and 139 of the EC Treaty, see <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E138:EN:HTML>>, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E139:EN:HTML>>

European social partners. With the exception of UK, after little modifying, this agreement was adopted by 11 MS and engaged as the Protocol and Agreement on Social Policy enclosed to the Treaty of Maastricht.²⁰ Thereby, cross-sectoral social dialogue was established by the Social Protocol which will give the right to social partners to conclude cross-sectoral agreements subsequently. With this fundamental step, Maastricht Treaty came into force in 1993, social partners acquired a right to be consulted on proposals in the social field and negotiate binding Europe-wide framework agreements. By Addison and Siebert this was regarded as a smart move of an activist European Commission seeking to put pressure on a Council unable or unwilling to agree on meaningful social policies whereas Bockmann commented the event as a common wish of unions and employers to assign between them a policy area in which they knew better than Council and Commission, providing themselves with an institutional capacity to discover common interests and prevent incompetent intervention by supranational and intergovernmental bodies. (Addison/Siebert, 1994, p.5-27; Bockmann, 1995, p.193-211)

Some Euro-optimists, Biagi and Kim, regarded this event as likely to give rise to an era of Euro-corporatism. (Biagi, 1999; Kim, 1999, p.393-426) In the light of these evaluations, Streeck perceives social dialogue as a new kind of corporatist structure at the European level, adding to the array of existing supranational and international institutions that were about to supersede national social policy and industrial relations.²¹ Besides, there was a criticism about the contents negotiated of the Maastricht social dialogue.

One of the crucial points emphasized was the exclusion of key industrial relations issues from the social dialogue, like issues of pay, freedom of association, and the right to strike were all excluded from the Social Protocol. (Kirton-Darling/Clauwaert, 2003, p.253) As many pointed out, it was argued that the exclusion of these issues also limited the capacity of the Commission and ETUC to convince European employers to settle over the negotiating table with ETUC. (Prosser, 2006, p.6)

Now, the European Commission had a duty to promote social dialogue between the parties and to consult with them when taking Community decisions. Thus, social partners had the authority to respond to a consultation by expressing their volunteerism to reach an agreement among themselves. Consequently, social partners became important actors in building the European social model. However, the specific definition of social dialogue was

²⁰ See <<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/valduchesse.htm>>

²¹ For more comprehensive evaluation see Streeck, W., *The Internationalization of Industrial Relations in Europe: Prospects and Problems*, Working Paper Series in European Studies, Volume 1, Number 1, 1998.

not yet clearly introduced within these legal arrangements. Besides, at that time, like present, there was another contentious question. Which party was more reluctant to conduct the European social dialogue? UNICE was opposite to EU-wide collective bargaining and ETUC faced a continual struggle to engage employers. representative organisations in social dialogue. Thereby, the employers restricted the effectiveness of social dialogue by claiming that entering into binding agreements was beyond the jurisdiction of UNICE. (Dølvik, 1999, p.141) Streeck and Schmitter argued that: *By not delegating authority upwards to the European level, employers were, and still are, able to confine institutions like the Social Dialogue to a strictly non-binding, consultative status.* (Streeck/Schmitter, 1991, p.206)

In October 1992 the ETUC, CEEP and UNICE established a new Social Dialogue Committee which is consulted on social, macroeconomic, employment, vocational training and other policies of interest to the social partners and the one has several thematic working groups.

Meantime, in 1993, European Commission issued a Communication²² regarding the application of the Agreement on Social Policy and within this Communication the definition of social dialogue adopted by the Commission. Namely, social dialogue is that which can lead to legally or contractually binding framework agreements as set out in Article 138 of the EC Treaty. (Kirton-Darling/Clauwaert, 2003, p.248)

The Maastricht Protocol on Social Policy was integrated into the Amsterdam Treaty. Detailed, in June 1997, by the Amsterdam Treaty, the Agreement on Social Policy was incorporated into a revised Social Chapter of the EC Treaty and the term social dialogue was displayed obviously. Therefore, in the EU one can not abstain to implement social dialogue; it is not optional, since it is regulated in the Treaties. In this period, European social dialogue led to the implementation of three framework agreements (on parental leave in 1996 revised in 2009, on part-time work in 1997, and on fixed-term contracts in 1999) via Council directives.

In 1997 the Council presidency has invited the social partners to meet the troika ahead of the European Councils, the Tripartite Social Summit which was an important evidence to show the role of tripartite consultation at the highest level of European decision-making. The Tripartite Social Summit meets at least once a year for a high-level exchange of views

²² Commission of the European Communities, Agreement on Social Policy, COM 93, 600 Final, 14.12.1993, Brussels, 1993.

between social partners and EU representatives. Macroeconomic dialogue, employment, social protection, education and training are the topics covered by the tripartite consultation.²³

Furthermore, Laeken Declaration, 2001, has an important role in the development of European social dialogue, since social partners have placed greater emphasis on bipartite ‘autonomous agreements’, presenting a joint contribution. They agreed on a joint declaration about their role within social dialogue, which they modified as being characterized by not only more autonomous but also more voluntarily. This new tool was designed instead of tripartite concertation, including active participation of the Commission, results in legally binding framework agreements. Thus, the Commission is supposed to lost ground to be the agenda-setter for social dialogue. (Keller, 2008, p.204) From now on, European social partners would act autonomously when formulating the agenda. These new generation autonomous agreements, after negotiating, are implemented, either by collective agreement in the MS or by Council Decision on request from the social partners (EC, 2003). However, it should be emphasized that, rather than displacing the Maastricht social dialogue, the new phase coexists with it as a mode of regulation. (Prosser, 2006, p.6) By their joint contribution to the Laeken European Council, social partners made it very clear and reaffirmed their specific roles, the distinction between bipartite social dialogue and tripartite concertation, the need better to articulate tripartite concertation around the different aspects of the Lisbon strategy, their wish to develop a work programme for a more autonomous social dialogue. Besides, the underlying idea was to give greater force to the implementation of joint agreements, guidelines or other instruments which had not become part of Community social legislation through the legal process. (Schömann, 2009)

On November 2002 at the Summit in Genval, as a matter of fact, following this joint contribution, social partners issued a detailed joint Multiannual Work Programme for 2003 - 2005 which focused on employment, enlargement and mobility.²⁴

In this respect social partners reached three important framework agreements in a new autonomous way, whereby implementation at the national level was delivered to the social partners themselves. These new generation autonomous agreements were concluded on teleworking (2002), on work-related stress (2004), and on harassment and violence at work (2007), a framework of actions for the development of lifelong skills and qualifications (2002) and a framework of action on equality between men and women (2005).

²³ See < <http://www.etuc.org/a/1751> >

²⁴ ETUC, UNICE, UEAPME, CEEP, Work Programme of the European Social Partners 2003-2005, ETUI publications, Brussels, 2002.

In March 2006 the social partners adopted their second Multiannual Work Programme for 2006-2008 and in 2009 the third Work Programme which will be undertaken during 2009-2010.

In a brief, since 1993, the European social partners have adopted over 40 cross-industry and almost 500 sectoral joint texts, signed several important agreements and developed independent multi-annual work programmes.²⁵

3.3 European Social Partners

Social partners are one of the most important elements of social dialogue. In the narrowest sense social partners predicate the trade unions and employer organisations. In its broadest sense trade unions are the organisations that guard the rights and interests in the economical and social fields and aim to improve the life and working conditions of working class whereas, employer organisations are other main party of social dialogue that represents the employers either from one trade section or various sectors. It is not easy to satisfy all parties of the social dialogue. However, social dialogue saddle social partners with some responsibilities in order to get seamlessly functioning process.

First, there should be „strong and capable social partners. who are European in their conception and administration of policy; and second, that the social dialogue should be reinforced to act as a regulatory instrument ensuring the ‘harmonization of employment and working conditions’ (EC, 1988: 88–9) alongside other regulations and directives. (Gold/Cressey/Leonard, 2007, p. 9)

3.3.1 Defining European Social Partners

In the EU legislative sources, there is no specific definition of social partners; however there is a common understanding of the term. The social partners are the independent representatives of the European trade unions and employers' organisations involved in the European social dialogue, as provided for under Article 138 and 139 EC.²⁶ Additionally, whereas there is not a definition in EU legislative sources of “social partners”, in reality social partners refer, at European level, to “sectorial” associations of trade unions and business organizations (meaning referred to a specific sector, for instance commerce sector, metalworkers and so on) and to three main “intersectorial” or cross-sectoral organizations; namely ETUC, BUSINESSEUROPE, CEEP. (Reale, 2003, p.9)

²⁵ See <<http://www.etuc.org/r/20>>

²⁶ See

<<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/EUROPEANSOCIALPARTNERS.htm>>

Even though there is no specific definition, European Commission figured out, via its Communication concerning the application of the Agreement on Social Policy²⁷, some criteria for the representativeness of organisations. According to the Commission's Communication, organisations should fulfill these criteria:

- being cross-industry or relate to specific sectors or categories and be organised at European level;
- consisting of organisations, which are themselves an integral and recognised part of Member State social partner structures and with the capacity to negotiate agreements, and which are representative of all MS, as far as possible;
- having adequate structures to ensure their effective participation in the consultation process.²⁸

However, it is not enough only fulfill these criteria to obtain a good functioning social dialogue. Social partners should have a will to work together to harmonize the differences in point of views, mutual trust to create the notion of culture of cooperation. Besides, the social partners need to be united in their clear objectives.

Apart from the fact that, setting out the criteria gave rise to loud criticisms, since these criteria related almost only to the organizational structures of the social partners, rather than to representativity of the social partners.²⁹ Even the European Parliament made a comment on the debate, suggesting the organizations should be able to ensure a concrete mandate from their members to act as representative agents in the social dialogue procedure.³⁰ Moreover, these criteria were applicable only in the consultation since when the social partners were to decide to enter into negotiations in order to conclude an agreement, the principle of mutual recognition would apply. (Reale, 2003, p.12)

²⁷ Commission of European Communities, Agreement on Social Policy, COM 93, 600 Final, 14.12.1993, Brussels, 1993. see <http://aei.pitt.edu/5194/01/001653_1.pdf>

²⁸ For a comment on the criteria, see Bercusson, B., Van Dijk, J.J., The Implementation of the Protocol and the Agreement on Social Policy of the Treaty on European Union, *International Journal Comparative Labour Law Industrial Relations*, Volume 3, 1995.

²⁹ At that time UEAPME has not been admitted to the table of negotiations. Because of this exclusion there was a case before EC judicial Courts. UEAPME brought the case before the Court of First Instance of the European Communities by reason of its exclusion from the law making procedure of the first Directive on Parental Leave. For a comment to the judgment see Bercusson, B., Democratic legitimacy and European Labour Law, *Industrial Law Journal*, Volume 28, p. 153, 1999. Adinolfi, A., Admissibility of action for annulment by social partners and sufficient representativity of European agreements, *European Law Review*, Volume 25, Number 2, p. 165-177, 2000.

³⁰ This proposal of the European Parliament was reported in the Communication of the Commission of the European Communities, Development of the Social Dialogue at Community level, COM 96, 448 Final-Not published in the Official Journal, 1996.

However some commentators claim that, the success of social dialogue depends upon the effectiveness of social partner representative organisations within MS and in the accession and candidate countries. Especially in the accession and candidate countries there may be drawbacks that employer organisations are not enough advanced or that trade unions are not yet enough independence from the government. (Winterton/Strandberg, 2004, p.23-24) Therefore, the role of the social partners is gaining increasing importance amongst the MS, as well as in the acceding and candidate countries.³¹

It is crucially important to understand the historical development, the structure, the operation of the European social dialogue as well as the roles of the different organizations within the dialogue. We shall introduce the organizations who are closely involved with the European social dialogue.

3.3.2 Overview on General Cross-sectoral Organisations

Even at the time of that there was unionization rights at the Community level, management and labour organisation were organized at the EU level and unionization became strong with the guaranty of ILO agreements. Firstly, the UNICE (now BUSINESSEUROPE) was established after the signing of Treaty of Rome in 1958. In 1961, CEEP was founded which brought the public enterprises at EU level together. Thereby, CEEP has had a separate presence from those private sector employers, UNICE, and since 1965 is the second social partner from the employer wing. But workers or employees side was unified at the EU level later than expected and in 1973 they founded the ETUC. However, some scholars have argued (unequal) power balance between the social partners at European level. Even they put down the weakness of the EU social dialogue to inherent weaknesses of trade unions, since the fact that employers are able to refuse to negotiate, whereas the trade union movement requires the dialogue to pursue its demands. (Kirton-Darling/Clauwaert, 2003, p.252) Power balance and role distribution among the social partners will be discussed within the next part, adding the views of the representatives of social partners.

3.3.3 Businessseurope

By the Treaty of Rome, employer representative organisations started to appear. The first was UNICE (Union des Industries de la Communauté européenne) founded in March 1958. The six countries of this first European Community were all represented by the eight founder member federations, the BDI and BDA (Germany), the CNPF (France),

³¹ Related projects are driven in many countries with the financial supports of the European Commission, Social Partners Participation in the European Social Dialogue: What are the Social Partners needs? See <www.resourcecentre.etuc.org> (ETUC resource centre) and <www.erc-online.eu> (employers resource centre, under capacity building)

Confindustria (Italy), the FEDIL (Luxembourg), the FIB (Belgium), the VNO and FKPCWV (the Netherlands). The Federation of Greek Industries was accepted as an associate member.³² UNICE had the task a means of communication between national employers. confederations and mediation with the Commission. (Mangenot/Polet, 2004, p.20)

In 2007, just before its 50th birthday, the organisation changed its name into the Confederation of European Business (BUSINESSEUROPE). Structurally, it consists of two layers. Firstly, the Council of Presidents, which meets at least twice a year and is consists of the presidents of each of the national member federations. President and the vice-presidents are selected by the Council of Presidents. Moreover, it is responsible for BUSINESSEUROPE's general strategy. The executive committee is the second layer, composed of the director-generals of each of the member federations. The executive committee translates the Council's strategy into practice and monitors its implementation. Executive bureau consists of representatives of the federations from the five largest countries and five smaller countries by rotation and the country currently holding the EU Presidency, supports executive committee on its tasks. Besides these main bodies, BUSINESSEUROPE has also specialised policy committees; these in turn oversee about 60 working groups.

Contentious point is that, unlike the ETUC, there is a lack of sectoral representation in BUSINESSEUROPE's structure. Keller and Sorries criticize the matter; saying that despite BUSINESSEUROPE has been regarded as the main European actor on the employers. side, it might have difficulties to coordinate different sectoral interests of European firms. (Keller/Sorries, 1998, p.341) In other words, in many sectors BUSINESSEUROPE members are general business organisations and not specific employers. associations, which means it represents broad market interests rather than specific labour market and social interests. (Keller, 2008, p.212)

However, BUSINESSEUROPE defends a claim that sectoral interests to be already represented within its national member federations, which have sectoral members themselves. (Keller/Sorries 1999, p.114)

BUSINESSEUROPE declares its main objectives within its mission as uniting the central industrial federations to foster solidarity between them; encouraging a Europe-wide

³² For more detailed information on the historical development of BUSINESSEUROPE see <<http://www.businesseurope.eu/content/default.asp?pageid=414>>

competitive industrial policy; and acting as a spokesperson body to the European institutions.³³

BUSINESSEUROPE has defined priorities regarding social dialog; namely fulfillment of economic and social cohesion, improvement of social dialogue with other European social partners, liberalization of the world commerce, smooth functioning of internal market, more flexible social policy which increases European labour force capacity. Moreover, BUSINESSEUROPE stands for a European Social Policy purified from additional pressures and unnecessary bureaucracy which may cause burdens on the competitiveness of enterprises. (Tartan, 2006, p.138)

Moreover, BUSINESSEUROPE stands for a social dialog which contributes the performances of enterprises, embraces collective bargaining dynamics foreseen by the Agreement on Social Policy. However, it did not state its will power to systematize the European collective bargaining, on the contrary it asks for a collective bargaining based on the private initiative of the Commission. In other words, BUSINESSEUROPE is not in favour of the voluntary collective bargaining in which social partners choose the matter and implement co-decision procedure without any intervention of the Commission. (Ibid, p.139)

However, in our interview Stefan Clauwaert of European Trade Union Institute (ETUI) stresses that After the Laeken Declaration, with the autonomous social dialogue, the reluctance to negotiate has decreased among both employers and employees side, because of the emergence of less legally binding instruments and easier process from negotiating to implementing.

Besides, BUSINESSEUROPE is committed to a mission plan consisting of 6 points:

- Implement the reforms for growth and jobs.
- Integrate the European market.
- Govern the EU efficiently.
- Shape globalisation and fight all kinds of protectionism.
- Promote a secure, competitive and climate-friendly energy system.
- Reform European social systems in response to the challenges posed by globalisation.³⁴

³³ See <<http://www.busesseurope.eu/content/default.asp?pageid=414>>

³⁴ See <<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/busesseurope.htm>>

Currently the organization has 40 members from 34 countries, including EU MS, the European Economic Area countries and some central and Eastern European countries.

3.3.4 European Association of Craft, Small Medium-sized Enterprises (UEAPME)

UEAPME is the second employers' organisation differently representing the interests of European crafts, trades and Small Medium Sized Enterprises (SME) at EU level which was created in 1979. It is a recognised European Social Partner since December 1998 and since then takes place in the negotiations of European framework agreements and of the European social partners multi-annual work programmes. UEAPME entered into the dialogue in 1998, as a result of an agreement between this organisation and BUSINESSSEUROPE. This agreement was the consequence of the case, the case which will be introduced in the next paragraph. Indeed, the said two parties issued a 'Proposal for a cooperation agreement between UNICE and UEAPME', dated 12 November 1998, which outlined 'the modalities of cooperation between UNICE and UEAPME in social dialogue meetings, including negotiations' (Clause 1.2). This includes provisions whereby 'UNICE has pledged to consult UEAPME prior to expressing positions on behalf of employers in social dialogue and negotiating meetings' (Clause 3.1) and agreement provides that employers' UEAPME representatives have same rights in preparatory meetings of employers' organisations and in plenary meetings with ETUC' (Clause 3.2). (Esty/Geradin, 2004, p.260)

As mentioned before, UEAPME got relatively late into the social dialogue negotiations. Actually, there was a case questioning the representativity of the UEAPME. On 17 June 1998, the European Court of Justice handed down its judgment in case T-135/96, UEAPME vs Council of the EU. UEAPME had brought the case, grounding on the Article 230 EC Treaty, seeking principally the annulment of the June 1996 EU Directive on parental leave (96/34/EC)³⁵, or secondarily the annulment of the Directive's applicability to small and medium-sized enterprises (SMEs). The idea behind that UNICE was considered to be the body representing the interests of employers. As a matter of fact, the complaint of the UEAPME was rejected by the Court on 17 June 1998 on the grounds that the social partner representing employers, which was sitting around the negotiating table, UNICE, and was sufficiently representative of SMEs, instead of appealing the decision of the Court of First Instance to the European Court of Justice.³⁶

³⁵ The said Directive put into affect the agreement on parental leave reached in December 1995 by the UNICE, CEEP, ETUC.

³⁶ See < <http://www.eurofound.europa.eu/eiro/1998/07/inbrief/eu9807121n.htm>>

UEAPME offers mainly two kind of memberships; namely full and associate membership. Full members consist of representative national, cross-sectoral organisations representing craft activities and/or SME businesses in the different sectors of the economy within the EU and have the right to vote whereas latter has no right to vote but they can attend and speak at UEAPME meetings. Associate members branch into three groups, national cross-sectoral SME federations from non-EU countries, European sectoral organizations and other associate members.

Currently UEAPME represents over 12 million enterprises with nearly 55 million employees across the Europe and has 84 member organisations consisting of national cross-sectorial SME federations, European branch federations and other associate members.

3.3.5 European Centre of Employers and Enterprises Providing Public Services (CEEP)

Centre européen des entreprises à participation publique et des entreprises d'intérêt économique general (CEEP) assembles European enterprises and organisations, both public and private, at national, regional and local level, which are either public employers or providers of services of general interest and is one of the three European cross-sectoral Social Partners.³⁷ Apart from BUSINESSSEUROPE, CEEP is the other employers' association recognized by the European Commission, in 1965, who represents the public employers in the European Social Dialogue while other represents respectively private employers. CEEP is the new name for the European Centre of Enterprises with Public Participation which was founded in Brussels in 1961. After its relaunch by Jacques Delors in 1985, it became one of the key players of the cross-sectoral social dialogue. CEEP works mainly as voice before the

European institutions in order to promote solidarity between national public enterprises' federations who directly affiliated with the CEEP.

The National Sections have a great place in the structure of the CEEP. They regroup full members which are enterprises, groups of enterprises or public employers' organisations which exercise, to a significant extent, activities of public interest. Retrospective appraised, CEEP has long been characterized by the dominance of the French enterprises and it has therefore had several French Presidents.³⁸ Moreover, many of the members of CEEP are the enterprises who have operations in the main fields like energy, transportation and

³⁷See <<http://www.ceep.eu/>>

³⁸For detailed information see Mangenot, M., Polet, R., European Social Dialogue and the Civil Services, Europeanisation by the back door?, European Institute of Public Administration, p. 51, Netherlands, 2004.

telecommunication, in field of finance like banks and insurance companies and industrial sections.

Deciding body within the CEEP is General Assembly which consists of representatives of CEEP's full member national sections and individual members. As far as individual members are concerned, they are sectoral associations organised at EU level, representing enterprises exercising activities of public interest. General Assembly determines the general policies and elects the President, in every three years, and the Executive Vice-presidents of the CEEP who assists President representing CEEP in external relations. The President has the responsibilities like giving the directions for implementing the decisions of CEEP's competent bodies and ensuring that they are carried out. Experts from national sections and individual members are also members of the CEEP's Horizontal and Sectoral Committees. These committees are specialized on the specific fields of the activity. The Council of Administration is the managing body of the CEEP which consists of members sent by the General Assembly. In addition to this Council, there is the Board of Directors who counsels the President, the executive Vice-Presidents and the General Secretary.

3.3.6 European Trade Union Confederation (ETUC)

Although there are other trade union organisation at the EU level, workers are only represented by the ETUC. Especially after Agreement on Social Policy obliged that European social partners should be consulted; the role of ETUC increased a lot in the European social dialogue and so that its representative authority strengthened even the unified European workers' representative body came in existence relatively later, 8 January of 1973, than other European social partners. ETUC's roots reach to two organisations, namely the European Trade Union Secretariat (ETUS), founded in 1958 and became the European Confederation of Independent Trade Unions (CESL) in 1969 and the European Organisation of the International Federation of Christian Trade Unions became the World Confederation of Labour (WCL) in 1968. (Mangenot/Polet, 2004, p.20)

When examined structurally, the Congress is the supreme body of the ETUC which meets once every four years. As far as Executive Committee is concerned, it consists of representatives of national members in proportion to the national affiliated members of each national organization. Executive Committee makes decisions, which are usually taken by qualified majority, on the mandate and the composition of the delegations for negotiations with the European employers' organisations in the European Social Dialogue and assesses the results. Furthermore, there is Steering Committee which is responsible for following up the decisions made by the Executive Committee. It is meaningful to note that day-to-day

activities of the ETUC are run by the Secretariat. Even though it is not an administrative unit within the ETUC, ETUI³⁹ is of great importance due to its specialist staff. In 2005, ETUI came into being from three former ETUC centres of expertise- ETUI, the European Trade Union College (ETUCO), and the European Trade Union Technical Bureau for Health and Safety (TUTB), joined together to form the ETUI. ETUI has three main departments, ETUI Research Department, ETUI Education Department, ETUI Health and Safety Department. ETUC watches over the workers group in the Economic and Social Committee and coordinates the participation of trade unions to the Committee. In the light of Article 139 EC, ETUC supports the improvement of social dialogue at the European, regional and sectoral level and defends that European level social dialogue could be a new level of collective bargaining for multinational companies and sectors. Gülmez summarizes the opinions of ETUC regarding European social dialogue (Gülmez, 2003, p.64);

- The role, responsibility and autonomy of social partners in the European integration should be clearly defined and recognized; social dialogue should result with the framework agreements and agreements cover whole EU;
- One of the legal requirements for improving this kind of social dialogue is to respect the fundamental social rights cover trade union rights, right for collective bargaining and strike aimed to public and private sector workers;
- The contents of the European social dialogue should be immediately improved and strengthened in order to let parties subject to the agreements. ETUC expects that social dialogue could take at levels of interprofessional, sectors, line of business, multinational companies and cross-border regions.

ETUC comprises more than the MS of the EU which means it is not an organisation at Community level. Currently, ETUC represents 82 trade union organisations in 36 European countries, plus 12 industry-based federations. DISK (Türkiye Devrimci İşçi Sendikaları Konfederasyonu- Confederation of Progressive Trade Unions of Turkey) and TURK-IS (Türkiye İşçi Sebdikaları Konfederasyonu- Confederation of Turkish Trade Unions) are the first Turkish trade union confederations who are the member of ETUC. In 1998, also the applications of HAK-IS (Hak İşçi Sendikaları Konfederasyonu- Confederation of Turkish

³⁹ For more information on ETUI see <<http://www.etui.org>>

Real Trade Unions) and KESK (Kamu Emekçileri Sendikaları Konfederasyonu-Confederation of Public Employees Trade Unions) were approved by the ETUC.

Besides, ETUC has delegations included representatives of the Council of European Professional and Managerial staff (EUROCADRES)⁴⁰, European Federation of Retired and Elderly Persons (FERPA)⁴¹ and European Confederation of Managers (CEC)⁴² who are cross-industry organisations representing certain categories of workers. It makes sense to obtain more information on these social partners. In addition, the ETUC coordinates the activities of the 44 Interregional Trade Union Councils (IRTUCs), which organise trade union cooperation at a cross-border level.

EUROCADRES, like FERPA, was established under the umbrella of the ETUC based on the European experience of the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET) Professional and Managerial Staff Committee. In 1993 professional and managerial staff decided to obtain active involvement at European level and to launch the Council of European Professional and Managerial Staff under the name EUROCADRES. Thenceforth, it brings together European professional and managerial staffs who are members of a very wide variety of organisations, existing at national and at European levels. Currently EUROCADRES unites more than 5 million professional and managerial staff who works in all branches of industry, both manufacturing and service, and in the civil and public services and struggles for conditions to work in a flexible, interactive and open network.

FERPA (Fédération Européenne des Retraitées et des Personnes Agées) is the second organization who represents employee side within the European social dialogue under the umbrella of the ETUC. In the beginning, in 1988, FERPA was established by the ETUC as The Coordinating Committee on Retired Workers (CCRW) consisting of delegates appointed by the affiliated confederations, since ETUC needed an appropriate organization to improve its defence of pensioners' and elderly persons' interests. In 1992 CCRW was renamed as FERPA and recognized as an organization by the ETUC's Geneva Executive Committee in 1992. With its 10 million membership force FERPA works for the interests of retired and elderly persons and represents them towards the legislations touch on their living conditions, long-term care, dependency and lifelong learning, amongst other things.

⁴⁰ For more information on EUROCADRES see <<http://www.eurocadres.org/>>

⁴¹ For more information on FERPA see <<http://ferpa.etuc.org/>>

⁴² For more information on CEC see <<http://www.cec-managers.org/>>

European Confederation of Executives and Managerial Staff (CEC) is one out of the cross industry European social partners.⁴³ Through its national member organisations and professional federations it represents 1.5 million managers in Europe. Founding of the CEC (Confédération européenne des cadres) dates back to 1951 when the French, German and Italian executive federations formed the CIC (International Confederation of Managers). Later this international federation established the European institution CEC in 1989. Since Maastricht Treaty came into force in 1993 CEC is consulted on social legislative initiatives. Moreover, in July 1999 CEC became part of the employee delegation in the negotiations under the social protocol promoting and defending the interests of managers in Europe in these negotiations. CEC is an independent social partner; however it cooperates with the EUROCADRES under the umbrella of the ETUC.

Regarding sectoral organisations, there are specific sectoral organisations one of them called EUROCHAMBRES (European Association of Chambers of Commerce and Industry), established in 1958, which is the sole European body that serves the interests of every sector and every size of European business.⁴⁴

Besides, there are sectoral organisations representing both employers and European trade union organisations consulted under Articles 138 and 139 of the EC Treaty.⁴⁵

3.4 Evaluation of Social Dialogue at the EU level

More than 20 years after the establishment of the European social dialogue a total of seven framework agreements have been concluded at inter-sectoral level. The results of the period between 1986 and 1999 are composed of over 40 joint texts, so called joint opinions.⁴⁶ These initiatives resulted in three framework agreements and five agreements later, Framework agreement on parental leave in 1995, Framework agreement on part-time work in 1997 and Framework agreement on fixed-term work in 1999 were implemented by way of Council Directives. The social partners have taken a joint decision to revise the 1996 framework agreement on parental leave. Recently, on 18 June 2009, in the presence of Vladimir Špidla, European Commissioner for Employment, Social Affairs and Equal Opportunities, the European Social Partners, have formally adopted an agreement revising their 1995 Framework Agreement on Parental Leave. ETUC announced this event as a

⁴³ European cross-industry social partners are: ETUC on the employees' side and BUSINESSEUROPE, CEEP and UEAPME on employers' side.

⁴⁴ For more information on Eurochambres see <<http://www.eurochambres.be/content/default.asp?PageID=4>>

⁴⁵ For the list of this organisations see <ec.europa.eu/social/BlobServlet?docId=2154&langId=en>

⁴⁶ See European Commission, Social dialogue text database <http://europa.eu.int/comm/employment_social/>

milestone in the 25-year history of the European Social Dialogue as it is the first time that European social partners have agreed on the revision of a Community legal text resulting from their negotiations 12 years earlier.⁴⁷

The social partners have adopted joint statements and have developed joint initiatives, guidelines and codes of conducts. In addition to the formal procedures laid down in the Treaty, social partners may set their own specific agendas and can discuss various topics of common interest, such as lifelong learning and gender equality. In these cases social dialogue can result in the adoption of frameworks of action. This ‘new generation texts’ differ from their earlier joint opinions which consisted of policy statements aimed at the European institutions and/or national public authorities, by being directed instead at their members. (Branch, 2005, p.324) However, one can observe the alteration in the attitudes of European social partners, in particular, since Laeken Declaration. They developed a new instrument – the so-called autonomous agreements – and thus their national members came to order. Examples of issues covered by autonomous agreements include telework and work-related stress.

After giving the summary, now we will evaluate the consultation procedure and the outcomes of the social dialogue so far.

3.4.1 Consultation and Negotiation Procedure for the European Social Partners

In the beginning, amendments in the treaties and then the alternation of the policy making strategies at the EU level, have application social partners in shaping social policy of the EU. The main features of the lawmaking procedure in which social partners are involved can be explained as follows.

Article 138, paragraph 1 of the EC Treaty declares the first pattern, in regard to the Commission’s duty, as to promote social dialogue between the parties and to consult with them when taking Community decisions in the main social policy areas while ensuring balanced support for the parties. According to Article 138 Paragraph 2, of the EC Treaty, the Commission, before submitting a proposal on a social policy issue, must consult the social partners. After this consultation, the Commission may issue an envisaged proposal and subject it to the social partners. Social partners may send to the Commission an opinion or a recommendation. After this second consultation, the legislative proposal follows the procedure either provided by Article 251 of the EC Treaty, with the involvement of the

⁴⁷ See <<http://www.etuc.org/a/6279>>

European Parliament, and will be enacted by the Council either by qualified majority or a unanimous vote (depending on the topic, listed in Article 137 of the EC Treaty) or as enshrined in Article 138 Paragraph 4 social partners may inform the Commission of the wish to start negotiations, which lead to agreements on the content of the proposal, provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the parties and the Commission decide together to extend it.

If the social partners come to an agreement, in concordance with Article 139 Paragraph 2, it may be implemented according to the procedures and practices specific to management and labour in the MS or, in topics listed in Article 137, at the joint request of the signatory parties, by a decision of the Council on a proposal from the Commission. If an agreement is not reached between the social partners, Article 137 will apply, the Commission will draft the proposal and the procedure will go on inasmuch as in the Article 251.

European social dialogue provides for the signing of collective agreements between employers, associations and trade unions organized at the European level. There are four procedural types of European collective agreements, (Smismans, 2008) namely;

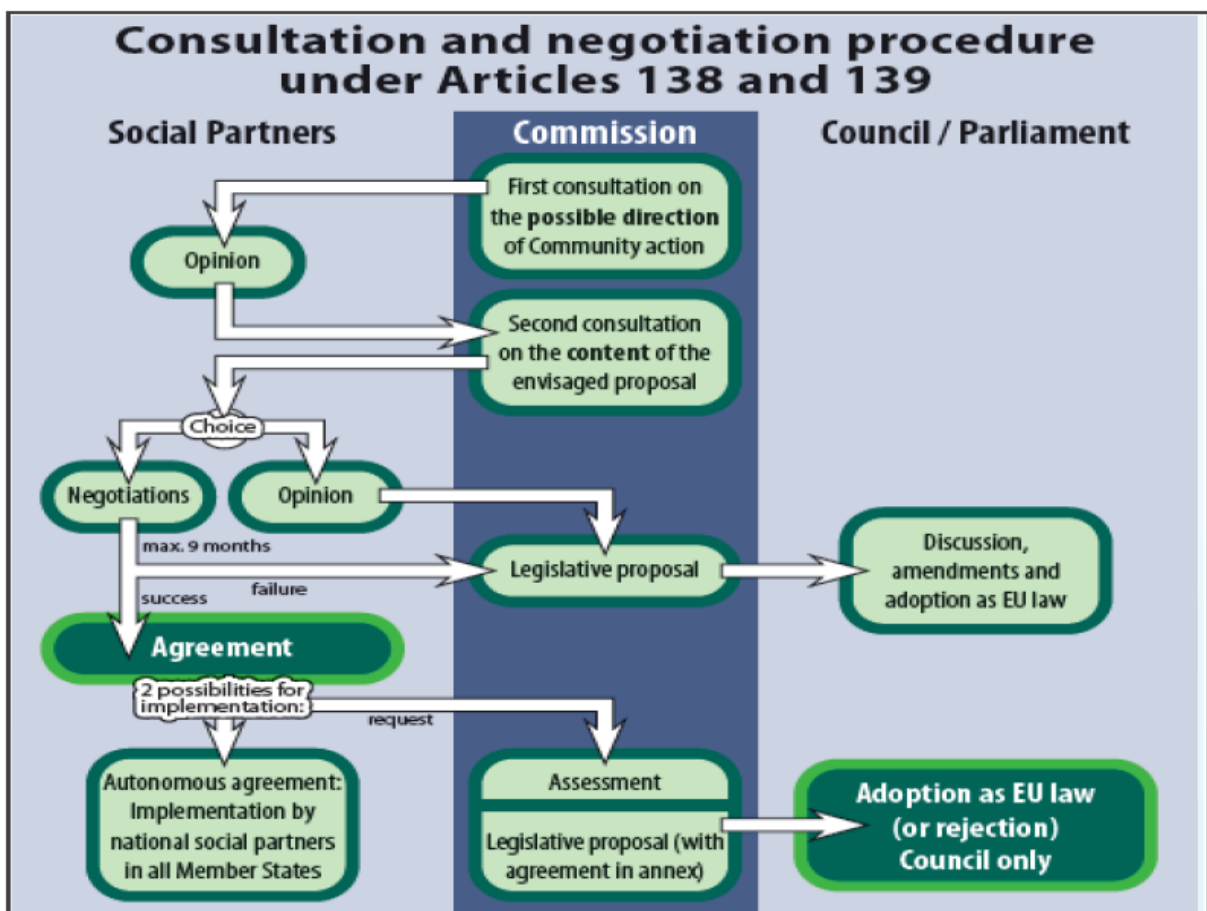
- Commission-initiated and Council-implemented Collective Agreements,
- Commission-initiated but self-implemented Collective Agreements,
- Self-initiated and self-implemented Collective Agreements,
- Self-initiated but Council-implemented Collective Agreements.

One basic question is of course how to implement the outcomes from the social dialogue. For instance if it results in form of a directive, then, all MS have to implement this directive, which is normally done by lawmaking. Later, autonomous agreements come into the picture, negotiations in the social dialogue can also lead to the autonomous agreements, which are not started by the Commission's initiative, may be implemented by the members of the social partners and the liaison committees. Before proceeding to the outcomes, it is worthy to give the critics about the process itself. Jacobs and Ojeda Avilès have identified six legal and constitutional problems of the EU social dialogue, mostly regarding cross-sectoral level, (Jacobs/Ojeda Aviles 1999) which leads us to know better the process:

- The voting procedures in the Council of Ministers and the related importance of subsidiarity, and the related importance of subsidiarity;
- The relationship with the Council of Ministers;

- The ambiguous relationship between the EU social dialogue and the European Parliament;
- The ambiguous relationship with the Economic and Social Committee and need to redefine its role;
- The important but controversial role of the Commission;
- The problems which might arise concerning subsequent interpretations of agreements and directives.

Table 3.1 Consultation and negotiation procedure under Articles 138 and 139 of the EC Treaty



Source: Commission of the European Communities, *Introducing European Social Dialogue*, 2008, p.8. <<http://ec.europa.eu/social/BlobServlet?docId=2349&langId=en>>

There are some noteworthy points in this procedure which should be discussed. Reale brings out these points clearly; according to the Articles 138 and 139 of the EC Treaty the Parliament does not play any role within the consultation procedure. Besides, Article 138 does not provide neither for a definition of social partners nor for any other criteria of holding a place in the procedure. (Reale, 2003, p.8) Especially last point has been criticised largely

since the European Court of Justice rejected a case brought by UEAPME, the European organisation which seeks to represent SMEs. UEAPME had claimed that the EU Directive on parental leave should be revoked, as UEAPME had been excluded from the negotiations on which the Directive was based.⁴⁸

Several cross-sectoral collective agreements have resulted from this tripartite social dialogue that involves labour and industry as well as the state, in this procedure state refers to the Commission who proposes both the topics for the collective negotiations and then the Council Directives for implementing any agreements and the Council who turns the social partners' agreements legally binding structure by adopting them as Directives.

Agreements in the social dialogue that result after the initiative of the Commission do not pose any special implementation problems for the enterprises, since a directive from EU has to be transposed into national legislation and implemented on initiative of the national government. Accordingly, new rules will enter the labour market and these will comply all enterprises within the market, regardless if they are parties to the collective agreements or members of the social partners. In other words, the role of the national social partners was restricted to contributing to the position of their European level organisation and to adopting the final outcome in the respective decision-making bodies. National social partners were not responsible for the implementation of these Directive agreements.⁴⁹

Autonomous agreements present an obstacle in terms of obtaining effective implementation because of the diversity of national industrial relations, concretely very different collective bargaining coverage rates. The new version of the social dialogue creates soft modes of implementation, by which we mean non-binding obligations upon the parties. In the case of framework agreements negotiated by the European social partners and implemented by the Directive, by decision of the European Council did not lead to this kind of problems since the implementation eventuates at the Community level and they were generally applicable to all workers, irrespective of whether or not they are covered by a relevant collective agreement. However, the European employers' organisations are against using this procedure since it is more strictly transposed in the MS legislations even under the

⁴⁸ UEAPME v. Council, Court of First Instance, Case T 135/96, For more information on the judgment see <<http://www.eurofound.europa.eu/eiro/1998/07/inbrief/eu9807121n.htm>>, the case will be examined within the introduction of the UEAPME.

⁴⁹ Except for few countries where transposition of social directives can be done by way of collective bargaining, i.e. Denmark, see Kaeding, M., Müllensiefen, T., "European Social Dialogue: Autonomous Agreements-galvanising national social actors", International Conference Bringing Civil Society in the European Union and the Rise of Representative Democracy, p. 1, 2009.

control of the Commission and European Court of Justice. This new version voluntarist social dialogue softens the opposition of the European employers to European level legally-binding agreements.

Jeane Schmitt of UNICE stresses that the diversity and flexibility within the new version social dialogue was more suitable at European level, whilst Liliane Volozkinskis of UEAPME says that their member organisations are also happy with the flexibility afforded by the autonomous social dialogue, whereas, Maria Helena Andre of ETUC argues the risk of non-implementation.⁵⁰

The topic raised contrary doubts between the scholars.⁵¹ Barnard thinks that the implementation of such autonomous agreements would be very problematic: ‘No agreement has yet been implemented through this way nor is likely to be because of the difficulty in implementation at national level.’ (Barnard, 2000, p.92) Keller and Sorries had a similar view: an implicit prerequisite would either be a very high level of centralisation of the national bargaining system and of the participating organisations on both sides, or alternatively, close, strict co-ordination of sectoral bargaining. (Keller/Sorries, 1999, p.84) Contrary, Deinert advocates, however, that whether or not such a European agreement has direct effects depends on how it is worded and in the case of telework the social partners have decided to exclude such effects by requiring the agreement to be implemented by their national members. (Deinert, 2003) Despite everything, Branch argues that the ‘bottom-up’ issues like capacity building in the new MS and candidate countries could be better managed by the new version, autonomous social dialogue, that were difficult to handle it with European legislation. (Branch, 2005)

3.4.2 Outcomes of Social Dialogue at the EU Level

The initiative of the European social partners, in response to a Commission Communication⁵² of June 2002 (CEC COM 2002) on the future of social dialogue, to launch an autonomous bipartite social dialogue arose from their common intentions to contribute to the Lisbon Strategy. (Schömann, 2009, p.137; CEC COM 2002) Thankfully, favourable

⁵⁰ Interview with Maria Helena Andre, see Prosser 2006, p.17

⁵¹ See Fitzpatrick, B., Community Social Law after Maastricht, ILJ, Volume 21, p. 206, 1992. Guery, G., European Collective Bargaining and the Maastricht Treaty, ILR, Volume 131, 1992. Keller, B., Sorries, B., Sectoral social dialogues: new opportunities or more impasses?, B., Terry, M. (eds.), Industrial Relations Journal-European Annual Review 1997, Blackwell, p. 84, 1998. Deinert, O., Self-executive Collective Agreements in EC Law, in M. De Vos (eds.), A Decade Beyond Maastricht: The European Social Dialogue Revisited, Kluwer Law International, 2003.

⁵² Commission of the European Communities, Communication from the Commission, the European Social Dialogue, a force for innovation and change, COM 2002, 341 Final, 26.07.2002, Brussels, 2002. <http://ec.europa.eu/employment_social/news/2002/jul/social_en.pdf>

results of their first autonomous multiannual work programme, for 2003-2005 adopted at the Genval social dialogue summit in 2002, are to be appreciated. The first work programme relied on three main priorities: employment, enlargement and worker mobility. Under each of these priorities a number of sub-priorities were purposed. Social partners have to agree on the topics or here priorities for it to be included in their Work Programmes. In other words, the topics on which autonomous social dialogue is conducted must at least potentially drive profits for both sides of the dialogue. They are establishing their own work programmes, they are selecting the issues jointly on which they are going to work and by which instruments they want to implement.

In brief, one could claim that when the general evaluation of the work programme made, this was generally positive; most of the actions planned had been carried out. In 2002, first example of the above mentioned ‘new generation text’ Framework of Actions on the Lifelong Development of competencies and Qualifications was adopted to be implemented by the open method of coordination. This was the first implementation of the open method of coordination to the social dialogue.⁵³ (Branch, 2005, p.325) European social partners concluded their second new generation text the Framework Agreement on Telework in 2002 which was the first agreement to be implemented in accordance as in Article 139 Paragraph 2, namely through the procedures and practices specific to management and labour and the MS.

In other words, the agreement is to be implemented and monitored by the social partners themselves. It was determined that there is a three-year implementation period, plus a further year monitoring period. At that time there was disagreements between European social partners; although the trade unions would initially have preferred to implement the agreement by a Council directive, employers’ organisations would only agree to implementation by the social partners themselves.⁵⁴ Moreover, they have different views regarding the text. UNICE understands the text on telework as a non-legally binding agreement whereas ETUC appreciates the text in all cases the agreement should have a binding character. (Clauwaert, 2003)

UNICE offers negotiations on telework, press release, 8 March 2001. Aiming to promote the awareness of employers and workers of the problem of work related stress, on 8 October 2004 social partners concluded their second autonomous Framework Agreement on work-related stress. Social Partners issued the ‘Declaration of the Social Partners for the

⁵³ Open method of coordination is a method of setting certain targets or benchmarks and regularly reporting on progress towards them.

⁵⁴ See euro-line Social partners sign teleworking accord, <<http://www.eiro.eurofound.eu.int/2001/03/feature>>, UNICE offers negotiations on telework, press release, 8 March 2001.

European Year of People with Disabilities' emphasizing their shared interest in integrating people with disabilities into the labour market, later they signed the Framework of Actions on Gender Equality in 2005.⁵⁵ Two joint reports on implementation of guidelines, three follow-up reports and a final report on lifelong learning were published, a new framework of actions on gender equality, two joint declarations on restructuring and disability, a joint seminar on undeclared work, a series of seminars on industrial relations and restructuring, lifelong learning and implementation of the Community *acquis* in the new MS were adopted, as well as a seminar on mobility and qualifications, finally, an assistance programme were launched for social partners in the new MS joining the European social dialogue.⁵⁶ In the light of the results of the first work programme, social partners adopted and implemented their second multiannual work programme for 2006-2008. In the 2006-2008 programme, social partners did not designate concrete headlines akin in the first work programme, instead they defined eight points relating to key challenges facing European labour markets.⁵⁷ However, they declared their desire to work in conjunction with the principles of the Lisbon Strategy. In the 2006-2008 work programme social partners dealt mostly, with the issues not much handled in the previous one. This work programme 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 MS. This capacity building projects involves launching structures and procedures for dialogue between management and labour in the new MS. Both sides of the industry reaffirm their ambitious for the commitments to this kind of projects, as the contents of the work programmes confirm this. Indeed, ETUC Deputy General Secretary Maria Helena Andre stresses her organisation's commitment to the process, and representatives from UEAPME and UNICE, also, declare their enthusiasm toward process.⁵⁸ During 2006-2008 work programme, negotiations led to the signing of a Framework agreement on harassment and violence at work on April 2007. Social partners furnished, for their national members, necessary guidelines and trainings for the implementation of the autonomous agreement.⁵⁹ Meanwhile, an initial joint report on implementation of the

⁵⁵ For the all outcomes of the 2003-2005 Work Programme see ETUI, ETUC, *Benchmarking Working Europe 2005*, ETUI publications, Brussels, p. 84, 2005.

⁵⁶ ETUI, ETUC, *Benchmarking Working Europe*, ETUI publications, p. 105, Brussels, 2005.

⁵⁷ For the work programme see <http://www.etuc.org/IMG/pdf/Depliant_EN_HD2006-2008.pdf>

⁵⁸ Thomas Prosser conducted a primary research interviews including Neil Bentley (CBI), Maria Helena Andre (ETUC), Liliane Volozinskis (UEAPME), Jackie Morin (European Commission), Jeanne Schmitt (UNICE), Peter Coldrick (TUC), Evelyne Pichot (European Commission), and Jørgen Rønneest (DA/UNICE). Interview with Maria Helena Andre, see Prosser, T., *Is the 'new phase' of the European Social Dialogue the development of an autonomous and effective form of social dialogue?*, Warwick Papers in Industrial Relations, Number 82, p.16, 2006.

⁵⁹ Especially ETUC has provided for information, trainings and strong translation facilities for its members.

agreement was issued by the Social Dialogue Committee on 18 June 2008.⁶⁰ A joint project Integrated programme of the EU social dialogue 2006-2008, an effort of restructuring processes in 15 MS and seminars and national studies were also carried out in at least 10 MS.⁶¹

Moreover, capacity building projects were organised in new MS and candidate countries.⁶² On 26 June 2006, a final implementation report on the telework agreement adopted by the Social partners.⁶³ Generally, implementation of the agreement has been successful. Again within this work programme, two joint reports and a final report on implementation of the autonomous framework agreement on work-related stress was adopted. On the whole, the implementation has been again efficient, despite various legal orders and instruments of the MS. However, social partners were all of one mind that it is necessary to give assistance to national and sectoral social partners to understand European social dialogue instruments better. (Schömann, 2009, p.145) In addition, again joint implementation reports, relatively positive, on the framework of actions on gender equality were represented by the social partners. Moreover, they concluded first ever multi-sectoral agreement on the health protection of workers handling and using crystalline silica. However, point 8 of the work programme on improving understanding of European social dialogue instruments was postponed to the 2009-2010 work programme. European social partners prepared their last work programme in the light of the current financial and economic crisis and are taking into account short, medium and long term implications this will have on workers and employers, which means not purely labour law oriented issues. Moreover, work programme is based on fairly European Growth and Jobs Strategy. Corner stones of the new work programme are the joint analysis of labour market challenges, the economic and social change agenda, reconciliation between private and professional life, capacity building for social dialogue in EU MS and candidate countries and the implementation of social dialogue instruments.⁶⁴

⁶⁰ ETUI, ETUC, Benchmarking Working Europe, ETUI publications, Brussels, 2009.

⁶¹ Ireland, Italy, Spain, Denmark, Austria, United Kingdom, France, Netherlands, Sweden, Greece.

⁶² The Project is available on <<http://www.erc-online.eu/>> - under the 'Capacity Building' heading you will find information about the project just undertaken.

⁶³ Report by the European Social Partners, Implementation of the European Framework Agreement on Telework, 2006. <<http://www.etuc.org/IMG/pdf/Telework2006-01429-EN.pdf>>. Commission carried out a similar study. Report on the implementation of the European social partners' framework agreement on telework. Since the framework agreement on telework was the result of consultations under Article 138 EC Treaty, which requires the Commission to assess to what extent the agreement contributes to the meeting of Community objectives. See Commission of European Communities, Report on the implementation of the European social partners' Framework Agreement on Telework", SEC, 2178, 2008.

⁶⁴ See <http://www.etuc.org/a/6176?var_recherche=work%20programme>

Currently, European social partners are negotiating on an autonomous framework agreement on inclusive labour markets as well as the scheduled discussions on a framework of actions on employment. Moreover, they jointly monitor the implementation of the common principles of flexicurity (in particular, the role and involvement of social partners in this process) and are working for issuing ‘a joint recommendation aimed at contributing to the definition of the Post-2010 Lisbon’.

It is quite obvious that European social partners pursue a more autonomous social dialogue; they want to extend their fields of action and no longer to restrict their autonomous initiatives to the list inherent in each work programme, like in the last work programme. However, despite the existence of favourable results, there are still challenges of autonomous social dialogue to be overcome. Schömann, in her paper, compares the framework agreements becoming a European directive and autonomous agreements widely that lights the way us for understanding. Lack of the financial, organisational and human resources, legal uncertainty inherent in the texts and the diversity of industrial relations systems in the MS affect their implementation and come into existence as lack binding legal forces.⁶⁵(Schömann, 2009, p.147) In the case of first three cross-sectoral agreements, the question of implementation was resolved through the adoption of a legal instrument to be implemented by the MS.

3.4.3 Commission’s Role Within Social Dialogue at the EU Level

It is worthy to evaluate briefly the role of the Commission within the social dialogue since it has acquired a different character as the years went by. In the beginning especially in the 1970s the Commission was identified as a potential catalyst for social dialogue. In the beginning of the 2000s, the social dialogue has become a useful instrument for the Commission to by-pass veto points within the traditional EU-decision making system. (Kirton-Darling/Clauwaert, 2003, p.252)

There is a strong linkage between the Commission and social dialogue, since for the Commission social dialogue is a governance tool. Mangenot and Polet claims that social dialogue is an instrument which is in keeping with the democratic governance of Europe, the instrument based on synergy between the different strata of socio-economic fabric of the EU; European, national, sectoral, local and enterprises level. (Mangenot/Polet, 2004, p.32)

⁶⁵ Some of the European sectoral social partners have also been pursuing autonomous initiatives. However, again the financial and information assistance are diverse among them. For more information see Branch, A., The Evolution of the European Social Dialogue Towards Greater Autonomy: Challenges and Potential Benefits, The International Journal of Comparative Labour Law and Industrial Relations, Volume 21, Number 2, p. 326, 2005.

After their Laeken Declaration, European social partners have relatively restricted the role of the Commission by declaring their wish to pursue more autonomous bipartite social dialogue.

Thus, they can start negotiations without the catalytic role of the Commission. Currently, Commission is trying to act as a facilitator by ensuring follow-up to social policy initiatives.

However, one should bear in mind that the existence of an autonomous social dialogue does not mean that the Commission should withdraw from social policy. The Commission should take a far more active role in initiating, in particular, sectoral social dialogues in those sectors which have so far failed to do so.⁶⁶ In our interview, Stefan Clauwaert of ETUI comments upon this; it is clear to see the Commission has limited role since the Laeken Declaration. Now the Commission has to make necessary resources are available and facilitate the process, i.e. translation facilities, if the social partners decide negotiating. However, Commission has another important role than not being only the 'catering firm' or financier of the European social dialogue.

The question is 'why do European social partners still need Commission around the negotiating table?'. If the social partners fail to negotiate and conclude an agreement, Commission can carry out the procedure, as in the temporary agency work case, since the Commission knows the obstacles within the proposals and the process.⁶⁷ In our interview, Cinzia Sechi of ETUC commented upon this; the difference is that, before the Laeken Declaration the issues discussed by the social partners were relatively pushed by the Commission and the negotiations were carried out on the ad hoc basis, however, now European social partners moved towards more autonomous social dialogue and they can enlarge the scope of negotiations, beyond the existing ones, due to the issues that they jointly decide. For instance currently European social partners are discussing on mobility, all inclusive labour market, how overcome economic crisis, climate change and sustainable development.⁶⁸

The Commission continues issuing communications to identify the steps required to strengthen the social dialogue at European level and to bring together social partners more

⁶⁶ European Industry Federations presented their position on the future of social dialogue at sectoral level, May 2002.

⁶⁷ Interview with Stefan Clauwaert made by the author on 24.09.2009

⁶⁸ Interview with Cinzia Sechi made by the author on 25.09.2009

closely in order to better meet the challenges and develop/ implement EU policies and conduct studies to foster the institutionalization of the social dialogue at EU level.⁶⁹

However, there are debates, in particular from workers' side, that the Commission is much too focused on a quantitative rather than a qualitative approach.⁷⁰ There is the need to develop a qualitative approach for better regulation. Besides, Commission tends to move to soft forms of regulation and this has to be taken seriously in the social field which can contribute to the modernisation of the labour law. (COM Green Paper 2006)

3.4.4 Contributions of Social Dialogue at the EU Level to the Lisbon Strategy

By way of addition, the social dialogue, at all levels, is an essential instrument to reconcile economic and social progress in order to achieve the objectives adopted at Lisbon. While we are really close to the deadline year 2010 for the 2000 Lisbon Strategy, it makes sense to talk about how much European social dialogue has supported the strategy.⁷¹ Through the paper it is widely examined that European social partners are delegated by the EC Treaty to negotiate and conclude agreements on specifically defined social issues at cross-sectoral as well as sectoral level.

These agreements may subsequently be transposed into European directives due to the joint request of the parties. The aim of the Lisbon Strategy was to turn the EU into „the most dynamic and competitive knowledge- based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion. by 2010. Similarly, social dialogue at EU level aims to obtain economic progress and social cohesion in whole Europe. A 2002 Communication⁷² by the Commission to the Social Partners point 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.

European social partners emphasized their commitment to the implementation of Lisbon Strategy in their 2002 Laeken Declaration. In this respect, they prepared their first

⁶⁹ See <http://europa.eu.int/comm/employment_social/social_dialogue/represent_en.htm>

⁷⁰ ETUI, ETUC, Benchmarking Working Europe 2007, ETUI publications, p. 132, Brussels, 2007.

⁷¹ This part of the paper was garnered from the Benchmarking Working Europe 2009, p. 67-76, 2009.

⁷² Commission of the European Communities, Communication from the Commission, the European social dialogue, a force for innovation and change, COM 2002, 341 Final, 26.07.2002, Brussels, 2002. <http://ec.europa.eu/employment_social/news/2002/jul/social_en.pdf>

work programme, in particular stressing employment. In an interview⁷³ made by Liliane Volozinskis of UEAPME, she commented upon this,

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

The provisions of social dialogue texts are in keeping with the objectives of the reviewed version of March 2005 of the Lisbon Strategy focusing on growth and employment. Within the reviewed Strategy, important role of the social partners in managing social and economic change was emphasized. As concrete examples can be given, the contents of the different proposals for the Directive on Framework agreement on the protection of temporary agency workers had clear references to the reviewed Lisbon Strategy objectives.⁷⁴ In light of the objectives of the Lisbon Strategy, social partners launched the main activities defined in their first work programme, namely; employment, enlargement and mobility. According to the European social partners, the European social dialogue work programme for 2003-2005 has successfully contributed to the implementation of the strategy., and this belief was confirmed in their 2005 Joint Declaration on the mid-term review of the Lisbon Strategy. In their 2nd Work Programme 2006/2008, European social partners again declared their support for the Lisbon Strategy.

To sum up, European social partners adopted autonomous agreements and frameworks of actions in order to reach also the objectives of the Strategy to enhance skills and qualifications, modernize work organisation, promote equal opportunities and diversity and develop active ageing policies during in both work programmes. Moreover, a number of studies and capacity building actions, joint analyses, joint recommendations made which serves as a contribution. Major contributions have been made in the framing of regulations covering non-standard employment, working conditions, gender equality and lifelong learning. In the future, it is clear that European social partners, both employers and employees, will continue launching their work programmes and activities in order to contribute to the Lisbon Strategy. One point that was repeatedly by the Euro-pessimists' was the low probability of UNICE, CEEP and UEAPME engaging in a meaningful social dialogue. Despite the fact that capital and labour are working together to promote European social dialogue, they perceive the meaning and implementation of the social policy issues differently. They have, even, contradictory policy interests. (Keller 2003) Opposing attitudes

⁷³ Interview with Liliane Volozinskis, see Prosser 2006, p. 10

⁷⁴ ETUI/ETUC, 2009: Benchmarking Working Europe 2009, ETUI publications, p. 18, Brussels, 2009.

of the European employers organizations here turn into, however, positive commitments. As Jørgen Rønneest asserted in the interview⁷⁵,

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.

In brief, European social dialogue and Lisbon Strategy are two norms that nurture each other in order to promote social legislation of the Union. Both of the Social Partners Work Programmes, and now the last one, are primarily concerned with the Lisbon Agenda and its objectives. However, it remains again difficult to assess the impact of their activities on the outcome and to examine to what extent the outcomes of social dialogue can influence the EU level social legislation or which MS. Cinzia Sechi of ETUC argues the matter; she advocated that their work is more helpful for new MS than old ones since new MS do not have written steady social legislations due to their lack of history and traditions, besides the new MS have less capacity to transpose the social *acquis*. Therefore, the outcomes of the autonomous social dialogue have greater impacts on new MS rather than countries have good and long established industrial relations and social dialogue history, like Germany. In addition to new MS, also candidate countries benefit the model of EU level social dialogue to adopt at national level, i.e. Turkey, Croatia, and Macedonia. She summarizes the matter *like a push to adopt*. Likewise, Stefan Clauwaert agrees with her pointing out that the impact of the outcomes of European social dialogue is easier to observe in new MS rather than Nordic countries.

3.5 A Mid-term Evaluation of Social Dialogue at the EU Level

So far, European social partners have concluded so many meetings and agreements both at cross-sectoral and sectoral level; however not all of them have been put into practice through Council directives. Actually, as Stefan Clauwaert denotes in the interview, creating laws is not enough, the thing is creating necessary process and necessary tools for the efficient implementation. Moreover, common understanding of the instruments of the social dialogue and the positive potential of their impacts should be progressed.

Since 2002, European social partners are establishing their own work programmes, they are selecting the issues jointly on which they are going to work and by which instruments they want to implement. The development of autonomous social dialogue and social partner

⁷⁵Interview with Jørgen Rønneest, see Prosser 2006, p.11

work programmes broadened the scope of topics with that social partners deal. However, the enlargement of the EU makes, which leads great variety in industrial relations rules, difficult to reach consensus on legislative fields and consequently fewer agreements can be concluded. Thus, autonomous social dialogue contributes limitedly the Union's social policy development.

CHAPTER 4

SOCIAL DIALOGUE IN TURKEY

Since 1987, when the first membership application was submitted, Turkey tries to align its national legislation with European standards. In the European Council held in Helsinki in December 1999, the status as candidate country of Turkey was recognised. After negotiation process started officially in 2005, it became one of the main tasks of Turkey, harmonizing its national legislations and implementations with EU *acquis communautaire*, including social related issues. Having well-arranged industrial relations, a good functioning social dialogue mechanism and strong and well-institutionalised social partners are some of the preconditions for accessing to the EU. Therefore, it makes sense to examine the historical development and current situation of social dialogue in Turkey. In the first main part of the paper we have examined the social dialogue improvements occurred in the EU. Thus, now it makes sense to analyse the place of social dialogue in Turkey and the social dialogue mechanisms in Turkey. Historical emergence of social dialogue in Turkey can be examined in two periods, namely; pre-republic and republic period.

In both periods, economical, social, and political circumstances have hindered the development of social policy adequately. After giving historical development we will analyse main social dialogue platforms, Turkish social partners, and challenges within the social dialogue successively.

4.1 Development of Industrial Relations and Social Dialogue in Turkey

4.1.1 Prior to the Proclamation of the Republic

It is helpful to give short information about the structure of the industrial relations in Ottoman Empire, in order to discover if Turkey has received some legacy from it in this matter. Because of the slow moving industrialization in Ottoman Empire also the outcome of modernized working classes and labor organizations were relatively fruitless. Ottoman Empire, which had a self-sufficient agricultural economy throughout the 17th and 18th centuries, as it could not keep pace with industry-driven technological innovations of West, started to decline after late 18th century. In late 19th century and the beginning of 20th century, the empire, owing to wars, became economically collapsed country. Turkey Socialist Party was the most important organization, despite all its deficiencies and infirmities, which created the link between employees and trade unions while organizing strikes. This Party realized its most active movements between 1919 and 1922. In addition to Turkey Socialist

Party, Turkey Employee and Farmer Socialist Party establishing Turkey Employee Union moved towards more organizational relations with workers. However the outcome was not so effective.

At that time the governing party “Committee of Union and Progress (İttihat ve Terakki Cemiyeti)” found the unionization movement as a control mechanism but then unionization was forbidden by this Party since the potential that those trade unions could be fascinated by socialist thinking. However, despite of this prohibition the workers continued to be organized under the name of “association”. But these efforts could not bring big success like in Europe. It can be claimed that the reasons behind of this failure was not only the prohibition by the governing party but also the incapability of political movement and unwillingness of employees to struggle with the employers.

In the light of informations above, the first social dialogue attempt in Turkish history, as a means of Committee of Union and Progress forming a consulting assembly called “The Assembly of Economics” in 1908. The assembly, headed by Trade and Agriculture Minister, consisted of, the senate and national congress members elected by the Minister, university lecturers, chamber of commerce’s chairman and its members, intellectuals proved themselves in the field of their professions. The Assembly of Economics, thanks to being formed by Committee of Union and Progress, chose its structural target as reinforcing national economy and pursuing economy under state control instead of Economic Liberalism. However, the length of life of the Assembly of Economics ceased by the end of the Committee of Union and Progress. (Arolat, 1995, p.65) During the three-year long, 1919-1922, Independence War, resources were used up for supplying battle needs and it was not possible to invest in social policy matters. Under these circumstances, between 17th of February and 4th of April, 1923, Izmir Congress of Economics was held to foster political independence by economic independence. 1135 delegates consisted of representatives of traders, artisans, workers, manufacturers, bankers and farmers attended this congress which can be named as the first social dialogue and pursuit of settlement. However, owing to the fact that there were no organized worker groups, the workers side could not be represented in the congress. Because of the deficiency in industrialization the number of workers was limited and the existence of various nations, ethnic backgrounds and religions blocked the class solidarity among the workers. Despite the weak representation of the workers, Izmir Congress of Economics is critically important, since it set a good example by getting various society sections together and carrying out a noteworthy dialogue and social conciliation at those times.

4.1.2 After Proclamation of the Republic

Since 1930s the reflections of etatism existed not only in economic life; but also in social, cultural and political life, too. (Köker, 2005, p.208) Especially after 1929 world economic crisis, because of the lack of capital, it was resorted to industrialize with the state intervention. In this period, important industry progress was made, i.e. establishment of Sümerbank and Etibank.⁷⁶ As a consequence of this industrialization period, worker population emerged and labour market area started to enlarge within the country. Moreover, in 1932 Turkey became a member of the ILO. Under these developments it was necessary to enact the worker-employer relations and employment problems by a law. The first Turkish Labour Law, enacted in 1936 with 148 articles, was largely tailored from the French Labour Code and was influenced by ILO conventions. (Öke, 2005, p.238) However, there is no reference regarding the unionization of workers or collective bargaining in this law, even prohibited to strike and lock out.

The first trade union law was put into force in 1947, Trade Unions and Employers Associations Law number 5018, it was authorized to unions to sign a collective bargaining agreement but no permission was granted to strike and lock-out, therefore the problems about collective bargaining was solved by compulsory arbitration. Besides, this law embraced only blue-collar workers not white-collar workers. After that, trade unions were set up in the beginning of the 1950s. The numbers of the unions run up which caused too many unions with few members. The possibility in order to establish federation or confederation was provided in the frame of this law. Also one of the most important trade unions confederations 'The Confederation of Turkish Trade Unions' (Turkish: Türkiye İşçi Sendikaları Konfederasyonu, TURK-IS) was established in this phase, in 1952.

Concerning freedom of association, Turkey ratified ILO Conventions C 87- The Freedom of Association and Protection of the Right to Organize Convention in 1948 and C 98- Right to Organize and Collective Bargaining Convention in 1949. One can observe the modern features in industrial relations in Turkey by the Constitution of 1961, by modern feature we mean features of the socialist state governed by the rule of law dominated in Western Europe, which caused fundamental transformations on the industrial relations in Turkey. (Mahiroğulları 1998, p.164) In the Article 2 of the Constitution 1961, it says that Turkish Republic is asocial state governed by the rule of law,....Besides, this Constitution ensured the right to both workers and employers to organise, also the rights to bargain

⁷⁶ These are the banks which started operations by order of Mustafa Kemal Atatürk to finance the Turkish natural resources economy as a driving force of industrialization.

collectively, strike and lock out. Thus, trade unions institutionalized and became more functional. Noteworthy attempts to promote a system of democratic industrial relations in Turkey are the Law on Unions No. 274 and the Law on Collective Agreements, Strikes and Lockouts No. 275, issued in 1963 pursuant to the guidelines of the 1961 Constitution. In 1960s, the relations between labour and workers side was relatively harmonized due to the narrow trade unionism structure and moderate demands and developments in collective bargaining system. In 1963 ‘Unions Law number 274’ and ‘Collective Bargaining Strike and Lock-out Law number 275’ became a law. This legislation gave Turkish workers first time the right for collective bargaining while striking. (Ibid, p.168) Regarding further improvements; freedom of working and concluding agreement, working conditions, equity in pay, the right of social security and health can be given as example. Contrary to the West, these progresses were made by intellectuals and bureaucrats by law instead of pressures from workers. (Uçkan/Kağıncıoğlu 2004, p.230) A group of members from TURK-IS left and established in 1967 another confederation, namely ‘The Confederation of Progressive Trade Unions of Turkey’ (Turkish: Türkiye Devrimci İşçi Sendikaları Konfederasyonu, DISK).

However, post 1970 political instability, high inflation rates and political student and labor boycotts affected unfavorably the industrial relations as any other field in the in the country, thus industrial relations moved backward by the 1970s. In this period, in 1976, ‘The Confederation of Turkish Real Trade Unions’ (Turkish: HAK-IS) was established as extension of Islamic trends and parties in labor movement.

In 1978, ‘Social Agreement’ was concluded on 19 July 1978 between the government and the largest trade union confederation, TURK-IS. The agreement was a cooperation and solidarity act aiming to promote democratic working life, democratic progress and economic development, to distribute welfare in each section of the society with the trade unions, to lower the unemployment rates, in addition to building close relations on economic and social policy. (Parlak, 2006, p.20) Since 1978 until 1990s, although the establishment of an Economic and Social Council (ESC) as a social dialogue mechanism, which is important for the development of industrial relations in candidate countries, was always on the agenda of Turkish working life; it is not possible to observe any official or unofficial positive in this period. Single improvement can be given is that the bilateral summits carried out between the government and TURK-IS, resulting in no concrete consequences. Talas relates this result with a cause that of the weakness of the then government and lack of interest by militant unions. (Talas, 1978) Besides, Turkey ratified ILO Convention C 151, Labour Relations (Public Service) Convention in 1978.

Because of the September 12, 1980 Turkish coup d'état, the democracy experienced a decline in the country. Law-maker limited some rights for workers in industrial relations considering civil disturbances pre 1980 and threat of communism during cold war. (Güloğlu, 2004, p.1) Since 1980s liberal economic policies continues to dominate the Turkish industrial relations because of the cooperation between state and employers and international finance organisations to support export-led industrialisation. The Constitution of 1982, which is currently in force, regulated the industrial relations in more detail, however more restricted. For workers and employers freedom of association is provided by Article 51 of the Constitution whereas, right to collective bargaining is provided by Article 53 of the Constitution. Legal regulations on industrial relations were the new Labor Law, which was enacted in July 1983, Unions Law number 2821 and Collective Bargaining, Strike and Lock out Law number 2822, which has the devolution in the rights of workers and trade unions. These laws imposed judicial and bureaucratic constraints on collective bargaining and strike activity. Indeed trade unions lost their cultural and educational identities and *redefined solely as organizations with economic and social functions*. (Ibid. p.1) According to Sonmez, new laws reflected the demands of employers and their main organisation, TISK. (Yıldırım/Çalış, 2008, p.216) One of the restrictive provisions of Unions Law number 2821 is on the model of be organized. Unions can be established solely on the basis of branch of business not on the business or working place and they can have operations only in Turkey, however collective bargaining occurs at workplace not industry level; in other words collective agreement covers only one establishment. Thus, trade unions continue facing legal restrictions. These laws have remained in force without major changes and constitute the main legal framework of the present industrial relations system.

In 1985, Labour Assemblies were reregulated under the umbrella of Ministry of Labour and Social Security (MoLSS), as consultation body which brings together workers, employers, government representatives and scientists working on labour law, social policy at the universities in order to negotiate the problems of working life.⁷⁷ Labour Assemblies convene at the initiative of the MoLSS. Although decisions of this body are not legally-binding, these assemblies played a key role as conciliation bodies, in the development of Turkish employment legislation and social policy since they can be given as the first institutionalized tripartite social dialogue in Turkey.

⁷⁷ Labour Assemblies established in 1945 simultaneously with the Ministry of Labour and Social Security.

As from 1990s, social dialogue has come to order because of the increasing impacts of globalization and neo-liberal policies, candidacy to the EU, increasing strike and industrial activities. First attempts at developing social dialogue emerged from the employers' side. Turkey ratified ILO Convention No: 144 Tripartite Consultation to promote the implementation of ILO standards in 1993.

In 1995 the article added to the constitution which provides to public servants to be organized and collective bargaining. However the related law, which includes application provisions, was enacted in 2001.

While harmonizing EU Legislation and ILO norms, the revised Labor Law number 4857 was enacted on 22 May 2003 to ensure security for employees partly and flexibility for employers and edit individual labor relations.⁷⁸ The Law, by taking into account the relevant EU legislation, contains provisions regarding non-standard employment; flexible working time; temporary employment relationships; establishment of the Guarantee Fund providing protection for workers in the event of the insolvency of their employer; the transfer of undertakings; the employer's obligation to inform employees; the establishment of a tripartite Advisory Board; job security; and the effective implementation of occupational health and safety measures. (Öke 2005, p.32) Civil servants are covered by distinct provisions included in the Law on Civil Servants.

4.2 Social Dialogue Platforms in Turkey

Currently, there are several platforms where social partners meet, such as Economic and Social Council, Tripartite Consultation Board (TCB), Labour Council, Minimum Wage Committee, Supreme Arbitration Board, Turkish Employment Organisation, and the general assemblies and executive committees of Social Insurance Institutions etc. In this part, we will only introduce ESC and TCB deeply, since they are the largest tripartite social dialogue platforms in Turkey.

4.2.1 Economic and Social Council (ESC)

In 1995, the government issued a circular regarding ESC; however, ESC was enacted in 2001 by Act No. 4641. Apart from the ESC, 13 sub-committees have been established under the terms of this Act, namely, the Macroeconomic Policies Committee, the Agricultural Committee, the Energy Committee, the Human Resources Committee, the EU Committee, etc.. However, only the Employment and Working Life Committee, which consists of the

⁷⁸ See <<http://www.iskanunu.com/4857-sayili-is-kanunu/4857-sayili-is-kanunu-turkce/4857-sayili-is-kanunu-maddeli-metin.html>>

social partners, is active and has met regularly. ESC has the duty to facilitate the dialogue between the social partners and the government concerning economic and social policies and chaired by the Prime Minister or his Deputy. It has members representing the government and members representing social partners and civil society.

The ESC is frequently criticised because it contains too many interest groups and the government seems to have the most dominant position and these makes it hard for the council to function well. Even the EU warns that the ESC should be restructured to reduce the government's representation.⁷⁹ Moreover, the instability of the Council, because of the reestablishment with each government, has been questioned within the academic papers. (Saripek/Özsoy 2008, p.4)

4.2.2 Tripartite Consultation Board (TCB)

ILO Convention, No. 144, concerning tripartite consultation boards, has been approved by the Parliament of the Turkish Republic and has been enacted as Law No. 3851, thus TCB was established in 2004 to ensure effective consultation between the government and confederations of employers', workers', and civil servants' unions. Through the board, social partners have the right to monitor preparation and implementation of legislation on labour life.

The Board is composed of the heads of units of the Ministry or its affiliated bodies, depending on the agenda, one representative from each of the confederations of trade unions, three representatives from the most representative confederation of employers' unions, one representative from each of the confederations of civil servants. unions. The Board is chaired by the Minister or the Undersecretary of MoLSS. In contrary to ESC, where the government seems to have strongest position, TCB.s membership structure is balanced better. Therefore, it is thought that TCB is closer to the most idealist social dialogue structure among the existing ones in Turkey. (Koray/Çelik 2007, p.423) However, there is no obligation for the government to consult with the TCB while making regulations and implementing policies about working life which could jeopardize the effective social dialogue in time.

⁷⁹ Commission of European Communities, Turkey 2005 Progress Report, see <http://europa.eu.int/comm/enlargement/report_2005/df/package/sec_1426_final_en_progress_report_tr.pdf>

As above mentioned, apart from these main bodies there are also other formal tripartite social dialogue platforms in Turkey.⁸⁰ However, there are no formal bipartite social dialogue platforms at national level, despite the existence of informal contacts between social partners.

Besides, bipartite social dialogue in the Turkish private sector is limited to collective bargaining at the enterprise level. Regarding sectoral level, especially in the last decades, very important bipartite consultation practices have been launched by workers and employers organizations in the sectors of metal, textile, construction and cement, in the form of joint actions, primarily in the field of vocational training.⁸¹ At enterprise level, under the Articles 34-35 of the Unions Law, consultation takes place on certain issues between the employer and representatives of the trade union authorized to bargain collectively. At the workplace level, most collective agreements provide for joint discipline and health and safety committees.

4.3 Turkish Social Partners

The social partners and governmental agencies which have been involved within the tripartite social dialogue include: the MoLSS; the Ministry of Education; the State Planning Organisation; the State Statistical Institute; TOBB; TESK; TURK-IS; TISK; HAK-IS; DISK; and KESK. In this part we only need to describe the non-governmental organisations.⁸²

4.3.1 Employee Side

TURK-IS (The Confederation of Turkish Trade Unions), DISK (The Confederation of Progressive Trade Unions) and HAK-IS (The Confederation of Real Trade Unions) represent mainly blue-collar workers. As a leading confederation TURK-IS represents almost two- third of more than 3 million unionized workers. (Öke, 2006, p.5) These representative organisations have seats in the participatory bodies. Currently within TURK-IS there are 35, within DISK 18 and within HAK-IS 8 Trade Unions. KAMU-SEN(Confederation of Public

⁸⁰ Labour Council, Minimum Wage Committee, Supreme Arbitration Board, Turkish Employment Organisation, under Turkish Employment Organisation; General Assembly, Board of Management, Unemployment Insurance Fund Management Board, Occupational Standards Committee, Provincial Employment Boards and the general assemblies and executive committees of Social Insurance Institutions.

⁸¹ Such as in metal sector, the metal employers union (MESS) set up vocational centre in metal industry with its counter partners. In textile industry, one of the Association of Textile Exporters, General Secretariat of Istanbul Textile & Apparel Exporters' Associations (ITKIB) set up vocational centre in order to extend capacity of qualified labour force in the sector with Ministry of National Education. On the other side in Ankara in construction sector employer organization (INTES) and trade union (YOL-IS) set up vocational training centre in industrial zone. Additionally one of the peak confederations DISK set up Vocational Training Centre in textile sector. See Winterton, J., Öke, M.K., Megep Report, SVET-Strengthening of the Vocational Education and Training Project, 2005. <<http://www.megep.meb.gov.tr>, 2005>

For information on governmental bodies, see successively MoLSS, <<http://www.calisma.gov.tr/>>, Ministry of Education, <<http://www.meb.gov.tr/>>, State Planning Organisation, <<http://www.dpt.gov.tr/DPT.portal>>, State Statistical Institute, <<http://www.tuik.gov.tr/Start.do;jsessionid=mFJ2LQRSJ8rB0YsNtJgHK9BsY77ThvCvS0nyzF1yQbsQJPFgDt xJ!-1050176474>>

Employees Unions), the largest public servant confederation, KESK (Confederation of Public Workers Unions), MEMUR-SEN (Confederation of Civil Servants Unions) and BASK (Confederation of Independent Public Servants Unions) represent public servants who are under the jurisdiction of the Public Servants Act (1965) and operate on the basis of the Public Servants Trade Unions Act (2001).

4.3.2 Employer Side

TISK is the main employer organisation specialising in labour relations and employment issues which was established in 1961 and affiliated to the BUSINESSSEUROPE. Turkish Industrialist and Businessmen Association (TUSIAD) was founded in 1971 as a non governmental organisation which aims to institutionalize the market economy and consolidate democracy in Turkey. Although TUSIAD represents the largest employers in the country, has a seat in the ESC and is a member of BUSINESSSEUROPE, TUSIAD is not a direct social partner in the industrial relations field and not taking part in collective bargaining system but indirectly it is another important social partner.⁸³ The Union of Chambers of Commodity Exchanges of Turkey (TOBB) established as civil economic and semi-public organisation which usually deals with fiscal and other macroeconomic matters and participates in social and economical institutions.⁸⁴ However, TOBB as a social partner does not take place directly in the field of industrial relations but indirectly has effects on the social dialogue negotiations. Confederation of Turkish Tradesman and Craftsmen (TESK) is one of the most important non-governmental organizations of the country that has been established to set and regulate economical and social formations of the society formed in 12th century. TESK has a seat in ESC, Vocational Training Board of Ministry of Education, etc. and is member of UEAPME.⁸⁵

4.4 Present Challenges Within Turkish Social Dialogue

In Turkey the industrial relations started later than Western countries, since the industrialization came to the fruition very slowly after the collapse of Ottoman Empire. Union rights were created by law without experiencing any concrete class struggles. Weak social dialogue and an industrial relations system that reflects characteristics of its labour market differs from the founding states of the EU. Still, from the social dialogue culture perspective Turkey, despite its weak industrial relations history, is better off than eastern European countries. (Centel 2004, p.2) In this respect, Esra Belen of TISK agrees with this, giving rapid

⁸³ In the preparation period of the Constitution 1982, TÜSİAD was, apart from TISK, the second initiator proposing to establish an ESC in Turkey. Interview with Dr. Kaleağası International Coordinator of TUSIAD, on 24.09.2009

⁸⁴ For these institutions see Öke 2005, p.256

⁸⁵ For the institutions and organisations by which TESK is represented see < <http://www.tesk.org.tr/eng/eng.html>>

improvements especially in the last years, thanks to common efforts under the EU funded projects.⁸⁶

The representation power of both labour and employer organizations has not developed sufficiently, since the organization and collective bargaining levels are very low in Turkey. In Turkey only confederations can make collective bargaining at national level with government. Trade Unions face obstacles in front of organizing.

Turkey has a very low overall labour force participation rate, which is mainly the result of a low level of female labour force participation.⁸⁷ The official unemployment rate has fluctuated around 10 per cent since 2002. In Turkey the number of unionized workers and unionization rate are defined with the statistics by the MoLSS biannually. According to the figures of 2009 July, the total number of workers is 5.398.296 whereas 3.232.679 of them is unionized workers and thus the unionization rate is %59,88.⁸⁸ Therefore, number of benefiting from collective bargain is very limited in total number of employment.

EU warns Turkey in particular within Accession Partnership Documents and in Progress Reports saying that it is urgent to abolish the legal and practical obstacles in front of trade unionism and organization and also to encourage them with new legal regulations and applications. (Sarıpek/Özsoy 2008, p.2) EU does criticize Turkey on these failures also within social dialogue. It is emphasized several times in the consecutive regular Progress Reports for Turkey that there is a strong need to develop and strengthen bipartite social dialogue mechanisms and the MoLSS should ensure effective social dialogue with social partners in the social field. As in the last Progress Report 2009 under the Chapter 19, Social policy and employment stressed, there has been little progress in the social dialogue. Social dialogue, at cross-industry, sector and corporate level, remains generally weak. Especially, the percentage of workers benefiting from collective labour agreements is low. ESC should be strengthened and there is no improvement regarding union rights. Immediately, trade union rights should be respected in line with EU standards and the relevant ILO Conventions, in particular as regards the right to organise, the right to strike and the right to bargain collectively.⁸⁹ Also, 2008 Accession Partnership Document includes that conditions for a genuine social dialogue must be established by abolishing restrictive provisions on trade

⁸⁶ For instance, MoLSS, Strengthening Social Dialogue for Innovation and Change Project, 2006

⁸⁷ World Bank, Turkey Employment Market Report Summary, 2006.

see <<http://siteresources.worldbank.org/INTTURKEY/Resources/361616-1144320150009/Ozet-Overview.pdf>>

⁸⁸ MoLSS, July, 2009, see <http://www.csgb.gov.tr/article.php?category_id=50&article_id=665>

⁸⁹ Turkey Progress Report 2009,

<http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf>

union activities.⁹⁰ Again, apart from other deficiencies, the necessity to furnish conditions for an active and autonomous bipartite as well as tripartite social dialogue was stressed within the EU Council Decision of 19 May 2003 on the conditions for the Accession Partnership with Turkey, by eliminating restrictive provisions, thresholds on trade union activities and ensuring that trade union rights are respected. Final Report of the “Integrated Project of the European Social Dialogue, Social Partners Participation in the European Social Dialogue: What are the Social Partners needs?” states expressly that in Turkey the legal and administrative deterrents to trade union membership were highly obstructive.⁹¹

Turkish authorities respond these warnings with its commitments within the development plans and national programmes. One of the main document outlining government commitments is the National Programme 2003, stressing the priorities; „Harmonisation of Turkish Labour Law with EU Legislation', Development of social protection and social inclusion. To this end, in the Eighth (2001-2005) and Ninth (2007-2013) Five Year Development Plans, the government emphasizes its commitment in the field of social dialogue; by issuing the Law establishing the ESC in 2001, undertaking to launch new mechanisms that strengthens the current social dialogue mechanisms and to reinforce social dialogue culture from state level to enterprise level.⁹² Besides, MoLSS is working on the related EU directives so as to harmonize them with national legislation.

Furthermore, one of the most important problems in Turkish industrial relations is the lack of communication between employees and employers and the area to express interests mutually and find out a common solution, which leads to nonexistence of well-functioning Social Dialogue. At this point, the mutual trust between social partners is strongly needed. Being more transparent, trying to understand opposite party, looking into micro problems while analyzing fundamental macro problems are some of the preconditions to create mutual trust between social partners. Weakness of the social partners causes difficulties in taking common initiatives. European employees denominate their employers as ‘Social Partner’, whereas Turkish workers avoid closer relations with the employers, since they could be accused with having a toady relation with the employer or classified as ‘yellow union’. Lack of culture of cooperation both between government and social partners and among themselves, prevent coming to necessary compromise. Cinzia Sechi of ETUC comments upon this; she is pleased with the culture of cooperation and bipartite dialogue between the

⁹⁰ Turkey Accession Partnership Document 2008,
< <http://www.dtm.gov.tr/dtmadmin/upload/AB/ABKurumsalDb/2007kob.pdf>>

⁹¹ European Social Partners, Final Report, Integrated Project of the European Social Dialogue Social Partners Participation in the European Social Dialogue: What are the Social Partners needs?, p.15,2009.

⁹² See < <http://ekutup.dpt.gov.tr/plan/plan9.pdf>>

employers and employees especially after the Laeken Declaration within the EU. However, she advocates that they have improved this culture and compromise capacity with joint projects, conferences and activities. She especially emphasizes that they have built this culture together in the length of time with skilled persons, willingness, trust and respect. Cooperation culture can not be created in a short time; there should be some efforts both from the government and from the social partners. Esra Belen of TISK⁹³, reveals that for Turkey similarly; since 1990s Turkey tries to integrate its economy with the world's economy, to strengthen its national competitive power and to put its employer-employee relations in order. Putting the concept of 'culture of cooperation' between social partners on a healthy footing requires time and legislative developments. It is clear that most social partners shared the view that their influence in the tripartite committees in which they are formally consulted on key macroeconomic decisions could be improved if bipartite dialogue was more effective.⁹⁴ The current structure does not maintain sufficient participation for both sides. In Turkey, there are various social dialogue institutions from enterprise to national level. Although tripartite consultation bodies have long been institutionalized, their impact has been relatively minor in terms of social dialogue both at national and local levels. ESC should be restructured as appropriate as possible to make it perform better and the head of the council could be chosen by the members of the council instead of prime minister or politician pointed by the prime minister. In order to be made ESC functional and to develop the strategies and policies regarding the future of the country with the participatory concept, social dialogue partners, TISK, TOBB, TURK-IS, HAK-IS, DISK, KAMU-SEN, and TESK, prepared a bill and presented it to the government on the 25 March 2005 ESC meeting, while taking into consideration the European examples. Despite the fact that government found this bill positive, it is still pending to become law. (Kayhan 2007, p.76)

As above examined, Turkey does not have a long-established institutionalised tradition of employee information and consultation and insufficient bipartite social dialogue platforms which interferes the development of effective social dialogue. (Yıldırım/Çalış 2008, p.220)

In addition to above mentioned problems, there is an incoordination between three peak confederations that prevents to form a common political position in confrontation with the government. Seen from the opposite directive the consortium of these three peak organizations could weaken the monopolist decision making of the government. Besides, the

⁹³ Esra Belen of TISK answered the questions of the author via mailing on 05.11.2009.

⁹⁴ European Social Partners 2009, Final Report, p.14, 2009.

existence of whole ranges of different union views and strategies and lack of cooperation with employers' side jeopardizes the strong position, 'corporate identity' of both sides of the industry before the government. As mentioned before, the state's traditional protectionist approach on industrial relations also reflected to the social dialogue, by creating weak social dialogue mechanisms.

A lot of collective agreements are concluded between labour unions and employer associations and that these agreements cover many workers. Therefore, collective bargaining has crucial importance on the industry relations in Turkey since it has mechanisms concerned with information and consultation, even one can claim that direct social partner influence in the economy takes place through collective bargaining system. (Öke 2005, p.259) Except this mechanism, there is no adequate platform for labour unions to participate and have an influence on the decision-making process. Öke argues that employer unions and other employer organisations, such as TOBB, TUSIAD and TESK, have more influence directly on the government and on the decision-making process than do labour unions, whereas Esra Belen of TISK sustains, on the contrary, that three Turkish labour confederations, rarely together mostly separately, have important lobbying activities besides, they influence via worker-origin member of the parliaments in Turkish Parliament (TBMM) while defining social policy fields. (Öke 2005, p.33)

Besides, Oli Rehn, Commissioner responsible for the enlargement stresses on all occasions that the negotiations on Chapter 19, Social Policy and Employment can not be started unless the rights to strike and collective bargaining are to be enabled for the public servants.⁹⁵ Shortly, there are several challenges for ensuring genuine social dialogue in Turkey. Öke summarizes them as, existing legal arrangements, lack of culture of cooperation between the consecutive governments and social partners, and from lack of experience of the staff of the MoLSS as well as of social partners. (Öke 2006, p.2)

In 2007, MoLSS carried out a SWOT Analysis to find out the main problems and challenges of social dialogue in Turkey. The respondents consisting of employee, civil servant, employer and state representatives were asked to reveal their thoughts about most problematic areas of social dialogue. According to the results, the most appearing problem of social dialogue in Turkey, despite the existing relative noteworthy legislations, is the

⁹⁵ CHP EU Bulletin, October 2009, p. 1, 2009. <<http://brussels.chp.org.tr/?Islem=BultenGoster&BultenID=77>>

insufficient functioning of it. The lack of having a compromise culture in society was also pointed out for the most important factor behind it.⁹⁶ (Saripek/Özsoy 2008, p.6)

⁹⁶For detailed information see MoLSS, SWOT Analysis, 2007.
<<http://ab.calisma.gov.tr/dnn/Docs/wg1/Sosyal%20Diyalog%20Swot%20analizi.pdf>>

CONCLUSION

By all means, the concept and definition of social dialogue differ from country to country and even from institution to institution. Moreover, social dialogue is an important indicator for the modernism and socio-economic development. Social dialogue at the EU level is one of the most important tools of social policy. The roots of EU level social dialogue go to the Treaty of Rome, 1957. Bipartite social dialogue at the EU level starts with the Val Duchesse in 1985. After all, the development of institutionalized structure has eventuated during the last 20 years. It should be beared in the mind that social dialogue at the EU level is a reflection of social compromise cultures and traditions of the MS. At the EU level, European social partners have the participation opportunity and key roles in definining the social policies. Under the Article 138 of the EC Treaty, the Commission is obliged to consult with European social partners when taking Community decisions in the main social policy areas. Thus, since 1993, the European social partners have adopted over 40 cross-industry and almost 500 sectoral joint texts, signed several important agreements and developed independent multi-annual work programmes.

Social dialogue is defined by the ILO *to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.* From the whole paper, it can be observed that, despite the negative critics, social dialogue at the EU level lives up to definition's, made by the ILO, reputation.

For Turkey, negotiation process started officially in 2005 created a catalytic impact on the government's commitments, apart from other fields, on the development of industrial relations and one of the important components of it 'social dialogue'. By the EU accession process, social dialogue has developed in Turkey. Until Turkey reaches developed and institutionalized efficient and smooth functioning industrial relations and social dialogue mechanisms, negotiations on Chapter 19, Social Policy and Employment can not be got a move on.

In the light of the evaluation for Turkey in the given parts made, it is necessary to sum up main challenges and mention further suggestions which are needed to be realised as soon as possible in order to furnish and promote efficient social dialogue structures in Turkey.

Even though, within the process of social policy based developments, like other parts of the World, including the EU, there have been serious steps taken towards the institutionalisation of social dialogue in Turkey, however, it is needed enormous efforts in order to settle the social dialogue culture in the country's industrial relations. Regarding institutionalization, there are many institutions and platforms not only in the industrial relations field but also in economic and social life in Turkey. However, it is suspicious that they have democratic structures as it warned within the Progress Reports of Turkey.

Turkey has made some attempts to adopt its industrial relations system to EU norms. Year by year there are important positive signs that show us social dialogue, consensus and better understanding between social partners is growing up. Turkish social partners, despite the lack of culture of cooperation, attempt to increase the efficiency of social dialogue by conducting common projects, workshops and informal meetings. Obtaining smooth functioning social dialogue requires that social partners should cooperate and place their conflicts on one side, by featuring common interests, in order to increase the competitiveness, employment and social welfare of Turkey.

Tripartite social dialogue platforms, ESC, TCB, Labour Assemblies, etc., should be reorganised securing their democratical structure to make it perform better. Moreover, as mentioned in regular Progress Reports for Turkey, there is a strong need to develop and strengthen bipartite social dialogue mechanisms and the MoLSS should ensure effective social dialogue with social partners in the social field.

MoLSS should foster working on the related social dialogue EU directives to harmonize them with national legislation. In order to encourage strong unionization, legislation should be revised. Restrictive legal provisions, i.e. 10% threshold value for the recognition of unions or the rule that a union must represent at least more than 50 % of the workers within the plant or the obligation that the registration in public notary to become a member of the union, should be immediately reformulated according to the EU norms.

In Turkey, at national level can be seen social dialogue however, collective bargaining takes only at workplace level. This situation causes unbalanced structure regarding working conditions and wages, between the regions, local places and branches of business.

As a result, the main assumption of this thesis, "European social partners desire to pursue a more "autonomous social dialogue" whereas Turkish counterparts still struggle to establish a "culture of cooperation" implying negotiations with both the government and among themselves" could be questioned. When we look at the improvements in the social

dialogue at the EU level, it is quite obvious that the year 2002 marks a turning point for the European social partners by redefining roles of their national member organisations and declaring to try for more autonomous social dialogue. The adoption of their first autonomous agreement under Article 139 Paragraph 2 in 2002 was a good prove of this desire. Afterwards, they continued by issuing their own work programmes, framework of actions, concluding autonomous agreements, etc. Even, the social partners autonomy is now clearly recognised in the new Treaty establishing a Constitution for Europe, stating that “*The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national system. It shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue*”.⁹⁷

However, the question whether Turkish social partners still struggle to establish a "culture of cooperation" implying negotiations with both the government and among themselves” remains not well answered. Lack of reliable objective sources and outcomes make difficult to come to a concrete conclusion. However, in brief, while there are many developments in social dialogue field in recent years, there are still many handicaps which hinder the efficiency. For all that, Turkey, as a candidate country, has a chance to benefit the experiences of the Union and can revise its national legislations inspiring by EU’s most helpful areas.

In conclusion, despite the positive improvements of social dialogue at the EU level, somehow non-binding characteristic of the autonomous agreements contribute partially the EU’s social policy development. Thus, it may be revealed that social dialogue is still developing in EU, as in Turkey is, too.

⁹⁷ Title VI ‘The democratic life of the Union’, Article 48, Treaty establishing a Constitution for Europe was signed in 2004, but did not come into force because of the French and Dutch rejections. This treaty was later named the Treaty of Lisbon.

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DECLARATION OF AUTHORSHIP

I declare that this thesis and the work presented in it are my own and have been generated by me as the result of my original research.

None of the part of this thesis has previously been submitted for a degree of any other qualification at this University or any other institution

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ANTALYA

Place

30.4.2010

Date

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Signature