The representation of the labour world in national and European institutions:

the role of the national and European economic and social committees and of other dialogue structures

STUDY

European Economic and Social Committee

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Summary

1. The role, representative function and representativeness in practice of what are referred to as "intermediate bodies" are central to the current debate, at European and national level, on labour law and industrial relations.

These subjects are also of general interest, however, shaped as they are by the underlying framework of "social" constitutional democracies and legal-regulatory systems that have given rise to a model that is consistent with them and, for present purposes, prioritises a cooperative approach to social conflict, including by means of consultation and/or worker participation in the management of the firm (Rhine capitalism).

The austerity measures imposed by the European Union's troika to tackle the crisis bring into question not only the standards of protection under regulations on labour relations, but also internal systems of collective bargaining, which have undergone a trend towards decentralisation within companies and a decline in the representativeness of existing fora and organisations because of the convergence of models, with the Rhine model of capitalism now resembling the US model.

On the one hand, the unions have had to scale down their own "representative strength" in a number of areas; and on the other, they are no longer in a position to represent jointly the category covered by company agreements, with the agreements themselves not always differentiated to take account of the various types of workers employed on the same premises. This has a number of consequences: equal legal and financial treatment of workers belonging to the same categories can no longer be guaranteed; the range of decentralised offices issuing contracts undermines the unity of what might be defined as the "political line" followed by the union at national or individual sectoral level; workers, whether with permanent or temporary contracts, have lost faith in the unions; and the involvement of the unions has been limited almost exclusively to crisis management and dealing with staff cuts.

A contributory factor here lies in the difficulty in attributing an identity to European labour law, partly because of the way in which the economic and financial crisis has whittled away the social model, as has already been mentioned.

Discussions are also focussing on the "fate" of the economic and social councils, institutional bodies with the function of representing interest groups; this role has been challenged nationally and at European level and, with rare exceptions such as that of the French Economic, Social and Environmental Council (CESE), has been emasculated by the simultaneous weakening of the system of industrial relations and by cost-cutting reforms. A comparison can be drawn, by way of example,

between the French CESE, comprising 233 members, and the Italian National Council for the Economy and Labour (CNEL), which saw its membership was slashed from 120 to 64 in 2011 by national legal provisions, adopted in view of the economic and financial situation with the aim of balancing the budget[1], and which now seems set to be abolished altogether.

2. The main area of focus of this research project is to analyse the role of the economic and social councils in the current context of recession-driven reforms. In addition to examining the question with reference to the European Economic and Social Committee (EESC), the main objective is to analyse and compare five national models (namely the Italian, French, Spanish, Greek and Romanian councils) and their recent development.

Although the names of these councils in the respective countries may be similar, their origins and functions differ widely, as does the impact of austerity measures on the process of reform that they are undergoing at the present time of economic and financial crisis.

Whilst the French and Italian councils are, for example, long-standing institutions and provided a model for the European EESC when it was set up under the Treaty of Rome, the Greek council is relatively recent and drew its own inspiration from the European model.

Furthermore, under the French, Italian and Spanish regulations, the fact that the principle of trade union freedom is recognised under their constitutions has resulted in informal, alternative fora for consultations between the social partners and the government developing alongside the economic and social councils, posing a challenge to their very role and necessitating a review of their functions. By contrast, under regulations such as those prevailing in Romania, it was the very lack of a developed system of autonomous industrial relations that legitimised the role of the council as a forum for dialogue between the social partners and the government, a council which in fact fulfilled the functions typical of a trade union, including collective bargaining - a "relic", obviously, from the socialist model which sought to do away with industrial relations in the wake of the abolition of differences (in economic and bargaining strengths, class and ownership of the means of production) characteristic of liberal states, precisely because this abolition was instrumental to establishing a socialist society.

Moreover, whilst the French CESE has recently renewed and broadened its membership and functions to keep abreast of new requirements on the part of civil society, talks are under way to abolish the Italian CNEL and the Greek council is having to contend with ever more drastic cuts in the wake of the country's austerity measures.

1 Article 2 of Law No 936/86, as amended by Article 23(8)(a) of Decree Law No 201 of 6 December 2011.

This clearly highlights one of the strengths of this piece of research, coupled with way in which the findings have been presented, namely the fact that the research methodology has made use of legislative comparisons. This has proven useful in collecting and presenting the range of data analysed, has allowed important new facts to emerge and, in particular, has made it possible to draw up a ranking system and models. This has ensured a sound scientific approach, with significant findings drawn from a detailed comparative analysis of the research material.

3. In the course of comparing national regulations, and subsequently comparing these with European ones, the analysis of the role of the economic and social councils has shown that they have a number of points in common:

a) Models

The first commonality is the concept of "model". It is not the intention here to revisit the familiar events that, following the second industrial revolution, have given rise to industrial relations in their contemporary form. The aim is simply to show that the historical and comparative study reveals two different institutional models of industrial relations: the first consisting of a parliamentary house or chamber for representing social, economic and professional interests politically organised in such a way that they are involved in shaping decisions taken by the state, and the second of ad hoc organs designed to complement the traditional political representation structures. Starting with the historical and constitutional background, a comparative public law approach has been used to examine the historical systems of representation: "corporative bicameralism" and the "economic council". By dint of their "exemplary" past, they have acquired the status of models, offering a perfectly adequate legal basis for operations such as legal borrowing and legal transplant and promoting their own dissemination through use and take-up.

It has to be said that, when given the choice between the two models, not many countries have in the past opted to base their regulations on a chamber representing economic interests. Examples are the *Seanad Éireann* introduced under the Irish Constitution in 1937, the National Council introduced under the third Estonian Constitution in 1937, the Bavarian Senate (abolished in 1998), the Slovenian Council of State and the Moroccan House of Councillors. In Italy, the Constituent Assembly proposed adopting a chamber representing categories and interests, but in the end the country opted for an economic council.

The reason for this decision lay partly in the fact that Article 165 of the Weimar Constitution contained provision for a Reich Economic Council (*Reichswirtschaftsrat).* This was a consultative body based on corporate representation of regional and professional groups and trade unions, but which did not cover the economic concerns of the interest groups represented. Nonetheless, it was consistent with the requirement that economic and social interest groups should be accorded institutional importance to prevent them from entering into "competition with the principle of liberal democracy". As a result, the Economic Council came to assume the role of a "model" for the

institutional representation of economic interest groups at state level that has influenced subsequent constitutions. In addition to the CNEL, established under Article 99 of the Italian Constitution, there is the *Conseil économique* set up under the French Constitution of 1946 and, at European level, the Economic and Social Committee. These are all made up of representatives of the productive sectors with the task of advising parliament and the government and - in the case of Italy - initiating legislation in the economic and social arena.

b) Competing fora

As has already been said, the role of the economic and social councils as an institutional forum for representing interest groups is facing **competition from the increase in alternative representative fora**. Historically, the competition originated on the one hand with the introduction of the principle of universal suffrage, which meant that the interests of the working classes became the subject of political debate in parliament (Ventura 1994, p. 8) or, as was the case with the European Economic and Social Committee, with the direct election of MEPs introduced in 1979 (Smismans 2000) and, on the other, with the recognition of the principle of trade union freedom and the development of an autonomous system of industrial relations, where dialogue between the social partners and consultations between them and the government and parliament developed in a diverse, more informal, way (Ventura 1994). In other words, dialogue is guaranteed elsewhere, as happened in post-Maastricht Europe, with the institutionalisation of the "European social dialogue" (Cadin 2004).

It is this second factor that explains the distinctive composition and role of the economic and social councils in, amongst others, eastern European countries with a history of authoritarian regimes. In their case, the councils' liaising function between interest group representatives and political power was the direct consequence of the fact that it was impossible for trade union organisations to establish themselves and express themselves freely (Ventura 1994, p. 63); moreover, the tripartite composition of the councils, with government bodies occupying a pre-eminent position, is evidence in itself that they operate as a dialogue platform for defining the country's economic and social policy and cannot therefore be defined as a forum for representing wider civil society.

Competition with a system of industrial relations based on trade union freedom has in the past relegated the economic and social councils to a marginal and secondary role as a forum for comparison between institutions and the social partners.

However, it is not only the positive and negative trends in trade union representativeness and the nature of industrial relations that have drained the economic and social councils of their own representative potential. This can, rather, be attributed to their partial exclusion from the economic and political decision-making process which in practice - despite their constitutional basis - has prevented them from effectively covering the interests of the categories represented. The *real* game of representation (even if only, or primarily, the representation of "interests") tends to be played out elsewhere than in the economic and social councils. This is not to say that it takes place beyond the

confines of the democratic system, however: in view of the councils' inadequate representativeness and perceived incapacity to mediate, "splinter groups" tend to by-pass the mediation of the institutional representatives, though only with the aim of representing themselves in the decision-making process.

The model no longer sets out to incorporate specific interests within the more general ones through the "modern" representative process, but rather to strike pacts between interest groups (and their leaders) conducting their own representation and the political powers.

The widespread phenomenon of concertation between bodies standing for economic interests is one of the factors that has triggered the crisis in the role of the economic and social councils as representative institutions. It is in fact quite clear that they do not have the appropriate instruments for coming up with prompt proposals for settling and/or adjusting the outcome of consultations to be put to the categories and their representatives. As a result, interest groups are inclined to duplicate the fora where they are represented.

Nevertheless, the fact that the procedures for concertation and social dialogue have become outdated in countries in like Italy has not created a pull in the opposite direction - on the contrary.

c) Beyond labour

This state of affairs has forced, and continues to force, councils to revise their own role, to diversify and to specialise, both in relation to the informal concertation structures, for which they can provide **technical support together with research and preparatory assistance**, and more generally in relation to the interest groups represented, the aim being to expand its remit **to include all groups of organised civil society**.

With regard to first of these roles, the proposals for reform put forward by the Italian CNEL, for example, are based on an understanding with the government and productive sectors to the effect that the council will conduct surveys and analyse information in support of social dialogue and concertation at central and regional level.

Regarding the second, there is an effort on the part of the councils to act as catalysts on behalf of all organised civil society groups at both European and domestic level.

At European level, the role of the EESC, as the specialist institution for civil society dialogue since this was first proposed in a Committee opinion in 1999[2], has also been recognised in the Treaty, first in the amendments to Articl 257 of the TEU in the Nice Treaty, explicitly referring to the Committee

2 EESC own-initiative opinion 851/1999 of 22 September 1999 on The role and contribution of civil society organisations in the building of Europe.

as the forum for "representatives of the various economic and social components of *organised civil society*", and subsequently in the 2009 Lisbon Treaty, acknowledging the need for the Committee to be representative of all civil society parties, not just economic and social interest groups (Article 300(2) TFEU). The role of the EESC as a forum for civil society dialogue was indirectly promoted and reinforced by the affirmation in the Lisbon Treaty of the principle of participatory democracy (Article 11 TEU) (Bolognini Cobianchi 2005). In this respect, it is interesting to note how, in the climate of participatory democracy and with reference to the new body for citizens' initiatives (the European Citizens' Initiative, ECI) also established under the Treaty of Lisbon, the EESC has promoted its own role both as "catalyst", putting organisers of initiatives in touch with each other and on occasion meeting them, and as "mentor", organising hearings and producing an opinion to assist the Commission in evaluating the initiatives (EESC, *Your guide to the European Citizens' Initiative*, 2012).

At national level, again with the expansion of the representative functions of the economic and social councils in mind, it is interesting to note that the **French CESE**, made up of 233 members with precise indications on gender parity has, as a result of the recent reform in 2010[3], undergone a change in its structure, and now includes 33 representatives of environmental and nature conservation organisations and, among the 66 members of the group on social and territorial cohesion and community life, 4 representatives of young people and students (the minimum age for becoming a member of the council has been reduced from 25 to 18 years). This compares with the 140 members representing economic interests and the social dialogue. Of special significance is the clause, introduced in the constitutional law of 2008[4], allowing citizens to lodge a petition provided it has a minimum of 500 000 signatures. To date, the only petition that successfully garnered the required number of signatures was the one calling on the CESE to intervene in the bill on same-sex marriages. Even though the petition was not considered admissible, the CNEL acted on the request by presenting an own-initiative opinion entitled "The evolution of the contemporary family and its consequences for public policy".[5]

As regards the **Italian CNEL**, amended by Law 383/00, membership of the council has also been opened up to participation by the third sector with the appointment of 10 members – a figure that was reduced in 2011 to 6 following measures to cut the number of representatives (reduced in general from 120 to 64, see footnote 1). The reform proposals also call for legal clarification regarding the function of the CNEL as a forum for open representation and free discussions between all the groups operating within a system of social and economic pluralism.

3 Organic Law No 2010-704 of 28 June 2010 on the Economic, Social and Environmental Council.

4 Constitutional Law No 2008-724 of 23 July 2008 modernising the institutions of the Republic.

5 On 30 June 2014 the Administrative Court of Paris overturned the decision of inadmissibility of the petition, ordering the CESE to pay EUR 1 500 to cover the legal costs of the organiser of the petition (Philippe Brillault).

Turning to the **Greek economic and social council**, referred to as the OKE, this deserves a chapter to itself, particularly in light of the fact that it has been established relatively recently compared to the councils in the other Member States: it was founded in 1994 but was not recognised as an institution under the constitution until 2001. Its relation to the European model, as has already been mentioned, has followed a completely different trajectory compared to, for example, the French and Italian councils. Whereas the European EESC, already established in the Treaty of Rome, is a bottom-up model drawing inspiration from national models tried and tested in the founding Member States, in particular the Dutch *Social-Economische Raad* which served as the model for the original proposal (Smismans 2004), the Greek economic and social council has, in contrast, followed a top-down process, taking the European EESC as its source of inspiration. Finally, unlike the other economic and social councils, the Greek OKE has not been marginalised or jeopardised by the proliferation of informal fora for concertation and negotiation. Quite the contrary: it was set up at the same time as the reforms in the early Nineties aimed at reducing state interventionism in interest group dynamics and promoting the development of a collective autonomy as the primary source of regulation. Against this background, the OKE provides an institutionalised and permanent setting for national social dialogue on social and economic policies and helps to shore up the development of trade union freedom. Under the management of the social partners, the OKE provides tripartite representation for stakeholders of social and occupational interest groups, i.e. employers, workers and a third group composed of other representatives of civil society (more specifically, the local authorities, the farming sector, the self-employed, consumers and organisations in the areas of environmental protection and gender parity). The effect of the recession, with the attendant austerity measures on which the bail-out package offered to the Greek State was conditional, has put the clock back to the state interventionist model which prevailed prior to the reforms in the Nineties. There has been an increase in unilateral state measures, involving direct cuts to salaries, pensions and welfare services, a reduction in the individual and collective guarantees provided for under labour law and the undermining of the unions' bargaining power. Alongside the increase in state interventionism, collective bargaining at national and sectoral level has been decentralised to the level of the individual company, allowing for company agreements to take precedence over sectoral ones (suspension of the principle of the most favourable treatment) and granting so-called "associations of persons" the right to sign collective company agreements without the involvement of the unions and with primacy over all other company agreements. Under these changed circumstances, the marginalisation of the social partners has inevitably been followed by that of the institutional role of the OKE, compounded by cuts of almost 50% to its budget.

d) Effectiveness

The comparative analysis of the economic and social councils brings to light another ongoing issue, namely the competences of the various economic and social councils and their institutional effectiveness. This is relevant for any assessment of the impact of their work and the way in which they fit in with the industrial relations system and, more generally, to the social constitutional model. Here, too, the comparative analysis has yielded important results. Examining the councils from the

perspective of the competences assigned to them means taking a functional approach: this makes it possible to look not so much at the instruments for intervention at their disposal, but more at how the constitutional regulations establishing the councils set about offering similar solutions to common problems.

The comparative analysis highlights the difficulties encountered by the councils in having an efficient impact on the institutional decision-making process, deriving both from the lack of instruments serving as an **incentive** to the institutions to take into consideration the opinions of the councils, and to the **generic nature or tardiness** of the opinions themselves.

Regarding the first of these issues, taking the **European EESC**, despite the fact that in the 2001 Interinstitutional Agreement the Commission pledged to issue quarterly reports explaining how the Committee's opinions had been used, there is a widely held view that the Treaty should include an explicit requirement to issue a reasoned response, obliging the institutions to account for how they have acted on the positions taken by the Committee (Smismans 2004; Hönnige, Panke 2012).

With regard to the **French CESE**, it should be pointed out that the government is obliged to consult the council on draft laws in the areas of economic, social and environmental planning and programming. Likewise, under the Spanish system, the government is required to ask the ***Consejo Económico y Social*** to issue obligatory opinions on draft laws.

In Italy, however, the opinions of the **Italian CNEL** are merely optional, and may be requested by each house of parliament, by the government, acting on a proposal from the prime minister or the relevant minister, and by the regions (Article. 11, Law No 936/86). Precisely for this reason, in an endeavour to increase the incentive, it has been proposed that referrals for opinions should be mandatory, although not binding, with a requirement on the part of the requesting institution to five a reasoned response.

Regarding the second issue - weak points in the operation of the councils arising from the **generic nature or belated delivery of opinions** - it emerges that the councils need to concentrate their resources on a few priority areas, adopt opinions more swiftly and include specific proposals for amendments to the draft laws.

In the Spanish system, for example, the opinions on draft laws submitted by the ***Consejo Económico y Social*** at the request of the government are highly detailed and include a close analysis, article by article, on the content of the bill, together with a series of observations on the impact of the proposed changes to existing regulations (Astrid 2011).

With respect to the timing of the opinions, it is noted that the French model has urgent procedures that can be set in motion either by the government where it is responsible for delaying an opinion, or by the **CESE** itself in the case of an own-initiative opinion.

At European level, a great many studies have demonstrated the excessively general and vague character of the EESC's opinions arising from the fact that they are based on a consensual procedure: EESC opinions do not contain detailed amendments, article by article, to the Commission's proposals, with a clear comparison to the original text. Secondly, it has been noted that the EESC's intervention is not sufficiently timely in the political process, and all too often comes after the Commission has drafted its proposal. In order to increase the impact of the Committee in the decision-making procedure, recent studies have pointed to two types of requirement. On the one hand, the Committee should adopt its own recommendations swiftly, sending them to the recipient before the internal drafting process has been completed; in this respect, some authors assert that to incentivise the Committee's work, it should be detached and independent from specific legislative proposals, as is the case with its exploratory opinions, which the Commission also undertook to consider in the Interinstitutional Agreement of 2001. On the other hand, the Committee should select the areas for intervention on the basis of ranked priorities, something that would also take into account the scant resources available, so as to provide the institutions with new information, expert interpretations and convincing arguments on the subject chosen. In this respect, the Committee should select issues where, partly thanks to its wider contacts with civil society, it can provide an input based on its specific representative nature and competences (Smismans 2004; Hönnige, Panke 2012).

As for the **Italian CNEL**, with the prospect of reforms to strengthen the function of legislative initiative that has been a traditional part of the council's role, it has been proposed that the council and government/parliament should jointly draw up an annual/multiannual programme of priorities. This would help to prevent the CNEL from spreading its resources too thinly and would make its interventions more incisive and better targeted.

Furthermore, when assessing the impact of the economic and social councils on institutional decision-making procedures and with a view to reform, it is also necessary to take account of staff and budget cuts affecting the councils in the current climate of austerity and anti-crisis measures.

As has already been mentioned, the **Greek OKE** has seen its budget slashed in half. At European level too, the **EESC**, like the other EU institutions, is facing staff cuts of 1% for 5 years and its budget (including salaries) has been frozen. The impact of the EESC's spending review has been further affected by the entry of Croatia into the European Union, raising the number of members to 353, temporarily exceeding the ceiling of 350 fixed in the Lisbon Treaty under Article 300(1) TFEU. The **Italian CNEL** has also, as mentioned, been subject to a drastic reform in 2011 introduced in the form of a decree law, halving the number of members from 120 to 64. The Italian model is thus now more closely aligned in terms of membership to that of the ***Consejo Económico y Social*** (60 members,

comprising 20 union representatives, 20 employers and 20 representatives of the third sector), with an ever greater distance from the **French CESE** which, on the contrary, has recently not only had the increase in its members confirmed by the constitution (raised from 231 to 233 in 2007), but has also been granted wider functions and competences in view of its role in the participatory democracy and as representative of all components of organised civil society.

4. The advantage of a legal comparison lies in its ability to better illustrate and explain the way in which each regulation operates. In this respect, the survey draws attention to a number of paradoxes affecting the **Italian CNEL** in its present moment of crisis:

1) whilst it is true that the representativeness of the council has been undermined by the unprecedented parallel growth in informal fora for concertation and bargaining, it is also true that at the present moment in time, where austerity policies are placing domestic models of industrial relations under great strain, the CNEL can provide a setting that can strengthen the identity of intermediate bodies and help to overcome the rifts between them;

2) the abolition of the CNEL contained in the Boschi-Del Rio proposal for constitutional reform (DDL 1429), currently under discussion, would come at a time when historically the function of the council has been strengthened and integrated at both the legislative level and in terms of agreements between unions. Specifically, Law No 15/2009 conferred new competences on the CNEL in terms of verifying the efficiency of measures undertaken by the public administration in its relations with the public, and Law No 234/2012 has stipulated that the CNEL is to be specifically involved in the process of drafting EU laws. Finally, as is well known, the Single Text on trade union representation of January 2014, signed by the social partners, makes provision for the council to certify their representation.

Consistent with the move to revise and strengthen it, the proposals to reform the CNEL include giving it additional functions in terms of analysing and assessing (*ex ante* and *ex post*) public policies, also using data from other sources including study and research institutes and centres and universities, so as to provide the government and parliament with a detailed research picture and systematic opportunities for comparison. The reform proposals also include strengthening the CNEL's involvement in EU issues and consolidating its relations with the EESC, along the lines of the model of participatory EU governance enshrined in the Lisbon Treaty under Article 11 TEU.

Final Report

1. Introduction

The representation and representativeness of the social partners and civil society is one of the main topics of discussion in the current debate on labour law and industrial relations at both European and national level. The changes arising from the crisis and the impact of the measures imposed by the EU troika and the Euro Plus Pact raise questions about the role of "intermediate bodies" and places of representation; moreover, they question the function and usefulness of the national and European economic and social councils and of other dialogue structures in the context of social and political pluralism.

Representation by the social partners is highly relevant to the perspective of European integration, which needs to be based on the re-launch of policies of both economic convergence and social cohesion: this explains the strengthening, at European level, of the institutional role of the EESC, from the Treaty of Rome in 1957 to the Treaty of Lisbon in 2009, and the establishment of similar committees or councils in almost every EU Member State. In fact, in modern democracies, political representation does not fully cover the complex issue of the representation of society. Moreover, economic and social interests need to be granted a direct and autonomous representation so that they can express themselves in a constant and institutional manner, without being affected by changes in political arrangements and dynamics.

A study that sets out to analyse this topic must take due account of a multiplicity of aspects. First, one must consider that, despite possible similarities in denomination, economic and social councils are very different from each other and were established to pursue very different objectives, depending on the Member State. An emblematic example is offered by France, on the one hand, where the CESE (Economic, Social and Environmental Council) is the third national institution, and Italy, on the other, where the government has recently announced the abolition of the CNEL (National Council of the Economy and Labour), maintaining it has not met the objectives and expectations set out in the Italian Constitution.

Another important consideration that needs to be taken into account is that the function of these councils has been subjected to deep changes over time, sometimes resulting in unintended consequences (a sort of "heterogony of purposes"). This is the case with Romania, where one can observe the risk that the council itself might replace the social partners by carrying out their functions, collective bargaining included (it is not by chance that in this case, the third party making up the council is not civil society, but the government itself).

Based on these two premises, this piece of research intends to focus on the impact of the crisis on the functioning of economic and social councils, at both national and European level.

The analysis will examine, in particular, whether this impact has resulted in budgetary reductions and a downsizing of these councils or whether, on the contrary, it has strengthened their role as a place for enhancing consensus for adopting measures to combat the crisis. At the same time, this development highlights the importance of assessing the need for democratic consultation mechanisms involving social agents and civil society from a constitutional point of view, as well as of analysing the emergence of the idea of "democratic government" in modern societies and the basis for social and institutional dialogue in a democratic society. Specifically, at European level, the study sets out to investigate the role and function of the European Economic and Social Committee (EESC) in the context of multilevel governance, especially considering the fragile democratic nature of the EU structure. At national level, the research will focus on the role, development and possible reform of national economic and social councils in Italy, France, Spain, Greece and Romania, so as to highlight the wide range of diversity and exemplary importance of these Member States as far as the topic is concerned.

2. The representation of the labour world in national and European institutions: the role of the national economic and social councils, the European Economic and Social Committee and other dialogue structures

2.1 Paths to representation. A historical and legal comparative background

The topics of representation and representativeness of social partners and civil society have featured in debates on constitutional law, labour law and industrial relations from the end of the nineteenth century onwards.

These topics concern not only the European integration process, but also - primarily - national systems of labour relations. Hence, representation of the social partners, businesses and workers has an historical lineage which stretches back to the dramatic changes which occurred during the Second Industrial Revolution in both the United States and Europe (1875-1914).

Among other things, changes affected the organisation of production, growth in some industries (steel, chemicals, engineering and so on), and rapid innovation in technology. As a consequence, there was a steady rise in economies of scale, and new forms of management and production were experienced. The Second Industrial Revolution thus transformed industries into massive enterprises, where hundreds – or even thousands – of people worked. Poor working conditions, numerous accidents and the lack of any form of insurance led to conflicts between management and the workforce. These conflicts spread in Great Britain, France, Germany, Belgium and most of the rest of Western Europe. The labour force also began to establish mutual aid societies and created labour unions to help them to negotiate better rights.

It was clear that the representative institutions of the bourgeois-dominated state were not construed to manage the complexity of these socio-economic and labour conflicts. In fact, the nineteenth-century political representative institutions did not ensure complete representation of society as a whole. Italian and French scholars (Orlando 1940; Romano 1969; Hauriou 1896) astutely pointed out that traditional institutions were not capable of being representative of the different actors, groups and interests of which the "new" political societies were comprised. Furthermore, scholars with a background in labour law highlighted the need to establish innovative dialogue structures for collective bargaining (Gianturco 1891; Ratto 1903; Galizia 1907).

As a result, economic and social interest groups asked to be directly integrated in decision-making processes through autonomous representation mechanisms. This should have allowed them to be integrated in the socio-political arena in an institutional manner, without being affected by changes in political arrangements and dynamics. Questions arose, however, about the forms of representation to which the labour representatives should be entitled. To put it another way, politicians and scholars

concentrated on the "places of representation". In particular, it was extremely contentious whether these places should be incorporated in the decision-making process via the political representative institutions, or whether, by contrast, they should be granted separate representation in ad-hoc advisory bodies.

2.2 The places of representation. Second chambers based on vocational interests

The integration of vocational interests within the representative institutions can be traced back to the social doctrine of the Catholic Church's Pope Leo XIII, epitomised in the First Encyclical Letter *Rerum Novarum* (*Acta Leonis XIII*, 11 (1892), 97-144), which was subsequently followed by Pius XI's Encyclical Letter *Quadragesimo Anno* (*AAS* 23 (1931), 177-228).

The influence of Catholic social doctrine can be detected in how the question of the function, usefulness and establishment of vocational representation was debated and implemented in practice.

The quest for representation on vocational grounds led to draft bills and proposals for constitutional amendments. In particular, the proposed bills aimed at replacing the "traditional" second chamber – i.e. the Senate – with an upper chamber whose members should be nominated or elected by panels composed of persons having knowledge and practical experience of the interests and services in question.

In Italy, several scholars (Brunialti 1884; Arcoleo 1907) suggested the Senate be replaced by a second chamber based on vocational categories, and a Senate commission delivered a report on a constitutional reform of this type, which would grant adequate representation to economic and social interests within the legislative branch (Finali, Fortunato, Borgnini, Caetani, Pellegrini, Rossi, Severi, Villa e Arcoleo, *Per la riforma del Senato*, in *Atti Parlamentari*, Senato del Regno, Legislatura XXIII, sessione 1909-1913, doc. n. CII, 62 et seq.). In France, Germany and Austria scholars also advocated the creation of dialogue structures within the state apparatus. These structures were intended to allow social and political pluralism to be integrated in the decision-making process (Hauriou 1896; Renard 1930).

Despite this, however, Italy, France and Germany did not succeed in amending their constitutions and replacing their respective second chambers with vocationally-oriented ones. By contrast, the influence of the social doctrine of the Catholic Church is evident in the 1937 Irish Constitution: a second chamber representative of vocational groups, socio-economic interests and the social partners was effectively established. Pursuant to Article 18 of the Irish Constitution, the Senate (*Seanad Éireann*) is composed of sixty members: the President of the Republic nominates eleven members; forty-nine members are elected by five panels representing vocational interests (Culture and Education, Agriculture, Labour, Industry and Commerce and Public Administration). There are also members

elected by the graduates of two universities: three each by the National University of Ireland and the University of Dublin (Trinity College) (Laver 2002).

The responsibilities with which the *Seanad Éireann* is endowed under the Constitution are those typical of "traditional" second chambers. Hence, representation on vocational grounds through the *Seanad Éireann* allows for initiating and revising legislation, although the legislative role is restricted: it cannot initiate financial legislation, and can only make recommendations to bills of this type.

It could be argued that a vocational second chamber adds a layer of complexity to the decision-making process: as far as labour issues are concerned, legislative action should not be limited by a second chamber, which aims at acting as a safeguard against legislation being enacted too quickly. Moreover, the assumption is that the *Seanad Éireann* delays legislation which has already been passed by the Irish lower chamber [the *Dáil Éireann*] and cannot initiate bills to amend the Constitution.

Notwithstanding these objections, there are several arguments supporting the relevance of integrating vocationally-oriented mechanisms into state legislative processes.

First, the *Seanad Éireann* is not the sole second chamber based on vocational interests. The 1937 Estonian Constitution also established a National Council construed on vocational grounds. Secondly, there have also been constituent assemblies that decided to adopt vocational second chambers. As a result, the Constitutions of Morocco (1996 and 2011) and of Slovenia (1991) introduced second chambers representing vocational interests, the social partners, trade unions, professional organisations of employers and representatives of employees.

Thirdly, there was a proposal to amend the Constitution of Ireland and to abolish the *Seanad Éireann*. The *Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013* was rejected by the electorate in a referendum on 4 October 2013 by 51.7% against to 48.3% in favour.

In any case, the incorporation of vocational interests within political representative institutions is not a frequent model – indeed, the vocational Bavarian Senate was abolished in 1998 (Schmitt-Glaeser 1996; Palermo, Nicolini 2013). Despite this, the "model" of a "corporative'" second chamber has proved to be a useful mechanism through which it has been possible to ensure adequate representation of the social partners and civil society and to grant them a "place of representation" under the constitution.

2.3 Dialogue structures as places of representation: the economic and social councils

The creation of a second chamber was not the only response to the quest for representation on vocational grounds. Comparative constitutional studies uphold that several constitutions opted for the creation of innovative dialogue structures in order to permit social and political pluralism to emerge at

constitutional level. The establishment of a bicameral legislature with the second chamber based on vocational categories was perceived as a factor of complexity in the decision-making process.

Indeed, constant disagreements between the two chambers led to proposals for the creation of a second chamber whose seats would be apportioned on the basis of geographical constituencies.

This has led to the creation of ad-hoc committees, which offer a seat of influence to vocational groups and allow the interests of social agents and the social partners – as well as of civil society – to be adopted as the basis for social and institutional dialogue in a democratic society. In Italy, the creation of committees or councils can be traced back to the end of the nineteenth century. Royal decrees were enacted and different vocational advisory boards established: the council for agriculture (Decree No 4619 of 1868); the council for manufacturing and trade (Decree No 5210 of 1869); and the advisory commission for labour and social policy (Decree No 5370 of 1869). These were not independent boards, but fell under the political responsibility of the minister of trade – and, as a consequence, they were not representative of the vocational categories. Even the Council for Labour – created by Law 246 of 1902 and amended under fascist rule – did not represent the world of labour and socio-occupational interests, because its composition and the procedure for appointing its members fell within cabinet responsibilities (De Fina 1959; Ventura 1994).

After the dismantling of the fascist regime, the proceedings of debates, which took place in the Constituent Assembly, encompassed all the most relevant issues related to vocational representation. When addressing the structure of the national Parliament, the Constituent Assembly proposed the establishment of a second chamber representing categories of professionals, employees and economic interests, but the proposal was subsequently abandoned in favour of an advisory ad hoc council, the Consiglio Nazionale dell'Economia e del Lavoro (hereinafter the CNEL), which was then enshrined in Article 99 of the Constitution (De Fina 1959; Chiarelli 1961; Ventura 1994; Bonfiglio 2006). The creation of a second, vocational, chamber was severely criticised and then rejected. In fact in 1939 the fascist regime transformed the lower chamber of Parliament into the so-called "Camera dei Fasci e delle Corporazioni" – i.e. a guild-dominated chamber (Law No 129 of 1939).

Recourse to the vocational council "model" is also characteristic of French constitutions. Whilst drafting the 1946 and 1958 Constitutions, a vocational second chamber was proposed. The 1946 constitutional text eventually replaced the second chamber with an ad-hoc council – the "Economic Council" (*Conseil économique*: Article 25) – as did the 1958 Constitution: an "Economic and Social Council" (*Conseil économique et social*) was then inserted in the 1958 Constitution (Articles 69-71), and the Constitution amendment Act (23 Jul 2003) modified its official denomination – which is now "Economic, Social and Environmental Council" (*Conseil économique social et environnemental*, hereinafter the CESE).

The Italian and French constitutions confer upon these councils manifold responsibilities – amongst other things, they act as advisory boards in the decision-making process (Aubry 1959; Frayssinet 1996; Nicolais 1991). The Italian National Council can also introduce bills relating to socio-economic issues (Article 99.3 of the Italian Constitution).

2.4 The roots of the economic and social councils

Before examining the origins, organisation and functions of the CNEL, we will explore the historical roots and constitutional foundations of the economic and social councils in general.

It is quite clear that the purpose of setting up such dialogue structures – distinct from second chambers in that they are based on representation of vocational interests – is to integrate social and political pluralism within the broader constitutional context. Like vocational bicameral structures, these councils can be traced back to the social doctrine of the Catholic Church. Social doctrine is not, however, the sole "ideological" and "political" foundation supporting councils as the key to the problem of labour representation. In this regard, several political and constitutional entities have come together to offer support in setting up institutions representing the social partners.

On the one hand, there was the British *Guild Socialism* movement calling for workers' control of industry through a system of national guilds operating in an implied contractual relationship with the public (Cole 1920; Mises 1998). The Guild Socialism movement – which developed in England in the first two decades of the 20th century – has traits in common with the Italian and Portuguese fascist experiments of the so-called "corporative state" (*stato corporativo*) (Cassese 2010; Biscaretti di Ruffìa; Gomes Canotilho), which dealt with conflicts between management and labour in various guilds, with working relations being governed by direct bargaining. In this respect, it is clear that in the 1930s, "guild" or "corporate" experiments were considered as alternative models to vocational second chambers within the liberal democracies of the time.

On the other hand, it should be pointed out that connections between the Italian fascist corporative experience and Guild Socialism movement also emerge from the role played by the international parties of Marxist socialism, from which the Fascist party seceded, once it could no longer pose as socialist. Hence, studies aiming at analysing representation of the social partners must take this multiplicity of aspects into account. Indeed, one must consider that, despite possible similarities in denomination, economic and social councils may be very different from each other and were established to pursue very different objectives, depending on the specific circumstances of the states concerned.

This is particularly true for the ad hoc councils as "places of representation". In this regard, the Economic Council (*Reichswirtschaftsrat*) of the 1919 German Constitution had represented the "model" of economic and social councils in European democracies (Article 165 of the so-called

Weimar Constitution) (Tarnow 1951). To this extent, scholars highlighted that it is the antecedent of the Italian and French councils – indeed, it is one of the first manifestations of economic democracy. The ideological roots can thus be traced back to the social doctrine of the Catholic Church, as well as to the institutional conceptions of "council democracy" (*Räterdemokratie*), which had already been advocated during the 1917 Soviet revolution and by German politicians such as Rosa Luxemburg (Ortino 1994). Moreover, the "Weimar model" is very much indebted to the social democratic manifesto: whereas political interests should be represented through traditional representative institutions, social and labour actors stand for innovative vocational ones acting within state institutions. However, there was a flaw between the constitution on paper and the one enacted in practice: indeed, although it was enshrined in the text of the Weimar constitution, the Economic Council was never set up. In any event, it directly influenced the English *Whitley Councils*, and the homologous councils established in France (1925) and Spain (1929) (Cappuccio 2006).

2.5 Addressing the National Council for the Economy and Labour (CNEL) from a comparative perspective

Economic and social councils comprise a wide range of dialogue structures, incorporating vocational interests and socio-economic pluralism within state institutions. The assumption is that these councils represent an effective model, which is an alternative to the vocational second chamber.

When addressing the representation of the social partners and the two sides of industry, the proposed classification – which draws a distinction between vocational second chambers and economic and social councils – is the outcome of a legal analysis conducted on the basis of the comparative method. On the one hand, the comparative method makes it possible to detect analogies and differences between different forms of representation, integration and participation of vocational categories in the decision-making process. On the other hand, it means that the different forms can be grouped according to their common traits. Indeed, the purpose of the comparative method is to devise "models" of representation – i.e. a synthesis of complexity by logical categories useful for the advancement of federal comparative studies (Pegoraro).

At national level, the number of councils has grown at a steady rate. The French CESE and Italian CNEL are the longest-standing ones. Recourse to dialogue structures has taken place in Romania, Greece, Spain and Portugal, whereas in Belgium and the Netherlands, the council model is complemented by bilateral agreements between trade unions and organised business which negotiate directly. In some cases, there have also been proposals for their reform: in France, for example, the transformation of the CESE into a second chamber was rejected under a referendum in 1969 (Nicolais 1991). Italian sub-national administrative units also established their own economic and social councils: among others, Puglia (under Article 46 of the Regional Statute and Regional Law No 7 of 2004), Tuscany (Article 61 of the Regional Statute), Calabria (Article 56 of the Regional Statute) and Piedmont (Article 87 of the Regional Statute) (Cappuccio 2006).

It should be pointed out that the function of these councils has been subject to radical change over the course of time, sometimes resulting in unintended consequences. In particular, there is a flaw between the role constitutionally assigned to them and the way in which the economic constitution actually works: this distinction between constitutional form and operational reality is mainly due to the creation of more informal places for negotiation, the role played by trade unions and professional business organisations and the current economic crisis. As a consequence, one can observe the risk that the social partners may replace the councils by carrying out their functions, collective bargaining included. Furthermore, it is not by chance that in this case, the third party composing the council is not civil society but the government itself. The creation of dialogue structures as an alternative to the councils affects these bodies, as well as their capacity to represent the labour world and socio-occupational interests. It also has a direct impact on their composition, the procedure for appointing members and on the legislative and political impact of their activities.

This is particularly true of the Italian CNEL. The CNEL is composed of experts and representatives of the economic categories, in such a way as to reflect their numerical size and qualitative importance (Article 99.1 of the Italian Constitution). It serves as a consultative body for parliament and the government on those matters and those functions attributed to it by law (Article 99(2)). It can initiate legislation and may contribute to drafting economic and social legislation according to the principles and within the limitations laid down by law (Article 99(3)). The constitutional provisions were implemented by Law No 33 of 1957, which was subsequently amended by Law No 936 of 1986.

We have already observed that the CNEL has its roots in socio-economic and political concepts that were recognised in some relevant constitutional questions between the First and the Second World Wars. The organic representation of workers, professionals, businesses and entrepreneurs had already been tested in the Weimar Constitution Laboratory, with the outcome then being transplanted to France, Italy, Spain, and Portugal.

The CNEL comprises 111 members: the president and ninety-nine representatives of the manufacturing and service categories in the public and private sectors. Pursuant to Article 2 of Law No 936 of 1986, 44 members are appointed in order to represent the employees; 18 members are representatives of professionals; and 37 members are representatives of businesses. There also are twelve experts, to be nominated from leading figures in economic, social and legal spheres. Members are appointed by the President of the Republic in accordance with a resolution passed by the Council of Ministers. Members remain in office for five years and cannot be Members of Parliament.

The CNEL is endowed with a range of powers and responsibilities. Like the French CESE, it delivers advisory opinions at the request of the cabinet and of the two chambers of Parliament. Its opinions and reports may range from guidelines on economic, financial and social policy to any topic which is

related to or falls within the field of economics and labour. It can also deliver opinions on its own initiative for submission to those institutions. As already mentioned, the CNEL can initiate legislation.

Despite its constitutional foundations, and notwithstanding the relevance of the powers attributed to it under the constitution, the CNEL has not lived up to expectations in terms of the representation and representativeness of the social partners and civil society within national institutions. It has only exercised its powers on a few occasions, and the social partners, trade unions and organised business have preferred to seek out more informal places for negotiation.

To some extent, it regained momentum as an institution capable of delivering analysis in the field of labour and as a laboratory for new collective bargaining (Balboni 2013). One of the main factors that has severely undermined the representativeness of the CNEL is the fact that economic, vocational and social interests have had the possibility to develop informal, direct and autonomous mechanisms of representation. Thus trade unions and businesses can negotiate, collective bargaining included, with the representative institutions, without being affected by changes in political arrangements and dynamics.

As a matter of fact, scholars with a background in constitutional law, labour law and industrial relations have been debating the future of the CNEL ever since the Constitution entered into force (Mortati 1991; Ventura 1994; Cappuccio 2006). Nevertheless, the current political centre-left cabinet has tabled a parliamentary bill for an amendment to the Constitution calling for the Council's abolition on the grounds that it has not met the objectives and expectations set forth in the Italian Constitution.

3. The European Economic and Social Committee: development of its role in the EU institutional framework and possible future perspectives

The Economic and Social Committee, as it is referred to in the Treaty notwithstanding a request put forward by the Committee itself to the intergovernmental conference (IGC) drafting the constitutional treaty (ESC Opinion of 24 September 2003) for the epithet "European" to be added, is an EU consultative body with general competence and instrumental and auxiliary functions in respect of the European Parliament, the Council and the Commission (Article 300(1) TFEU).

Although it does not qualify as an institution, but merely as an organ, of the European Union, the EESC has full financial and administrative autonomy (see Declaration on the ESC appended to the Treaty of Maastricht; financial regulation applicable to the general EU budget - Reg. 966/2012; Staff Regulations of Officials of the European Union – Reg. Cons. 259/68) as well as the power of self-regulation, originally recognised in the Treaty of Rome. Under the Treaty of Maastricht, the Committee became autonomous and was no longer subject to approval by the Council (see *infra*) (Santini 2014). Precisely because of these characteristics, experts have suggested that the EESC could be described as a "quasi-institution", an "institution *sui generis*" (Toth 1990, p. 184; Cadin 2004, p. 1209) or an "institutional organ" (see the Preamble to the EESC Rules of Procedure; Santini 2014, p. 1438).

The EESC was originally established under the Treaty of Rome (Article 193 ff.).

The decision to set up the EESC was based, on the one hand, on the model of the consultative committee of the European Coal and Steel Community (ECSC) and, on the other, on the national models of economic and social councils found in the founding Member States (five of the six founding countries, with the sole exception of Germany) (Smismans 2004).

Regarding the first model, that of the ECSC, the establishment of a consultative committee to represent the interests of producers, consumers and traders in the coal and steel sector was justified by the sectoral integration specifically planned for this economic community. The reasons for establishing a committee of this kind within the EEC were less obvious, however (Smismans 2000). It is not by chance that the question of setting up the EESC arose only in the final phase of the Val Duchesse negotiations, in September 1956, and that a decision was reached only two months prior to approving the final text of the Treaty of Rome.

Regarding the second model, the establishment of the EESC was originally in response to the expectations of the founding Member States, with the exception of Germany, who wanted to replicate at supranational level the model of representation of interest groups that they used nationally in the form of formal councils. The initial proposal to use the Belgian model for the EESC was discarded in

favour of the Dutch one, based on the *Social-Economische Raad*, which originally would also have conferred a right of own initiative on the committee. The right of own initiative was not recognised in the Treaty of Rome, however, as it met with the opposition of the German Federal Republic as a result of its negative experience with the *Reichswirtschaftsrat* during the Weimar Republic. As will be seen, it was only once the German fears of corporativism along the lines of the Weimar Republic had been dispelled (see the memorandum presented by Chancellor Brandt at the EEC Paris summit in October 1972) that the EESC was granted the right of own initiative, first in its 1974 Rules of Procedure and subsequently in the Maastricht Treaty as a primary sources (Smismans 2000, 2004).

The role of the EESC in the European Community institutional framework has evolved in three main phases.

From 1958 to 1979. Initially, the importance of the EESC lay in its specific representative function for interest sectors indispensable for economic integration between the Member States that could not be provided efficiently by the Assembly (later re-named European Parliament), which at that time was not directly elected. In particular, the EESC's role was enhanced by the need for Community regulatory measures to be supported, on the one hand, by the competences of the economic and social interests of the specific sector and, on the other, by the agreement, and hence consensus, of the socio-economic players directly involved. The role of the interest groups was moreover central to the sector-by-sector approach adopted by the founding states; it was also difficult for the interests of these groups to be represented in the Commission through an indirectly elected parliamentary assembly, one in which the parliamentarians were also supposed to represent "the general interest" (Smismans 200). In view of its representative role, the experts came up with the idea - still valid - of designating the EESC as an "economic parliament" or "functional organ with parliamentary characteristics" (Smismans 2000, 2004). It can be considered a functional organ in that it is called on to provide the necessary competences and consensus to secure integration in particular areas of the European project and because it is composed of representatives of functional organisations/groups. The EESC is not simply an expert body, however, and its opinions cannot be considered simply as technical reports. They are the fruit of agreement between socio-economic players, the culmination of a negotiated process. This is guaranteed by the EESC's parliamentary characteristics in terms of both the status of its members - who are not subject to a binding mandate and, as was made clear in the Maastricht Treaty, enjoy full independence and act in the general interest of the Community - and of the internal organisation and operation of the Committee. It is particularly worth noting that the EESC is not a corporative group where the main economic and social groups defend their own interests, negotiate on a specific issue and commit their own organisation: the decision-making process is the outcome of discussions that seek the broadest possible consensus (although the Rules of Procedure do contain the possibility for submitting a counter-opinion) (Smismans 2000, 2004).

Nevertheless, in its early stages the role of the EESC and its ability to effectively influence the decision-making procedure were hampered by two main factors: i) the lack of any right of own

initiative, which meant that the Committee's activities were subordinate to the programme and time-frames dictated by the Commission and the Council and were limited to the subjects where a mandatory referral was required or where recourse was occasionally had to an optional referral: ii) its own lack of autonomy, with the Committee's Rules of Procedure being subject to the control and approval of the Council. It was not until the Germans' resistance was overcome that the Committee was given the right of own initiative. This was approved by the heads of government in October 1972 and was subsequently incorporated into the EESC's Rules of Procedure in 1974 (although it was not until the Maastricht Treaty that this was laid down in a primary source, see above). In spite of this, part of contemporary doctrine critically pointed to the fact that although the Committee has increased influence on the Commission's proposals, the Commission and the Council continued to exercise the right to ignore its opinions entirely and, in particular, the Committee's position with respect to the supranational institutions continued to be ambiguous. In particular, a number of authors maintain that whilst it is a community body, i.e. equipped with a supranational identity, the members of the EESC do not represent supranational interests but, rather, individually express national considerations and, on the basis of consensus and a high level of generalisation, issue opinions on the Commission's policy and questions that it considers useful for community action (Lodge, Herman 1980, p. 277-278). It was not until the Treaty of Maastricht that the EESC was finally granted full autonomy over its Rules of Procedure with the repeal of Article 196 TEU requiring approval by the Council.

From 1979 to 2000. Competition from the European Parliament, following the introduction of direct elections in 1979, the institutionalisation of the European social dialogue with the protocol on social policy annexed to the Maastricht Treaty, and the development of other forms of technical consultation and corporative pressure have progressively increased the risk of the role of the EESC being gradually marginalised in the Community institutional framework. It was on these grounds that, already at the outset of the Eighties, some experts were warning that the Committee was at risk of becoming obsolete (Lodge, Herman 1980). The political pressure on the Committee to revitalise, specialise and bolster the legitimacy of its own work, role and representative function in the EU arena accounts for the emergence of its narrative on civil society and civil dialogue (see the EESC's own-initiative opinion 851/1999 of 22 September 1999, The role and contribution of civil society organisations in the building of Europe) and the enhanced role given to organised civil society as the lowest common denominator in the various bodies represented. Notably, at the end of the Nineties, the EESC assumed the role of "forum for organised civil society": the participative model of civil society is presented as being complementary to the model of regional representation and representative democracy characteristic of the European Parliament. The EESC was the first to make the connection between the concept of civil society and the democratic deficit and lack of legitimacy of the European integration project, before it became a core question in the Commission's 2001 White Paper on European Governance (Pèrez-Solórzano Borragán, Smismans 2012; Smismans 2004).

From 2000 onwards. The role of the EESC as the specialised forum for civil dialogue, promoted by the Committee in its 1999 opinion, was recognised by the Commission first in its White Paper and

subsequently in the 2001 Interinstitutional Agreement, by the European Parliament in its Resolution on the White Paper (A5-0399/2001), and above all by the Member States in the amendments to Article 257 TEU in the Nice Treaty, which referred explicitly to the representation by the Committee of the "various economic and social components of *organised civil society*". However, the need for the Committee to represent all civil society groups, not just economic and social ones, was not authorised in a primary source until the Lisbon Treaty came into force in 2009. It is interesting to note that, following the amendments made in Lisbon, civil society is no longer referred to as "organised" since - as is also clear from the literature - the specific reference to "organisations" in Article 300(2) means that civil society stakeholders that are not part of an organisation cannot be represented by the EESC (Santini 2014; Zambrano 2012). Article 300(2) TFEU refers specifically to representatives of organisations of employers, of the employed *and of other parties representative of civil society, notably in socio-economic, civil society, professional and cultural areas*. As a result, it is no longer necessary to list individually, by way of example, the various groups represented, as supplemented in the Nice Treaty, i.e. producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest. It is important to emphasise that whilst the Lisbon Treaty confirms and further promotes reference to civil society as the "common denominator" of the various components of the EESC, on the other hand it also reflects the tripartite structure that already existed in the Committee (Santini 2014, p. 1438). Despite pressure from the unions - the driving force behind the establishment of the EESC -to limit the composition of the Committee to employers and workers, since its very inception the Committee has in fact been divided into three groups, a practice also made statutory in its Rules of Procedure: Group I, made up of employers, the public and private sectors, commerce, transport, banking and insurance; Group II, comprising representatives of the main national trade unions; and Group III, the "other interests" group, encompassing two "generic" groups without any homogeneity, something that has been criticised in the literature: one representing farmers, professionals and craftsmen, and the other representing the "general public". It is noted that the treaty of Nice did away with the clause requiring "adequate representation" of the various categories of economic and social life (Cadin 2004). On the other hand, the explicit reference to the Committee's tripartite working method in Article 300(2) provides a basis for maintaining that the numerical size of each component should not be disproportionate with respect to the others (Santini 2014; Orlandi 2014, p. 2337).

The role of the EESC was indirectly promoted and reinforced by the affirmation in the Lisbon Treaty of the principle of participatory democracy (Article 11 TEU). As has already been mentioned, the EESC and the Commission, in the 1999 opinion and 2001 White Paper, respectively, refocused the debate on democracy in the EU, positioning the issue of participatory democracy at the centre. The idea was to give parties with an interest in policies the opportunity to take part in the decision-making process, providing an extra resource and enhanced legitimacy in terms of regional and representative democracy. In this sense, as non-elected bodies, the EESC and the Commission cast a different light on the EP as the EU's only legitimised resource. The definition of civil society promulgated by the EESC and endorsed by the Commission in its 2001 White Paper is also consonant with its original

conception and the political interests it serves. It also embraces the social partners, not just NGOs, and above all it is inclusive of all the levels at which civil society is organised, i.e. not just European level organisations, but also national and local ones (indeed, the EESC is made up of representatives of *national* organisations). The same political reasons underpin the EESC's interest in examining the question of the representativeness of civil society organisations (EESC opinions on *European Governance – A White Paper*, 357/2002 and on *The Representativeness of European Civil Society Organisations in the Civil Dialogue*, 240/2006). In this respect, it is interesting to note how, in the climate of participatory democracy and with reference to the new body for citizens' initiatives (the European Citizens' Initiative, ECI) also established under the Treaty of Lisbon, the EESC has promoted its own role both as "catalyst", putting organisers of initiatives in touch with each other and on occasion meeting them, and as "mentor", organising hearings and producing an opinion to assist the Commission in evaluating the initiatives (EESC, *Your guide to the European Citizens' Initiative*, 2012).

When assessing the degree of impact the EESC has on the Community decision-making process, in other words its capacity, through voicing its views, to influence the stance of the target institutions and shape the content of the final political outcome, the literature has identified a range of possible variables.

As mentioned above, with regard to the first embryonic phase of the EESC, a number of authors have pointed out that the Committee's influence was hampered by the lack of a right of own initiative and an autonomous regime enabling it to operate independently of the constraints imposed by the referral procedure -whether mandatory or optional - initiated by the Commission and the Council and to self-regulate without being dependent on the authorisation of the Council. Nevertheless, overcoming this dual limitation - in part with its own Rules of Procedure in 1974 and at a primary level not until the advent of the Maastricht Treaty, did not spare the Committee from being described during the Eighties as "defunct" (R.E. McCarthy, 1997) or as an "unnecessary" item of expenditure (Weatherill, Beaumont 1995). Even more recently, and at a political level, a number of MEPs have actually called for it to be abolished (see the contribution by Helle Thorning-Schmidt, Prime Minister of Denmark and former MEP, to the European Convention; the statement written by Nils Lundgren and Hélène Goudin of the Independence/Democracy Group, presented in 2007; and the *Position paper on the EU budget post 2013,* presented by the ALDE Group in 2011).

With a view to possible reform, studies that have explored in depth the Committee's progress have highlighted the following drawbacks in its working methods. In the first instance, the excessively general and vague character of the EESC's opinions arising from the fact that they are based on a consensual procedure: EESC opinions do not contain detailed amendments, article by article, to the Commission's proposals, with a clear comparison to the original text. Secondly, the EESC's intervention is not sufficiently timely in the political process, and all too often comes after the Commission has drafted its proposal. Finally, the weakness of its relations with the other Community

institutions, particularly the Council (Smismans 2004, p. 165). In order to increase the impact of the Committee in the decision-making procedure, recent studies have pointed to two types of requirement. On the one hand, the Committee should adopt its own recommendations swiftly, sending them to the recipient before the internal drafting process has been completed; in this respect, some authors assert that to incentivise the Committee's work, it should be detached and independent from specific legislative proposals, as is the case with its exploratory opinions, which the Commission also undertook to consider in the Interinstitutional Agreement of 2001. On the other hand, the Committee should select the areas for intervention on the basis of ranked priorities, something that would also take into account the scant resources available, so as to provide the institutions with new information, expert interpretations and convincing arguments on the subject chosen (Hönnige, Panke 2013, p. 468). In this respect, the Committee should select issues where, partly thanks to its wider contacts with civil society, it can provide an input based on its specific representative nature and competences (Smismans 2004; p. 181). Finally, there is no incentive at all for the Commission and the Council to pay due attention to the opinions of the EESC. In this respect, despite the fact that in the 2001 Interinstitutional Agreement the Commission pledged to issue quarterly reports explaining how the Committee's opinions had been used, some authors have proposed that the Treaty should include an explicit requirement to issue a reasoned response, obliging the institutions to account for how they have acted on the positions taken by the Committee.

Moreover, in the impact assessment on the Committee and with a view to reforming it, it should be borne in mind that staff and budget cuts introduced in 2011 have affected it, like the other EU Institutions - staffing levels are being cut by 1% for 5 years and the budget has been frozen The impact of the EESC's spending review has been exacerbated by the entry of Croatia into the European Union, raising the number of members to 353 and temporarily exceeding the maximum of 350 fixed in the Lisbon Treaty under Article 300(1) TFEU.

4. The CNEL, Italy's economic and social council: reform or abolition?

The Boschi-Del Rio Bill (DDL 1429), which aims at introducing significant amendments to the Italian Constitution and is currently under discussion, provides for the abolition of the CNEL (National Council for the Economy and Labour) by repealing Art. 99 of the Constitution. The report attached to the Bill explains this choice by arguing that to date the Council has produced only a few parliamentary initiatives and can no longer adequately fulfil the role of coordination of social and economic categories that originally justified its establishment.

However, there are interesting proposals for a reform of the CNEL, aimed at updating its functions in accordance with current social and economic needs and avoiding the risks of lack of accountability and excessive red tape.

In this sense, a specific proposal drawn up by Professor Treu (see below) outlines a number of functions in the form of new tasks that the CNEL should accomplish in the event of it being reformed.

Document for the reform of the CNEL (Professor Treu, 3 February 2014)

1. Reasons for reforming the CNEL

The need to reform the CNEL, bringing it abreast of the times and strengthening its role, is shared by many but raises doubts and resistance on the part of others. The future of the CNEL has most recently been the subject of discussion within the committee on constitutional reform. A variety of opinions was expressed: **all** of them were critical of the current status of the CNEL **but** sceptical about the reality of being able to remedy the situation, with some members nevertheless convinced that reform was necessary and possible providing it was "far-reaching".

We agree with the latter viewpoint and believe that there are valid reasons for supporting it, in the light of social and economic developments in Italy **and taking account of the country's position in the European Union.** Reform of the CNEL is necessary not only to retain a body that has, over the years, played an important role in social representation and mediation, but also because it continues to meet current social and political needs in Italy.

Authoritative and institutionalised representation is in fact more urgent than ever, given the radical transformations taking place in our society caused by structural factors: globalisation, the primacy of the third sector of the economy and the diversification of labour forms, not to mention people's individual life paths. These factors mount a challenge to traditional forms of representation and the familiar collective structures that are necessary in any society. They risk breaking up the social fabric, fomenting inequality and exacerbating centrifugal tendencies, along with the populist trends that are such a threat to our democracies. **These trends jeopardise the very function of intermediary bodies in a society organised on the basis of political and social pluralism. Under these circumstances, it is more than the role and the defence of the CNEL that is at stake. It is vital that we are all aware of this: it is a question of safeguarding, albeit at a time of reforms and procedures designed to speed up the process of taking clear decisions, the constitutional and social pluralism that are a fundamental feature of our democratic system with a view to tackling the crisis afflicting Italy in a participatory way and without cutting corners.**

The weakening of the intermediary representative organisations will, as De Rita has observed with consternation, gradually "increase the solitude of all components of society, lead to a proliferation in selfish interests and leave situations of social malaise and inequality bereft of filters and intermediary mediation".

Countering these tendencies will call for rethinking the type of response to social needs and mediation. This process of reflection should take place in the full light of constitutional norms (Articles 2 and 3) recognising that social training performs an essential function in terms of

personality development, increased participation and strengthening the bonds of solidarity and cohesion between citizens. Hopefully, the review will also be extended to cover the European situation and include the principles set out in the new European treaties. Of particular importance among the subjects which fall within our remit are those measures aimed at strengthening the weight attached to the Union's social values and objectives (Articles 2 and 3 TEU) and to those of social dialogue (Article 152 TFEU).

Reflection on these subjects is an urgent task which pertains **not only to us, but also to all** social and institutional stakeholders; **it must** seek to strengthen all those institutions with the capacity to promote social cohesion and manage the complex relationship between the world of economic and social interests and the decision-making bodies, primarily those representing states and regions, but also the European Institutions.

Our commitment to reforming the CNEL can be seen as part of this common venture. For the CNEL can indeed continue to be just such an institution, provided it is able to bring its functions into line with the latest social and economic requirements and resist the temptation to resort to self-referential methods and bureaucratic corporatism. **Even if for these reasons the CNEL no longer exercises its original intervention functions in terms of the social concertation process, which is now directly carried out by the social partners, and as an interlocutor with the government, it is nevertheless important that a renewed and strengthened CNEL should put its complementary role and socially authoritative expertise to use in providing support, including joint objectives and instruments, for the social concertation process considered essential by many in Italy and Europe in order to overcome the crisis.**

2. Meeting the new needs of the country and the social partners

These considerations show that the reform of the CNEL is quite rightly placed in the context of the institutional reforms that Italy needs, precisely because in our modern democracy, political representation cannot subsume the forms of social representation - it needs them as a separate adjunct. This was in fact the idea behind Article 99 of the Constitution which conceived of the CNEL as an institutional forum for social representation: this design should still infuse any proposed reforms.

A revitalised CNEL can serve the country by contributing to the search for a more stable and balanced social and democratic arrangement and **enhancing** the role of **intermediate groups**. Nowadays, the social stakeholders can make their voices heard in a wide range of fora. The representation of the different categories and social groups is recognised in constitutional jurisprudence. Trade union organisations in particular have bolstered their legitimacy and membership numbers over and above their presence in the CNEL, considered in the past the yardstick of representativeness, and are now supported by precise rules agreed on by the trade union

confederations. The CNEL has the important task of verifying that these rules are implemented as an integral part of our social model.

However, the voice of civil society is often contradictory, lost in the general background rumblings and frequently inclined to indulge in a self-referential approach that excludes anything new. For these reasons, it is a voice that is rarely listened to.

A forum for debate and representation such as the CNEL, which is institutional but open, where the views of civil society groups can be voiced openly among themselves and with society at large, can enhance their authority and "rationality".

A recognised institutional setting not only enhances the functions of intermediate bodies, but can also strengthen their identity and iron out internal rifts that may appear. For these reasons the role of the CNEL as a forum for "social mediation", with the capacity to defuse widespread social tension, is more important than ever.

This proposal for reform seeks to contribute, alongside the work of the institutions and all the relevant social and political stakeholders, to providing convincing responses to the new demands for social representation and mediation that have been voiced, however chaotically, by broad segments of the country. Our contribution draws strength not only from the constitutional roots of the CNEL but also from its experience over the years, which is both rich and varied.

The CNEL's work, even in its ninth mandate (2010-2015), has been unremitting, even in the face of the major organisational transformations introduced by law at the end of 2011 designed to cut costs (in particular by reducing the number of members). As summarised in the appended document, its work has covered all the main areas for which it is competent: legislative initiatives, replies to specific requests from the government and parliament, drafting reports such as the ones on fair and sustainable well-being indicators (BES) and levels and quality of services provided by the public administration (PA), and analysis and monitoring of key aspects of social policies and the labour market.

The value of past experience should be recognised and defended, but this must not dilute our determination to do more - rather, it should make our work even more efficient. The CNEL has not always been in a position to respond to the economic and social challenges facing Italy, something that has undermined its credibility with the institutions and other stakeholders. Our response needs to be to review our priorities in the light of the country's economic and social transformations, improve our working procedures and step up our external activities with our social and public interlocutors.

One of the priorities in our reform proposal is to outline in an innovative way the areas where the CNEL is best placed to respond to the country's needs, areas which cannot adequately be covered by

other bodies. Only after this, once the decisions have been made regarding the CNEL's mission, will it be possible to adjust its governance, structures and organisational arrangements, fine-tuning them with its mission.

3. Specific aspects of the CNEL's new functions

The reform, encouraging to country to engage in a wide-ranging, open debate, sets out to update the CNEL's tasks in a number of areas that correspond to the country's most pressing needs; we believe that the CNEL, by dint of its approach to social representation, can provide a better response than other institutions.

a) An initial area calling for innovation and strengthening is the CNEL's participation in central and local decision-making processes. The objective is to allow the Council to resume its full constitutional role without undermining the autonomy of the social partners. The idea is to safeguard the practice of free concertation, carving out a role for the CNEL so that it can improve the management and efficiency of these procedures, first and foremost by gathering information with the added bonus of its institutional authority, together with the necessary technical back-up. Its technical and social credentials in terms of information gathering can benefit not only the issues and procedures of concertation between the social partners, but also the drafting of legislation on social and economic questions. The role of "institutional partner" can be relevant not only to the major laws on economic and social policy, but also to sectoral laws and the various forms of micro-regulation. The latter should not be underestimated as they often have a greater impact on the everyday life of economic interest groups than general regulations. **It also has a role to play in public policy programmes in those areas where they are currently most urgently needed, in the major decisions needed in order to revitalise the competitiveness of our productive system and in strengthening our welfare system.**

An authoritative and competent institutional intervention on the part of a body like the CNEL can help to rationalise **these political, legislative and administrative measures**, avoiding the unintentional contradictory and fragmentary effects that are regrettably a feature of our legislation, and can also encourage a trend towards simplification. The public, firms and workers are increasingly aware of the need to simplify rules and procedures, but attempts are thwarted by the labyrinth of existing legislative and bureaucratic mechanisms, as recent events have demonstrated.

The significance of this rationalising and simplifying function is not just a technical matter. It is the very composition of the CNEL, made up as it is of representatives of the social forces, that means that its work can be enriched by its contact with these forces, placing it in a position to express their views in its dealings with public decision-makers at national and local level. Our information-gathering capacities, enhanced by direct contact with representatives of social interest groups, can bring alternative viewpoints to the discussion table based on emerging social trends, reflected as a

result in proposals regarding methods and content. In this way, its efforts to rationalise and gather information can facilitate the work of government and legislative bodies, formulate informed and authoritative solutions and provide a respite from the often disorganised pressure of lobby groups.

b) A second way of innovating the institutional participation of the CNEL is to enhance and upgrade not only its information-gathering role, but also its capacity to contribute own-initiative and legislative proposals.

This is traditionally one of the CNEL's functions, but has over time become tarnished in part by the lack of clear priorities and institutional instruments to increase its impact on political decision-makers, the parliament and national and local government. In order to rehabilitate this function, it needs to be more closely targeted to priorities agreed on by the stakeholders and the institutions themselves. We would therefore propose, in line with suggestions put forward by the social partners, that priority intervention areas be defined over a number of years (2-3 years), with the agreement of the government, the regions and the social partners on the basis of the prior opinion of the relevant parliamentary committees.

To enhance the political impact of these decisions, it would be appropriate to arrange for a special assembly to hold an open debate with the political institutions, the social partners and the participation of the political leadership of the main social organisations represented.

Secondly, to reinforce the consultancy and legislative proposal functions of the CNEL, we would suggest that it should be mandatory to ask the CNEL to deliver non-binding opinions where major economic and social policy decisions are at stake, and for the competent bodies to issue a reasoned response to the opinions received. Furthermore, the CNEL's procedures for exercising its power of legislative initiative could be revised and supplemented by any necessary normative adjustments. This should include, in a limited range of subjects, the possibility of appending to its opinions amendments in the true sense of the word, to be put to the vote.

c) The functions assigned to the CNEL under Article 28 of Law 234 of 2012 (participation in the drafting process of EU law) should be strengthened in the light of the launch of a European debate on A Blueprint for a deep and genuine Economic and Monetary Union. This document calls on the European institutions to strengthen the mechanisms for ensuring democratic legitimacy and responsibility in the new European governance system, referring explicitly to the need for social dialogue to be stepped up at national level also. In a multi-level system of governance such as that operating in Europe, the CNEL could, by strengthening its fact-finding role, act as a hub and spoke model on issues (primarily economic and social ones) where the European Institutions themselves call for closer involvement of the social partners at all levels. The work carried out in conjunction with the European Economic and Social Committee, including for example the ongoing revision of the Europe 2020 strategy, is one of the areas where, at European level, the CNEL needs to increase

the range of its activities, particularly in the light of Italy's six-month presidency.

With innovations of this ilk, the CNEL will take its rightful place in the process of shaping public policy, with the possibility of conveying the views of social interest groups through an independent institutional channel, particularly at national and European level. The possibility of extending participation in the decision-making process to the regions should not be discounted, but will call for a range of activities and structures that the CNEL, even once reformed, would not be equipped to handle.

d) An additional function of the new CNEL consists of the analysis and evaluation (ex ante and ex post) of public policies. The CNEL is qualified to take on this role, not least because, in cooperation with Istat (the Italian National Institute of Statistics) and the Bank of Italy, it has devised a methodology for analysing and evaluating certain public policies based on fair and sustainable well-being indicators (BES).

Alongside the BES work is the project, already operational, on building an information system (CNEL, Istat) on the final performance of public administrations, designed to measure and assess the quality and level of public services to citizens and businesses.

The CNEL's function here in fact fills a gap in the Italian panorama, where instruments and activities for evaluating public policies have not kept pace with developments in other countries. A set of tools of this kind is extremely useful and increasingly necessary in order to intervene in the complex contemporary social and economic set-up by means of aware and efficient legislation, as has been borne out by the experience of countries which already have such tools at their disposal.

Work on this scale would, however, involve gathering a considerable amount of data and expertise - this would call for specially trained staff - not all of which are available and which could not be activated by the CNEL alone, even if its technical instruments and staffing levels are increased, as is necessary in any case.

On the other hand, the representative nature of the social partners present in the CNEL could undermine any direct assessments, leaving it open to criticism on the grounds of potential conflicts of interests or partisan views.

One role suited to the nature of the CNEL would be for it to act as a "control centre" to coordinate the analysis and evaluation of public policies carried out by other bodies.

In this respect, the CNEL could conduct the following activities:

a) collect and collate evaluations, including sectoral ones, carried out across Italy by various public

or private entities, thereby providing a "repository" where the various contributions can be located;
b) validate the various evaluations, not in the sense of endorsing whatever conclusions might have been reached by the bodies concerned, but rather ensuring that the methods used and data collected are transparent and verifiable;
c) act as a stimulus for encouraging the evaluation of public policies, maybe even commissioning them in sectors where they are most directly pertinent.

In addition to providing the setting and a "reasoned stimulus" for analysis and evaluations on the part of others, the CNEL has the right to carry out one further, even more pivotal, task: that of providing a platform for a transparent debate on subjects directly related to economic and social issues on which a "technical" assessment has previously been carried out by other bodies. In other words, a kind of "secondary" evaluation, of a *political* nature, putting forward the views of the productive forces present in the Council that are also stakeholders in these policy areas, in that they will be directly affected by these policies.

This would provide a way of ensuring that public policies are evaluated by the country's leading forces, which could offer parliament and the government suggestions as to how to reorient policies judged to be insufficiently efficient or effective, or to introduce new policies considered essential to the economic and social progress of Italy.

The precise issue to be addressed each time could be decided on independently by the CNEL, on the basis of suggestions put forward by its own members, or it could be agreed with parliament or the government as part of the multi-annual programme mentioned under point b).

The outcome of the discussion, in addition to being made public, could provide the basis for specific opinions and benefit from its privileged status in gaining the attention of the chambers of parliament and the executive, ensuring that the debate is not merely a rhetorical exercise, but that its findings are acted upon to improve public policy in that particular area.

This proposal is based on the function conferred on the CNEL in Article 9 of Law No 15 of 2009: the presentation of an annual report to parliament and the government on the levels and quality of services provided by the national and local public authorities to businesses and the public. This is a particularly important role, but one that risks having little impact if it takes on subjects that are too broad where it is impossible to conduct an in-depth analysis. In order to respond better to its new tasks, this function should also be fine-tuned, for example choosing a specific topic every year, based on the priorities agreed under the programme and to be examined in detail. In any event, given the scale and difficulty of these evaluation functions, they should be tried out on a pilot basis with respect to specific subjects, again to be defined in agreement with the government, the regions and the social partners.

These pilot initiatives could have different objectives, and could be based primarily on an analysis of the opinions of stakeholders affected by the legislation, hence taking the form of an assessment (ex post) of the actual impact of the legislation on the basis of existing indicators, as was done in the case of the BES project.

The pilot period could cover either national sectoral policies - and, following on from this, regional ones - or European Union policies, with particular reference to the priorities of the 2014 European semester.

e) Carrying out these new tasks will require, on the one hand, the involvement of all the private and public stakeholders and, on the other, a gradual build-up of information of a calibre that is consonant with the CNEL's role as the prime "council on social expertise".

To this end, the CNEL has equipped itself with a series of systematic sources of information and essential data bases. This has enabled it to provide invaluable reports to inform and guide public policy-making, ranging from the labour market to proposals in the area of industrial policy. These systematic sources of information must be supplemented by proposals and monitoring, if it is to carry out its new consultancy functions to the best of its ability.

Of fundamental importance here is the collective bargaining archive, set up by the CNEL many years ago, which is an essential source of information for all countries on labour law and its development. In addition to updating the archives on collective bargaining in the private and public sectors, the CNEL is committed to collecting information on a broader and more systematic basis regarding decentralised bargaining, which has come to assume a key role in industrial relations in recent years, in part as a result of the promotion of more modern, productive regulatory mechanisms. The work of the CNEL should not be limited to that of a database, but should also provide an expert interpretation of the data collected to make for a better understanding of changes occurring in the world of labour.

A second key area for the role of the CNEL as an institution for social representation is the certification of representativeness of workers' trade union organisations.

This task was assigned to the CNEL by the agreements signed recently (after 31 May 2013) by the trade union confederations on representativeness and trade union democracy. The database being organised by the CNEL, in cooperation with the social partners and the Ministry of Labour, including expertise supplied by the main trade unions, will provide systematic access to information on the unions' representative structures, including at local and business level, thereby contributing to the transparency and smooth functioning of industrial relations in Italy.

In summary, the new functions of the reformed CNEL comprise the following:

1) Strengthening and expanding of public participation in the decision-making process through information gathering, consultation and legislative initiatives, including tabling amendments, and through issuing mandatory opinions - non-binding but to be expressly taken into consideration - on priority issues to be defined in a programme agreed on with the government, the regions and the social partners.
2) Recognition of functions of information-gathering, consultation and drafting of opinions including on the main laws and programmes promulgated by the European Union, in line with the new European governance and in view of the Italian six-month presidency.
3) Analysis and evaluation of public policies, with the CNEL acting as organiser and provider of second-level evaluation regarding the analyses and assessments produced by other bodies.
4) Strengthening of the function of social information and recognition of the certification of the representativeness of the social partners, including establishing a database on social representativeness. Upgrading and enhancing of the contents of the archive on collective bargaining, including decentralised bargaining.

The pursuit of the ambitious reforms outlined here will call for a broad-ranging consensus on the part of the country's political and social forces.

This cannot be provided in the present climate of economic and political turmoil. It is precisely for this reason it is more than ever necessary to strengthen social cohesion, and a revitalised CNEL could contribute to this through its tasks of social representation and institutional mediation. **It is essential that the renewal and upgrading of the functions of the CNEL and the strengthening of its work should be endorsed and supported from a policy and institutional perspective by all the organisations in the world of work, by businesses, the third sector and the professions, at their highest levels.**

To this end it is vital for the top political leaders represented in the CNEL to launch an appropriate initiative calling for their organisations to be formally given responsibility in these areas. Also useful would be an initiative on the part of the organs of institutional pluralism to draw up common positions here.

Once the objectives of the proposed reforms have been agreed upon, the CNEL's system of governance and its operating bodies and mechanisms will have to be amended so that the objectives can be implemented in practice.

5. The French Economic, Social and Environmental Council

5.1 An uninterrupted process of economic and social democracy from 1924 to 2010

The origins of the current CESE lie in the Decree of 16 January 1925 setting up the National Economic Council. At that time it comprised 47 members and 94 alternates from the most representative unions, employer and agricultural organisations together with various associations. Its role is strictly consultative.

It is worth noting that up until 1954, throughout its various phases (apart from the Second World War years, when it was dissolved by the collaborationist government), the institution was presided over by Léon Jouaux, a trade unionist from the CGT (General Confederation of Labour), subsequently the CGT-FO (General Confederation of Labour–Workers' Force).

Under the Law of 13 October 1946, the Economic Council was enshrined in Article 25 of the Constitution and, in 1958, its name was changed under the Constitution of the 5th Republic to **Economic and Social Council (CES)**, with its headquarters in the Palais d'Iéna. Apart from occasional adjustments or vague attempts to introduce radical reforms (in 1954 and 1969), it was not until 2008 that there was a major reform of the CES, with the Constitutional Law of 23 July on the modernisation of the institutions of the Fifth Republic establishing the **Economic, Social and Environmental Council** (CESE). This was followed by the Grenelle II Law of 12 July 2010 establishing regional councils.[6] The Organic Law of 28 June 2010 organised the composition and representation of the Council. Its membership had been increased to 233 under the Constitutional Law of July 2008. This law also broadened the scope for making referrals to the CESE.

The Economic, Social and Environmental Council is the third constitutional assembly of the French Republic.

5.2 A consultative body with wide-ranging and proven expertise

Like many other institutions, the French CESE has had to take on board changes in society, lifestyle and newly emerging problems such as those linked to the environment and sustainable development. It has also been affected by a lack of public and political visibility. The Chertier report submitted to the President of the Republic in January 2009 also underscored that "in the interests of the right of

6 Article 250 CHAPTER IV: The regional economic, social and environmental council, Article L4134-2, Article L4241-1 II. In all these legislative and regulatory texts, the term "regional economic and social council" is replaced by "regional economic, social and environmental council" and "regional economic and social councils" by "regional economic, social and environmental councils".

petition, it is imperative that the CESE break out of its isolation in the country and undertake a more vigorous external communications policy aimed at the general public and the media"[7].

The Organic Law of 28 June 2010 aimed to rectify matters by defining three main areas of representation: 140 members representing economic life and the social dialogue; 60 members representing social and territorial cohesion and associations; and 33 members representing protection of natural resources and the environment.[8] The 233 members (councillors) are appointed for a five-year term renewable not more than once. If, during the course of a term of office, a member of the Council no longer possesses the attributes on which his or her appointment was based, he or she is obliged to retire and be replaced.[9]

The assembly also offers better representation of young people and women, through the appointment of four representatives of young people and students (the minimum age requirement was reduced from 25 years to 18) and through clauses on gender equality regarding the appointment of members: "In all cases where an organisation is invited to nominate more than one member to the Economic, Social and Environmental Council, they are to ensure that there is a difference of no more than one in the number of men appointed on the one hand and women on the other. The same rule applies to the appointment of qualified individuals."[10]

One original feature of the CESE is the appointment of associated individuals who, nominated by the government on the basis of their competence, professional experience or geographical place of origin, may sit in a section for a limited period and with a particular mission. 72 seats are reserved for these members, and they can contribute on equal terms with the other councillors to drawing up opinions, reports and studies in the sections to which they belong. Article 13 of the 2010 Organic Law specifies that no more than eight such associated individuals may belong to any one section. Whereas they are not entitled to vote on opinions, they can vote on studies.

5.3 Budget, organisation and operation of the CESE

a) In 2013, the CESE budget (passed every year by Parliament) was EUR 38.5 million, coming to a total of EUR 40.2 including own resources. Members' expenses and allowances (salary, accommodation and expenses) come to a gross total of EUR 3 786.76 per month. The 72 associated individuals receive an expense allowance of EUR 946.69. As of 31 December 2013, the Council employed 136 full-time members of staff (47% women and 53% men).

7 Chertier report to the President of the Republic, January 2009

8 See Appendix 1 on the distribution of members by category.

9 Article 9 of the Organic Law of 23 June 2010.

10 Article 7 of the Organic Law of 23 June 2010.

b) The CESE is run by its president (currently Jean-Paul Delevoye, elected by secret ballot in plenary for a five-year term running from 2010 to 2015), a bureau of 18 members + the president and a secretary-general appointed by the government on the proposal of the bureau. The terms of the 233 members were renewed in 2010, with 193 of them being appointed by the organisations they represented and 40 by the government. Plenary sessions are held twice a month, during which opinions presented by the sections are put to the vote.[11] The Council may also set up delegations to deal with subjects outside the sphere of competence of the sections or on particular issues. There are three delegations at the present time: the overseas delegation; the delegation on future trends and evaluation of public policy; and the delegation on women's rights and equality. The Council can also set up temporary committees to examine particular issues or questions which lie beyond the remit of the sections. There are currently four such committees on the following subjects: the annual report on the situation in France; the social and solidarity economy; the Grenelle environmental forum; and dependence.

c) The Council is structured on the basis of interests and members are divided into 18 groups (no group may contain fewer than three members).[12]

d) The different types of referral:

- Government referral

The government makes referrals to the Council on draft legislation, ordinances or decrees. Referrals are mandatory on any draft laws regarding plans or programmes of an economic, social or environmental nature.[13] The prime minister can also ask the Council to draw up opinions or studies. An urgent procedure exists whereby, at the request of the government, the Council is required to deliver its opinion within one month and the opinion may be adopted without a debate (Article 34 of the Rules of Procedure). The same urgent procedure may be invoked for own-initiative opinions if the bureau so decides, after consultation of the bodies involved in drawing up the opinion (section, permanent delegation or temporary committee).

Likewise, a referral by the government or parliamentary assembly may, at the request of the initiating body, be subject to a simplified procedure requiring the section responsible to issue its opinion within three weeks.[14] The draft opinion becomes the opinion of the Economic, Social and Environmental Council three days following its publication unless the president of the Economic, Social and Environmental Council or at least 10 of its members request during this three-day period that it be debated by the plenary assembly.

11 See Appendix 2 for the list of sections.

12 Rule 8, Chapter II of the Rules of Procedure.

13 Article 70 of the Constitutional Law of 23 July 2008.

14 Rule 23 of the Rules of Procedure

- Parliamentary referral

The president of the National Assembly or the president of the Senate may also consult the Council on any issues of an economic, social or environmental nature or ask the Council to deliver opinions and studies.

- Referral in the form of a citizens' petition

This is an important innovation extending the right of referral to the members of organised civil society. This right was laid down in Article 69(3) of the Constitutional Law of July 2008. Article 4-1 of the Organic Law of June 2010 sets out the practical details for exercising this right, primarily in the form of the presentation, by a sole representative, of a minimum of 500 000 clearly legible signatures of adults with French nationality or with their main residence in France. The admissibility of the petition is examined by the CESE bureau which organises a hearing of the sole representative and, where it is declared admissible, the CESE must respond within one year to the questions raised in the petition and specify what follow-up it proposes to give. This opinion is then sent to the prime minister, the president of the National Assembly, the president of the Senate and, of course, to the representative who lodged the petition. The opinion is also published in the Official Journal.[15] To date, one petition has successfully gathered the required 500 000 signatures, asking the Council to issue an opinion on the draft law on same sex marriage. Although the bureau acknowledged that the criteria had been met in terms of numbers and form, it declared the petition inadmissible as only the prime minister is entitled to refer a draft law to the CESE for an opinion. Nevertheless, the bureau decided to draw up an own-initiative opinion on the evolution of the contemporary family and its consequences for public policy.

- Own-initiative work

Owing to few, if any, requests on the part of the government, this important component of the CESE's work has by and large been limited to the period prior to the last reform. The Chertier report, quoted above, in fact stated that own-initiative opinions accounted for three quarters of the CESE's opinions between 2005 and 2007.[16]

The sections and delegations are instructed by the Council's bureau to prepare own-initiative work. Rapporteurs are appointed from among the Council's members in the case of own-initiative opinions, and from members or associated individuals in the case of a study. Hearings with relevant members of the government or with experts in the field may be organised while work is in progress. Draft opinions and studies must be subject to a roll call vote in the section or delegation before they are forwarded to the bureau and, subsequently, to the plenary session. At least half the members must be present in order for the votes to be valid.

[15] Article 69(3) of the French Constitution and Article 4-1 of the Organic Law of 29 June 2010.

[16] Chertier report to the President of the Republic, January 2009

The CESE adopts some 25 to 30 opinions every year, each containing 60-90 pages. Opinions may be voted on by show of hands or public ballot; more than half of those voting must be in favour in order for the opinion to be adopted.[17] Written statements by the groups are appended to the opinions.

- It is required by law to follow up on opinions: "Every year, the prime minister shall provide information as to the follow-up given to the opinions of the Economic, Social and Environmental Council"[18]; this procedure does not work very well in practice, however, forcing the CESE to carry out its own "after-sales service" on its opinions.

A member of the Council may be designated to make a statement to the parliamentary assemblies on the opinions adopted by the Council on the draft laws or proposals referred to it.[19]

5.4 An exercise in decentralised economic and social democracy with the regional economic and social councils

The regional economic and social councils (CESR) date back to 1982, and were established in the wake of a policy of regional decentralisation. The regional councils are comprised solely of representatives of socio-occupational interests groups and associations. They were given the name of "regional economic and social councils" in the Law of 2 February 1992. The name was subsequently changed to "regional economic, social and environmental councils" (CESER) in Article 250 of the Grenelle II Law of 12 July 2010, dividing their members into four colleges: companies and self-employed professionals; workers' unions; bodies and associations that participate in the civil society life of the region; and qualified individuals involved in regional development. Members (numbering between 65 and 128, depending on the region) are appointed for six years by prefectoral decree.

Referrals to the regional councils are mandatory in the case of all budgetary documents and regional development plans drawn up by the region; referrals may also be initiated by the president of the regional council, but the right of own-initiative is strictly limited to issues relating to regional matters.

As stated by the former president of the CESE, Jacques Dermagne (1999-2010), the regional councils "follow a rationale akin to that of the national CESE".[20] It was therefore natural for the work of the regional councils and the CESE to be based on coordination and synergy, without any "hierarchical claims" between them.[21]

17 Rule 44 of the Rules of Procedure adopted on 27 November 2012.

18 Article 4 of the Organic Law of June 2010.

19 Article 69 of Title XI of the Constitutional Law of 23 July 2008.

20 Qu'est-ce que le Conseil économique et social? [What is the Economic and Social Council?] Edition L'Archipel 2006.

21 Idem.

The establishment in 1999 of the Assembly of Regional Economic, Social and Environmental Councils (CESER of France), located in the Palais d'Iéna, has fostered an exchange between the regional councils and the CESE, as well as providing a means of disseminating information about the regional councils and promoting their work.

Today, the Assembly of French regional councils comprises 26 councils from metropolitan France and the overseas departments, including those of New Caledonia, French Polynesia, Mayotte (since January 2005), Saint-Barthélemy and Saint-Martin (since January 2009).[22]

The government's recent decision to redraw the regional boundaries (reducing the regions from 22 to 13) has had an impact on the number and location of regional councils.

5.5 Representation of Council members in French civil society bodies

An important aspect of the CESE's expertise, influence and coverage undoubtedly lies in the fact that its members sit on a number of national committees, foundations, associations, institutes and observatories, etc. The CESE can in fact appoint some of its members, on the proposal of the groups, to represent the Assembly in some bodies. Today, members are present in 31 bodies ranging from the Foundation for French Sport to the French Economic Observatory, the Research Institute for the Study and Monitoring of Living Standards, the National Council for the Evaluation of the School System, the National Water Board and the Supreme Council for the professional and social redeployment of workers with a disability, etc.[23] The creation of a delegation to the European Union

[22] http://www.cesdefrance.fr

[23] A list of all the bodies where the CESE is represented can be found on its website: http://www.eesc.europa.eu/ceslink/
Appendices
Appendix 1
Article 7: Organic Law No 2010-704 of 28 June 2010
I. - The French Economic, Social and Environmental Council comprises:
1. 140 members representing economic life and the social dialogue, divided as follows:
- 69 worker representatives;
- 27 representatives of private companies in the fields of industry, commerce and services;
- 20 representatives of agricultural and farm workers;
- 10 representatives of craftspeople;
- 4 representatives of the professions;
- 10 qualified individuals selected on the basis of their experience in the economic sphere, including two representing public enterprises and one representing French overseas economic activity;
2. - 60 members representing social and territorial cohesion and associations, divided as follows:
- 8 representatives of the non-agricultural mutual, cooperative and fair trade sector;
- 4 representatives of the agricultural mutual and cooperative production and processing sector;
- 10 representatives of family associations;
- Section for European and International Affairs;
- Section for Economic Activity;
- Section for Agriculture, Fisheries and Food;

in 2001 also gave an important boost to work on European issues and led to the CESE appointing a representative of the assembly to the French delegation to the European Economic and Social Committee. The representative in question is currently Evelyne Pichenot, a member of the EESC's Group III. The Delegation to the European Union subsequently developed into the Section for European and International Affairs.

5.6 A window on Europe and the world

The French CESE played a leading role in the establishment in 1999 of the International Association of Economic and Social Councils and Similar Institutions (AICESIS), which currently brings together institutions from 72 countries in Asia, Europe, Africa and Latin America-the Caribbean. The AICESIS secretariat was hosted in the Palais d'Iéna (headquarters of the CESE) until 2011, with the Council supplying the necessary logistical support. The secretariat is currently based in Brussels, and its secretary-general is Patrick Venturini, former secretary-general of the European Economic and Social Committee. The French CESE is also heavily involved in the "CESlink" network set up in 2000 by the European Economic and Social Committee and the national economic and social councils. The French CESE is concerned with incorporating the European dimension into its opinions and has dealt with many referrals directly related to the construction of Europe or European policies.

5.7 Conclusion

Over and above the expansion of its competences, representative nature and handling of referrals, it must be mentioned that the evolution of the position and role of the social partners defined in the laws of 31 January 2007 and 20 August 2008 has also had an impact on the role and status of the CESE. In a culture that is still broadly state-dominated, the social partners have shouldered new responsibilities in defining social norms, thereby radically changing the nature of the social dialogue in France. Moves are now under way to reposition each of the social partners in a new architecture offering ample new spaces and responsibilities for all.

- Section for Education, Culture and Communication;
- Section for the Environment.

6. Social dialogue institutions under pressure: the case of Greece

6.1 Social dialogue and partnership in Greece: background

Greece's turbulent historical past and its post-war political economy have had a decisive influence on the evolution of the country's institutions and civil society. In the wake of the Civil War (1946-1949), the repressive pathology of an authoritarian "guided" parliamentary state and the subsequent military dictatorship (1967-1974) led to an entrenched, state-directed market economy and established a tradition of state intervention over institutional arrangements which meant that civil society and civil, political and social rights were submerged (Mouzelis and Pagoulatos 2005). The transition to democracy in[24] 1974 modified state–civil society relations, introducing a polarised political system that still controlled the administration and supervised civil society via institutional structures, e.g. trade unions, farmer cooperatives and civil servant associations (Sotiropoulos 1995). In sum, civil society and the right to form associations in Greece have evolved under a structural legacy of state interventionism, party tutelage, bureaucratic clientelism, rent-seeking, corruption and "disjointed corporatism" as the main form of interest representation (Featherstone and Papadimitriou 2008; Lavdas 1997:17; Lyrintzis 1984). Notwithstanding this legacy, the democratisation process after 1974 introduced substantive changes at both socio-political and legal-institutional levels.

The Constitution of 1975 extended fundamental rights and enshrined freedom of association and the right to strike.[25] In the early 1990s a series of institutional changes, particularly Law 1876/1990 on free collective bargaining and dispute settlement substantially transformed the Greek industrial relations landscape. To replace the existing restrictive framework, this legislation elevated collective autonomy to the main source of regulation and decentralised collective bargaining, enhancing its content (Yannakourou 2004).[26] By consolidating collective autonomy and the representational status of worker and employer organisations, the new institutional framework sought to comply with Greece's EU membership requirements, including the *acquis communautaire*, and fostered the gradual disentanglement from state intervention. The abolition of compulsory arbitration, for instance, moderated state intervention in deadlock resolution, shifting the emphasis to bargaining and

[24] Lavdas (1997:17) describes disjointed corporatism as "the combination of a set of corporatist organisational features and a prevailing political modality" lacking diffuse reciprocity and "incapable of brokering social pacts".

[25] Notably, safeguarding of human dignity (Article 2(1)), the free development of the individual (Article 5(1)), the right to work (Article 22(1)), the right to equal pay for work of equal value (Article 22(1)(b)), the recognition of collective autonomy (Article 22(2)), the right to social security (Article 22(5)), the right to associate (Article 12), the protection of trade union freedom (Article 23(1)) and the right to strike (Article 23(2)).

[26] Law 1876/1990 broadened the scope of agreements to include all terms and conditions of work (excepting pensions issues), and prioritised the sectoral and the enterprise bargaining levels over occupation based collective agreements. Collective agreements fall under four categories: the National General Collective Agreement which sets universal minima for wage and terms and conditions of work, Industry wide collective agreements, firm-level and occupation based collective agreements. Legally binding, collective agreements function both as contracts and law while the most favourable provisions prevail between different applicable agreements. Among others, procedures for acceding to and extending the scope of collective labour agreements were articulated (Yannakourou 2004)

consensus building between trade unions and employer organisations (Zambarloukou 2006). The time was ripe for institutionalising permanent national social dialogue structures.

6.2 Social dialogue structures and social partners

The social partners in Greece are designated as the most representative level of employer and worker organisations that are signatory parties of the National General Collective Labour Agreements (henceforth NGCLA). Labour is represented by the General Confederation of Labour (GSEE) and the Confederation of Public Servants (ADEDY), which are among the few unitary trade union umbrella organisations in Europe. Employer representation includes the Hellenic Federation of Greek Enterprises (SEV), the National Confederation of Hellenic Commerce (ESEE) and the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE).

Modelled on the European Economic and Social Committee (EESC), the Economic and Social Council of Greece (OKE) was established in 1994[27] as a consultative body to provide a formal social dialogue platform on social and economic policy. The OKE accommodates a tripartite representation of socio-occupational stakeholders, namely employers, workers and a third group comprising other civil society representatives.[28] A constitutional institution since 2001, the OKE holds a twofold competency: to conduct social dialogue with an emphasis on social and economic guidelines, and to deliver, upon request and at its own initiative, opinions on proposed legislation. The OKE is today entirely managed by the social partners.

Under pressure from the EU to strengthen social dialogue in line with the European Employment Strategy, the government set up new structures in two key policy areas in 2003[29]: the National Employment Committee and the National Committee for Social Protection, among others, were respectively made responsible for monitoring/assessing the National Action Plans for Employment and for Social Inclusion. Other institutions and structures based on social partnership include mainly the Organisation for Mediation and Arbitration (OMED), the National Institute of Labour (EIE), the Hellenic Institute for Occupational Health and Safety (ELINYAE) and the National Land Planning Council. The social partners in the 1993 NGCLA agreed to create, jointly finance and administer the Fund for Employment and Vocational Training (LAEK). The deployment of EU Support Frameworks and particularly the European Social Fund (ESF) helped considerably in developing and maintaining social dialogue related processes and institutions.

In sum, while intense government interventionism in a conflictual setting marked industrial relations between 1974–1990, the 1990s witnessed the gradual decline of state intervention in interest group

[27] Law 2232/1994 on the Establishment of an Economic and Social Council and other provisions.

[28] Local government, agriculture sector, the self-employed, consumer, environmental and gender equality organisations

[29] Law 3144/2003 on Social Dialogue for the promotion of employment and social protection and other provisions.

dynamics, the democratisation of labour law, the consolidation of collective autonomy and a level playing field for employers and workers in an institutional context that encouraged decentralised free collective bargaining, voluntary dispute settlement and structures of social partnership corresponding to the challenges set by the EMU criteria (Lavdas 2005:308–9; Pagoulatos 2003:167; Tsarouhas 2008:353).

6.3 The pre-crisis state of play: an assessment

While the favourable institutional framework strengthened the status of the social partners and fostered a climate of trust, it failed to wholly eliminate state and party influence over industrial relations. Forms of political patronage persisted – along with mistrust – in relations between governments and organised interests. Underscored by the tradition of "disjointed" corporatism, fragmentation in associational structures and diverging interests/demands often hindered effective consensus building. Hence, progress in social dialogue has not been entirely smooth. Attempts to achieve result-oriented dialogue in terms of concluding effective social pacts has been described as "Sisyphean", relegating Greece to the fringes of the social pact camp (EIIR 2003; Ioannou 2010). A closer look affirms this view. The first attempt at tripartite dialogue to reach consensus on reforms vis-à-vis Greece's EMU accession in 1997 yielded a Confidence Pact[30] that was implemented in a fragmented manner: substantive labour issues[31] were left out of the dialogue (although they would subsequently be covered by legislation) while points of consensus had no regulatory follow-up (OKE 2002c). Starting in 1997, national dialogue on social security reform proved to be a negative experience: it was finalised under EU pressure only in July 2002 with a number of false starts owing to strong labour opposition and inefficient handling by the government (OKE 2002a).[32] Conversely, national concertation on tax reform is held up as a successful example of effective structured social dialogue with concrete results (OKE 2002b, 2002c:34).

Ultimately, a seminal OKE opinion (2002c) provided balanced insight into the state of play in pre-crisis social dialogue. The opinion identified both difficulties and progress. The OKE noted the diminishing role of the state but observed that regulation remained grounded in legislation perpetuating the presence of the state. Concerns were voiced over the marginalisation of the OKE, e.g. the limited use or neglect of its proposals by the Government, which since 1995 referred less than half of its relevant draft bills to the Council. Nevertheless, the empowerment of social partnership emerged as an uncontested fact underpinned by effective collective bargaining, with the national collective agreements concluded providing a factor of stability in a difficult and uncertain economic climate. Overall, notwithstanding difficulties, on the eve of the crisis, Greece had arrived at a working – if not perfect – rights-based industrial relations order that incorporated institutions of social dialogue and

30 Trade unions signed the Pact with a marginal majority, and only two employer organisations, SEV and ESEE, signed it.

31. For instance local employment pacts and working time arrangements

32 Law 3029/2002.

guaranteed the fundamentals of the European Social Model. As we shall see next, events set in motion by Greece's sovereign debt crisis were to dramatically disrupt this order.

6.4. The disruption: context, rationale and content

To address its mounting sovereign debt and high current account deficit, in May 2010 Greece received a EUR 110 billion rescue package, concluding with its creditor troika two Memoranda[33] (commonly referred to as Memorandum I) that detailed a sweeping economic adjustment programme (EAP) subject to deadline benchmarking and periodic revision. An IMF style conditionality clause committed the Greek government to successive rounds of fiscal adjustment and structural reform. As Memorandum I failed to achieve its fiscal targets, triggering unprecedented recession (Dedoussopoulos et al. 2013), a new EUR 130 billion loan was concluded in June 2011 conditional on the implementation of another austerity package.[34] Memorandum II (MEFP and MoU) for the second bailout programme was signed in February 2012, stipulating another round of austerity and structural measures despite strong public opposition.

The rationale of the IMF type adjustment imposed on Greece emphasises competitiveness and export-led growth sustained by currency depreciation, something that is not feasible in a eurozone country. Hence a policy of massive "internal devaluation/deflation" was implemented to bring down wages and prices and reduce unit labour costs by direct wage cuts: labour market deregulation is key in this approach for eliminating alleged rigidities (Armingeon and Baccaro 2012; Pisani-Ferry, Sapir, and Wolff 2013). Yet, while described as enjoying strong employment protection legislation (OECD 2007), the pre-crisis Greek labour market was characterised by fragmentation, low job growth, wage inequalities, precariousness, widespread undeclared work, inadequate inspection, migrant labour and high unemployment rates among young people and women, with a high incidence of self-employment and SMEs[35] completing the picture (INE/GSEE 2012, 2013).

In this context, on the one hand, harsh austerity measures imposed direct wage and pension cuts, wage freezes and cuts in welfare expenditure. On the other hand, drastic measures were implemented to remove labour market rigidities and radically overhaul the institutional framework which had hitherto regulated industrial relations in Greece. In other words, taken as key adjustment tools, labour law and labour market institutions were radically reconfigured, massively disrupting the pre-crisis framework. A substantial body of legislation affected adversely almost every aspect of individual and collective

33 Memorandum of Economic and Financial Policies and the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU). All texts concerning financial assistance to Greece including the Memoranda, the adjustment programme and the revision reports are available at the EC Economic and Financial Affairs website at http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/

34 Law 3986/2011 on Urgent Measures for the Implementation of Mid-term Fiscal Strategy Framework (2012-2015).

35 Greece has the highest share of micro-SMEs, employing one to nine persons, in the EU.

labour rights in both the public and private sectors. In broad lines[36], more than fifteen legislative acts led to pay and benefit cuts, intervened in collective autonomy, contested both individual and collective labour law guarantees and eroded trade union bargaining power. This body of legislation had far-reaching implications for employment relationships and working conditions, it increased State intervention in wage setting, decentralised collective bargaining from the national and sectoral level to that of the individual firm, eliminated the favourability principle, banned any future extension of collective agreements, retracted seniority rights, made dismissals cheaper and easier and reinforced the managerial prerogative[37] in setting work conditions (ILO 2012; Katrougalos and Achtsioglou 2012). Another explicit intervention in collective representation is the conferral of bargaining rights on so-called "associations of persons" that can conclude binding agreements with precedence over all other agreements in firms without a trade union.[38]

It is useful to make the point that the resulting socio-economic climate has amplified the social impact of institutional disruption. The policy mix implemented has triggered the deepest recession in Greece's post war history but has failed to render sustainable its sovereign debt – estimated at 177 percent of GDP.[39] The persisting recession has generated a social and economic impasse that cannot be resolved by recent anaemic signs of recovery.[40] Unemployment stands at dangerous levels, particularly among young people.[41] Historically higher rates of unemployment among women as compared to male unemployment indicate that gender inequalities have been exacerbated. Sharp cuts in wages and pensions, combined with direct and indirect tax/levy hikes, have slashed disposable income and driven consumer demand down: the rate of bankruptcies is rising, investment is stagnating, firm and consumer credit is rare while household savings accounts are steadily decreasing (Dedoussopoulos et al. 2013:56–57). In addition to salaried employees, SMEs (55% of retail commerce) and the self-employed (35% of the active population compared to a European average of 11%) have been gravely hit (INE/GSEE 2013). Welfare spending cuts have disrupted health, education and other social provision. Rising levels of poverty and inequality are alarming: considerable numbers of individuals and families face extreme hardship, particularly among vulnerable groups (Matsaganis 2012; Mitrakos 2014). In brief, alongside the economic crisis, a severe social and humanitarian crisis is jeopardising human rights, particularly economic, social and cultural rights, in Greece, and is undermining social cohesion (UN Human Rights Council 2014).

6.5 Social dialogue institutions as collateral damage

36 A detailed inventory of the numerous changes is beyond the scope of this paper. The 365th Report of the Committee on Freedom of Association of the ILO (Case No 2820) provides a detailed exposé including the views of the Government, the complainant - Greek General Confederation of Labour (GSEE), and the Committee's recommendations.

37 Unilateral imposition of shift work, increasing the maximum duration of fixed-term and agency work contracts, reduction of overtime pay, elimination of administrative burden in overtime arrangements.

38 Regardless of the total number of workers in a firm, three-fifths suffice to form an association.

39 http://ec.europa.eu/economy_finance/eu/countries/greece_en.htm

40 http://ec.europa.eu/economy_finance/eu/forecasts/2014_spring/el_en.pdf

41 Current figures stand at 27.8% and 56.7% for young persons (15-24 years) (EL.STAT- Labour Force Survey, 1st Quarter 2014).

The charged and difficult economic situation examined above raises questions as regards the role of the social partners and social dialogue. As a result of their content and socio-economic impact, the far-reaching measures described previously directly challenge social dialogue and the social partners as, in varying degrees, they adversely affect the interests represented in Greece's social partnership. The manner of their introduction is also key in assessing the post-crisis state of play and the prospects for social dialogue in Greece.

First, the planning and imposition of measures indicate a de facto transfer of economic and social policy-making from national to international actors, gravely violating the constitutional order. More specifically, subsequent to prior binding agreements between the government of Greece and the EC/ECB/IMF[42], precise Memoranda provisions were directly translated into applicable domestic statutory provisions by framework laws (Achtsioglou and Doherty 2013, 8). For instance, Article 1(6) of Framework Law 4046/2012 implementing Memorandum II stipulates that its labour market clauses constitutes directly applicable rules. Second, as emphasised by eminent constitutional law scholars[43], the Memoranda, the relevant executive legislation and the loan treaties markedly deviate from constitutional, European and international legality on procedural and substantive grounds: the Greek parliament has not ratified the loan treaties[44], while the incorporation into the treaties of a waiver of immunity for reasons of national sovereignty violates the guaranteed respect and protection of national sovereignty.[45]

Third, unprecedented changes with grave socio-economic implications were introduced in the Greek labour market institutions without effective tripartite dialogue and in a manner which appears disconnected from Greek reality. All the social partners interviewed for an ILO study confirm that their role was marginalised and that in the few meetings with the Troika their views were not considered at all: a former Labour minister noted that the "Troika considered the social partners part of the problem, not part of its solution" (Dedoussopoulos et al. 2013:40–41). A case in point is the government intervention in collective autonomy to unilaterally reduce to below poverty levels the national minimum wage set by the NGCLA[46] despite the declared written agreement by the social

42 The European Commission, the European Central Bank and the International Monetary Fund, collectively denoted as the "Troika".

43 Joint Statement of 12 February 2012 by Emeritus Professor George Kasimatis (University of Athens), Andreas Dimitropoulos (University of Athens), George Katrougalos (University of Thrace), Ilias Nikolopoulos (Panteion University), Costas Chryssogonos (University of Thessaloniki).

44 Contrary to Article 36(2) of the Constitution.

45 Katrougalos (2013:106 fn.60) notes that a borrowing state may generally "waive its immunity from execution with an express act (see, for instance, A. Reinisch, European Court Practice Concerning State Immunity from Enforcement Measures, European Journal of International Law, vol.17, 2006 p.816 ff.). However, the explicit abandonment of national sovereignty by an official statement is unprecedented."

46 The national minimum wage for a new entrant single worker is reduced by 22 percent to a net monthly EUR 476.35 and for young workers by 32 percent to EUR 426.64 violating the principle of non-discrimination and their right to fair remuneration, as it is below the poverty line defined at 50 percent of national average wage. See Council of Europe, Committee of Ministers, Resolution CM/ResChS(2013)3 (https://wcd.coe.int/ViewDoc.jsp?id=2029587&Site=CM).

partners.[47] The government has routinely claimed that the chances of reaching consent were slim, while urgent time frames did not allow for social dialogue (ILO 2012:260–61).

Throughout the adjustment process, the Economic and Social Council of Greece (OKE) has been increasingly marginalised. Already in 2008, the OKE had proposed a plan for an economic and social pact which was never taken on board. While during the crisis the OKE placed itself at the disposal of the Government to discuss exit strategies, it was not asked to deliver an opinion on the Memoranda, which were adopted via summary procedures. As the OKE explicitly informed the ILO High Level Mission, all measures were legislated without effective social dialogue, leaving no time for the social partners to "plan, co-decide and implement measures to overcome the crisis", depriving the social dialogue process "wholly of its meaning", while creditors did not allow for any dialogue (ILO 2011). Additionally, the Government has either not referred critical draft laws to the OKE or has not considered its opinions on referred draft laws as well as the OKE's own initiative opinions. Hence the potential for the OKE to play a role in bringing together the social partners to discuss ways out of the crisis has been minimised. Interviewed for this research[48], the president of the OKE, Mr Polyzogopoulos, confirmed the OKE's ongoing marginalisation and emphasised that the Council was currently confronted with serious drawbacks due to crippling funding cuts. Expressing concern for the future of the Council, he noted that, while cuts across public sector entities tended to range between 20 and 30 percent, the OKE's budget has been reduced by 50 percent, affecting daily every aspect of its operations and the fulfilment of its constitutional mandate.

The adjustment programme has met with strong public opposition. Trade unions and two employer organisations[49] representing mostly SMEs that make up more than 80 per cent of businesses in the country have been particularly vocal. The legality of wide ranging statutory interventions has been challenged from 2010 onwards by trade unions before the Greek Council of State, the ILO, the European Committee of Social Rights and the European Court of Human Rights.[50] The ILO Committee on Freedom of Association has observed that the repeated and extensive intervention in collective bargaining threatens to destabilise the entire industrial relations framework, weakening freedom of association and collective bargaining as enshrined in Conventions Nos 87 and 98 (ILO 2012). The ILO High Level Mission to Greece emphasised the need to ensure collective autonomy, proportionality in the implemented measures and to provide for the most vulnerable groups in society (ILO 2011). Repeatedly urging the Government to strengthen the institutional framework for collective bargaining and social dialogue, the ILO has recommended permanent and intensive social

47 Law 4046/2012 and the subsequent Ministerial Council Decision No 6/28.2.2012.

48 Interview conducted by author on 19 September 2014 at the EESC headquarters, Brussels.

49 The National Confederation of Hellenic Commerce (ESEE) and the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE).

50 The General Confederation of Greek Workers (GSEE) filed complaints between 2010 and 2012 for non-observance of Conventions 87, 98 151 and 154. For a detailed survey see Yannakourou, Matina. 2014. "Challenging Austerity Measures Affecting Work Rights at Domestic and International Level. The Case of Greece," in The Role of Fundamental Rights' Challenges: EUI Working Paper LAW 2014/05, ed. Claire Kilpatrick and Bruno De Witte.

dialogue on all issues raised, aiming to develop a comprehensive common vision for labour relations that conforms to the principles of freedom of association, the effective recognition of collective bargaining and the relevant ILO conventions ratified (ILO 2012). It should be noted that the Government did not take any steps to comply with the recommendations of the ILO to initiate a frank social dialogue and evaluate the impact of the measures adopted.

6.6 Concluding remarks

This paper has examined critically the changing landscape for social dialogue actors and institutions in Greece subject to the conditionality of the adjustment programme focusing on the radical reconfiguration of the institutional industrial relations framework. This examination was premised on the idea that social dialogue has emerged as collateral damage of the adjustment process at a time when it was needed most. Our examination confirms this premise, exposing how a vast programme aimed at reconfiguring industrial relations has been implemented in Greece without effective social dialogue, regardless of its manifestly adverse socio-economic impact. By their content and manner of implementation, the measures have rendered the social partners redundant and have altered the level playing field of social partnership, disempowering the labour component and eroding collective bargaining. The OKE, the constitutional social dialogue institution, has been weakened and marginalised. As their representational capacity diminishes, the social partners are deprived of the option to examine more appropriate alternatives. Such alternatives could have mitigated the multiple direct and collateral effects of the crisis on social groups represented by the social partner organisations. The permanent character of the measures does not allow even the future periodic reassessment to involve the social partners. More importantly, the non-negotiable EAP framework and its philosophy inherently preclude the adoption of an alternative exit plan (Ghellab and Papadakis 2011).

Taking stock of Greece's historical background in state-society relations, the crisis episode ironically swings the pendulum back to the traditional interventionist state model by reinforcing unilateralism and eroding structures of dialogue and collective bargaining. A new element in the emerging paradigm of interventionism lies in the transfer of economic and social policy-making from national to international actors. This new paradigm replaces the consensual institutional order established in the 1990s to conform to EU norms, weakens the existing mechanisms of transfer, redistribution and social inclusion and increasingly contests the effective collective representation of civil society. The new paradigm also elevates competitiveness to the main policy norm upon which the whole regulatory system has come to be grounded since 2010 (Achtsioglou and Doherty 2013:15–16). Hence, in the absence of social dialogue, other values and considerations such as social cohesion, equality or proportionality are cast out of the policy-making process.

To conclude, while Greece has been presented as an exceptional case in the crisis discourse, the trends identified in this paper are not confined within Greek borders. EU wide policy choices, particularly in

the crisis-hit peripheral areas, are emblematic of a move towards weakening social dialogue institutions, raising concerns over the future of the European social model (Barnard 2014; Hermann 2013). Notably, the EU Commission reiterates that the conditionality of the loan agreements is an integral requirement for social cohesion and a more equitable society in Greece, suggesting a new vision for a Social Europe based on what is essentially a standard IMF formula[51]. Under the current climate, in Greece as elsewhere, only effective processes of social dialogue can generate socially acceptable alternatives geared at growth, employment, innovation and sustainability. This option, however, requires fundamental redesigning of economic and social policies and adopting another vision of growth. To this end, finding a meaningful space for social dialogue which validates Europe's strong tradition of social partnership to foster solidarity remains a matter of urgency.

[51] European Commission, "Growth for Greece" COM(2012) 183 final.

7. The Economic and Social Council in Spain

7.1 Difference between the constitutional approach and the legal approach

The Spanish Constitution of 1978 included under Title VII on the economy and finance, part of the debate, a highly recurrent one at the time, on the need to make freedom of economic initiative compatible with economic planning on the part of the State. Article 131 of the Constitution specified that the State could plan "general economic activity" for three purposes: meeting collective needs, balancing and harmonising regional and sectoral development and, lastly, stimulating the creation and a fairer distribution of profit and wealth. With this aim, the second part of the article laid down that planning projects were to be drawn up by the government, and that to this end a council was to be established with the participation of the regional governments, the trade unions, professional organisations and business and economic associations. This model of the Economic and Social Council, based on economic development and planning, was not followed up in law. The reason for this doubtless lay in the fact that it was linked to the objective of public economic planning, an approach that became outmoded in the Eighties with the acceptance of the dominant political theories on the role of the State in relation to the market economy.

Following a period of intense social conflict beginning in 1988, with the General Union of Workers (UGT) and the Trade Union Confederation (CC.OO) embarking on joint action, labour relations were in practice reinstitutionalised on the basis of projects with the unions. Against this background, the unions advocated the need to set up an Economic and Social Council (CES), although rather than developing along the lines laid down in the Constitution, it drew its inspiration directly from the European model, i.e. the European Economic and Social Committee. Law 21/1991 establishing the CES referred in effect to Article 105 of the Spanish Constitution, which recognised in generic terms the right of citizens to participate in drawing up measures which affected them, and to Article 9(2) committing the government to the right "of all citizens" to participate in economic and social life.

The CES is comprised of three groups: one made up of representative unions, a second of business associations and a third, mixed, group composed of six members nominated by the government and fourteen representatives of other professional and social organisations linked to the social economy, consumers and users, etc. The CES is headed by a president and secretary-general nominated by the government. Its institutional mission is to operate as a consultative body to the government on social, economic and labour questions. To this end, it issues opinions on preliminary drafts of laws or regulations which, in the view of the government, have particularly important implications from a social, economic and labour perspective. Likewise, it can issue opinions on specific subjects at the request of the government or acting on its own initiative, and draw up reports on the social, economic and labour situation in the Spanish State.

7.2 Institutional participation in draft laws on social and economic issues: a supplement to the social dialogue.

The CES came into its own in 1992, giving its input on draft legislation on labour issues. The reform of 1994 was a particularly interesting moment, prior to the breaking off of negotiations with the unions and the government's need to reinstate its lost social legitimacy by means of the institutional participation of bodies such as the CES. Generally speaking, it is the case that throughout the whole of the last decade of the century, the CES played an important complementary role, mostly by providing cohesion and drive, in the processes of social concertation and political negotiation in labour relations, employment and social security. At the same time, however, informal contacts developed outside the institution in the form of direct contacts with trade unions, employers' associations and the government, or of bilateral exchanges between the unions and employers. The complementary role of social dialogue remained stable both during the last minority government of the Socialist Party (PSOE) 1993-1996, the first two governments of the People's Party (PP) 1996-2004 and, again, under the first Zapatero government, 2004-2008.

The participatory function of the CES is in turn important as a means of complementing the social concertation mechanisms in the regions. In this way, the regional economic and social councils have come to represent a carbon copy of the national model. The role of the regional councils is, however, to facilitate the process of consultation and negotiation between the unions, business entrepreneurs and the regional governments. The councils are therefore of greater importance in those regions where social interest groups seek to develop a regional model of labour relations that differs to some extent from the national one. One such example is the Economic, Social and Work Council of Catalonia (CETESC) and another is the Basque CES, with a different trade union set-up compared with the national one, comprising four main central unions, two of which are regional (ELA and LAB). Some regions have set up affiliated "labour relations councils" specialised in the tasks of support and mediation in collective bargaining. One of the most pertinent examples is that of Galicia.

7.3 Economic crisis, political crisis and the critical situation of the CES

The unleashing of the economic crisis in 2009 generated an initial response prior to the collapse of the real estate sector and the consequent devastation in terms of jobs. From May 2010, however, with the euro crisis, the political situation deteriorated dramatically: labour law reforms led to the break-up of the social dialogue between the unions and the government, on the one hand, and the beginning of a process whereby all laws relating to labour, employment and social protection were systematically dealt with under the urgency procedure, thus preventing the CES from delivering an opinion on them. This trend gradually took hold during the course of 2011 and became entrenched when the Popular Party joined the government with an absolute majority in November of the same year. Cuts in social spending, in the public administration and in wages, and a freeze in pensions, on the one hand, along with structural reforms in the system of labour relations on the other, were carried out without

consultation or the agreement of the most representative unions. They were not even consulted indirectly under the procedure provided for in the CES since the measures were introduced under the urgency procedure. The complete absence of social consultation and the crisis in the normal legal mechanisms of law-making meant that the CES was totally marginalised with regard to these regulatory procedures.

The public spending cuts had a very serious knock-on effect on the CES itself, resulting in cuts to the bulk of its activities and funding, particularly in the realms of publishing and promoting research. The negative effects have been far more serious for some of the regional economic and social councils, where budget cuts have led to them being scrapped altogether: legislation has been passed in Madrid, Castilla-La Mancha and Cantabria rescinding the councils on the grounds that they are "superfluous" or "redundant".

The protracted situation has left the CES paralysed and powerless to act on the subsidiary implications of social and economic legislation. It is currently in a state of crisis, directly bearing the brunt of the disappearance of social dialogue between the unions, business entrepreneurs and the public authorities and the loss of its role as an auxiliary and cohesive body. Moreover, its own cuts in its financial resources are preventing it from carrying out its specific functions in terms of strengthening and researching social, economic and labour conditions.

8. The Economic and Social Council in Romania

8.1. Introduction: overall legal and economic context

In Romania, social dialogue is organised[52] with reference to the two key organisations in this area, namely the ILO and the EU.

The economic environment in which social dialogue takes place in Romania has been characterised by the transformation of its role and content, which has led to far-reaching restructuring and reorganisation of the system of relations and cooperation between the social partners and the public authorities. Privatisation and foreign direct investment (FDI) have significantly changed the model of social dialogue, which covers trade unionism, in Romania, the various areas of concern, the scope of negotiations and the social partners' ability to promote their interests in the face of increasing economic competition and complex social problems.

The effects of globalisation, the fact of EU accession and, in the past few years, the impact of the economic crisis have resulted in an austerity programme introduced during the crisis, rising unemployment, delayed economic recovery and, in the past year (2014), a new phase of recession.

In this context of multiple economic and social changes, there has been a steady decrease in the rate of unionisation (at present fewer than one third of the total number of employees at national level belong to a union[53], as compared to around 70% at the peak of unionisation in 1993).[54] Objective and

[52] The legislative framework governing social dialogue consists of the following laws: Law No 53/2003 - Labour Code, as amended and supplemented; Law No 62/2011 - Social Dialogue Law, as amended and supplemented; Law No 248/2013 - on the organisation and functioning of the Economic and Social Council; Law No 467/2006 - Law on the general framework for informing and consulting employees; Law No 217/2005 - European Works Councils Act; GD 187/2007 on informing and consulting employees in European companies; GD 188/2007 on informing and consulting employees in European cooperative societies; GEO No 28/2009 on the regulation of social protection measures (sectorial committees); ILO Convention 87/1948 concerning Freedom of Association and Protection of the Right to Organise; ILO Convention 154/1981 on the promotion of collective bargaining; ILO Convention 98/1949 on the application of the right to organise and bargain collectively; ILO Convention 135/1971 on the protection of workers' representatives in the undertaking and facilities to be granted to them; ILO Convention 144/1976 on tripartite consultations to promote the application of international labour standards; HG1260 / 2011 on sectors established under Law No 62/2011.

[53] The latest available data on the number of members of the main confederation are based on official statements reconfirming representativeness: BNS –254 527 members and 6.02% of total number of employees at national level, in February 2012; Cartel ALFA – 301 785 members and respectively 7.16% in January 2012; CNSLR-Fratia – 306 486 members and 7.05% in January 2013; CSDR – 249 264 members and 5.72% in March 2013; Meridian – 320 204 members and 7.64% in December 2011)-(author's estimation based on NIS database for number of employees and each confederation declaration at the date of representativeness reconfirmation – information available on http://www.mmuncii.ro/j33/index.php/ro/dialog-social/info/protectie-sociala/dialog-social/997-reprezentativitate-sindicate and NIS - monthly statistical bulletin).

subjective factors have led not only to a decrease in the number of members in both private companies and in those with majority/total state ownership, but also in the bargaining power of employees and their organisations. It has thus led to reduced collective bargaining, especially after collective labour contracts were abolished at national level and new legislation was adopted.

The new legal framework (Law No 62/2011 as amended) covering social dialogue in Romania has redefined the scope, level of organisation and institutional actors involved. The following aspects have been taken into account: conceptual unity of approach, terminology standardisation, redefining "representativeness", extending the right to join a trade union to cooperatives and farmers, aligning social dialogue procedures with EU practice, reorganisation of the Economic and Cocial Council, establishment of a new institution for social dialogue (National Tripartite Committee for Social Dialogue) and the elimination of the national level of bipartite autonomous social dialogue, etc.[55]

Not only was collective bargaining dropped at national level, but it was also scaled back considerably at industry/activity level. Bargaining at company level is the predominant form of bipartite social dialogue, with the opinion of employers being the main influence on the prospects for and dynamics of negotiation.

Reform of social dialogue has been accompanied by a gradual process of development on the part of the social partners and qualitative improvements in negotiation skills and conflict management. Unpredictable conflicts, difficult to manage and sometimes without a sound basis for claims and hence negotiations, have gradually been replaced by a social dialogue based on economic and social substance, well-handled and motivated by economic and social impact analysis, estimates and careful analysis of the potential effects of claims, etc.

The social partners have gradually become more experienced in the negotiation process, more accountable in their role and more attuned to the purpose of collective bargaining. The negotiation environment has been gradually improved, as has the quality of the negotiation process. The number of strikes has been substantially reduced, but the scale and difficulty of the negotiation process has increased. The conflictual approach has gradually given way to communication and cooperation. To some extent, management disputes have been preempted by prevention. A significant contribution here has been the diversification of mechanisms for resolving labour conflicts. Under current

54 Chivu L., Ciutacu C., Dimitriu R, Ticlea T., (2013) - The impact of legislative reforms on industrial relations in Romania, International Labour Office, Industrial and Employment Relations Department (DIALOGUE), Decent Work Technical Support Team and Country Office for Central and Eastern Europe. -Budapest: ILO, 2013, ISBN 978-92-2-127598-5; 978-92-2-127599-2 (web pdf)

55 See Explanatory Memorandum to the Social Dialogue Law No 62/2011, em185.pdf.Law gathered and fined earlier legal provisions in this field, namely: Law 54/2003, of trade unions, Law No 356/2001 of employers' organisations, Law 109/1997 on Economic and Social Committee, GD 369/2009 regarding Social Dialogue Commissions at public administration and territorial levels, Law on Collective Bargaining and Labour Contracts No 130/1996; and Law No 168/1999 on the Settlement of Labour Disputes

legislation, mediation procedures (with specific stages of mediation, conciliation and voluntary arbitration, set out under Law No 192/2006) were introduced as new tools for improving the functioning of social dialogue and preventing workplace disputes through cooperation, communication and the amicable settlement of labour disputes, including the threat of strike action.

The new model of social dialogue was developed on the basis on the current legal framework and led to the following changes:

a) The organisational structure of the social dialogue takes place mainly at the level of the individual firm, but the high proportion of smaller enterprises in the Romanian economy limits the scope for negotiation. Collective bargaining is compulsory only for companies with more than 21 employees.[56] For companies with 15-21 employees, collective bargaining is based on the free initiative of the employer and the employees' representative. Companies with fewer than 15 employees have no legal obligation regarding social dialogue. This legal threshold for compulsory social dialogue development at company level, associated with the very high proportion of small enterprises and micro-enterprises in the Romanian economy, has led to a significant reduction in the trade union membership rate. The ongoing process of privatisation of large public owned companies and entrepreneurial activities initiated through foreign direct investment has also steadily diminished trade union membership. Moreover, the elimination of the national collective contract has limited the number of employees protected by collective agreements.[57] The proportion of unionised employees is much lower in the private sector.

b) Changes in the role and level of interaction of the social partners, with an increase in the importance of bipartite social dialogue at company level and the reorganisation of the tripartite structures for social dialogue.

c) An obligation introduced by law to reconfirm the representativeness of the social partners that can negotiate at the level of groups of companies and at sectoral level has not only resulted in a delay in the resumption of negotiations, but has generated a reorganisation of the traditional social partners at sectoral level. On the one hand, employers seek to form representative associations at sector/branch/business activity levels and, on the other hand, trade unions are interested in the protection of employees. This protection is framed in a common agenda of social issues, working

[56] In June 2014, the number of companies/units with more than 21 employees, registered at the Territorial Labour Inspectorates was 272 386, 365 fewer than in the equivalent period in 2013 (of which 11 842 were state owned, 259 404 private owned, 884 had mixed ownership and 256 had other types of ownership). On average, the number of employees under collective agreements in state owned and mixed companies is higher than in private companies, but is steadily tendency decreasing. http://www.mmuncii.ro/j33/index.php/ro/transparenta/statistici/buletin-statistic/3531 Statistical Bulletin in the field of labour and social protection in Q2 – 2014, conditii_TII2014.pdf

[57] The single collective agreements signed at national level (the last one was in force up to the end of 2010) provided an automatic extension mechanism for the contractual provisions negotiated to all employees (erga omnes); also, these provisions become the minimum threshold for the lower level of negotiation.

conditions, remuneration form and wage level etc., as are efforts to increase employees' influence in the decision-making process at company level.

d) In Romania, in line with EU trends, there is an opening to an extended social dialogue to include other actors and civil society representatives, SMEs (previously largely excluded from collective bargaining), associations and representatives from rural areas (rural economy actors), representatives of the social economy and associations of migrant workers (including workers from other EU Member States), etc. The main problem remains representativeness, which now poses a challenging barrier to collective bargaining at sectoral level, including for some traditional social actors. A legislative initiative to amend Law No 62/2011 is currently being debated in the Romanian Parliament, with the aim of unblocking the social dialogue mechanism.

8.2. Legislative framework for the social dialogue in Romania

The main forms of social dialogue are bipartite, tripartite and civil society.[58]

Bipartite social dialogue (BSD), as an autonomous form, was altered from the outset due to the involvement of the government (trade union membership is still predominantly in large companies with total or majority state ownership). Collective bargaining is mandatory at company level. The number of collective labour agreements concluded at company level in Q2, 2014 was 5 290, 359 more than in 2013, Q2, comprising 3 893 collective agreements in Q2, 2014 (an increase of 378 compared with 2013) and 1 397 additional agreements (a decrease of 19 as against the 2013 figure). In terms of type of ownership, there was an increase in collective agreements in private companies (up by 405) and in additional agreements in state owned companies (up 50).[59] In 2008, the total number of collective labour agreements (collective agreements and additional agreements) was 11 729, a decrease of 45% in Q2, 2014. This demonstrates the fact that national legislation does not encourage the development of collective bargaining, but on the contrary has actually led to a decline in representativeness. 35% of employees would benefit from stronger BSD.[60]

Collective agreements may also be negotiated at the level of groups of companies and at sectoral level (Article 128, Law No 62/2011). The national level for autonomous bipartite social dialogue was abolished in 2011. At present, the highest level of BSD is the sectoral level, and collective agreements can be negotiated and concluded under Government Decision No 1260/2011 (29 sectors of activity, based on the NACE Rev 2 activity classification). Up to 30 September 2014, only three collective

58 http://www.mmuncii.ro/j33/index.php/ro/dialog-social/dialogul-social

59 http://www.mmuncii.ro/j33/index.php/ro/transparenta/statistici/buletin-statistic/3531 Statistical Bulletin in the field of labour and social protection in Q2, 2014 and Q2, 2013.

60 PDF_2013_13L399EM.pdf, pg.2-3 (Explanatory statement)

agreements at sectoral level had been signed: in health and veterinary activities, higher education and research, and pre-university education.[61]

Romanian labour law has established the social partners' representativeness for the purpose of negotiation (based on quantitative criteria that still have to be confirmed by the courts, based mainly on the number of members) and the effects and applicability of collective agreements (limited after 2011 to the signatory organisations).[62] An extension of the collective agreement at sectoral level (for all companies/units) has been requested only for the health sector.[63] Also worth mentioning is the sectoral level committee, organised at industry level, as an atypical form of bilateral autonomous social dialogue (Law No 132/1999, similar to the European sectoral committee, but not functional).

Forms of BSD with multipartite participation could include: a) a dispute resolution procedure (set up at the Ministry of Labour, Family, Social Protection and the Elderly (MLFSPE), National Office of Mediation and Arbitration); b) permanent or occasional consultation between the administration/government and unions or the administration/government and employers on economic and social issues in organised meetings (committees or commissions).

Tripartite social dialogue (TSD) takes place within the institutional structures of tripartite consultation: the National Tripartite Council for Social Dialogue (NTCSD) established at the national level of social partners, social dialogue committees at sectoral level (SDC), parliamentary working committees or other ad hoc tripartite structures. TSD takes place at different levels in the form of consultation and information sharing and, as an advanced form of social partnership, negotiation. It refers to the Social Pact negotiation and its conclusions. The NTCSD was created as a continuation of the tripartite consultation mechanism (government - trade unions - employers' associations) and as an advisory structure of the social partners, following the reorganisation of the Economic and Social Committee (ESC) in 2011 designed to establish civil society dialogue. The TNCSD legitimates government involvement in TSD – it is presided over by the Prime Minister of Romania and can be replaced only by the Minister of Labour, Family, Social Protection and the Elderly. The composition of the NTCSD Board includes members of the representative trade union confederations and employers nationwide and members of the government, appointed in all ministries and at state secretary level by the prime minister. The purpose of the NTCSD is to achieve tripartite consultation

61 Available at: http://www.mmuncii.ro/j33/index.php/ro/dialog-social/info/protectie-sociala/dialog-social/951-ccm-ramura: CCM 1726-29.11.2013 la Nivel de Sector de Activitate "Sănătate. Activități veterinare" 2014-2015; CCM 59495-2012 Sector de activitate Învăţământ Superior şi Cercetare; CCM 59276-2012 Sector de activitate Învăţământ Preuniversitar

62 Art 133 of the Law No 62 provide specific conditions: (1) collective bargaining agreements produce effects that are specific to the level at which they are concluded (all employees of a company, in the case of contracts passed at this level; all employees of the companies that comprise the group/sector of activity for which the collective contract was concluded); (2) only one collective agreement may be concluded and registered at a specified level. For each agreement signed, the list of participant companies has to be drawn up and signed. The application of the extension provision is possible only for registered contracts, after a special request addressed to the NTCSD. By order of the Minister of Labour, Family and Social Protection, with the approval of the NTCSD, the collective contract may be extended at the level of all units of the respective sector of activity.

63 See more details can be found at: http://www.mmuncii.ro/j33/index.php/ro/info/protectie-sociala/dialog-social/3387

on the government's economic and social strategies, including the gross minimum payment guaranteed in the settlement of conflict situations. It also ensures a peaceful social climate, reviews requests for extension of collective agreements at sectoral level, negotiates and concludes agreements or social pacts aimed at achieving peace and social stability and deals with other issues of common interest or related to the development and implementation of government strategies, policies and programmes. TSD **at sectoral level** operates in the form of institutionalised social dialogue commissions (SDCs) established at central level (ministries and other central public institutions). SDCs are composed of ministerial representatives and representatives appointed by trade unions and employers' organisations at national level. The institutional framework for informing and consulting the social partners on legislative initiatives and other matters of interest to them falls within the competence of the central government ministry or institution. Consultation is a first step towards establishing binding legislation, as a means of solving real problems in the field of competence of the central institutions and also as a means of reporting situations that may generate social tension. TSD **at local level** takes place in the SDCs established in the prefectures. These are comprised of representatives of local government and one representative appointed by each of the confederation's representatives at national level. Its aim is to inform and consult the social partners on the decisions of local authorities or other issues of interest locally. Representatives of all local, business and civil society organisations may attend as guests, depending on the issues discussed. There are no organised and regulated institutionalised TSD structures at regional level for objective reasons related to regional administrative organisation in Romania. The Social Dialogue Department of the MLFSPE is responsible for coordinating and monitoring the institutional structures of TSD. It is responsible for the efficient organisation of the NTCSD and tripartite working group, dissemination, dialogue and strengthening social partnerships and regulatory improvements in social dialogue, including through the implementation of European and international standards in the field. It also promotes cultural dialogue and tripartism. In Romania, a delegate from the ministry is designated as coordinator of the specific activities.[64]

An advanced form of TSD and of social partnership itself (similar to the ILO definition of TSD "plus") is present in Romania by involving civil society organisations in the social dialogue. There are no regulations on the purposes of this form of dialogue. In practice there has been an increase in the participation of NGOs in tripartite consultations of social dialogue committees, but their status/role is limited to that of guest, not member, and their right to express their opinions is limited subject to the agreement of each SDC. In terms of the government, dialogue with civil society organisations takes place in the framework of consulting the Romanian Economic and Social Council (ESC) (of which they are members) and is based on Law No 52/2003 on transparency in government and Article 51 of Ordinance No 26/2000.

[64] Article (7), Rules of organisation and functioning of the MLFSPE , ROF_MMFPS_2012.pdf

Civil society dialogue as an advanced form of TSD. The term "civil society dialogue" has not yet been defined in national legislation. The dialogue between parliament/government and the ESC, although similar to the TFEU's definition of social cooperation between the European institutions and the European Economic and Social Committee, is assimilated with social dialogue at national level in Romania.

8.3. Special features of the organisation and role of the ESC in Romania

Prior to the entry into force of Law No 62/2011, the ESC had an advisory role: a) in economic and social strategies and policy design, b) in the settlement of conflict between the social partners, at sectoral or national level, and c) in achieving, promoting and developing social dialogue and social solidarity. The ESC was consulted by the initiators of draft legislation and draft programmes and strategies falling within its field of competence. The consultation process was compulsory. The ESC was also established in order to achieve national social dialogue between employers, unions and the government and to secure a climate of social stability and peace.

Law No 62/2011 on social dialogue[65] altered the structure and organisation of the Economic and Social Council (ESC[66]), so that it became **a tripartite social dialogue structure at the national level of civil society dialogue** (between civil society actors) similar to the European Economic and Social Committee (government representatives were removed from this structure, the NTCSD being created instead). Under to its new role, civil society organisations[67] participate with traditional social partners in the consultation process within the ESC. In accordance with Article 82 of Law No 62/2011, the ESC is an autonomous public institution of national interest, aiming to achieve national dialogue between employers' organisations, trade unions and civil society organisations. The ESC is defined as a consultative body of the parliament and government in areas established by its own founding law, organisation and functioning. It has an advisory function in working out strategies and economic and social policies. Its purpose is to guide legislative initiatives and report economic and social phenomena that require legislative changes and action. Although it has major responsibilities, such as giving its consent to all normative acts in its field of competence, in actual fact the **ESC has not operated as a statutory civil society dialogue structure since the entry into force of Law No 62/2011.**[68] Subsequently, in an attempt to unblock its activity, a specific Law on the ESC's

65 The social impact of Law No 62/2011 has been defined in the explanatory memorandum to the bill as follows: ensure effective social dialogue by clarifying the representativeness of the social partners, ensure relevant employee coverage by collective agreements, allow involvement in the socio-economic debate of the civil society representatives, ensure timely settlement of labour disputes. Although it was publicly debated and has been submitted to the ESC for approval, the Social Dialogue Law, unamended notwithstanding observations raised by the social partners and other representatives of civil society, has been promoted by the Government, which has assumed responsibility without parliamentary debate.

66 http://www.ces.ro/economic-social-council/en/1

67 In terms of direct dialogue between government and NGOs (also understood as civil society dialogue), in the absence of NGO platforms or other types of direct networks, it is limited to information and consultation.

68 http://www.labourlawnetwork.eu/national_labour_law_latest_country_reports/national_legislation/legislative_developments/prm/109/v__detail/id__3363/category__29/index.html

organisation and functioning (248/2013[69]) was adopted. The most important changes in this respect concern the procedure for designating the representatives of trade unions and employers' associations in the ESC, so that each trade union or employers' association representative at national level is entitled to a place in the body.

The ESC plenary session has a structure consisting of 45 members including the president and the vice-presidents. The distribution of members of the ESC is as follows: 15 members nominated by the employers' confederations representative at national level; 15 members nominated by the trade union confederations representative at national level; 15 members representing civil society appointed by decision of the prime minister, on a proposal from the MMFPSE, cooperative structures, professions, consumer protection organisations, the scientific and academic community, farmers' organisations, organisations of retired people, local community organisations, associations representing families and people with disabilities and other NGOs (ESC, Rules of Procedure[70], Rule 15). The problem of how to select members representing civil society has not yet been resolved.

The ESC is composed of nine permanent sections as provided under Law No 62/2011 on the Social Dialogue: a) Section for Economic Development, Competition and Business Environment; b) Section for Social Inclusion and Social Security; c) Section for Industrial Relations and Wage Policy; d) Section for Agriculture, Rural Development and Environment; e) Section for Education, Vocational Training, Health and Culture; f) Section for Consumer Protection and Fair Competition; g) Section for Cooperation, Professions and Independent Activities; h) Section for Rights and Freedoms; i) Section for Public Administration and Public Order. Problems and draft legislation in the field of research fall within the competence of the existing sections and, if necessary, any other temporary sections may be established by the ESC Plenary Session (ESC, Rules of Procedure[71], Rule 39).

The **ESC's competences have been expanded**[72], with new responsibilities allowing it to give its consent to normative acts adopted in the following fields: economic, financial and fiscal policies; work relations, social protection and wage policies; agriculture, rural development and environmental protection; consumer protection and fair competition; cooperatives, freelance work and independent activities; rights and freedom of association and non-governmental organisations; health policy; policy in the spheres of education, research and culture.

The ESC aims to step up its activity in areas that could be useful for the development of the democratic process in Romania, including strategic priorities in the medium term. A major objective

69 This was published in Official Gazette No 456, of 24 July 2013. The organisation and operation of the Economic and Social Council is now regulated in a distinct Act, and all provisions regarding the Economic and Social Council in Law No 62/2011 are abrogated.

70 ROF-CES-08-04-2012-EN.pdf

71 ROF-CES-08-04-2012-EN.pdf

72 Law No 248/2013, Articles 2(2) and 5, http://www.ces.ro/legislation/en/9

will be to develop regional economic and social councils and to strengthen cooperation with other economic and social councils in the other Member States.

At present, a legislative proposal to amend Law No 248 is currently under discussion and awaiting the approval of the Romanian Parliament.[73]The main additions consist of including of civil dialogue in specialised ESC areas;

- redefining the ESC as a national level public institution that is tripartite, autonomous and aims to provide civil society dialogue at national level between employers' organisations, trade unions and civil society representatives;
- representatives of civil society will be proposed in accordance with the EESC model and will be nominated by decision of the prime minister;
- the following civil society structures can appoint representatives to the ESC: human rights organisations (including women's, young people's and child rights organisations); organisations operating as resource centres; health organisations and organisations for persons with disabilities; organisations for social services and poverty eradication; environmental and rural organisations; academic, professional and consumer protection associations; social economy organisations; cooperative organisations; professional associations; farmers' organisations; organisations of pensioners; local community organisations and other NGOs working in the areas of competence of the ESC;
- the ESC Plenum is to adopt decisions by consensus of its members.

The operation of the ESC in Romania is faced with some major challenges:

- Up until the enactment of Law No 62/2011, the ESC included government representatives. The newly established National Tripartite Social Council took on the previous tasks of the ESC in social dialogue. The place of the third party in ESC membership was replaced by organised civil society. Currently, it is not functioning as a genuinely civil society dialogue body.
- The opinion given by the ESC is a consultative one and accompanies draft legislation or legislative initiatives. If its opinion is not unanimously accepted by the parties, its position will be recorded and this will take the place of an opinion. In the past, opinions expressed by the ESC have often not been taken into account in the final version of legislation;
- Local and regional structures aiming to support decentralised civil society dialogue need to be developed.

[73] PDF_2014_14b519FG.pdf

8.4. The impact of the crisis on the functioning of TSD in Romania

The Ministry of Labour, Family, Social Protection and the Elderly includes ESC activity as part of the national level social dialogue. In this perspective, and considering the role of the ESC in the period 2008-2011, it is understandable that during the crisis the role of the social partners was downsized and their level of activity decreased, even though Romania was among the few EU countries where a severe austerity programme was put in place, with drastic implications for workers' incomes, working conditions and job security.

During this period, the social partners drew attention to the ESC's diminishing role (the reaction of the social partners in 2011 is well documented in ILO studies on the Romanian reforms[74]) and considered that institutional reform had been promoted in an undemocratic manner – the social partners' opinions were ignored and the consultation procedure was a pure formality (Dandea P.S., 2014).[75] Since 2011, ESC activity has mainly been focused on producing opinions on draft legislation (these are approved by the executive board during the non-statutory meetings of the plenum).

During the crisis there was also a considerable decrease of the number of collective disputes (116 conflicts of interest with 205 000 participants in 2008, 73 with 61 700 participants in 2010, 35 with 55 600 participants in 2011 and 22 with 7 700 participants in 2013). The reasons for this are twofold: on the one hand, there was a lack of response on the part of the government to protests relating to the implementation of the austerity programme and, on the other hand, job cuts in the public sector reduced confidence in social dialogue and also in the ESC as the national level body for democratic consultation and negotiation.

8.5. Other dialogue structures in the context of social and political pluralism

In terms of multilevel governance and the TSD institutional framework in Romania, we can observe a risk of confusion and overlap in the role, initiatives and actions implemented at national and local/regional level, and between social dialogue and civil society dialogue bodies. On the one hand, there are TSD structures acting in an extended area of responsibility and, on the other hand, the ESC's strategic orientation is to develop regional/local structures. In the absence of local level structures of the ESC, new forms and structures of social dialogue have been developed. These can, in fact, be considered local mixed structures (of social dialogue and of civil society dialogue), consisting of the

[74] See Appendix 5 for more detail - The impact of legislative reforms on industrial relations in Romania (Chivu L., Ciutacu C., Dimitriu R, Ticlea T., 2013) -, International Labour Office, Industrial and Employment Relations Department (DIALOGUE), Decent Work Technical Support Team and Country Office for Central and Eastern Europe. -Budapest: ILO, 2013, ISBN 978-92-2-127598-5; 978-92-2-127599-2 (web pdf) and in Ch. 12 - Romania: A Country Under Permanent Public Sector Reform (Vasile V., 2013), (p. 449-510) in Public Sector Shock: The impact of policy retrenchment in Europe, Daniel Vaughan-Whitehead (ed.) ILO Geneva, ISBN 978-1-92-2-126568-9, 652p., ebook isbn 978 1 78195 535 2, Published by Edward Elgar Publishing Ltd. UK and Edward Elgar Publishing Inc.USA, http://www.e-elgar.co.uk/bookentry_main.lasso?id=15209

[75] Interview with Dandea Petru Sorin –vice-president Cartel ALFA – 3 October 2014

traditional social partners, representatives of local authorities and civil society representatives. Some examples are as follows:

a) The first initiative could be to consider the establishment, organisation and functioning of civil dialogue advisory committees (CDAC) for issues concerning the elderly, in the prefectures (Government Decision No 499/2004). Their work mainly aims to: a) provide collaborative relationships that allow ongoing sharing of information relating to specific problems regarding the elderly; b) consultation with representatives of older people on draft legislation which is to be initiated, including in all matters of economic, social, medical and cultural interest. The thematic working sessions of CDACs for issues concerning the elderly in 2012[76], for example, were focused on the major socio-economic problems with a direct impact on the lives of older people: pensions, health, tickets for spa treatments, partnership with the local neighbourhood police and with pensioners' associations etc.;
b) The establishment of an Economic and Social Development Council (CDES) in Iasi County.[77] The Council comprises the Prefecture (promoter), Iasi County Council and City Hall, business representatives, academics and NGOs.[78] The CDES mission is to provide a consultative framework to support collaboration between public institutions and businesses with the backing of academia and civil society. The operational objectives of this body include enhancing dialogue and increasing administrative transparency by formalising public-private consultations (Article 7 of the Statute). Activities of the CDES in Iasi comprise: organising regular meetings with directors of the decentralised services, improving relations between the state authorities and entrepreneurs; organising meetings between representatives of the business world, academia, civil society and parliamentarians from Iasi with a view to promoting legislative proposals and amendments (Articles 22-23); organising meetings between representatives of business, academia and civil society in order to implement common projects and identify business opportunities (Article 24);
c) Establishment of working groups involving trade unions and employers' organisations for drawing up the county's development strategy for the period 2014 – 2020; and also the establishment of the Local Committee for the Development of Social Partnership in TVET, comprising the representatives of the public authorities and the social partners in Bistrita-Nasaud county;
d) Establishment of a Local Partnership Group in Calarasi County. The group comprises 40 members including representatives of the two trade unions and the business environment,

[76] Comitetele_consultative_de_dialog_civic_pentru_problemele_persoanelor_vârstnice_în_anul_2012.pdf

[77] The following examples are presented in Pana D.A. (coord) - Anuarul dialogului social tripartit din Romania 2013 (Yearbook of the Tripartite social dialogue in Romania 2013), Social Dialogue Division, Ministry of Labour, Family, Social Protection and Elderly.

[78] http://www.prefecturaiasi.ro/comisii-si-comitete, http://www.prefecturaiasi.ro/dezvoltare-economica, Protocol si statut CDE.pdf (Protocol and CDE status); Regulament functionare ONG,pdf, (NGO operating rules).

SMEs and multinationals, also for the purpose of planning the county's development strategy for the period 2014 – 2020.

e) Establishment of Regional Pacts for Employment and Social Inclusion (RPESI) as a partnership entity and to set up resource centres. These bodies include: the local authorities, decentralised public services, traditional social partners, NGOs, universities, companies and other social actors. The RPESI mission is to increase the capacity of stakeholders to create projects that respond to real problems and to mobilise and empower additional stakeholders to address structural problems at regional or local level in the field of employment and social inclusion. These pacts were created for the development and implementation of employment policy at regional level (development of Regional Action Plans for Employment and Social Inclusion - PRAO) and for increasing the take-up of EU funds. Permanent technical secretariats for these pacts in all 8 regions were subsequently created, providing technical expertise and necessary resources for guaranteeing the efficient implementation of agreements. The pacts were, as a result, more dynamic, becoming truly representative of all regions, attracting new members and creating their own structures and processes. In the year 2012, for example, the 8 Regional Pacts for Employment and Social Inclusion brought together 833 stakeholders from all categories. It is estimated that pact members are involved in the implementation of approximately 70% of HRD projects currently under way.[79] For the next programming period, an increase in the role of sound project implementation for local development and social inclusion has been planned.

f) Another consultative structure with relevant activity in dialogue with the government is the Coalition for the Development of Romania, established last year, consisting of 20 business associations and 18 permanent observers from the foreign embassies in Bucharest. The Coalition holds regular meetings (once or twice a month, including in the reporting period) with the prime minister and other ministries, such as the Ministry for European Funds, promoting initiatives and providing expertise.

g) Another relevant structure is the Inter-institutional Committee for the Partnership Agreement, created two years ago, a body consisting of the most relevant stakeholders (public and private) in terms of attracting funding from the European Structural Funds. It did not have any activity in the reporting period, because the ministry in charge (Ministry for European Funds) did not convene any meetings.

8.6. Brief conclusions and policy recommendation for enhancing civil society dialogue at all levels

[79] Pactele regionale pentru ocupare si incluziune sociala din Romania, Raport – martie 2012 (Regional Pacts for employment and social inclusion in Romania, Report- March 2012), (Cartarescu I., Ghiman L., Isaila S, 2012), RAPORT+FINAL+PACTE+REGIONALE.pdf Establishing eight Regional Pacts for Employment and Social Inclusion was the initiative of the MLfspe through technical assistance projects Phare RO 2003/005 - 551.05.01.04.04.01 entitled "Support for the Ministry of Labour in developing and implementing employment policy and preparation for EDIS "(EDIS - Extended Decentralised Implementation system). Such resources centres could be organised also at county or local level.

i) Elimination of national level collective bargaining removed a powerful tool for the social partners to achieve consent on some fundamental issues. In addition, the need to reconfirm representativeness, the increase in the minimum threshold and the prolonged crisis resulted in a significant reduction in the number of companies obliged by law to negotiate and settle collective contracts. The level of negotiation was changed from industry to sector of activity, which effectively blocked BSD at sectoral level, as it did TSD. The establishment of the 29 sectors of activity, which partially corresponded to the organisational structure of the social partners in terms of activities, led to a need for reorganisation and with some of the social partners losing their representative status. Basically, the reforms initiated in 2011 create dysfunctions in multi-partner dialogue.[80] We also have to point out that participation and involvement of the social partners in institutionalised social dialogue is uneven. Trade unions show more interest than employers' organisations in social dialogue, both at central and local level, which reflects the balance of interests represented.

ii) ESC activity during the crisis was basically a formality; the reform programme and austerity measures were undertaken by the government without taking into account the social partners' opinion. Virtually ignoring the opinion of the social partners has led to reduced confidence of the employees/members in social dialogue effectiveness. Even today, democratic consultation is more formal, and fails to take account of many of the opinions expressed by the social partners in the ESC on legislative proposals. In terms of formal approach, social dialogue committees in ministries set up to amend draft legislation based on their specific interests did not achieve the expected outcomes. However, some officials consider that in terms of an informal approach, these committee meetings have proved to be effective as a means of maintaining open channels of communication between ministries and the social partners (Pana D.A.- Delegate Ministry for Social Dialogue).[81]

iii) In the case of the ESC, statutory civil society dialogue is inoperative because of problems in selecting civil society representatives and there have been delays in setting up the new Tripartite Council (NTCSD). For the time being, these institutions are not operating in accordance with the role conferred on them by law.

iv) The abolition of the possibility of extending the system of collective agreements has significantly decreased the number and proportion of employees covered, with a negative impact on benefits (level of wages, working conditions etc.); in order to reduce inequities created between similar jobs, a wider platform of democratic dialogue proved necessary to develop industrial relations and boost business.

[80] At the beginning of April, the social dialogue with unions – employers' organisations and the Government was re-started, at the initiative of the Delegate Ministry for Social Dialogue, Aurelia Cristea. At the meeting, all the organisations representative at national level were present and the discussion was focused on suggestions regarding the modification of the Social Dialogue Law. At the same meeting, two new working groups were created, the first to identify economic tools that could generate new jobs, and the second to follow up on solving the problems of public sector employees.

[81] Pana D.A. (coord) - Anuarul dialogului social tripartit din Romania 2013 (Yearbook of the Tripartite social dialogue in Romania, 2013), Social Dialogue Division, Ministry of Labour, Family, Social Protection and Elderly.

Developments in recent years stimulated multi stakeholder dialogue, especially at local level, as hybrid bodies of civil society dialogue (assumed by officials as extended TSD at local level) – e.g. the Economic and Social Development Council at county level, Local Partnership Group at county level, Coalition for the Development of Romania, Inter-institutional Committee for Partnership Agreement, Local Committee for the Development of Social Partnership in TVET, civil dialogue advisory committees for issues concerning the elderly, etc. Territorial pacts have been created (Regional Pacts for Employment and Social Inclusion), a multi-beneficiary mechanism, in order to solve local problems by bringing together funding for activities undertaken (drawing on the Structural Funds and other EU funds).

v) Organising social dialogue in a relatively rigid framework does not facilitate a more accurate representation of the interests of significant local actors beyond those established by law. Therefore, the need to open the dialogue, especially to include ministries and local interested social actors, basically calls for openness to civil society organisations. In 2013, such extended committees also discussed problems raised by NGOs; in the main, those who initiated topics addressed in social dialogue committees were as follows: 47% of proposals came from the local authorities, 42% from the trade unions and only 7% from employers' organisations. Moreover, the examples above demonstrate a shift in the social dialogue towards civil society representatives, especially at the local level, where they can operate more efficiently and can build up support for sound policy measures in order to achieve local development, based on networks of stakeholders and smart distribution of resources.

vi) Current efforts on the part of the social partners, especially the trade unions, are targeted mainly at identifying ways to rebuild the legislative framework in a manner that leads to unblocking social and civil society dialogue in Romania (currently efforts are focused on amending legislation). In this respect, it is important to unlock and improve the functioning of the ESC as a civil society dialogue forum at national level and also of the new NTCSD, as the TSD body at national level.

vii) Development of civil dialogue initiatives recently initiated by the government. In May 2014, Aurelia Cristea, from the Delegate Ministry for Social Dialogue, launched a consultative process with civil society organisations, inviting them to register and express their areas of interest with a view to setting up an NGO forum for reaching agreement on the major issues with a social and economic impact, as mentioned in the government programme.

The development of civil society dialogue, although initiated in various forms and at various levels of organisation, has progressed rather slowly relative to the needs of Romanian society. Inexperience in the exercise of democracy and too few proactive joint initiatives are a problem with both the traditional social partners and civil society representatives. Solid action is required to create a coherent framework for civil dialogue development in Romania: at *legislative* level – completion/updating; at *institutional* level - restructuring and/or developing the local and regional

structure of the network system of cooperation; the development of policies to promote civil society dialogue, calling for *a new model of dialogue - multi-beneficiary, flexible, ethical and the responsibility of all social actors*. Without openness, joint and enhanced actions, parliamentary legislative initiatives under discussion cannot be operationalised. In this context, the strengthening of the institutional role of the ESC together with building up the third party of this structure – that representing civil society - are the main components of a coherent framework design for civil society dialogue development in Romania.

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