

ASEM project on social dialogue on working conditions

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1. Introduction

1.1. What is Social Dialogue (SD)?

Definition ILO: “All Types of negotiation, consultation and exchange of information between or among, representatives of government, employers and workers on issues of common interest related to economic and social development”.

The main objectives of SD are to resolve important economic and social issues, to encourage good governance, to boost economic progress and to maintain social and industrial peace. SD helps in this connection by promoting consensus building and democratic involvement. Social Dialogue is not a “right”, but it is a process that takes place when fundamental rights to organise and bargain are exercised.

Social dialogue can be bi-partite, employer and trade union organisations, as is most often the case in collective bargaining negotiations, or tripartite on more general policy issues that affect economic and social issues and social protection.

The ILO sees SD as critical in promoting and achieving Decent Work. In fact, SD is one of four strategic objectives which ILO considers are necessary for putting the Decent Work Agenda into practice (the others are: creating jobs, guaranteeing rights and extending social protection). In the Decent Work Agenda (DWA), the SD is seen as an important separate strategic objective as well as a tool to achieve the other three objectives.

1.2. Structures of Social Dialogue

SD may take different structure forms:

- Tripartite process or bipartite process (with or without government involvement)
- Institutionalised, informal, or a combination of the two
- Taking place at international, regional, national or at enterprise level
- Inter-professional, sectoral/Industrial or a combination of the two.

1.3. Advantages of good Social Dialogue

Most important advantages of SD are:

- Democracy. SD, by allowing different actors of the workplace and society to expose their points of view and to participate in decision making processes, is reinforcing democracy. It is crucial in all democratisation processes.
- Industrial peace. Norms that were made by SD consensus are more likely to be respected, effective and efficient.
- Higher production. Because SD integrates all human components of an economy/company, it provides the best framework for decision-making.
- Welfare of the workers. SD is the best way to find a socially acceptable compromise between economic requirements and social demands. SD, by integrating all claims in negotiations, reduces the risk of social conflict. SD eases social tensions during economic hardship and transition periods.
- Equality and equal treatment. Social dialogue is the ideal instrument to move towards a more equal position between men and women workers, but also towards all other marginalised groups of workers (disabled persons, migrants elderly persons, LGBT)

There are other benefits associated with the results of SD, such as:

- Social Pacts
- Sustainable economic and labour reform, and bringing the social dimension to the economic policy reform agenda
- National economic and social progress

1.4. Problems of Social Dialogue

Most important problems of SD are:

- Lack of enabling environment. If the legal and political environment and framework does not protect the exercise of workers' rights, SD is not enabled.
- Lack of law, implementation, enforcement mechanisms. SD pre-requires at least some fundamental rights as freedom of association and collective bargaining. A complete legal framework will strengthen the legitimacy, the efficiency and the effectiveness of SD.
- Lack of capacity of the social partners. Important that all social partners have a sufficient and equal access to information, and sufficient technical capacities to defend their positions during collective bargaining.
- Lack of understanding. ILO points to political will as one of the conditions of SD. In the case of lack of understanding from political authorities or from social partners, the whole decision-making process based on consensus may get stuck.
- Weak representativeness of social partners. In that case, legitimacy of SD may be called into question.
- Once SD exists the dialogue process must be organised on a regular and continuous basis. It is not an ad hoc approach at a moment of crisis. SD also needs a review and evaluation mechanism to analyse its progress, mistakes, non-functioning and other short-coming.
- An effective social dialogue requires policy coherence and consistency among the different actors/ministries/departments of the governments. It is not only the Ministry of Employment that is concerned, indirectly all the ministries are involved and concerned. The decisions taken have to be integrated in the overall policy of the government.

1.5. Criteria and conditions for good Social Dialogue

ILO identifies a number of principal conditions for constructive SD:

- Respect for the fundamental rights of freedom of association and collective bargaining (democratic foundations)

- Political will and commitment to engage in SD by all parties
- Strong, independent workers' and employers' organisations (legitimacy of social partners)
- Technical capacity, knowledge and competences, and access to relevant information.
- Appropriate institutional support
- The representatives of the social partners should be recognised by each other as equal partners
- An enabling environment for a dialogue with mutual understanding and trust among the parties at bi and tri-partite level

On the evaluation of SD, ILO identifies three major indicators providing information to answer the question "*How good is SD in X country?*" However, these indicators have to be interpreted cautiously because of the methodological difficulties to obtain comparable data across countries.

- Membership of trade union and employers' organisations
- Density of trade union and employers' organisations
- Collective bargaining coverage
- Number of tripartite social dialogue meetings over a one year period

1.6. Necessary capacities for an efficient social dialogue

In order to reach an efficient social dialogue, the most necessary capacities are:

- Technical capacity
- Capacity to access information
- Capacity to organise

1.7. Topics of Social Dialogue

SD concerns basically all important economic and social issues of common interests for workers and employers, in general way: everything that concerns the world of work.

Some more specific topics addressed by SD (list not exhaustive):

- Employment policy and labour market policy
- Social welfare, security and protection (occupational safety and health)
- Labour legislation and labour dispute settlements
- Working conditions, outsourcing, contract labour
- Wage settings, including minimum wage determination
- Educational and vocational training

1.8. Gender equality

The benefits of gender mainstreaming through SD and equality bargaining are multiple. They regard both men and women, not least because greater gender equality means:

- Reduction of employment segregation (less workforce divisions and competition)
- Reconciliation of work and family life
- Measures to combat sexual harassment

However, obstacles and problems persist. Gender equality is still long from being transversally recognised and treated as a priority in all aspects of SD. Certainly it is an important matter for trade unions.

The gender gap in labour markets of countries in Europe as well in Asia is a problem that SD must address, if there is to be a more egalitarian gender based labour market in the ASEM region.

1.9. Difference between Social Dialogue and Civil Dialogue

There is no common definition of Civil Dialogue (CD). It is neither a parallel nor complementary concept to the SD. CD has a generic nature and refers to public policy at large whilst SD embraces the specific macro-economic sphere and is structured around clear objectives and standard actors (public authorities, employers and workers). CD is more diverse and inclusive but also less structured. Its relations between public authorities and civil society may be conducted through many channels, and through such means as one-to-one meetings, hearings, conferences, and written consultation procedures. Otherwise mutually influencing actors in CD and SD can be very useful and successful. Each of the actors of SD and CD are reinforcing the final result through the particularities that they stress (cf. AEPF sessions, work in the informal economy). Trade unions, being part of industry as well as civil society, are actors in social as well as civil dialogue.

1.10. Specific Social Dialogue on working conditions

- Possible advantages for working conditions. SD gives a chance to workers, through their representatives, to explain precisely what is the situation/problems/needs “on the ground”, and thus to find adapted solutions. SD certainly is an optimal mean for improving working conditions.
- Possible benefits for the social partners. Adopting the SD procedures based on consensus can be beneficial for all social partners in the sense of being a way to avoid social conflicts and tension that could ensue from excluding a stakeholder.

1.11. International legislation and structures

- International Labour Organisation (ILO) standards. SD is directly linked with ILO Conventions n° 87 (freedom of association and protection of the right to organise) and n° 98 (right to organise and collective bargaining). These Conventions, indeed, constitute the fundamental legal basis for any form of SD, in the sense that without the capacity to exercise freedom of association by forming or joining their own organisations, social partners cannot work together. Other important SD related ILO standards are Conventions n° 144 (tripartite consultation, international labour standards), n° 151 (labour relations, public services) and n° 154 (collective bargaining), just as ILO Recommendation n° 92 (voluntary conciliation and arbitration). Also the convention n°81 (labour inspection) supports implementation of the labour code.
- Guidelines. Set legally non-binding principles and standards. Guidelines are more of government expectations for what constitutes responsible business behaviour. These principles should be respected by any multinational corporation based in a country that adheres to the Guidelines.
- Corporate Social Responsibility (CSR). The responsibility of business enterprises for their impacts on society. This responsibility can be established in law but also can be set in non-legally binding instruments (the UN Guiding Principles for Business and Human Rights or the OECD Guidelines for instance) as well as set through widely shared expectations as to what constitutes responsible behaviour.
- International Framework Agreement (IFAs) or a Global Framework Agreement. Is an instrument negotiated between a multinational enterprise and a GUF (Global Union Federation). The goal of such an agreement is to ensure that the company respects the same standards in all countries where it operates (cf. key ILO Conventions).

1.12. ASEM and Social Dialogue

Trade unions have been engaged in the ASEM process since its very beginning in 1996. In 2006, the first ASEM Labour and Employment Ministers Conference (LEMC) created the

basis for a new central platform (the ASEM Social Partners Forum which started in 2008) for an employment and social policy dialogue between European and Asian countries. The engagement of the trade unions increased seriously.

For greater and more effective trade union participation, it is necessary to grant official recognition to the trade union body within ASEM, the ASEM Labour Forum (ALF) in parity with the ASEM Business Forum. It would not make ASEM dialogue more inclusive and it would add the trade union's relevant experience on issues of employment and social affairs, and increase ownership of ASEM's work.

1.13. Remarks

- This brief introduction clearly shows that there is no one size fits all prescription for a successful SD.
- Many good examples of bi- and tripartite SD exist but the status of SD in any country is totally dependent on that country's own particular political, economic and social history or context and development. And every country is different and unique. Therefore, the exchange of best practices from different countries is very useful.
- Another central, and often problematic, aspect is to ensure the implementation of the agreements that have been reached. This depends on the character (binding or not) of the SD outcomes. Whatever their nature implementation remains a challenge in many cases, as the step from written engagements to concrete action is not automatic. Also the role of the government in enforcement and verification mechanisms for the implementation of the agreements through an efficient labour inspection is often lacking. Implementation also assumes thus a real willingness to engage all partners in joint action.

2. Informal economy and social dialogue

What is at stake? Where are the problems?

Informal economy has become a growing concern in both developed and developing countries. The informal economy is a term that refers to economic activity that takes place outside of the appropriate legal and institutional framework. It can involve employers in the form of enterprises that are not registered or recognised and it can involve workers performing work on an informal basis in formal enterprises. The informal economy is on various national, regional and international public policy agendas and it is an item on the agenda of the upcoming International Labour Conference in June 2014.

The informal economy is fundamentally a governance issue. Workers performing work on an informal basis usually do so without any social protection or the protection of labour law. Human rights abuses such as child labour and forced labour for the most part occur in the context of the informal economic activity. Informal economic activity challenges the role of government to raise revenue and carry out its functions. Informal economic activity can be an obstacle to the rule of law and, for workers, deny their ability to access justice.

The term informal economy encompasses a wide range of activities and situations. There are many and different contexts and faces. The informal economy is a term that can refer to both economic activities that would be supported in a formal market and to activities performed on a survival basis. For a variety of reasons today economic activity is being transformed into informal economic activity. The informal economy is gaining ground.

From a trade union point of view, the informal economy means: a weakening of the social protection system, jobs with low productivity, unrealised and unrecognised rights and great

difficulty for workers to join or form their own organisations. Trade Unions recognise that the best way to insure SD for the workers in the informal economy is to formalise their employment and to integrate them in the formal economy. In this way they will be covered by the labour laws, they will be able to exercise their rights, obtain legal protection and that their workplaces will be subject to labour inspection. All these gradually improve livelihoods and play a role in eliminating poverty.

Social dialogue can only work if it is based on recognised work relationships with recognised employers. Establishing social dialogue for workers performing work on an informal basis will likely mean formalising the work and the employer. By organising, workers will obtain an essential prerequisite for genuine dialogue: representation.

Some work relationships can be formal in that they are covered by law but the workers are not adequately protected because of the nature of the relationship. This would include work performed on a temporary basis including fixed term contracts. It would also include work performed in a triangular relationship where the enterprise that dispatches the worker is not the same as the enterprise that uses the labour of the worker. Trade unions use the term “precarious work” to describe indirect employment relationships that provide jobs of low quality, little benefits and insecurity. Workers performing work on a precarious basis face obstacles that can prevent them from obtaining representation.

ILO 189 Convention for domestic workers¹ is an important instrument establishing standards for a form of work that often is performed on an informal basis. Sometimes this work is performed on a formal but precarious basis. In many instances it can be expected that the application of this standard by governments will transform informal work into formal work. Regulating what is defined as unregulated changes its fundamental nature, at least on paper - but this is the first step.

An ASEM LEMC project on social dialogue and working conditions can provide support and strategies to reinforce negotiation skills and abilities for informal workers.

The initiative and the issue receive even more importance due to the integration of the informal economy workers in the agenda of the International Labour Conference from June 2014 onwards. The main challenges that the delegates of the ILC will have to tackle are the means to transform the informal economy into the formal economy so that the rights of all workers are realised.

The trade union enhance in general to a three step strategy as follows:

1. Organisation of the informal economy workers
2. Creation of a dialogue between the workers groups (unions) of the informal economy and the local governments, small employers in the informal economy and this with the objective of:
 - adopting a rights based approach in employment relationships
 - linking the informal economy workers to social protection and employers to access to credit, funds, legal, social, economic services
3. Promote and defend the transformation of the informal economy into the formal economy.

¹ C 189 Cf. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C189>

3. Social Dialogue in Multi-National Companies (MNC's)

In the global economy precious resources and consumer markets are a major attraction for foreign capital owners to invest. The Asian countries are attractive because in addition to the availability of resources and markets, they offer high rates of economic growth, a large workforce and low wages.

Governments attract FDI (Foreign Direct Investment) through different means: providing them access to their markets (market size matters), a good state of infrastructure, improved fiscal policies and incentives that attract FDI. At the same time the lack of local investment capital sharpens the interest of the global capital owners and MNC's to invest in certain countries. All ends up in a global competition: countries are competing for FDI; the MNC's and the capital are competing among themselves. The latter are even putting pressure on governments to minimise the legislative protections and deregulate their markets. This quest and competition for benefits of FDI and MNC's creates negative consequences for workers' rights, social welfare and the environment. The influence of the MNCs on local and even national policies is immense and should not be underestimated.

When looking at MNC's, we should not neglect all the companies (often local ones) that are included in the supply/production chain of the MNC.

Social dialogue is the instrument to help avoid the social and environmental race to the bottom. The social dialogue is a kind of control mechanism from within and creates a better balance between the interest of the owner(s), the corporate goals and social justice.

The recognition of the right for freedom of association, collective bargaining and equality are the primary requirements of a good social dialogue. SD can only function if governments create the necessary legal framework and enabling environment so that unions can engage in social dialogue. In a large number of countries within the ASEM area the environment is still too hostile to trade unions to effectively organise and engage in social dialogue.

The workers in the MNCs are more vulnerable to certain elements linked to the characteristics of an "MNC" itself, like its operation in different countries and its flexibility to often shift work or leave countries and move production parts or whole units to countries with lower production costs. In order to ensure protection for workers in the MNCs, it is necessary that the MNC's fulfil and respect a set of general principles elaborated in different international and national legislations, regulations, agreements and treaties. These general principles could be used as a minimum standard to which each MNC should commit. The basis for expectations for business conduct is already contained in the UN Guiding Principles for Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and other instruments.

In this way the competition between countries based on rights violations, related to the FDI's of the MNCs, can be reduced and the negative social effect (the race to the bottom) on the workers that are a direct consequence of this FDI competition from the MNC side for the states, can be lessened if not stopped.

1. Labour issues include:

- MNCs and their supply chains should be the example in respecting national laws and international standards (ILO and others)
- MNCs and their supply chains should respect and promote freedom of association and collective bargaining
- MNCs and their supply chains should provide best possible wages and working conditions

- MNCs and their supply chains have the best capacity to establish decent wages within their own structures in different countries
 - MNCs and their supply chains should promote the decent work agenda
 - Social dialogue in MNCs and their supply chains should be the main tool to avoid and solve labour problems and improve the productivity as well as address the social and economic situation of workers
 - Social dialogue in MNCs and their supply chains should provide the possibility to conduct regular consultation with workers on issues of mutual concern
2. Environmental concerns include:
- MNCs and their supply chains should constantly safeguard environmental sustainability
 - The occupational health and safety of the workers should be a chief objective
 - MNCs and their supply chains should promote lower carbon production and strive to create green jobs
3. Strengthening local industries:
- The MNCs should build linkages with the domestic enterprises so that they can broaden their experience, know-how and gain an easier access to global market

At the same time, many trade union organisations have obtained interesting and remarkable results in social dialogue with MNCs and consequently the improvement of the working conditions for the workers. Some approaches to social dialogue in the MNC's are:

- Networking within one specific MNC: Trade unions establish union networks within MNC. Such networks between different unions in different countries within the same MNC provide the possibilities to improve information exchange, run efficient communication, increase the internal transparency on figures and policies related to the respective MNC and slowly develop an international, but internal social dialogue within the MNC under the auspices of the appropriate GUF(s) at regional and global levels. Such social dialogue might lead to International Framework Agreements or Global Framework Agreements.
- Global Works Councils: of networking within a MNC can lead to social dialogue structure in a specific MNC on global level. With a few exceptions, trade union leaders from different countries can have a global dialogue with the MNC leadership. In line with the European Works Councils the employer could provide certain internal information regarding investments and labour policy.
- The International Framework Agreement (IFA) also called Global Framework Agreements: Trade unions may be able to develop plans to organise in worksites including suppliers and sub-contractors of the company if there is an agreement or other forms of global social dialogue.
- Protocols: There are agreements existing between brands in the shoe industry with garment and textile unions facilitating and allowing the freedom of association and collective bargaining and other advantages for the workers in the companies. This can be built in collaboration with pressure groups and NGO's active with consumers on labour issues; a concrete example is the Clean Clothes Campaign and the union agreement in Indonesia.
- Corporate Social Responsibility (CSR): In circumstances where the content of the Corporate Code of the MNCs are in line and respect with the ILO conventions and legal legislation, the GUF's seek to engage with the MNC for social dialogue aiming at an IFA. CSR as a standalone instrument has proved to be weak and inefficient.

- OECD guidelines on multinational and ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Despite that these two instruments are generally weak to protect the labour rights in MNC's, they are valuable instruments and the unions use these instruments for strategic advocacy. Their weakness is the limited scope of the instruments themselves, for example the ILO declaration only aims to promote core labour standards in the MNCs and the OECD guidelines only aim to ensure ethical behaviour in a wide range of areas such as environmental issues, corruption, child labour and human rights. The newly revised OECD Guidelines provide a structure for submitting cases to National Contact Points (NCPs) normally foreseen for the unions in OECD countries, but also trade unions from non-OECD countries can be involved through MNC's global supply chains.

A good number of instruments and tools to strengthen and render the social dialogue in the MNC's exist, but the general knowledge on them is still too low. The experiences should be exchanged and published to promote broad ranged use among the trade unions.

Also new and alternative ways should be explored and tested. The FDI is often an issue of bi-lateral trade and investment agreements between Asian and European countries. Respect for the ILO Conventions and the requirement to consult with unions should be integrated in these bi-lateral agreements. At the same time the unions of both countries should monitor the elaboration or revision processes of this type of agreements and screen them on the level of policy coherence, between the different agreements and with the ILO Conventions ratified by the respective countries.

But also external context elements influence the effectiveness of the trade union work and the social dialogue. For example, the global economic crisis is a huge threat to business continuity, but it is also the biggest challenge for the practice of social dialogue at company level.

The success of social dialogue at company level, particularly in MNC's, should lead to great benefit not only to each worker on the level of comfort in working, welfare, increased competence and job security, but also to the employers on the level of higher production, increased workers commitment and interest, lower level of absence and accidents.

A good social dialogue in the companies will lead to an improved level of the macro-economy; it leads to the growth of the national economy, an increasing GDP and a sustainable social development.
