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**New Start for Strong Social Dialogue**

**Report by Zoran Stojiljković**

The starting premise and reason for examining social dialogue reforms is the position that without (1) creating a culture of dialogue and establishing mutual trust, (2) without creating normative and institutional framework, as well as without (3) real capacity building of participants in social dialogue, it would not be possible to achieve key progress.

European Framework and Perspective

The significance of the European framework is confirmed by the fact that the title of this text is taken from the call of the Presidency of the Council of the European Union on the Member States to undertake necessary steps to:

1. intensively cooperate with social partners while shaping and realizing relevant reforms and politics, in accordance with national practice;
2. support improved functioning of social dialogue at national level which facilitates collective bargaining and creates the required space for negotiations of social partners;
3. encourage building and strengthening of social partners’ capacities through different forms of assistance, including legal and technical expertise, in order for them to become firm and representative organisations. (New start for Social Dialogue European Commission - DG Employment, Social Affairs & Inclusion <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7918&furtherPubs=yes>)

Another key document for the development of social dialogue is the appeal to EU leaders: The Europe we want: Just, Sustainable, Democratic and Inclusive, of March 2017 which was sent to European officials by ETUC and European civil society associations on the occasion of six decades of European integration. Civil society actors demanded:

1. The delivery of the 2030 Agenda for Sustainable Development, by putting the Sustainable Development Goals and the principles that underpin it at the core of EU and national policy-making;
2. A just transition for workers and industrial regions from the current economic model to a modern, vibrant, green and socially just economy in which our human and natural capital is cherished;
3. A European Social Model that provides full protection to all workers, all consumers and all people living in the EU; one that reverses the wealth gap and reduces poverty and social exclusion;
4. A European Union with a strong social rights pillar, which ensures quality employment and fair pay (The Europe we want: Just, Sustainable, Democratic and Inclusive 02.03.2017).

In such occasions, the focus is precisely on **European Pillar of Social Rights**. The communication of the European Commission of April 2017 contains 20 principles and rights grouped in three categories: (1) equal opportunities and access to the labour market, which includes gender equality, lifelong learning and active support for employment, (2) fair working conditions, with emphasis on decent wage, safety of work and life, work-life balance, i.e. decent work, social dialogue and collective bargaining, and (3) social protection and inclusion, which includes the universal right to minimum income (European Pillar of Social Rights, European Commission, Publication Office, 2017: 10-18).

The document, which was signed by the Council of the European Union, European Commission and Parliament at the Social Summit in Gothenburg, Sweden in November 2017, contain a position that the purpose of social protection is to make the system adequate, sustainable and in respect of intergenerational fairness.

European Trade Union Confederation, by insisting on the adoption of the Action Plan and constant monitoring of the realization of the goals contained in the European Pillar of Social Rights, and with its demand for the European Semester to grow from an economic to an economic and social one, strives to prevent the situation in which this document remains but a political proclamation.

Messages and Lessons for Serbia

In the public sphere of Serbia, no one is openly challenging the values of social dialogue and social cohesion. Institutionally, they are part of the official policy, primarily via Chapter 19 in the accession negotiations between Serbia and EU.

Chapter 19 is focused on the functioning of social dialogue, and particularly on general legal framework for trade unions and employers’ organisations, including the rights to organise, collective bargaining and strike, tripartite consultation mechanisms, including economic and social councils, with the basic aim to include social partners in the creation and implementation of laws, and creation and evaluation of economic and social circumstances[[1]](#footnote-1).

**Challenges**

At the same time, the entire functioning of tripartite consultations within which a development strategy should be formulated is in permanent crisis. Mutual mistrust of social partners is reflected in non-functional social dialogue at national level, and its negligibly small presence in lower instances of authority. Instead of a system and network of bodies for participation and dialogue, we practically have just a head without developed (sectoral, regional and local) torso and limbs.

Unfortunately, one of the catalysts for this situation was the predilection of the governments towards the accelerated procedure for adoption of crucial legislation.

Insufficiently consolidated social partners and feelings of being endangered and ignored, predominantly on the part of trade unions, also present key problems for further functioning of social dialogue.

Simultaneously, bipartite social dialogue remains underdeveloped with almost a complete halt in collective bargaining. Only a few sector collective agreements are being implemented.

Neuralgic points of social dialogue

1. Social dialogue is not obligatory

The Law on Social and Economic Council foresees consultations on legislation of significant influence on the life of employees and business of employers. This obligation, however, is not implemented in the very rules of preparation and adoption of laws and other legal norms.

1. The governments have shown a tendency to sidestep the debate in SEC by employing an emergency procedure for adoption of laws.

For example, SEC was not consulted regarding important legal regulations, such as laws on public companies, excise, value added tax.

1. Considerably short deadlines given by the government for discussion and giving of opinions/recommendations on law proposals often render the discussions and their outcomes insignificant (e.g. five days for debate on the new Labour Law).
2. Representatives of social partners in specialized standing committees of SEC usually do not participate in tripartite working groups organised by relevant ministries when initiating procedures for development of laws and policies. Thus the standing committees cannot have a systematic familiarity with the objectives and contents of government initiatives related to laws and policies.
3. The procedural obligation to send a recommendation related to a law proposal first to the line ministry which submitted the proposal, and then send it to the government if the response from the ministry was not received within 30 days, is an unnecessary delay.
4. Apart from that, the practice of ministers to send their deputies to attend the meetings deprives the Council for the full support and authority when adopting opinions or conclusions.
5. The line ministry in charge of the preparation of the law must enable the discussion on such a law, as well as the consideration of objections within this discussion. However, there is no obligation to notify the proposers about the reasons their proposals were not accepted.
6. The next step in bringing closer the opinions of social partners are the sessions of standing working bodies of the Republic SEC and the meeting of the Republic SEC. Only after this process is finished, should the proposal be adopted by the Government and subsequently the National Assembly.

There are two more questions: 8. the missing mechanism for control and evaluation; and 9. the possibility to organise public hearings on proposals of laws and the effects of their application.

1. Tripartism under Government domination

The legislative changes achieved government’s majority and taking control over all other tripartite institutions and social funds (Pension and Disability Insurance Fund, National Health Insurance Fund, National Employment Service), thereby practically reducing the network of tripartite bodies to social and economic councils (SEC).

1. Weak position and resources of SEC

The Council’s budget has been essentially around EUR 200,000 since 2010, which affects negatively its operative capacities and its overall functioning. The Secretariat of the Council does not have enough funds to realize research and publish. All projects that have been realized thus far were financed with the help of other countries. Even though, according to the systematization of jobs, the Secretariat is composed of 10 persons, there are only three employees.

The budget funds allocated to SEC were reduced to 62% in 2017 in comparison to 2009. However, since 2017 it has been increased to EUR 300 000.

Technical capacities of SEC standing committees for providing expert contribution to a great number of complex economic, fiscal and legal issues are still limited. Cooperation with academic community, research institutes and civil society organisations would increase quality.

Analysis of (in)sufficient capacities of social partners

The assessment of the situations is succinctly described by the claim that social dialogue does not decide on everything it should, nor does the decision-making include (all) those who have the resources and are truly in position to have a say.

For example, stakeholders who are important economic actors and achieve what is in their interest without participating in social dialogue, are outside SEC (e.g. Foreign Investors Council).

The much needed capacity building of stakeholders in social dialogue should offer answers to the following questions and dilemmas:

* 1. Do representative social partners have an adequate organisational structure and resources to participate in social dialogue at national, provincial and local levels (projection of 30 local SECs)? (Twinning Report on functioning of National SEC, 2015)
	2. Do the state and local self-governments offer minimum standards for work of tripartite bodies, and do they have adequate resources and capacities at their disposal or are even those brought into question (by rationalizing the number of employees in administration)?
	3. To what extent and in which areas is it possible to receive logistical support from the Chamber of Commerce and Industry, academic community and civil society organisations (CSO)?
	4. Should those who are not in formal and institutionalized social dialogue, but have significant power, resources and employ a large number of employees, be included in it and how? (Foreign Investors Council, AmCham Serbia.)

On the other hand, the situation of "organisational asymmetry" persists, i.e. the state in which where there are private employers there are no trade unions for the most part, and vice versa, where there are trade unions, there are no (private) employers.

* 1. How to reduce the specific and multiple: regulatory, mediatory and proprietary position of the Government and local self-governments?

Namely, the Government is a competitor to employers’ associations as a partner in social dialogue, and it has the tendency to substitute employers, which are under its direct management, in collective bargaining. The situation is similar in companies where this “managing” function is performed by the local self-government.

**In Lieu of an Epilogue: What kind of Social Dialogue?**

Today in Serbia there is a pressing need to initiate – not any kind but lasting, institutional and equal social dialogue. To support this claim, at least nine of its key missing assumptions can be itemized:

# Good will on the part of social partners and the state, and a sincere intention to participate in social dialogue.

# An appropriate social environment (market economy; active civil society; developed political system and stabilized political institutions).

# Developed culture of dialogue, negotiating and conflict management skills.

# Mutual trust among social dialogue participants.

# Freedom of trade union and employer organisation, association and action, and the obligation on the part of the state to create an environment and legal framework for social dialogue on equal terms.

# Legitimacy of social partners – representativeness and acting in the interest of the membership, democratic procedures and transparency in decision-making.

# Expert capacities of social partners and access to information.

# Responsibility of social partners and the Government to carry out what has been agreed.

# Balanced position and bargaining power of social dialogue participants[[2]](#footnote-2).

Levels, Management Method and Participants in Social Dialogue

The framework and practice of social dialogue cannot be limited to the existence of SEC at national level, which is reduced to consultative role and mainly presentational status. Social dialogue demands an entire network of bodies at branch level and the level of territorial autonomy and local self-government, in order to be able to speak about an ordered, systematic concept and practice.

Vertical and horizontal network of councils and their standing and temporary programme committees and working bodies are, however, but a satisfactory institutional framework and necessary presupposition for quality and effective social dialogue.

The councils must – unless it is the case of pretend social dialogue – within their authority, have the power to adopt conclusions and recommendations and have initiatives related to regulating »pluralist industrial relations«, as well as the right to influence the whole economic and social policy and development by expressing pertinent opinions and positions.

The risk of inadequate – slow, non-operative and inefficient action, and application of tactics of ultimatums and blackmail by certain participants is high, but the commitment to social consensus itself expresses the meaning and essence of social dialogue.

A rounded, institutional framework of tripartite dialogue entails systematic prevention and regulation of conflicts, i.e. an existence of a network of councils for peaceful resolution and arbitrage, and the existing Agency for Peaceful Resolution of Labour Disputes, which for the most part answer to social partners.

A specific form of social dialogue with multiple sides is also represented by broad consultative procedure, such as debates on adopting ERP and ESRP, i.e. increasing social cohesion, as well as by inclusion of social partners’ representatives in the work of appropriate bodies in the National Assembly.

**Recommendations**[[3]](#footnote-3)

# Early inclusion of social partners in drafting of laws with line ministries is needed in order to increase the quality of information and enable a discussion of more quality within SEC.

# The minimum quorum of present full members at SEC sessions should be increased, especially for Government representatives. Otherwise, the legitimacy of the recommendations and opinions may be questioned.

# The recommendations and opinions of SEC should include the opinions which are not in agreement with the majority position. This would allow for the members who voted against or abstained to express their views to the relevant decision-makers.

# Social dialogue is, first and foremost, a matter of social partners. Yet, others may be included in it in an appropriate way – through committees and broader social forums, social dialogue could include representatives of academic community, NGOs, expert groups, professional associations, and organisations of unemployed, self-employed and consumers – all who have interest and knowledge to make the transition process more efficient, transparent and as fair as possible. The representatives of these institutions/organisations could participate without voting rights in the work of specialized standing committees.

# The opinions of SEC should be forwarded to the Government and the line ministry, which should, in turn, have shorter deadlines for giving responses.

# The Government should recognize the Council as a full national tripartite advisory body. It is important that the Government acknowledges in full the value of social dialogue in the process of creating laws and policies.

# Law proposals debated by SEC should be accompanied by recommendations and opinions of SEC when submitted to the Parliament. MPs are generally not aware of SEC debates and its recommendations. This would enable MPs to be better informed for the discussions in the Parliament and it would increase SEC influence in creating laws and state policies.

# It is necessary to strengthen collective bargaining as a sine qua non condition for effective tripartite social dialogue, especially in the private sector. Therefore, SEC should, at least once a year, discuss the state of collective bargaining, as well as the status and implementation of collective agreements at different levels. This recommendation would contribute to development of mutual trust and recognition, as well as to empowering of social partners.

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1. Social and Economic Council of the Republic of Serbia was originally established based on a tripartite agreement of 2001. The current legal basis for the work of SEC is the Law on Social and Economic Council from 2004 with amendments from 2008. Within SEC, there are four specialized standing committees (working groups) for legislation, collective bargaining and peaceful resolution of labour disputes, economic issues, and occupational health and safety. Each standing committee has 4 members, one of each representative social partner.

The agenda of SEC meetings is determined by a tripartite "Kolegijum" (board) comprised of representatives of the Government, member organizations and SEC Secretary. According to law, it should meet once a month. [↑](#footnote-ref-1)
2. The extent to which these assumptions are absent from practice is exemplified by the situation in the National Geodetic Authority, an institution under direct management of the executive authorities, in which, following strikes and non-compliance with two agreements signed with the representatives of the Government, there were abuses and transfers of trade union representatives, police questionings and pressures in the procedure for the review of representativeness. At the same time, a “desirable, manager’s” trade union was formed predominantly by those who are due to transition from working on a service contract to an employment relationship. [↑](#footnote-ref-2)
3. Recommendations were taken and modified from ESAP Project realized by EU and ILO. [↑](#footnote-ref-3)