

Democracy, Social Dialogue and Citizenship in the European Multi-level System

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I. Introduction: Citizenship and Social Dialogue

Understood in a wider sense, citizenship rights can be exercised either in a direct or in an indirect way. A direct path is e.g. participating in referenda, voting in general elections, accessing an ombudsperson or claiming information rights. Indirect forms of citizen representation are channelled through intermediary political institutions, for example associations.

For the sake of this paper, we suggest to understand “associative democracy” (see e.g. Hirst 1994; Cohen/Rogers 1992) as part of a broader concept of citizenship. We will not, however, go into the intricate details of the latter concept in this paper. Neither are we going to touch on the normative aspects of it.

Our question is, by contrast, if and how the European Union (EU) plays a role in the realm of this form of citizenship. First, what kind of arena is the EU with regard to private interests and their participation in the making of public policies? Second, are the national systems of public–private interaction affected by the process of European integration? If so, how? Here, we focus on implementation of EU¹ Directives, since one should expect any changes to primarily occur in the “Europeanized” part of the national political systems, i.e. those connected to European policies and their trickling down within the multi-level system.

The empirical focus of this paper is labour law. This is a major field of traditional national corporatism. At the same time, it is the policy area where quasi-corporatist patterns were formally established even at the EU-level. In the following section, we will briefly outline this regime and compare it to other EU policies (II). Subsequently, we will present results from our study on the implementation of recent EU labour law Directives in the 15 member states, with particular focus on two of the ‘quasi-corporatist’ Directives. Did the specific history and character of these Directives prompt patterns of public–private interaction different to the specific national regime in place (III)? In the conclusions the significance and the scope of these developments will be discussed (IV).

In other words, this paper extends the study of Europeanization from the realm of policy contents to policy-making patterns, which is a comparatively less researched field. Our

¹ In this paper we only look into issues connected to the “first pillar” of the European Union. Therefore, in a strict sense the expression “European Communities” would be more accurate. Nevertheless, we will use “European Union” throughout the paper, because it has become a common term in everyday usage.

results stem from a collaborative project at the Max Planck Institute for the Study of Societies entitled "*New Governance' and Social Europe: Theory and Practice of Minimum Harmonization and Soft Law in the European Multilevel System*".² In this project, the implementation of the main EU Directives of the 1990's concerning labour law (on the subjects of work contracts, working time, protection of young workers, protection of pregnant workers, parental leave, and part-time work) were examined in all 15 EU member states. Besides the evaluation of press reports and legal documents, the study, for the most part, is based on semi-structured expert interviews. During the time of September 2000 to March 2001 about 150 interviews were carried out in the member states with ministry officials, representatives of interest associations and national enforcement agencies. This extensive empirical data contains information about the adaptation caused by the Directives and their political processing in the EU member states. In addition, it also allows conclusions to be drawn about special aspects of interest intermediation in the multilevel system of EU social policy.³

II. Interest Associations in EU policy-making

Private interests participated in EU policy-making from the very beginning. The ECOSOC (Economic and Social Committee) includes nationally nominated representatives of the employers, the workers, and various other interests. It has a consultative function in most other areas of European integration, but its 'reasoned opinions' on policy proposals are in no way binding as to their content or direction (see Article 193 old, now Article 257, EC Treaty). Ideological splits between ECOSOC's three parties (employers, employees, and various interests) have, in many cases, deprived the Committee of a good basis for compromise (Lodge/Herman 1980: 284; Streeck/Schmitter 1991: 202f; Gorges 1996: 34f).

Beyond the participation of ECOSOC, there are many further ways of private interest participation in EU policy-making. However, the EU's political system is extremely fragmented in character. The enormous cross-sectoral differences in policy style were highlighted by a number of political science studies (Greenwood et al. 1992b;

² More details can be found on the project's homepage at: http://www.mpi-fg-koeln.mpg.de/fo/multilevel_de.html#Proj5.

³ The evaluation of the empirical data is not finalized yet. Therefore, it should be noted that the presented overview reflects important first impressions, but is not able to show a complete picture at this time.

Mazey/Richardson 1993; Pedler/Schendelen 1994; Eichener/Voelzkow 1994a). Despite the widespread consensus that the EU is surely no macro-corporatist system (see the seminal contribution by Streeck/Schmitter 1991),⁴ some authors detected structures alien to classic pluralism on the meso-level, e.g. in the pharmaceutical sector (Greenwood/Ronit 1992); consumer electronics (Cawson 1992); health and safety at the workplace (Eichener/Voelzkow 1994b); and technical harmonization and standardization (Eichener/Voelzkow 1994c). The interdependence and potential co-evolution of political regimes and interest politics was also discussed (Greenwood et al. 1992a: 243f; Eichener/Voelzkow 1994c: 17; Kohler-Koch 1996: 215f.).

A prime example for a co-evolution of political/administrative structures and interest politics is EU social policy under the post-Maastricht Treaty rules (in force after 1 November 1993). Due to unanimity requirements, the ‘social dimension’ had traditionally lagged behind economic integration and was stuck in a classic ‘decision-making trap’ (Scharpf 1988). In 1991, however, the so-called Maastricht Social Agreement introduced a new social policy regime. Originally, it only applied to the member states except the UK.⁵ Explicit Community competencies were extended to many more social policy matters than before; majority voting has since then been possible for a much wider range of issues; and new patterns of quasi-corporatist decision-making were introduced. The establishment of this new regime was, in fact, attributable to the major European interest groups’ anticipation of significant changes in the EC Treaty’s social policy provisions, which made UNICE (employers) conclude an Agreement with ETUC (trade unions) and CEEP (public enterprises) in October 1991. Their joint proposals on the future involvement of the social partners were immediately submitted to the ongoing Intergovernmental Conference and accepted there without major changes (for the background, see Falkner 2002).

The EC Treaty’s social provisions (see Articles 136ff.) now⁶ contain three layers of social partner participation in the policy process: Firstly, the Commission now has a legal obligation to consult both sides of industry before submitting social policy

⁴ Following the classical publications of Philippe C. Schmitter (1974) and Gerhard Lehmbruch (1974) corporatism in this paper is understood as a two-dimensional phenomenon, based on the co-responsible inclusion of the central interest groups into policy formulation and implementation on the one hand, as well as a corporatist group structure (a small number of monopolist, centralized and functionally distinguished groups, recognized or promoted by the state) on the other hand.

⁵ For details, see Falkner (1998).

⁶ The Amsterdam Treaty introduced into the EC-Treaty (which is binding for all) what had after the Maastricht Social Agreement been the rule among the Member States with the exception of the UK, but it did not otherwise change the rules of this game.

proposals. Secondly, a member state may entrust management and labour, at their joint request, with the implementation of Directives adopted pursuant to the Social Agreement. And thirdly, but most importantly, management and labour may, on the occasion of such consultation, inform the Commission of their wish to initiate negotiations in order to reach agreements instead of traditional EC legislation. Such agreements may, at the joint request of the signatory parties, be implemented by a Council decision on a proposal from the Commission.

During the 1990s, the social partners have thus become formal co-actors in EU policy-making. In fact, the EU social policy procedures fit the classic formula for corporatist concertation, i.e. “a mode of policy formation in which formally designated interest associations are incorporated within the process of authoritative decision-making and implementation” (Schmitter 1981: 295). Since this specific style of public–private co-operation is restricted to one policy area only, we nevertheless prefer not to simply speak about “Euro-corporatism” (Gorges 1996), but rather of a “corporatist policy community” (Falkner 1998).

A number of cross-sectoral collective agreements have resulted from this tripartite pattern that involves not only labour and industry, but also the ‘state’, i.e. the Commission (who proposes both the topics for the collective negotiations and then the Council Directives for implementing any deals) and the Council (who makes the social partners’ agreements legally binding by adopting them as Directives). Three such collective agreements (on parental leave, December 1995; on part-time work, June 1997; and on fixed-term work, March 1999) were implemented by Directives adopted in the Council of Ministers. The most recent agreement on telework (May 2002) shall be implemented by the national interest groups autonomously.⁷

In short, the social policy example indicates that the associational aspect of citizenship has recently seen a significant upgrading at the EU level. In addition, however, this raises questions as to a potential impact on citizenship and public–private interaction patterns at the national level. Therefore, our research project at the Max Planck Institute for the Study of Societies (see outline in the introduction) includes a study of the implementation of two of the corporatist labour law Directives in all 15 member states: the Directives on parental leave⁸ and on part-time work⁹. The following section outlines

⁷ For the fate of various Euro-collective negotiations see Falkner (2003).

⁸ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, *Official Journal* No. L 145 of 19 June 1996, p. 4–9.

that more intense private actor participation at the EU level seems to indeed make a difference at the national level, too.

III. Implementing EU Directives drafted by the European social partners: new patterns at the national level?

Our study of the implementation of EU labour law Directives, in particular the parental leave and part-time Directives, reveals a number of processes that deviate from the prior national patterns of policy-making and from the implementation of earlier EU Directives. We will present a section on developments that give national private interests rather more influence than before (III.1.); and a second section on those cases where the Directives originating in the EU's social dialogue rather impinge on the form or degree of national corporatist patterns (III.2.).

III.1. Towards more influence for the social partners

Our studies regarding the implementation of the part-time and parental leave Directive show that in a considerable number of cases these Directives, due to their particular character based on European social partner agreements, have also received particular treatment at the national level. There are cases where the social partner involvement was actually increased compared to the usual procedure in this field. In other cases, at least attempts by the government for a stronger involvement of private interests were made.

During the implementation of the *part-time work Directive in Ireland*, the fact that the Directive was based on a European social partner agreement led to the consequence that the department in charge (Department of Enterprise, Trade and Employment), contrary to the usual procedure, in the preparatory stages of implementation set up a tripartite working group which consisted of representatives of the employees' association ICTU, the employers' association IBEC, as well as a number of other ministries. These types of tripartite talks between employers, unions, and representatives of the state did not constitute something entirely new for Ireland – a whole series of tripartite national social pacts have been concluded since the 1980's (O'Donnell/Thomas 1998; Prondzynski

⁹ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, *Official Journal* No. L 014 of 20 January 1998, p. 9–14.

1999: 66-69; Dobbins 2000). However, it was the first time that such a tripartite working group was set up for the creation of a national law in the area of labour law. Up to that point it was normal to consult the two social partners¹⁰ intensively, but separately. The establishment of a tripartite working group was explicitly explained by the officials in charge using the argument that the Directive to be implemented arose out of social partner negotiations on European level. Therefore, it had to be met with greater involvement of the social partners at the national level as well (interview IRL4: 436-443).

In *Great Britain*, too, interest groups (notably on the labour side) feel that European integration makes a difference. Under Margaret Thatcher and John Major, the unions were consulted in a way that they considered “pro forma” (interview GB2: 96-100, 497-498): “We have had 14 years of basically being ignored by our national government, and the European level gave us a huge power. I mean we were increasingly having a voice in Europe and becoming influential as a social partner in a way that we just didn’t have in our own country” (interview GB6: 122-124). For sure, the unions have regained some influence since Labour has been in office, but they feel that even after another change of government, the European social dialogue would be an advantage in the national arena. The implementation of the *parental leave and part-time Directives* in the UK showed a much more intense consultation process with both sides of industry than before, which is attributed to the specialist insider knowledge gained by the interest groups in the EU-level negotiations between UNICE, ETUC and CEEP. The government wanted to profit from this insider knowledge at the implementation stage (interview GB2: 358-366). The example of the implementation of the part-time work Directives makes particularly clear that domestic actors could actually exert more influence in implementation as a consequence of their being closely involved in the European negotiations. With the help of internal negotiation documents, the unions were able to convince the government that the basic principle of non-discrimination between full- and part-time workers should be extended to “workers” (interview GB6: 598-619, TUC 2000: 2-3; Taylor 2000), while at first the government had wanted to limit the field of application to “employees”, like it is traditionally the case in other legal rules in the area of labour law (interview GB10: 177-203).¹¹

¹⁰ As far as the national level is concerned this paper makes use of the term “social partners” the way it is also used by the European Commission: it simply refers to the peak level organizations on both sides of industry in each member state (regardless of whether there is a weaker or stronger tradition of institutionalized partnership and co-operation between management, labour and the state).

¹¹ The term „employees“ refers to all persons with a regular employment contract, while the term „workers“ also includes persons who do not have an employment contract, but offer services and

Throughout the implementation of the *parental leave Directive* in *Luxembourg* an attempt to stray from the usual procedure of interest involvement was made. Usually in Luxembourg the implementation of EU Directives concerning labour law is done via legislation. During the ongoing legislative process both sides of industry are formally involved in the making of an implementation law. Employers and employees in each sector of the economy are statutory members of professional organizations, which are legally entitled to issue an expert opinion on each piece of upcoming legislation.¹²

Before the drafting of an implementation law, usually the largest Unions OGB-L¹³ and LCGB¹⁴ as well as FEDIL¹⁵ on the employers' side are consulted. Yet these consultations are not formalised or institutionalised, but are rather based on the intensity of informal contacts in the small country (interview LUX1: 939-960). For the implementation of the parental leave Directive, the fact that the Directive originated from a European social partner agreement was now taken as a reason for also wanting to base the national implementation procedure on an agreement between the largest employers' and unions' associations. The ministry therefore did not make any proposals of its own, but rather left it to the social partners to agree upon a regulation (interview LUX9: 573-625). However, the negotiations between unions and employers quickly faced constitutional problems. It had to be acknowledged that there was no legal base in Luxembourg for a procedure that would have made it possible to make the social partners agreement generally binding for all employees. Therefore, this attempt failed, the talks were broken off, and the Directive was later implemented via legislation (interview LUX7: 204-258, Feyereisen 1998).

Still, even after this failure, the implementation process of the parental leave Directive remained a uniqueness concerning the involvement of private interests in EU implementation matters. Now the implementation was combined with the negotiations over the National Action Plan for Employment 1998, so that the draft national parental leave Act was finally worked out in the tripartite co-ordination committee. What is more, the issue of 'social partner negotiations as a basis for the implementation of

are to a certain extent economically dependent on their customer or client. In the UK, this category includes types of homework, fixed-term work, or freelance work (for more details see Burchell et al. 1999: 5-19, 90-91).

¹² Besides the organization of management and labour under private law in Luxembourg, there is a system of so called professional chambers under public law with compulsory membership for the professional groups (Schroen 2001: 254-258).

¹³ Onofhängege Gewerkschaftsbond Letzebuerg.

¹⁴ Letzebuenger Chreschtleche Gewerkschaftsbond.

¹⁵ Fédération des Industriels Luxembourgeois.

Directives' could come up at the next reform of collective agreements legislation which is supposed to be on the agenda this year (interviews LUX7: 204-258, LUX1: 903-917).¹⁶

Even in *Austria* with its traditionally extremely corporatist system of social policy-making, the EU's social policy Directives with their manifold references to social dialogue also seem to have made a difference at the national level. While in other areas, the extensive consultations and tripartite negotiations known from the heydays of national corporatism were significantly cut back under the centre-right government in office since early 2000, this was much less so in this field (interview A4: 25-70). The implementation of EU Directives has recently been the area where public-private co-operation has been comparatively the most intense (interviews A1: 167-254, A2: 1743-1777). In this case, the effect is hence a conserving one, for recent national developments point into the opposite direction. And also in *Greece* the European social dialogue is considered to have had an impact. Several interviewees stated this, although so far no significant change is to be seen in either institutions (new working groups etc.) or procedures (ad hoc consultation). In a country without a tradition of social dialogue in public policy-making, the political actors feel that the idea of social dialogue as a form of "good governance" has spread and that the EU presses Greece to develop social dialogue (interview GR5: 378-390, GR11: 488-490).

Similar to the cases described above, also the *Spanish* government made an effort to give the representatives of employers and workers a greater say in transposing the first European-level social partner agreement incorporated in *the parental leave Directive*. In

¹⁶ It should be mentioned that also in *Italy* there was an attempt to transpose a European Directive against the national tradition via *autonomous* action of the social partners. This did not concern a 'social partner Directive' though, but already the earlier *Directive on European Works Councils*. This Directive was implemented in Italy by way of an agreement (*Accordo Interconfederale per il Recepimento della direttiva 94/45 CE del 22.9.1994; 06.11.1996*) signed by the association of industrials Confindustria, the employers in the banking sector Assicredito, as well as the unions CGIL (*Confederazione Generale Italiana del Lavoro*), CISL (*Confederazione Italiana Sindacati Lavoratori*) and UIL (*Unione Italiana del Lavoro*) on 6 November 1996. When the agreement was notified to the European Commission as the Italian implementation act for the Directive, the Commission argued that a supplementing law was needed to make the agreement generally binding, arguing that the „Accordo Interconfederale“ covered a number of sectors only (Kommission der Europäischen Gemeinschaften 2000; Hall 2000). The Italian constitution actually does provide for such a procedure, but so far it has not been possible to put it into practice, mainly because the Italian unions were against its use (Biagi 1998: 103) for fear of losing intra-organisational autonomy (interview I8: 102-170). The solution expected now is a governmental statute incorporating the „Accordo Interconfederale“, hence a form of "bargained legislation" (Biagi 1998: 103).

this case though, the government's initiative in the direction of autonomous implementation was not taken up by the social partners.

The existing Spanish parental leave regulations already encompassed a high level of protection, so that the need for adjustment was rather small. Knowing that it would have been mainly about the negotiation of non-binding standards, the government made a proposal to both sides of industry to negotiate autonomously about the implementation of the Directive into national law (interview E4: 607-621). Legally binding agreements negotiated by the social partners are provided for in Article 83/3 of the *Estatuto de los Trabajadores* and are common in the labour law area in Spain.¹⁷ Previously, however, no EU Directive had been implemented solely through social partner negotiations. An autonomous implementation of the Directive would not only have strengthened the position of the social partners with regard to EU concerns, but could also have helped the model of social partner decisions at the EU level to rise to greater popularity in Spain. With this in mind, the ministry was astonished about the lack of interest that the social partners showed for autonomous collective negotiations (interview E4: 618-623). But obviously neither side estimated the achievable gains for their clients or the profits for the strengthening of the social partners' position in the country higher than the potential conflicts about how to implement the soft-law provisions of the Directive. Finally, the Directive was implemented through Law 39/99. The social partners were consulted, but did not directly take part in the drafting of the law. Compared to some other labour laws, they were even consulted fairly late (interview E4: 842-852 and 1674-1688, Secretaria Confederal de la Mujer CCOO 1999).

In *France* also, the union Force Ouvrière felt encouraged by the new procedure at the EU level and proposed to enter into negotiations with the employers' side with a view to implement the parental leave Directive by autonomous social partner agreement. This offer was turned down though (interview F2: 40-758), and the initiative did not show any further impact on the relationship between the state and the social partners.

A *Portuguese* ministry official also reported to us that the government had failed with a proposal to the social partners to take over the implementation of EU Directives. The interest groups were, according to him, not interested in negotiating since they

¹⁷ There is a general applicability (*aplicación general*) of collective agreements which are published, just like laws, in the official journal (*Boletín Oficial del Estado*). They apply to all employees in the field of application, not only to the members of the negotiating organizations (*erga omnes*). This is not the case though for agreements (*convenios extrastatutarios*) which are only made for certain groups (interview E4: 540-603). Sometimes the agreements are also put down in laws ('*bargained legislation*'), which are then ratified by parliament. These are the possibilities to render social partner agreements generally binding.

considered it easier to put pressure on the government than to convince their counterparts in collective negotiations (interview P1: 1965-1978).

III.2. Towards less influence for the social partners

On the other hand, among our case studies there are also examples where a certain shift of influence may be observed in the opposite direction – from the social partners towards the state. In our sample, this phenomenon occurred in connection to the implementation of the EU ‘social partner Directives’, for instance when the *part-time work Directive* had to be implemented in *Denmark*. This effect, however, is not specifically connected to this kind of Directives, since it also arose during the implementation of Directives which had been adopted on the basis of the “normal” legislative procedures.

The implementation of the *part-time work Directive* in *Denmark* created special problems, because it concerned an area that is traditionally exclusively regulated by collective agreements. For further explanations it is useful to go back a little into the history of implementing EU labour law Directives in *Denmark*. When the first EU Directives on labour law were to be implemented, they did not greatly touch upon the autonomous competencies of the social partners, since they were mostly about topics which were not considered to be of much importance. The normal procedure was that a law was drafted and then opening clauses were included for the social partners. This meant that if they wanted to, they could come to different regulations by way of collective agreements. Those workers who were not covered by the collective agreements could refer to the law. Then, the implementation of the working time Directive for the first time concerned a topic that was of central importance to the social partners: The regulation of maximum weekly working hours. The implementation of this Directive became a test in which the Danish government, in accordance with the social partners, for the first time tried to implement a Directive solely through collective agreements (interview DK3: 558-599).

As a reaction to that, however, the European Commission criticised that even after the implementation via collective agreements *Denmark* could not guarantee sufficient coverage for the total work force (Madsen 2000). Danish collective agreements can basically provide coverage of about 75 to 80 percent of all workers, but not 100 percent,

as the European Court of Justice (ECJ) demands in decisive case law.¹⁸ After the European Commission had sent a statement to Denmark, explaining the reasons and threatening to bring the case to the ECJ, the Danish government, at the beginning of 2002, finally complied. Even though neither the government nor the social partners found this solution satisfactory, it was decided that the Directive should be implemented by law (EIRR 2002). A similar situation occurred again when the Directive on part-time work had to be incorporated into Danish law. Here collective agreements could also not guarantee sufficient coverage for the whole work force and so the Directive had to be implemented via complementary legislation (EIRR 2001).

The debate about the implementation instruments (the contents of the Directives did not cause much uproar), especially for the working time and also for the part time work Directives, led to the consequence that at the beginning of 2000 a special new implementation committee (*Implementeringsudvalget*) was created to be able to discuss the question of an implementation instrument with the social partners beforehand. The procedure is basically just a reversal of the above-mentioned one. While under the old system, the law came first and the question of whether collective agreements also should play a role came second, collective agreements now are in first place. The role of the social partners in those areas where EU Directives touch upon the sphere of competence of the social partners can be seen as having shifted from automatic autonomous responsibility in the direction of tripartite consensus-building in the new committee. The most that could be achieved there is that the social partners will try to implement the Directive autonomously. But the cases looked at so far have shown that this implementation mode has been unable to guarantee sufficient coverage for all the workers concerned. Consequently, the instrument of complementary legislation had to be employed. Compared to autonomous implementation, this does not restrict the freedom of the social partners in substantive terms, but the associations of both sides are afraid of losing organisational importance (e.g. by a decrease in their membership) if they are no more exclusively responsible for the regulation of certain important working conditions. Additionally there is the worry that the well functioning 'Danish model' might topple if more and more employers refer to the minimum legislation and do not enter into negotiations on these topics anymore (interview DK3: 861-903).¹⁹

¹⁸ See e.g. Judgment of the Court of 30 January 1985. Commission of the European Communities v Kingdom of Denmark. Equal pay for men and women. Case 143/83.

¹⁹ Denmark is not the only country facing the specific problem of insufficient coverage when implementing EU Directives. Also in *Sweden*, legislation had to be used for the implementation of the Directive on *part time work*, because it was not possible to reach sufficient coverage by way of collective agreements (Berg 2001). The difference to Denmark is that in Sweden legislation

IV. Conclusions

For the sake of this paper, we understood citizenship to encompass a dimension of associative democracy. The first part of the paper outlined that the EU as a political arena offers quite diverse regimes of public–private interaction in policy-making. In recent years, even one corporatist policy community has emerged, in the field of social policy. More details on this phenomenon can be read elsewhere (Falkner 2000a). It will suffice here to say that the EU is a polity where citizens are not only represented by their national governments (in the Council of Ministers), but also by interest groups or interest group federations. In some policy areas, the latter have a strong say in the policy-making phase. Social policy is one area where this is the case, and three recent EU Directives were even based on collective agreements concluded by three major interest groups of labour and industry.

Not only is the EU therefore a relevant arena for associative democracy in itself, but it furthermore impacts on the national patterns in that specific field of citizenship at large. Our findings on the implementation of EU social policy Directives (most importantly, the Directives on parental leave and part-time work which were negotiated by the EU-level social partner federations) indicate that the EU definitely plays a role in the realm of associative governance in the Member States.

In this paper, we have briefly outlined the relevant developments which either gave private interests (III.1.) or the state (III.2.) a comparatively greater room for manoeuvre in the negotiations of national follow-up legislation. From a bird's eye perspective, the sum of these developments is now of interest in the concluding section.

Convergence or divergence of national patterns?

The observed changes in the 15 member states sum up to a *slightly convergent development* going in the direction of a moderate social partnership model of

regarding working time issues in general already existed. Therefore the new law was not so much regarded as an interference with the traditional 'Swedish model'. This does not exclude the possibility that some future EU Directives might well interfere more severely with the autonomous competencies of the social partners even in Sweden. Besides that, the *Italian* effort to implement the European Works Council Directive via collective agreements was also considered insufficient by the European Commission. This case was already briefly discussed in the previous section since the Italian tradition of public–private relations is less corporatist and the development therefore brought about a rather larger role for private interests than a smaller, in overall terms (see footnote 16). The case nevertheless demonstrates that the implementation of European Directives by collective agreements faces serious difficulties.

involvement of private interests in the making of social policy.²⁰ The development is only “slightly convergent”, because neither a homogenous model is resulting nor are all the member states developing in this direction.²¹ As far as tendencies or attempts of change in the individual countries are obvious, these are going (at least in sum) in the direction of a form of *erga-omnes* legislation like it has been practised in EU level social policy since Maastricht. This means that the labour law standards which are negotiated on a social partnership basis are made generally binding by the state (or by the EU Council of Ministers, respectively) without adding any extra change in contents.

In regard to our cases, this basically means that countries with an extremely strong corporatism (Denmark) are showing the tendency of developing away from autonomously negotiated and implemented collective agreements about labour law concerns and are going in the direction of a more moderate corporatist modus. In the latter the social partners pre-negotiate agreements which are then molded into law or are made generally binding by way of an *erga-omnes* declaration. Or they work directly together in a tripartite modus with public actors in the drafting of laws. However, they cannot determine social policy regulations completely without the intervention of the state anymore. On the other side of the continuum it is noticeable that some countries without a corporatist tradition (most of all Great Britain), have started to slightly develop in this direction, or at least (this is the softest type of noticeable effect coming from the EU change initiatives) felt pressure in this direction (Greece). In between, in the middle part of the continuum, there were at least efforts made to get from social partner involvement via hearings, or at best “bargained legislation”, to a kind of *erga-omnes* legislation (Italy and Luxembourg). Overall an empirical trend in the direction of “convergence towards moderate diversity”²² can be discerned.²³

²⁰ The convergence notably only refers to the procedural aspect of the definition of corporatism given at the beginning, not to other aspects, like for example the level of the private actors included in public policy making.

²¹ This does not exclude the possibility of stronger tendencies or reverse developments also in certain areas of social policy within the member states. It would, for example, be imaginable in sub-areas like equal treatment or health and safety protection. The design of the research project and the large number of interviews with various national actors were planned so as to ensure that we were also informed about the most important developments in these areas and could include them in the general picture.

²² See already Falkner (2000b) on an abstract argument in this direction.

²³ So in interest politics there is also „adaptation in national colors“ (Risse et al. 2001), one cannot speak of identical findings in the least.

What is the degree and the scope of the changes at the national level?

In the sense of an overall evaluation of the tendencies of change that were found in the individual countries, it firstly has to be said that *no revolutionary transformation* of national interest intermediation systems has taken place. Neither did a change from a corporatist to a pluralistic model (or in the other direction) take place in a member state, nor did a true convergence of national patterns occur. These findings are in accordance to the common and theoretically well founded expectation that national institutions often times are very powerful resisting forces (see for example Thelen/Steinmo 1992; Immergut 1998; Thelen 1999; Pierson 2000a) and that the individual states defend their own arrangements even against supranational influence. (Duina 1997; 1999; Duina/Blithe 1999; Börzel 2000a; 2000b; Knill 2001; Knill/Lenschow 1998; 2000; 2001).

Certainly change below the level of profound systemic transformation (for critical junctures versus incremental processes of institutional change see for example Thelen 2001; Pierson 2000b) is of interest as well and in this category we found some interesting developments. As described above, they go in the direction of a moderate model of corporatism in public policy-making. A number of countries without significant features of associative democracy moved towards more participation of such actors in the implementation of the Directives studied here. Other countries with an extremely strong corporatist tradition moved towards the centre. This refers notably to Denmark and to a more limited extent to Sweden, where such labour law norms were in earlier times always negotiated and implemented by the social partners independently. Denmark now in two cases had to use legislation to make the content of collective agreements binding for all citizens. From an optimistic viewpoint, this can be said to optimise the potentials of associative democracy: the interest groups unburden the state and add their specialist knowledge to agreed standards, yet at the same time all members of the political system (even those not member of the relevant associations) will profit from the protection offered by such collective deals. From a more critical perspective, however, this can be seen as an intrusion of European law into the member states. Even worse, an intrusion on the grounds of rather legalistic arguments, for the old system of autonomous labour law-making by the Danish and Swedish social partners seems to have worked quite well and, most importantly, without any significant number of complaints by citizens outside the agreements' (theoretical or practical) reach.

The degree of change is significant in some countries but nevertheless strictly limited in overall terms. The trend is not all encompassing: neither are all member states affected, not are all developments uniform. There are countries without any significant change,

and there are some countervailing developments in others (that are nevertheless balanced in overall terms).²⁴ The trend towards “light convergence in the sense of moderate divergence” for now only refers to the part of semi “Europeanised national social policy”, where the member states become active in the frame of the implementation of EU Directives. The fact that this trend (*ceteris paribus*) could spread to the other part of member states’ social policy, which is continuing to be a solely national matter, cannot be ruled out though. Such a broadening of the scope of convergence tendencies depends, *inter alia*, on specific internal constellations in the member states. Most importantly: are there further domestic challenges to the existing public–private relations that could reinforce the pressure for change induced by the EU? In addition, any potential broadening of the trend described in this paper depends on the status of EU social policy in the years to come: in the absence of further binding EU social law to be implemented in the member states (i.e. if the method of open co-ordination should be the only EU activity to survive in the social realm), our findings could as well be short-lived even in the Europeanised parts of the national political systems.

²⁴ Most importantly, in countries that tend to implement EU Directives by decree, interest groups may actually have less of a say during such processes if compared to traditional national legislation.

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