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## Europeanization of Social Partnership in Smaller European Democracies?

**ABSTRACT** ■ This article examines the impact of Europeanization on cooperation between major interest groups and the state in national policy-making. Its theoretical innovation centres on two issues: (1) a classification of cooperation by management, labour, and the state in public policy-making and (2) a differentiation of levels of Europeanization in the Member States. The empirical material highlights the implementation of six EU Directives in four smaller states: Austria, Denmark, Luxembourg, and Sweden. A moderate trend towards convergence is discovered, caused mainly by forced adaptation of the most extreme model of corporatism.

### Introduction

European nation-states have diverse and deeply rooted systems of interest-group involvement in public policy-making. Will increasing internationalization and, more specifically, Europeanization reduce the extent of this diversity? In particular, how are national systems of social partnership affected by the process of European integration? In this article, we focus on cooperation between the government and the social partners (that is, the peak organizations on both sides of industry) in the formulation of labour law. We analyse the specific incentives resulting from EU developments in the labour law field since Maastricht, the effects of which on national social partnership have not previously been studied. We cannot systematically cover all indirect effects of Europeanization, but will primarily concentrate on what is directly triggered by EU legislation. In any case, our study provides practical examples that demonstrate how, during the process of European integration, 'class, sectoral and professional interests at the national and subnational levels

are confronted with the need to adapt their existing political strategies' (Traxler and Schmitter, 1995: 191).

Our research findings derive from a collaborative project on the implementation of the main EU labour law Directives of the 1990s. Six of these are considered: on employment contract information (91/533/EEC), working time (93/104/EC), protection of young workers (94/33/EC), protection of pregnant workers (92/85/EC), parental leave (96/34/EC), and part-time work (97/81/EC). Those on European works councils (94/45/EC) and posted workers (96/71/EC) were not included because they deal with genuinely transnational issues, whereas the project focused on adaptation pressures on prior national labour law standards. The fixed-term work Directive (99/70/EC) was also excluded because the implementation deadline had not yet expired when the project's evaluation phase started.

Our research design involved qualitative expert interviews based on a semi-structured questionnaire, in addition to analysis of European and national documents. For each Member State and for each Directive studied, interviews were conducted with experts from the national ministries of Social Affairs and Employment, and from trade unions, employers' associations, and labour inspectorates. In addition, information from experts in the European Commission and social attachés from the national Permanent Representations was used to deepen our understanding of the Directives, their genesis, and national reactions to them. In total, 47 expert interviews were carried out in respect of the four countries examined in this article.

In this article, we first explain why a Europeanization of national social partnership in the field of labour law is to be expected. We then outline a typology of interaction patterns in public policy-making and a framework of factors that mediate domestic adaptation to Europeanization pressures. This leads to a summary of our four country studies in Austria, Denmark, Luxembourg, and Sweden. These countries are typically ranked rather high in terms of their corporatism, but still vary significantly, and the manner and degree of Europeanization looks quite different in each of them. In addition, they are particularly interesting cases because the EU, for legal reasons, impinges most directly on strong forms of corporatism. Among our conclusions, we suggest that Europeanization is causing a convergence of state-society cooperation in the making of public policy.

## **Why Expect a Europeanization of Social Partnership?**

'Europeanization' can refer to the development of policies or policy networks at EU level (Risse et al., 2001), to the reactions in domestic

systems to top-down influences from the EU induced directly by European Community (EC) law or indirectly by policies such as the Maastricht convergence criteria (Ladrech, 1994), or to a combination of these processes (Börzel, 1999). For the purpose of this article, we adopt the top-down perspective defined by Ladrech, and we will try to isolate, as much as possible, the effects stemming from EU politics and (social) policy from other aspects of Europeanization.

There are a number of different ways in which the EU might exert top-down influence on the interactions between the state and social partners in national labour legislation, as follows.

1. *The upward shift of competences impinges on the (potential) scope of national corporatism.* The EU has assumed a number of competences which remove issue areas from the national political arena. If the social partners play a major role in national policy-making, they may experience this as a loss of influence. The latter may to a certain degree be replaced by EU-level corporatist deals regarding social policy. In that case, national actors again play a role as members of Euro-federations of interest groups, but that is a different story which does not necessarily counterbalance the loss of influence at the national level.
2. *The EC Treaty invites Member States to have their social partners implement EC Directives.* Article 137 of the Treaty explicitly encourages Member States to ‘entrust management and labour, at their joint request, with the implementation of Directives’. This provision was initiated by Danish Commissioner Henning Christoffersen (Hartenberger, 2001: 146) in order to protect the Nordic model of labour regulation, which is based on a great deal of social partner autonomy. As we show below, this aim was not achieved.
3. Additionally, a number of *EC labour law Directives contain provisions that encourage national corporatism.* For instance, the part-time work and parental leave Directives state that the social partners are best suited to finding solutions fitting the needs of employers and employees and that they should therefore be given a special role in implementation. Some Directives (such as that on working time) add incentives such as longer transition periods or additional derogations. This means that even a national government that has no interest at all in cooperating with labour and industry on labour law matters must now at least consult these societal actors if it wants to derogate from specific EC norms.
4. A further potential influence of European integration on national governance patterns is that a ‘*corporatist policy community*’ (Falkner, 1998) *may be perceived as a best-practice model* for national systems. The role of framing and the diffusion of policy paradigms and ideas has recently received increasing attention in European integration

studies (Kohler-Koch, 2000; Kohler-Koch and Edler, 1998). In the case of social partnership, we are talking about a national paradigm that has a long-standing tradition in many EU countries, but which now has attained some currency at supranational level, and might therefore feed back into Member States.

5. However, EU case law specifies conditions if European Directives are to be implemented via corporatist deals. Most importantly, the process must secure *full* coverage of the workforce (as is discussed in the section on Denmark below). Not all forms of national corporatism are therefore acceptable mechanisms.

## Operationalizing Europeanization Effects on Governance Patterns

This article examines four smaller European democracies: Denmark, Sweden, Luxembourg, and Austria, all commonly considered 'corporatist' countries. It must be noted, however, that the academic literature on corporatism versus pluralism and statism is far from uniform in categorizing individual countries. There is no authoritative classification of EU Member States with regard to their patterns of interest politics, and comparative studies do not always draw the same conclusion (see, for example, Crepez and Lijphart, 1995; Lehbruch, 1979; Schmitter, 1981). Moreover, the national patterns of relevance to a study of labour law differ somewhat from those assumed in the classic corporatism versus pluralism debate, which has neglected meso-level variance. We therefore offer our own typology, with a focus on the process of interest group involvement (see Table 1).

In many countries, decision-making processes vary according to the issue, but we assign each country to the category most typical for its labour regulation (or, where there is no dominant pattern, according to the form of corporatism that gives labour and industry their most far-reaching powers). Given this method of classification, only quite dramatic change will result in the shift of a national system from one category to another. We therefore need a way to register potential effects of a less dramatic character. Another methodological issue is that *internal* developments might cause movement between or within categories. Such movement might therefore not be attributable to Europeanization or, conversely, Europeanization may prevent a movement which would otherwise have occurred.

In other words, any stimulus coming from the EU level meets national factors that are also potentially dynamic; as Héritier (2001: 2) insists, national and European developments 'intersect and have a reciprocally reinforcing, counteracting, or neutralising impact'. Since we are also

**TABLE 1. Forms of Interest Group Involvement in Labour Law Decision-Making**

Model	Interest group involvement
1 Little or no involvement (statism)	Absent or not heard
2 Consultation (pluralism)	Accepted only as lobbyists
3 Tripartite concertation (corporatism Type A)	Joint process of decision-making between state and social partners
4 Complementary legislation (corporatism Type B)	The state gives <i>erga omnes</i> effect to social partner agreements (this model is also practised at EU level)
5 Social partner autonomy (corporatism Type C)	Labour and industry agree and implement on their own

seeking a framework that is as parsimonious as possible in order to conceptualize the many factors codetermining national Europeanization effects, we will refer to the *national policy stream* (Kingdon, 1984). We use a wide notion here that includes the relevant discourse: the ideas and communicative actions that can potentially drive, within institutional interactions, change in perceptions, preferences, and strategies (Schmidt, 2003: 32). It also includes elements of Kingdon's political stream (interest group campaigns) and problem stream (for a problem exists not 'as such', but must be brought to attention in a discourse). The existing national policy discourse can counteract or reinforce EU-made impulses for change, as can the domestic policy stream more broadly. The latter also includes a content-related dimension (recent measures adopted in the relevant area) and a process-related dimension (recent patterns of policy-making in the field). This accounts for the fact that even long-standing national processes may have experienced a period of gradual challenge or change (variation within the same ideal-typical pattern) when they meet the top-down impulse for change, and this may influence the response. A purely institutional focus will often exaggerate continuity, whereas concentration on strategic action may overemphasize change, since 'policy entrepreneurs' (Kingdon, 1984: 21) can react quite flexibly and may seize their opportunity and advocate change. From the perspective of the probability of reform, policy streams are intermediate between institutions and agency.

In this article, we therefore consider signs of potential Europeanization effects in the field of governance patterns at three levels: *types of corporatism or pluralism* that are deeply institutionalized in a country,

recent *policy streams* (including policy measures, interaction between interest groups and the state in their decision patterns and discourses) that may deviate from the formal and informal rule systems, and, lastly, *strategic action*.

## Four Smaller European Democracies in Practice

Below we discuss the Europeanization of cooperative patterns between the state and the social partners in our four countries. We will only summarize here the cases of Directives in relation to which a distinctive effect on social partnership was discovered. The effects are summarized in Table 2. We will also mention, however, general effects of Europeanization which we found outside the implementation realm. Furthermore, we discuss whether the competences of national social partners lost as a result of the Europeanization of labour law were counterbalanced by a particular cooperation pattern in the negotiation and implementation phase of such EU law.

### Austria: Europeanization Stabilizes Corporatism in the Social Realm

In Austria, corporatism is extremely well developed, both structurally (interest group set-up) and procedurally (involvement in policy-making). There are a number of hierarchically organized Chambers (for business, labour, agriculture, and so on) with compulsory membership established under Austrian law. The classic social partner institutions are the

**TABLE 2. Effects on National Social Partners: Overview of 24 Case Studies**

Directive	Effect on national social partners			
	Austria	Luxembourg	Denmark	Sweden
91/533 Employment contract information	0	0	+	0
92/85 Pregnant workers	0	0	0	0
93/104 Working time	0	0	+	+
94/33 Young workers	0	0	0	0
96/34 Parental leave	+	+	+	0
97/81 Part-time work	x	x	+	+

Note:

+ effect

0 no effect

x not yet transposed

Chambers of Business (*Wirtschaftskammer Österreich*), of Labour (*Bundesarbeitskammer*), the Conference of Presidents of the Chambers of Agriculture (PRÄKO), and the *Österreichischer Gewerkschaftsbund* (ÖGB). They cooperate formally (in a plethora of working groups) and informally with the other political institutions on a daily basis. Draft legislation is often negotiated between the social partners before being 'rubber-stamped' in parliament. Austria is therefore a classic case of our Type-A corporatism.

EU accession was expected to change this pattern of corporatism in a 'substantial and speedy' way (Tálos, 1994: 179). As a *direct* effect of membership, the issues prone to joint decision-making by the social partners and the state would be less numerous, since decisions would be shifted to the EU level. The major interest groups feared that significant parts of their powers in national policy-making would be transferred to Brussels, and this has indeed occurred; but compensating measures were designed to win their support for the accession negotiations and to have them campaign for a 'yes' in the popular referendum. They were even promised 'equal' participation in the various EU decision-making bodies and committees. Soon after accession, however, the government argued that under EU rules only government representatives could officially participate in national delegations. Nevertheless, in special cases, ministers have agreed to include social partner representatives in the Austrian delegation, although without the right to speak (Karlhofer and Tálos, 1996: 141).

All in all, no direct Europeanization effect on Austrian corporatism was experienced, for the Austrian model of tripartite concertation (corporatism Type A) is consistent with EU law (in contrast to Denmark, as will be seen below). As an *indirect* effect, however, pluralist patterns of interest group behaviour at the European level ('lobbying') were expected to trickle down into the Austrian system. A study comparing the social with the environmental policy networks during the years after Austrian EU membership found a number of signs of this effect (Falkner et al., 1999: 512). In both networks, there were tendencies to exploit the new rules of the game and to move towards pluralist pressure politics, even if that meant somewhat undermining the old corporatist balance. Focusing on the area of labour law which is central to this study, however, Europeanization does not appear to destabilize long-standing national corporatism.

Most importantly though, the centre-right government elected in 2000 was hostile to concertation (Tálos and Kittel, 2001). This domestic 'policy stream', however, came at the same time as (at least in social policy) pro-corporatist stimuli derived from the EU level. While in other areas the extensive consultations and tripartite negotiations of the heyday of national corporatism were cut back significantly, this was much less true



in the social and labour law field. The implementation of EU Directives, in particular, has recently been the area where cooperation between management, labour, and the state has been particularly intense. In this case, the Europeanization effect was *stabilization*. This example underlines how important it is to look below the level of dramatic change.

At the level of agency, typically more short-term and flexible, there is an interesting story to be told about the potential of multilevel politics for individual interest groups. In the case of the parental leave Directive, the ÖGB was successful in promoting the individual right of all workers to parental leave. This had not been possible at the domestic level before and was celebrated as a victory for workers, and for the women's department of the ÖGB in particular. This is one example of how playing across levels can be a good strategy in the multilevel EU system, even for actors who would in former days have been just one partner in a broader corporatist policy network at national level. Clearly, a change in the type of the deeply rooted institution of corporatism will not easily result from such a small-scale event. However, there could potentially be a longer-term effect if a cumulation of such single-case actor strategies undermines the basis of mutual trust in jointly negotiated solutions.

### **Luxembourg: Experimenting with a New Model**

Luxembourg has rarely been included in comparative studies of corporatism; those who have done so (Lijphart, 1999: 177; Schmidt, 1982: 135) have tended to place it midway between corporatism and pluralism. However, there is considerable interest group involvement (indeed tripartite concertation) in the field of labour law. There are two main trade union confederations: the socialist *Onofhängege Gewerkschafts-Bond Lëtzebuerg* (OGB-L) and the Christian *Lëtzebuenger Chrëschtliche Gewerkschafts-Bond* (LCGB). The *Fédération des Industriels Luxembourgeois* or Federation of Industrialists (FEDIL) was the dominant employers' association until 2000, when the *Union des Entreprises Luxembourgeois* (UEL) was founded. This new organization includes various associations as well as the Chamber of Commerce, Chamber of Handicrafts, and Chamber of Agriculture (Feyereisen, 2000). This reflects the fact that in Luxembourg, as in Austria, there is a system of professional chambers with compulsory membership. This system also includes three employee chambers: for manual workers, white-collar employees, and civil servants (Schroen, 2001: 254–8).

The dialogue between government and interest groups in this field is mainly based on three institutions: the chamber system, the Economic and Social Council (CES), and the Tripartite Coordination Committee (*Tripartite*). The chambers are legally entitled to issue an expert opinion on all draft legislation, and are often consulted during the

pre-parliamentary stage (Schroen, 2001: 259). The CES was founded in 1966 and comprises employer and union representatives with additional 'independent' officials representing the government administration. It should be consulted whenever draft laws of general social or economic interest are under preparation (Tunsch, 1999: 354). The *Tripartite* emerged from the steel crisis in 1977 and has equal representation from the government, employers, and unions. At first, it served as a political forum for socio-economic concertation in crisis situations, but has developed into a platform for regular dialogue between the government and the social partners (Feyereisen, 2001).

The partial shift of regulation in the field of labour law to the European level has entailed a certain loss of influence for the interest groups. The customary consultation of the chambers and the main union and employers' confederations in the national legislative process is not matched when it comes to the EU decision-making process in the Council. However, a new approach to interest involvement occurred with the implementation of the parental leave Directive. The fact that this originated from a European social partner agreement was taken as a reason to base its national transposition on an agreement between the main employers' associations and the unions; hence, the ministry did not make any proposals of its own, but left it to the social partners to agree upon a regulation. However, it had soon to be acknowledged that there was no legal base in Luxembourg for a procedure to make a social partner agreement generally binding for all employees: collective agreements between employer and employee organizations are only legally binding on their members and cannot obtain an *erga omnes* effect. Therefore the talks were broken off, and the Directive was implemented via 'normal' legislative procedures (Feyereisen, 1998).

Nevertheless, the possibility of social partner agreements for the implementation of Directives has not been totally excluded: there has been discussion of legal changes to introduce an *erga omnes* procedure for collective agreements (which could equate to our category of *complementary legislation*). Thus given the loss of social partner influence caused by the shift of regulatory competences to the European level, there might be *compensatory reforms* yet to come. At the end of 2000, the CES presented a reform proposal for its own area of responsibility, envisaging that in the future it should play an 'institutionalized role' in the supervision of supranational influence (in particular, stemming from European regulation) on Luxembourg. In addition, it proposed the creation of a framework for social dialogue which would explicitly adopt the European example as a role model (Feyereisen, 2001). These are clear signs, on the level of discourse, of a potential top-down diffusion of EU corporatist patterns in Luxembourg.

## Denmark: Towards a New 'Dual Method' of Implementation

Denmark is noted for its high degree of associational organization, a tradition of 'administrative corporatism' (Christiansen et al., 2001: 61), and for the role played by collective agreements as a central instrument of regulation.

Union density is about 80 percent. In addition to the main confederation, the *Landsorganisation* (LO), there are central organizations for salaried and public employees (*Funktionærernes og Tjenestemændenes Fællesråd* or FTF) and for graduates (*Akademikernes Centralorganisation* or AC). The largest umbrella association on the employers' side is *Dansk Arbejdsgiverforening* (DA). The characteristic of the 'Danish model' is that considerable autonomy is given to these social partners in employment regulation. Where legislation exists, as for health and safety in the workplace, they are included in tripartite administrative structures; but working conditions are predominantly determined by *autonomous* bilateral negotiations without governmental intervention (Due et al., 2000a, 2000b).

On those issues traditionally covered by law, social partner participation is unaffected by the partial shifting of regulatory competences to the European level. The tripartite coordination of the Danish position in EU decision-making became firmly institutionalized, with permanent committees linked to the various ministries. However, EU Directives which address areas traditionally covered solely by collective agreements pose a particular problem.

The first EC labour law Directives (for example, that on employment contract information) did not greatly affect the autonomous competence of the social partners, since they mostly related to topics considered of minor importance. The normal transposition procedure involved legislation with opening clauses which enabled the social partners to apply better regulations by way of collective agreements. However, the working time Directive concerned a topic of central importance for the collective bargaining agenda; its implementation became a test case in which the Danish government, in accordance with the social partners, for the first time tried to transpose EU law solely through collective agreement (Knudsen and Lind, 1999).

Estimates of the proportion of the Danish workforce covered by collective bargaining vary between 70 and 85 percent (Madsen, 2000; Scheuer, 1997, 1999), but the European Court of Justice (ECJ) insists<sup>1</sup> that the implementation of Directives by collective agreement alone is permitted only if this ensures that all workers are guaranteed the rights specified. Since 100 percent coverage of collective agreements exists nowhere, this is in reality a demand for *erga omnes* provisions or for complementary legislation. In November 1999, the Commission sent the

Danish government a letter of formal notice to ensure full transposition of the Directive, and this was followed in September 2001 by a threat of action in the ECJ.<sup>2</sup> The government and the social partners (with some opposition on the union side) then agreed to introduce complementary legislation (EIRR, 2002). A precedent had been set earlier in the same year when the social partners agreed (also with some internal dissent) that the Directive on part-time work should be implemented by a similar method: in this case, because the coverage of part-time workers by collective agreements was clearly insufficient (EIRR, 2001).<sup>3</sup>

In the case of the parental leave Directive, almost all the requirements were already fulfilled by legislation. The only exception concerned leave 'on grounds of force majeure' (clause 3 of the Directive), which was, however, covered by numerous collective agreements. Here too, the government and the social partners agreed to implement this clause by comprehensive collective agreements, a procedure also questioned by the Commission (interview notes).

Hence, four of the six Directives entailed challenges to social partner autonomy. Those on employment contract information and parental leave attracted little attention because they did not touch upon the core interests of the social partners. However, the remaining two (on working time and part-time work) were more significant. Hence, the form of regulation involved a change of category from *social partner autonomy* to *complementary legislation*. Nevertheless, the change does not restrict the freedom of the social partners in substantive terms. They are still able to negotiate the content of regulation without state interference, and the ensuing legislation merely guarantees an *erga omnes* effect. Nonetheless, this 'new dual method' (Jørgensen, 2001) of complementary legislation is regarded with great scepticism in Denmark. The unions, in particular, fear loss of membership if they are no longer exclusively responsible for the regulation of key working conditions. There is also fear of the erosion of the 'Danish model' if more and more employers refer to the minimum legislation and no longer negotiate on these topics.

The transposition of the working time Directive is of particular interest because, like parental leave in Austria, it illustrates the potential of multi-level politics for individual interest groups. When the Danish government and the social partners informed the European Commission that collective agreements would be sufficient to fulfil European requirements, some smaller unions and confederations argued, on the contrary, that legislation would serve the interests of their membership better (Madsen, 2000). This reflected internal conflict over tactics among Danish employers, who wanted to rely on the successful 'Danish model', yet were generally unwilling to conclude collective agreements with certain union organizations, such as the AC. Since graduates in the private sector usually have positions close to management, employers prefer to employ

them on individual contracts rather than on the basis of collective agreements; hence, DA has not concluded agreements with AC. The latter therefore refused to endorse the argument that collective agreements were a sufficient means of implementing EC Directives. Other smaller unions excluded from the bargaining process even complained to the European Commission (Petersen, 1998). Hence, the smaller unions could use the multilevel system for their purposes. Backed up by the EU requirement of comprehensive coverage, they first attempted to put pressure on Danish employers to conclude working-time agreements with their members. When this failed, they at least managed to achieve coverage of their members via legislation.

### Sweden: Fear of Re-centralization

The Swedish corporatist model is similar to Denmark, but there are some crucial differences, particularly in the field of labour law. As in Denmark, there is a high degree of organization on both the employees' and employers' side. The main union confederations are *Landsorganisationen i Sverige* (LO), which covers manual workers, the white-collar confederation *Tjänstemännens Centralorganisation* (TCO), and a smaller confederation for civil servants and graduates, *Sveriges akademikers centralorganisation/Statstjänstemännens riksförbund* (SACO/SR). *Svenska Arbetsgivareförening* (SAF), the main employers' confederation until 2001, has been succeeded by a new organization, *Svenskt Näringsliv* (Confederation of Swedish Enterprise).

The principle of autonomous self-regulation by the social partners has been a valued feature of the Swedish system since the Saltsjöbaden agreement of 1938, and there was concern that EU accession should not endanger this. During the negotiations, Sweden therefore secured a clause in the accession treaty designed to guarantee the maintenance of the autonomous model (*Official Journal of the European Communities*, 1994: 397).

In broader social policy, the Swedish social partners are also often involved in the preparation of draft legislation. To the extent that their competence was reduced by the partial shift of regulation to the European level, they have been compensated (as in Denmark) by regular involvement in the preparation of Swedish decisions in the EU Council.

The implementation of employment Directives in Sweden might in principle raise similar problems to those faced by Denmark. In practice, this is less serious, not only because of the special clause in the accession treaty, but also because the scope of social partner autonomy is not as encompassing as in Denmark. *Completely autonomous* social partner regulation in Sweden mainly applies to wage policy. In contrast to Denmark, however, legislation on broader employment issues is common, though frequently there is provision for derogation by collective agreement.

Hence, only one of the six Directives examined has notably affected autonomous regulation in Sweden: that on part-time work (see also Andersen, 2003). This was the first case in which the government wished to implement a Directive by collective agreement alone, because part-time work had not previously been regulated by law. The government asked that the social partners should negotiate the removal of all clauses in existing collective agreements which discriminated against part-time workers. But while the unions agreed to this procedure, the employers did not. In 1990, SAF had taken a strategic decision to conclude no further agreements at central level in order to ensure a decentralization of collective bargaining (Bruun, 2002; Thörnqvist, 1999). Renegotiation of all sectoral and company agreements to meet the requirements of the Directive would have been impracticable, and without a cross-sectoral agreement, workforce coverage would probably have been incomplete. After lengthy and fruitless negotiations, the government was obliged to legislate in order to bring the deadlock to an end (Berg, 2001b, 2002b). This case confirms that 'the development of corporatism cannot be generated by a deliberate political design by the state, though state assistance is essential' (Traxler, 1990: 64).

The implementation of the working time Directive also caused problems: even though the existing working time legislation was already largely in line with European requirements, it allowed the social partners to agree almost unlimited derogations from the statutory standards. Hence, the scope of these derogations had to be limited in order to conform with the Directive. On the employers' proposal a procedure was adopted to maintain as much flexibility for the social partners as possible: a clause was added to the existing legislation which simply stipulated that derogations may be made only in so far as they still guaranteed a level of protection consistent with the Directive. In essence, therefore, the Directive was not incorporated into Swedish law, but was transposed by means of a simple reference to the Directive.

Such a method does not, however, meet the principles of full effect and legal certainty defined by the ECJ as preconditions for correct transposition (Prechal, 1995: 88–90), since there is no clear mechanism for enforcement of the complex requirements of the Directive (which, our interviewees suggested, are mostly ignored by employer and worker representatives). The procedure was merely a symbolic transposition of the Directive, which the Commission did not accept. Revision has, however, been delayed by political disagreements over broader government plans for working time reform (Berg, 2000, 2001a, 2002a). Presumably, legal changes cannot be postponed indefinitely, and these will entail some restriction of the autonomy of the social partners. The effect will be significant, though not as far-reaching as in Denmark.

In sum, so far European Directives have not encroached on social

partner autonomy to the same extent as in Denmark. In the main such case to date, the part-time work Directive, the question regarding whether implementation via collective agreement could actually provide sufficient workforce coverage was not put to the test. Had the employers cooperated with such a procedure, this would have been an interesting basis for determining whether the accession treaty actually removed the requirements of previous ECJ case law.<sup>4</sup> Had the employers agreed to make a deal, the Directive would have exerted a kind of counter-effect against the trend towards decentralized collective bargaining. There may, however, be further Directives to come which again interfere with social partner autonomy. One example already discussed in Sweden is the potential Directive on temporary agency work, which includes reference to wages. The working time example also illustrates how Directives may interfere with collective bargaining autonomy, and any revised transposition mechanism will constitute a more substantial Europeanization effect. If social partners are to be involved as the main actors in the implementation of Directives, this requires collective agreements (or at least coordination) between the peak organizations, for practical and coverage reasons. These requirements stand in contrast to the decentralization trend in the national policy stream.

## A Convergence of National Patterns?

In this article, we have examined the implementation of six employment Directives in four smaller Member States, all of which have rather corporatist patterns of public policy-making. The findings of our four studies are summarized in Table 3.

The strongest impact of Europeanization can be seen in Denmark. This is because there is a legal incompatibility between autonomous social partner action in the implementation of Directives, on the one hand, and EU law as interpreted by the ECJ, on the other. The national confederations of labour and industry do not cover all individuals who should be guaranteed the minimum rights conferred by the relevant Directives. Hence, the requirements for the implementation of EU Directives have caused a change in the nature of Danish corporatism. Against the background of the Christoffersen clause mentioned previously, which was designed to encourage regulation by the social partners, this is a rather paradoxical outcome. Originally, the clause was intended to protect the Danish model. But while it might offer incentives for a strengthening of social partnership in other Member States (as long as they possess an *erga omnes* procedure for generalizing the coverage of collective agreements), Denmark itself has been forced by ECJ case law to change its model in the opposite direction to that intended: towards less social partner

TABLE 3. Summary of the Four Cases

Country	Long-term institutional inheritance	Pressures in current policy stream	Special role of policy entrepreneurs
Austria	Corporatism (Type A) <i>Europeanization effect: none</i>	Dismantling of corporatism <i>Europeanization effect: conservative</i>	ÖGB obtained an individual right to parental leave by supranational action
Luxembourg	Corporatism (Type A) <i>Europeanization effect: experiment with Type B (complementary legislation)</i>	Compensation for lost social partner competence discussed <i>Europeanization effect: none (to date)</i>	None
Denmark	Corporatism (Type C) <i>Europeanization effect: move towards Type B (for Europeanized labour law)</i>	None	New strategic options for hitherto sidelined unions
Sweden	Corporatism (Type C) <i>Europeanization effect: none (to date)</i>	Decentralization of negotiation <i>Europeanization effect: potential re-centralizing effect (not realized to date)</i>	None



autonomy or, at least, towards an 'autonomy' without exclusivity in employment standard setting.

In other countries, the effects are much more subtle. Our framework (which builds on national institutions, policy streams (including discourse), and on actor strategies as factors mediating any EU-level impetus for domestic change) also alerts us to effects on levels lower than change regarding deeply rooted, national core institutions. For example, the Austrian case shows that Europeanization can have a stabilizing effect if national policy streams are otherwise working in the direction of destabilization of the pre-existing national institution of corporatism. It also reveals an example of Europeanization leading to novel actor strategies, since Austrian unions can now use the EU-level social dialogue to pursue their policy options, instead of having to negotiate with their domestic counterpart. The same was the case in Denmark, where the implementation of the working time Directive shows how the multilevel system creates new strategic options for hitherto sidelined minority unions. In addition, the Austrian example reveals that endogenously driven regime change (in this case, caused by the governmental lurch to the right) may be inhibited by Europeanization. The Swedish example illustrates that Europeanization may have a similar effect on interest groups to that which is usually expected for state actors: a strengthening of the central level. If, at the same time, there is a trend towards decentralization in the national policy stream, this tendency may either be counteracted or (as was the case with the part-time Directive in Sweden) social partner involvement, as such, may be reduced. In addition, the working time case shows how EU rules restricted the autonomy of national collective bargaining in Sweden. As legislation on working time is not unprecedented in Sweden (unlike Denmark), this cannot be considered a fundamental systemic change, but is, nevertheless, an interesting effect of Europeanization.

Overall, the observed changes in the four corporatist Member States add up to a *slightly convergent development* towards a moderate social partnership model of involvement of private interests in the making of social policy.<sup>5</sup> The trend is only slightly convergent because it results neither in the emergence of a homogenous model nor in a movement in all the Member States in this direction. In so far as clear-cut changes have occurred (or at least been pursued) in the individual countries, these are to develop a form of *erga omnes* legislation, as has been practised in EU-level social policy since Maastricht. The latter entails that regulatory standards negotiated on a social partnership basis can be made generally binding by means of a Directive without adding any change in content. In similar mode, the social partners at national level can pre-negotiate agreements which are then moulded into law or are made generally binding by means of an *erga omnes* declaration, or they may work

directly together in a tripartite mode with public actors in the drafting of laws. However, they can no longer determine social policy regulation completely autonomously, without state intervention.

This means that countries with an extremely strong corporatist tradition have moved towards the centre. This is notably the case with Denmark and (to a more limited extent) Sweden, where such regulatory norms were in earlier times always negotiated and implemented by the social partners independently and exclusively. In several cases, Denmark has now had to use legislation to make the content of collective agreements binding for all citizens. From one viewpoint, this can be said to optimize the potential 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 members 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, it is an intrusion on the grounds of rather legalistic considerations, for the old system of autonomous labour regulation by the Danish and Swedish social partners seems to have worked quite well and, most importantly, without significant complaints by citizens outside the (theoretical or practical) reach of the agreements.

For a somewhat less intensively corporatist state such as Luxembourg, there were at least efforts made to reform social partner involvement. This had originally varied between consultation and tripartite concertation, but always with a central role for the government and parliament. The introduction of a kind of *erga omnes* legislation is now being considered, whereby the social partners might negotiate their own bipartite agreements which would subsequently be made generally binding by legislation. In the Austrian case, finally, a tripartite mode of corporatism was stabilized through the effects of Europeanization, at least in the area of labour law.<sup>6</sup>

In sum, this results in an empirical trend in the direction of ‘convergence towards more moderate diversity’, as argued theoretically by Falkner (2000). However, it would be dangerous to overgeneralize the findings of a study of only one policy field, and in only four countries. The trend towards ‘light convergence’ in the sense of more moderate difference is thus established only with reference to the ‘semi-Europeanized’ arena of national social policy, where the Member States have become active in the implementation of EU Directives. It is, however, possible that this trend could spread to other domains within Member States’ social policy which have so far remained a solely national prerogative. Such a broadening of convergence tendencies depends, inter alia, on specific internal constellations in the Member States. Most importantly, are there further domestic challenges to the existing relations

between the state and social partners that could reinforce the pressure for change induced by the EU?

In addition, any potential broadening of the trend described in this article depends on the status of EU social policy in the years to come (for example, how far the open method of coordination will be extended in the social policy field at the expense of binding regulation). At least to date, however, the importance of legislative activity in this field has not significantly diminished.

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## NOTES

- 1 See, for example, the ECJ's judgement of 10 July 1986 in Case 235/84, *Commission of the European Communities v. Republic of Italy*.
- 2 The Commission's hard line appears to contrast with that of its predecessor: it is reported that the Employment Commissioner when the Directive was implemented, Pdraig Flynn, had informally approved the Danish approach (Knudsen and Lind, 1999).
- 3 In a separate development in 2002, the new right-wing government introduced an amendment to the implementation act designed to render void any provisions in collective agreements which restricted part-time work. This provoked fierce opposition by the social partners, and the three main union confederations tabled a complaint to the International Labour Organization Committee on Freedom of Association. The latter concluded that the Danish government should suspend its legislation and seek a negotiated solution (Jørgensen, 2003).
- 4 Analysis of the commitments made to Sweden in the accession treaty, and the exchange of letters with the Commission which served as their basis, does not support this assumption (Leiber, 2005, forthcoming).
- 5 It is important to reiterate that the convergence we examine here concerns only the procedural aspects of corporatism, not the substantive aspects included in some definitions of corporatism.
- 6 Note that there are increasingly issue-specific divergences in patterns of corporatism against pluralism in Austria, and our focus is on social policy alone.

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