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Lobbying for Justice? Organized Welfare in Germany under the Impact of Europeanization

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Abstract

The paper explores the impact of European integration on German welfare associations and their lobbying activities on behalf of the poor. The first part describes the restrictions of lobbying in German welfare corporatism. It argues that the use of the lobbying function is diminished due to the role of welfare associations to pacify rather than fuel political conflict. Based on the assumption that European integration contributes to the weakening of welfare corporatism, the second part analyses the effects of Europeanization on 'welfare lobbying'. The application of a conceptual framework, derived from recent Europeanization debates, leads to the distinction of three time periods, during which the impact of European policy on the lobbying behaviour of welfare associations has gradually increased. During the first two periods, a change in the welfare associations' political strategy towards the EU had a strengthening influence on their lobbying function. In the third period the political decision making process on the EU Services Directive provided a 'window of opportunity' for the welfare associations to further consolidate the use of their lobbying function.

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1. Introduction

The intensification of European integration processes has led to a new level of interdependence and problem awareness among the member states. In the area of social policy, scholars observe an unprecedented openness for learning and joint solutions (Begg and Berghman 2002: 187-193). There seems to be a growing alertness in EU-social policy debates about the relevance of co-operation and shared targets. The current political decision making process on the EU Services Directive demonstrates the effort to converge issue areas, which are by and large subjugated to national sovereignty. This raises the question of how these changes affect the role of domestic actors. The paper focuses on welfare associations in Germany and their struggle for organizational stability and political influence in an increasingly changing environment. It explores the issue of whether Europeanization has contributed to the weakening of welfare corporatism and its restrictions on the welfare associations' lobbying function in domestic social policy.

The paper proceeds in three steps. Following the introduction, section two focuses on lobbying in the context of German welfare corporatism. It is argued that corporatism considerably restrains the lobbying of welfare associations. A high level of integration into the system of public welfare limits their political autonomy vis-à-vis the state. In exchange for public funding the welfare associations are expected to serve as reliable social service providers and to pacify rather than fuel political conflict. However, the uniqueness of German welfare corporatism in the EU justifies the assumption that this could change as a consequence of Europeanization. Strong state support and legal protection of the welfare associations' social service provision, which is one characteristic of German welfare corporatism, is clearly in conflict with the free-market logic of economic integration. Based on the 'misfit' between welfare corporatism and EU policy goals, one can expect a strong impact of European integration, serving to weaken the corporatist restrictions on the welfare associations' lobbying function. In order to explore this issue section three is devoted to the analysis of Europeanization effects. By drawing on the more recent Europeanization literature I will carve out the conceptual premises that are particularly relevant to the analytic focus of this article. The main concept I refer to can be summarized under the heading 'goodness of fit' (Risse, Cowles and Caporaso 2001; Börzel and Risse 2003, Börzel 2005). The central argument is that the 'adaptational pressure' from the EU increases with the degree of 'misfit' between the EU processes on the one hand, and national institutional settings, politics and policies on the other. Given the uniqueness of

German welfare corporatism in the EU, 'goodness of fit'-arguments help to explain change in this issue-area. However, in order to grasp the full complexity of Europeanization in the domain of lobbying, the framework of analysis needs to be expanded to include a clearer focus on the politics dimension as well as on bottom-up mechanisms of change. A time-sensitive conceptual framework that integrates both perspectives (top-down and bottom-up) will finally help to sort out and evaluate empirical findings for different time periods of welfare lobbying from the mid-eighties until the current political decision making process of the EU Services Directive (1)

2. 'Lobbying' in German Welfare Corporatism [↑]

German welfare associations are complex organizations with a large bureaucracy and a constant exchange relationship with their various environments, formed by their member organizations, the state, competing organizations, close associates, clients and the public. The six 'central' welfare associations constituting organized welfare in Germany are the *German Caritas Association*, the *Welfare Services of the Protestant Church in Germany*, the *Association of Non-affiliated Charities*, the *Worker's Welfare Services*, the *German Red Cross*, and the *Central Welfare Agency of the Jews in Germany*. According to the federalist structure of the German polity, all welfare associations are shaped by the division of regional, district level and local associations. Differences in size, ideological background, membership profile and affiliation not only influence the strategic choices of single welfare associations (Nährlich and Zimmer 1997), they also determine their lobbying function and its relevance to national social policy. Beyond these differences, however, the welfare associations share a high degree of ideological and organizational coherence, professionalism and bureaucratic accountability as well as the ability to function throughout the entire geographic territory of the nation state and in all areas of social welfare. Based on these features they work together within their legal amalgamation and organizational mouthpiece, the *Federal Association of Non-statutory Welfare*.

The welfare associations look back over a tradition that is – in some cases – over a century old. Their organizational structure developed from a history of interaction with the state and civil society. As intermediate organizations they have to manoeuvre between politics and society as well as the tensions resulting from their different demands. The relationship between welfare associations and the state in Germany is best described as political exchange in corporatist settings. While the state provides financial support and allows for political influence, welfare associations serve as reliable social service providers and intermediate organizations to provide information and to protect the state from justice claims by channelling and pacifying civil society involvement into the welfare system. Based on the principle of subsidiarity the welfare associations enjoy a *unique legal status* in the charity and foundation law, securing the various kinds of public funding and privileged access to the provision of social welfare services (2). Historically the exchange relationship with civil society precedes the one with the state. Traditional support includes income from various private sources (donations, gifts, contributions from members and support groups, legacies, fines and foundations) as well as the voluntary work, without which numerous small establishments could not exist. To people who desire to become involved in society the welfare associations offer many opportunities for participation. As intermediate organizations between state and society they are able to canalise and transform civil dissatisfaction into effective political demands.

The welfare associations' problems to balance out their relationships with state and civil society are reflected in their dual function of lobbying and social service provision. Lobbying concerns all action taken to influence political decision making processes (Lahusen and Jauß 2001: 52; Michalowitz 2004: 53). Associations often acquire political influence in exchange for expertise and competency in their field of action (von Winter 2004: 774). In the case of welfare associations, lobbying overlaps with advocacy interest representations or the defence of 'weak interests'. Interests are considered weak if their agents suffer from a lack of power resources that results in a relative disadvantage in the political interest competition (Imig 1996, Willems and von Winter 2000: 14). If welfare associations lobby for justice, they lobby for the poor and needy, who lack the resources to

enter national politics, let alone its European equivalent (3). Welfare associations defend equal access to basic social services, needs-oriented services for the poor, as well as the just redistribution of income to eradicate poverty. This involves the classical lobbying activities (Alemann 1989), such as the use of access to government and parliament, the release of press statements as well as less publicly visible means (i.e. participation in public hearings within the parliament or the relevant ministries and background discussions with political decision makers).

Lobbying is in two ways linked to the social service provision. Based on a close co-operation with public service providers like the state, local authorities and social insurance bodies, the welfare associations are highly integrated into the system of public welfare. The consequences for their lobbying function are ambivalent. Given their direct involvement with poverty problems, welfare associations are in the position to judge the legislation and administration of social policies by the needs of the most vulnerable members of society. However, their close association with the state makes corporatism a rather inflexible arrangement that restricts the use of the lobbying function (4). If the lobbying function conflicts with the organizational interest of welfare associations to secure state funding, it will not be used.

The second link between both functions consists in the fact that lobbying aims at the legal protection of discrete social services. As semi-public organizations with strong ties in civil society, the welfare associations are in a better position than the state to morally support the poor, to offer them legal advice and to help them cope with a potentially hostile welfare bureaucracy. Thus, lobbying for justice is actually a two-dimensional activity. The welfare associations require the state to do things that they cannot do for the poor, namely the regulation of social rights to contribute to the eradication of poverty. But they also demand support for offering discrete services to the poor that are unlikely to be adequately performed by the state *or* the market. Providing a just welfare system is not only a matter of guaranteeing a minimum income above the poverty line. It also involves social work on a grass roots level which is best performed based on solidarity and humanitarian values beyond the logic of power and money. Thus lobbying concerns not only social rights reform, it also concerns the legal basis of the welfare associations' care work in the form of the charity and foundation law.

As dual functions, lobbying and social service provision complement each other. But this should not obscure the fact that these functions adhere to specific ethical principles and policy goals, they bring about distinct consequences for the state, and their implications for problems of poverty and social inequality differ (see table 1).

Table 1

By targeting institutional change in the legal system, lobbying refers to justice. Its goals are the eradication of poverty based on rights as well as a charity and foundation law that serves the poor. By contrast, social service provision adheres to humanitarianism. The goal is to practise humanitarian values by caring for particular needs on a face to face level (5). Moreover, both functions bear different consequences for the government. By providing information to the government about the effectiveness of anti-poverty policies, lobbying assumes to a policy feedback function. But it also confronts the government with critique and entitlements, which, if ignored, could easily contribute to the de-legitimization of existing institutions. Thus, lobbying politicizes poverty. Social service provision, by contrast, depoliticizes poverty. Its logic is to help rather than protest. Instead of contributing to political conflict, it channels and pacifies civil society involvement in the welfare system.

The pacifying function of the welfare associations should not be underestimated. Even under the conditions of mismanagement and inefficiency they are of help to the government by offering a response to problems that are taken into the political system by democratic processes without being easily solved (Seibel 1992; Salamon 1996; Baumann 1998). Given this, the lobbying function is restricted when it conflicts with the state's claims on the welfare associations to pacify rather than

fuel political conflict. Currently, the welfare associations' ability to balance out the potentially conflicting roles of lobbying and pacification is put to a real test. The traditional pillars of organizational stability, provided by supportive socio-moral milieus and state funding, are crumbling. Given this, the welfare associations will try to avoid criticizing the government by an offensive use to their lobbying function. Yet, the total renunciation of lobbying is no solution either. This is the case for three reasons. The first reason relates to the conflicting logics of membership and influence. In contrast to traditional interest groups with a congruence of members and represented interests, the organizational integrity of welfare associations depends on their ability to transform the value-orientation of their members into supportive energy and voluntary engagement. Given this, it is essential for the welfare associations to follow a membership logic based on values rather than interests. Justice, humanitarianism and compassion serve as stable points of reference to maintain the support of members and to attract new ones. The use of the lobbying function provides the most effective way to publicly demonstrate a positive attitude towards these values, particularly if it is well covered by the media.

The second reason relates to public sector reform and the growing relevance of a social service market. During the nineties, the unique legal status of the welfare associations has increasingly come under pressure from two sides. Firstly, the state has contributed to the erosion of the principle of subsidiarity by introducing market elements in the management of welfare services (Backhaus Maul and Olk 1994). Decisive steps were the shift from cost effective to performance based monetary compensation as well as the introduction of the choice to delegate tasks to private service suppliers rather than welfare associations. Consequently, economization pressure increased as welfare associations were forced to compete with commercial service suppliers, and the state weakened the corporatist arrangement by treating the welfare associations primarily as social service providers rather than as political partners (Lange 2001: 67). Secondly, profit-seeking service-suppliers are fighting for their market share (nationally and in the EU) by means of legally accusing the welfare associations of violating free competition. As has been shown in the past, the European Court of Justice (ECJ) and national courts can always rule cases to the disadvantage of welfare associations (6). In response to this situation, welfare associations use their lobbying function in order to draw attention to

- their political role in social policy, and
- the non-marketable side of social welfare services that are essentially based on humanitarian values rather than profit-seeking motives.

A third reason concerns the state. If the welfare associations see the corporatist arrangement as becoming substantially jeopardized by the state, their hesitation to 'lobby for justice' could easily fall into the opposite extreme of using the lobbying function as a last resort to play out their power towards the state (Backhaus-Maul 1995). Studies that focus explicitly on 'welfare lobbying' during the early and mid-nineties (Pabst 1997, Baumann 1998) share the assessment that the two largest welfare associations have notably strengthened their advocacy engagement by means of publishing poverty reports and openly criticizing cuts in social assistance. A more offensive poverty politics was geared towards making one's mark in social policy. The use of the lobbying function aimed at generating the trust of the public and making the state return to the corporatist arrangement in an overall climate of welfare state retrenchment.

In the meantime, public funding has become further restricted. Under the conditions of fiscal austerity welfare corporatism became a less suitable instrument of redistribution for the government. Consequently, the corporatist arrangement has become undermined to the extent that patterns of 'disorganized welfare corporatism' now end a period of relatively stable exchange relationships between welfare organizations, the state and civil society (Bode 2004). In the politics dimension, these changes work to cut off traditional channels of influence in the domestic social policy arena. They are paralleled, however, by the enhancement of European social policy and the engagement of welfare associations in lobbying, strategic networking and coalition-building on the European level.

With the erosion of long-established bargaining arrangements, it has become more important to create new flexible and strategic alliances for lobbying (Dahme 2005: 63). At the same time, welfare associations are in the midst of organizational reform. Much of what has been practised under the terms 'new governance' and 'contract management' in public sector reform has had a strong impact on the welfare associations. Even though they do not share the profit motive of commercial service suppliers, their organizational structure has to a considerable extent become adapted to that of an economic venture (Lange 2001: 66). Current reform strategies have been described in terms of a 'divided modernization' (Dahme 2005: 92). Whereas the welfare associations are energetically pushing forward the modernization of operational means and resources, politically they are holding on to their unique legal status. As we will see in the next section, Europeanization has led to the consolidation of this strategy, and lobbying assumes a key function within it.

3. 'Europeanization' and Domestic Change [↑]

From the 'goodness of fit' perspective, Europeanization is understood as the 'emergence and the development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problems solving that formalizes interactions among the actors, and of policy networks specializing in the creation of authoritative European rules' (Risse, Cowles and Caporaso 2001: 3). The main goal of this concept is to analyse the top-down pressure for change and its effects on the domestic level of politics. It is assumed that 'misfit' is a necessary but not sufficient condition for domestic change and that the effect of 'adaptational pressure' on the national level depends on intervening variables that facilitate adaptation. More recent literature on the 'goodness of fit' suggests an analytical distinction between two logics of Europeanization (Börzel and Risse 2003: 36-75). The first logic, called the 'redistribution of resources', is based on a rationalist-institutionalist perspective. Europeanization is perceived as an emerging political opportunity structure that offers additional resources for certain actors to pursue their strategic goals while preventing others from exerting influence. The capacity of actors to exploit such new opportunities or to avoid constraints depends on the multiple veto points in a country's institutional structure as well as on the availability of supportive formal institutions. The second logic of 'socialization and learning' is best grasped from the constructivist perspective of sociological institutionalism. This approach stresses the collective understandings and intersubjective meanings of 'proper' behaviour that guide action. The focus lies on discourse and its transformative power in institutional settings. Facilitating factors are the so-called norm entrepreneurs, such as 'epistemic communities' (Haas 1992) and 'advocacy issue networks' (Agyris and Schön 1980), who enhance social learning by means of persuasion and arguing. The distinction between these two logics is mainly analytical. Empirically, they could occur in a parallel fashion or signify different periods of the same Europeanization process.

The explanatory potential of the misfit-approach is expected to be high because of the exceptional character of German welfare corporatism in the EU. As argued earlier in section two, based on the notion of free and equal competition, the unique legal status of welfare associations in Germany can be interpreted as an unjustified privilege. This could easily provoke the Commission exert pressure for a better 'fit' of the national legal system with the free market logic of economic integration. The category of 'misfit' then applies to the policy dimension. Adaptation to the EU is a matter of changing the laws by eradicating the unique legal status of welfare associations. However, if we want to examine the issue of how leading actors in the field of organized welfare cope with this kind of pressure and how this affects the lobbying behaviour of welfare associations, the misfit category needs to be expanded to the politics dimension (7). It needs to be clarified what 'misfit' means with regard to the politics dimension and whether it can be considered a necessary condition for change. The answer is that welfare associations can be expected to circumvent adaptation to EU policy-demands by means of adaptation to EU politics. Having done everything to protect their legal status in domestic politics, they can be expected to act in a similar fashion on the European level. They will take a stand politically vis-à-vis the Commission and other European institutions that are potentially interfering with their national legal position. It will be argued in the empirical section that the

adaptation to the EU politics dimension requires them to learn strategically.

This brings us to a second aspect that needs to be reconsidered for an adequate analytical framework. The misfit approach identifies socialization and learning as one facilitating factor for domestic adaptation to European policy. Once more, this reflects the policy-focus of misfit-arguments. Learning from this perspective means 'social learning', entailing lessons about the social construction of policy problems as well as the scope and purpose of policy (May 1992: 332). It thus concerns policy goals instead of the political strategy chosen to pursue these goals. The application of the term learning to the politics dimension requires a concept of 'political learning'. A lobbying organization learns in politics if it becomes more sophisticated in advancing its policy arguments, if it enlarges its coalition, changes its political strategy or shifts the arenas of its advocacy among branches and levels of government. Thus, 'political learning is concerned with lessons about manoeuvring within and manipulation of policy processes in order to advance an idea or problem ... Documentation of political learning requires evidence that the policy elites of a given advocacy coalition are aware of the political prospects of the proposals or problems they advocate' (ibid.: 351). Political learning does not exclude social learning. Those who learn in the politics dimension can also learn in the policy-dimension (i.e. by reconstructing policy goals). But on average, agents who learn in the politics dimension aim at making *others* learn from *them* how to perceive policy goals. A lobbying organization that is becoming more sophisticated in its advocacy of a certain policy view might be able to bring about a change in an opposing groups' construction of a policy or problem.

To expand the term learning to the politics dimension has not only the analytical advantage to differentiate forms of learning. It also allows for a shift in the conceptualization of political power from a considerably static concept of institutional power to a process-oriented notion of power that seems more suitable to the complexity and dynamics of multi-level politics in the EU. From the misfit-perspective, power is thought of as institutionally defined or as a characteristic that political actors either do have or do not have. Thus the rationalist logic of action is based on the assumption that domestic institutions put actors in the position to profit from the EU whereas power according to the logic of socialization and learning seems to be reserved to epistemic communities that are able to influence others to adapt to EU-policy templates or goals. Stretching the concept of learning to explicitly include the politics dimension broadens the perspective to grasp situations where 'weak' actors, who are not able to immediately profit from Europeanization, learn to gain power over time by means of strategically using the contingency of multi-level governance to their advantage. Particularly in the field of lobbying and interest representation, a 'snap-shot' view will not grasp the variety of channels open to actors and the fluidity in the patterns of institutional behaviour in the EU-multi level system (Ladrech 2005: 319).

The final point concerns the top-down focus of the misfit-approach. Arguments from this perspective usually remain trapped between top-down pressure and institutional change. But there might be domestic driving forces for change that contribute to Europeanization without adaptational pressure from the EU. Given this, the top-down focus needs to be complimented by a more systematic thinking about bottom-up forces for change. Thus scholars have drawn attention to the possibility that political actors can "'choose" and "learn" outside of institutional pressure' (Jacquot and Woll 2003: 3, see also Radaelli 2004: 7). According to the concept of 'usage' (Jacquot and Woll 2003) actors 'use' European integration processes in order to pursue their own domestic policy goals. Another approach that contributes to a better understanding of bottom-up dynamics is the model of 'multiple streams' (Zahariadis 1999). It helps to grasp the efforts of domestic actors to circumvent adaptational pressure in an entrepreneurial fashion by means of manipulating the interaction of EU and domestic 'streams' (i.e. political moods, problem perceptions, and suggested solutions), moving independently from each other through processes of policy-making. In idiosyncratic policy domains with strong cultural imprinting these patterns of response do not seem to be exceptional. Recent studies show that Europeanization in these areas is best analysed as a process of complex sequences and time patterns, during which actors are more or less successful in avoiding adaptational pressures (Megie and Ravinet 2004). Thus, analyses of Europeanization should not focus too

narrowly on domestic adaptation to EU-policy templates or goals. Europeanization already begins when 'EC political and economic dynamics become part of the organizational logic of national politics and policy-making' (Ladrech 1994: 69). Moreover, it is not a one-way street, and studies on misfit ought to concentrate on the 'interactive and recursive nature of the relationship between the EU and its member states' (Börzel 2005: 63). Studies on the Europeanization of lobbying suggest that adaptive processes result from EU *and* national sources (see Ladrech 2005: 322). The following section will analyse these sources of change in more detail. I will adopt a time sensitive frame-work that integrates both perspectives (top-down and bottom-up) for a systematic exploration of the links and feedback loops between bottom-up and top-down dynamics of Europeanization and its affects on the lobbying function of organized welfare in domestic politics. Guided by the analytic framework in the above figure three time periods are divided according to the shape and objective of European governance, the political strategy of the welfare associations to cope with the EU and the effects of this strategy on their lobbying behaviour in domestic politics (see table 2).

Table 2

3.1. Time period I: Protecting welfare corporatism from 'Europeanization' ↑

The beginning of the first time period dates back to the year of 1984 when the European Parliament issued an EC-wide legal status for service organizations. It thereby responded to the demand of one French and one German welfare association who wanted to merge their activities under the roof of one joint European organization. Five years later this initiative provoked a political spill over. The Commission stretched its regulatory competency beyond the issued domain by suggesting a legal status for a number of organizational types, among them the welfare associations. In this context, the French concept *Economie Sociale* served the Commission as an interpretative framework to define the social service provision of welfare associations as a 'market' rather than a 'social' activity. Given the fact that the European market creates a 'gateway to EC-law' (Lange 2001: 92), this definition can be read as an 'attempt to hierarchy'. The Commission intended to apply a hierarchical mode of governance by pushing the regulation of NGOs and third-sector organizations according to the Community principles 'the freedom of movement for services' and the competition rules in the EC Treaty. Based on these principles the preferential treatment of German welfare associations by the state could easily have come under attack.

On the side of the welfare associations, one can speak of different reactive patterns that add up to a defensive political strategy. Speaking in terms of the logic of redistribution of resources, the following situation emerged. In contrast to social organizations in France and England, who expected advantages for their national position from the Commission's move, welfare associations in Germany feared the redistribution of resources to their disadvantage. The attempt of the Commission to converge and redefine associational activities as 'economic' and under free competition was considered a threat to their unique legal status in Germany. They were thus afraid of losing their domestic legal status that guaranteed them a certain organizational stability. After years of trying to 'ignore Europe away', they fell into the opposite extreme of constructing a European threat to their 'uniqueness'. Arguing for the protection of the German tradition of subsidiarity against European reform demands, they were able to win the German government over to their side (Schmid 1996: 167). In December 1995, Germany successfully vetoed a proposal by the Commission concerning the change of status of the welfare associations based on the argument that the Commission had no competency in this area (see Lange 2001: 124). Another incident that preceded this decision can be described in terms of 'policy uploading'. Actors try to upload policies in order to reduce the adaptational pressure that results from the misfit of national and European policy (Börzel 2005: 63). In 1991 the Ministers of Work and Social Affairs of the German *Länder* initiated a declaration about welfare associations that has entered the appendix of the Treaty of Maastricht as 'Declaration 23 on cooperation with welfare associations'. Declaration 23 paralleled article 32 of the German Reunification Contract that explicitly acknowledges the unique legal status of the six welfare associations (Loges 1994: 125; Lange 2001: 127). Even though the anchoring of the comparable

Declaration 23 in the Treaty of Maastricht had no legal consequences and was thus 'primarily symbolic', it signalled a change in the perception of welfare organizations, leading to the explicit acknowledgement of their status and achievements in the welfare systems of the member states.

What were the effects on the lobbying behaviour of welfare associations in domestic politics? The political action of the welfare associations during the first time period had been state-centred. Instead of recognizing the Commission as a powerful actor in social policy that could become part of a political strategy beyond welfare corporatism, the welfare associations relied on the German government to protect them from European influence. Given this, the impact of European policy on the lobbying function should not be overestimated. The first period parallels the early nineties when two large welfare associations had strengthened their lobbying activities. However, as discussed in section two, this strengthening was caused by factors that were firmly grounded in domestic politics. Lobbying formed a reaction to the economization pressures in the context of welfare state retrenchment and public sector reform. Thus, it would equally have taken place without European policy.

3.2. Time period II: Turning to offensive strategies

In the year of 1993, the approval of EU budgetary funds to support the networking and lobbying activities of NGOs and third sector organizations marked a further shift in perception. The welfare associations were not identified as mere objects of regulation anymore. Instead, they had become accepted as political actors. Two years later, the creation of a new EU budgetary guideline paved the way for the regular financial support of their involvement in EU politics (Lange 2001: 127). It signalled the readiness of the Commission to view the welfare associations as potential political partners by actively supporting the organization of weak interests (Lodge 1993: 7; Lange 2001: 125). The change from the 'attempt of hierarchy' to a rather 'cooperative' mode of governance was not without self-interest. The Commission depended on the local knowledge and expertise of national interest groups for the development of viable policy suggestions.

Funding provides incentives for national interest groups to transform themselves into EU-relevant interest groups in order to benefit from financial support schemes. Thus, the utilization of funds provides a typical example for 'strategical usage' (Jacquot and Woll 2003: 7). The reaction of the welfare associations can be understood in these terms. Together with the welfare associations of the other member states, unions and NGOs they learned to become international actors in the European social policy arena (8). Europeanization was considered an emerging opportunity structure to compensate the loss of domestic power by means of adapting to the EU in the politics dimension. The welfare associations had realized that conserving the status-quo was too defensive a strategy to protect their unique legal status. This change in strategy for a non-changing policy goal signifies political learning. Paradoxically, the Commission acted as a catalyst of this change in strategy by urging the welfare associations to venture out of their domestic niche (9). The Commission attempts to encapsulate as many interests as possible in its policy development, offering incentives and funds for groups to present their views to Brussels (Aspinwall and Greenwood 1998). Given this, one can observe the establishment of a new exchange relationship: While the Commission helped the welfare associations to organize and network, they were expected to aggregate interests on the European level and to share their national policy-knowledge in return.

The welfare association's offensive engagement in networking activities on the European level has contributed to the strengthening of the lobbying function in domestic politics. What can be observed is a mutual enforcement of welfare lobbying in the domestic and European context. The domestic lobbying function helped the welfare associations to play a credible role in the process of creating a 'social' Europe beyond mere market integration (Lange 2001: 128). In due course, their political engagement on the European level contributed to the strengthening of domestic lobbying (10). Of course, there were also domestic push-factors deriving from the specific challenges in German social policy after reunification. In the overall climate of welfare state retrenchment the increase of poverty

in the new *Länder* contributed to the deepening and broadening of the welfare association's lobbying engagement in domestic welfare politics (11)

3.3. Time period III: Optimizing 'divided modernization' ↑

The third time period began with the so-called Lisbon strategy of the European Council. In March 2000, the European Council defined a new strategic goal. By the year 2010, the EU should 'become the most competitive and dynamic knowledge-based economy in the world' (see European Council 2000). Part of this strategy was to complete the internal market by 'the removal of barriers to services' (ibid.). Given this, the European Council announced major steps in the area of negative integration. The welfare associations could finally expect the long awaited end of a stressful planning-insecurity regarding the acceptance of their domestic legal status in the EU. In 2004, the Commission started a formal political decision making process on this issue by proposing an EU Services Directive (12). The so called 'Bolkestein-Directive' involved suggestions that met with the strong resistance of the welfare associations. They feared that deregulation would apply to all kinds of services – including charitable services in the area of social welfare and health. Moreover, they were against the 'country of origin principle' that gave workers the opportunity to offer their services in every EU-member state and based on the laws of their respective home country. Like unions, welfare associations suspected a 'race to the bottom', both in terms of the wages and the quality of services. Given this, they started a major lobbying campaign to convince the members of the European Parliament that services in the area of social welfare and health should become excluded from the Services Directive (13). The main argument was that these services cannot be traded across borders because they have to meet quality standards according to national identity and culture of the country they are performed in.

In the meantime, the Commissions' original proposal was substantially amended by the European Parliament. The amended proposal excluded the controversial country of origin principle as well as all services that are of major concern for the welfare associations (14). The Commission approved of most changes and tabled an amended proposal (15), which was basically accepted by the Competitiveness Council in May 2006. Even though, a second reading will follow, no major changes are expected. In the remaining section I will argue that this outcome has to be interpreted against the background of a widespread scepticism towards the European integration project that was used by the welfare associations to optimize their strategy of 'divided modernization'.

Divided modernization is best understood as the simultaneous pressure of continuity and change in policy goals. During the whole time period examined in this paper, the welfare associations adhered to the policy goal of 'status maintenance', that is, the protection of their domestic legal status from political threats. In a parallel fashion, they had started during the nineties to modernize the operational means and resources of their social service provision. As actors in European politics, they learned to optimize this strategy by means of systematically linking both policy goals in a major reform initiative to modernize the national charity and foundation law. As European actors, the welfare associations were less able to stick to unquestioned traditions and ways of doing things. Performing charitable social work ceased to be sufficient as a justification for the legal advantages they enjoyed vis-à-vis commercial service providers. The legitimacy of their unique legal status increasingly depended on evidence about the efficient use of operational means and resources. Given this, they signalled the readiness to learn from their counterparts in the other member states how to meet internationally exemplary standards of efficiency and transparency. By suggesting that these principles become legally binding they applied internationally acquired knowledge in domestic politics. In a parallel fashion, however, they initiated a European debate on important features of their domestic legal status and its applicability to the other third sector organizations in the EU (16). This involved a different framing of the concept of uniqueness. During the first time period uniqueness was understood as an exclusive term that only applied to German welfare associations. Now it became understood in inclusive terms to be applied to all third sector organizations in the EU. Whereas the exclusive framing of uniqueness had served as a justification for the non-adaptation of

German welfare associations to the EU, its inclusive framing contributed to the understanding of uniqueness as a challenge to learn from advanced European partner organizations how to make public funding conditional on the efficiency and transparency of operational means and resources (17). On the side of the welfare associations, this signalled a change in the perception of policy goals that can be described in terms of social learning. They learned how to make policy goals compatible with internationally accepted standards and how to frame them differently in order to include others in their struggle against the heteronomous Europeanization of policy.

In the politics dimension the welfare associations learned how to optimize their power in the decision making process on the EU Services Directive. Lacking the institutional power of other actors in the process, they used the contingencies of multi level governance to get the policy goal of divided modernization on the political agenda. The emergence and 'usage' of opportunities is best understood when entangling and contextualizing the simultaneous activities of the welfare associations on the domestic and European level of politics. Domestically, a financial scandal in one of the local establishments of the *German Caritas Association* unleashed an intra- and inter-organisational debate on the necessity of economic monitoring. The so-called Doerfert-Affair (18) as well the ensuing influential guideline for action from the *German Conference of Bishops* (19) coincided with the major welfare reform of the Red-Green government, called the Agenda 2010. This opened a window of opportunity for the welfare associations to exert pressure for political action. In a skilful entrepreneurial fashion, their political representatives redirected attention from the deficiencies of the welfare associations to the malfunctions of the German legal system. Lobbying pointed at the German charity and foundation law that became criticized for its overregulation and lack of transparency (20). At the same time, the welfare associations offered themselves as advocacy issue networks to communicate internationally approved standards to the government. They assembled all third sector organizations that represented civil society in Germany to a pressure group that developed detailed reform suggestions in line with the welfare associations' strategy of divided modernization. Coinciding with a change in government, their initiative came timely enough to profit from a second event, namely a grand coalition government that improved the reform perspective by making it part of the coalition contract and thus minimizing the potential blockage of institutional veto points (21). The reform initiative is still going on. But what counts for the welfare associations is the following. They appear as innovative forces in domestic politics that makes EU involvement in the German regulation of services less necessary. Thus the domestic reform initiative is used to minimize and control EU pressure for change. At the same time, EU pressure is becoming redirected towards the government that finds itself under observation in its role to adapt a 'hopelessly outdated' charity and foundation law to internationally accepted standards.

On the European level, the welfare associations lobbied against the deregulation of services in the area of social welfare and health. What came to their help this time was a massive bottom-up pressure against the EU Services Directive in Germany and other member states. In spring 2005 – a year after the EU-enlargement – the supposed displacement of German workers by Central and East Europeans in the German meat cutting industry became a public issue. The so called dumping-scandal triggered a wide-spread outrage against the erosion of work standards. Public outrage in Germany was paralleled by the negative referenda on the draft Constitution Treaty in France and the Netherlands as well as a mass demonstration against the liberalization of services in Brussels. In February 2006, just before the vote of the European Parliament, additional mass demonstrations took place in Strasbourg and Berlin. The welfare associations used these events to push their policy goals. They literally drove in the slipstreams of national and EU-wide protests, taking part in a successful alliance against the liberalization of services.

For two reasons, the strategy of divided modernization has a consolidating effect on the domestic use of the lobbying function. Politically, it served to gain autonomy vis-à-vis the state and the Commission by means of strengthening the welfare associations' ties to civil society. In the domestic context this became evident with the major reform initiative, involving the whole third sector in Germany. The decisive factor in European politics was the strengthening of political partnerships

with the welfare associations from the other member states. The grounding in civil society is something these organizations share across their differences in historical and cultural background. Its authenticity and vitality, however, will not cease to depend on the use of the lobbying function that serves as the most visible and effective instrument to bind members by means of demonstrating a positive attitude towards the values of justice, humanitarianism and compassion. Economically, the welfare associations operate under an increasing modernization pressure. Even though, the EU Services Directive ceased to provide a major threat to the welfare associations, their legal status could still be called into question by the ECJ and domestic courts. Given this, they have to continuously put their differences from commercial social service providers under political proof. 'Lobbying for justice' helps the welfare associations to demarcate civil society from market and state and to effectively direct the public attention to their irreplaceable value-oriented role in European and national social policy.

4. Conclusion [↑]

The paper examined the impact of Europeanization on the domestic lobbying function of German welfare associations. Based on a time sensitive analytic framework derived from recent debates on Europeanization it examined the domestic and European driving forces for change in the welfare associations' lobbying strategies. During the first two time periods the political learning of welfare associations resulted in a shift towards a more offensive strategy to protect their unique legal status in domestic politics from outside attacks. In the third time period, the welfare associations used the political decision making process of the EU Services Directive as an opportunity structure to optimize their strategy of divided modernization. The synchronization of political action in the multi-level system of the EU had synergetic effects on both levels – European and domestic –, allowing for the enhancement of their ultimate policy goal to protect their unique legal status from a heteronomous and disadvantageous Europeanization. The gain in political autonomy, resulting from these activities, as well as the lasting economization pressure had a consolidating effect on the use of their lobbying function.

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Endnotes [↑]

(1) As studies on more recent change of organized welfare are rare, the empirical part draws on narrative interviews with social policy experts and European representatives of the three largest welfare associations (the *German Caritas Association*, the *Welfare Services of the Protestant Church in Germany*, and the *Association of Non-affiliated Charities*) as well as with the chair person of the *Federal Association of Non-statutory Welfare*, conducted between November 2003 and March 2006.

(2) Next to fees for services rendered and traditional sources of funding the welfare associations are supported by state funds. The latter include investment aid for the construction of buildings and financial assistance for companies, tax reduction based on charitable benefit and the donation privilege. In exchange for state funds the welfare associations serve as the countries most important provider in many areas of social welfare. Welfare corporatism in Germany dates back to the Weimar Republic when the involvement of the central state in the regulation and financing of local welfare gave rise to an institutional mix of non-statutory and public social work, called the *dual system of Non-statutory welfare* (Tennstedt 1992: 354; Backhaus-Maul and Olk 1994: 102).

(3) According to the welfare associations, 'the need for support comes in many forms: the sick and disabled, children and young people requiring educational assistance, old people in need of care, foreigners and refugees, people without jobs or incomes, marginal groups in society such as the homeless, delinquents and addicts, or people finding themselves in other desperate social situations and seeking advice' (cf. <http://www.bagfw.de>, 31.5.2006).

(4) Compared to macro-corporatist arrangements between the state and the social partners, welfare corporatism is regarded as rather inflexible. In macro-corporatism the involved actors are able to leave the corporative arrangement at any time. In contrast, the exit from meso-corporatist network-relations between the state and the welfare associations threatens the functioning capacity of both

parties (Czada 1994: 52-54).

(5) David Miller (1976: 124) gives a good example for the difference between justice and humanity. If the satisfaction of need is a matter of justice, a certain amount of food has to be distributed equally between the members of a group. By contrast, any distribution of food which helps to relieve the suffering of one or more persons will satisfy the criteria of humanity.

(6) The ECJ decided on different occasions that ideological orientation and the lack of a profit-motive do not count as exceptional criteria for protecting the welfare associations from the application of EC law. In a number of cases, the term economic activity has become widely applied to include services provided in the framework of organized welfare (Schulte 1992, Lange 2001: 129-32). Security in legal status is also threatened by domestic courts. According to a recent ruling of the Provincial High Court in Düsseldorf the ability of welfare associations to compete with commercial service providers has become questioned. In the relevant legal case a private service provider claimed that the ability of welfare associations to offer their services for less money provides an unfair advantage. That the court spoke in favour of the plaintiff has unleashed a new controversy on the unique legal status of welfare associations (cf. *Ministry of Justice of North-Rhein-Westphalia* from the 23.12.2003, VII-Verg 58/03).

(7) Even though, politics is considered as one important dimension of Europeanization (Börzel and Risse 2003: 60), adaptation processes are often comprehended on the level of policy. The reason is perhaps that it is more difficult to trace actual patterns of misfit in the domain of politics, where the object of analysis is not policy, but the more dynamic and unpredictable behaviour of political actors.

(8) They are part of European social policy networks, such as the *European Anti Poverty Network* (EAPN), and the influential *Social Platform*. All six welfare associations have formed representative offices in Brussels and the majority has created European umbrella organizations. They are represented in the *European Economic and Social Committee* (ESC), and they have played a key role in the foundation of the *European Round Table of Charitable Social Welfare Associations* (ETWelfare).

(9) According to one interview partner, political representatives of the welfare associations in Brussels were aware of the fact that the Commission expected them to adapt to European politics in exchange for cooperation. 'Die Politiker in Brüssel (Kommissare und Mitarbeiter der Generaldirektion) wollen nichts hören von unserer „Einzigartigkeit“. Die möchten hören, wie soziale Dienstleistungen in Europa organisiert sind (z.B. im Bereich der Organisation des Gemeinnützigkeitsrechts) und wie unsere vernetzte Antwort auf diesbezügliche Fragen aussieht. Da muss man in einem Netzwerk arbeiten, um der Kommission Ergebnisse vorlegen zu können' (Interview 28.3.2006).

(10) A central role in this context is played by the EAPN, an 'advocacy issue network' that ties together National Anti Poverty Conferences and is thus able to directly strengthen domestic lobbying. In the German case, the *National Poverty Conference* was initiated by the EAPN as a confederation composed of the welfare associations, national associations on special social issues, self-aid-organizations and the *German Trade Union Confederation*. Throughout the 1990s, the National Poverty Conference has gained political attention for its criticism of governmental cuts in social assistance.

(11) Thus the *Welfare Services of the Protestant Church* joined the *German Caritas Association* with the first and major publication on poverty in the *New Länder* (Hübner and Neumann 1998).

(12) European Commission (2004) Proposal on services in the internal market 2004/0001. See also: http://www.europarl.europa.eu/comparl/imco/services_directive/default_en.htm for insight into the

Commissions' original proposal and the two documents, quoted in footnote 14 and 15 (link from the 15th of June 2006).

(13) For positions see *Social Platform* 'Proposed Directive on Services in the Internal Market: First comments from the Social Platform'. September 2004, *German Association for Public and Private Welfare* 'Stellungnahme des Deutschen Vereins zum Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates über Dienstleistungen im Binnenmarkt ("Dienstleistungsrichtlinie")' KOM (2004) endg. DV 26/04 08.12.2004, *Eurodiaconia* 'Seminar Social Services and the Service Directive: What options for revising the draft?' The Greens European Free Alliance / Social Platform. 5th April 2005.

(14) Cf. the Position of the European Parliament from February 16th 2006 (Document No. EP-PE_TC1-COD (2004)0001).

(15) European Commission (2006) Adoption of the amended proposal for a directive on services in the internal market KOM (2006) 160.

(16) Cf. *Federal Association of Non-statutory welfare* (2005) Stellungnahme der Bundesarbeitsgemeinschaft der freien Wohlfahrtspflege e.V. zu den Anforderungen an eine Reform des Gemeinnützigkeits- und Rechnungslegungsrechts (<http://www.bagfw.de>, 31.05.2005). See also *Federal Association of Non-statutory welfare* (2004) *Memorandum zum zivilgesellschaftlichen Mehrwert gemeinwohlorientierter sozialer Dienste*. Brussels. The latter document was circulated in different languages among EU partner organizations.

(17) A series of interdisciplinary conferences was organized by the *Federal Association of Non-statutory Welfare* and the *Bucerius Law School*, pushing the English Charity Law as exemplary for reforms in Germany. The following document, first published by the Strategy Unit of the Labour government under Tony Blair, was translated and circulated during these conferences: *Private Action, Public Benefit. A Review of Charities and the Wider Not-for-Profit Sector*. Strategy Unit Report – September 2002. See also Werner Ballhausen und Rainer Walz (2006) 'Aus der Mitte des Dritten Sektors. Vorschläge zur Reform des Gemeinnützigkeits- und Spendenrechts', *Stiftung & Sponsering* 2/2006: 28-29.

(18) In 1999, a criminal intrigue, costing the *Caritas establishment Trier* more than 50 Million Euro, led to the arrest of the responsible manager Joachim Doerfert. (<http://www.phil.uni-sb.de/projekte/imprimatur/2002/imp020303.html>).

(19) In response to the Doerfert Affair, the *German Conference of Bishops* suggested guidelines for action, cf. *Soziale Einrichtungen in katholischer Trägerschaft und wirtschaftliche Aufsicht. Eine Handreichung des Verbandes der Diözesen Deutschlands und der Kommission für caritative Fragen der Deutschen Bischofskonferenz vom 2. Februar 2004*.

(20) Dossier zur Projektgruppe 'Reform des Gemeinnützigkeits- und Spendenrechts' of the Federal Association of Non-statutory welfare (<http://www.bagfw.de>, 31.5.2006). See also: Werner Ballhausen und Rainer Walz (2006) 'Aus der Mitte des Dritten Sektors. Vorschläge zur Reform des Gemeinnützigkeits- und Spendenrechts', *Stiftung & Sponsering* 2/2006: 28-29.

(21) Cf. Koalitionsvertrag von CDU/CSU and SPD, 11. November 2005, p. 83, 127, and 131 (<http://www.educsu.de/upload/koalitionsvertrag/>).

Table I

The dual function of lobbying and social service provision

Function	Ethical principle	Policy goals	Consequences for the state	Politicization of poverty
Lobbying	Justice	Institutional reforms (welfare rights, Charity and Foundation Law)	Policy feedback	high
Social service provision	Humanity	Practising humanitarian values	Pacification	low

Source: Author

Table II

Three time periods of Europeanization

Time Period	European governance	Political strategy of welfare associations	Lobbying function
I. 1984 – 1993	attempt of hierarchy	defensive strategy	moderate
II. 1993 – 2000	co-operation	offensive strategy	strengthened
III. 2000 – 2006	negative integration	optimization of 'divided modernization'	consolidated

Source: Author