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The double voluntarism in EU social dialogue and employment policy*

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Abstract: In this article, we analyse the development of new modes of governance in EU employment and social policy over the past two decades. In this field, a number of innovations can be observed. First, with the Maastricht Treaty, the right to draw up legislation was given to European social partners. Second, with the European Employment Strategy and the Open Method of Coordination, new instruments of coordinating national policies were introduced to EU policy-making. Recently, the latter instrument was incorporated into the social dialogue. Hence, we contend that a double voluntarism takes places that not only delegates responsibility for social policy to the social partners but also relies on soft rather than on hard law.

Keywords: corporatism; governance; social dialogue; open coordination; employment policy; political science

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1. Introduction

The integration of national economies has no legitimacy in its own right. People do not fall in

love with the Common Market as Jacques Delors once commented. This insight motivated the European Union's efforts to involve civil society actors in political processes. Social partners were of particular importance here (1). The involvement of trade unions and employer organisations in both the formulation and implementation of policy became a blueprint for good governance. This is indicated in both the White Paper on "European Governance" (CEC 2001) and by the promotion of social dialogue in new member states. According to the Commission, social dialogue is a "key to better governance" (CEC 2002: 4).

Recent years have seen the emergence of modes of governance that correspond to this approach to European policy-making, especially in social and employment policy. With the Maastricht Treaty organised labour and employers became co-legislators of EU social policy. In the European Employment Strategy (EES), they are called upon to contribute to national action plans and to the implementation of EU guidelines. More recently, however, this positive reevaluation of social partners has been associated with the proliferation of less binding decision-making methods. For example, there has been an increase in the number of autonomously implemented agreements among the EU social partners that are binding for the member organisations but not for all employees (depending on the reach of collective agreements). Furthermore, soft law instruments have been extended to social dialogue that now also operates with non-binding targets and mutual monitoring rather than giving rise to legislation. Consequently, a "double voluntarism" relating to both the content of policy and to its procedural aspects can be observed in European social dialogue and employment policy (2).

The aim of this article is to examine the emergence and limitations of those new modes of governance that have been adopted in the EU since the beginning of the nineties, namely EU social dialogue and the Open Method of Coordination (OMC). The next section discusses the literature on new modes of governance. We argue that too little attention has been paid to the relationship between government and governance (but see Héritier and Lehmkuhl 2008) leading to a rather benign view of this research on the problem-solving capacity of policy-making in the European Union (see Büchs this issue). Our analysis seeks to contrast this view. In the third section, we describe how new modes of governance have developed in employment and social policy. According to our argument, they were a reaction to a lack of consensus about what kind of labour market and social policy should accompany Economic and Monetary Union (EMU). Only an agreement to non-binding procedures was possible in the face of substantial disagreement among the member states and employers' opposition. Putting new modes of governance into the context of other forms of policy-making, section four discusses some of their limitations. The final section summarises the findings.

2. Decentralised polity, centralised society? ↑

In his famous study of the "semisovereign" (West-)German state, Katzenstein (1985) demonstrated that a weak, decentralised state does not prevent successful policies – if complemented by centralised society. In the German case, the dispersion of state power among competing institutions was counterbalanced by the concentration of private power in large social groups, among others by powerful employer associations and trade unions. Paradoxically, under these circumstances state weakness – at least until the late 1980s – turned out to be a strength (Streeck 2005). Compared to Germany at that time, the European Union is but an extreme example of a decentralised polity. Even though it has constantly been gaining competences and many of its decisions affect the member states, the ability of the centre to act autonomously of the federal units is limited. This holds true in particular for social policy and industrial relations, where governments, management and labour cautiously defend their prerogative to act. Hence, by the late 1980s the lesson had been learned that the EU would not replicate the path of a nation state and acquire ever more competences in social policy. In this area, the Union was bound to remain a weak, highly decentralised state. As a result, the Commission reinvigorated its attempts to centralize society (3). Through financial aid and institutional incentives, the Commission wanted to nourish interest representation as well as corporatist policy-making (see the contributions in Eising and Kohler-Koch 2005) at the European level hoping that society-building could overcome the weakness of the political

centre. Since the EU will for the foreseeable future stay “semisovereign” the road ahead may lie in further centralizing society.

The “governance turn” in EU studies (Kohler-Koch and Rittberger 2006) mirrored the political turn towards “civil society.” (4) As hierarchical government or hard law was not available in important fields of EU policy, attention shifted to other actors who could possibly fill the void. This new orientation was facilitated by the fact that a focus on governance can be fruitfully combined with other theories in three respects. First, reference to a decision-making mode specific to the EU supports the idea of a political system *sui generis*. Non-hierarchical modes of governance are not considered deficient but rather a logical consequence of the multi-level nature of the polity. Soft coordination, from this point of view, is a superior mode of governance as it promotes flexibility and learning (see Kohler-Koch 1996; Trubek and Trubek 2005). Second, rather than stressing conflict, EU policy-making has often been characterised as a problem-solving exercise. Procedures that build on cooperation and argumentation comply well with this image (Eberlein and Kerwer 2002; Radaelli 2003). Finally, turning from government to governance opens a point of contact to deliberative and participatory democracy, such as that promoted for example by Cohen and Sabel (1997) (5).

Arguably this view of European governance was in part due to the selectivity of the chosen perspective. The debate has primarily been developed on the basis of those policy areas in which new modes of governance were applied. It has less frequently been asked under which circumstances new modes are chosen and which restrictions follow from the existing body of hard law, ECJ case law, or non-decisions. Taking these restrictions into account shows that the boundaries in which for example the European Employment Strategy can search for solutions are rather narrow (Scharpf 2002: 655). Neither monetary, fiscal nor industrial policy can be enlisted to ease unemployment; it is virtually impossible to justify exceptions to the four freedoms before the Commission and the European Court of Justice for the sake of social policy objectives as the recent Laval, Viking, and Ruffert decisions demonstrate; ambitious programmes that follow the model of the New Deal could not be introduced without a radical redefinition of the nature of the EU Treaties and a new mandate for supranational actors – yet, such changes are highly unlikely (Bartolini 2006: 46).

What is more, quite frequently governance depends on government to work effectively (Héritier and Lehmkuhl 2008) and, more specifically, European social dialogue depends on the “shadow of hierarchy” (Smismans 2008). In particular employers engage in negotiations with trade unions at the EU level only if they have to fear that their unwillingness to act will trigger a political response of the Commission and the Council. However, the theoretical challenge is to define under what circumstances those actors (principals) are willing and able to coerce agents to act. We suggest that the shading of the shadow of hierarchy depends not least on the party-political complexion of the Council of Ministers. While the end of the 1990s saw an unprecedented wave of social democratic governments in the member states this wave has ebbed away since then. By now, a majority of member states are governed by centre-right parties, there is a centre-right majority in the European Parliament and the Commission President is a conservative. The supporters of the “project of regulated capitalism” (Hooghe and Marks 1999) – who mainly pushed for European social dialogue and the EES – are much weaker than a decade ago. At the same time, EU member states have grown highly diverse in terms of their welfare states and production regimes, which makes it more challenging to find uniform social standards.

3. The emergence of new modes of governance in social dialogue and employment policy

For methodological reasons (Zeitlin 2009: 214-215; Kröger this issue) evaluating top-down Europeanisation effects of new EU modes of governance on national labour-market and social policy is a difficult task that is not pursued in this article. Looking at reasons for the emergence of these new governance procedures (see this section) as well as at principal limitations of the governance modes, arising among other things from a strong interrelation of governance and

government as well as “hard” and “soft” governance mechanisms (see section [four](#)), should, however, contribute to our understanding of how these new modes of governance may or may not affect policy-making in the European Union. In this section we argue that the creation of flexible modes of governance in labour market and social policy that do not strive for uniform solutions at several stages has helped to overcome political stalemate in the Council. Non-binding decision-making procedures and the delegation of authority to social partners alleviated the pressure to come to an agreement.

At the end of the 1990s, the Open Method of Coordination provided the EU with a new “soft” coordination process ([6](#)), which initially appeared to be a prime example of what the governance approach postulated for the change of policy-making in Europe: Governance takes place without the classical instruments of hierarchical control. At the same time, there was an increase – at least in discourse and regarding the formal rules – in the importance of networks and civil society actors such as the social partners. However, it is not only in the OMC that social partners have gained weight in shaping European policy over the last 20 years. Social dialogue is no longer a purely national phenomenon since management and labour have become potential co-legislators of EU social policy with the Maastricht Treaty (e.g. Falkner 1998). And yet, following a heyday in the 1990s, there are signs that social dialogue is – in the absence of political backing – currently softening in order to overcome the non-committed position of the employers. Instruments that were first used with the OMC have by now been picked up by the social partners – pushing EU governance towards a twofold voluntarism. Rather than moving from a weak state to strong society, we observe weak social partners and a weak political decision-making centre. In the following we describe these developments in detail by distinguishing four (partly overlapping) phases: The period prior to Maastricht characterised by a precedence of negative integration; the period from Maastricht to the end of the 1990s, where we observe a heyday of social dialogue and social policy directives; the turn to non-binding coordination in employment and social policy since the end of the 1990s; finally, with the new century the turn to non-binding coordination also in the realm of social dialogue that we call the double voluntarism.

3.1. The precedence of negative integration [↑](#)

In the phase prior to Maastricht, EU social policy was characterised above all by what Scharpf (1988) termed the “joint decision trap” and what Streeck (1995b) went on to describe as the “corporatist decision-making gap.” The demand for consensus in the Council repeatedly led to a blockage of the Commission’s social policy initiatives. Consequently, attempts to advance social policy in Europe often failed. An exception is the equal treatment of women and men, which had already been regulated in the Treaty of Rome. Especially the European Court of Justice has been actively pushing for a broad implementation of this principle (cf. Ostner and Lewis 1998). In the mid 1980s, the Single European Act led to the introduction of qualified majority decision-making in the area of workplace health and safety. This also resulted in an appreciable body of regulations and a high level of protection in this area (Falkner et al. 2005: ch. 3).

In contrast, cross-industry social dialogue between management and labour on the European level offered a reserved picture at that point in time. In fact, Art. 193-198 of the Treaties of Rome included provisions for creation of the Economic and Social Committee (ESC) ([7](#)), which, however, did not develop into an effective channel of influence for the social partners (Streeck and Schmitter 1991: 138). The committee was supposed to mirror the French Comité Économique et Social. Its members were selected by governments rather than by the associations themselves, and the ESC made only non-binding statements, which have not been very influential. Also the tripartite conciliation process that came into life in the 1970s failed due to employer opposition. The same happened to the Val Duchesse dialogue starting in the mid-1980s between representatives of the European Commission and the three largest European social partner organisations (at that time UNICE ([8](#)), CEEP and ETUC) ([9](#)). Even then, though, the Commission hoped that deadlock in the Council would be overcome with the assistance of social dialogue (Falkner 2000: 14). And yet, it was not possible to evade the

uncommitted position of the social partners since European employers had no interest in establishing EU regulation in addition to existing national regulations. Because at government level European social policy was firmly caught in the “joint decision trap”, employers hardly had to concern themselves about regulation by the Council at that time. Hence they did not make themselves available as a negotiating partner. In spite of strenuous attempts of several member states and the European Commission, the development of European social policy and social dialogue was only rudimentary in the pre-Maastricht phase.

3.2. Functional Subsidiarity

The Maastricht Treaty and the annexed Social Protocol ushered in a new phase of EU policy-making as the social partners were authorised to draft legislation (e.g. Dølvik 1997: 189-240; Falkner 1998: 78-96; Keller and Sörries 1999). Four institutional innovations were introduced in social policy:

1. New competences were created,
2. the scope of qualified majority voting was expanded,
3. the European Parliament was strengthened, and
4. European social partners were accorded much more significance.

These changes introduced a new mode of governance to the EU: Complementing the Community Method, the “social partner procedure” allows management and labour to negotiate Framework Agreements. At their request, these agreements can be transformed into a Directive by a Council decision on a proposal from the Commission. In this case the only available option of the Council is to either accept or reject it in its entirety. The Maastricht Treaty also sought to strengthen national social partners. It introduced the possibility to entrust management and labour with the implementation of Directives, if they requested to do so.

Through the social partner procedure, organised labour and employer associations have been given the authority to participate directly in the creation of EU social policy. In some instances, this authority even exceeds that of national associations, although collective agreements are customary in most EU countries. However, the negotiation of social policy or labour law standards with an erga omnes effect by the state (in this case, by the Council of Ministers), beyond the issues of wages and working time, was known above all from Belgium (10). Thus, while the Union’s social policy competencies have remained limited, the social partner procedure nonetheless represents an innovation in European policy-making. This new mode of governance can be seen as the first step in a series of procedural answers to intergovernmental blockades to EU social policy. Shifting decision-making to management and labour is a case of “functional subsidiarity” (Streeck 1998: 410), which frees the Council from the obligation to act. At the same time, the threat to use qualified majority in the Council – the “shadow of hierarchy” – puts pressure on the employers to engage in negotiations with trade unions as they can no longer be sure that social policy initiatives will be blocked in the Council.

Indeed, during the 1990s, cross-industry social dialogue resulted in three agreements implemented by Council Directive, on parental leave (1995), part-time work (1997) and fixed-term contracts (1999). In contrast, the social partners failed to agree (on negotiations) concerning four other initiatives – the European works councils, the burden of proof in cases of discrimination, sexual harassment in the workplace and the information and consultation of employees – by the end of the 1990s. As a consequence, the respective Directives were passed via the normal EU legislative procedure instead (11). In sum, the 1990s not only saw the establishment of a new mode of governance – cross-industry social dialogue – but also a number of social policy Directives (Falkner et al. 2005). However, it is worth noting that these developments took place under favourable political circumstances. In the second half of the 1990s, social democratic parties governed in three out of four member states. Despite differences between Third Way- and more traditional Social Democrats, these governments were generally sympathetic to EU social policy (Manow, Schäfer and Zorn 2004; see section

four).

3.3. Non-binding Coordination

In the phase following Maastricht, the willingness to strengthen the European profile in the fight against unemployment increased. While the Maastricht Treaty had been strongly influenced by Christian Democratic and Liberal Parties (Johansson 2002), the party-political centre of gravity began moving leftwards during the 1990s. Consequently, the call to more actively tackle unemployment grew stronger, also because after Maastricht governments felt in need to counterbalance economic and monetary integration by a social dimension of Europe. Governments agreed to make the fight against unemployment a priority of EU activities at the Essen Summit in December 1994. Core elements of the OMC – common objectives, national implementation, monitoring by the Commission and other member states – were put in place already then (Goetschy 1999).

Although the Essen procedure remained largely inconsequential, it nonetheless served as a template for the European Employment Strategy, which was introduced with the Treaty of Amsterdam in 1997. At the Luxembourg summit later the same year, governments drew not only on the Essen procedure but also on the multilateral surveillance process that had become known as the Broad Economic Policy Guidelines. They transferred this sanction-free coordination of national policies to employment policy. The Commission proposed more rigorous a set of employment guidelines and urged member states to accept clearly specified quantitative targets but failed to overcome their resistance. Reducing employment policies to a voluntary opportunity for learning without obligatory targets facilitated support for it. In sum, the turn towards soft law in employment policy ensured that the negotiations were not deadlocked over substantive disagreements (Kohler-Koch and Rittberger 2006: 36; Schäfer 2006b).

In Lisbon, this procedure was dubbed the OMC and it was simultaneously bound to a new strategic goal, which was intended to turn “the union into the most competitive and dynamic knowledge-based economic region in the world” and to create the necessary conditions for “full employment” (European Council 2000). With the OMC, it seems that a template for political coordination was found that above all serves the interests of participating governments. Visser (2005) sees the OMC as a “selective amplifier” that matters only if governments want to act in any case. Soft coordination sidelines the European Court of Justice and the Commission and marginalises the influence of the European Parliament. Ironically, the OMC seems to be more firmly intergovernmental than traditional modes of governance such as the Community method. The Commission therefore seeks to limit the OMC to those areas that have no basis in the Treaties (CEC 2003: 9).

In the aftermath of the Lisbon summit, the OMC proliferated in a number of (social) policy fields, such as e.g. pensions, health care, social inclusion, and elderly care (Hodson and Maher 2001: 726). As these processes were not well integrated and the “flow of work [was] somewhat haphazard” (CEC 2003: 8), first the EES and in subsequent years diverse OMC procedures were streamlined. Most importantly, in 2003 the EES was organisationally merged with the Broad Economic Policy Guidelines and put on a three year schedule. Rather than drawing up new guidelines each year, they should remain stable for an extended period of time. In addition to the reorganisation of the process, the mid-term review of the Lisbon Strategy’s effects was sobering. An expert group led by former Dutch Prime Minister Wim Kok concluded that “much needs to be done in order to prevent Lisbon from becoming a synonym for missed objectives and failed promises” (High Level Group 2004: 10). To prevent this from happening, the Lisbon Strategy was relaunched in 2005. One of the main goals was to ensure delivery that had not been forthcoming until then. The new Lisbon Action Programme focuses on the completion of the internal market and builds on three overarching aims:

1. Making Europe a more attractive place to invest and work;

2. knowledge and innovation for growth; and
3. creating more and better jobs (CEC 2005: 15).

However, as the deadline of 2010 approaches in the midst of an economic crisis, it seems clear that the EU will miss most, if not all of the goals announced at the Lisbon summit in 2000 (see Pochet, Boulin and Dufour 2009).

3.4. Double Voluntarism

The Laeken Summit at the end of 2001 can be seen as another important turning point in the governance of EU social policy. On the occasion of the summit, social partners presented a common statement with a previously unknown emphasis on bipartite social dialogue. This heralded developments towards an increasingly independent and autonomous European social dialogue, which incorporates elements of the OMC (Leiber and Falkner 2006; Smismans 2008: 171-172). While this does not mean that legally binding instruments have become irrelevant (Falkner et al. 2005: ch. 3), voluntary instruments were nonetheless gaining in significance. OMC procedures have become part of the social dialogue of management and labour. While their negotiations resulted in a number of Framework Agreements during the 1990s, the so-called “new generation joint texts” no longer aim at binding EU regulation. According to the Commission, there are now two social partner strategies: „Autonomous agreements and process-oriented texts which make recommendations of various kinds (frameworks of action, guidelines, codes of conduct, and policy orientations). The essential difference is that agreements are to be implemented and monitored by a given date, whereas the second kind entails a more process-oriented approach” (CEC 2004: 7). In particular the latter approach resembles the OMC.

The Framework Agreement on fixed-term contracts in 1999 marks the last time that EU social partners achieved a successful cross-sector agreement that was subsequently turned into an EU Directive (12). Since then, autonomous agreements on telework (2002), work-related stress (2004), and harassment and violence at work (2007) have been signed. Cross-industry social dialogue also led to “frameworks for action”, on the lifelong development of competencies and qualifications (2002), gender equality (2005) and a host of “process oriented texts” such as Guidelines and Policy Orientations – all of which are not legally enforceable and rely on mutual monitoring, learning and good will (see CEC 2008 for an encompassing overview). Most of these measures are laid down in the social partners’ second “Work Programme” (2006-2008) (13). Interestingly, this document does not make any reference to the possibility of negotiating Framework Agreements.

In recent years, social dialogue has also shifted from the cross-industry to the sectoral level (Dufresne, Degryse and Pochet 2006). At present, it takes place in 36 different sectors dealing mainly with industry-specific questions at a European level. Sectoral social dialogue committees regularly focus on training, working time and conditions, health and safety, sustainable development, and free movement of workers. These committees have adopted several hundred joint texts including Joint Opinions and Agreements, Guidelines and Codes of Conduct. Pochet (2007) analyses 281 texts adopted between 1997 and 2006. While the sectoral social partner committees are very active, a mere 2 percent of all documents contain binding agreements. Most other documents do not commit the social partners to take action or remain, as the Commission criticises, excessively vague (CEC 2004: 14). Other authors conclude that the softening and the sectoralisation of European social dialogue turn it into “an alternative channel for lobbying” rather than resembling corporatist patterns of decision-making (de Boer, Benedictus and Meer 2005: 62).

The autonomisation of the social dialogue is a consequence of the same kind of problems the Council faces when it seeks consensus on employment and social policy. After a period when social partner Framework Agreements were given legal effect by a Council decision and were transposed into the legislation of the member states, negotiations on other topics stalemated. In particular since the beginning of 2000, little progress has been made towards new legislation

as the social partners failed to reach an agreement. Especially the employers are also less pressed to cooperate since the shadow of hierarchy is rather light – given the interest heterogeneity of national governments and the shift away from social democratic dominance, as one employer representative admits:

“(…) the only motivation for employers’ organizations to take up negotiations is the threat of even more restrictive regulation, if it is left to the Commission and the EP. However, this negative motivation is rather weak and becomes less and less credible as a basis for the development of the negotiating practice at EU-level from the employers’ perspective” (Hornung-Draus 2002: 218-219).

As a result, there has been an increase in the conclusion of agreements that are autonomously implemented by the social partners and that no longer bind all employers and employees but only those covered by national collective agreements.

In addition, even on the unions’ side, in countries with strong social partnership traditions such as Denmark, social partners were much in favour of turning towards autonomous social dialogue because this better reflects their national model (Leiber and Falkner 2006: 176-177, see also section 4). Thus, not only different welfare state models but also different national conceptions of social partnership/ industrial relations paved the way for soft governance tools in European social policy and social dialogue.

Monitoring and implementation of these autonomous agreements differs significantly from those of negotiated legislation since there are no legally binding infringement procedures or sanctions through the EU Commission, the European Court of Justice or national enforcement authorities, but merely voluntary reporting (if any) (14). What is more, the reach of these agreements differs substantially across member states since the coverage of collective bargaining varies significantly. On average 62 percent of the employees in EU member states are covered by collective agreements, ranging from 12 percent in Lithuania to 100 percent in Slovenia (Figure 1). Hence, in many countries only a minority of workers will be covered if there is no legislative backing. As a result, autonomous agreements lead to a patchwork of regulation (15).

Figure 1

Following a heyday in the course of the 1990s, European social dialogue did not quite fall back to its former insignificance of the 1970s and 1980s. It continued to gain importance in terms of discourse and the volume of activity. However, it is also moving in the direction of being non-obligatory.

4. The limits of new forms of governance in employment and social policy ↑

4.1. New and old modes of governance interact

As previous sections have shown, new modes of governance have been an attempt to free EU social policy from gridlock. However, it is less clear whether these new modes are an effective way to advance social issues in Europe. To answer this question, we have to put the OMC and Social Dialogue into the broader context of different modes of governance prevalent in the EU. Scharpf (2001) distinguishes four types of governance that differ in the degree of institutionalisation:

1. Mutual Adjustment,
2. Intergovernmental Negotiations,
3. Joint Decisions, and
4. Hierarchical Direction.

Table 1 lists various examples of these modes of governance and indicates whether their effect tends to be market-making or market-correcting.

Table 1

Hierarchical Direction takes place where supranational actors act autonomously. In monetary policy, this is the European Central Bank and in competition policy the European Commission. But also the European Court of Justice not only interprets the law but has also become a legislating instance itself (Weiler 1991; Alter 1998). In the field of social policy, “hierarchy” is found above all in ECJ decisions on gender equality, which is anchored in EU primary law. In all of these cases, supranational actors do not depend on member states’ consent. In contrast, EU secondary law is only created when the Council passes Regulations or Directives submitted by the Commission. In many instances, the European Parliament also has to agree to the proposal. Hence, the Community Method is the prime example of Joint Decisions. EU legislation on the completion of the internal market – such as the Services Directive – or Regulation 883/2004 (formerly: 1408/71), which regulates social security for transnational workers but also minimum labour standards and Directives on gender equality are the result of such negotiation processes. Social partner Framework Agreements also conform to this mode of governance. In general, positive integration – whether it is market-making or market-correcting – requires Joint Decisions. Once an agreement has been reached, Joint Decisions lead to binding legislation, monitored either by the Commission, the ECJ or national courts. In contrast, Intergovernmental Negotiations do not necessarily lead to legislation. While national policies are coordinated or standardised by unanimous agreements at the EU level, national governments remain in full control of the decision process, cannot be bound without consenting and also control the transposition of agreements into national law and their implementation (Scharpf 2001: 8). We contend that multilateral surveillance exemplifies this mode of governance. Although a host of European objectives is defined, member states remain exclusively responsible for their realisation. There are no sanctions available should they fail to stick to their promises other than naming and shaming (16). Finally, Mutual Adjustment prevails in policy areas that are subject to increased competition through the internal market, such as wages or corporate taxes.

Any assessment of the potential and the limits of EU social dialogue and employment policy needs to be done in conjunction with a synopsis of these different modes of governance since they are not independent of each other. For example, monetary policy is highly effective in fighting inflation but it also puts pressure on wages and national labour market policies because neither exchange rate adjustments nor fiscal policies can counterbalance asymmetric shocks. EMU puts a premium on micro-economic strategies to fight unemployment. Clearly, the EES conforms to this supply-side approach. Similarly, ECJ rulings intensify tax competition (Ganghof and Genschel 2008) and expand mobility rights of workers and, lately, of EU citizens. In these cases, member states are forced to adjust national policies. In sum, there are a number of cross-cutting effects between different modes of governance.

4.2. European Social Dialogue and national corporatism ↑

Ever since the 1980s the European Commission has promoted social dialogue. Both cooperation on the European level and coordination of national associations are supported by the EU. Each year the Commission accords approximately Euro 40 million to European social partners (17). However, empirical research on the effect of European social dialogue in the member states offers mixed results (Leiber 2005). In most countries, “soft” Europeanization impulses promoted a somewhat stronger integration of the social partners. However, there are also unforeseen consequences pointing in an entirely different direction. In Denmark, management and labour were – in line with the provisions of the Maastricht Treaty – responsible for implementing EU social partner Directives. Yet, because Danish collective agreements do not cover the entire workforce and no *erga omnes* clause was in place, this implementation route was not compatible with earlier ECJ decisions. Paradoxically, in this case, EU social policy weakened social partner autonomy. As a consequence, Danish social

partners were in favour of softening EU social dialogue and supported the move from negotiated legislation to voluntary guidelines (Leiber and Falkner 2006: 176-177). Of course, the trade unions in Scandinavia are much less in need of EU support than other unions. Especially in many new member states social partnership takes place only under government supervision, if at all. The degree to which workers and above all of employers are organised is – in spite of Commission efforts – very limited (Kohl and Platzer 2003; Iankowa 2006). In these cases, a well-functioning European social dialogue could underpin national social partnership – but, as we have argued, it has by now lost momentum.

The OMC was meant as another avenue for social partner involvement. Right from the inception of the EES social partners were asked to take part in the drafting of national action plans. Some guidelines specifically addressed them. Much of the early literature put forward the view that this would create more open and inclusive a way of decision-making. However, empirical research finds the reality of the OMC less promising:

“The picture of social partner participation in the EES is shaky, despite the efforts made over time to improve their involvement. This is due not only to the financial resources and agenda mismatch, but also the lack of institutional rootedness of the EES within the national policy process” (de la Porte and Pochet 2005: 371) (18).

While the Commission’s capacity building efforts have had ambiguous effects, recent ECJ decisions on Viking, Laval, and Ruffert clearly curtail the right of trade unions to defend national standards (Joerges and Rödl 2009). In fact, the ECJ keeps pushing negative integration ahead. In its decisions, the ECJ confirmed the unions’ right to engage in collective action in principle but at the same time held that any limitation of the four freedoms must be under the restriction of commensurability and can only be justified by overriding reason of public interest. In Laval and Viking the ECJ found these principles violated since trade union actions aimed at obtaining standards which went beyond the minimum established by law. The Court argued that industrial action discouraged companies to carry out business in other member state and therefore constituted a restriction on the freedom to provide services (19). In Ruffert the ECJ argued that Article 49 EC precludes national or sub-national authorities from adopting measures that oblige companies to pay the remuneration defined by a collective agreement. The combined effect of these rulings is to impose limitations on any matters, including strikes, which could limit the rights under Articles 43 and 49 EC – even though the right to strike is a constitutional right in some member states. Accordingly, Bercusson (2007: 308) concludes: “(...) the future of the trade union movement, but also of the EU, may depend on whether on judgment day the ECJ decides that the EU legal order upholds the right of trade unions to take transnational collective action”.

Apart from these direct effects, indirect effects can be observed. For some years during the run-up to EMU it seemed that European integration reinvigorated national corporatism. Faced with the accession criteria, the likely effect of a uniform monetary policy and increased competition, several member states saw either the creation or the renewal of Social Pacts (Hassel 2003; Enderlein 2006). This kind of supply-side corporatism took place even in countries without a corporatist tradition such as Ireland. However, in contrast to the 1970s, social pacts today result from labour’s weakness (Pochet and Fajertag 2000; Visser 2006). While national corporatism apparently staged a comeback, the terms were entirely different from those of neo-corporatism’s heyday (Schäfer and Streeck 2008).

In sum, the impact of European integration on the social partners – and especially on trade unions – is mixed at best. Even though genuinely new opportunities to influence policy were created, a number of countervailing forces exist, too. Thus, in the light of double voluntarism, the Commission’s aim to compensate for a weak state at the European level by strong social partners has only been achieved to a limited degree.

4.3. The shadow of hierarchy and double voluntarism

In addition, both the OMC and European social dialogue can easily fall prey to uncommitted actors. Since the party-political composition of most EU institutions and also the European Council has recently shifted away from the left ([Figure 2](#)), political support for the social dimension of the EU might no longer be forthcoming. To be sure, even during the phase of centre-left dominance this support was guarded and there was a fair amount of disagreement within the social democratic/socialist party family. Nonetheless, most observers agree that the electoral shift towards the left just prior to the finalisation of the Amsterdam Treaty helped to put employment and social policy more firmly back on the EU's agenda (e.g. Johansson 1999; Pollack 2000).

Figure 2

Quite clearly, Lionel Jospin and Tony Blair differed in their enthusiasm for European social policy, yet, both of them (and their parties) were more supportive of some progress than Margaret Thatcher or John Major had been – as the incorporation of the Maastricht Social Protocol into the main body of the Amsterdam Treaty showed. Hence, a shift of the party-political centre of gravity matters for the support of the social dimension in Europe. The Amsterdam Treaty, the Luxembourg Employment Summit, the Nice Treaty, and the Lisbon Summit were all influenced by centre-left parties. However, while these parties did support a higher EU profile in the struggle against unemployment and social exclusion, they differed in their national approaches; while it was easier to agree on certain ends, they nonetheless favour different means to achieve those. Hence, as we have argued above, they were ready to install non-binding coordination to improve cooperation in employment and social policy while, at the same time, preserving national autonomy.

What is more, the party-political complexion and the degree of heterogeneity of the Council arguably influence how the social partners perceive the shadow of hierarchy. Given the rising tide of social democratic governments in the second half of the 1990s, employers might well have considered it advantageous to enter into negotiations with the trade unions ([20](#)). In recent years, however, not only the electoral fortune of the centre-left has changed but also member states have grown enormously heterogeneous with regard to national production regimes, welfare states and industrial relations models after enlargement ([21](#)). Empirical evidence shows that the number of social policy directives per years substantially dropped after 2004: while, on average, three directives were concluded between 1990 and 2004 only five directives came into force in the years 2005-2008 (Pochet and Degryse 2009: 96). It may be too early to tell whether this trend will last. However, the argument of the article would hold even if it did not last. We do not assume that soft law displaces existing hard law but rather that governments since the late 1990s have failed to increase the scope of the latter in primary law. Instead they have relied on soft coordination, peer pressure, learning and monitoring etc. This shift towards voluntarist policy-making has recently been mirrored by the social partners who also supplement solemn declarations for binding agreements. Hence, we speak of a “double voluntarism” in EU social policy.

5. Conclusions

In this article we analysed how a number of innovative procedures have emerged in EU employment and social policy over the last two decades. Arguably, these attempts to centralise “society” by strengthening social partnership were a response to political stalemate in the Council. The EU is an extremely decentralised polity in which decisions require the support of many diverse actors in different arenas. Accordingly, progress in the social dimension of European integration was limited prior to the Treaty of Maastricht, which increasingly frustrated those who favoured regulated capitalism. Hence, first Commission president Jacques Delors and later a number of social democratic governments sought alternative ways to place

the fight against unemployment and social exclusion on the Union's agenda. The push for new modes of governance was an attempt to find middle ground between uncoordinated national action and a transfer of competencies to the European level.

Multilateral surveillance – based on common targets, national implementation, peer review, and regular stock taking – turned out to be an ingenious solution to the need to cooperate and the desire to stay in control of highly salient policies. As a result, the Open Method of Coordination mushroomed in such diverse fields as social inclusion, pensions, research & development, or innovation policies. National governments are quite ready to assent to procedures that do not necessitate action and that circumscribe supranational actors' ability to interfere with national decisions. In the meantime, soft coordination has also spread to European social dialogue, substituting non-binding declarations of intent for "social partner Directives." In the past decade, cross-industry social dialogue has no longer lead to EU legislation. Instead, management and labour also increasingly rely on voluntary agreements, monitoring, and the exchange of information. Therefore, we speak of a "double voluntarism" that not only delegates the responsibility for social policy to the social partners but also favours soft law over binding legislation. Since not only the member states but also national social partners have grown more diverse with enlargement, the EU is a decentralised polity facing a highly fragmented society and therefore lacking the benign features of a semisovereign state. Thus, building strong social partners to compensate for a weak state in order to overcome deadlock and to compensate for the dispersion of state power seems unavailable for the European Union.

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Endnotes

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(1) The article concentrates on social partners as an important part of organised civil society. For a broader analysis of civil society conceptions in the European Commission see e.g. Michel (2008). The term “social partners” is used here in the same way as the European Commission does. It refers to the umbrella organisations of unions and employer associations in individual EU member states and on the EU level.

(2) On the concept of voluntarism, see Streeck (1995a).

(3) Yet, one can ask whether top-down attempts of society-building are promising and, in fact, desirable. Despite Fligstein’s (2008) claim to the contrary, it is one of the problems of the European polity that most associations still are firmly embedded in their national context. As section 4 indicates, EU society-building may well have unintended (unforeseen and unwelcomed) consequences.

(4) For an encompassing literature review see Kröger (in this issue).

(5) Sabel and Zeitlin (2008) detect forms of experimentation and learning in a wide range of areas and hence speak of a new governance architecture in the EU.

(6) For the application of similar procedures in the OECD and the International Monetary Fund, see Schäfer (2006a).

(7) This is made up of employer representatives, unions and various associations from agriculture, the trades, small and middle sized companies, freelance professions and science together and must be heard on all commission suggestions.

(8) Today *Busines Europe*.

(9) The European social dialogue received formal recognition by the Single European Act’s insertion into the EC Treaty of a new Article 118B EC.

(10) The reason for this parallelism is that the Belgian delegation to the Maastricht Intergovernmental Conference successfully managed to present its own national model as a blueprint for the EU (for further details see Falkner 1998: 89-96).

(11) For an encompassing overview of the activities of the cross-industry social dialogue following Maastricht within the context of Articles 138-139 of the EUT, cf. Leiber and Falkner (2006); European Commission (2008).

(12) On 18 June 2009, however, the European social partners made progress in adopting an agreement revising their 1995 Framework Agreement on parental leave. The next step will be for the European Commission to propose implementation of the revised agreement through a new Council Directive, but this process is not yet concluded.

(13) See: http://www.etuc.org/IMG/pdf/Depliant_EN_HD2006-2008.pdf (accessed on October 21, 2009).

(14) If the autonomous agreement is related to a EU proposal, the Commission may verify the implementation and make a new proposal if the implementation is not considered to be properly fulfilled.

(15) For the implementation of the telework agreement see Martín and Visser (2008).

(16) Soft procedures can have the effect of creating markets as well as correcting markets. The labour market policy recommendations of EES and BEPG primarily aim at the former. However, in the area of social security the effect is less clear. Goals such as “sustainable finances” – geared towards cost containment for pensions or health care – coexist with provisions to enhance the quality of social security, such as the “adequacy of pension levels” or access to “high quality health care.”

(17) The Commission spent Euro 13.1 million for the promotion of social dialogue in 2008. A further 14.4 million Euro was spent on “Information and training measures for workers’ organisations” and another 7.3 million Euro for the “information, consultation and participation of representatives of undertakings”. Finally, trade unions received 400,000 Euro for preparatory consultation meeting. All details are taken from the overall budget for 2008: http://eur-lex.europa.eu/budget/data/D2008_VOL4/EN/index.html (accessed on April 6, 2009).

(18) See also Natali and de la Porte (2009).

(19) However, no legal minimum wages exist in Denmark or Sweden, as they are implemented via collective agreement. This prerogative of the social partners is an essential feature of the Nordic social model.

(20) Although we lack direct empirical evidence that this was the case, the developments described in section three lend support to this interpretation and invite further research on this question.

(21) What is more, many centre-left parties to date endorse market-making policies. For an in-depth analysis of the failure of Social Democrats to foster “Social Europe” see Bailey (2009).

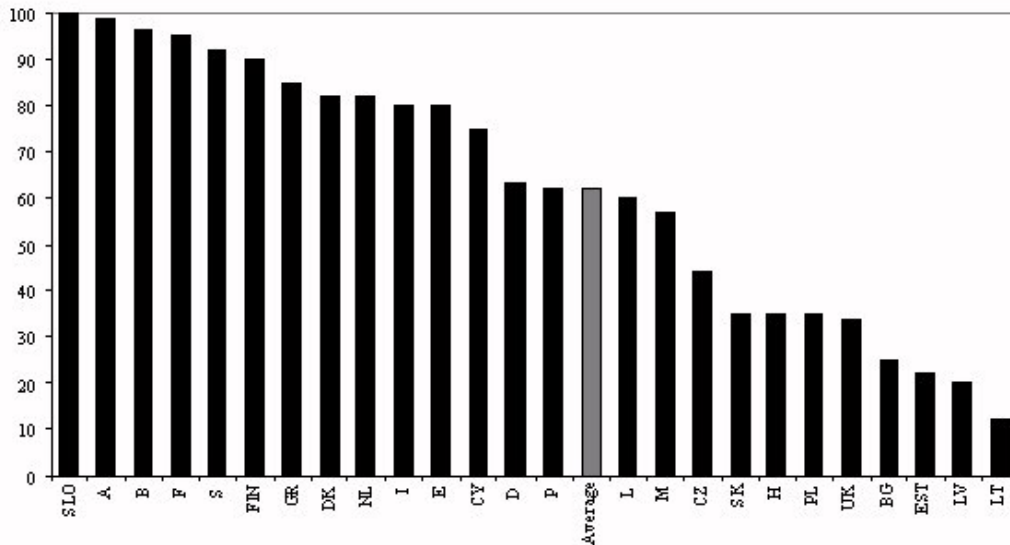
List of Tables and Figures

Table 1: Mode of Governance in the EU Economic and Social Policy

	Effect	
Mode of Governance	market-making	market-correcting
Hierarchical Direction	Monetary policy; Competition policy (merger and state aid control);	Gender Equality (TEC)
Joint Decisions (Community Method)	Common Market Directives (e.g. Services Directive) Social protection for mobile workers who cross national borders	Gender Equality (Guidelines) Labour legislation, conditions and protection (Incl. social partnership guidelines) European Social Fund
Intergovernmental Negotiations (governments remain in control of the decision)	Labour Market Policies* (Broad Economic Policy Guidelines; European Employment Strategy)	Social security* and social inclusion* (Open Method of Coordination)
Mutual adjustment (Competition through non-decisions)	Wages; Corporate Taxes	Product regulation

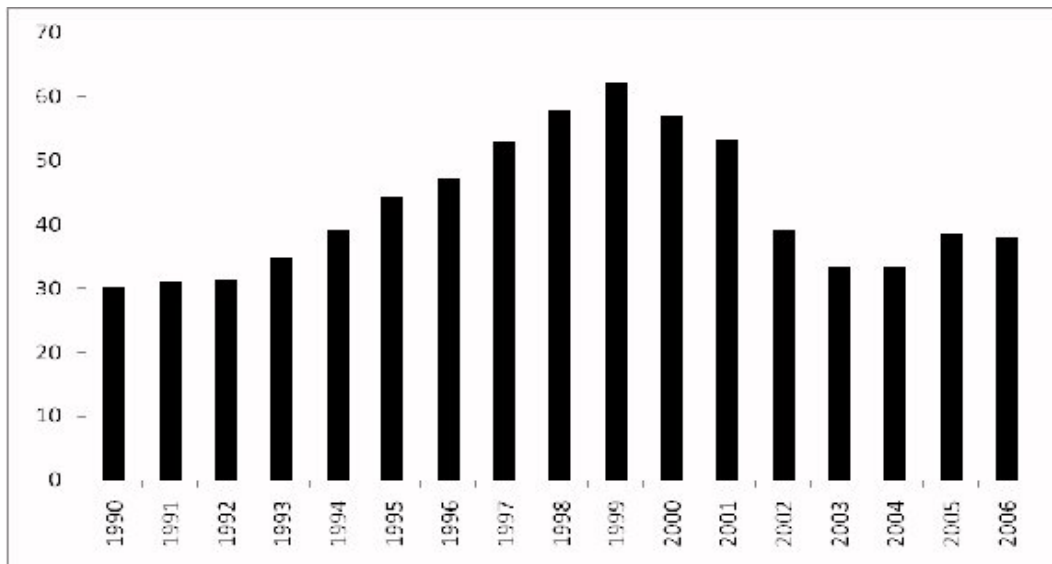
* Effect is less clear

Figure 1: Collective Bargaining Coverage in EU member states, 2006



Source: ICTWSS: Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 countries between 1960 and 2007. <http://www.uva-aias.net/207> Greece & Hungary: 2005; Slovenia: 2003.

Figure 2: Centre-left parties in percentage of total cabinet posts in all EU member states



Data: Armingeon et al. (2008): Comparative Political Data Set III 1990-2006.