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Recent European Challenges and the Danish Collective Agreement Model

- A Research Paper focusing on the Banking Sector and the Confederation of Professionals in Denmark

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1 Introduction

The Nordic countries collective agreement systems face, similar to other bargaining models, a wide range of challenges as a result of globalisation and increased European integration. Some concern the further development and strengthening of the European and national social dialogue. Others are related to the new forms of cross-border collaboration and negotiations taking place within multi-national corporations (MNC's).

This research paper examines a series of challenges facing the collective bargaining systems in Denmark, Estonia, Northern Ireland and Sweden. These countries represent four distinct labour market systems with different traditions of social dialogue and allow comparison of how different EU member states handled the recent challenges caused by the increased European integration.

The banking sector is one of the sectors where the European integration has gone furthest in terms of deregulation, free movement of capital, the common currency and cross-border collaboration. This sector is used as the empirical example as it was also one of those sectors first affected by economic changes in MNC's and a wide range of national and multi-national banks have increasingly expanded, merged and opened new branches in other European countries. This has triggered a series of new challenges and opportunities for *developing cross-border HR- policies* and collective bargaining and implicitly thereby, social dialogue not only at company level, but also at the sector, national and supra-national level. Indeed, the EU as an institutional framework affects to varying degrees the social dialogue between trade unions and employers at all levels.

This research paper examines five areas affecting the further development of collective bargaining systems in Denmark, Estonia, Northern Ireland and Sweden. Some selected areas are of particular importance to the Nordic labour market models, as these countries have long and strong traditions of collective bargaining, which sometimes clash with the rest of Europe, where the primarily means to regulate the labour market is legislation.

The five selected areas under examination are:

- The EU's social dialogue, European social partners' autonomous agreements and declarations
- The implementation of European social partners' autonomous agreements and joint declarations
- The idea of a European arbitration system
- Cross-border agreements at company level
- The European Court of Justice's recent rulings in the case of Laval, Viking and Rüffert.

The comparative analysis suggests that member states' different industrial relations systems represent a crucial challenge for increased European integration. However, the empirical findings also show that new opportunities for cross-border collaboration have arisen from the European project. The importance of coordinating common labour market policies as well as cross-border HR policies and collaboration within individual MNCs is analysed and discussed with

particular focus on the challenges facing the banking sector and the challenges experienced by social partners in the Nordic countries.

The research paper draws on empirical findings from a study financed by the Confederation of Professionals in Denmark and their affiliate the Financial Services' Union. The study is based on 35 interviews with representatives from the European Commission, national ministries, European and national trade unions and employers associations, conducted in the Spring 2008. The study also draws on secondary material regarding the industrial relations systems in Denmark, Estonia, Northern Ireland and Sweden.

The full report is in Danish and can be downloaded at:

http://faos.sociology.ku.dk/dokum/fnotat101.pdf.

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2 The European Social Dialogue - Negotiating Autonomous Agreements and Joint Declarations

Negotiations at EU-level often have crucial implications for the further development of social dialogue in different member states. Generally speaking, national key stakeholders can be inspired by the other member states' ways of handling various European challenges, including possibilities for influencing the further development of the European social dialogue, the implementation process of European social partners' autonomous agreements as well as the legal handling of different European policies at national and European levels.

Overall, two conditions appear to influence the policy process behind European social partners' autonomous agreements and joint declarations.

Firstly, the composition of the European Commission is crucial, particularly, as to a large degree the political game is determined by the type of European Commission in office. The political orientations of the European Commission in office are crucial, particularly whether it favours directives and thereby the legislative route or supports soft-law regulation, where the parties involved aim to reach their goals through higher levels of social dialogue and respect for national labour market traditions. To varying degrees social partners can exploit the political situation to their advantage. For example, if the European Commis-

sion favours increased EU legislation, social partners can be relatively passive to the on-going negotiations if they are in favour of a directive, whilst being active if they wish to affect the overall strategy for implementation.

Secondly, the policy process is also affected by European enlargements, which lately include the new East European countries, which often have relatively weak traditions of social dialogue, low union density and relatively few organised employers. Such differences in the traditions of social dialogue and the strength of social partners affect the possibilities of regulating Europe through social dialogue, as these countries have needs different to the old EU member states with long traditions for regulating the labour market through social dialogue. Therefore the challenge here is to develop a European social dialogue and implementation methods that are able to unite and operate in very different labour market models.

During the initial negotiations on how to regulate a specific issue at EU level, a wide range of interests are at play across Europe. European civil servants as well as national social partners stress that during such negotiations nearly all countries primarily think in terms of their own labour market system. Their awareness and knowledge of other member states' labour market systems is often limited. It is therefore often extremely difficult for European social partners to agree on any type of European regulation. This also applies to the negotiations taking place between European social partners and the internal discussions within the European trade unions and employers associations e.g. among their affiliates in member states. It is particularly the employers associations that are very fragmented in approach, which is often down to the different member states' industrial relations strategies. Hence the different sectors such as public versus private, small and medium size enterprises vis a vis multinational corporations also tend to make it difficult if not impossible to coordinate a common strategy.

Danish employers and employees are relatively influential in the political game which takes place between European social partners at EU level, particularly if one considers the size of Denmark (5.5 million inhabitants). Indeed, the Danish key stakeholders are active players when the European Commission consults social partners. As a result the Danish trade unions and employers associations appear relatively influential when European social partners negotiate and reach important decisions regarding the implementation methods used to regulate European policy. For example, Danish trade unions and employers associations are typically overrepresented in the small negotiation boards, where the final decisions are typically taken. This also applies to the negotiations regarding European social partners' recent autonomous agreements on tele-work, work-related stress and harassment and violence. These three agreements differ from the EU's labour market directives as the agreements are not legally binding. In addition, it is the European social partners and their affiliates, rather than the member states, which negotiate and are responsible for implementing the autonomous agreements at national level.

The preconditions for the Danish success is reportedly down to a common strategy between Danish employers and employees, where they jointly attempt to influence the early stages of the policy-process at EU level to affect the con-

tent of the agreements and thereby promote Danish interests. The shared common interest of Danish trade unions, employers associations and the Danish government in maintaining the main features of the Danish collective bargaining system or at least ensuring that new EU law has minimal implications for the Danish collective bargaining model is a main motivating feature of this successful participation.

When it comes to the specific negotiations regarding the EU's labour market directives and European social partners autonomous agreements, two conditions appear to influence the policy process: *the content of the agreement* and the *ongoing power games*, which take place not only between European social partners, but also within the European trade unions and the employers associations at EU level.

Occasionally, the content of the autonomous agreements have almost caused a break down in the negotiations. The most recent example being the negotiations regarding the autonomous agreement on harassment and violence and violence against third parties was a highly controversial issue. Some employers representing the private sector opposed the inclusion of violence against third parties as they found the issue irrelevant. In addition, the interviews indicate that the European Commission, the European trade union and the employers' support for a particular form of regulation is often down to the content of the agreements, where important questions are: 'Does the agreement concern specific employee rights rather than more soft issues such as work-related stress, life-long learning or harassment at the workplace?'. Neither the European Commission nor the European trade unions will support that specific employee rights are regulated through autonomous agreements. They prefer instead that such policies are regulated via directives. Also, the employers appear unwilling to regulate employee rights through autonomous agreements, particularly as they fear increased red tape for those implementing the agreements and thereby the risk of unfair competition. As a result, the empirical findings suggest that the European Commission and European social partners in some instances prefer to regulate social Europe through directives rather than autonomous agreements, whilst in other instances they favour autonomous agreements.

With respect to the ongoing power games, it appears that in particular employers representing the private sector often oppose any form of legally binding regulation from the EU when European social partners negotiate autonomous agreements and joint declarations. Indeed, this reluctance among some private sector employers has forced trade unions and the European Commission to settle for an autonomous agreement when they wanted a specific topic regulated at EU level. A recent example is disputes regarding the legal status of joint declarations and autonomous agreements, which have caused a stalemate in the negotiations within the European social dialogue representing the banking sector. Trade unions have advocated for legally binding declarations and agreements, whilst this was fiercely rejected by financial employers.

Although some employers have been reluctant and in some instances have even opposed more binding EU regulation, the European trade unions have to some degree succeeded in making the autonomous agreements more binding. For example, the status of the European social partners' agreements has

changed from voluntary to autonomous agreements. Also, the content of the agreements has changed, particularly where the possibilities of employees' participating in the development of the local procedures when handling the European agreements at company level have been strengthened in the latest two agreements on work-related stress and harassment and violence. For example, the agreement on work-related stress includes a *can- clause* regarding employees' involvement in the development of local procedures on work-related stress, whilst the agreement on harassment and violence include a *shall-clause*. This implies that a form of *spill-over* has taken place with respect to the European agreements, as they have become more binding not only in terms of their content, but also regarding their status.

A major challenge for developing the European social dialogue is, however, the limited involvement of some member states' trade unions and employers associations at EU level. This applies not only to the policy-making process at EU level. Also the implementation process reflects limited engagement by social partners, where recent empirical findings suggest that this problem is more prevalent in some countries and sectors than others.

3 Implementation: Different Methods at National Level

The next step following the decision-making process at EU level is to secure an efficient implementation of European social partners' autonomous agreements and joint declarations in the member states. The autonomous agreements and European social partners' joint declarations are regulated according to article 139 in the Amsterdam treaty. They differ therefore from EU directives as the agreements and joint declarations are not legally binding. The autonomous agreements and joint declarations are also different from the European social partners' previous agreements on parental leave (1995), part-time work (1998) and temporary work (1999) which were transposed into directives. In addition, it is the members of the signatory parties rather than the member states, who are responsible for implementing the agreements at national level 'in accordance with the procedures and practices specific to management and labour in the member states' (ETUC, et al, 2002:3). To varying degrees these activities have been followed by different implementation initiatives, where the autonomous agreements and joint declaration have been transposed into guidelines for good practice or collective agreements at confederal level. However, the success of implementation varies often not only from sector to sector, but also from one agreement to another.

For example, social partners in the Danish banking sector implemented the autonomous agreement on tele-work through collective agreements and thereby follow the Danish labour market traditions of collective agreements. However, the agreements on work-related stress, harassment and violence, along with the various joint declarations, have only been subject to discussion, and so far social partners have failed to implement them. Social partners have therefore followed a slightly different implementation method from the one used when implementing the tele-work agreement. The social partners in the Estonian, Irish

and Swedish banking sector decided not to implement the European agreements and joint declarations according to their national labour market traditions. The four countries' traditions for social dialogue between the national trade unions and employers associations appear to influence the implementation process. In Sweden and Denmark, to varying degrees social partners seek to implement the agreements through social dialogue. However, most Danish and Swedish social partners at the sector and local levels decided not to implement the agreements. In most cases, this decision was due to Danish and Swedish trade unions and employers associations finding no need to transpose the agreements into collective agreements, since tele-work, work-related stress or harassment and violence were already regulated through more extensive agreements or perceived as irrelevant for their members at sector and local levels. As a result, relatively few Danish and Swedish trade unions and employers associations choose to follow the Nordic traditions of collective agreements when implementing the European agreements.

In Northern Ireland, British labour market traditions dominated the implementation process. The British government participated in the negotiations at confederal level, but the negotiations and the implementation were led by the social partners. The ongoing power games appear crucial for the choice of negotiation forum and the implementation results. The British employers requested that the British government hosted the meetings and was actively involved in the implementation process, as the employers feared that negotiations with the trade unions would send a signal of social partnership and collective bargaining at confederal level, which the employers fundamentally are against.

Finally in Estonia, the state has been the initiator and main driver for the implementation of the agreements. After pressure from the EU, the Estonian Ministry of Social Affairs took the initiative to implement the agreements, and as a result the tele-work agreement has been transposed into national law.

Within the banking sector in all four countries, it appears that the sector already offers relatively good working conditions, and as a result some of the European agreements appear irrelevant for the social partners. Indeed, the agreements' content seem be crucial for mobilising the interests of social partners at national level. When analysing the implementation process in all four countries, it appears that the poor implementation record particularly at confederal and sector levels is often down to the content of the autonomous agreements and joint declarations. The relatively few implementation results are due to the fact that some countries already have extensive regulations in the areas regulated by the autonomous agreements and joint declarations. In addition, the interviews reveal that social partners often find the autonomous agreements and joint declarations' content such as tele-work irrelevant for their members and they have decided not to implement the agreements and joint declarations. However, the empirical findings also suggest that although a specific subject appears irrelevant for some sectors, it may prove fruitful to participate in the negotiations and the development of implementation strategies at national level. Indeed, the empirical analysis also suggests that by giving positive feedback regarding the implementation process to the European social partners seems to

affect national social partners' influence on ongoing and future negotiations at EU level.

The relative sporadic and limited implementation results are also often due to the voluntary nature of the autonomous agreements and joint declarations as well as the relegation of the responsibility for implementation to social partners, which often triggers new power games between the parties involved, where one party sometimes refuses to implement the agreements or common declarations. The banking sector is no exception. The Danish Employers' Association for the Financial Sector and The Swedish Employers Associations for the Financial Sector have often refused to implement the autonomous agreements through collective agreements at sector level, mainly because they are not a member of BusinessEurope (Sweden and Denmark). Therefore, they are not obliged to implement the agreement. Also the Danish and Swedish financial employers often remarked that they already had more extensive regulations in the areas regulated by the European agreements and joint declarations and therefore found no need to implement these policies. In other countries such as Estonia and Northern Ireland, the weak tradition of collective bargaining in the banking sector appeared to account for the limited implementation results.

The relatively poor implementation record within the banking sector has resulted in critique from the European Commission and social partners. Trade unions in particular, have called for increased pressure from the European Commission on social partners to provide deliverables. Therefore, the lack of implementation results can affect social partners' influence on the type of European regulation used in the labour market in the long-term. Indeed, poor implementation records may question social partners' legitimacy and credibility as responsible partners in the negotiations and implementation of the autonomous agreements and joint declarations, and as a result the European Commission may start to promote directives rather than autonomous agreements as a way to regulate European labour market. Regulating the labour market through directives appears particularly problematic for countries such as Denmark with long traditions of collective agreements, mainly because social partners would no longer be the ones in charge when regulating the labour market through directives. In the long-term, this may affect social partners' interests in participating in collective bargaining when specific issues are expected to be regulated through European directives rather than autonomous agreements.

4 The idea of an European Arbitration System

Nordic trade unions with Danish FTF and LO in the lead have recently proposed the idea of an European Arbitration System as a response to the various difficulties regarding the implementation and handling of the European social partners' autonomous agreements and common declarations in the member states.

Unlike the European directives, the autonomous agreements and cross-border agreements are not legally binding and as a result potential breaches cannot be brought before the European Court of Justice. The possibilities to prosecute any breaches of the European social partners' agreements and com-

mon declarations depend on the implementation method used and the legal system in place in the member states. Nordic trade unions, Denmark in particular, have expressed an interest in developing a European arbitration system covering all member states. However, the idea of a European arbitration system is relatively unknown to most member states, and among those aware of the idea the reactions are mixed. The employers oppose the idea full stop and trade unions across Europe appear wary of the idea. The employers and some trade unions fear that a European arbitration system will create red tape and reduce the flexibility in the labour market – a feature typically requested by employers. Others state that an efficient European arbitration system requires high union density in all member states, which is a fundamental problem. Recent statistics indicate that the union density is high only in the Nordic countries, significantly lower in Northern Ireland and almost non-existent in Estonia, where trade unions are often associated with the former communist regime. In addition, most bank employees in several Eastern European countries reportedly feel no need to get organised as, generally speaking, the banking sector in these countries offers the employees relatively high salaries and benefits. The idea of a European arbitration system is considered difficult, if not impossible, to implement unless it is accompanied by high union density and relatively strong traditions of social dialogue in most European countries. Finally, the potential clash between the national and European systems of arbitration to some extent also account for employers and trade unions' opposition.

The empirical findings suggest that it is primarily Nordic trade union representatives who advocate for legally binding agreements and a European arbitration system based on the Nordic principles of collective bargaining. However, whilst Nordic trade unions have been less successful in promoting their idea of a European arbitration, a slightly different route for a European arbitration system seems to have emerged in recent years. Indeed, the different ideas of a European arbitration system appear to have had a domino effect - or a so-called spill-over effect - at company level. Some trade unions at company level have successfully convinced their counterpart that internal cross-border arbitration systems are set up to handle potential disputes regarding their various cross-border agreements and declarations. In the long-term, a form of bottom-up pressure is triggered as the relatively few and small effects of the European autonomous agreements and common declarations adds pressure from local trade unions on individual companies to develop arbitration systems that can strengthen the European social dialogue.

Although some examples of cross-border arbitration systems at company level exist, the idea of a European arbitration system at EU level appears to be relatively short-lived, particularly as the idea is no longer at the top of the European Commission and the European Trade Union Confederation's policy agenda. However, the idea of a European arbitration system continues to be a long-term ambition among some Danish trade unions.

5 The Danish Collective Agreement Model - Challenged by recent rulings by the European Court of Justice

Rulings by the European Court of Justice (ECJ) are crucial to most if not all member states, depending on the extent to which the rulings are compatible with individual member states' rules and regulations. Rulings by the ECJ determine the rules and procedures for national actors and take precedence over national law or collective agreements in all member states. The member states sovereignty is therefore to varying degrees challenged by the ECJ's rulings – a problem which has become even more apparent in recent years. Indeed, the recent rulings in the case of Laval, Viking and Rüffert to some degree challenge the Danish collective bargaining model, mainly because the rulings favour the principle of free movement of goods on behalf of the right to collective strikes.

Debates are still ongoing across Europe, the Nordic countries in particular, regarding the practical implications of the recent rulings in the member states. The three rulings share a common feature, the *principle of proportion.* The principle of proportion states that the means of industrial action have to correspond with the cause subject to industrial action. In this context, the recent ECJ rulings state that employees various demands and means of industrial actions fail to correspond to the type of social dumping trade unions attempt to prevent, which in the case of Viking is Conflict of Sympathy versus the principle of free movement; in the case of Laval Conflict of Sympathy versus free exchange of services and in the Case of Rüffert, a German federal state's collective agreement versus the principle of free movement of labour.

The recent ECJ rulings regarding the cases of Laval, Rüffert and Viking to a varying degree are considered specific Nordic labour market problems among European trade unions. This is largely down to the way the Nordic countries regulate the labour market, where social partners regulate wage and working conditions through collective agreements. Indeed, both Danish and Swedish trade unions, employers and government representatives state that the EU's human rights convention with its focus on the individual rather than collective employment rights clash to some degree with the Nordic system of collective bargaining. This is due to the fact that trade unions and employers associations here "own" the collective agreements and neither individual companies nor employees have any legal rights. By contrast, the various questions regarding the right to industrial action are often considered a cross-border issue, relevant to all European trade unions. However, the discussions regarding the recent rulings have generally speaking been relatively limited in most European countries, except for the Nordic countries.

In the Nordic countries the reactions by employees have been varied. Several Nordic and particularly Danish trade unions consider the rulings mentioned problematic and often refer to them as a direct attack on the Danish labour market model. Others perceive the rulings as minor technical problems that can be solved. Generally speaking, the trade union density is relatively high in Denmark and particularly within the banking sector the general trend is that employers either become a member of the Danish Employers' Association for the Financial Sector or sign a collective agreement. However, most Danish trade

union, government and employers representatives appear to agree that the recent rulings regarding Laval, Rüffert and Viking are not in favour of the Danish collective bargaining model, which is founded on a strong collective representation. This is largely reflected in the way the rulings overwrite collective rights at the expense of other principles often related to the concerns regarding the employment rights of the individual. Some trade union representatives stated that if conflicts of sympathy are made illegal, this may have severe implications for the Danish collective bargaining model. Others argue that the recent rulings are in effect a change of the directive, where some of the minimum employment rights are now considered standard rights by the ECJ.

Danish employers argue that implications of the recent rulings are few generally speaking. They often perceive the ECJ rulings as EU bureaucrats failing to trust social partners' ability to handle various problems, which stands in sharp contrast to the Danish labour market traditions. Indeed, the Danish labour market traditions are that social partners with the support of government solve their own problems. A recent example of this willingness to find solutions that meet the demands of EU, whilst respecting the main features of the Danish bargaining model is the work of the task force, which was set up to discuss and handle the various problems caused by the ECJ ruling in the case of Laval. The task force, which comprised of representatives from Danish peak organisations and government officials, proposed that a clause was added to the "law on posted workers" regarding the means of collective action. This clause stipulates that foreign service providers shall comply with the rules and regulations stated in the collective agreements signed by the 'most representative social partners in Denmark and apply to all sectors on the Danish labour market'. However, it is questionable whether the solution proposed by the task force and later adopted by the Danish Parliament meet the requirements of the ECJ.

The rulings on Laval, Rüffert and Viking concern the so-called principle of transparency regarding member states' minimum wages. This principle of transparency poses a specific challenge to Denmark and Sweden. This is not least because Denmark and Sweden, unlike other EU member states, have no statutory or legally determined minimum wage. Instead, the minimum wage is set through collective bargaining in Denmark and Sweden. Secondly, Denmark has, similar to other Nordic countries, decentralised some of the wage bargaining to company level to enhance labour market flexibility. This process of decentralised wage settlements makes the actual wage levels less transparent for foreign employers. The task force mentioned earlier solved this particular problem by excluding local wage negotiations. Although this solution solves the immediate problems related to the case of Laval, it is questionable whether this solution will trigger new problems in the long-term due to local wage bargaining being a central element for the flexibility of Danish and other Nordic companies.

The reactions of the ECJ's rulings in Laval, Viking and Rüffert in the four countries participating in this study – Denmark, Estonia, Northern Ireland and Sweden - indicate how different labour market systems are forced to adjust to similar European rules and procedures. Indeed, the different reactions in Denmark, Estonia, Northern Ireland and Sweden reflect to some extent not only the

implications of the ECJ rulings on these countries' national bargaining systems, but also their different labour market traditions. For example, in Estonia, the government was the key actor regarding the implementation of the rulings, which appear to mirror the main features of the Estonian labour market model. In Northern Ireland, employees felt pressurised and did not consider the recent ECJ rulings as any help in an industrial relations system, where the social dialogue is primarily company based and relatively weak if not non-existent in some sectors. In Sweden, the recent rulings were considered a draw back and in the short-term social partners and the government are adjusting the legislation (particularly the Representative Act (1973) and the collective agreements to meet the requests by the ECJ.

Some officials representing the European Commission stated that the debates following the ECJ rulings reflect to some degree the fundamental problems with the European social project, where member states and national social partners often see anything from the EU as a challenge or something intended to destroy their own national industrial relations system rather than seeing the potentials in other labour market systems. In this context, the recent rulings underpin the challenges that occur when different labour market systems interact. However, other EU officials hardly see the recent ECJ rulings as a fundamental problem. Instead, they perceive the ECJ rulings mainly as implementation problems, which need to be addressed by the member states.

In the long-term the different rulings by the ECJ may affect ongoing power relations between social partners. At national level one side of industry may exploit the rulings to gain some advantages. However, this appears more likely to happen in Northern Ireland, where the relations between social partners are relatively conflict-oriented. Should social partners attempt the same in Denmark, they may risk undermining the Danish collective bargaining model, which foundation is based on several decades of trust. Indeed, this would annul a one hundred year tradition of collaboration between social partners, and the day the political winds change the side of industry which initially lost may take revenge. This approach is, however, not currently present in Denmark. Instead, the recent negotiations on the task force of Laval as well as the implementation of the European social partners' autonomous agreements and joint declarations suggest that Danish social partners often collaborate to advance their common interest in promoting the Danish bargaining model, even if to varying degrees they disagree on the content of, for example, the autonomous agreements and joint declarations.

6 Social Dialogue at Company Level - A Bottom up Perspective

Despite the various problems regarding the European social partners' negotiations at EU level and the various implementation problems in the member states, the data suggest that these policy processes to varying degrees enhance social dialogue between European trade unions and employers associations.

The European social dialogue has perhaps unexpectedly had a knock on effect or a spill-over effect on the social dialogue taking place in different

member states. Indeed, the empirical findings suggest that the social dialogue within one area at EU level have often paved the way for other types of dialogues between social partners either at supra-national or national levels. The contact with social partners with different industrial relations traditions appear to improve individual trade unions and employers associations understanding of their counterpart, and put their own labour market traditions into a perspective. For example, through their participation in the European social dialogue at EU level social partners may realise that some countries have much more state control with less autonomy for social partners. Likewise, social partners from countries with labour market systems dominated by legislation may act as an inspiration to alternative ways of protecting employee interest. Indeed, this suggests that social partners by bench-marking their own traditions of social dialogue reveal weaknesses as well as strengths. In a Danish context, there have indeed been examples of trade unions and employers associations gaining a greater appreciation of the Danish industrial relations system when comparing their own system to others where social partners have less influence.

Recently, the industrial relations systems in the new member states have been the main focus at EU and national levels. Both the European Commission and social partners in countries, such as Denmark, are increasingly aware of the relatively weak or no traditions of social dialogue in most new member states. These countries' weak traditions of social dialogue are largely down to employees being weary of trade unions due to the new member states' past traditions of state controlled unions. As a result, union density is relatively low in most sectors, which also means that social partners are relatively weak and the state is the dominating actor when regulating the labour market. This also applies to the negotiations at EU level and when the various negotiations results have to be implemented in most of the new member states.

An industrial relations system with weak or no trade unions and employers associations pose a problem to the development of the European social dialogue, as social partners from such industrial relations systems feel no ownership towards the decisions made at EU level and therefore appear to be less interested in implementing them. Therefore, the 'old' EU member states are relatively active in promoting and strengthening the social dialogue in the new member states. This interest in promoting social dialogue applies not only to Danish trade unions. Danish and Swedish employers, particularly larger companies operating in the new member states, also appear active in promoting social dialogue in these countries. Indeed, employers often consider social dialogue as a crucial element in further developing their companies and personnel policies. In this context, we conclude that:

- Low union density on both sides of industry restricts the development of social dialogue in the new member states
- Trade unions are often associated with the past communist regime and that hinder the attempts to organise labour
- The initiatives for social dialogue are often instigated from below, particularly when foreign companies operate in the new member states

- The management in multi-national corporations is often interested in developing and strengthening social dialogue at company level.

This study reveals that social partners and not least employers' express an interest in promoting cross-border collaboration, which has a positive effect on developing social dialogue not only at national level, but also when it comes to cross-border collaboration at company and EU levels. Within the banking sector, Nordic confederal and sector trade unions coordinate and develop common European strategies through the Confederation of the Nordic Bank, Finance and Insurance Unions. The Nordic employers representing the banking sector have not yet set up a similar system, but nevertheless, they have developed a more informal collaboration, where they meet from time to time.

At company level, trade unions have developed various fora for negotiations such as Union in Nordea and Danske Unions. Within these company based work councils, trade unions have the mandate to negotiate and consult with management on behalf of employees in different national and foreign branches belonging to the particular MNC. Generally speaking, the Nordic countries dominate the debates in the works councils and particularly the European Works Councils (EWC). Furthermore, it is mainly in the country where the headquarter is situated that the employee representatives have the most resources, typically take the initiative, lead the discussions and have most influence on the decisions taken. Indeed, the interviews revealed that Danish employee representatives typically took the initiatives such as setting up the European Works Council within Danish multi-national corporations. The findings also suggest that they typically encourage employee representatives from other countries to participate in the discussions despite their different traditions of social dialogue. In addition, the Nordic countries often have the final vote regarding the allocation of seats within the works councils. Indeed, Nordic trade union representatives requested that employee representatives must be organised in trade unions equivalent to the Nordic Financial Services' Unions in order to be members of Danske Unions or Union in Nordea. This has been a problem for some of the countries participating in this study such as Estonia. These findings also suggest that Nordic labour market traditions with their high union density and relatively strong trade unions dominate forms of company-based collaboration that take place across borders within Nordic multi-national corporations. As a result, it is debatable if the system is primarily international or primarily Nordic.

The empirical analysis also indicates that different labour market traditions influence the negotiations within the European Works Councils. The Danish and Swedish trade union representatives come from a system with strong traditions for formal and informal negotiations at all levels. Therefore they appear fully aware of the different limitations which exist regarding the types of results that can be reached within the EWC. They repeatedly stated that the EWC is mainly a forum for hearing and consultation between employees and management rather than a negotiation body. Also the Estonian employee representatives appear to understand the nature of the EWC as a forum for hearing and consultation. However, they are relatively silent within the EWC due to their

weak traditions for social dialogue and the fact that hardly any – employers and employees alike - are organised. The Irish trade union representatives appear to have less understanding of the nature of the EWC as a cross-border forum for hearing and consultation. They have reportedly tried to exploit the system to strengthen their relatively weak national traditions of social dialogue at company level.

Despite the different traditions of social dialogue at company level, the various examples suggest that the initiatives for developing and strengthening social dialogue often come from below when companies merge or take over new companies. Indeed, a takeover quite often appears to trigger new needs for developing employer and employee relations in the new companies. The various examples to varying degrees also suggest that the European social dialogue at EU level influence the social dialogue at national level. Indeed, from the European social dialogue, some countries often realise that their system is relatively efficient compared to other countries, whilst others seem to gain inspiration for new forms of dialogue between social partners. At the same time, the national differences within member states' industrial relation systems represent a major challenge for developing a European industrial relations system.

7 Member states Industrial Relation Systems - National Differences a Major Challenge

The handling of European social partners' autonomous agreements and joint declarations in the member states reflects not only the mix of industrial relations systems at play when negotiating and implementing such common policies. It also reveals a wide range of challenges facing European and national social partners when they attempt to develop and strengthen the European social dialogue and the European project more generally. In terms of industrial relations systems, we here distinguish between three models: the collective agreement model, the market-model and the state model - each characterised by specific features.

7.1 The Main Features of the Collective Agreement Model

The Danish and the Nordic labour market model are often classified as the c*ollective agreement model*, where the labour market is primarily regulated through collective agreements signed by social partners. The union density is typically high, and the industrial relations system is dominated by a high degree of voluntarism, where trade unions and employers through collective agreements find solutions to their various problems. Social partners are also involved in the policy-making process when the government proposes new legislation. Indeed wage and working conditions are primarily left to social partners, although legislation also dominates in areas such as vacation time, health and safety. Therefore, the labour market regulation is not entirely left to social partners. Instead, a close collaboration and coordination takes place between the state, unions and employers associations to avoid government led initiatives clashing with the agreements signed by social partners.

During the last few decades, a decentralisation process has taken place within the Danish and Swedish industrial relations systems. The framework for Danish and Swedish collective bargaining is still outlined by sector agreements, whilst local bargaining increasingly determines the implementation and interpretation of these agreements at company level due to pressures for decentralisation. Due and Madsen (2006) describe this process as centralised decentralisation, whilst other commentators draw on the concepts of coordinated or organised decentralisation (Hyman 1992; Traxler 1995). The main difference between organised decentralisation and dis-organised decentralisation is that no coordination takes place between the state and social partners in the case of the latter. Some commentators also define this difference as the domination of liberal market economy rather than a coordinated market economy (Hall and Soskice, 2001).

Although the Danish industrial relations model is often characterised as the collective agreement model, Jensen (2007) argues that the Danish model has been subject to some significant changes during the past 20 years. *Firstly,* the right to industrial action appears less important as social partners cannot legally exploit this right locally when company based bargaining is on-going although more and more subjects are increasingly negotiated at company level. Secondly, social partners to varying degrees appear to disagree on the relevance of industrial action as a mean to obtain results. To some degree this weakens the rights to strikes and lock-outs as tools for industrial action. Finally, Jensen (2007) states that increased competition makes it difficult to exploit the right to industrial action without compromising the individual company's competitiveness.

7.2 The Main Features of the Market Model

The market model is characterised by a labour market less organised and institutionalised. The labour market legislation is limited and collective agreements are typically few and sporadic. The bargaining process is also hardly systematised or coordinated. In fact, individual agreements are key and the market means dominate the regulation of wage- and working conditions. However, Jensen (2007) argues that this does not necessarily mean that trade unions and employers are weak. Social partners often seek to gain influence by mobilising and monopolising specific part of the workforce. In this context, the market model mirrors a model of conflict, whilst the collective agreement model more resembles a consensus model.

In contrast to the type of voluntarism dominating the Danish and Swedish industrial relation systems, collective bargaining taking place within the market model has typically declined in recent years. During the 1980's and 1990's countries dominated by the market model increasingly adopted legislation aimed to fragment the coordinated bargaining culture and weaken unions rather than supporting the past traditions of collective bargaining.

The British and Northern Irish industrial relations systems are often seen as prototypes of the market model. In the UK, after the Conservative's hand bagging of trade unions during the 1980s and 1990s, New Labour, which came into office in 1997, adopted new, but still moderate legislation regarding the recognition of trade unions, common rules and procedures for industrial action as well as consultation and hearing (Edwards, 1998). At the same time, New La-

bour passed legislation strengthening the rights of the individual in terms of adopting a minimum wage and rules and procedures on working time. However, the union density continues to decline and the relations between employers and employees are still dominated by the model of conflict rather than consensus. One analysis by EURO-found also stresses this by stating *"Regarding unions representation it can be said that the industrial relations system is now characterised by extensive non-unionised zones."* (EURO-found UK).

7.3 The Main Features of the State Model

In the state model, the state or the political system plays a key role in regulating the labour market. Labour market legislation is extensive and the government or the state primarily regulates the labour market. The union density is typically low and the so-called principle of Erga omnes is widely used. The principle refers to a process, where collective agreements are transposed into legislation that covers all sectors in the labour market.

Estonia and other new member states such as Poland resemble the state model as union density is often low if not non-existent in certain sectors within these countries and the state typically takes the lead in regulating the labour market. In most of these countries, the industrial relations systems are still under development following the independence from the USSR. The union density on both sides of industry continues to be low, and particularly among employers it is almost non-existent in specific sectors. Therefore, an industrial relations system based on voluntarism as seen in Denmark and Sweden appears difficult if not impossible to implement in these new member states.

7.4 Comparing the Models of Industrial Relations

Denmark, Estonia, Northern Ireland and Sweden are prototypes of different industrial relation systems. Two countries represent the collective agreement model (Denmark and Sweden), one country resembles the State Model (Estonia) and the fourth country mirrors the Market Model (Northern Ireland). Each of the three models specific characteristics dominates in different areas.

In some countries a genuine tri-partite system dominates parts of the industrial relations system, where social partners and the state coordinate their policies. Such a system dominates the Danish and Swedish system of industrial relations, whilst this is less so in Estonia and in Northern Ireland (the UK), where the coordination which takes place between social partners and government is limited, despite past traditions for such forms of collaboration between the parties mentioned.

The degree of legislation also appears crucial when comparing different industrial relations systems. For example, employees' rights to collective bargaining differ across the four countries, where such rights are stated in the law in Estonia, Northern Ireland and Sweden, whilst this is not the case in Denmark (Jensen, 2007: 194). In fact, in Estonia and Sweden employees' right to collective bargaining is included in the constitution, whilst in Northern Ireland the unions rights to collective bargaining is restricted by law. For example, the law excludes companies with less than 21 employees and requests that the union organises at least 10 per cent of the employees at a particular workplace and that

the majority of employees support the union (Dickens and Hall, 2003; 138). Another significant difference across the four countries is that neither Denmark nor Sweden regulates the minimum wage through legislation, whilst this is the case in Estonia and Northern Ireland (Jensen 2007:193). The four countries also differ in other areas such as the levels of union density among trade unions and employers as well as the coverage rate of collective agreements.

- The Danish union density is comparatively high, although there are varied reports on the number of organised employees and employers. The union density among Danish employees varies from 75 per cent (Jensen 2007: 72) to 80 per cent (EURO-found Denmark). The union density among Danish employers is estimated to 52 per cent (EURO-found Denmark). The coverage rate of collective agreements is approximately 83 per cent in Denmark, which is relatively high compared to other European countries (EURO-found Denmark).

  Within the Banking sector recent statistics by the Danish Employers' Association for the Financial Sector suggest that the union density is 83 per cent, a number which only covers employee members of the Financial Services' Union. Jensen (2007:88) estimates that 90 percent of employees within the banking sector are organised either through the Financial Services' Union or the National Insurance Workers' Association. The coverage rate of collective agreements is estimated by the Financial Services' Union to be 100 per cent.

  Among the employers, 238 companies are members of the Danish Employers' Association for the Financial Sector and these companies employ approximately 90 percent of all employees within the banking sector. The coverage rate, according to recent statistics by the Danish Employers' Association for the Financial Sector, is 94.1 per cent in 2006. Jensen (2007) estimates that the level of conflict is relatively low within the Danish banking sector compared to other sectors in Denmark.

- In the UK/Northern Ireland, the unions density is 29 percent among employees, whilst 40 per cent among employers. During the past 20 years, trade unions have lost more than 50 per cent of their members. Employees within the public sector are often organised, whilst the private sector is increasingly fragmented and tends to loose members. In the private sector the union density is 17 per cent and the coverage rate of collective agreements is approximately 20 per cent. Recent statistics for the banking sector are unavailable (EURO-found UK).

  Collective bargaining increasingly takes place at company level due to the low union density among employers and increased deregulation over the past 20 years. The coverage rate of collective agreements is around 35 per cent, which is 50 per cent less compared to 20 years ago, when the coverage rate was 70 per cent.

- In Estonia, trade unions are relatively weak. The trade union density today is 14 per cent compared to 53 per cent in 1993 when the economical changes started. Among the employers, the union density is also relatively low – 25 per cent. As a result, collective bargaining plays a limited role in regulating the labour market. Social partners and government officials estimate that the union density is lower than the national average within the banking sector. Reportedly, none of the employers within the banking sector are organised and the union density among employees is also estimated to be very low. In fact, Danish and Estonian interviewees stated that there are no independent employers representing the banking sector within Estonia.

- In Sweden, the Union density among employees is 77 per cent (EURO-found Sweden; Jensen, 2007), whilst around 55 per cent of the employers are organised (EURO-found Sweden). The coverage rate for collective agreements is 90 per cent. Within the Swedish banking sector approximately 75 per cent of the employees are organised, where 65 per cent are members of the Swedish Financial Services or the Swedish Confederation for Professional Employees. Another 10 per cent are members of the Swedish Confederation of Professional Associations**.** Recent statistics by the Danish Employers' Association for the Financial Sector estimate that 67.3 per cent of bank employees working for one of the Swedish Employers' Association for the Financial Sector's members are organised. The union density among employers within the banking sector is estimated to 72.1 per cent according to the statistics by the Danish Employers' Association for the Financial Sector.

Across the four countries, the empirical findings also reveal that the level of collective bargaining varies, depending on the country under consideration. In Denmark and Sweden, the sector level appears to dominate, although social partners at company level have acquired increased room for manoeuvre due to pressures for decentralisation. The situation is slightly different in Estonia and Northern Ireland, where the company level is the dominating forum for collective bargaining. However, across the four countries a common trend is that collective bargaining increasingly takes place at company level, although social partners at sector level continue to set the main frames for the negotiations at company level in some countries such as Denmark.

With respect to the level of employee protection, Denmark is often characterised as a country with relatively liberal rules and procedures regarding dismissal and recruitment of new employees, whilst most European countries have stricter rules and procedures. Denmark also differs in other ways. For example, employees are primarily protected through collective agreements, whilst such rights are regulated through legislation in Estonia and Northern Ireland. In Sweden, collective agreements still protect employees although recent initia-

tives suggest a move towards increased legislation in some areas such as the Representative Act (1973).

Although Denmark and Sweden belong to the collective agreement model, significant differences exist regarding the balance between flexibility and security the so-called flexicurity balance. A recent OECD report states that on a scale from 0-6 regarding various procedural barriers for dismissal, where six is the maximum employee protection, Sweden comes in at 3.5, whilst Denmark similar to Northern Ireland is indexed as 1. Likewise, barriers for redundancy are also significantly higher in Sweden (4.0) compared to Denmark (1.5) and Northern Ireland (1.0 - OECD, 2004). Indeed, the level of employee protection is relatively similar in Denmark and Northern Ireland, which is striking considering that Denmark is often is compared to Sweden.

Table 1: Indicators for Employee Protection

	Denmark	Sweden	Northern Ireland (the UK)
Procedural barriers	1	3	1
Barriers for redundancies	1.5	4	1.3
Notice periods and redundancy pay	1.9	1.6	1.1
Total employee protection regarding redundancy	1.5	2.9	1.1
Source: OECD (2004), tabel 2.A 2.1: 112			

By contrast, the level of income security in case of unemployment is much higher in Denmark and Sweden compared to Northern Ireland. The relatively liberal flexible hire and fire rules and high income security in Denmark appears puzzling and is often referred to as the system of flexicurity. Numbers for Estonia are unavailable.

In sum, fine differences between countries are often overlooked in most comparative analysis, although it is evident from the empirical analysis that significant differences exist across sectors in each of the four countries. For example, collective bargaining at sector level to a varying degree sets the framework for local bargaining at company level in different sectors and countries. Therefore, it is slightly misleading that sector agreements dominate in Denmark as collective bargaining regularly takes place at company level in order to implement and interpret the sector agreements. In addition, the principles of Erga omnes, where collective agreements are transposed into legislation, are also used in Denmark, Estonia and Sweden, whilst this is not the case for Northern Ireland. In this context, the principle of erga omnes is primarily used when implementing EU law in Denmark and Sweden in order to meet the implementation requirements by the European Commission, which state that all employees need to be covered by EU law. Indeed, this also poses a challenge when EU law is implemented through collective agreements which only cover certain groups of employees as it is the case in Denmark.

8 Discussion - The Danish Collective Agreement Model and EU Labour Market Policy

Denmark, Estonia, Sweden and Northern Ireland, along with other EU member states, have different traditions of social dialogue. This affects not only the negotiations at EU level, but also implementation of the European social partners' autonomous agreements and common declarations at national level.

Countries with strong traditions for collective bargaining will typically advocate for leaving the negotiations and the implementation to social partners with limited, if any interference from the EU and the member states. Hence, they often perceive the EU and the member states as crucial stakeholders in terms of strengthening and maintaining the model of voluntarism. In the case of Denmark, it appears that social partners are relatively influential in the negotiation phase at EU level. They have also shown the ability to collaborate with their national counterparts when it comes to promoting a common Danish agenda at EU level. Danish social partners are also relatively active during the negotiations at EU level. Such possibilities for collaboration have been exploited to a lesser extent by social partners from some of the countries dominated by the state model. This is not least down to the fact that social partners from such countries often suffer from low union density and therefore appear less able to act as legitimate negotiators and implementers at EU and national level. Countries dominated by the market model typically face the problem that social partners are often unable to jointly promote common country specific interests due to their traditions of conflict rather than consensus.

That most European member states' industrial relations systems mirror the market or the state model rather than the collective agreement model is a problem for the Danish industrial relations model. Although social partners from countries with strong traditions of regulating the labour market through legislation may at first find the legislative route irritating, they also often consider it a necessity to ensure implementation of the European social partners' agreements - even if it means limited or no influence on the implementation process. Indeed social partners in many EU member states appear less active in the policy-making process at EU level when negotiations concern a directive or legislation rather than an autonomous agreement. The recent negotiations regarding the European social partners' autonomous agreements on work-related stress, telework and harassment and violence underpin this. Danish trade union and employer representatives were particularly active in the early stages of the negotiations in order to influence the policy outcome. Thereby, they appeared to follow the Danish labour market traditions of actively involving social partners in the policy-making process.

Also the debates regarding the idea of a European system of arbitration reflects different interests and labour market traditions across Europe. Nordic trade unions have primarily promoted the idea, whilst trade unions from other EU member states may at first sympathise with the idea, but have often deemed the idea unrealistic due to their relatively weak traditions of social dialogue. The individual countries' industrial relations system therefore appears crucial in terms of social partners' interest in developing a European system of arbitration.

The differences in member states' industrial relation systems are also apparent when European social partners and their affiliates negotiate and implement the autonomous agreements and joint declarations. Social partners with strong traditions of collective bargaining are typically very active in the negotiation process at EU and national level, whilst social partners from countries dominated by the state model are often unable to act as legitimate negotiation partners due to being relatively weak and fragmented.

With respect to the implementation process, the country differences are less marked. Despite strong traditions of collective bargaining in Denmark and Sweden, social partners have often failed to implement European social partners' autonomous agreements and joint declarations. Likewise, in countries such as Northern Ireland dominated by the market model and Estonia, where the state model prevails, the implementation results are also few. In Northern Ireland, the poor implementation records are typically down to the antagonistic nature of relations between trade unions and employers, whilst the problem in Estonia is that social partners are weak and the state therefore has to take the lead when implementing the autonomous agreements and common declarations.

The EU largely appears to favour the rights of the individual rather than collective rights, which poses a significant problem to the Nordic collective agreement model. In Denmark, social partners regulate the labour market including some rules and regulations from the EU through collective agreements. However, the collective agreements cover only between 75 to 80 per cent of the employees, whereby a relatively small group of the workforce is without protection when implementing EU law exclusively through collective agreements. To solve this problem, social partners and the government typically decide jointly to adopt subsidiary legislation which covers groups in the labour market without a collective agreement.

The recent rulings by the European Court of Justice in the case of Laval, Viking and Rüffert and the following debates and policy proposals developed jointly by the Danish government and social partners stress the potential conflicts between the EU's emphasis on the rights of the individual vis-à-vis the Danish collective bargaining system. In all three cases, the ECJ ruled that the means of industrial action used by trade unions failed to match the concerns regarding the *principle of free movement of services* and the *principle of free establishment*. Although the right to collective industrial action resembles a protection of basic employee rights, the ECJ favoured the principle of free movement of labour and service providers. Indeed, these rulings are perceived by some trade unions and employers as a direct threat for the Danish bargaining model, since the right to collective industrial action represents one of the cornerstones in the Danish industrial relations system. Social partners and the government solved the problem by adding a new clause to the law on posted workers. However, the recent rulings also suggest that the Danish traditions of collective agreements clash not only with the industrial relations systems of other EU member states, but with the ECJ's interpretations of the EU's rules and procedures regulating the labour market. Indeed, ECJ rulings of this nature to a varying degree challenge the Danish collective agreement model and it is highly questionable whether social partners and the government can continue to solve

the problems by adding new clauses to existing legislation without jeopardizing the basic principles of the Danish collective agreement model. A Danish employer representative also stated:

> *"Denmark is a little island of collective agreements within an ocean of legislation and individual agreements. As a result, we frequently have to handle issues which often clash with our system of collective bargaining." (The Danish Employers' Association for the Financial Sector)*

9 The Long-term Perspective: Specific Challenges facing the Banking Sector

Social partners across Europe face a wide range of challenges due to increased European integration. Some of these challenges apply to all four countries participating in this study, whilst others are country specific.

In Estonia, the relatively low union density on both sides of industry pose a challenge, as it makes any form of social dialogue difficult. As a result, the implementation of the European social partners' autonomous agreements and joint declaration is handled by the state rather than social partners. In Northern Ireland a significant challenge is that employers are often reluctant to sign collective agreements, making it difficult if not impossible to implement and regulate EU directives, autonomous agreements and joint declarations through collective agreements. In addition, trade unions continue to lose members and the coverage rate of collective agreements is currently declining. The challenges facing Denmark and Sweden are somewhat different. The EU's approach based on the rights of the individual to a varying degree clashes with the Danish and Swedish labour market traditions, where collective rights dominate.

Although some challenges are country specific, they also have implications for the cross-border collaboration and negotiations at company and EU levels. The empirical findings from the banking sector reflect this. Social partners here have increasingly tried to match recent changes in company structures by developing various fora for cross-border consultation and negotiations. However, collaborating across borders is not without problems. For example, within the EWC a common problem is to coordinate and negotiate various labour market issues across national borders due to a series of barriers. In addition, the majority of unions and employers associations tend to concentrate at the national rather than international scene and often think it is possible to reproduce or transfer their own national labour market traditions to the EU level and other countries. However, this is difficult if not impossible due to European countries different industrial relations systems, and as a result trade unions and employers associations are often forced to develop new strategies when collaborating across border. Such strategies often entail a better understanding of other countries' industrial relations systems, which coalitions to join and whether one prefers an EU directive to an autonomous agreement or joint declaration due to the political circumstances.

Setting the agenda, including which issues to raise, along with what is practically possible, resemble other major challenges facing social partners when collaborating across borders. Indeed, it is often difficult to strike a balance be-

tween statements that do not clash with member states' legislation and collective agreements and still have some substance when negotiating autonomous agreements and joint declarations at EU and company levels. In addition, it is often difficult to conclude cross-border agreements, where similar rules and procedures apply to all employees within the MNC due to national differences, legislation and collective agreements. Indeed, the interviews revealed that some banks faced various hurdles when trying to develop cross-border rules regarding various bonus schemes due to member states' different rules and regulations on tax exemptions etc.

Also the set up and operation of European Work Councils involves a series of problems at company level. Representatives from the European Commission, ETUC and UNI-Finance stated that most EWCs are inefficient when it comes to consultation and hearing. Nearly one in two EWCs fail to consult employees prior to a restructuring of a company. In addition, some uncertainties exist regarding the interplay between the various levels such as who to consult first. Finally, employers fail to a varying degree to deliver information to their employees and implement the decisions taken within the EWC.

The empirical findings also revealed that a specific problem exists with respect to the election of EWC representatives in the new member states. In several instances it has been highly questionable whether the employee representatives from these countries in fact represent the employees and not management. At first, this problem appears less significant when the EWC are led by trade union representatives from countries with high union density and long traditions of collective bargaining. However, if some of the branches in for example Estonia or Poland gets bigger than the Nordic branches, it is possible that a Nordic employee representative is replaced by their Estonian colleagues, which may favour management and not the employees.

The comparative analysis also revealed that it is often the country, where the company headquarter is placed, which dominates the discussions and takes the lead when it comes to involving the employees. This also suggests that although multi-national corporations are multi-nationals, it is often the labour market traditions of the country where the headquarter is based, which prevail. As a result, meeting the expectations of trade unions and management is often a significant hurdle for most cross-border collaborations at company level. Hence various practicalities such as language barriers also tend to pose a problem.

10 Summary

The comparative analysis suggests that EU labour market regulation increasingly influences individual member states' room for manoeuvre. Likewise, individual member states' labour market traditions appear to shape the possibilities for cross-border collaboration at EU and company levels. Indeed, social partners' willingness and ability to negotiate across borders often prove crucial for the types of collaboration and human resource policies adopted at company level. The findings also reveal that the social partners' willingness and ability to comply with the EU standards vary significantly across Europe.

The interplay between the different industrial relations systems across Europe pose a considerable challenge for all parties involved. Indeed, member

states' distinct labour market traditions appear to influence the design and implementation of European social partners' autonomous agreements and joint declarations at all levels.

In this research paper, the complex policy process - from the initial stage when an idea is presented, turned into a specific agreement, joint declaration or directive and then implemented at confederal, sector and company levels – has used the banking sector as an empirical example. The central focus has been on the Danish collective agreement model and particularly how Danish social partners have handled recent challenges from the EU. The empirical analysis identifies three main challenges: *firstly*, the cross-border collaboration at EU level; *secondly* the collective bargaining system within the banking sector; and *thirdly* the challenges facing the industrial relations system at company level within the banking sector. The handling of the various European challenges depend to varying degrees on individual member states' labour market traditions, the ongoing power games between social partners, the political system and the type of European policy. As a result, social partners have handled the wide range of European challenges differently.

The empirical analysis also suggests that the Danish collective agreement model has its strengths and weaknesses when handling EU regulation. The findings also imply a wide range of challenges facing social partners in Denmark, Estonia, Northern Ireland and Sweden. They include among others:

Low union density:

- In some countries this poses a problem in a number of areas:
    - Social dialogue is almost non-existent in countries with low union density among trade unions and employers and it is difficult to identify the legitimate negotiation partners.
    - Pre-conditions for a European arbitration system are a high union density on both sides of industry
    - It is difficult to develop common rules and procedures for employees at company level due to weak or non-existent trade unions
    - The legitimacy of EWCs is at risk, if employee representatives represent management rather than employees
    - Risk of weakening the collective bargaining system vis-à-vis the rights of individual.

Decentralisation of collective bargaining towards the company level:

- Increased decentralisation makes the coordination and type of collaboration within the framework of the European social dialogue more difficult. A recent example is the ECJ rulings in the case of Laval, Viking and Rüffert. These rulings identify a potential clash between the Danish traditions of local wage bargaining vis-à-vis the EU's principle of transparency regarding wage and working conditions.

The European Court of Justice's rulings and the employment rights of the individual:

- Appear to favour the principle of free movement of goods and service providers at the expense of the collective bargaining system. The ECJ rulings challenge the basic features of the Danish collective agreement model. In the short-term the problems can be solved by adjusting Danish labour market regulation according to the ECJ rulings. However, in the long-term it is questionable whether it is possible to continue to adjust the model according to ECJ ruling and other EU policies. It is possible that the ECJ rulings may hinder the development of the European social project, as a number of countries are relatively reluctant and sceptical towards the EU as a result of the recent rulings.

Poor implementation records:

- Trade unions and employers associations lack of engagement and unwillingness to implement European social partners' autonomous agreements and joint declarations may in the long-term convince the European Commission to promote directives rather than social dialogue as the way to regulate the European labour market. The European social dialogue within the banking sector is often used as an example, where the negotiation results are particularly few. The content of European agreements appears crucial for the implementation results and social partners often consider these agreements irrelevant as they already have more advanced agreements in place.

A European arbitration system:

- Some Nordic unions, Denmark in particular, with limited success have promoted the idea of a European arbitration system to their European colleagues. The European employers oppose the idea and most European trade unions are sceptical and find no need for such a system. At the moment, some trade unions have, however, with the approval of management been successful in developing cross-border arbitration systems at company level.

Lack of communication regarding autonomous agreements:

- Social partners at company level have often failed to implement the European social partners agreements and joint declarations as they are often unaware of their existence, indicating that the communication between the different levels are far from optimal. Indeed, it is striking that the European agreements and joint declarations have failed to cascade down the system to company level in all four countries. The relative few and sporadic implementation results are often due to the agreements and joint declarations voluntary nature and that social partners rather than national governments are responsible for implementing the agreements. This often triggers new power games between the parties involved. The employers within the bank-

ing sector tend to oppose the implementation of the agreements on the grounds that they are not members of Business Europe (Denmark and Sweden) or have no tradition of collective bargaining within their sector (Estonia and Northern Ireland/ the UK).

Different languages and cultures:

- Are often considered a major barrier at EU and company level. With respect to language barriers, employee representatives often speak relatively poor English and there is therefore a need to translate the various agreements prior to work meetings and have translators present during, for instance, EWC meetings at company level.
- The cultural barriers concern social partners' lack of understanding of other European industrial relations systems and traditions, which to a varying degree pose a problem when collaborating across borders and trying to develop common policies at EU and company levels.

Different industrial relations systems and Danish Smugness:

- Are also barriers to cross-border collaboration. Nearly all countries appear to relate primarily to their own labour market traditions. Also, Danish social partners appear to favour the Danish collective agreement model, where they seem to agree that the survival of the Danish collective agreement model is crucial, even if unable to agree on the specific details. This mantra results to some degree in a lack of self-criticism among Danish key stakeholders regarding the transferability of the Danish collective agreement model in a world, where most of all it appears as a curiosum.

References

Due, J. and Madsen, J.S. (2006) *Fra storkonflikt til barselsfond. Den danske model under afvikling eller fornyelse.* København: Jurist- og Økonomforbundets Forlag.

EURO-found (2007) *Industrial relations developments in Europe 2007.* http://www.eurofound.europa.eu/docs/eiro/tn0803029s/tn0803029s.pdf

EURO-found Denmark:
http://www.eurofound.europa.eu/eiro/country/Denmark.pdf

EURO-found Estonia:
http://www.eurofound.europa.eu/eiro/country/Estonia.pdf

EURO-found Sweden:
http://www.eurofound.europa.eu/eiro/country/Sweden.pdf

EURO-found UK:
http://www.eurofound.europa.eu/eiro/country/United.Kingdom.htm

FA (2008) 'Den sociale dialog i EU – 10 års status'. I *FAKTA* nr. 2, juni 2008. Finanssektorens Arbejdsgiverforening.

Hall, P. and Soskice, D. (2001) *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage.* Oxford: Oxford University Press.

Hyman, R. (2004) 'Varities of Capitalism, National Industrial Relations Systems and Transnational Changes' I A.W Hazing and J. Van Ruysseveldt (eds.): *International Human Resource Management (2nd Edition).* London: Sage Publications.

Jensen, C. S. (2007) *Arbejdsmarkedsrelationer i Danmark – fra konfliktbaseret konsensus til konsensusbaseret konflikt*. Jurist- og Økonomforbundets Forlag.

Jørgensen, C. (2002) *Collective Bargaining in Europe 2001 – Denmark.* FAOS Forskningsnotat nr. 36.

OECD (2004): *Employment Outlook*. Paris.

Traxler, F. (1995) 'Farewell to labour market associations?', I C. Crouch and F. Traxler (eds) *Organised Industrial Relations in Europe*. Avebury: Aldershot, pp. 3-19.

Union in Nordea (2001) *Agreement on Group Council for Collaboration between Labour Union Representatives and Management in Nordea,* Stockholm: Union in Nordea.