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Slowing down Social Europe? The role of coalitions and decision-making arenas

Report 5 – summary report

Mikkel Mailand & Jens Arnholtz

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Employment Relations
Research Centre

Department of Sociology
University of Copenhagen
Øster Farimagsgade 5
DK-1014 Copenhagen K
Tel: +45 35323299
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DEPARTMENT OF SOCIOLOGY
UNIVERSITY OF COPENHAGEN

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1. Introduction

The social dimension of the EU is as old as the union itself. However, it was not until the mid-1980s that the EU gradually developed a real social dimension to counterbalance economic integration. The social dimension includes hard-law regulation in the form of directives (the first of which was decided upon in the 1970s) as well as soft-law regulation[1] such as the Open Methods of Coordination and the European social partners' voluntary framework agreements. In recent years, what can be labelled 'the regulation-sceptical actors' have been strengthened and 'the pro-regulation actors' have been weakened. Indeed, the number of socialist and social-democratic governments in the European Council has reduced and the same political forces have weakened in the European Parliament. In addition, the Barosso-led Commissions have followed a more liberal agenda than its predecessors and the European Trade Union Confederation (ETUC) has lost bargaining power due to its affiliates' loss of members and challenges from internationalization of production and labour migration. The enlargement in 2004 with new member states where the level of labour standards often do not match those in the old member state also served to strengthen the regulation-sceptical actors. While the enlargement itself made it more difficult to agree on new regulation.

These recent changes are expected to have influenced the development of the social dimension of Europe, also known as 'Social Europe'. The present project - which theoretical and methodological framework is described in details in report 1 - aims to explore whether the strengthening of the regulation-sceptical actors has affected the scope and content of regulation as well as the relative weight between different forms of regulation. To address this question, we have analysed recent decision-making processes within the four most important types of EU regulations - the directives, the Open Method of Coordination (OMC), the social partners' autonomous agreements and case law. In this regards, we have analysed what stand the main actors (the European Council/the member states, the European Commission, the European Parliament, the European social partners and the European Court of Justice (ECJ) have taken with regard to the extent and content of regulation and the choice between the above mentioned types of regulation. In doing so, we have examined and compared three work and employment related areas, labelled 'employee involvement', 'employment policy' and 'posting' in report 2- 4.

There are two main reasons that a project with such a focus should be able to provide new and relevant knowledge. Firstly, the connection between changes

[1] Regulation' will in this report be used as an 'umbrella-term' for written rules of all kinds, no matter their juridical statue. 'Regulation' is also the name of a special kind of juridical binding rules formulated at the EU-level. It should be clear from the context which of the two meanings of the term is used in which situations.

in the various actors' power position on the European scene, and the outcome in terms of regulation agreed, have seldom been analysed. Secondly, in the rare cases this connection has been analysed, the researchers have exclusively focused on only one policy area or one type of regulation. Knowledge about changes in power positions and regulation outcomes across work and employment related areas and regulation types are therefore limited.

The four types of regulation represent a continuum from what is often named 'hard' (legally binding) to 'soft' (legally non-binding) regulation. Case law and the directives are the binding form of regulation, in that the ECJ rulings and the directives are supra-national legislation that the member-states are bound to follow. The OMCs represents soft regulation, in that the actors (in this case primarily the member-states) are not legally bound to follow them. However, most of the OMCs contain some measures to commit the member states, such as quantitative targets, indicators and feed-back reports. This increases the chances that member-states will perceive the regulation as politically binding. These elements are missing in the social partners' autonomous agreements as these just formulate general guidelines for national and sectoral member organisations and therefore, can be seen as the softest form of regulation of the three.

A common theme addressed in such studies is whether the introduction of soft regulation - the OMC and the European social partners' autonomous agreements - has replaced the usage of hard law regulation when developing new European policies or added to it. If the first mentioned opportunity is the case, soft law could in itself be seen as a weakening of the social dimension. However, OMCs are often found in slightly different areas of work and employment compared to the areas regulated by EU directives, just as the specific issues covered by the social partners' autonomous agreements were not covered by directives. In that sense, overemphasizing the shift from hard to soft law and its potential implications may make for a muddled assessment of the progress or slow-down of Social Europe.

Another strand of studies has focused on what has happened with regard to directives (hard law regulation) in recent years. According to a widespread perception in the research community, the directives should have become fewer and weaker. Only a few studies have analysed the role of directives in new EU regulation in recent years. Pochet and Degryse are among the few (Pochet & Degryse 2009). They find - contrary to 'conventional wisdom' - that the number of 'social' directives and 'health & safety' directives did not decline from the second half of the 1990s. However, the number of directives adopted does not tell us about the content of the regulation.

In sum, these studies – which does not include the development in the present decade though - leaves us with some uncertainty if and to what extent the quality and quantity of European regulation has changed in recent years and, hence, if the development of Social Europe in fact has slowed down in the area of work and employment. For these reasons, the present paper contains an

analysis that goes across different types of regulation and goes into the content of the regulation under study.

Furthermore, although recent studies have examined the recent development of hard- law and soft-law regulation, the links between recent changes in the composition of various European key actors' power positions vis a vis the policy outcome in terms of regulation agreed has rarely been analysed. In the few studies which have analysed such links, researchers have typically focused on only one policy area. While such studies are valuable, they may contain a methodological bias by over- or underemphasise policy areas that conform to the assumption that shifts in power positions leads to shift in policy content. Therefore, systematic knowledge about changes in power positions and regulation outcomes across the work and employment related areas are limited. For these reasons, the present paper focus on the relation between changes in power positions and policy outcome, and it does so across three different policy areas.

Previous studies of EU level decision-making processes in work and employment related areas have shown that, in order to maximize their influence, the main actors tend to seek alliances and create coalitions. This is not only the case for the member states in the Council, but also for the various so-called 'directorate generals' (departments within the Commission), the European social partners and party groups in the European Parliament. Hence, an understanding of the role of coalitions is crucial to understanding and explaining EU-level decision making. It will help to determine who wants what, why, and to what extent they get their priorities through on the European stage.

The term 'coalition' has, however, mainly been used in studies of national-level decision making processes. The Advocacy Coalition Approach is often used as an analytical framework formulated by Sabatier and Jenkins-Smith (1993). Theses coalitions are knitted together by a common belief system that shares a set of value priorities and causal assumptions about how to realise them. In studies of EU-level decision making, other approaches have also been adopted. Hooghe and Marks (1999) were among the first researchers to point to the existence of coalitions in European social and economic policy decision-making. Their approach pays more attention to the interests of actors than Sabatier and Jenkins-Smith's more value-based approach. Although they do not use the word 'coalitions', they nevertheless located two 'projects' backed by groups of actors which could be seen as coalitions. The 'neo-liberal project' aims to minimise the capacity for European-wide regulation, so as to create a mismatch between political regulation, which remains largely national, and economic activity, which they argued is increasingly European. Supporters of this project were the British conservative and German liberal parties, leaders of multinational corporations, UNICE (now Business Europe) and DG IV, the DG for competition (now DG Markt). The opposing project of regulated capitalism aims to create European regulated capitalism through redistribution, regulation, private public partnerships and social dialogue – all measures that support and

enhance markets rather than replace them. This project has first and foremost been driven by Jacques Delors, the president of the Commission from 1985 to 1994. Important supporters also include the Central and Southern European Social Democrats, Christian Democrats and some left parties, the European Parliament, the Commission as such (despite opposition from some DGs), most green parties, the ETUC, national trade unions and various NGOs.

Whilst Hooghe & Marks describe coalition-like actor-constellations across policy areas, other studies tend to focus on specific policy areas or policy questions. Nearly all of these confirm the existence of the two coalitions, although different names are used and the members are not always the same. Barbier (2004), Nedergaard (2005), Mailand (2006) and Deganis (2006) have all confirmed the existence of the two abovementioned coalitions in the employment policy area. Whilst the first three tend to see the Commission as belonging to the group of pro-regulation actors, Deganis found that the coalitions vary from case to case depending on the circumstances. In these studies, there seems to be solid evidence of two coalitions: A Anglo-Scandinavian coalition led by the UK and with the participation of Ireland, Holland and most of the Scandinavian countries and a Continental coalition led by France with participation of most of the Continental and Southern European countries. However, the role of the Commission seems to be uncertain or changing. In addition, some member states, especially the new member states, are difficult to place within the coalitions. Moreover, research seems to focus on the employment policy area, leaving gaps in our knowledge of the presence and role of coalitions in other policy areas. The cross-area study of Marks & Hooghe, studies of the service directive (Dølvik & Ødegård 2009) and social policy and economic policy (Nedergaard 2009), nevertheless indicate that similar coalitions also exist in other areas. Still, the outcome of specific decision-making processes cannot be read-off from the structural power positions of the various actors.

In our analysis, we start from the assumption that two broad coalitions exist in the EU. We choose to call them regulation sceptical and pro-regulation actors in order to avoid the overused concept ‘neo-liberals’, but our assumption is that they have roughly similar orientations as the two coalitions described by Hooghe and Marks. It is important to note that the terminology of ‘pro-regulation’ and ‘regulation sceptical’ regards these coalitions orientation in relation to social end employment policy and not regulation as such. As will be evident from the case-stories, in cases on the edge of the social and employment policy area the positions will sometimes be reverse in that the pro-regulation actors might try to prevent or reduce regulation whereas the regulation-sceptical actors will push for it. We make it into an empirical question whether these overall coalitions and the balance of power between them has a direct influence on the outcome of policy processes. The decision-making processes takes place on what can be seen as ‘decision-making arenas’ in line with studies of national level decision-making (Winter 2003; Torfing 2004; Mailand 2008). With the

reservation that informal contacts always blur the picture, the decision-making processes behind some directives are mainly found on what could be named 'the politico-administrative arena' (including the European Council and the European Commission) and 'the parliamentarian arena' (the European Parliament alone).

Those directives where the social partners are the initiator are at least partly found on 'the bipartite arena' (the social dialogue) or 'the tripartite arena' (for instance the Commission's consultations of the social partner or the tripartite summit before the annual spring summits), the later where the Commission coordinates the process. Similar to some directives, the OMC decision making processes take place mainly in the politico-administrative arena, although the tripartite arena also plays a role (when the social partners are consulted). Contrary to these directives, however, the European Parliament plays only a minor role in the OMCs. The 'juridical arena' is mainly reserved for the ECJ. Apart from framing the analyses of the decision-making processes and setting different contexts for these depending on which arena is in focus, the arenas are also important in that the actors in some cases deliberately try to move decision-making processes from one arena to another in order to maximise the chances that the outcome will be in line with their interests. The extent to which they do so will be addressed in addition to the extent they form coalitions.

1.1 Research questions

Following this, the research project - being reported in report 1-4 - has addressed the following question: Has the strengthening of the regulation-sceptical actors affected the content or the range of work and employment regulation at the EU-level? This question has been addressed through analyses of the following:

- What role have coalitions played in decision-making processes in work and employment related areas?
- What glue the coalitions together and are they divided primarily into pro-regulation and regulation-sceptical groups?
- Has the strengthening of the regulation-sceptical actors affected different work and employment related areas to a different degree?
- How has it been possible for the actors to agree on a number of new regulation initiatives when the regulation-sceptical actors have been strengthened?

The possible effects stemming from the strengthening of the regulation-sceptical actors would be the adoption of less new regulation than previously - or of less binding forms of regulation. This final report will *focus on the same overall questions and sub-question, but the main focus will be the overall research question and the first sub-question.*

The sources of the article are in-depth qualitative studies of processes and outcomes of eight cases of European work and employment regulation within the three areas of employee involvement, employment policy and posting from the years 2004-2010, with two exceptions – one which starts earlier and one which ends later. The impact referred to in the research questions are mainly related to these cases. The impact will be evaluated by focusing on empirical issues such as: Are these regulation initiatives tightening or relaxing the regulation pressure on work and employment related issues, is the impact neutral or could the changes in the regulation not be put on a scale like that? How do the contents of the initiatives change from the early proposals to the final adopted versions? And to what extent has the changes taken place as a result of actions of coalitions?

Despite of the uncertainty that the previous studies leave us with, we expected in these cases-studies to find a slower development – or even a weakening - of Social Europe in the second half of 2000s in the form of a reduced scope of new regulation and/or changes in the content of the regulation. This expectation derives from the change in power relations between pro-regulation and regulation-sceptical actors. Regarding the role of the coalitions, we expected to find a continuation of the strong roles of the pro-regulation and the regulation-sceptical coalition, although the latter was expected to be even more influential compared to the situation in the 1990s and the first half of the 2000s.

1.2 The present final report

The present report discusses findings across the three empirical areas in order to compare similarities and differences between the areas and to find more general answers to the research question. After this first section the second section will focus on the question if Social Europe has slowed down in the three areas analysed. This will be discussed following an analysis of two or three cases in each of the three areas which will focus on the context of the cases and the outcome of the decision-making process. The third section will analyse and discuss the role of the coalitions in the decision-making processes, focusing on the same areas and cases, but paying more attention to the decision-making processes. Conclusions and perspectives are found in the fourth and final section.

Where nothing else is stated the sources to the analyses below are semi-structured interviews conducted with key decision-makers within the three areas. List of interviewees are found in the respective research report (report 2-4).

2. Has Social Europe slowed down in the three areas?

2.1 Employee involvement

In the industrial relations literature employee involvement is usually split between direct participation (in the work-processes themselves) and indirect participation (consultation and information of employee representatives in various representational bodies at firm- or workplace-level). The history of EU regulation in the employee involvement area has primarily been about indirect participation. Moreover, to a large extent it is a history of directives.

Below, the background to and outcome of two of the most important decision-making processes are summarised: The 2008 revision of the EWC-directive and the attempts to establish a European Company Statue up to 2009. Longer analyses of these two processes are found in report 3.

The revision of the European Works Council directive 2008

The 1994 European Works Council (EWC) Directive was adopted only after more than a decade of bargaining. Since it was a new instrument the directive obliged the Commission to undertake a review of the directive in September 1999. However, this review did not take place. While the ETUC supported a revision of the directive, UNICE (which later became Business Europe) remained sceptical towards a revision of the directive during most of the 2000s and blocked any changes. Nevertheless, in September 2004, the Commission launched its first phase consultation with the social partners on a review of the directive with a consultation paper (European Commission 2004), yet it was some years before things really started to move.

According to all but one of the interviewees, who pointed out the European Parliament's declaration (European Parliament 2007) as an important driver, the interviewees agreed that the Commission's 2007 announcement that a revision was scheduled for 2008 had to do with its wish to be reappointed. It is the European Council who appoints the Commission, but the Commission needs also to be approved by the European Parliament. And to be reappointed the Commission needed to strengthen its social profile – something that a completion of a revised EWC-directive could support (see also Jagodzinski 2009). The opinion of many pro-regulation actors was that the Commission with its strong focus on growth and jobs, its streamlining of the Lisbon strategy in 2005 (see below) and its other priorities in the field had neglected social issues.

In short, the changes from the original to the adopted recast directive were: a specification of timing and content of information and consultation: a specification that EWCs must have the means required to apply the rights and to represent the interests of the employees collectively; a specification that the obligations arising from the directive do not apply to undertakings in which there was already an agreement, or in which an agreement is signed during the two years

following the adoption of the Directive; a specification of the controversial definition of transnationality; abolishment of the threshold of 50 employees for setting up a Special Negotiating Body (SNB) so as not to discriminate against small member states; the right of the SNB to request assistance of its choice, who may include Community-level trade union organisations; a right for the members of the SNB of the EWCs to be provided with training without loss of wages; an obligation for the member states to ensure that sanctions taken in the event of a failure to comply with this Directive are 'adequate, proportionate and dissuasive' (Council of the European Union 2008a).

Towards a European Private Company Statute, 2008-09

The European Private Company (EPC) initiative should be seen in the context of the general European Company Statue adopted in 2001 after a 31 year long decision-making process. The official aim of these initiatives was to enable the set-up of European companies in order to increase their competitiveness. Since the European Company Statute initiative was mainly targeted larger corporations it was supplemented with the EPC initiative targeted the small and medium-sized enterprises (SMEs). At least this is the official reason. The potential advantages should - according to the Commission – be that the initiatives allow entrepreneurs to set up all their companies and subsidiaries within the same flexible management structure no matter where they are, and that it offers a European label that is easily recognisable throughout Europe. The process has had its centre in the DG Internal Market & Services (DG Markt), not the DG Employment. This is because it is basically a company law regulation proposal, although an EPC statute has consequences for labour law issues. According to the interviewees, DG Employment had a very limited role in formulating the Commission's proposal. Although the initiative targeted SMEs, the proposal contains no limits on the size of the companies.

According to the Commission the initiative to make a separate status for European private companies was developed in business and academic circles in the 1990s. Some interviewees from the European social partners pointed to the role of interest-organisations as important for keeping the issue on the agenda. The French Business organisation Mouvement des Entreprises de France (MEDEF) was mentioned especially. MEDEF was of the opinion that the European Company - the company form at the centre of the European Company Statue - was difficult for big enterprises to handle because of the demands included on employee involvement. Therefore, MEDEF wanted another tool, de facto allowing them to bypass the European Company Statute. Other interviewees saw the need of the Commission to legitimise itself as the main driver behind the initiative, and pointed more specifically to the role of DG Enterprise and its former influential Commissioner Günter Verheugen who wanted to 'do something good for the SMEs' and pressed hard to get the initiative through, although the SMEs themselves did not see the need for it.

Reportedly it was Verheugen who managed to convince the responsible DG Markt. Which of these explanations, if any, are right is difficult to assess, but it is telling that in the beginning the initiative was not supported by the SMEs and their European organization (UEAPME) and that it did not include any size-limit on firms who could be recognised as SMEs.

After various attempts from various actors to get a kick-off earlier in the decade, in July 2007 DG Markt found it was ready to launch a specific public consultation on the EPCs. In October 2007 the Commissioner Charlie McCreavy from DG Markt told the public that the EPC had the highest priority (www.fagligt.eu 09.10.07).

However, it was not before the Swedish presidency in autumn 2009 things really started to move. Regarding employee participation rights, the outstanding issue remained that of the threshold which the rules on employee participation foreseen in the proposal would be applied. Although most delegations welcomed the lowering of the threshold and the simplification of the rules presented in the Presidency compromise text, some delegations preferred the threshold to be even lower, while a few delegations considered the threshold of 'at least 500 employees' to be too low. The Presidency suggested setting the threshold of at least 500 employees and at least half of the employees working in a member state that provides for a higher level of participation rights for employees than is provided for those employees in the member state where the EPC has its registered office. In the final part of the decision-making process it was also clear that although other member states had reservations - Germany especially was sceptical of the initiative. According to an interviewee, Germany was very interested in the initiative at first but became worried that the EPC could be used to undermine German employee board level representation, an important part of the German employee involvement model. At the Competition Council session in December 2009, the Swedish presidency presented a compromise proposal. In the Council's discussions the German representative made it clear that the Swedish proposal was unacceptable for three reasons: the lack of a minimum capital requirement of €8000 for all SPEs; the possible separation of the statutory seat and the de facto head office of the SPE; and the inadequate board-level participation rules. Besides Germany, other member states – such as Austria, Hungary and the Netherlands – also opposed the proposal's board-level participation rules. As unanimity in the Competitiveness Council is required, the Swedish presidency broke up the discussion after this clear statement (workers-participation.eu 2009).

As the Swedish presidency ended the draft directive was immediately taken up again by the Spanish presidency which followed. However, this further fate of the draft directive was time-wise beyond the focus of the present study.

Assessment across cases

The answer to the question if Social Europe has slowed down in the area is not straight forward. In the first place, it is clear that the pro-regulation actors got

what they wanted – a revision. The most important reason for this is found beyond the workers participation area. It was the Barroso Commission's need to achieve new regulation in the social field while still in office that prevented a continuation of Business Europe blocking the revision. On the other hand, focusing on the content of the revision, the amendments were neither extensive nor impressive. Interviewees from both the Commission and the European social partners were of the impression that more changes were expected from the revision prior to 2008 and that the ETUC would have been better off if they had chosen to bargain with Business Europe at an earlier stage.

Moreover, most of the amendments were clearly priorities of the pro-regulation actors. This is the case with training; the sanctions; the resource amendments; the opportunity for external assistance; and the abolishment of the 50 employee threshold. Other changes could be seen as priorities from Business Europe, and dates back to the European social partners' informal meeting at the beginning of July. This is the case with the formulation that the EWC should have the 'means required' in relation to the 'steaming of the directive' and with the changes made to the article on training.

As in the case of the revision of the EWC directive, the case of the EPC shows that it was not only the need to address a certain social or economic problem which drove the decision-making process. The need of the Commission to send certain political signals in order to secure its own legitimacy was also crucial in this case.

Considering how the discussions of the draft EPC directive focused on its potential deregulatory potential and most of the interviewees saw the directive as a way to bypass other directives, indicates that supporting the EPC directive could not be seen as taking a pro-regulation position. Rather, supporting this directive should be seen as taking a regulation-sceptical position. But the pro-regulation actors seem to have been most successful, in that the directive has still not been adopted.

In sum, the two in-depth case stories from the employee involvement area show that the pro-regulation forces are still able – under the right conditions - to get new regulation adopted (the EWC directive) as well as to prevent the adoption of unwanted regulation (the EPC initiative). Hence, there is little indication of a 'slowing down of Social Europe' here, although the pro-regulation forces might have wanted more from the revisions of the EWC directive.

2.2 EU-level employment policy regulation

The more or less persisting high level of unemployment across Europe for the past 30 years is one of the most important reasons why the EU decided to introduce an employment policy. Also pressure from the Delors Commission (1985-95) to balance the EMU and the single market with a social dimension no doubt played a role. The Commission's white paper on growth, competitiveness and employment (European Commission 1993) legitimised an increased focus

on employment matters and policies. Following advice given in this white paper it was decided to establish a common European framework for employment policy at the Essen summit in 1994.

With the Amsterdam Treaty in 1997 employment policy gained an even more central place in the EU: following a proposal from the Commission, the European Council became obliged to agree on a series of guidelines setting out common priorities for Member States' employment policies every year and was given the opportunity to issue country-specific recommendations. At the Luxembourg summit later that year it was agreed that the member states' employment policy should focus on actions within four pillars: improving the employability of the workforce; entrepreneurship; the adaptability of employees and companies, and equal opportunities for men and women. The four pillars became the backbone of the European Employment Strategy (EES) – also known as the Luxembourg process – and remained so until 2003 when the EES was first revised. The following two revisions - and the intermediate agreement on the European Common Flexicurity Principles - will be analysed below.

The Lisbon revision, 2004-05

In the run-up to the revision, most actors found that the Lisbon process - initiated in 2000 and including the EES - had developed into far too broad a process. They claimed that it was about everything and therefore nothing and that it contained too many guidelines and targets. Therefore, the Lisbon process needed to be more focused. A High Level Group was set up in 2004 'to contribute to the mid-term review of the Lisbon process'. The report was published a year later. According to the interviewees, realising the knowledge society was the main message in the report. However, the report also included recommendations regarding the labour market, in that it called for rapid delivery on the recommendations of the European Employment Taskforce; developing strategies for lifelong learning and active ageing; and underpinning partnerships for growth and employment (High Level Group 2004).

The report of the High Level Group did influence the Lisbon revision, but the revision process started already before the group's report was finalised. The first important question in relation to the mid-term review of the Lisbon process was to decide which OMCs should continue to be under the umbrella of the Lisbon strategy. From the outset there was no doubt that the Broad Economic Guidelines would remain part of the strategy. Although the pro-regulation coalition was not activated as such, DG Employment, ETUC and some pro-regulation governments were concerned that the employment guidelines would get a much lower status after the revision. Other major uncertainties regarded the other OMCs – i.e. social inclusion, pensions, health and education. In the end the solution was to include in the revised Lisbon strategy those parts of the education OMC that linked directly to employment, most importantly lifelong learning. What might have been a danger in the eyes of some actors – and an

unspoken aim for others – was that the OMCs excluded from the Lisbon agenda could be marginalised and would eventually slowly fade out.

One of the other controversial issues in the revision process was the relative weight of the economic and the employment aspects of the revised Lisbon Strategy, including the guidelines. The worst case scenarios among those who wanted a continuation of a European employment policy - i.e. the pro-regulation actors - was that the EES would be totally abandoned, sidelined or reduced to insignificance did not happen. Nevertheless, the employment guidelines ended up having a subordinated position vis-à-vis the economic guidelines, in that they made up the minority of the total number of guidelines and were placed at the end of the document. However, the interviewees from DG Employment were satisfied with the position the employment issue achieved in the revised Lisbon strategy. Most of the EMCO-representatives from the member states also found that the employment guidelines made up a suitable part of the revised Lisbon Strategy, whereas a few found the economic part too dominant. The outcome of the revision in 2005 was nevertheless influenced by the strengthening of the regulation-sceptical actors. The new Commission succeeded in getting the Lisbon process refocused on growth and jobs so that the social inclusion and environmental issues were downplayed. However, in relation to employment policy no major changes could be seen.

The Common European flexicurity principles

The European process of flexicurity is as old as the EES itself. However, according to the interviewees, the initiative to deepen and widen its use at the EU level came from civil servants in DG Employment in 2005. Their reason was most likely that they saw it as a tool to bridge the visions for Europe represented by the minimalist and the regulation coalitions – and, importantly, a bridge which would fit the overall reform agenda of the Commission. Moreover, it could be used to give new life to one of the cornerstones of DG Employment policy, the EES, to which the member states were paying less and less attention.

The first references to the Commission's home-grown definition of flexicurity are reportedly found in papers from the Austrian presidency in January 2006. This definition included four 'components': 'flexible and reliable contractual arrangements, effective active labour market policies, comprehensive lifelong learning strategies and modern social security systems'. These four components, inspired by the Danish 'golden triangle' of flexicurity (e.g. Madsen 2005), formed the basis for two loosely coordinated initiatives taken by DG Employment. One was launched in 2005 in connection with the preparation of a Green Paper on Labour Law, the final version of which was published in November 2006 (European Commission 2006). The second flexicurity initiative was launched in the winter of 2006, when the Austrian presidency invited EMCO to set up an internal working group on flexicurity. At the time, many member states were still critical towards the flexicurity approach.

In order to estimate the influence of the regulation-sceptical actors the draft and the adopted principles can be compared. Among the important differences are that the references to insiders and outsiders in the labour market were removed. Some interviewees confirmed that this change might have to do with a rejection by some member states – and also the ETUC – of this dichotomy, and their dislike of the connotation of 'taken from the one and given to the other'. Keune (2008) emphasizes in his analysis that in place of the references to insiders and outsiders the Council included a statement referring to those on the periphery of the labour market. Moreover, in principle 7, about the importance of trust and dialogue, the role of social dialogue has been emphasized more strongly and the words 'socially balanced policies' have been added. Again, this most likely happened as a consequence of pressure from the sceptical member states or trade unions. In sum, these and other changes illustrate that in order to get everyone on board, it was necessary to make some concessions to pro-regulation actors and other stakeholders.

In sum, the supporters of flexicurity succeeded in obtaining a set of common flexicurity principles through the EU decision-making process, but that the sceptics succeeded in downplaying the initial strong focus on transition from job security to employment security and on divisions between insiders and outsiders in the labour market.

Europe 2020 – the employment policy part

In 2008, as the end of the Lisbon Strategy approached, reflections and discussions on its successor intensified. It had become clear a couple of years before the end of its term that neither the main aim of the strategy to create 'the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion', nor its main 70 percent employment target, would be fulfilled.

In early September 2009, during Barroso's campaign to be reappointed as leader of the Commission, something took place that would later become very important to the future strategy. Many MEPs found him to be too liberal. However, in a speech to the Parliament, when Barroso warned against using the economic crisis as an opportunity to attack the single market, he also declared that Europe 'needed a much stronger focus on the social dimension' (The New York Times September 3, 2009). All but one of the interviewees agreed that this statement and Barroso's following support for a poverty dimension in the psot-2010 strategy should be seen as a reaction to the criticism of a lack of social focus in the Lisbon strategy and a tactical step to be reappointed.

One way of assessing if the strengthening of the regulation-sceptical actors has impacted the regulation in relation to Europe 2020 is to compare the employment guidelines agreed in 2007 with the employment guidelines agreed in 2010. The reduced number of guidelines (from eight to four) makes the assess-

ment more complicated. However, taking this reduction into account, it is possible to summarise the most important changes:

Firstly, poverty is now an important issue and has its own guideline and a quantitative target. In the 2007 version poverty was not addressed. Secondly, education and training, which already played an important role in the 2007 guidelines, become even more important. Two out of four guidelines are now about education and training, and so too is one of the quantitative targets. Thirdly, activation policies have a less important role, although the word and the related 'public employment service' are mentioned in guideline 7. In the 2007 version activation had an important position in at least three of the eight guidelines and two of the eight quantitative targets. Fourthly, gender equality is totally absent. In the 2007 version there were four references to gender balance issues, and one quantitative target (the female employment rate).

Looking at the changes, there is - when they are assessed as a whole - no clear indication that they have strengthened the regulation-sceptical actors. The lack of reference to the gender issue could be seen as such a strengthening, but is more than counterbalanced by the introduction of the poverty guideline and target. The less prominent role of activation policies is not easy to conclude upon (since the various actors support of the policies depends on type of activation policies). Also the stronger emphasis on education and training is difficult to see as more in line with the one type of actors or the other, since there in general is a strong consensus on the value of these policies.

Assessment across cases

Regarding the scope of the policy, the employment guidelines have been reduced in numbers over the years – a development which in itself represents a weakening. However, this development is less dramatic when seen in the context of the attempts to streamline the strategies, which has also led to a diminished number of economic guidelines. Also the 2007 adoption of the flexicurity principles included so many concessions to the pro-regulation actors, that they could not be seen as weakening Social Europe. Still, the bottom-line is that the range of the employment policy has been diminished over the years, and the employment policy now has a more subordinate position to the economic policy than 10 years ago. Focussing on the content of the employment policy there are only a few signs in the selected cases that a development in line with a weakening of Social Europe has taken place. Taken together, although the changes of the scope and the content of European employment policy are important and to some extent confirms that 'social policy' discourses as well as practises have weakened as described by Barbier (2011), the changes in the employment policy area are much more limited than could be expected from the change in the power-relations between the pro-regulation and the regulation sceptic forces. There is a certain institutional inertia on play (e.g. March & Olsen 1989), which is coursed by the institutional set-up of the EU polity.

2.3 The posting area

Within the EU employers are allowed to post their employees to another member state to provide services. However, it is a matter of contention how the terms and conditions of these posted employees should be regulated. The legal tensions involved in the regulation of the working conditions of posted workers have been on the EU agenda since the 1960s, but the issue did only get covered by EU regulation - ECJ rulings and the Posting of Workers Directive - in the 1990s. However, because the scale of posting and the wage differences that follows have increased, the issue of posting has become more and more contentious. Furthermore, as the phenomenon of posting is placed between service law and labour law, the regulation of posting takes place in both legislative fields.

Services Directive

Traditionally, liberalisation of the service sector has happened through sector specific initiatives of simultaneous harmonization and liberalization. Member states were reluctant to engage in some of the more aggressive strategies proposed by the EU Commission. However, from the mid-1990s the EU Commission began arguing more forcefully for increasing the efforts to remove barriers to the provision of services in the internal market and at the 2000 Lisbon European Council member states finally acknowledged the need for more initiatives (Loder, 2011: 570). This led to the Commission´s *Proposal* for Directive on Services in the internal market (Commission, 2004). It was a proposal for a general directive, affecting all kinds of services (except for those explicitly excluded). This kind of horizontal approach had the aim of sidestepping slow sector-specific legislative initiatives, to give a more general momentum to the liberalisation of cross-border service provisions within the EU. The aim was in no way intended to contribute to the construction of Social Europe. However, it might still affect Social Europe.

As the proposal was presented all the formally engaged actors (Commission, Parliament and Council) highly welcomed it. However, pro-regulation actors holding no institutionalised position – especially trade unionists - started to voice their concerns (Dølvik and Ødegård, 2009: 9). There were many points of concerns, but in relation to posting, the implications of three elements of the proposal raised concerns. First, the broad horizontal scope of the directive combined with the general country of origin principle was a matter of concern. Under the mutual recognition approach used previously, the legislation of the host states would apply unless challenged in court, where the member states might try to defend any restrictions that their legislation might impose as serving legitimate objectives. Under the country of origin principle, the home state legislation would apply unless specific rules allowed for host state measures. This could potentially affect labour law not explicitly mentioned in the Posting of Workers Directive. Secondly, while the preamble of the Proposal clearly stated that the Directive did ‘not aim to address issues of labour law’, pro-

regulation actors feared that a statement in the preamble would have little influence on ECJ rulings. Furthermore, while this might not be the 'aim' of the proposed directive, it might still be its effect, they argued. Thirdly, the provisions on administrative cooperation found in paragraph 24 and 25 of the Proposal would limit of host state control.

The proposal was faced with massive mobilisation by trade unions, which slowly started to influence the political struggle in the European Parliament. These dragged out, so that the first reading of the EP was only voted on in February 2006, almost two years after the presentation of the proposal. In addition, the proposal was linked to the constitutional referendums in France and the Netherlands, which made several member states change their minds about the proposal. In the end, the EU-Commission´s proposal was therefore heavily revised.

A number of the concerns mentioned were addressed in the revisions. First, while the general scope of the directive was retained, the 'country of origin principle' was removed. Second, Article 1 of the directive was supplemented with a paragraph 7, explicitly excluding labour law, and paragraph 8, containing a watered down version of the so-called 'Monti clause' insuring the exercise of fundamental rights such as the right to take industrial action. Thirdly, article 24 and 25 on restrictions to destination states control efforts were removed. However, when presenting a revised version on the Directive, the EU Commission simultaneously issued a communication arguing that the content of these two articles is in fact entailed in the ECJ´s case law.

The Temporary Agency Work Directive

Another victory for the pro-regulators during the adoption of the Services Directive was the fact that temporary agency work was excluded from the Service Directive. The reason is that a proposal for a directive on temporary agency work was already under way, which was based on a strategy of both liberalisation and harmonisation. Had temp work been liberalised by the Service Directive, there would be little incentive for regulation sceptics to consent to a separate directive on agency work.

While all temporary workers are, of cause, not posted, the directive is nonetheless of interest because posted temps can be seen as the clearest expression of using posted worker solely for the reason of them being cheaper. Thus, any regulation of temps may influence the regulation of this specific kind of posted workers.

The origin of the Temporary Agency Work Directive can be traced back to 1994, where the EU Commission had invited the social partners to start Article 139 negotiations on the broad issue of 'atypical work'. This consultation process first led to the 1997 agreement on part-time work and, secondly, to the 1999 agreement on fixed-term contracts, both of which were subsequently implemented by EU directives. In the latter agreement, it was stated that the

social partners would consider the need for a similar agreement relating to temporary agency work. However, the negotiations on this issue ended in deadlock. There were three issues dividing the social partners. First, they disagreed about whether the non-discrimination of temps should be with regard to other agency workers (as regulated through laws or collective agreements for this specific type of work) or user-firm workers. Employers wanted both options, so that member states could decide during implementation of the directive. Unions wanted user-firm, and used the argument that most countries either had or were moving towards this principle. Secondly, they disagreed about the issue of a time threshold. The trade unions wanted the directive to apply from day one, whereas employers suggested as much as an 18 months period of non-application. In parallel with the discussion surrounding the Posting of Workers Directive, employers stressed the need for flexibility and the disproportionate administrative burden that no threshold would cause, while trade unions argued that any threshold would be an opening for circumvention, make enforcement of the directive very complicated and reduce its effect (as most temps are only used for a very short period of time). Thirdly, unions wanted the directive to reflect ILO provisions prohibiting the use of temporary agency workers to replace workers on strike. The employer representatives argued against this on the grounds that this would exceed the competence of the EU, as it involved regulating the right to strike and collective action.

Despite of several attempts, these differences could not be overcome, and in May 2001 it was clear that no compromise would be reached. Instead, the Commission came up with a proposal for a directive in March 2002. The proposal favoured a non-discrimination principle that compared with user company workers, but also included a number of exceptions from this principle and excluded clauses limiting the use of temporary workers during strikes. It caused a good deal of debate in the European Parliament, but it was completely deadlocked in the Council. There were several points of disagreement, among them the issue of a possible time threshold for the non-discrimination principle to enter into force. From the end of 2002 and onwards these disagreements marked the debates and by 2005 the Commission stated that it would ‘reconsider the proposal in the light of future discussions on other proposals (Broughton, 2006). However, the Portuguese presidency managed to perform a number of strategic moves that put the blocking minority in the Council under increasing pressure. Slowly, the blocking minority started to erode, with the UK being one of the only member states still upholding its opposition. Thus, the UK government went to CBI and told them to find some agreement with the TUC. A deal was made that allowed for a 12 week exemption for the non-discrimination principle. This allowed the UK to approve the final directive: while it had non-discrimination from day one as a general principle, the final version allowed the social partners to negotiate exemptions. Moreover, there were other possibilities for exemptions. As for the other two controversies between the EU-level social

partners, the final directives non-discrimination principle related to employees of the user firm, but contained no clause disallowing the use of temps during strikes.

With regard to the issue of posting, it is still not quite clear which directive is to be applied to posted temps. The difference may, however, be marked, as the Temporary Agency Work Directive requires non-discrimination not just to certain elements of the host states labour law, but to a much broader range of working conditions at the work place level.

Political responses to the 'Laval-quartet'

The rulings in the so-called 'Laval quartet' – consisting of the cases Viking, Laval, Rüffert and Luxembourg – caused uproar from pro-regulators. Amongst other things the rulings questioned trade unions right to strike when dealing with firms using EU freedoms to provide services; they restricted the possibility of demanding wages above minimum standards; and they restricted the right of member states to make various parts of their labour law into public policy to be followed by posting companies. In that sense, the rulings placed question marks with a lot of practices used in different member states to regulate the wages and working conditions of posted workers. For this reason, pro-regulation actors made strong calls for a political response that would correct what they perceived as a misinterpretation by the ECJ.

The rulings had set limitations to the right to take industrial action, transformed minimum standards for the posting of workers directive into maximum standards and had limited member states possibility to make demands on issues that went beyond those listed in the Posting of Workers Directive.

In the European Parliament, the Employment Committee initiated a report that would call for change to both the Treaty and the Posting of Workers Directive. The ETUC set-up an expert group that would elaborate in detail the changes needed to 'resolve' the problems caused by the rulings. However, they were faced by opposition both from regulation-skeptics - such as BusinessEurope and a number of new member states that saw no need for legislative initiatives - but also from within their own ranks, where it was feared that legislative initiatives could worsen the situation.

Any legislative initiative would have to come from the Commission, it tried to refer the issue to both the member states and the social partners. It was only after the Irish 'no' referendum that the Commission started to acknowledge the seriousness of the concerns raised by the Laval quartet. Still, it was reluctant to launch an initiative that would likely end up in deadlock in Council. However, when Barroso wanted to renew his presidency of the Commission, socialist MEP made their support for him dependent on him taking an initiative with regard to posting. Thus, the new Commissioner of Employment and Social affairs was charged with the assignment of making a legislative proposal with

regard to the posting issues. After years of delay the Commission presented two legislative proposals in the spring of 2012.

One was the so-called Monti II regulation, which aimed at clarifying the relation between market freedoms and the right to take collective action. However, the attempt at balancing these two kinds of rights would, in the eyes of trade unions, not have resolved the problems raised by Viking and Laval. Furthermore, the proposal was completely withdrawn by the EU Commission in the summer of 2012 after 12 national parliaments had declared it to be in breach of the principle of subsidiarity.

The other proposal was a directive aimed at improving the implementation of the Posting of Workers Directive. This proposal has become the centre of intense political struggle in the European Parliament, but at the time of writing the final outcome is unclear. What is clear, however, is that it will hardly resolve the problems raised by the Laval quartet.

Assessment across cases

Despite the shifting balance of force between pro-regulators and regulation sceptics, pro-regulation actors have been successful in preventing legislatives that would deregulate the working conditions of posted workers. However, Dølvik and Ødegård (2009) have argued convincingly that the success-story of the Services Directive was caused by a set of very peculiar circumstances. With regard to the Temporary Agency Work Directive, pro-regulation actors have been successful by the mere fact that the directive was adopted at all. Furthermore, the directive contains a general principle of non-discrimination from day one, which must also be seen as a victory. Supporting the regulation sceptics, are the many possibilities for exemptions from this principle, the fact that the directive includes no clause preventing the use of temps during strikes and the uncertainty whether posted temps will be covered by the directive or not. As for the responses to the Laval quartet, which has seriously undermined the possibility for regulating the terms and conditions for posted workers, none have come.

If we should summarise across the three selected case, we could say that pro-regulators still hold enough power to prevent deregulatory legislative initiatives and even promote some regulatory measures (as long as enough exemptions are made to make them less effective). On the other hand they have been unable to respond to the increasing challenges posed by the ECJ rulings and the increasing use of low wage posting after the EU enlargements.

3. Have coalitions played important roles in decision-making?

3.1 The employee involvement area

Revision of the EWC directive

Answering the research sub-question 'What role have coalitions played in decision-making processes in work and employment related areas?' requires a closer look at the decision-making process. The decision-making process following the publication of the second consultation in February 2008 (European Commission 2008) went through a number of phases:

The first phase involved the social partners' reactions to the Commissions' Communication while simultaneously the European social partners' explored the will and opportunities for making a bipartite agreement. This process ended in April 2008 with the ETUC declining Business Europe's surprising declaration of willingness to bargain on the issue. The interpretation of several interviewees was that the ETUC thought they would be better off with what the Commission could offer them, compared to what they could obtain from a proper social dialogue process with Business Europe. Therefore they wanted to give the Commission a greater role in this 'regime shopping' game than the Commission could have on the bipartite arena. The February 2008 consultation paper from the Commission - according to the ETUC interviewee - gave the impression that to a large degree the revision process would incorporate the ETUC's priority for the revision. At the beginning of April 2008, when the decision whether the bipartite arena should be used or not, the ETUC expected that the proposal would be more in line with their proposal than it turned out to be. The second phase involved the publication of the Commission's proposal in early July 2008, which only to a limited extent followed the ETUC priorities. The proposal offered a 'recast' and not a full revision of the directive. By choosing a recast process, the number of issues that could be changed was minimised. This was, according to interviewees done in order to ease the passage of the directive through the European Council and Parliament while the Commission was still in office. The third phase involved a bipartite agreement at the informal meeting of the ministers for labour and social policy hosted by the French presidency in mid July 2008 (to which the European social partners according to tradition were invited as guests) between Business Europe and the ETUC on changing eight issues in the Commission's proposal. The fourth phase in autumn 2008 involved a period with a very active French presidency working hard to complete the recast directive before the end of its term; and with the ETUC, the presidency and other pro-regulation actors turning around and telling the European Parliament to minimise its pressures for change, in order not to disturb the consensus between the European social partners. Fifth and finally, and 'end-game' in early December in the form of a so-called 'trialogue process' where the EP, the Commission and the Presidency agreed on the remaining

unsolved issues, so a formal adoption of the recast directive could take place in the beginning of 2009.

In relation to the question about the role of coalitions in the decision-making process we are left with divergent evidence. On the one hand it is possible to see the division between pro-regulation and regulation-sceptical actors. The UK, British MEPs and CBI clearly had some kind of interaction in order to minimise the impact of the recast process, and they had some support from some old and newer member states. However, the support was partial and many of the member states that supported them in other decision-making processes, did not in this case. It is also noteworthy that the CBI and Business Europe – despite of CBI giving the green light for Business Europe's attempt to bargaining – seemingly were not on one and the same line in this case. Likewise, focusing on the pro-regulation actors, although the ETUC and a number of pro-regulation member states with France in front were clearly among the strongest drivers in the process, a clear-cut coalition was hard to locate. The roles of pro-regulation actors were divided, more precisely on the extent to which the social partners' agreements should be added to or not. The usually good relations between the ETUC and left-leaning MEPs became tense and unusable, because the two took different stands on exactly this issue. Finally, and related to both the pro-regulation actors and the regulation-sceptical actors, the Council's limited role in the process has in itself made the strong role of coalitions less likely.

The European Private Company Statute

The decision making process following from this can be divided roughly into five phases that are briefly summarised here:

First, during autumn 2007 and winter 2008 the different stakeholders responded to the communication. Secondly, in June 2008 these comments were taken into consideration when the Commission issued its proposal. Contrary to the work and employment issues centred in DG Employment, the European social partners had no privileged access in the case of the EPC-proposal, which was not labour law, but a company law issue. The consultation on the proposal was simply done as an on-line consultation. As was expected Business Europe was more positive than the ETUC (who were worried about the employee involvement dimension), whereas UEAPME emphasised the necessity to adapt the directive to the needs of SMEs. In general the ETUC was dissatisfied with the process and the consultation method and reported on very little communication and contact between them and DG Markt. Thirdly, in the autumn of 2008 to spring 2009 various Council formations worked on the issue. However, the French presidency gave priority to the EWC directive (see above) and not to the EPC statute. According to the Commission interviewees the following Czech presidency put a lot of effort into the EPC statute, but did not make enough progress to be able to complete it.

It has not been possible in this case to locate clear coalitions. However, Germany was the most sceptical member-state, and supported by Austria, Hungary and France – all four member-states that are often found among the pro-regulation actors. The Netherlands, however, was also found among the most sceptical member-states alongside member-states they are not so often in line with. The positions of the ETUC (sceptical) and Business Europe (supportive) are not surprising, whereas the initially sceptical position of the UEAPME emphasise that the initial reason for the proposed directive might not have been to support the SMEs. Whilst only weak shadows of coalitions are seen as in the EPC directive recast process, the encoring of the decision-making process in DG Markt reduced the influence of the European social partners, particularly the ETUC, and made them search for new allies among the MEPs and work much harder than usual to get their member-organisations to influence their respective governments.

Assessment across cases

The analysis of the employee involvement area shows that *solid coalitions cannot be seen in any of the decision-making processes analysed* from the second half of the previous decade. Still, in the EWC revision it is possible to see the division between pro-regulation and regulation-sceptical actors. Among the regulation-sceptical actors the UK, British MEPs and the Confederation of British Industry (CBI) clearly had some kind of interaction in order to minimise the impact of the recast process, and they had some support from some old and newer member states. However, this support was partial. Likewise, focusing on the pro-regulation actors, although the ETUC and a number of pro-regulation member states with France in the lead were among the strongest drivers in the process, a clear-cut coalition was hard to locate. Among other things, the pro-regulation actors were divided on the extent to which the European social partners' bipartite agreement should be added to or not and the usually good relations between the ETUC and left-leaning MEPs became tense and unusable. In the EPC initiative, Germany was the most sceptical member state, supported by Austria, Hungary and France –mostly member states often found among the pro-regulation actors. The Netherlands, however, was also found among the most sceptical members alongside member states they are often not in line with. The positions of the ETUC (sceptical) and Business Europe (supportive) are not surprising, whereas the sceptical position early on of the UEAPME emphasises that the initial reason for the proposed directive might not have been to support the SMEs. In sum, no real coalitions were formed in these cases either.

Regarding the decision-making arenas, the revision of the EWC directive is a clear case of strategic use of decision-making arenas. However, it was an actor outside the bipartite arena – the French presidency – that established an informal bipartite arena to smoothen the decision-making process. Moreover, the choice between the decision-making arenas – bipartite (social dialogue) or

tripartite was as described a core choice for social partners in their aims to estimate which arenas would provide them with the best outcome. The EPC statute process did not include any indications of decision-making arena shifts as parts of the actors' strategies.

3.2 The employment policy area

The Lisbon revision

The Communication with the draft guidelines went out from the Commission in April (European Commission 2005). The draft Broad Economic Policy Guidelines and the draft Employment Guidelines were hereafter in the same document. Whereas there were ten employment guidelines in 2003-2004, the number was reduced to eight in the communication. The proposed changes were minor, which might be one of the explanations why EMCO's decision making process on the draft guidelines - according to the interviewees and compared to the revision process in 2002-03 - ran much more smoothly and the two coalitions were not activated. The coalitions seem to have played a more limited role in the 2004-05 revision compared to the one in 2002-03, analysed by e. g. Mailand (2006); Nedergaard (2005); Deganyse (2006). This is because the process was less conflict prone, but also because the greater number of member states have made the coalitions even less stable and even less clearly demarcated than they were before.

Nevertheless, the outcomes of the revision in 2005 could be said to have been influenced by the strengthening of the regulation-sceptical actors. The new Commission had clearly, if not changed, then refocused the Lisbon process more on growth and jobs and downplayed the role of social inclusion and environmental issues; but in relation to EES, no major changes could be seen as a consequence of the 2005 revision. However, the context and the plans have changed to a large extent during the years, and the change of Commission has contributed to this. Although the change of the member states' general political orientation and the change of Commission was not strongly reflected in the employment guidelines, some - but not all - interviewees did feel that a change had taken place. As one of them expressed it, it is now possible to discuss the quantity of jobs without always balancing the argument against the question of the quality of jobs, and it is possible to discuss making work pay without always also discussing security. Also the use of pressure on the member states through 'naming and shaming' seems to have diminished.

The Common European flexicurity principles

Many of the sceptical member states gradually changed their position during the decision making process from 2006-07. Whereas a number of continental and Southern European trade unions, as well as the EP, remained sceptical all the

way through, important member states such as the UK, the Netherlands, France and (to some extent) Germany shifted position. The same was the case with BusinessEurope, and to a lesser degree the ETUC. The change of government in France in May 2007 was, according to the interviewees, very important for this development, in that it weakened the position of other sceptical member states and made them change their position. These changed positions facilitated DG Employment's work on its communication presenting proposals for the common principles (European Commission 2007). The response to the Communication from employers' federations and the Northern European member states was mostly positive. Southern European member states and trade unions, as well as Continental trade unions, remained sceptical. The reaction of the Parliament was also cautious. The ETUC expressed scepticism in its reaction to the Communication, especially about what it saw as an attack on job security (ETUC 2007). On the other hand, the feedback from BusinessEurope was highly positive (BusinessEurope, 2007).

Further barriers arose to reaching agreement on the joint principles. One of the most sceptical countries, Portugal, took over the EU Presidency in July 2007, and trade unions organized big demonstrations protesting against flexicurity in Lisbon as well as in Brussels. However, following protracted negotiations the European social partners, in the context of a joint publication on key challenges facing the European labour markets to be presented at the annual tripartite summit in Brussels, agreed a concise compromise on flexicurity and methods of achieving it that did not greatly differ from that proposed in the Commission's Communication (ETUC et al. 2007). Also in this case, it was extremely difficult to reach common ground. With the European social partners' report, the basis for the sceptics was yet again weakened and the European Council reached an agreement on the principles at its meeting in December 2007

In sum, at least two factors might explain that it was possible to reach a fragile consensus although many actors initially saw flexicurity as a way to sugar the bitter flexibility pill. These two factors are the erosion of the anti-job-security elements of the flexicurity concept and a spill-over (or domino) effect that gradually eroded the power as well as the arguments of the skeptics. The most important drivers in the domino effect might have been the European social partners short consensus paper agreed in July 2007 at the informal meeting of the French Presidency, the change of government in France, which „spilled over" to Germany and others, and the last-minute confirmation of support from both European social partner organizations in the form of a joint report in October 2007 (ETUC et al 2007).

It seems that pro-regulation and the regulation sceptic coalitions have played only a minor role, although the UK's EMCO representatives initially attempted to mobilize the minimalist coalition. This does not mean that some of the actors did not join forces in their attempts to influence the process: the joint Portu-

guese-German-Slovenian letter is just one example of this. What it means is that more or less stable cooperation between actors could not be seen in this case. The two coalitions were divided in the case of the flexicurity process. Whereas the strongest sceptics were found among what was previously the regulation coalition, the sceptics in the beginning of the process also included member states from the minimalist coalition, among them the UK and the Netherlands, although for different reasons. Towards the end of the process, most countries from the regulation coalition had developed into (weak or strong) supporters of flexicurity. Moreover, DG Employment did not join the countries that previously formed the backbone of the regulation coalition, such as France and Belgium, in their criticism of flexicurity. Quite the contrary: DG Employment was the initiator and one of the strongest supporters of flexicurity (see also Keune and Jepsen 2007).

That the two coalitions from the first half of the decade played a minor role in relation to the development could, among other things, be because the flexicurity issue is not so easy to place on a 'more or less regulation' axis. The flexicurity principles call for less regulation in some areas, but also for more regulation – and higher public spending – in others.

Europe 2020

Following the publication of the communication Europe 2020 a process followed which can be divided into three parts:

Firstly, a phase took place with reactions to the communication in early spring 2010 and discussion of these in EMCO. The interviewees pointed to four controversial issues at this point in the decision making process: A shorter decision-making process meaning lack of time to discuss the Communication; the Commission's idea to integrate Europe 2020 and the Growth and Stability Pact to have a single document and a single governance structure (the member states rejected this idea); the educational target, which especially Germany had problems with, but also other member-states found controversial; the poverty target and related indicators - and more generally the inclusion of this purely social policy issue in Europe 2020 in general. There were two partly overlapping dimensions to this controversy, a juridical one and a political one. The juridical one questioned the legal foundation to include the issue in a plan like Europe 2020. Questions were raised regarding the legal base of the poverty part of Europe 2020. According to one of the interviewees from the Commission there were discussions about which of two roads to follow. One road was to link the poverty action directly to the EES and 'use' the EES' legal base. This would limit the scope of what could be done, but the juridical base would be clear. The other opportunity would be to seek juridical backing elsewhere in the treaties and have more freedom in formulating the path to take. The Commission chose the first option, most likely influenced by the positions taken by the member states. The UK, Denmark, Sweden, the Netherlands (mainly regulation-sceptical

actors) and Italy (that did not want any targets at all) and possibly other member states too were sceptical with regard to the legal basis, and the UK stated that no recommendations on the issue would be accepted. The controversy was, according to one of the interviewees closest to the process, not only related to the presence of the poverty issue, but also of how to measure it.

Secondly, a phase followed from late spring to early autumn 2010 where the draft guidelines were issued. The draft guidelines did not include anything unexpected. The guidelines were generally welcomed, among others by Business Europe. ETUC, who had responded mainly negatively in earlier phases of the process, did due to staffing problems they had to make tough priorities on what issues to focus on – and the draft guidelines were not among them.

Thirdly, the final process took place in autumn 2010 and early winter 2011 and led to the adoption of the guidelines (European Commission 2010). In this phase the European Parliament proposed – despite of limited competences in the OMC areas - a large number of amendments. They succeeded in getting a few changes in the recitals to the employment guidelines.

Like the decision-making on the Lisbon revision and the Common European Flexicurity Principles also Europe 2020 showed a decision-making process where coalitions played a relatively limited role. The poverty issue did activate resistance from a number of the regulation-sceptical actors. And cooperation between the pro-regulation Belgium Presidency and the Parliament's Employment and Social Affairs Committee during the final phase of the decision-making process might also have facilitated the changes made to the recitals of the guidelines. However, apart from these examples, there does not seem to have been much coordinated action among the two groups of actors referred to as the regulation-sceptical and pro-regulation actors. The roles of the European social partners in relation to the two groups of actors were the usual ones. Their common declaration came too late to make an impact and the ETUC was seemingly forced by its reduced organisational capacity to choose what processes to focus on - and Europe 2020 was not among them. If the ETUC does not solve its capacity problems the regulation coalition will be (further) weakened.

Assessment across cases

In the employment policy area, coalitions seem to have played a more important role in the first half of the past decade (especially in the first revision of EES) than in the second half, where neither the common flexicurity principles nor the Europe 2020 activated the coalitions more than sporadically. One obvious explanation could be that the weakening of the pro-regulation actors has weakened the pro-regulation coalition too - and this to such an extent that it is not able to organise resistance. The enlargement with new member states has simultaneously blurred the picture somewhat, in that a number of these are not easily placed within the two coalitions, but has also strengthened the minimalist coalition, because the governments from the new member states on average tend to

take more regulation-sceptical positions than the old member states. Moreover, the enlargement has created a group of member states that so far have been less active and influential in the decision making process, but according to the interviewees, will become more active when they have been Presidents for the EU and 'learned the game'. However, despite the weakening of the role of coalitions and of the pro-regulation coalition in particular, at least parts of the pro-regulation coalition played an important role in the amalgamation of the social OMCs in 2006, the change of the European flexicurity concept during the decision-making process 2006-07 and the inclusion of the poverty issue in Europe 2020.

Regarding decision-making arenas, shift in these do not seen to have been an important part of the actors strategies in any of the three cases. The process leading to the common flexicurity principles was not in the first place part of the EES and the its employment guidelines although the outcome did had consequences for it. Embedding the process of the common flexicurity more directly in the repeated revision of the employment guidelines would not have been an opportunity when the plan for the European flexicurity initiative was as ambitious (in scope) as it was. The initiative could to some extent be seen as a way to deviate from the 'mainstream' EES and therefore. There is therefore an element of decision-making arena shift, although the actor constellation is more or less the same in the EES as it was in the European flexicurity initiative.

However, a much clearer example of arena shift was the set-up of the European Employment Task Force in 2003. This taskforce was clearly an initiative by a group of regulation-sceptical countries (under the leadership of the UK) who was dissatisfied with revision of the employment guidelines in 2002, which they did not find sufficient (Mailand 2006). However, this case was not included in the present project as it is too old.

3.3 The posting area

Services Directive

The adoption of the Services Directive went through several phases or shifts. In an early phase, both prior to and just after the Commission´s presentation of its proposal, where a general consensus about the importance and desirability of the directive seems to be established and prevail amongst all actors holding positions in the decision-making process. However, soon after the presentation in March 2004, a second phase started, in which trade unions start criticising the proposal and mobilising opposition at both EU and national levels. These mobilisation efforts lead to a turning point in February 2005, when French president Chirac – under strong pressure from the referendum 'no' campaign - started to express strong concerns about the proposal both in Paris and in Brussels. After this, other member states – such as Germany, Sweden, Austria, Belgium, Denmark and Luxemburg - follow suit and a new phase started where the proposal

was heavily revised in the EP's Employment Committee. Yet another turning point occurred, however, as conservatives and Christian Democrats started to mobilise in a defence of the original proposal, but in the end a compromise was reached in February 2006. Hereafter, the Commission´s threatened to revise the compromise, but in the end made only minor revisions.

As for coalitions, it seems that there was a large degree of initial consensus regarding the proposal amongst all those officially part of the decision making process. In that sense, it would seem wrong to talk about coalitions. However, that Commission staff leaked the proposal to trade unions to make them mobilise political opposition does indicate pre-established links between different pro-regulation actors. Still, it was only during the process and due to a large number of different factors that two clearly distinct coalitions were established. And when this finally happened, the coalitions stroke a compromise that allowed for the Services Directive to be passed, but in a highly revised form.

Temporary Agency Work Directive

There was a long process before the Temporary Agency Work Directive was adopted in November 2008. It was originally part of an attempt by the Commission to regulate atypical employment, which was taken up by the social partners in 1995. After having negotiated to two prior directives on this theme, it turned out that the social partners could not find a compromise with regard to temporary agency work. Thus ETUC put pressure on the Commission to launch its own proposal after the article 139 negotiations had broken down in 2001. After the Commission presented its proposal in 2002, it was debated in the Parliament, but was later stuck in the Council. Just as CBI had played a vital role in preventing a compromise between the social partners, it also put strong pressure on the UK government to prevent the adoption of the directive in Council. The UK was the prime actor in the blocking minority opposing the directive. Germany backed the UK due to shady deals, while the Netherlands found that the proposal might spell difficulties for their labour market regulation. However, in 2007 the Portuguese presidency (on the recommendation of DG employment staff) tied the Temporary Agency Work Directive to the Working Time Directive, which put additional pressure on the UK. At the same time the Portuguese Presidency proposed a compromise that would allow both Germany and the Netherlands to retain their systems. Thus, the blocking minority opposing the directive crumbled. When the UK government had made sure that the UK social partners had an agreement in place, they too could approve of the directive when it was finally adopted in November 2008.

While finding an alignment between the UK government and BusinessEurope could be expected, it is not adequate to talk of coalitions as such. The Netherland would, for instance, not normally be regarded as a regulation sceptic country, but opposed this particular initiative due to specific institutional structures at home. Even amongst the employers ranks it seems that some have

seen the proposal as quite uncontroversial. Thus, it seems that CBI was really the key player opposing the initiative and using both its formal position in BusinessEurope and its informal relations to the UK government during most of the process.

Political responses to the 'Laval-quartet'

The efforts to produce a political response to the Laval quartet can be divided into three phases. First, an initial phase marked by the uproar after the Laval ruling. Here we see the Andersson report in the Parliament and the ETUC issuing a resolution demanding revisions of the Posting of Workers Directive and the Treaty. This phase ended in October 2008, after the Commission´s Forum, where even member states sceptical of the Laval ruling such as Belgium and Denmark argued that a revision of the directive could easily go the wrong way. In the second phase, pro-regulation actors in ETUC and EP regrouped and tried to find a new strategy for promoting a political response. During the process of the renewal of the Commission´s mandate they were successful in making Barosso promise to make a legislative proposal. This was in the fall of 2009. Still, it took two and a half years and encouragement from the Monti report before the Commission delivered. The third phase started before the official presentation of the proposals, as a lot of behind-the-scene politics had been going since a first draft was leaked in late 2011. For this reason, the positions of key actors were clearly drawn when the two proposals were finally launched in March 2012. The Monti II regulation was quite quickly rejected by both France and the UK (but for diverse reasons), and 10 other member states joint the critic of the proposal. As for the Implementation directive, the process is still on-going.

In some ways it makes sense to talk of coalitions, because the process leading up to the Laval ruling had already made oppositions between different member states quite clear. Employers, trade unionists and MEP´s positions and roles on the political scene were indeed marked by clear divides. However, some of those pro-regulation actors that were sceptical of the ECJ´s rulings were also sceptical towards attempts to take new legislative initiatives. Noting the shifting balance of power in the EU, they feared that such an initiative would either be blocked or would turn the situation into something even worse. Thus, it seems that the shifting balance of power has indeed had an impact on the possibility to form a political response to the Laval quartet.

Assessment across cases

Looking at the two cases where posted workers have been most directly debated (the Services Directive and the responses to the Laval quartet), it seems that the issue has become more and more contentious, moving from initial consensus on the proposal for Services Directive to clearly distinguishable coalitions with regard to the issues raised by the Laval quartet. While some pro-regulation

countries might not want to revise the posting of workers directive, this is mainly so because they acknowledge that regulation sceptics have the upper hand. When it comes to the Temporary Agency Work Directive, however, the process seems to be reversed, from initial oppositions between two groups to the gradual construction of a compromise.

4. Conclusions and perspectives

4.1 Conclusions – answers to the research questions

The analyses of the eight cases within three work and employment related areas shows that the *expected impact in the form of a weakening or a 'slowing down of Social Europe' is seen in only three of eight cases analysed*, and some of these only to a limited extent. None of two cases in the employee involvement area – the revision of the European Works Council directive and the European Private Company initiative - marked a general weakening of Social Europe, although the pro-regulation actors did far from obtain all their goals in any of the cases. In the employment area the employment policy parts of the Lisbon revision and the Europe 2020 shows signs of a weakening of Social Europe, but only to a limited extent and less so than expected. The third case, the common European flexicurity guidelines included so many concessions to the pro-regulation actors that it could not be seen as weakening Social Europe. In the posting area, the Laval quartet itself has seriously weakened Social Europe, and the response (the case analysed here) has not yet come. The two other cases, the temporary work directive and the Service directive, do not represent weakening of Social Europe.

The analyses of the eight cases show that the weakening of Social Europe is less widespread than expected and that this can be explained by especially two factors. The first is actor/action oriented: *Successful resistance and ad hoc coalition-building from pro-regulation actors.* This factor played especially an important role during the decision-making processes of the Service directive, but was also of importance for the decision-making process of the European Private Company statute and the Common flexicurity principles. Successful attempts by the pro-regulation actors to adopt new regulation are mainly found in the case of the TAW directive (and to a lesser extent by the EWC directive – lessons for a reason which will be addressed below). Even in one of cases that to some extent can be seen as weakening Social Europe, Europe 2020, successful resistance from pro-regulation groups were important for the outcome – in this case especially the Parliament raised successfully their demands for a greater role for social issues as a prerequisite for the re-appointment of Barosso as leader of the Commission. Yet, sometimes the lack of progress towards new regulation or the content of the regulation adopted can also be explained by failure in the strategies of the pro-regulation actors. This was the case with the revision of the EWC-directive and to some extent the Lisbon revision (because of the content of the regulation adopted) as well as the failure to agree on a response to the Laval Quartet.

The second factor is institutional and has to do with the institutional set-up. A certain form of organisational inertia linked to the actors search for legitimacy, especially *the Commission's need for a stronger social profile in order to be*

reappointed. This factor was the most important reason that the EWC directory was finally revised and that the poverty issue got a prominent place in Europe 2020. It was also influential in making the Commission come up with any kind of response to the Laval quartet (although this response was rejected in the end). This second factor is important for the decision-making processes in that it works as a sort of an 'automatic stabiliser': In times where the regulation sceptics should be strong enough to introduce more sweeping changes, it can – to some extent – prevent this from happening. And it must be expected that the same will be the case in times where the pro-regulation hold the stronger power position (if that will ever happen). However, it should be added that a similar mechanism was also among the reasons that the Commission proposed the European Private Company Statue, which was in line with the regulation sceptics rather than the pro-regulation actors' wishes.

Regarding the role of the coalitions, these seem only to have been playing a role in some of the cases. In general, coalitions seem less stable and solid than described in the previous research. While there are contours of pro-regulation and regulation-sceptical coalitions in many of the cases, and several actors take position as could be expected from previous studies of coalitions, it is noteworthy that *none of the eight cases could be seen as clear examples of the pro-regulation vs. regulation sceptic coalitions in action*. The cases that come closes might be the EWC-revision, the Service directive and the response to the Laval quartet. The reason that stable coalitions seems to be more or less absent in the case seems to be that content specific institutional interests often stand in the way of the formation of stable coalitions and that some issue – for instance flexicurity – is not so easy to place on the pro-regulation regulation sceptic axis. However, this is not sufficient to explain the development from a situation in the 2000s where the two coalitions were influential to the present situation where they are less so. Two possible explanations can be suggested. One explanation could be that the weakening of the pro-regulation actors has weakened their capacity to maintaining a coalition too - and this to such an extent that it is not able to mobilize for new initiatives for Social Europe or organize more than partial and ad hoc resistance on attempts to weaken Social Europe. Contributing to this development might be that a number of the new member states are not easily placed within the two coalitions, although these member states governments on average tend to take more regulation sceptical positions than the old member states. What has replaced the clear cut coalitions are member states that instead of joining forces to a larger extent than before defend their own national model and national interests on an ad hoc basis

It is important to add, that the conclusion that the cases within the three areas only to a limited extent show a slowing down or weakening of Social Europe does not necessarily imply that the work and employment related regulation in the period analysed represent a correct or adequate answer to the structural and cyclical challenges Europe faced in that period. Nor does it imply that this

regulation is sufficient to balance the economic integration. Analyses of these questions have not been the aim of the present paper and the project is derives from. Our aim has only been to assess whether improvements in social regulation (or resistance to de-regulatory measures) can occur at a time when pro-regulation actors have been weakened.

4.2 Reservations and perspectives

Two reservations, one about the case-selection and another one about timing, should be mentioned with regard to the conclusions:

Regarding the case selection, the areas chosen represent maximum variation cases in the sense that they both include 'in-work' related issues (EWC, European Private Company Statute, Temp Work directive), broader employment issues (Lisbon Strategy, the Common European flexicurity principles, Europe 2020) as well as competition issues with indirect effect on both 'in-work' and employment issues (Service directive and Response to the Laval quartet). Likewise, the cases include both some dominated by soft law/OMCs (Revision of the Lisbon Strategy, the Common European flexicurity principles, Europe 2020) and cases dominated by hard law/directives (the rest of the cases). In other words, it is a broad range of cases and areas which is covered by the study. However, although the areas and cases represent maximum variation cases, which are especially well-suited for generalisations, area-specific features might imply greater impact of the changed power-relations and more extensive roles of coalitions in areas and cases not covered. As an example, inclusion of the 'Laval quartet' as an independent case of EU regulation with regard to posting (rather than just the background of the political processes following the rulings) would have change the picture with regard to posting. The rulings had a clear regulation-sceptical tendency, as they challenged a number of regulatory practices at national levels. Furthermore, the rulings challenged very central issues (such as wage levels, trade unions right to strike and the regulatory autonomy of member states), which would make it legitimate to place great emphasis on them in an overall assessment of the development of Social Europe. However, the case was dropped both because it took place in a completely different setting (the legal system) than other cases, which is regarded as having a logic of its own. Furthermore, it would be difficult to validate the idea of coalitions within the ECJ as judges give no dissent and are sworn to silence about internal discussions of the Court. In that way, the regulation produced by the ECJ will often appear more similar to the pressure coming from the marked than to regulation produced by legislators and social partners. For these reasons the case was dropped.

Still, despite of these reservations, we consider the findings as solid and expressing developments that likely can be generalised to other work and employment related cases as well.

A further – and maybe more serious – reservation is related to the timing of the cases analysed (2004 – 2010, which the exception of the failed response to the Laval quartet). The period hereafter - or more accurately from September 2010 onwards - has seen the development of what some see as a whole new regime of economic EU policies with important consequences for the work and employment related policies areas as well. This development includes the introduction of EU-initiatives such as the Six-pact, the Europlus pact, the Financial pact and aid-programmes to the most troubled euro-countries, but also an even clearer subordination of work and employment issues to economic policy and 'intervention' of EU policies into issues formerly excluded from this, such as the wage issue. The introduction of these initiatives reflects, firstly, a further direct as well as indirect weakening of what in the present study has been labelled the pro-regulation actors and their impact could be expected to weaken the pro-regulation actors in the member states, and, secondly, a further development in the direction where the regulation-sceptical actors to a larger extent are those who push for new regulation. Not regulation to protect employee rights or the quality of work, but regulation in order stabilise national economies and secure more market-based wage-setting. To what extent these developments will also include and impact the three work and employment related areas included in the present research project - employee involvement, employment policy and posting – is a question for further research.

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