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

Report 1 – theory, literature review and methods

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1. Introduction[1]

The social dimension of EU is as old as the union itself. However, it is only in the mid-1980s that EU gradually developed a real social dimension to counterbalance the 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[2] 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 been reduced and the same political forces have weakened in the European Parliament. In addition, the Barosso-led Commission have followed a more liberal agenda than its predecessors and the European Trade Union Confederation (ETUC) has lost bargaining power due to loss of members among its affiliates and challenges from internationalization of production and labour migration. Also the enlargement in 2004 with new member states that often do not feel being in a position to match the level of labour standards in the old member states could also be expected to strengthen the regulation-sceptical actors. Furthermore, the enlargement itself has made it more difficult to agree on new regulation.

These recent changes are expected to have influenced the development of Social Europe. The project, which theoretical and methodological framework will be described in this working paper, aims to explore whether the strengthening of the regulation-sceptical actors has affected the scope and content of the regulation as well as the relative weight between different forms of regulation. To address this question, we will analyse recent decision-making processes within the four most important types of EU regulations - the directives, the Method of Coordination (OMC), the social partners' autonomous agreements and case law. In this regard, we will analyse 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 different types of regulation. In doing so, we will examine and compare four work and employment related areas simultaneously. The areas will be labelled 'employment', 'employee involvement', 'work-life balance' and 'posting'.

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[1] I am thankful for inspiring discussions and useful comments from a number of colleagues from FAOS: Trine P. Larsen and Jens A. Hansen, who both participate in the project, and Søren Kaj Andersen and Klaus Pedersen.

[2] '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 that are used in which situations.

A project with such a focus should be able to provide new and relevant knowledge mainly for two reasons. Firstly, the connection between changes in the various actors' power position on the European scene, and the outcome in terms of agreed regulation, have seldom been analysed. Secondly, in the rare cases that 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, insofar as the ECJ rulings and the directives are supra-national legislation, which the member states are bound to follow. The OMCs represent soft regulation, insofar as the actors (in this case primarily the member-states) are not legally bind 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 the member states will perceive the regulation as politically binding. These elements are missing in the social partners' autonomous agreements that are only formulating general guidelines for the national and sectoral member organisations and therefore could be seen as the softest form of regulation of the three.

Furthermore, the relative importance of the main actors varies between the types of regulation. Although variation is found from case to case, the Commission and the member states are the most important main actors in the OMCs, whereas the social partners in general have a greater role to play in relation to the directives and the framework agreements. The role of the European Parliament is in general at its peak in relation to the directives, whereas it is less important in relation to the autonomous agreements and the OMCs. Finally, the ECJ is the all dominant actor in relation to case law. These differences will be elaborated in section 2 of this report.

The different actor-constellation in the various types of regulation could 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 of 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' (only including the European Parliament). Those directives where the social partners are the initiator will at least partly be found on 'the bipartite arena' (the social dialogue) or 'the tripartite arena' (for in stance in the social dialogue committees, where the Commission coordinates the process). Similar to some of the directives, the OMC decision-making processes are mainly taking place on 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 only

plays a minor role in the OMCs. The 'juridical arena' is mainly reserved for the ECJ.

Previous studies (Hooghe & Marks 1999; Nedergaard 2004; Mailand 2005 to name a few) have shown that, in order to maximize their influence, the main actors tend to seek alliances and create coalitions with other actors. This is not only the case for the member states in the Council, but also for the various so-called 'directorates generals' (departments within the Commission), party groups in the Parliament and for the social partners. The multi-level and multi-actor nature of the European decision-making processes on employment and work does certainly not make it less complicated and easier to study than national level decision-making, but tracing down the coalitions will help to find out who wants what, why and how they get on to the European scene.

1.1 Research questions

Following this, the research project – of which this working paper is the first report - will address the following questions:

Has the strengthening of the regulation-sceptical actors affected the content or the range of work and employment regulation at the EU-level?

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

Possible effects from the strengthening of the regulation-sceptical actors would be adoption of less new regulation than previously – or less binding forms of regulation - whether this is due to the juridical status of the types of regulation used or due to lower or fewer quantitative targets and minimum levels.

1.2 Structure of the working paper

This introduction is followed by a presentation of the two main theoretical concepts of the working paper – decision-making arenas and coalitions. The third section is the literature review, which will help localise the knowledge gaps and formulate hypotheses. The project's hypotheses are found in the fourth section. The final fifth section includes a description of the project's methodology.

This working paper will be followed by four other working papers. The first four will focus on different empirical areas. The first of these focuses on the area 'employee involvement'. This will be published ultimo 2010. The second will focus on the decision-making process within the area 'employment' and

will be published early 2011. The third empirical working paper focuses on key decision-making processes from the 'work-life balance' area and will be published late 2011. The fourth working paper - also to be published in late 2011 - will be dealing with 'posting of workers'(?). A closer presentation of these four areas, and a justification for the selection of them, are found in section 5 in the present working paper.

2. Policy arenas and coalitions – a presentation

2.1. What is a policy arena?

In studies of national level public policy and public administration, the term 'decision-making arena' have in recent years often been used as an analytical concept to systematically describe the differences between the institutional set-up, especially the constellations of actors, surrounding the decision-making process. These studies often focus on how the different actors tries to place the decision-making processes in focus on the arena that maximizes their chances to reach their political goals. For instance, in a study of the Danish active labour market policy in the 1990s, Winter (2003) distinguishes between a 'corporatist arena' and a 'politico-parliamentarian arena'. Both arenas play a role in policy formulation and policy implementation. However, Winter argues that the politi-co-parliamentarian arena have been strengthened during the 1990s – mainly because many decision-making process has been related to negotiations of the annual state budget, which is a process where to the social partners have limited access. But this development was only seen in policy formulation, not policy implementation, where the corporatist arena remained important at the time of writing.

Another example of the use of decision-making arenas is Torfing's (2004) study of discourses and decision-making also in relation to Danish active labour market policy. He found an 'inter-ministerial arena' (the civil servants), a corporatist arena and a parliamentarian arena (the Parliament and its councils and(?) committees). Torfing finds that the latter arena did play a very limited role in this policy area.

Few researchers have explicitly located an arena only with participation of interest organisations – an arena that could be called an 'organisation arena' or a 'bipartite arena' (Mailand 2008 is an exception). However, with regard to regulation of work and employment issues there is no doubt that such an arena exist. The term 'forum-shopping' (which could also be labelled 'arena-shopping') has been used to describe situations, where one of the involved parties in negotiations through lobbyism tries to place a decision-making process on the 'political' arena without any bi- or tripartite dialogue, because this party believes it will achieve better results here (Due & Madsen 2006).

2.2 Arenas and types of regulation

The concept 'decision-making arena' described above has exclusively been used to describe relations at the national level. When applying the concept to the EU-level it will be necessary to acknowledge that at least some of the areas have a cross-level or multilevel structure, meaning that they include both the national level and the supra-national level (the EU-level).

The 'decision-making arena' is an analytical concept, but the arenas can be closely linked to empirical decision-making. Each arena covers typically a number of forums for decision-making. When applied to the EU-level, no less than six different arenas can be located:

It is more difficult to construct a *politico-administrative arena* on the EU-level than on the national level, because the formal role of the Commission is not simply to carry out Council's[3] policy as ministerial departments are supposed to do with national governments' policies. One of the most important differences here is the Commission's right to take initiatives. The Council and the Commission will nevertheless both be included in the arena for the analytical purposes of the present study, and because the links between these two EU-institutions are actually closer than those between any of the other EU-institutions. The politico-administrative arena is clearly a cross-level arena, in that the most important actors here are the Commission and the Council. Whereas the Commission could be said to be firmly placed at the EU-level, the Council - that gathers ministers and civil servants from the member states - links the national level to the EU-level. The important position as the chair of EU should be seen as part of the Council.

When the Council and the Commission are to be separated in two different arenas, it makes most sense to see the European Parliament as forming a separate *parliamentarian arena* due to its independent role. Actually, the parliament is more 'separate' than the two other institutions. The Commission and the Council are often both involved in cyclic processes (such as the National Action Plans in the Lisbon process) that the Parliament are more or less detached from, and the representatives from the Commission often have seat in the Council's committees, which the Parliament has not (such as the Employment Committee and the Economic and Social Committee) – although the Commissions representatives have no formal decision-making power.

The *bipartite arena* might be the easiest arena to define, as it is more or less synonymous with the social dialogue, both the cross-sectoral dialogue and the sectoral dialogue. Still, the Commission - and to some extent the Parliament - plays crucial roles in relation to some of the processes. This is especially so when the social partners' decisions lead to directives, but also more generally in the social partners' social dialogue committees, where the Commission has a role as 'host' and facilitator. The 'pure' bipartite arena includes the process leading to the multi-annual work programmes of the European social partners

[3] For analytical purposes we do not here distinguish between the Council of Ministers (sector ministers) and the European Council (heads of state and governments).

and the various forms of bipartite communication that the Commission does not take part in.

In between the politico-administrative arena and the bipartite arena is the *tripartite arena*, where the Commission and/or Council interact with the social partners and often also various NGOs[4]. The annual tripartite summit, held before the spring summits in March, is obviously a part of this agenda. At least as important as this are the numerous channels for the ongoing tripartite dialogue. In all policy areas, the consultation processes on draft documents are part of what takes place on the tripartite arena. There are also face-to-face meetings in various tripartite forums. In the employment area, an example would be the Council's meetings with participation of the social partners in the Council's Employment Committee (EMCO).

As we will return to in the forthcoming research reports 2 – 5 of this project on employee involvement, employment, work-life balance and posting, most decision-making processes that produce – or have been close to produce – agreements on new regulation, include more than one arena. Furthermore, the importance of the different arenas changes over time.

In recent years, it has become more and more difficult to ignore what could be labelled the *juridical arena*, a sixth arena. This arena includes only The Court of Justice of the European Communities (often referred to simply as 'the Court', or 'ECJ'). ECJ was set up under the European Coal and Steel Union Treaty from 1952. It is based in Luxembourg. Its job is to ensure that EU legislation is interpreted and applied in the same way in all EU countries, so that the law is equal for everyone. It ensures, for example, that national courts do not give different rulings on the same issue. The Court also makes sure that EU member states and institutions apply with what the law requires. The Court has the power to settle legal disputes between EU member states, EU institutions, businesses and individuals. The Court is composed of one judge per member state, so that all 27 of the EU's national legal systems are represented. For the sake of efficiency, however, the Court rarely sits as the full court. It usually sits as a 'Grand Chamber' of just 13 judges or in chambers of five or three judges. The Court is assisted by eight 'advocates-general'. Their role is to present reasoned opinions on the cases brought before the Court. They must do so publicly and impartially (europa.eu 2009).

The Court is often seen as one of the most important driving forces behind European integration (Ghailani 2006). In recent years, the ECJ has increased its importance in relation to the regulation of work and employment. The 2004 enlargement has facilitated intra-European labour migration. However, large wage-differentiations between new and old member states combined with the good business cycle of especially the Scandinavian and Anglo-Irish member states throughout most of the period from the mid-1990s to the late 2000s might

[4] That also various NGOs often are consulted in these processes means that this arena could also be named 'the multi-partite arena'. However, since the social partners often have a privileged position and de facto a stronger say than the NGOS in work and employment related areas, the term 'tripartite arena' will be used.

have been the prime driver in this migration. To avoid what they have been defined as 'social dumping', national trade unions have taken actions against companies and service providers from the new member states that pay far less than the agreed minimum levels in the host-countries. A series of these cases have been brought to the ECJ - most importantly the Laval, Viking, Rüffert and Luxembourg cases. The rulings recognise the right of trade unions to take actions, but only in some circumstances. The rulings might have long-term consequences for national-level industrial relations system. The ECJ rulings have been seen as balancing act between free movement of labour, member state autonomy and the fundamental right to strike where most emphasis has been placed on the first two (Dølvig & Visser 2009).

The ECJ has in recent year especially been an important arena with regard to labour migration, and the role of this court will therefore be analysed in dept in the fifth working paper on 'posting'.

Table 1 Decision-making arena on the EU-level

Arena	*Key actors*	*Examples of processes related to work and employment*
Political-administrative arena	Council/MS Commission	Adoption of proposals and communications
Parliamentarian arena	European Parliament	Drafting reports of the Parliaments' Social and Employment Committee Voting in Plenary
Tripartite arena	Council/MS Commission Social partners (NGOs)	Annual tripartite summit before the Spring Council Consultations on Commissions' communications
Bipartite arena	Social partners	Inter-sectoral social dialogue Sector dialogue
Juridical arena	European Court of Justice	Laval, Viking, Rüffert and Luxembourg cases

It is important to note that the arenas mentioned above only addresses the formal channels for decision-making and influence. The informal channels should not be neglected and will therefore also be part of this project's empirical anal-

yses. They are in some case related to – and might even be difficult to separate from – the formal decision-making processes and arenas.

2.3 Coalitions

Like 'decision-making arena' the term 'coalition' has mainly been used in studies of national-level decision making processes. The Advocacy Coalition Approach is often used as an analytical framework. The coalitions in the Advocacy Coalition Approach - formulated by Jenkins-Smith and Sabatier (1993) - are knitted together by a common belief system, which is a set of values priorities and causal assumptions about how to realise them. They operate within 'policy subsystems' understood as the interaction of actors from different organisations who follow and seek to influence government decision in a policy area. There is often more than one coalition within a subsystem. The subsystems involve multiple levels within government. To study a coalition, it is, according to the authors, necessary to have a time perspective of one decade or more. A coalition change due to external changes in the environment of the subsystem that will cause changes in the framework of and resources allocate to the coalition. In the subsystem 'policy brokers' mediate between the different coalitions.

In Jenkins-Smith and Sabatier's understanding ,the coalition becomes long-living structures often with multiple actors involved, close to what others have called 'policy networks' (see e.g. Marsh & Rhodes 1992). On a smaller scale in a study of public-sector collective bargaining in Denmark, Due & Madsen (1996) find that coalitions between trade unions and coalitions between employers' organisations played an important role in the collective bargaining rounds analysed. Due & Madsen define coalitions as the united powers and resources of two or more independent organisations (or groups of organisations) with the aim of achieving a specific goal, overcoming weaknesses or controlling actors outside the coalition. Coalitions differ in their view from organisations. Organisations are characterised by actors sharing interests on a broad range of issues as well as a set of basic values, hierarchical structures, and organisational resources in the form of a bureaucracy and longterm goals, including the sustainability of the organisation itself. Coalitions, by contrast, have no strong hierarchical structures or organisational resources, they have a short time-horizon, and - most importantly - are stitched together by narrowly defined interests vis-à-vis an external counterpart or 'enemy'. Furthermore, a common set of basic values is not necessarily present in a coalition.

Below, we will take a look at the literature and see how arenas and coalitions have been used analytically and how the present project's research questions have been addressed in other studies.

3. Literature review: arenas and coalitions in EU's work and employment regulation

Firstly, the literature review will present the history of the Social Europe, paying attention to the role of coalitions and how new initiatives have had consequences for the balance between the different arenas. Secondly, the review will present studies that discuss if Social Europe has slowed down in recent years.

3.1 The development of arenas in EU's social dimension

As stated in the introduction, the European social dimension is as old as the union itself. The 1957 Treaty of Rome manifested the new Community's commitments to maintaining a high level of social protection for workers, increasing standards of living, quality of life and improving living conditions, indicating that there was a basis for a social dimension to the European Community (EC) from the beginning. Article 118 of the Treaty listed the areas, for which the Commission was merely to promote close collaboration between member states as: employment, labour law and working conditions; vocational training; social security; prevention of occupational injuries and diseases; occupational health and safety; the right of association and collective bargaining between employers and workers. However, until the mid-1970s the Council adopted virtually no legal instruments to develop the Commission's role in any areas of social policy except facilitating the free movement of workers. Only after pressure from the women's movement for the EC to implement the Treaty Article 19 on equal pay, and for the 1975 and 1976 gender equality directives to be adopted. They marked the effective start of social regulation in the EU (Threlfall 2007; Larsen & Taylor-Gooby 2004).

What indirectly caused a speed-up of the development on social dimension was the initiative to implement the Single European Market in the mid 1980s. To give new life to European integration, the Commission issued in 1985 a communication the vision of a Single Market, stating that before 1992, free movement of capital, goods, services and labour should be implemented The vision was concretised by the Common European Act of 1987. To support the decision-making process on the Single Market, qualified majority voting was introduced in a number of new areas. This was the first major change of the Treaty of Rome (Jensen 1996).

As a reaction to the attempt to speed-up the Single Market, the *Delors Commission* (1985-1994) formulated a vision of a greater social dimension in the mid-1980s to balance the economic integration. In this vision, the Commission claimed the need for guiding social principles and Delors actually persuaded most member states in 1989 to adopt a 'Community Charter of Fundamental Rights of Workers', although it was rejected by the UK (Threlfall 2007).

The approaches of the various social actors were in this period - as well as later - located between two positions, with actor constellations not so different from the two coalitions that have been noticed in recent years (see below): those

who understood the project as essentially deregulatory (the construction of an integrated free market with open competition and minimal state and EU intervention), and those who saw the market as the first step in a process of institution-building at the European level. The first position was taken by the UK government, parts of the Commission and business organisations; the second by governments from Continental European countries, trade unions, and other groups in the Commission. These groups supported the social dimension, which would involve minimum standards in social rights to be guaranteed at the European level and the development of a European social dialogue between the social partners. A compromise between these two positions was achieved through the creation of a charter of social rights at the 1989 Strasbourg summit and a Social Action Programme complementary to the single market, coupled with a doubling of resources for the structural funds (Larsen & Taylor-Gooby 2004). The Charter proposed that the Community should focus on the elderly, the youth and the excluded as well as adding new rights for male and female workers already in the labour market. The Commission launched further in 1989 the first of a number of Social Action Programmes. By the early 1990s it could be argued that a fairly well-developed social dimension of European regulation had developed (Threlfall 2007).

The justification for need to develop new social policies was first and foremost the aim to avoid social dumping. This should be done by shielding the national systems from adjustment pressures and to protect the most vulnerable social groups. Most of the Social Action Programme initiatives - directives, recommendations, and action programmes - were directly related to market integration: for example, the broadening of free movement of workers provisions to include further groups, the establishment of European Works Councils or the directive to regulate posted workers. Almost all proposed directives focused on labour market issues, indicating the limits of European legal authority to go into social policy issues. Traditional welfare state policies were touched only marginally and the recommendations of the Commission on the convergence of social protection aims and the guarantee of minimum benefit levels did not have the legally binding status of the directives (Larsen & Taylor-Gooby 2004).

The Commission and several governments attempted to change the institutional rules of the Treaty by expanding qualified majority voting in the area of social policy and integrating the European social partners into the decision making process. Since it proved impossible to strike an agreement, the British government was permitted to ‘opt out’ of the proposed chapter on social policy, which was annexed to the Maastricht Treaty as a separate protocol applicable only to the other eleven signatories (Falkner 1998).

The new Treaty on European Union agreed at Maastricht in December 1991 (*the Maastricht Treaty*) increased the status of the social dimension. It contained new chapters on, vocational education and training, youth and on public health, allowing he Commission a circumscribed new role in fostering a ‘European dimension’ to education while prohibiting laws to harmonize education

systems. A new title on social policy was drafted, but the UK rejected it. The draft title was in its final form named 'Agreement on Social Policy' and became an appendix to the Maastricht Treaty instead (Falkner 1996). Still, even this represented a gain in Community competencies, as the issue of social exclusion became a legitimate field of concern, and aspects of social legislation were facilitated by qualified majority voting in the Council of Ministers, such as equality between men and women in employment. In addition, the Maastricht Treaty consolidated European civic rights, expanding free movement beyond 'workers' and their 'dependants' to virtually all categories of persons, such as students, pensioners and jobseekers, though at first stopping short of giving EU migrants the right to access welfare provisions in other countries (Threlfall 2007).

The Maastricht Treaty had also important consequences for the social dialogue - found on the tripartite and, especially, on the bipartite arena - and marked the beginning of a new phase of social dialogue. In 1997 a major reform, based on an agreement between the social partners, was incorporated into the Amsterdam Treaty (see below) without substantial changes. Thus, social dialogue received official institutional recognition. The social partners obtained the official right to be consulted twice by the Commission on all initiatives of European social policy making, first regarding the possible direction of an initiative and then regarding the content of the proposal. They were also given the privilege of negotiating and concluding binding framework agreements to be implemented at the European and national levels. Thus, they are able to replace legislative activities of the public authorities with their own 'negotiated legislation'. Furthermore, this new institutional arrangement included a substantial change of decision-making in the Council from unanimity to qualified majority in selected policy areas (notably, protection of workers' health and safety, working conditions, information and consultation of workers, equality between men and women, among others) (Keller 2003).

Whereas the Maastricht Treaty extended the opportunities for work-related issues (industrial relations), development in the early 1990s paved the way for employment policies that also include out of work-related issues. The more or less persisting high level of unemployment across Europe is one of the most important reasons why the EU decided to introduce an employment policy, but also pressure from the Delors Commission to balance the EMU and the Single Market with a social dimension has 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 EU: following a proposal from the Commission, the European Council became obliged every year to agree on a series on guidelines setting out common priorities for Member States' employment policies and was given the opportunity to issue country-specific recommendations. At the Luxembourg summit later that year, it was agreed that the member states' employ-

ment 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.

On this background, the strategy took for the following years the form of an annual circular process, starting with employment guidelines setting out common priorities for member states' employment policy, followed by National Action Plans for Employment (NAPs) where member states describe how these guidelines should be put into practice nationally. Then, a Joint Employment Report where the Commission and the Council jointly examined each NAP was published. The Council could decide, by qualified majority, to include country-specific recommendations upon a proposal from the Commission – something which was done every year from 2000 to 2004. Finally, the Commission was to present a new proposal for revision of the employment guidelines accordingly for the following period. The choice of this non-legally binding mode of regulation has to do with the subsidiary principle and the Maastricht treaty that prevent European legislation in the areas of social and employment policies.

At the *Lisbon Council* in 2000 this mode of regulation was labelled the open method of coordination (OMC) and was defined as an instrument of the Lisbon strategy, which had the aim of making EU 'the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment by 2010'. The OMC provided a new framework for cooperation between the Member States, whose national policies thus can be directed towards certain common objectives. Under this intergovernmental method, the Member States are evaluated by one another (peer pressure), with the Commission's role being limited to surveillance. The European Parliament plays a limited- and the Court of Justice virtually - no role in the OMC processes. The OMC takes place in areas which fall within the competence of the Member States, such as employment, social protection, social inclusion, education, youth and training. It is based principally on: 1) jointly identifying and defining objectives to be achieved (adopted by the Council); 2) jointly established measuring instruments (statistics, indicators, guidelines); 3) benchmarking, i.e. comparison of the Member States' performance and exchange of best practices (monitored by the Commission). The OMCs differs from the most of the other work and employment related processes in that less of it takes place in the bipartite, tripartite and especially the parliamentarian arena, and that a greater part of the process takes place on the politico-administrative arena. In other words, the OMCs are mainly games played by the member states and the Commission.

Depending on the areas concerned, the OMC involves so-called 'soft law' measures which are binding on the Member States to a varying degree but which never take the form of directives, regulations or decisions. Thus, in the context of the Lisbon strategy, the OMC requires the Member States to draw up national reform plans and to forward them to the Commission. However, youth

policy does not entail the setting of targets, and it is up to the Member States to decide on objectives without the need for any European-level coordination of national action plans.

Relating the overall development of the social dimension to the decision-making arena concept, it is clear that the bipartite and tripartite arenas - or at least the possibility to use them - were strengthened in the beginning of the 1990s due to the new role granted to the social dialogue. The increased use of the OMC in the 2000s represents formally a weakening of the parliamentarian arena, and a strengthening of the politico-administrative arena. However, as we will describe in some of the following research reports, the Parliament has more than compensated for this by being very active regarding forms of regulation.

3.2 The role of coalitions

A few studies have analysed the role of coalitions in decision-making in areas within the European social dimension. To locate the knowledge gaps we will describe these studies in the following.

Among the first researchers to point to the existence of coalitions in European social and economic policy decision-making were Liesbet Hooghe & Gary Marks (1999). They were not using the word 'coalitions' themselves, but located two 'projects', labelled 'neo-liberalism' and 'regulated capitalism', each of which has different 'supporters'. The neo-liberal project aims to minimise the capacity for European-wide regulation, so as to create a mismatch between political regulation, which remains mainly national, and economic activity, which increasingly according to the authors is European. Supporters of this project were the British and German liberal and conservative parties, leaders of multinational corporations, UNICE (now Business Europe) and DG IV, the DG for competition (now DG MARKT). The neo-liberal supports work to reduce the power of the European Parliament, simply because the Parliament in general is more sympathetic to economic regulation than the Council and ECJ. The neo-liberals tend to benefit from the fact that EU decision making rules makes it more difficult to regulate markets than to eliminate market barriers (se also Scharpf 1996).

The opposing regulated capitalism project aims to create European regulated capitalism through redistribution, regulation, private public partnerships and social dialogue - measures that supports and enhance markets rather than replace them. Important policy areas in this project is according to the two authors labour market, environmental, transport, structural, education, health and safety, consumer, and rural policies. This project has first and foremost been driven by the president of the Commission from 1985 to 1994, Jacque Delors. Important 'collective' supporters are the Central and Southern European Social Democrats, Christian Democrats and left parties, whereas these parties have been split in their support in UK, Denmark, Sweden and Greece, first and foremost because of euro-scepticism. The European Parliament tends also to be among the supporters and the same is the case with the Commission as such, despite of opposition from some DGs. Also most green parties, ETUC, national trade un-

ions and various NGOs support the project. Less obvious support to the project comes from the European Round Table, a group of Christian democratic oriented industrialists that in the early 1990s was one of the most influential lobby organisations on the European scene.

Whereas Hoodge & Marks describe coalition-like actor-constellations across policy areas, other studies tend to focus on specific policy areas or policy questions. Most of these focus on one of the four selected areas, i.e. employment, and especially on the EES.

Mailand (2005; 2006) has analysed coalitions in relation to the EES. According to Mailand, the member states have been the dominant actors in the further development of the EES since it was launched, although the Commission has also continued to exercise a strong influence. The social partners and the European Parliament – who have been pointed out as part of the coalition establishing the strategy – have been less influential. According to this author, the coalitions found in EMCO could be labelled 'minimalist coalitions' and 'regulation coalitions'. The 'minimalist' coalition in Mailand's study included mostly Atlantic and Scandinavian countries, and was the largest in terms of members. Membership did change over time, but consistently included the UK, Denmark, the Netherlands, Ireland, Sweden and Spain. After the enlargement Poland leaned towards this coalition. The aim of this coalition was to minimise labour market regulation, simplifying guidelines and focus more on the quantity than the quality of jobs. The other coalition was smaller and had a core of Belgium, France, Luxembourg, Greece and - most importantly - DG Employment. Some new member states, Hungary, Slovenia and Cyprus, leaned towards this coalition. This coalition was more open towards extensive labour market regulation and was keen to balance flexibility and quantity of jobs with quality issues. These coalitions are similar but not identical with coalitions found by Barbier (2004) and Nedergaard (2005).

According to Mailand, it is an open question which of the two coalitions that could be said to have been most successful in influencing the revisions of the strategy in 2003: the one that succeeded in adding a number of quantified targets to the guidelines, or the one that succeeded in reducing the Commission's proposal to a simpler, but not radically different document, from the one supposed to be reformed. According to the author, regarding the 2005 revision of the EES – that was part of a revision of the whole Lisbon process – the coalitions played a more limited role.

Deganis (2006) finds in her analysis in the same area that although the Commission in many acts as facilitator and policy-broker within the EES, these roles are sometimes marginalised and replaced by altogether more self-interest oriented practices. The Commission has sought to increase its standing within the EES by exploiting its formal powers and responsibilities, most notably with regard to its special relationship with the Secretariat of the Employment Committee, and by establishing and conscientiously upholding a fictitious sole right of initiative within the field of employment policy.

Nedergaard (2009) has compared coalitions within the EES with coalitions within two other OMCs, one related to the social inclusion strategy (centred around the Social Policy Committee, SPC) and another related to the broad economic guidelines (centred around the Economic Policy Committee, EPC). The cross-area focus of this paper might allow for some generalisations that the other studies cannot provide. In all three committees two coalitions were found, one led by the UK and the other led by France.

Nedergaard is also the author of a study (Nedergaard 2007), that uses the term 'blocking minorities' and 'networks' instead of coalitions. However, blocking minorities and networks are here more or less synonymous with coalitions. The blocking minority referred to here is consisting of the UK, Germany, Ireland and Denmark and a number of new member states, who blocked an adoption of a proposal for a directive on temporary work until at least early 2005. According to Nedergaard, they did so by creating an attractive storyline that 'more European regulation concerning the temporary wage earners would only harm job creation in the Member States', whereas the alternative storyline of the majority was that there 'is urgent need for a protection of the increasing number of temporary wage earners in the European Union'.

Also Dølvik & Ødegård (2009) have looked beyond employment policy in a study that addresses coalitions in relation to the adoption of the Service directive, one of the most controversial directives in recent years. The directive does not directly fall within the work and employment areas, but it has important consequences for these. The directive aimed at liberalising the service markets. From the outset of the process in 2004, the Bolkenstein directive - as it was called after the Dutch commissioner for internal market affairs - got initially strong support from virtually all the main actors, but during 2004 national trade unions started to warn ETUC that the so-called 'country of origin principle', according to which service providers should be subject only to the law of the country in which they were established, could have important consequences for national industrial relations systems.

Dølvik & Ødegård's step by step analysis of the decision-making process shows that ETUC, the socialist group in the European Parliament and their allied actors on the national level to a surprisingly high degree succeeded in influencing the outcome - the adopted directive from 2006 - weakening the points in the directive that they feared. The authors raise the question if this should be seen as a turning point in EU decisions-making or as a deviant case. Their answer leans towards the latter. Explanations for the success of what seems to be similar actors to what Hoodge & Marks labelled 'the regulated capitalism project' and Mailand labelled 'the regulation coalition' include inter alia a number of factors: 1) the high priority given to the directive by many of the main actors (including the new member states), meaning that a failure to adopt the directive would be unlikely; 2) a new commissioner for internal market that was reluctant to stand up for the directive in its original form; 3) the employee involvement procedure that gave the European Parliament an important formal role – a role amplified by a potential blocking minority of labour friendly governments

among the old member states in the Council; 4) the need to calm the public, that ETUC successfully had 'put on fire'; 5) ETUC's success in not airing internal disagreements; the perception of ETUC as the only organisation giving voice to the sceptic public; and finally 6) divided European employer organisations.

The Dølvig & Ødegård study is important in relation to the present project, because it shows that although the regulation-positive actors have been weakened, strategic choices and interconnected contextual factors at least in some cases help them strongly to influence the outcome of decision-making processes.

Summing up, as far as the area 'employment' is concerned, there seem to be solid evidence of the existence of a Anglo-Scandinavian coalition led by the UK and a Continental coalitions led by France. However, the role of the Commission seems to be uncertain or changing and some member states, especially the new member states, are difficult to place within the coalitions. Moreover, studies seem to focus on the employment area, leaving knowledge gaps about the presence and role of coalitions in other areas. The cross-area of Marks & Hoodge and the study of the Service directive nevertheless indicate that similar coalitions might be found in other areas as well. Furthermore, the study of the service directive shows that the outcome of specific decision-making processes cannot be read-of from the structural power positions of the various actors.

3.3 A deregulation turn in the new millennium?

The main research question is: *'Has the work and EU employment regulation been effected by the strengthening of the regulation-sceptical actors* at EU level. This research question has already indirectly been addressed in a number of EU-studies.

One theme in these studies is, if the introduction of the soft regulation has replaced existing hard law regulation or added to it. In this project, we will address this research question in three ways. Firstly, we briefly review the areas within which soft regulation has developed in terms of estimating the extent and dept of the regulation. Secondly, we examine the extent to which the usage of hard-law has declined in recent years. Thirdly, we explore the role of the ECJ in EU policy-making and thereby implicitly the development of juridical arena in recent years.

Replacing hard law with soft law?

The main research question will be addressed by examining the degree to which the two types of the soft regulation in focus here - the OMCs and European the social partners' autonomous agreements - have been used to regulate European labour markets.

The OMC is the most frequently used of the two. The OMC has been used in a number of areas at EU level such as social inclusion, pension and employment. However, not all areas related now covered by OMC are related to work and employment. In the following, the focus will be on OMCs that are directly or indirectly linked to work and employment.

The *European Employment Strategy* is where the OMC is most directly related to the area of work and employment, as described above. The EES is the one of the 'hardest among the soft ones' and is treaty-based. It includes relatively extensive compulsory national reporting procedures in the form of the national action plans/national reform programmes. Moreover, it has a long-lasting and well-developed peer-review process, and – maybe most importantly - since 2000 it has included recommendations as well. These recommendations were most comprehensive and explicit up until 2004. However, also the revised Lisbon strategy (from 2005) included some form of recommendations, asking individual member states to pay special attention to certain areas. The member states seems to have taken these recommendations very seriously, and on several occasions a number of member states have fought hard to modify or even remove draft recommendations (Mailand 2005; 2006). This suggests that although the EES resembles a soft form of regulation, it is not only about learning and voluntary actions.

The three other OMCs are indirectly related to work and employment. The Lisbon Council decided in March 2000 to launch an *OMC for Social Inclusion* based on common objectives and national action plans. The Commission presented its proposal for a Community Action Programme in this area in June 2000. The programme was adopted by the Parliament and the Council in December 2001. The programme took off in January 2002 for a period of five years. The aim was to enable the European Community and the member states to enhance the effectiveness and efficiency of policies to combat social exclusion by: 1) improving the understanding of social exclusion and poverty with the help in particular of indicators that allow for comparisons; 2) organising exchanges on policies which are implemented and promoted by mutual learning, using national action plans; 3) developing the capacity of stakeholders to address social exclusion and poverty effectively, and to promote innovative approaches. These objectives were to be achieved by promoting policy analysis, generate and collect statistical data and through exchange of best practice, and improve the networking across Europe of NGOs and regional and local authorities active in combating the risks of poverty and social exclusion. In 2001, the member states submitted to their first NAPs on social inclusion to the European Commission. The NAP's covered the period 2001-2003 and these reports were the beginning of a biannual cycle (Atkinson et al. 2005).

When the Lisbon process was revised in 2005, the OMC on social inclusion was excluded in the new revised Lisbon Strategy, but - possibly contrary to the wish of the new Barosso Commission - it survived (Mailand 2006). Taking over from the Community Action Programme, the EU's new integrated programme for employment and social solidarity supports, since January 2007, the goals set out in the Social Agenda and aim to contribute to EUs wider strategy for jobs and growth.

A number of features from the EES are also found in the OMC on social inclusion. For example, the OMC on social inclusion also includes national reports, feedback evaluations from the Council and the Commission; indicators;

and a peer review programme. The similarities are not surprising since the EES has been a source of inspiration for the Social Inclusion Strategy. However, unlike the ESS, the OMC on social inclusion has no treaty-base and it does not include recommendations to OMC lacks the treaty base of the EES and also the recommendations to individual member states.

The *OMC on education and training* was initiated at the Lisbon Council in 2000 and a biannual cycle was established in 2004. Despite of its relative strong institutional foundation in the decisions from the summit, this OMC is, however, relatively weak, as member states are not obliged to write and submit NAPs on education and training. Instead this is a voluntary option for each member state (Humburg 2008). During the revision of the Lisbon Strategy in 2005, the future of the OMC for education and training was uncertain. In the end, it was decided to include only the elements of the OMC on education and training that are directly linked to employment, most importantly Lifelong Learning. In this way, the Lisbon strategy could keep its focus on growth and jobs (Mailand 2006). However, the OMC on education and training did continue as a whole also after the revision.

Although initiated a few years earlier, the *OMC for pensions* was also called for at the Lisbon summit. The aims of OMC on pensions were to grant the social adequacy, financial sustainability and to modernise national pension programmes according to the changing social and economic situation. Similar to the OMC on education and training, the coordination of the OMC for pensions has so far been relatively weak. It has no explicit treaty-base; and the common voluntary objectives are mainly qualitative. In addition, there are no explicit recommendations to member states, and thus neither formal nor moral sanctions. Moreover, it lacks common indicators agreed by member states (at least as for the first cycle of its implementation. Benchmarking is also limited and the peer review process is often considered relatively weak (Natali 2007).

In sum, OMCs related to the area of work and employment reflect generally speaking a relatively weak form of EU regulation, even if variations exist across the range of OMCs. They are often found in slightly different areas of work and employment compared to the areas regulated by hard-law e.g. EU directives, which are analysed in the following section. As a result, the OMCs can be considered as supplementing rather than replacing hard-law at EU level.

The *social dialogue texts* represent slightly different types of soft-law, where European social partners rather than the European Commission take the lead. Since March 1978 the inter-sectoral and sectoral social dialogue have produced 590 joint texts, ranging from framework agreements, joint declarations, codes of conduct, framework of actions to follow-up reports etc. Between 1995-99 European social partners produced 129 joint texts. From 2000 to 2004 this number increased to 177. During the last five years (2005-2009), the number of joint texts produced by European social partners was 186, indicating that the numbers of joint texts have been increasing rather than decreasing since the mid 1990's. However, less than 4 per cent of the joint texts (23 in actual numbers) can be considered as more than purely voluntary. In addition, the status of the

inter-sectoral framework agreements is an ongoing debate, where European social partners seem to disagree on what the term 'voluntary' more specifically entail.. For example, ETUC argues that the term entail that it is voluntary for the European social partners to make framework agreements, but once signed by the European social partners, the framework agreements are binding for the member organisations (Clauwert 2005). However, Business Europe and even some of ETUC's affiliates disagree with this interpretation. They argue instead that the term 'voluntary' refers to that it is up to the individual employers and employee representatives to decide if the agreements should be implemented or not (Larsen & Andersen 2006).

The four autonomous framework agreements focus on telework (2002), work-related stress (2004), harassment and violence at work (2007) and the inclusive labour markets (2010) respectively. A recent interview-based study of the policy-making process behind three of these agreements (Larsen & Navrbe-jrg 2009), suggests that it is no coincidence that these three areas became the 'pilots' of this new form of cross-sectoral regulation. Telework, work-related stress and harassment and violence at work are often considered 'soft issues' aimed to introduce preventive measures and develop good practices rather than specific employee rights. Moreover, these issues are difficult to demarcate and are given a relatively low priority by the European social partners. Working time, information and consultation and other working conditions issues, that are given high priority and are not so hard to demarcate, will – if they are subject to EU regulation at all – be regulated by directives. As with most other processes in the European social dialogue the 'shadow of hierarchy' in the form of pressure from the Commission did also play and role for these issues to reach the bipartite bargaining table. Apart from that, a growing desire to demonstrate independence of the Commission was decisive. It was, however, not easy for the social partners to agree on the necessity to provide European regulation at all – and what decision-making arena to use, in the cases where regulation was wanted by both parties (ibid.).

In sum, it is in the case of the social partners' autonomous agreements more difficult to access, if this form of regulation is replacing, rather than supplementing hard regulation. On the one hand - and contrary to the OMCs - the autonomous agreements are found in areas, where hard law already exists. On the other hand, the specific issues covered by these agreements were not covered by directives, and it is difficult to imagine that hard regulation at any point would be likely to be agreed upon due to the nature of the issues. Moreover, recent studies tend to agree that the European social dialogue is a useful instrument for the European social partners to gain influence at EU level. However, it has not yet developed into a powerful platform for autonomous (bipartite) regulation.

Keller (2003) described the situation after Maastricht 1991 as one where non-binding agreements between the social partners (again) will be the most widespread form of regulation. However, five years on, Keller is less optimistic. He points to the increasing role the OMC has got, but since these are restricted to areas of consensual issues they will not include – and are not well-suited for

the core issues of industrial relations (Keller 2008). Boer et al. (2005) describes a 'broadening without intensification' in the European cross-sectoral and sectoral social dialogue. The social partners have managed to produce a large number of joint texts, but hardly any of these initiatives are legally binding and are therefore considered to have limited impact in member states. According to Boer et al. (2005), the European social dialogue has not developed into a real supra-national IR-system, but can instead be seen as a lobbying channel vis-à-vis the Commission. For example Leonárd (2008) argues that the European sectoral social dialogue does not constitute an arena for regulation like those found at national level in different member states. An important reason as to why that the European social dialogue has not yet reached its full potential is down to its strong institutional capacity (the institutionalisation in the Maastricht Treaty and elsewhere) which so far has not been matched by a strong normative and regulation capacity.

A decline in hard-law regulation?

The directives that derive directly from the social dialogue, in that they first appeared as frame-work agreements between the social partners, are those on parental leave (1996), part-time work (1997) and fixed term work (1999). Hence, the large majority of the directives in the work and employment related areas do not have its direct roots in the European bipartite social dialogue, the bipartite arena, although the social partners have played a role through lobbying and the tripartite arena.

Yet a way to address the main research question is to look at what has happened to these 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 2008; 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. The number of adoptions of the two types of directives were 9/4 in the period 1985-89, 17/12 in 1990-1994, 13/4 in the period 1995-99 and 16/4 from 2000-04 (the former number being 'social' directives and the latter 'health & safety' directives). However, these figures shows also that the number for the shorter period 2005-08 was only 4/1, which raises the question if the 'conventional wisdom' in the long run will show to be true. That remains to be seen.

A 'new' regulation arena: Free movement first?

Recent rulings by the ECJ indicate that the juridical arena is becoming more and more important for EU policy-making. Finally, it is relevant to include the increased importance of the juridical arena for the possibility of a deregulation turn. Some commentators has seen the ECJ rulings on the four cases related to free movement of labour and the right to strike (the Laval, Viking, Rüffert and Luxembourg cases) as a way of giving free movement of labour a higher status

than fundamental rights, including the right to strike. Others have been more reluctant to interpret these rulings as attacks on fundamental rights and strike actions, as they find that the rulings confirm these rather than attack them. Hence, also in this regard, there do not seem to be consensus. The recent rulings in the cases of Laval, Viking, Rüffert and Luxembourg reflect a number of challenges facing the pro-regulation actors, such as the trade unions when it comes to keep their national industrial relations systems intact.

Summing up

Whilst there is no doubt that the economic integration of the EU has been deepening during the last 15- 20 years, we are left with some contradictory evidence regarding the development of Social Europe. On the one hand, a number of the changes described above support the view that the development of Social Europe has slowed down during the last 10-15 years. Although new softer forms of regulation have not replaced existing regulations, news areas of regulation (such as employment, pensions and further training) have first and foremost been subject to the OMC. Moreover, opportunities for the social partners to conclude agreements that could end as legally binding directives have only been used to a limited extent. On the other hand, the widespread perception that the use of hard law has diminished seems to lack sufficient empirical support. Furthermore, successful attempts to 'water down' new regulation, that would have a de-regulationary effect on Social Europe, have at times been successful, most importantly in the case to the Service directive.

As a result, we do not have a clear picture regarding the direction and speed of the development of Social Europe. Moreover, the recent research findings presented above are relatively broad and point often to general trends. In addition, although some of the studies presented above address the research questions, it is not always clear which stakeholders have been advocating for which specific aims, and who they have collaborated with – and if the patterns of collaboration are the same across policy areas, or if they vary.

4. Hypotheses

Despite of these knowledge gaps, the literature review gives us the possibility to formulate hypotheses in order to the research questions.

The main research question, found on page 3, is: 'Has the strengthening of the regulation-sceptical actors affected the content or the range of work and employment regulation at the EU-level?' Although the literature review cast doubt about the strengthening of the regulation sceptical actors the main hypothesis is that:

- *the strengthening of the regulation-sceptical actors has led to conclusion of less new regulation than previously and less binding forms of regulation - including lower or fewer quantitative targets and minimum-levels.*

In other words: our main hypothesis is that the pace of developing Social Europe has slowed down since the late 1990's, mainly because the position of regulation-positive actors at EU level has been weakened, as mentioned earlier in the introduction.

The first sub-question is worded: 'What has been the role of coalitions in the decision-making processes in work and employment related areas at EU level and if they primarily have been divided into pro-regulation vis-a-vis regulation-sceptical groups?' From the studies in the literature review we will expect to find that:

- *coalitions play a substantial role in the decision-making process, and are expected to be glued together primarily by visions for a liberal Social Europe (regulation scepticism) or for a regulated Social Europe (pro-regulation).*

The second sub-question is worded: *'When not given by treaties, what factors are then decisive for the choice of decision-making arena?* In many instances, the treaties and the subsidiarity principle set limits to which forms of regulation that can be used in a given situation. For example, in relation to work and employment issues, EU treaties provide only – due to the subsidiarity principle - the opportunities to use the form of regulation OMCs, since EU have no competences to adopt legally binding from of regulation in this area. Since the use of the bipartite, tripartite and parliamentarian arenas are restricted in this mode of regulation, OMCs decision-making processes will primarily take place on the politico-administrative arena. However, in other instances, the choice of arena is not legally restrained. Our expectation is that:

- *the actors will attempt to place the decision-making process on the arena, where the likely outcome is most in line with their interest*.

However, this interest-based behaviour is expected to be restricted by two other factors. Firstly:

- *social partners are expected to have a priori preference for the bipartite arena, the Commission and the member states for the politico-administrative arena and the MEPs for the parliamentarian arena, since these arenas provide each of the actor with the greatest direct influence.*

This is simply a matter of institutional control (Nørgård 1997). Secondly,

- *the policy type could influence the choice of arena.*

By policy type we mean characteristics of a policy regarding the extent to which the policy area or policy issue has a high priority among the actors (core area) or low priority (periphery), and if the area or issue is well-defined and well-demarcated (e.g. wages) or not (e.g. work-related stress) (Larsen & Andersen 2006). With inspiration from Larsen & Andersen, an expected causal relationship can be formulated. The higher priority an actor gives to a policy area or

policy issue, the more important it will be to place it on an arena, where the actor has maximum of institutional control. And the better defined a policy area or policy issue is, the more likely is it that a binding form of regulation will be chosen. As a kind of residual category, situation specific circumstances might be what in the last resort determinates actors' preferences for arenas.

The third sub-question put forward in this research project asks 'if the strengthening of the regulation-sceptical actors has affected the different work and employment related areas to a different extent'. Obviously, some variation is to be expected between the areas in this regard. But there is nothing in the four different areas that a priori could lead to systematic expectations about the variation. For example, the regulation-skeptical actors cannot, from the analyses summarised above, be expected to be stronger in some of the areas than in others. The answer to this sub-question is a purely empirical and cannot be supported by hypotheses.

The final sub-question concerns what seemingly appears as a contradiction: 'How has it been possible for the actors at EU level to agree on a number of new regulation initiatives when the position of regulation-sceptical actors have been strengthened?' There are at least three possible answers to this question. Firstly, although a substantial amount of new regulation has been agreed upon,

- *the general development might still be at a slower pace when it comes to adopt new EU regulation compared to previously* (although this has been questioned by Pochet et al.'s analyses).

Secondly, even if a slower pace in the adoption of new regulation cannot be identified,

- *the regulation-sceptical actors might still have managed to influence the content of the regulation in a way that reduces its impact*.

Thirdly, the explanation could also be that the strengthening of *the regulation*

- *sceptical actors has had no impact on the regulation itself*.

This could be the case, if the structures at EU-level prevent such an impact, or if Situation-specific factors allow structurally weaker actors to have strong influence. In this case the main hypothesis will be rejected.

5. Case-selection and methods

The explanatory power of hypotheses outlined above will be explored by analysing the decision-making process in four different areas: Employee involvement, employment, work-life/balance and posting. These four areas have been selected for a number of reasons. Firstly, they represent some of the most important work and employment related areas at EU level. Employee involvement is by DG Employment defined as one of only two sub-areas of labour law (where the second sub-area is working conditions). Within the employee in-

volvement area the actors, especially ETUC, has giving great priority to European Work Councils (EWC). The area 'employment' has also been a high-profile area on the European scene since the mid 1990s, mainly due to the EES and the recent European flexicurity initiative. The area 'posting' is also a high profile issue, mainly because of the increase in intra-European labour migration. In fact it has recently becomes one of the most controversial work and employment related areas on the EU-level, which also the recent rulings by the ECJ and the policy processes behind the Service Directive illustrate. Finally, the area of 'work-life balance' has at the EU- and national levels gained increased attention not least due to demographic changes and more women entering the workforce in many European countries. All four areas have more or less strong treaty bases.

Secondly, these four policy areas have been selected because they include more than one decision-making arena. This allows us to explore why different arenas have been chosen when it comes to specific EU regulation. Thirdly, each of the areas represent different 'models' when it comes to the relative weight between the decision-making arenas. Indeed, the literature review reveals that the politico-administrative and tripartite arenas often dominate in the employment area, whilst the bipartite arena has had played a less significant role compared to the other three areas. Likewise, the role of the European Parliament is limited in the employment area, whilst its role has been more pronounced in the three other areas, not least in the area of posting.

Each of the four areas will be analysed, using a similar template. We first briefly review the main historical events, where we present the key actors, the use of decision-making arenas and miles-stone in the development of the areas up to the early 2000s. We then examine the policy-making process behind recent EU regulation by drawing on two or three in-depth case studies of specific EU policies from the mid- and late 2000s. In the case of 'employee involvement' these in-depth case studies include the revision of the EWC directive (finalised 2008) and the (so far) failed attempt to conclude a directive on a European Private Company in 2009. With respect to the area of employment, the case studies will be the revision of the EES in 2004-05 (part of the revision of the broader Lisbon Strategy), the adoption of a set of common European flexicurity principles in 2007; and the formulation in 2009-10 of the new ten-year socio-economic strategy for the EU 2010-20 (Europe 2020). In the area of 'work-life balance' we will look into the autonomous framework agreement on work-related stress in 2004; the revision of the target for female employment rates in the EES 2009-10; and the ongoing revision of the parental leave directive 2009-10. In the area 'posting' focus will be on the adoption of the Services Directive (2006), the increased decision-making power of the EU-Court in the so-called 'Laval-quartet' (Laval, Viking, Rüffert and Luxembourg case 2007-2008), and the (until now) failed attempt to revise the Directive on Posting of Workers (2008-).

Each case will be analysed through a combination of document analyses and process-tracing techniques, where the relevant key decision-makers are inter-

viewed and asked to point to other key decision-makers. Interviewees will be national level civil servants participating in the European decision-making processes, representatives from the Commission, the European social partners, the European Parliament, NGOs, networks and various tasks forces and expert groups. 5 - 10 key decision-makers will be interviewed for each case.

Each case study will focus on: 1) the background and context of the initiative and attempt to point out the initiator; 2) the different stages in the decision-making process (discourse formation and policy formulation) as well as the outcome of the process. The analysis will have specific focus on the role of coalitions and decision making arenas. Moreover, we also intend to compare draft texts to final adopted versions to address the classic question of 'who gets what and why?'.

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