

*Multi-level plus multi-actor:  
Co-operative governance in the European Union*

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**Introduction**

A variety of authors has during recent years studied the European Union as an example of 'co-operative federalism' (Wessels 1992) respectively as a 'multi-level system', (e.g. Marks/Hooghe/Blank 1996). This innovative approach points to the fact that EC policy-making includes actors from several institutional layers, i.e. transnational, national, and subnational. By late 1996, the fact that the European policy process includes a variety of levels is generally acknowledged but still much debated. Controversies relate mainly to consequences for the policy process and for central political actors -- especially for 'the state' which is still viewed as the sole dominating actor by the competing intergovernmentalist school of thought.

So far less debated is the fact that the EC policy process nowadays includes not only horizontal layers, but to an increasing extent also multiple categories of actors. The co-operative EC policy style builds -- in addition to the horizontal tiers -- also on a vertical dimension: a multiplicity of functionally differentiated actors are included in the bargaining process which has moved away from the pattern of 'steering' from above towards the 'networking' of mutually interdependent actors (cf. Kohler-Koch 1996). The most widely acknowledged co-actors in the European policy process are the numerous interest groups which have mushroomed since the mid-1980s. But while there is meanwhile a rich literature on the so-called lobbying boom, other types of public-private interactions have been paid much less attention to.

This paper aims to shed light at an area where particularly far-reaching changes in the participation of non-state actors occurred during the 1990s: EC social policy. There, we witness some signs<sup>1</sup> of what was called neo-corporatism or 'social partnership' at the national level, i.e. a decision modus based on the collective agreement of organised interests and on

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<sup>1</sup>But this is not to say that a simple revival of macro-corporatism as known in the 1970s is going to come!!!

their participation in governance and social guidance as co-responsible 'partners' (cf. Schmitter 1981).

This development is embedded in other changes in governance: the move towards co-operative public--private governance is only the most prominent aspect. The process of change in EC social policy concerned basically all characteristic elements of a 'system of governance' (Kohler-Koch). Thus, innovations occurred on the levels of

- belief systems about appropriate principles of action (shared responsibility between the European and the national levels with horizontal and vertical subsidiarity principles);
- actor constellation (a few privileged interest groups are incorporated in EC decision-making on public policies);
- decision-making routines (very specific processes are established); and
- boundaries (territorial exclusion of the UK; functional exclusion of various aspects of social policy).

This contribution will first outline the traditional patterns of EC social policy (1) and briefly analyse failed efforts towards more co-operative governance patterns during the 1970s and 1980s (2). Only when a major change in EC social policy was believed inevitable during the 1991 IGC, the employers agreed to participate in a quasi-corporatist modus of governance (3). The changes in EC social policy governance brought about under the Maastricht Treaty will be outlined in detail (4) before their practice shall be discussed (5). Subsequently, the changes will be put into the wider perspective of European governance (6).

~~Searching for an explanation for the most singular element within the EU context of the change in governance under review here, i.e. the development of quasi-corporatist patterns of decision-making under the Social Agreement, the hypothesis of a co-evolution of political and associational structures will be tested. It was put forward by Eichener/Voelzkow in 1994 but is deemed to rest on rather weak empirical foundations so far (see Kohler-Koch 1997: 77). Does the developing statehood (in the sense of action capacity) of the EU lead to a reorganisation of the system of interest representation, while in turn being influenced by the relevant organised interests (Eichener/Voelzkow 1994: 17)?~~

### **1. The 'old patterns': Social policy governance under the EEC-Treaty**

As a background to the changes which occurred, it is important to understand the central characteristic of the initial system of EC social policy governance which was based on national competence and hierarchical relations between public and private actors.

The 1957 EEC-Treaty's (EECT) social chapter lacked explicit competences for EC-level intervention. The dominant philosophy was that welfare would be provided by the economic growth stemming from the economics of a liberalised market and not from the regulatory and

distributive capacity of public policy (e.g. Kohler-Koch 1997: 76). As far as social provisions were included at all, they concerned the cost aspect of social policy and constituted small concessions for the more interventionist camp (e.g. Art. 119 EECT on equal pay for both sexes; the establishment of a 'European Social Fund' to co-finance professional training programmes). The only explicit Community competence for social policy regulation under the original EECT was under the freedom of movement for workers, as part of the Treaty's market-making activities (Art. 51 EECT). In principle, only equal treatment of EC citizens in social security was being assured via EC co-ordination, while the national social systems in principle stayed autonomous otherwise (but see Leibfried/Pierson 1995 on losses of sovereignty and spillovers).

The original procedural patterns as designed in the EC social policy chapter were exceptional within the Treaty. The Commission was assigned 'the task of promoting close co-operation' between member states (Art. 118 EECT). However: while in other areas of EEC activity, the Commission was empowered to present legislative proposals with a view to the Council deliberation of binding EC law, the Commission shall only 'act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations' in the social area (Art. 118 EECT). It is important to note that the organised interests of labour and industry were not given a special role in the social realm in the 1957 Treaty. The Economic and Social Committee which includes nationally nominated representatives of the employers, the workers, and various other interests, had only consultative function such as in most other areas of European integration. Up to the Maastricht Treaty, the constellation of actors in EC social policy was therefore not different from other functional realms.

To sum up: the EECT provided for a rather hierarchical mode of governance in social policy. The member states were almost exclusively competent. As far as EEC-level action was at all allowed for, the formal political institutions established under the Rome Treaty were exclusive masters, and the Council had to decide unanimously. As will be outlined in the following section, however, the EC institutions tried to introduce change alongside with the incremental development of a 'social dimension' of European integration from the early 1970s onwards.

## **2. Early efforts towards changes in governance in the 1970s and 1980s**

The first fifteen years of their existence, EEC politics concentrated on the realization of goals formulated in the founding Treaties. Consequently, social policy was almost a non-issue. But during the late 1960s, the relevant political climate changed. As soon as social policy (mainly in terms of labour law harmonisation) became an issue of debate, efforts to include the two sides of industry in the policy process began.

At their 1972 Paris summit, the EC Heads of State and Government solemnly declared that economic expansion should not be an end in itself but lead to improvements in the living and working conditions of the populace. With a view to relevant EC action, a catalogue of social policy measures should be elaborated by the Commission. The 1974 social policy action programme (OJ 74/C 13/1) represented a milestone in EEC social policy. Several of the proposed measures were indeed adopted by the Council up to the early 1980s (e.g. on equal treatment at the workplace; labour law minimum standards such as early warning in cases of mass redundancies; on details see e.g. Hantrais 1995; Gold ed. 1993).

It is interesting to note that next to full employment and the improvement of the living and working conditions, the growing participation of the social partners in the economic and social policy decisions of the Community was one of three central goals of the action programme. The Council announced to support those employee representations which participate in the activity of the Community, e.g. by establishing a European Trade Union Institute. This was an important signal to the European Trade Union Confederation ETUC which had only been founded in 1973. The Council furthermore planned to facilitate, on the basis of the circumstances in the single member states, the conclusion of European collective pay agreements in appropriate areas. This pledge, as early as 1974, shows what a long history invitations to the social partners to conclude Euro-level agreements indeed already have.

Still in 1974, the 'Tripartite Conferences' were established as a new public--private forum for social policy issues. It was hoped that this institution would not only allow for the consultation of the major interests but also for their aggregation. The Economic and Social Committee had proven unsatisfactory in that regard. The ideological split between and the lack of internal coherence and structure within the three parties (employers, employees, and various interests) have, in many cases, deprived the Committee of a good basis for compromise. In practice, this has meant that the results of cumbersome decision-making processes have lacked coherence and/or any definitive status (for a case study see e.g. Falkner 1991 on the so-called 'EC Social Charter'). In the 'Tripartite Conferences', Euro-level representatives of labour and industry were for the first time invited to participate, next to national social partners, the Council and the Commission. Such conferences met six times up to 1978. At that point, the ETUC withdrew due to the reluctance of the employers' side to conclude agreements (see e.g. Gorges 1996: 130). By then, the employers did not have to fear any negative consequences from this as the European trade union organisation was only in its beginnings and incapable of significant collective action. Furthermore, the Council's social policy impetus of the early 1970s had already stalled, and many important legislative projects stayed blocked.

Attempts towards co-operative governance were taken up when Jacques Delors came into office as Commission President by January 1985 and prompted a period of Euro-activism.

Delors had a well-known personal history of trade union leadership and held a strong conviction in favour of social dialogue -- as did his major collaborators (e.g. Ross 1995: 150). They launched the so-called 'social dialogue' between the EC level peaks of labour and industry (ETUC, UNICE and CEEP) at the 'Val Duchesse' castle outside Brussels. The Commission's plan was to reach common views which would subsequently be presented and discussed with the two sides of industry in each member state. This should, in turn, lead to new topics being discussed at Community level, with a view to reaching common views [see e.g. COM(89) 568 final]. Thereby, the tiring social policy stalemates in the Council should be circumvented or lifted. Because the employers still rejected to enter into binding agreements, however, the 'Val Duchesse social dialogue' never went beyond non-binding joint opinions.

With the 'Europe 1992' project, Delors was successfully pressing for EEC reforms. The price was that at least in the first run, this worked for economic integration, only. In the absence of a consensus among the governments, the White Paper on the Internal Market Programme did not include a social policy chapter. It is true that the 1986 Single European Act, too, contained only few social policy innovations. Nevertheless, the first explicit Community task was inserted within the EECT's social provisions, i.e. to improve worker health and safety, notably at the workplace. This was even allowed to happen on the basis of qualified majority voting which had never before applied to social policy issues. Furthermore, the Commission President was successful in getting formal backing for the Val Duchesse social dialogue as initiated by him: the possibility of Euro-level collective agreements was explicitly being mentioned, and the Commission was solemnly attributed the task of endeavouring to develop the dialogue between management and labour at European level (Art. 118b EECT).

Parallel to the practical implementation of the Internal Market, several actors such as the EP, the ETUC, and the Commission would not stop pressing for a more active EC social policy. They argued that open economic borders create a the need for EC action to prevent 'social dumping' (Falkner 1993). In 1988, the Commission published several discussion documents on what was called the 'social dimension of the Internal Market'. It urged for a codex of social minimal standards, a reflection on Euro-level labour relations, and the deepening of the social dialogue (see e.g. Social Europe 1988/1: 74). Although the Commission was at the time confronted with low ambitions in the Val Duchesse talks, its hope was still that the social dialogue could result in innovative social policy. The governments joined the Commission in pressing for collective Euro-agreements. By the late 1980s, several European Council meetings would in the presidency conclusions refer not only to EC social policy in general, but to the desirability of social partner involvement, in particular (see EC Bulletin 1988/12: 9f).

All these invitations were in vain as long as social policy was a doldrums area of European integration. At the very end of the 1980s, however, new activism was prompted during

debates on an improved legal basis for EC social policy. The EC 'Social Charter' was, due to British opposition, only adopted as a non-binding joint declaration by the other eleven governments in December 1989. It nevertheless constituted another milestone for European social policy. Minimum rights were solemnly assured in various areas, and selective EC action was envisaged. 'Social partnership' was again a central topic (points 10-13). The Charter's implementation was perceived to need the active participation of the EC social partners in many areas (Preamble).

It was in the Commission's working programme to implement the Charter [COM(89) 568] that formula for social partner involvement similar to the later Maastricht innovations were for the first time presented. The Commission wanted, together with the two sides of industry, to 'examine the extent to which and under what terms the former could agree to participate, in the framework of the social dialogue, in preparing certain legal instruments which the Commission would subsequently submit to the Community bodies concerned' (ibid.: 29). The Commission furthermore proposed to consult systematically the two sides of industry on the manifold legislative proposals under the action programme. It was no surprise that UNICE voiced concerns about the volume of initiatives proposed and the thrust of some of the proposals (UNICE position paper of 22 March 1990). The Commission's tactics to employ 'sticks' (envisaged social regulation) as well as 'carrots' (participation of the social partners therein), however, was successful: UNICE made clear that despite its opposition to most EC-level legislation, it wanted to have a say in the details of any measures discussed.

'UNICE requests that it should be properly consulted before the final detail of an initiative is decided by the Commission, as well as on formal proposals to Council. ... In some cases, it may be appropriate for the social partners to have an opportunity to debate the issues involved in the social dialogue at an early stage, prior to the Commission adopting a formal proposal. However, this should not replace or delay direct consultation of UNICE by the Commission.' (ibid.).

If UNICE on that occasion warned that 'too much regulation and central control will stifle initiative, demotivate the social partners' (ibid.), the further developments with a view to the Maastricht Treaty nevertheless showed the contrary: Euro-level interest politics developed alongside with the increased 'state' capacity of the EC in social policy. This is a case in point that the process of European integration draws political actors into a new game where they are induced to redefine their strategies (Kohler-Koch 1996: 366). While a pluralist mode of pressure politics rather than co-operation of private interests had characterised EC social policy-making up to the early 1990s, industry found itself involved in a process of change as soon as the EC's action capacity grew. As will be shown below, UNICE even became an active co-actor when the Intergovernmental Conference (IGC) preceding the Maastricht Treaty finally put in place a network type of governance for EC social policy which includes characteristics of what is known as a 'corporatist' set-up at member state level.

### 3. The 1991 IGC: A 'whip in the window'

The establishment of central features of the new pattern of social policy governance was, in fact, due to the major European interest groups' anticipation of significant changes in the EC social policy provisions<sup>2</sup>. The provisions (which are outlined in detail below) were suggested by the three central social partner organisations ETUC (workers), UNICE (employers) and CEEP (public enterprises). Following an initiative by the European Commission in February 1991 (Cassina 1992: 13), these three peak associations sat down with the Commission (Schulz 1996: 86) to formulate proposals to the IGC. In a letter to the Council President dated 28 June 1991, they informed 'of the progress of the social dialogue ad hoc working group on the role of the social partners and of (their) willingness to make a timely contribution to the work of the Intergovernmental Conference' (Social Europe 2/1995: 138). At their meeting of 31 October 1991, ETUC, UNICE, and CEEP reached an agreement on how to strengthen the role of the social partners in the new Treaty. On the basis of earlier inputs to the IGC by the Commission and the Belgian government, they drafted proposals for the wording of Art. 118 (4), 118(a) and 118(b) of the draft Treaty under discussion (published in Social Europe 2/1995: 138f). This input to the IGC received much public attention and was obviously accorded prime importance by the governments. The social partner proposals were indeed accepted by the Dutch presidency and subsequently by the signatories of the Social Agreement.

During the eight months of negotiations on this social partner agreement, important developments occurred at both sides of industry. Originally, neither of the partners had unequivocally perceived themselves as a potential collective negotiator at the European level. Influenced by certain of its member organisations, even the ETUC had de facto rather feared formal obligations resulting from collective negotiations. But at the May 1991 Congress, important changes were decided in the shadow of the internal market and the increased competitive pressures which made joint European action ever more pressing. Voting by two-thirds majority was introduced, and the European Industry Committees were given full voting power (except in financial and statutory matters; Ebbinghaus/Visser 1994: 239). Both territorial and functional interests are now directly represented within the umbrella of the ETUC. Further amendments to the ETUC constitution were decided during the May 1995 Congress. The Executive Committee now has a responsibility to 'determine the composition and mandate of the delegation for negotiations with European employers' organisations', and

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<sup>2</sup> This goes along well with established knowledge: With regard to the growth of European interest group federations, Kohler-Koch (1994: 171) observed that they did not develop parallel to an increase in the EC's policy-making powers, but rather, 'the anticipation of a growing importance of the EC in a rather vague sense (...) stimulated the establishment of transnational organizations (and not) the actual transfer of powers'; see also Greenwood et al. 1992b: 244.

to 'ensure the convergence at European level of the demands and contractual policies of affiliated organisations' (Art. 11).

For the employers, the probably switch to majority voting also in the realm of social affairs changed the perception of how to best pursue its self-interest (see also e.g. Keller 1993: 593). Assuming that it was better to keep the steering-wheel in the own hands, UNICE's former tactics of non-action at the Euro-level went no longer unquestioned. The CBI, however, constituted a special problem because it showed extreme resistance against collective bargaining at the EU level. Reportedly, two aspects helped to unblock the situation: the more co-operative attitude of several other national employer's organisations which had mostly experienced intense social partner co-operation at home; and the lifting of the blockade by the CBI who (wrongly) expected that the British government was going to block social policy reforms at Maastricht anyway (Cassina 1992: 14; Ross 1995: 151). When the Maastricht Social Protocol (see below) was in place, several internal reforms were made to enable UNICE to meet its challenges. In June 1992, the organisation was formally assigned the task of representing its members in the dialogue between the EC social partners (Art. 2.1 of the Statute). Further innovation arose from the failure to reach a collective agreement on European works councils (see below). According to an internal agreement of April 1994, the CBI will continue to participate but not have a veto right in negotiations pursuant to the Social Agreement -- while not being bound by a rejected agreement either.

To sum up: The internal interest group structure of the two major Euro-players both anticipated the changes in governance under the Social Agreement and reacted to them later on. Without the joint social partner proposal to the 1991 IGC, the actual features of the new Treaty basis would probably have looked different. We thus witness a pattern of interdependence between action capacity at the EC level, on the one hand, and the development of relevant interest politics, on the other. In the understanding of Eichener and Voelzkow (1994) this constitutes a co-evolution of the structures of the state and of the organised interests, respectively. The evidence presented here furthermore endorses the hypothesis that European integration has over the past decade been a polity-creating as well as a market-deepening process (Hooghe/Marks 1997).

#### **4. The Maastricht Social Agreement as a change in governance**

Social policy was one of the crucial areas in the 1991 IGC. The originally envisaged extension of the provisions in the EEC social chapter could not be realized because of strong opposition from Great Britain. In order not to endanger the rest of the IGC's compromises, the UK was finally granted an opt-out from the social policy measures agreed by the rest of the member states. In the 'Protocol on Social Policy' annexed to the Treaty on European Union (TEU), the other member states were authorised to have recourse to the institutions, procedures and



mechanisms of the Treaty for the purposes of implementing their 'Agreement on Social Policy' (see e.g. Falkner 1996a). As already outlined in the introduction, this so-called Social Agreement represents a significant change in governance if compared to the earlier Treaty provisions. It will most probably be included into the Treaty at the end of the 1996-7 IGC.

Innovations under the Social Agreement concern the full range of major governance components as outlined above. Thus, there is now an explicit Community competence for a wide range of social policy issues, including working conditions; information and consultation of workers; equality between men and women with regard to labour market opportunities and treatment at work; and the integration of persons excluded from the labour market (see Art. 2). Both the EC member states and the Community hence share the power to act in the social realm, both are in that sense now partial governance systems. Action under the Social Agreement can in most areas even be taken under the supranational modus of qualified majority voting, e.g. in the area of information and consultation of workers. Thus far, however, the new social policy provisions do not depart from patterns known from other issue areas in EC politics.

This is different when it comes to the boundaries of this sub-system of EC governance. In geographical terms, the full opt-out of one member state is unprecedented. Another interesting feature is that the functional boundaries are explicitly restricted: Excluded from the scope of the Agreement are matters of pay, the right of association, the right to strike or to impose lockouts (Art. 2.6). Under the EECT, by contrast, the subsidiary competence provisions allow for practically any action which is deemed necessary for reaching Treaty goals, notably market integration.

The changes to the policy-making process constitute the probably most innovative aspect of change. The Social Agreement contains three positive layers of social partner participation in the policy process: Firstly, a member state may entrust management and labour, at their joint request, with the implementation of Directives adopted pursuant to the Social Agreement. Secondly, the Commission now has a legal obligation to consult both management and labour before submitting social policy proposals. And thirdly, but most significantly, management and labour can, on the occasion of such consultation, inform the Commission of their wish to initiate negotiations in order to reach agreements instead of EC legislation. Such agreements may, at the joint request of the signatory parties, be implemented by a Council decision on a proposal from the Commission.

The Euro-level representatives of labour and industry are thus included in a pattern of co-operative policy-making. They may jointly act instead of, or in conjunction with, the EC institutions -- according to their options concerning the specific issue. The actor constellation in social partner negotiations under the Social Agreement is hence sharply distinct from what is usually characterised as the classic EC pattern, i.e. a multiplicity of lobbies which try to

influence the Commission independently of each other. The Social Agreement provides for 'corporatist' co-operation of interest organisations and public authorities (Lehmbruch 1982: 8) rather than for 'pluralist' pressure politics (which will however continue during the early phase of a policy proposal). The interest associations are incorporated within the process of authoritative decision-making and implementation (see the famous definition of neo-corporatism by Schmitter e.g. 1981: 295).

Collective agreements even enjoy primacy on the path towards social legislation. That constitutes the 'double principle of subsidiarity' [COM(93) 600 final, 6c]. Firstly, the principle of subsidiarity as laid down in Art. 3b ECT shall be applied to the social field, too. It implies that the Community shall take action only 'if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States ...'. But even if EC action is taken, secondly, social partner agreement is searched in the first run. Thus, the national level has priority over the European one, plus the level of collective agreements is preferred to that of traditional EC legislation.

With a view to the actor constellation at the side of private interest representation, too, a pattern reminding of 'neo-corporatism' was prompted by the Social Agreement. Two decision processes have so far been completed under the new rules. In both cases, the negotiations were monopolised by the three major cross-sectoral interest federations (ETUC, CEEP and UNICE), with the backing of both the Council and the Commission.<sup>3</sup>

In the following, I shall outline the practical developments under the Social Agreement to date in order to underline that also the practice of decision-making has undergone significant developments.

### **5. Co-operative policy-making under the Social Agreement**

The first application of the new procedures concerned the establishment of European Works Councils. UNICE had always strictly rejected any EC-level initiative on employee information and participation in the enterprise on the grounds that they might cause 'unnecessary and intolerable complications' and have a 'negative impact on investment' (UNICE 1991: 2). It was, therefore, a major innovation that the UNICE declared to be 'ready to sit down with the Commission and/or the European unions to develop a ... procedure for information and consultation that is acceptable to all parties...' (EIRR 238: 13), when the Social Agreement entered into force in autumn 1993 and the Works Councils became the test case.

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<sup>3</sup> In autumn 1996, the excluded Euro-association of small and medium-sized enterprises UEAPME indeed filed a law suit against the EC Council.

The ETUC was sceptical vis-à-vis the employers' presumably tactical new approach. It therefore suggested to initially have only preliminary talks on the possibility of entering into formal collective negotiations. After two exploratory meetings between the three cross-sectoral peak federations, during the spring of 1994, an exchange of conditional offers to negotiate began. The crucial point was the 'need for the negotiating parties to adopt a flexible approach and to examine alternative methods and procedures' (Hornung-Draus 1994: 4). This was regarded as indispensable by UNICE and CEEP, and was opposed by ETUC, which wanted explicit rights (for employees of transnational enterprises), obligations (for central management), and rather centralised fall-back provisions. An ex ante agreement on the latter ideas would, in the employer federations' eyes, have left purely 'technical details' for proper negotiations (ibid.). Nevertheless, three days before the closing date of the second phase of consultation, UNICE and CEEP broadly conceded to ETUC's principles (Gold and Hall 1994: 180) -- after crucial mediation by the Commission. There was also agreement to submit the envisaged final pact to the Council for implementation as European law.

Just before the end of the deadline, however, the stance of the British organisations, the TUC and CBI, changed the situation. The British employers' federation withdrew from the negotiations (on details see e.g. Ross 1995: 381ff; Falkner 1996b). By the spring of 1994, UNICE seemed not yet prepared to outvote its British member organisation, while the ETUC considered the participation of CBI to be indispensable. A significant sign for the changes which occurred under the Social Agreement is that in their official statements, both UNICE and ETUC would confer the responsibility for the failure of the 'talks about talks' (Gold/Hall 1994: 181) on each other. This indicates that although there is clearly no obligation to arrive at specific agreements under the Social Agreement, these organisations felt bound by their earlier commitment in principle: under the conditions of institutionalised co-operation (which is typical for EU governance), behavioural norms have a tendency to become binding (Kohler-Koch 1996: 363). The Works Councils issue was subsequently settled by a traditional Council Directive.

Already the second decision-making process under the new social policy regime has indeed resulted in a Euro-collective agreement among the three major federations. Like worker information and consultation, the issue of parental leave had been discussed since the early 1980s and had turned out to be extremely controversial. On 14 December 1995, the ETUC, UNICE, and CEEP nevertheless came to a framework agreement which provides for an individual right of a minimum of 3 months parental leave while employment rights are being maintained. These standards are low if compared to what the more advanced member states already had before, but constitute significant progress e.g. for Ireland, and advances in detail for several other countries. The same is, by the way, true for most EC Directives decided by the Social Council. As suggested by the social partners, the Commission subsequently indeed proposed a draft Directive with the aim to render binding their Agreement. Political consensus

within the Council was reached within two months only, and the Directive was formally adopted on 3 June 1996 (for details see Falkner 1997).

The main actors reportedly perceive of their collective agreement as a first step only. ETUC Secretary General Gabaglio considered the parental leave agreement as 'the point of departure for the establishment of a European industrial relations system as required by the single market and European economic integration' (indirectly quoted in Europe 15 December 1995: 9). CEEP President Castellano thought that it represented 'remarkable progress that will ... signify that other agreements may be reached' (quoted in Europe 16 December 1995: 9). For UNICE President P rigot, 'this negotiation proves that there is a contractual space at the European level that there must be a will to take care of...' (quoted in Europe 16 December 1995: 9). It is central to note that by the second half of the 1990s, it is no longer only the ETUC who pleads for a 'conventional dimension' of European integration. At least in solemn declarations, the employers' representatives meanwhile do so, as well.

## **6. Conclusions: The Social Agreement and the transformation of governance in Europe**

EC social policy has indeed experienced a change in governance. Although most social policy decisions are still taken at the national level (notably those regarding the cost expensive social benefits), there was some degree of Europeanization, particularly during the 1990s. The now commonly agreed and even formalised principle of action is co-operation and shared responsibility for social policy goals, between the various levels of governance (mainly national and European), on the one hand, and between various actors at the Euro-level (social partners and EC institutions), on the other. The developments under the Maastricht Social Agreement are thus a good example for what was described as the transformation of governance evolving around (but not exclusively at) the EU-level: a shift away from a hierarchical towards a network style of governance, which is characterised by co-operative rather than competitive interaction patterns among a large variety of actors. The developments in recent EC social policy fit well into this trend as outlined by Beate Kohler-Koch (1996): There are mutually dependent, but at the same time autonomous actors and blurred borderlines between the private and the public. The above overview on the development of EC social policy governance has shown that both problem definition and the setting of respective preferences are influenced by the process of interaction. The governments still try to reign, but they have shared their power with one another, with the Community institutions, and (under the Social Agreement even formally) with the major private interests.

How did this change in governance come about? Why did change indeed occur during the 1990s, although efforts were already made long before that? The evidence points at two interdependencies: between economic integration and social policy; and between EC action capacity in social affairs and social partner participation. There is no space to elaborate the

first argument, but it is obvious that the increased market integration prompted manifold calls for a 'social dimension' which, at least eclectically, resulted in EC Directives. And it was indeed the (anticipation of) increased regulative activity rather than solemn invitations which finally prompted the qualitative leap in social partner involvement. The developments under the Social Agreement are thus a prime example of the co-evolution of political/administrative structures (what might be called 'the state' at the European level) and interest politics. As long as the 'social dimension' had lagged behind economic integration due to a lack of competences and to the frequent unanimity requirements, the employers' representatives were successful in blocking any involvement in EC social policy-making which went beyond classic lobbying or non-binding consultation. UNICE had no negotiation mandate from its members and did not aim to get one because its organisational weakness was indeed a strength in its relationship with the ETUC (Streeck 1995: 116). This tactic was revised as soon as the Maastricht negotiations made qualified majority voting in EC social policy a matter of time only. UNICE's new attitude and the subsequent joint social partner contribution to the 1991 IGC, in turn, contributed essentially to the forthcoming reform of the Treaty basis for EC social policy. This points to an interdependence of state capacity and interest group developments, such as described by Eichener/Voelzkow in 1994.

It is true that the Commission (often times supported by specific Council presidencies) once again acted as a political entrepreneur by sponsoring the idea of co-operative social policy-making, from the mid-1970s onwards. The basic reasoning was that the major interest groups might develop and legitimise specific social policy measures at the EU level with a view to breaking or circumventing stalemate in the Council. It seems that the constant presentation of 'social partnership' as a good practice of governance finally made even those governments in the Council without a national tradition of corporatism agree to the new modus (except the UK). Increasingly, the problem of EC social policy would not only be identified with Council stalemate, but with a 'decision gap' at the level of organised interests, as well (Streeck 1995). But institutional activism alone was not enough to make the employers come to the bargaining table. Only the 1990-1 IGC offered a 'window of opportunity': the employers supported collective negotiations as a lesser evil if compared to increased EC regulation.

In fact, it is interesting to note that the growing 'statehood' of the EC is paralleled by patterns well-known from some member states. It was already mentioned that the new mode of EC social policy governance reveals some similarities to 'neo-corporatism'. Once again, 'the state' (in this case: the EC institutions) has an interest in sharing the burden of governance with the major interest groups. A particularly important feature in the case under discussion seems the strive for increased public legitimacy for the EU via 'social partnership'. This is against a background of widespread criticism vis-à-vis the meagre social dimension of European integration and the EMU whose convergence criteria de facto put increased pressure on the social expenses in the member states. It is hoped that the social partners bring EC social

politics closer to the citizen by adding another form of representation to the pre-existing forms at EC level: there is political representation of citizens based on direct elections via the EP; there is indirectly legitimated representation of the member states via the Council; plus there is now, under the Social agreement, a functional representation of the major producer interests (i.e. employer and employees). Extending Edgar Grande's suggestion to develop a mix of direct democratic elements and of representative democracy with a view to working post-national democracy (Grande 1997), one might welcome such an additional link between the citizens and their Union.

However, the innovations of the Social Agreement with a view to democracy are by no means unequivocally positive. As with corporatist systems at the national level, functioning intra-group democracy as well as the adequate representation of a wide range of other interests (e.g. gender issues; environmental protection) are by no means to be taken for granted. Furthermore, a typical but much criticised feature of classic (neo-)corporatism, i.e. the bypassing and downgrading of parliaments (e.g. Streeck/Schmitter 1991: 200), is repeated under the Social Agreement. The directly elected European Parliament is not involved in decisions taken by the social partners, and has no co-decision if collective agreements are implemented by a Council Decision.

Although some characteristics of corporatism were detected, the patterns that evolve under the Social Agreement will not replicate classic national corporatism. In short, major differences start with the restricted functional scope to social policy only. This limits political exchange and thus the political clout of the arrangement in overall terms, particularly if compared to the national corporatism at the macro-level during the 1970s. As recent concertation attempts in the area of employment policy ('Essen Follow-up') and studies in other EC policy areas show (see e.g. Greenwood/Grote/Ronit ed. 1992; Eichener/Voelzkow ed. 1994), the Social Agreement is not the only area where more co-operative public--private governance is under way. Nevertheless, one should not expect a coherent cross-sectoral system, due to the extremely fragmented system of EC politics with extreme divergences both in sectoral policy regimes and in patterns of interest representation within the single sectors (e.g. Eising/Kohler-Koch 1994: 182f). The emergence of cross-sectoral macro-corporatism at the EU level is therefore not on the agenda (see also e.g. Traxler/Schmitter 1995: 213; Kohler-Koch 1992: 103; Streeck/Schmitter 1991: 227).

Another difference to corporatism at the national level is that so far, the EC-level social partners cannot themselves guarantee the implementation of their agreements (e.g. Keller 1995; Obradovich 1995; Traxler/Schmitter 1995). The implementation via a Council Directive, however, provided a pragmatic solution to this -- similar to the existing 'Allgemeinverbindlichkeitserklärung', an extension of collective agreements to parties which have not signed them, in several European countries. It should also be noted that recent EC

social policy Directives have typically only outlined a general framework. Further specification of standards (and implementation as such) happens in a 'cascading'-like pattern where politics filter down from the supranational to the national, sectoral and even enterprise-level. The Social Agreement provides that at all these levels, the social partner organisations may be the decisive actors. This regulative pattern gives incentives for the inclusion of the social partners in public policy-making also at the member state level. This might, to a certain extent, reinforce existing patterns of national corporatism, or even bring about more co-operative patterns of public--private interaction in pluralist or statist member states. Due to the extremely punctual character of current EC social regulation one should, however, not expect a significant effect on the very diverse national systems. A further difference between the recent EC social policy patterns and national corporatism is well known from the literature: there is less cohesiveness and centralisation of the interests represented at the European level - notwithstanding the fact that interest group form followed function to a significant extent recently. Last, but not least, a sort of balance of power between labour and management was assumed for corporatist arrangements. It is certainly still the case that there is formal parity between the two sides of industry at the negotiation table. But with open economic borders and increased competitive pressures, the political resources of labour are devaluated if compared to capital's exit option. An even stronger backing from 'the state' (i.e., under the Social Agreement, from the Commission and the Council) is needed to give labour an effective voice at least in restricted issue areas.

As visible as the change in EC governance may be at the procedural level: regarding the problem solving capacity of EC social policy, the increased participation of the social partners per se will not bring about significant innovation. Here, the above-mentioned interdependence of 'state' action capacity and interest group politics comes back in: Only 'in the shadow of law' (Bercusson 1993) were the employers willing to negotiate. Without pressure from other political actors, in turn, there is little chance for agreement between management and labour. Thus, the success of an 'unburdening' of the EC Social Council (which is the main thrive behind the inclusion of the major interest groups in the policy-making process) will depend to a large degree on the governments' own willingness and capacity to progress in the 'social dimension'. For those who deem EC-level action as indispensable for the future survival of the welfare state in Europe, the fact that EC goals in social policy as well as majority voting were significantly extended at Maastricht leaves at least some hope that 'neo-voluntarism' (Streeck 1995a) is no absolute necessity for EC social policy. However, innovative and yesable concepts for appropriate measures which go beyond regulatory eclecticism still need to be developed.

A rather dim scenario comes to mind for the case that stalemate in the Social Council will persist in the future despite the improved Treaty basis. The social partners can now be brought in as an alternative route to arrive at EC social standards -- but they might also become the

scapegoat for the failure of a 'social dimension' of European integration if they can not arrive at agreements. If the citizens perceive the EC-level involvement of the 'social partners' as symbolic politics only (notably under the condition of further increased unemployment and continuing redistribution to those which are already better off), the legitimacy deficit of European integration might in the end be aggravated. In addition, a growing legitimacy deficit of trade unionism in the eyes of what was used to be called the 'working class' could lead to the further strengthening of the right wing and nationalist forces. That could in the end rather endanger than stabilize European integration.

The above indicates that co-operative public--private governance as well as multi-level governance may at best offer opportunities to be seized. They are no solution as such for any of the social problems arising in times of increased internationalisation and competitive pressures on the markets for capital, goods, services and labour. The Europeanization of public and private action capacity in social affairs may potentially increase the overall problem solving capacity of our societies. If theory is not turned into practice, however, the loss of unilateral action capacity of the member states will lack counterbalancing.

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