

**THE CONSTRUCTION OF SUPRANATIONAL COLLECTIVE BARGAINING:
WHY AND HOW DID THEY DO IT?**

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1. INTRODUCTION

The paper challenges one of the central arguments of the pessimists on the prospects for social policy in the European Community (EC). The “pessimists on social Europe”¹ have been skeptical about the possibility of constructing collective bargaining between organized labor and capital at a European level. I examine three critical developments in the recent history of EC social policy to gainsay the pessimistic view about the construction of collective bargaining at an EC level. First, the Social Protocol of the Maastricht Treaty, which set a cornerstone for institutionalizing collective bargaining at an EC level. Second, the European Works Council (EWC) Directive case (1994), in which the first attempt at collective negotiation at a European level failed. Finally, the Parental Leave Agreement (1995), the first ever framework agreement concluded between organized labor and capital at the EC level. To analyze how and why organized labor and capital came to engage in collective bargaining at a European level, I focus on the interactions in the 1990s between UNICE (Union of Industrial and Employers’ Confederations of Europe) on the capital side and the ETUC (European Trade Union Confederation) on the labor side and between them and the political authorities at the EC level.²

The pessimists identify employers’ opposition to building a social Europe in general and to establishing collective bargaining at a supranational level in particular as one of the biggest obstacles to building labor-inclusive neo-corporatist industrial relations at the EC level (Streeck and Schmitter 1991, pp.

¹Pessimism in this paper refers specifically to a skeptical view on the possibilities of developing social policy in the EC.

²Another Social Partner at the inter-sectoral level recognized by the Commission is CEEP (European Center of Public Enterprises) which represents public employers. Given that CEEP is relatively less powerful and becomes less and less important along with widespread privatization of public firms in Europe, however, CEEP does not get much attention in the studies of interactions among the Social Partners, and I follow suit here. Springer even states that UNICE and the ETUC are two most important actors in the areas of the social dimension, and the third one is COPA (Committee of Agricultural Organizations in the EC), instead of CEEP! (Springer 1992, p. 52). Historically, CEEP has been much more willing to cooperate with the ETUC than UNICE has been. For a concise yet helpful introduction to CEEP, see *EIRR*, no. 220, p. 28.

141-142; Streeck 1995, p. 419; Streeck 1994, p. 169; Ramsay 1995, p. 27; Rhodes 1992, p. 40; Rhodes 1991, p. 271). Arguably, employers' opposition is a more fundamental barrier to building a labor-friendly social Europe than other barriers such as labor unions' fragmentation on national lines and diversities in industrial relations across countries are. For, even if labor unions successfully overcome their internal divisions and present themselves as a unified actor at a supranational level, they would not be able to find an interlocutor with whom to bargain collectively because of the employers' intentional refusal to talk with them. What is more, unlike the national level where the state may legislate relatively high social and labor standards and induce employers to enter into collective bargaining with organized labor, the pessimists assert that due to its fundamentally intergovernmental structure enshrined in the Council of Ministers, the EC lacks meaningful political authorities which are strong enough to impose labor and social standards against employers' opposition and/or to compel employers to engage in collective bargaining with organized labor. Thus, the pessimists predict that "European collective bargaining resulting in enforceable agreements is not a foreseeable prospect" (Roberts 1992, p. 7), mainly because "European employers' associations will not constitute bargaining partners for the foreseeable future" (Mahnkopf and Altvater 1995, p. 113).

Indeed, European employers had been firmly opposed to the idea of collective bargaining at the EC level as the pessimists expected. While accepting the "Social Dialogue," which Jacques Delors launched at an inter-sectoral level in 1985, UNICE warned against "confus[ing] the Social Dialogue with a negotiation of European-level collective agreements" which it viewed as "neither desirable nor feasible" (UNICE 1988b and 1988a; see also Rhodes 1992, p. 40 and 1991, p. 271). Then, it was true that organized labor found it difficult to negotiate collective agreements with employers at a European level because of the latter's refusal to do so.³

³The pessimists tend to assume that labor unions would want to establish collective bargaining at a European level. Certainly, the ETUC has been pushing for European-level collective bargaining as the pessimists expected, yet with a critical proviso: it wanted collective bargaining with UNICE, *in addition to* the existing legislative mechanism of EC social policy-making. As Emilio Gabaglio, General Secretary of the ETUC, emphasized, "social Europe" must be built on both legislation and collective bargaining (Agence

The developments in EC social policy since the Maastricht Treaty, however, shows that the pessimists' argument no longer holds. As shown in Table 1, a major change in approaching European collective bargaining has taken place on the business side. In contrast to the pessimists' prediction, UNICE became willing to negotiate with the ETUC and, eventually, the two sides of industry reached a framework agreement on the parental leave issue in 1995. Also notably, it was the ETUC and not UNICE which *de facto* refused to negotiate a collective agreement on the EWC issue. UNICE has certainly moved from its long-standing opposition to engaging in collective bargaining at a European level to a new position in which it recognizes the ETUC as its main interlocutor and actively seeks possible European collective agreements on some issues.

Table 1. Willing to negotiate collectively?

UNICE \ ETUC	yes	no
yes	Framework Agreement on Parental Leave (1995)	European Works Councils Directive (1994)
no	Social Dialogue before Maastricht (up to 1991)	Reversal of Burden of Proof (1996)

Why did UNICE retreat from its traditional opposition to building European collective bargaining and show willingness to engage in collective bargaining on some issues? This is the core question to be answered in this paper. In the next section, I analyze why the Member States except Britain reached the Agreement on Social Policy in the Maastricht Treaty. Then, I examine why and how the Social Partners

Europe, 5/30/91, p. 15). The legislative route to EC social policy-making is indispensable to the ETUC, even if it succeeds in establishing collective bargaining with UNICE, for it is only the legislative route which it ultimately can come back to rely on in case European collective bargaining fails.

themselves agreed to institutionalize a collective bargaining procedure at the EC level as an alternative to the legislative procedure in their Agreement on October 31 1991, which decisively influenced the Member States in reaching the Maastricht Social Agreement. Next, I explore why the attempts at collective bargaining on the EWC issue has failed, and why it was the ETUC and not UNICE which actually refused to enter collective negotiation on this issue. Finally, from the above analyses, I try to find some clues to understanding why the Social Partners succeeded in reaching a framework agreement on the parental leave issue.

2. THE MAASTRICHT SOCIAL AGREEMENT: WHY DID THE ELEVEN MEMBER STATES DO IT?

The Maastricht Treaty is a breakthrough in the development of social Europe and a decisive turning point in UNICE's attitudes towards European collective bargaining. In a Protocol, the then 12 Member States authorized the Agreement on Social Policy, which allowed the 11 partners of Britain to pursue further development of social policy within the existing treaty structure. The main reforms introduced in the Social Agreement are two-fold. First, it has considerably expanded the Community's competencies and qualified majority voting (QMV) in social policy areas.⁴ Though some key industrial relations issues, such as "pay, the right of association, the right to strike or the right to impose lock-outs," are excluded from the EC competencies, the Maastricht Social Agreement enshrines a considerable "task expansion" in EC social

⁴QMV was established in the following five "fields": (1) "improvement in particular of the working environment to protect workers' health and safety" which had been subject to QMV since the Single European Act; (2) "working conditions"; (3) "the information and consultation of workers"; (4) "equality between men and women with regard to labor market opportunities and treatment at work"; and (5) "the integration of persons excluded from the labor market..." Still, unanimity was kept in the following five "areas": (1) "social security and social protection of workers"; (2) "protection of workers where their employment contract is terminated"; (3) "representation and collective defense of the interests of workers and employers, including co-determination"; (4) "conditions of employment for third-country nationals legally residing in Community territory"; and (5) "financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund."

policy. Second, and more important, it clearly promotes collective bargaining between the Social Partners at a European level, by recognizing it as a procedure of EC social policy-making in addition to the existing legislative procedure. The Social Partners now have explicit rights to be consulted by the Commission on the “direction” and “contents” of its proposals in social policy areas, and may initiate collective negotiation which may lead to “contractual relations, including agreements” at an EC level. The agreements may be transformed into European laws by a Council “decision” on a proposal from the Commission.⁵ (For clarification of the procedures, see European Commission 1993).

Peter Lange, a pessimist on the prospects for social Europe, attempted from an intergovernmentalist approach to answer the question, “Why Did They Do It?”: that is, “*why do sovereign states agree to the establishment of institutions and decision rules that are likely to erode their sovereignty and/or lead to decisions costly to them[?]*” (Lange 1993, p. 6; italics original). Lange’s question becomes “why did the poor countries do it?,” since, from the pessimist perspective, the poorer countries (Greece, Ireland, Portugal, and Spain) which could enjoy competitive advantages *vis-à-vis* the richer countries in terms of social and labor costs in the context of intensified competition in the EC, should have vetoed the proposed reforms in the Intergovernmental Conference (IGC) (*Ibid.*, p. 17). If we infer from Lange’s explanation,⁶ it eventually comes to an argument that the eleven did sign the Maastricht Social Agreement, because the reforms to be

⁵It was generally thought that collective agreements between the Social Partners would become subjects of Council “Decisions,” distinct from “Regulations” and “Directives.” “Regulations” are binding in their entirety and directly applicable in all Member States. “Directives” are binding as to the result to be achieved, but the states may decide how to implement them. “Decisions” are binding in their entirety upon those to whom they are addressed. Yet, the Commission interpreted that a Council “decision” in the Treaty text was a generic word and proposed the Parental Leave Agreement for a Council “Directive” instead of a “Decision.”

⁶Lange focuses on one typical aspect of intergovernmental bargaining, i.e., sidepayments, the “cohesion fund” in the Maastricht case. He refuses to view the cohesion fund as a direct sidepayment to the poorer countries for the Social Agreement (cf. Addison and Siebert 1994, pp. 16-19), because, according to him, the cohesion fund would be too large a side payment if only for the Social Agreement alone. Yet, at the same time, he argues that the cohesion fund would be “too small” as a sidepayment to the poorer countries for joining EMU (Lange 1993, pp. 23-25). A main problem with Lange’s explanation is that it explicates not the Social Protocol, the original object for his inquiry, but the cohesion fund, its size and its nature.

introduced were “limited” and were “not really an expression of the political will” of the Member States to significantly develop social Europe. The Maastricht Social Agreement was, Lange argues, “a *side-show* to the EMU negotiation and a relatively less important feature of the entire set of Maastricht reforms” (*Ibid.*, p. 27; italics added). In short, even though the reforms in the Social Agreement looked like a big change, the pessimist message runs, they were another round of “cheap talk,” i.e., face-saving pledge without full commitment to the development of social Europe (Lange 1992, p. 242). Then, why asks “Why Did They Do It?”?

This section tries to answer Lange’s question, without damaging the significance of the Maastricht Social Agreement which marks “the end of the era of ‘cheap talk’” (Leibfried and Pierson 1992, p. 344). Following the neofunctionalist tradition that has never ignored the central importance of the Member States in the process of integration even when analyzing the supranational actors (Haas 1958; Lindberg 1963; Lindberg and Scheingold 1970), I concentrate in this section on the attitudes of the Member States as regards social Europe at the time of the 1991 IGC. My analysis will show that the pessimists distort the actual preferences of the Member States, especially the poorer countries, by deducing their preferences from their relative positions in the EC.

It is not difficult to understand why rich Member States assented to the Maastricht Social Agreement. As the pessimists expect, the richer countries tend to support building high social and labor standards at a European level, so that they can reduce their competitive disadvantages *vis-à-vis* the poorer countries, by imposing on the latter some additional costs of adjusting to the high standards (Rhodes 1995, p. 92). In the 1991 IGC, the rich countries indeed expressed their support for improvements in EC social policy. For example, Belgium came up with its own proposal for EC social policy reforms quite early, which I will review in detail in the next section. Denmark, a country allergic to federalism like Britain, regarded the social dimension and environmental policy as well as the European Parliament (EP) power as too weak (*Financial Times*, 11/19/91).

In particular, three out of the four big countries except Britain all favored further development of social Europe in the 1991 IGC. As is well known, Germany has traditionally been committed to European integration. It perceived European integration as an almost inevitable way to regain its damaged sovereignty and moral respect after the World War II (Paterson 1990, p. 187; Wallace 1994, p. 16). Just at the time of the 1991 IGC, Germany achieved unification and felt a need to further assure its neighbors of its full commitment to European integration in order not to arouse fears and hostilities. In terms of industrial relations and labor costs, Germany has maintained a cooperative industrial relations system largely thanks to the relative strength of organized labor whose contribution to the performance of the German economy has been recognized by employers too (Jacobi, Keller and Müller-Jentsch 1992). Germany has therefore been adamant on introducing relatively high social and labor standards at the EC level, especially in the areas of information and consultation and worker participation. Though the German government's first priority in Maastricht seemed to be giving the EP more power, it was one of the strong promoters of social Europe too.

France and Italy have also been promoting social Europe. In Italy, the state responded to the "hot autumn" of 1969 by introducing various reforms such as the establishment of regional government, the right to hold referenda, housing reform, pension reform, and notably the Workers' Statute (*Statuto dei Lavoratori*) of 1970 (Ginsborg 1990, pp. 326-331). The Workers' Statute has radically extended workers' rights, reinforcing employment security, strictly restricting unilateral changes in job definitions, and providing educational and other forms of leave (Ferner and Hyman 1992, p. 534 and pp. 546-547). In France, too, the state promoted cooperative industrial relations by incorporating labor unions as a partner in the formulation of important social policies, particularly on welfare issues, especially since the social upheavals of May 1968. Though France experienced a rapid decline in union density in the 1980s, the Socialist government fostered collective bargaining and/or social dialogue between organized labor and employers at various levels. French employers have therefore been generally in favor of developing a social Europe (Goetschy and Rozenblatt 1992, p. 441).

These two countries explicitly expressed their commitment to social Europe in the Maastricht IGC. France defied the British opposition to social policy reform by declaring that it would not sign a treaty which did not expand QMV in social policy areas (Leibfried and Pierson 1992, p. 344). Mitterrand himself declared that a Treaty on Political Union without a social section could not be ratified by the French Parliament. Italy, too, strongly warned against the British intransigence on social policy. Andreotti, Italian Prime Minister, himself insisted upon a significant social policy reform, hinting that the EC should adopt the Social Charter of the Council of Europe (Agence Europe, 12/11/91, p. 4; *Financial Times*, 12/7-8/91).

Thus, the rich countries, in particular the three biggest countries bar Britain, had very favorable views on social Europe, in contrast to Britain whose opposition to the social policy reform had been clear from the beginning. Given the general support by the major Member States, it would have been very difficult, if not impossible, for the poorer countries to veto the reforms in the Maastricht Social Agreement. For, the poorer countries were afraid of being excluded from the core of the EC, which they believed, rightly or wrongly, as many Eastern European countries now believe, would exclude them from progress and development. Ireland, for example, saw the European political union as the key to its future prosperity, so much so that it even considered abandoning its neutrality policy, a central tenet of its foreign policy since its independence in 1921 (*Financial Times*, 11/22/91). For Greece, Spain, and Portugal, EC membership meant democracy and development after decades of dictatorship and backwardness in the periphery of Europe. For all these countries, the most important stake in the Maastricht IGC was joining other core countries in the envisioned economic and monetary union (EMU).⁷ Thus, the threat of being left out from the core of the European project, and EMU in particular, made the poorer countries worry that they might lose the overall advantages of EC membership if they did not follow in social policy development. What they might do, then, would be to get as much as possible in exchange for their support for various measures of deepening the EC,

⁷Even Italy was worried about being left to Europe's "second division" (*Financial Times*, 11/18/91), as it is now with regard to EMU.

including the reforms in social policy, rather than vetoing them. The cohesion fund may be understood this way.

Furthermore, there is no evidence to support the pessimist expectation that the poorer countries should seek to preserve a lower level of labor protection at the EC level. And, here is a crucial mistake of the pessimists: they deduce the preferences of the poorer Member States from their relative structural positions in the EC (e.g., poor versus rich countries) rather than observing their actual preferences by looking at their history and domestic politics. If we examine the actual situations and histories of the poorer countries, we find that their preferences with regard to social policy were quite different from those predicted by the pessimists.

Ireland, for example, has pursued a developmental strategy quite different from that adopted by the Conservative governments in Britain, even though Ireland resembles Britain in many aspects of industrial relations (e.g., voluntarism⁸, no legal force of collective agreements, and even the operation of a number of British-based unions in the Republic of Ireland) (von Prondzynski 1990 and 1992). In particular, the Irish labor unions tried to preempt a spread of conservative moves from Britain into Ireland. Under the leadership of the Irish Congress of Trade Unions (ICTU), the labor union side proposed in April 1987 to the government to establish a national plan for growth and economic recovery, which gave rise to the Programme for National Recovery (PNR) covering the period up to the end of 1990. In 1990, the ICTU again took the initiative and called for tripartite national negotiations, which eventually formed the Programme for Economic and Social Progress (PESP). Through these arrangements, labor unions preempted conservative moves that so undermined union power in Britain, and the Irish government and social partners became committed to the creation of a good industrial relations environment (*EIRR*, no. 256, pp. 29-33; *EIRR* no.

⁸Yet, given the anti-union legislation since the Thatcher government, some argue that European industrial relations systems have been converging in the direction of “juridification” (Simitis 1987), and some even see “no prospect of a return to voluntarism” in the British industrial relations system (Edwards, et. al. 1992, p. 17).

254, p. 25). Thus, understandably, the Irish government was not so antagonistic to the development of social Europe as the British government was, despite the similarities between these two countries and contrary to the expectations of the pessimists.

In the other three poorer countries, the labor unions had been important actors in their transition from dictatorship to democracy, and thus their governments could not easily ignore the voice of labor unions and represent only their business interests in dealing with the issues of EC social policy reforms (Gillespie 1990). For these countries, EC membership (in 1981 for Greece, and in 1986 for Spain and Portugal) meant an entry into a democratic world, in which basic rights of labor unions as well as political rights of the citizens are consolidated. In Greece, for instance, the labor movement had played an important role in resistance to the Colonels' regime which ruled the country from 1967. Since the fall of the military dictatorship in 1974, labor unions demanded and acquired their basic rights, especially through autonomous factory unions. The PASOK (Panhellenic Socialist Movement) government (1981-1989) produced various pro-labor laws designed to consolidate labor union rights similar to those enjoyed by labor unions in other European countries; for example, establishing union-based workplace representation, statutory health and safety committees with employee representation, and workers' councils in all enterprises with more than 50 employees (Kritsanonis 1992, pp. 614-621).

For Portugal too, the 1974-1975 Revolution left important repercussions on its industrial relations system. Not only did the Revolution demolish the authoritarian corporatist industrial relations system established by the Salazar dictatorship which had seized power in 1926, but it enshrined workers' fundamental rights in the Constitution which made Portuguese labor laws more favorable to labor than to capital. For example, the Constitution expressly guarantees the right to strike, allowing the workers to define the sphere of interests to be defended by strikes and the actual form of industrial action, but prohibits the corresponding employers' right to resort to lock-outs (*EIRR*, no. 253, pp. 27-32). Job security is so well established that CIP (*Confederação da Indústria Portuguesa*, Confederation of Portuguese Industry)

complains about workers' "ownership of jobs." With the comprehensive defeat of the Left, industrial relations gradually became less tense and politicized. But, this did not significantly damage the labor union rights earned in the Revolution. Rather, since 1984 there have been attempts at tripartite "social concertation" which ultimately led to the tripartite negotiation of a broad Economic and Social Agreement (AES) in October 1990. In agreeing to the AES, the parties involved wanted to reduce the discrepancies in labor rights and standards between Portugal and other EC countries (Barreto 1992, pp. 445-456 and pp. 477-480).

Finally, in Spain too, which had been leading the poorer countries in demanding the cohesion fund, sometimes linking it to social policy reform,⁹ labor standards were not as low as the pessimists presume. Like in Greece and Portugal, the Spanish labor movements were one of the main actors in the anti-Francoist movement. Understandably, Franco's death in 1975 was followed by an escalation of industrial and social militancy demanding political as well as industrial democracy. The Workers' Statute (*Estatuto de los Trabajadores*) of 1980, among other things, formalized workers' participation within the enterprise through workers' committees and delegates. The Law of Trade Union Freedom of 1985 provided statutory support for workplace union activities (Lucio 1992, pp. 497-498). The national social partners¹⁰ reached a framework agreement for industrial relations, and thus contributed to stabilization of the newly established democratic system (Gillespie 1990, p. 229). Notably, when Spain joined the EC, it did not have to change much in its labor laws, partly because it had a long tradition of labor legislation and, more importantly, because Spain

⁹If there was a poorer country explicitly expressing their concerns about social policy, it was Spain. On the Dutch proposals on social policy, it was Spain as well as Britain which blocked an agreement (Agence Europe, 11/15/91, p.4). Lubbers, the Dutch Prime Minister, once said: "The word social for the UK is the word cohesion for Spain," and "Sometimes it would be useful if the British could read what the Spanish are saying. There is not really a difference" (*Financial Times*, 11/26/91).

¹⁰The basic social partners were the UGT (*Unión General de Tabajadores*; General Workers' Confederation) and CEOE (*Confederación de Organizaciones Empresariales de España*; Spanish Confederation of Employers' Organizations). Yet, sometimes CCOO (*Comisiones Obreras*; Workers' Commissions) also participated.

had already adapted its labor laws to EC norms such as gender equality and health and safety in the workplace *before* it formally joined the EC (Valverde 1990, pp. 477-480). Also noteworthy, the government and the social partners consented to policy measures to prepare Spain for the single market by taking a high-skill and high-pay strategy, including for example intensification of multi-skill training and investment in advanced technologies, rather than a low-skill and low-cost strategy (Pérez Amorós and Rojo 1991, p. 367).

The above analysis does not imply that the poorer countries had higher labor and social standards than those in the richer countries. Yet, it shows that the poorer countries had been trying to adapt their social and labor standards to those available in more advanced EC countries before and/or after their admission to the EC. The poor countries did not want to lag behind the European norms, and did their best not to be left behind in a European periphery. In particular, for the three southern countries, EC membership meant the entry into democracy with no return to dictatorship, in which industrial democracy as well as political democracy were expected to consolidate. The attitudes of the governments of the poorer countries towards the social policy reform in Maastricht could not, therefore, be so clear as the pessimists deduce them from their structural positions. Rather, the governments of these countries were “caught between the welfare politics of the unions and their expectations concerning the ‘social dimension’ of European integration, and the constant demands of the employers for freer labor market relations and a less statist approach to economic issues” (Lucio 1992, p. 520). Thus, their preferences were unclear. Given the political will of the major rich countries, especially France and Germany, and given the threats of “exclusion” from European integration in general and EMU in particular, the poorer countries could not easily veto the social policy reforms of Maastricht. Further, there is no evidence that the poorer countries did really want to oppose the social policy reforms in the Maastricht IGC. What they did want instead was to get as much compensation as possible for the plausibly expected costs which they would have to accept even without the compensation.

3. THE SOCIAL PARTNERS' AGREEMENT ON OCTOBER 31 1991: WHY AND HOW DID THE SOCIAL PARTNERS DO IT?

The analysis in the previous section shows that however important intergovernmental bargaining might be in the process of the treaty reform, intergovernmentalism itself did not hinder the eleven Member States from agreeing on the social policy reforms in Maastricht. However, the analysis is far from sufficient to explain how the concrete contents of the Maastricht Social Agreement were adopted. By itself, intergovernmentalism may or may not help produce such an “upgrading of common interests.” Yet, the results would have been very different without the inputs from other actors and their interactions with the Member States, which defined the main issues and contents of the reforms in Maastricht. Among these other actors, two supranational actors seem to have played pivotal roles, the Commission and the Social Partners.

Most of all, the Agreement among the Social Partners on October 31 1991 was “decisive” in setting the terms and contents of the debates among the Member States on social policy, as the Social Partners themselves later recalled (ETUC, UNICE, CEEP 1992). The Commission also evaluated that the Maastricht Social Agreement was “heavily inspired” by the Social Partners’ Agreement (European Commission 1993, p. 11). The Social Partners’s Agreement envisioned the expansion of EC competencies in social policy areas and the institutionalization of collective bargaining at an EC level as an alternative to the legislative procedure. The Agreement of the Social Partners was immediately approved by the COREPER (*Comité des représentants permanents*; Permanent Representatives Committee) and inserted into the Dutch draft on social policy proposals. It was supported by most Member States, and the Dutch draft treaty in which the Social Partners’ Agreement was inserted was the main text on the basis of which the Member States discussed the reforms in the social policy provisions in the treaty. The final contents of the Social Agreement in the Maastricht Treaty were virtually identical to the contents of the Social Partners’ Agreement, except for a few sentences and except that the latter was originally designed to replace the treaty clauses themselves

rather than to be annexed to a protocol. Thus, it is certain that the contents of the Maastricht Social Agreement were “decisively” influenced by the Agreement of the Social Partners.

In this sense, the Social Partners’ Agreement was a “breakthrough” in the development of collective bargaining at a European level, as even Addison and Siebert (1994, p. 21) who have been quite cynical of EC social policy admit. The question that arises then is why capital, represented by UNICE, agreed to the October Agreement with the ETUC.¹¹ Surely, it came as a “surprise” to the pessimists (Streeck 1994, p. 167) when UNICE consented to this Agreement. Unfortunately, the existing literature seldom takes this question seriously. This section tries to fill this lacuna by analyzing why the Social Partners agreed on the new procedure. Without understanding this we cannot fully understand why and how the Maastricht Social Agreement came about.

When the idea of establishing collective bargaining at a European level was first introduced, UNICE was not ready to accept it, as the pessimists rightly expected. Yet, some member federations, in particular the Belgian, Dutch, Italian, and French employers’ associations, began to support this reform, and UNICE finally accepted it. To say the conclusion first, UNICE accepted European-level collective bargaining as an alternative way of EC social policy-making as opposed to the legislative procedure, because of the expressed political will of the Member States and the Commission to expand Community competencies and QMV in social policy areas. In other words, UNICE succumbed to the “political power” of the political authorities at the supranational level which was exercised to the ETUC’s favor, even though the ETUC lacked “conflictual power” such as capabilities to wage strikes which was an important power resource for labor movement at a domestic level (Jensen, Madsen, and Due 1995, pp. 11-17).

As explicated in the previous section, many rich Member States expressed their support for social

¹¹Again, I deal with the interactions between the ETUC and UNICE, excluding CEEP. Given that CEEP was relatively less important and it has been traditionally more willing to cooperate with the ETUC in Social Dialogues, its signing on the Agreement of October 31 is not really surprising. Notably, CEEP signed a bilateral “European framework agreement” with the ETUC in September 1990, which set a precedent for the Social Partners’ Agreement on October 31 1991 (*EIRR*, no. 220, p. 29).

Europe, which the poorer countries did not openly oppose. Perhaps the earliest strong expression of the political will to develop social Europe came from Belgium. The Belgian proposal was two-fold. First, Belgium proposed the creation of a European Committee on Labor (ECL). The ECL would be composed of employers' and workers' representatives, in which the Commission would play the role of "advisor and mediator." The ECL would be consulted on the Commission's proposals on social policy, and would elaborate and conclude collective agreements which could become Community law via a Commission proposal. Second, Belgium proposed to expand Community competencies in social policy areas, and suggested some specific measures to improve the effectiveness of EC policy-making, including generalization of QMV and generalization of the cooperation procedure with the EP (Agence Europe, 2/7/91, pp. 13-14).

The Belgian proposal defined the broad outlines of the social policy reforms in the IGC. The Commission's proposal envisioned two main reforms, like the Belgian proposal. One was the broadening of the Community's social policy competencies and the expanding of QMV. The other, and more important, was a "social dialogue" clause which would allow the Social Partners to reach "framework agreements" at the EC level, which then would be the subject of a Commission recommendation or of a Council decision. The Commission intended to give the Social Partners a strong incentive to enter collective bargaining with each other, by making clear that it would consult the Social Partners on the possibility of framework agreements before taking on the legislative course, and that if framework agreements could not be reached within a reasonable time then it would apply the legislative procedure (see *Bulletin of the European Communities*, Supplement 2/91, pp. 126-131). The two main reforms suggested by Belgium and the Commission were maintained also in the draft treaty presented by Luxembourg, the then Presidency of the Council, though the latter considerably weakened the suggested reforms (Ross 1995, pp. 149-150).

Thus, the two main innovative elements in the Maastricht Social Agreement were early on defined as the main issues for reform among the Member States. First, about the expansion of Community competencies and QMV in social policy areas, the Member States already formed a working consensus

except for few countries. A majority of countries, including France, Belgium, Italy, the Netherlands, Greece, and Denmark, all expressly favored the Commission's proposals for expansion of EC competencies and QMV. Putting aside Britain whose opposition was obvious from the beginning, a significant alternative to the Commission's proposal came from Germany. It proposed a "reinforced qualified majority" voting, which would require 66, instead of 54 in QMV, votes out of 76 in total. Germany tried to win over Britain to accept expansion of QMV by saying that the reinforced QMV would allow Britain to block a social policy together with just another country. Britain rejected the proposal, since it almost always stood alone on social policy issues. While some Member States (Belgium and France) and the Commission showed reservations, Denmark and Spain explicitly rejected the German proposal, for it could encroach on the social policy issues already covered by the existing QMV (Agence Europe, 5/13-14/91, p. 3). The large consensus among the Member States, except Britain, on this first point clearly indicated that the expansion of Community competencies and QMV in social policy areas would be almost inevitable, though it was still possible for Britain to veto it.

Second, the issue of giving the Social Partners an institutional right to collectively negotiate framework agreements which could then become European laws met little opposition from the Member States except Britain. The autonomy of the social partners had been well established in the continental European countries, and thus the states had no justifiable reason to reject the autonomy of the Social Partners at a European level if the latter asked it. A meaningful reservation about the institutionalization of the collective bargaining procedure as alternative to the legislative procedure came from the EP rather than from the Member States. The EP remained a relatively powerless institution, and saw the envisioned collective bargaining procedure to social policy-making without clearly entailing simultaneous expansion of the EP power as a threat to its already limited power in legislating social policies (Guéry 1992, p. 588). Yet, The EP had traditionally been a strong supporter of the development of social Europe, and expressed its reservations not to oppose the enhancement of the Social Partners' role but to further strengthen its relative power *vis-à-*

vis the Council and the Commission.

Under this situation of a widespread consensus among the Member States on the expansion of Community competencies and QMV and on the institutionalization of European collective bargaining, member federations of UNICE began to reconsider seriously the collective bargaining option as an alternative to increased social legislation at an EC level. The message from the Commission, around which a large consensus among the Member States was formed, was clear: If the Social Partners fail to conclude collective agreements they will face more EC legislation in social policy areas. Further, the infuriation of the EP on the proposed institutionalization of the collective bargaining procedure in social policy-making worried the employers associations more, because the EP's fear and anger "implied that the Parliament was eager to replace collective bargaining with legislation" (Ross 1995, p. 150). As it looked inevitable that the EC would have more social policy competencies and QMV, therefore, member federations of UNICE began to have strong incentives to support the collective bargaining option.

Let me take the example of the Danish employers association to explain this. In many European countries, capital and labor have a long tradition of collective bargaining, the agreements from which have in general legally binding effects. In Denmark, the scope of collective bargaining is wider than in many other European countries. Some issues of industrial relations, which in other countries would be governed by legislation, are regulated by collective bargaining in Denmark; e.g., overtime, shift work, notice of redundancy or lay-offs, maximum and minimum working hours, and minimum wage (until 1977 when statutory minimum wage was introduced) (Scheuer 1992, p. 173). In dealing with these and other issues through collective bargaining, the social partners in Denmark have nearly full autonomy from the state. An increase in the EC competencies in social policy is then perceived as a potential threat to the autonomy of the social partners in Denmark, because it would mean that some aspects of industrial relations in which the social partners have enjoyed nearly full autonomy are taken out of their hands into the political authorities at a supranational level. Furthermore, if EC legislation is subject to QMV and the Danish government should

implement the EC law passed by QMV even when it opposes the measure, then the autonomy of the social partners would be further eroded. For, under QMV, the Danish government could not veto an EC law, even if the social partners jointly ask the government to veto it, and the EC law nevertheless should be transformed into a national law in Denmark. That is, *it is not just the government but also the national social partners that lose a veto power in the Council, if the unanimity rule in EC social policy legislation is undermined.* EC legislation in expanded social policy areas under QMV would therefore be unacceptable to the social partners in Denmark. Hence the strong incentives for the Danish employers association to support establishing the collective bargaining procedure as a way to avoid imposition of unwanted legislation in wider areas of social policy issues.

Faced with the very plausible threat of increased EC competencies and QMV in social policy areas, therefore, more and more UNICE member federations began to endorse the idea of institutionalizing the collective bargaining procedure as an alternative to the legislative procedure. The first earnest sign from UNICE that it was considering supporting institutionalization of a collective bargaining procedure at a European level came in its letter, dated June 20 1991, which was addressed to the Commission as well as to the ETUC and CEEP. There, UNICE revealed that it decided to “welcome *a further strengthening of the European Social Dialogue,*” which insinuated a possible acceptance of collective bargaining at a European level (UNICE 1991d; italics added). Clearly, UNICE’s intention was to use the strengthened Social Dialogue “as a substitute for any Community [legal] action” (*Ibid.*). But, to avoid increased EC legislation in social matters, UNICE had to recognize the ETUC as its partner for collective bargaining at the supranational level.

With the signs of change in UNICE’s attitudes towards collective bargaining, the Social Partners soon came to the conclusion that they all wanted to strengthen the Social Dialogue. The *ad hoc* group of the Social Dialogue, composed of the Social Partners, identified a number of shared ideas in a letter sent to the Commission and the Council, dated June 28 1991. The letter revealed that the Social Partners were “willing to enter *a new stage by strengthening and enhanc[ing] ... the [S]ocial [D]ialogue,*” and asked to guarantee

“the autonomy of the [S]ocial [P]artners” and their right to be consulted on Commission proposals on social policy issues “before” their elaboration. The letter also noted that the *ad hoc* groups would study “possibilities of *negotiations which might lead to agreements at [a] European level* and their legal framework” (ETUC, UNICE, CEEP 1991; italics added). It shows that as early as June, UNICE was already engaged in serious talk with the ETUC on the possibility of establishing collective bargaining at the European level.

When the Dutch presidency in the second half of 1991 came up with a proposal on social policy reforms, which was strikingly similar to the reforms later adopted in the Maastricht Social Agreement (see Agence Europe, 11/1/91, p.3; 11/4-5/91, p.4; Ross 1995, p. 297 n. 63), there was no doubt that the political authorities at the supranational level had the political will to expand Community competencies and QMV in social policy areas. And, UNICE finally decided to promote the institutionalization of the collective bargaining procedure as alternative to the legislative procedure. Hence the October 31 Agreement between UNICE, CEEP, and the ETUC, which was then inserted into a new Dutch draft treaty.

In essence, UNICE’s endorsement of collective bargaining at a European level was a self-defensive measure to brake the moves by the Commission and some Member States to increase social policy legislation in the EC (Jensen, Madsen, and Due 1995, p. 16). In the words of Mr. Ferrer, the then President of UNICE, “UNICE believe[d] in the value of centralized bargaining at European level only as a substitute for legislation” (Ferrer 1992). As Maastricht came closer, Tyszkiewicz, General Secretary of UNICE recalls, “the employers were convinced that Maastricht would result in much wider powers for the Commission and the Council in the social field: a great extension of qualified majority voting, and therefore a greater number of legislative acts in the social field” (Tyszkiewicz 1992, p. 8). In response, the member federations of UNICE, which had relatively autonomous power in social affairs at a national level, began to support institutionalizing their voice in social policy-making process by installing a collective bargaining procedure, in order to avoid more legislation by the political authorities at an EC level. For this purpose, giving voice to

labor unions at the EC level was an indispensable cost, but worthwhile.

Britain's intransigent opposition to any expansion of Community competencies and QMV in social policy played a double-faced role in getting UNICE to ultimately sign the October Agreement with the ETUC. On the one hand, it eased UNICE's retreat from its traditional opposition to European collective bargaining, because European employers expected that the British government would not endorse such reforms as those suggested by the Social Partners. On the other hand, UNICE could not totally count on the British opposition, since employers perceived that an increase in social policy competence and expansion of QMV was almost inevitable despite Britain's opposition. In the words of Tyszkiewicz, while Britain opposed any improvement of EC social policy, "the other Member States, having taken up public positions back home and having different degrees of pressure from their unions and from their coalition partners to the left, could not come away from Maastricht without some change in the social chapter. They needed a change if only for face-saving reasons, but they had to have a change" (Tyszkiewicz 1992, p. 5). Thus, UNICE needed some protection against the possibility that Britain might not be able to block the social policy reform in the Maastricht summit. Then, as Tyszkiewicz says, UNICE's Agreement with the ETUC was "an insurance policy," prepared for the case the social policy reform might be passed despite the British opposition (*Financial Times*, 11/25/91). The final result of the Maastricht summit, British opt-out, shows that the two seemingly contradictory expectations of UNICE as regards British opposition were both right. That is, Britain did not retreat from its opposition to the social policy reform up to the last point and did not endorse the Social Partners' Agreement and, at the same time, the other Member States did get what they declared they wanted to get despite the British opposition.

The above analysis of why UNICE concluded the October Agreement with the ETUC needs to be completed with some special comments on the CBI (Confederation of British Industry). The CBI's case is specially interesting, given its strong opposition to social Europe and its relationship with the British government. The CBI was the most strongly opposed, among the member federations of UNICE, to the idea

of institutionalizing collective bargaining at a European level. Its downright opposition was well shown by Eberlie, the director of the CBI office in Brussels Office. Just before the October Agreement, he wrote that “the CBI s[aw] no grounds for the extension of collective bargaining to the European level, nor d[id] it see UNICE as a body able to negotiate on its behalf” at a European level¹² (Eberlie 1993, p. 205). The CBI’s strong opposition was in part due to the British government’s intransigence on social policy reforms. Given that the British government’s opposition to social policy reform was well known, it was reasonable for the CBI to follow the declared position of its own government and not to endorse the Social Partners’ Agreement. For it could be expected that the CBI’s endorsement of the Social Partners’ Agreement might be used against the British government and weaken its position in the IGC.¹³

Then, why did the CBI change its position and endorse the Social Partners’ Agreement? Here, I speculate on three plausible factors. First, pressures from CBI members. If UNICE gets into negotiation with the ETUC, excluding the CBI, British companies operating in continental Europe would be affected by the collective agreements between the Social Partners, in the process of which they would not have any voice due to the CBI’s isolation. Hence the need to maintain voice, unless the CBI can block the entire process of establishing European collective bargaining from the beginning. Second, pressures from the other member federations of UNICE. The other member federations of UNICE which already accepted the idea of establishing collective bargaining at a European level felt that they needed to get the CBI on board to prevent British businesses from getting competitive advantages.¹⁴ Finally, and most importantly, the possibility of a

¹²Even after the conclusion of the October Agreement, the CBI expressed strong reservations about the Agreement and even threatened to withdraw from it (*Financial Times*, 11/6/91).

¹³Actually, the CBI’s approval of the October Agreement was exploited by other Member States against the British government. To the British government which expressed its opposition to the social policy provisions in the Dutch draft, Belgium and the Dutch Presidency pointed out that British employers had already shown a more open attitude, mentioning the Agreement between the Social Partners (Agence Europe, 11/4-5/91, p.4).

¹⁴Significantly, Article 7.8 of the Statutes of UNICE provides that “[a]ny draft agreement negotiated in the framework of the dialogue between the [S]ocial [P]artners may only be approved by the Association [i.e.,

Labor government in Britain. The Conservative government had to call a general election by spring 1992, and the possibility of a Labor victory was considerable at that time.¹⁵ Given that Labor made no secret of its intention to join the Social Charter as soon as it gained power,¹⁶ a Labor government would mean to British businesses a loss of the most important voice for themselves in the Council. Then, the collective bargaining procedure would provide an alternative voice for the CBI, in case it could not expect a favorable voice from a British government. Hence the strong incentive for the CBI to join the other members of UNICE in endorsing the Social Partners' Agreement.

In the whole process that led to the Social Agreement in Maastricht, a crucial role was played by the Commission in initiating the issue and moderating the Social Partners and the Member States. If we trace the history of social Europe a little back, it was the Commission which launched the "Val Duchess Social Dialogue" at the inter-sectoral level and did its best to establish and promote an atmosphere of constructive dialogue between the two sides of industry at the supranational level. In particular, the Commission promoted the Social Dialogue to complement social policy legislation and not to replace the latter, as Delors said that "the Commission believe[d] that legislation and use of the social dialogue should be combined" (Delors 1988, p. 8). Delors apparently saw the Social Dialogue or collective bargaining between the Social

UNICE] on the basis of consensus *among all the members affected by the agreement in question*" (UNICE 1992b; italics added), leaving the CBI with no voice in case it is not covered by future collective agreements at a European level due to the British opt-out.

¹⁵The supports for Labor and Conservatives had been fluctuating. Labor had a clear lead in opinion poll in 1990 (12.3% lead in August 1990). Yet, following the deposition of Mrs. Thatcher and the Gulf War, the Conservatives were marginally ahead until April 1991. Labor regained its lead over the Tories up to 10% points in early June. Around the end of August and early September, the Conservative led by 4.5%. In early November Labor led by 8% points, and Labor (together with Liberal Democrat) victory in three by-elections on November 7 1991 made a Labor victory very promising (*Financial Times*, 9/6/91; 10/1/91; 10/5-6/91; 11/8/91). By the time the Social Partners reached the Agreement, therefore, the odds of Labor victory looked considerable.

¹⁶Tony Blair, shadow employment secretary, for instance, declared that Labor would implement the European Social Charter as soon as it won a general election (*Financial Times*, 12/3/91). Neil Kinnock, the then Labor leader, also made clear Labor's support for extending QMV in social policy and increasing the EP's power (*Financial Times*, 11/27/91).

Partners as a means of formulating EC social policy which could then be implemented by legislation. Then, a core element of the institutional reforms introduced in the Maastricht Social Agreement, i.e., the collective bargaining procedure as a route to EC social policy making, is nothing but a realization of the Commission's long-pursued goal of establishing supranational collective bargaining as a way of social policy-making.

If we limit our analysis to the immediate conjuncture of the IGC, it was again the Commission which brought the Social Partners together into the Social Dialogue *Ad Hoc* Group on February 25 1991, to examine the role of the Social Partners in the EC social policy-making process (Guéry 1992, p. 585), and it was under the Commission's moderation that the Social Partners finally agreed on the October Agreement (interview with Dirk Buda, DG V, March 1995). The Commission could achieve both the October Agreement between the Social Partners and the Maastricht Social Agreement among the Member States, by moderating not just between the Social Partners but also between the Social Partners and the Member States. The Commission first mobilized a large consensus among Member States on the need to expand Community competencies and QMV in social policy. Then, the Commission used this consensus in persuading UNICE to accept European-level collective bargaining as an "insurance" against increased legislation. Faced with the political will of the Member States and the Commission to develop social Europe, UNICE agreed with the ETUC on a collective bargaining path to EC social policy-making, arguing for the autonomy of the social partners. The Commission was then able to use the Social Partners' Agreement in inducing the Member States to accept the suggested reforms. In short, the Commission moved back and forth between the Member States and the Social Partners, using the emerging consensus of each of these two main groups of actors in persuading the other group to mobilize a large consensus on the social policy reform in Maastricht.

At the Maastricht summit, the Social Partners' Agreement was jeopardized by the last attempt of the Dutch Presidency to include Britain in social policy reform. The Dutch compromise proposal considerably watered down the reforms recommended by the Commission and the Social Partners. For example, only information, and not consultation, would be subject to QMV. Yet, even this Dutch plan, an

intergovernmental way of compromise, was rejected by Britain because, most of all, it contained a proposal to institutionalize collective bargaining between capital and labor at a Community level. This was the core in the Social Partners' Agreement, and Britain found it unacceptable (*Financial Times*, 12/10/91; 12/11/91). Though the Agreement of the Social Partners had been placed in jeopardy by the Dutch Presidency's attempt to reach a compromise with Britain, its core content survived and made it extremely difficult, if not impossible, for Britain to accept the compromise plan.

Again, it was the Commission who grasped the vacuum created by Britain's downright refusal to accept the Dutch compromise plan, and brought the Social Partners' Agreement back into the treaty albeit in the form of a protocol. At the last moment of the Maastricht summit, after the Member States failed to persuade Britain on social policy reform, Kohl came up with an idea of making social policy reforms outside the EC institutions, that is, through intergovernmentalism instead of "the Community method." Delors intervened at this critical moment and suggested making a protocol allowing the eleven to pursue their social ambitions through the regular EC institutions (*Financial Times*, 12/14-15/91). Delors' proposal won, and the Maastricht Social Agreement attached to the Social Protocol became "the Commission's most successful intervention" at the Maastricht summit (Ross 1995, p. 191).

The Maastricht Social Agreement thus reached was clearly well beyond "the lowest common denominator" agreement among the Member States predicted by intergovernmentalism. If the Dutch compromise plan had been accepted by Britain, it would have been intergovernmental bargaining that was the most important in defining the contents of the agreement. If Kohl's final idea of taking social policy out of the EC treaty structure into intergovernmentalism had prevailed, it would have been mainly an intergovernmental result. But, neither happened. Further, instead of the Dutch compromise plan which was quite softened to attract Britain, the Member States did agree on the Social Protocol, excluding Britain, which brought the original Agreement of the Social Partners back into the treaty, thanks to the timely intervention of the Commission.

4. THE EWC CASE: WHY DID THE SOCIAL PARTNERS FAIL IN COLLECTIVE NEGOTIATION?

The pessimists downplay the significance of the reforms introduced in the Maastricht Social Agreement. Streeck, for example, argues that “Maastricht extended ‘subsidiarity’ to management and labor without enabling the weaker group, labor, to make the stronger one, management, bargain in good faith” (Streeck 1994, p. 172; see also Streeck and Vitols 1993, p. 19). According to this view, the employers side has not retreated from its traditional opposition to establishing collective bargaining at a European level, and will use the newly institutionalized collective bargaining procedure only to “delay” or even block legislation in social policy areas (Streeck 1995, p. 406; Streeck 1994, p. 175 n. 21). As the pessimists argue, the employers side still can deny voice to organized labor at a European level by refusing to take the newly installed collective bargaining procedure.

Yet, here is the greatest trick: the collective bargaining procedure of EC social policy-making is established *parallel to* the existing and continuing legislative procedure. The Commission can take the legislative procedure if the Social Partners don’t want to negotiate or fail to reach an agreement. Further, the eleven Member States, by expanding the Community’s competencies and QMV in social policy areas, clearly showed their political will to develop a social Europe. Then, if the employers side continues to deny voice to organized labor by refusing to enter the collective bargaining procedure in good faith, it will face political intervention by the Commission and/or the Council in wider areas than before. As Bercusson aptly pointed out, therefore, this will promote collective “bargaining in the shadow of the law” (Bercusson 1992, p. 185).

The EWC Directive, passed in the Council on September 22 1994 is a critical case, in which the pessimists’ evaluation of the Maastricht reforms turned out to be erroneous. The Directive obliges “central management” of “Community-scale” companies, or, companies with at least 1000 employees within the Member States bar Britain and 150 employees in at least two Member States, to establish an EWC or an

“information and consultation procedure” by negotiating with a “special negotiating body” (SNB) composed of employee representatives. It leaves specific measures needed to set up an EWC or an information and consultation procedure to be decided by negotiations between central management and the SNB. The SNB may even decide not to initiate negotiations with central management, thereby not to have an EWC or an information and consultation procedure. However, an Annex, attached to the Directive, sets out “subsidiary requirements” which should apply: (1) where the two sides so decide, or (2) where the central management refuses to negotiate, or (3) where they fail to reach an agreement in three years. The “subsidiary requirements” set out a relatively strong version of an EWC, specifically spelling out its competencies and envisioning a centralized structure of an EWC. The subsidiary requirements strengthen the bargaining position of the SNB in its negotiations with central management on the establishment of an EWC or information and consultation procedure, since employee representatives know that they can get at least the EWC as defined in the Annex even if they fail to reach an agreement with central management.

The EWC Directive is one of the most significant developments in building a social Europe. First, the adoption of the Directive itself is a momentous victory for labor, gained against the employers’ long-standing opposition. The so-called “Vredeling Directive,” a draft directive on information and consultation proposed in 1980, was defeated largely because of the strong opposition from multinational companies and the British government (De Vos 1989). Since the Commission proposed it again in 1990, UNICE fiercely opposed the EWC Directive proposal, criticizing it as “unduly institutional, rigid and bureaucratic” (UNICE 1991e, 1991f; see also UNICE 1991a, 1991b, 1991c, 1993a; Agence Europe, 10/21-22/91, p. 14; Mark Hall 1992, p. 559). Given this severe opposition from employers, the pessimists expected that the EWC Directive was “extremely unlikely ever to be passed into law” (Streeck 1994, p. 162; see also Visser and Ebbinghaus 1992, pp. 230-231). When the EWC Directive was adopted in the Council on September 22 1994, therefore, it must have been a surprise to the pessimists. Second, the Directive is also a significant victory for labor in that it clearly envisions a *centralized* structure of EWCs, which is virtually guaranteed by the subsidiary

requirements laid down in the Annex. Employers found this clause horrifying and demanded to amend the Annex, strongly arguing that “local” employers should be responsible for information and consultation of workers (UNICE 1994g, 1994b, 1994e, 1994h, 1994d, 1994e, 1991f, 1994a; Agence Europe, 10/28-29/91, p. 14). Thanks to the centralized structure of EWCs, employee representatives from different countries could meet together, get to know each other, discuss together, and learn from each other, in addition to getting informed and consulted by their central managements. The EWC Directive would thus contribute to the construction of European industrial relations at the level of multinationals (cf. Tyszkiewicz 1993; Sisson 1990, p. 18; Rhodes 1992, p. 42).

The most striking aspect of the EWC case for the purpose of this paper is the fact that it was the ETUC and not UNICE which actually refused to initiate the collective bargaining procedure. The EWC issue was the first case put under the new procedures of the Maastricht Social Protocol. According to the new procedures, the Commission conducted the first stage of consultation from November 18 to December 30 1993 and the second stage of consultation from February 8 to March 30 1994. Considering the long history of the controversy around the issue, the Social Partners discussed the possibility of negotiation during the second consultation period. Yet, the “attempts at opening negotiations” (Danis and Hoffmann 1995, p. 186), or the “talks about talks” (Gold and Hall 1994, p. 180), failed. For the failure of the “talks about talks,” or “negotiations about the possibility of negotiations,” UNICE and the ETUC blame the other side respectively; the labor union side blames employers, especially the CBI, for their opposition to European-level collective bargaining, and the employers side blames organized labor for its lack of willingness to negotiate on this specific issue. Both sides have some elements of truth. A crucial factor for the failure of negotiation that would be the most surprising to the pessimists is the virtual lack of willingness on the part of the ETUC to negotiate with UNICE on the EWC issue, as employers are correctly pointing out. Contrary to the pessimists’ views, *it was the labor side rather than the capital side which actually refused to talk with the other side on the EWC issue.*

The basic reason why the ETUC lacked real willingness to talk with employers in this critical case, and so why the talks about talks failed, was the strong political will shown by the Member States and the Commission to pursue EC legislation on this issue. It was quite clear that the Member States and the Commission would together pass an EWC directive if the Social Partners failed to get into collective negotiation on the issue. As early as May 1991, a wide measure of consensus emerged with regard to the EWC draft directive among the Member States, with the exception of the UK and to a lesser degree Portugal (Agence Europe, 5/6-7/91, pp. 5-6; 12/2-3/91, p. 11). By the time of the June 1 1993 Council, it appeared that a consensus was emerging among most Member States around a more flexible proposal of the Danish Presidency, except for some differences on minor issues (*EIRR*, no. 234, p. 24). The Belgian compromise text in the latter half of 1993 rendered imminent the adoption of a common position among the Member States. In the Council meeting on October 12 1993, the Belgian Presidency noted that “most delegations broadly agreed to the draft” (*EIRR*, no. 242, p. 13). Though the Member States did not achieve unanimity when the eleven Member States adopted a formal common position without Britain on July 18 1994, Portugal choosing to abstain, it was clear that they had a wide consensus on the desirability of the EWC Directive at the time of the second consultation.

The Commission’s activities also contributed to the spread of the presumption that if the Social Partners failed to negotiate, the EWC Directive would anyway be passed by QMV under the Maastricht Social Protocol. As soon as the German Constitutional Court cleared the way for the application of the Maastricht Treaty, the Commission submitted the EWC proposal under the new procedures established by the Maastricht Social Protocol. By this, the most adamant opponent, Britain, was excluded and deprived of its voice as well as its veto power. Even if Portugal voted against the Directive instead of abstaining, it could not have blocked the passage of the Directive, since the issue was now subject to QMV. The message from the political authorities at the supranational level was then simple and clear: The Commission and the Member States in the Council were together actually threatening to take the legislation procedure if the Social

Partners failed to take the collective bargaining procedure.

Moreover, the draft proposals on the EWC issue were much more favorable to the labor side than to the employers side, especially in that they envisioned a centralized structure of EWCs to be established. The Belgian text, around which the Member States formed a large consensus, proposed two new ideas; the idea that the negotiating partners should have full autonomy, and the possibility of establishing “procedures” for information and consultation as an alternative to an EWC (ETUC 1995, p. 55). Yet, the Belgian proposal still envisioned centralized structure of EWCs. In short, the Commission’s proposals and the consensus among the Member States around the Belgian compromise text, albeit they incorporated some of the employers’ demands, all envisioned centralized structures of EWCs. The centralized structure of EWCs was also maintained in the new draft proposal which the Commission circulated for the second stage of consultation and became the main text for discussion between the Social Partners.

Faced with the strong political will of the Member States and the Commission and with the consensus around the centralized structure of EWCs, UNICE began to retreat from its opposition to EC regulation on the information and consultation issue and to collective bargaining at the European level. In September 1993, UNICE made a statement which implicated a change in its approach to this issue: “UNICE is ready to sit down with the Commission and/or the European [u]nions to develop a positive and constructive procedure for information and consultation of workers that is acceptable to all parties” (UNICE 1993b; *EIRR*, no. 238, p. 13; see also, UNICE 1994a). Now, UNICE was eager to rely on the collective bargaining procedure to avoid the legislative procedure, arguing that the Social Partners had the practical knowledge and experience and were therefore better placed than the legislators to tackle this question (UNICE 1994d).

Given the expressed and perceived political consensus around the labor-friendly draft proposals, the ETUC was in a winner’s position. In the “talks about talks,” therefore, the ETUC could enjoy a much

stronger bargaining position than UNICE. At an *ad hoc* meeting of the “Social Dialogue Committee,”¹⁷ held on February 22, the idea of a 4 week exploratory phase was agreed on (ETUC 1995, pp. 55-56). In the subsequent two bargaining sessions on March 9 and 17, the ETUC proposed three essential requirements for a preliminary agreement that should be accepted by the employers side, making the best of its strong bargaining position. The requirements are: (1) that the employers side should recognize the right of workers and their representatives to be informed and consulted at a transnational level; (2) that central management and workers’ delegation are responsible to negotiate arrangements for the transnational representation of workers, or equivalent procedures through which to exercise their right, in the individual transnational companies; and (3) that fall-back arrangements should be made for cases where negotiations are refused or fail (ETUC, *Press Report*, 9-94; Agence Europe, 3/19/94, p. 14; Gold and Hall 1994, p. 180).

Given its weaker bargaining position, UNICE had to move in the direction of accepting the ETUC’s demands. On March 22, UNICE proposed that the pre-agreement should contain the following points: (1) “the recognition that information and consultation on subjects defined by workers and their representatives *in transnational enterprises* is a right”; (2) “the responsibility of the central management to negotiate in the transnational enterprise with *representatives* of the workers concerned, *to be designated according to modalities to be defined*, on the setting up of a transnational representation of workers or *alternative* procedures for exercising this right”; and, (3) “the establishment of minimum provisions in the case of refusal to negotiate or failure of negotiations, bearing on a recognized structure of worker participation and on condition that the right to information and consultation *within* the transnational enterprise is respected” (Agence Europe, 3/24/94, p. 10; italics in original; italics indicate additions to the ETUC text). This proposal was rejected by the ETUC as “disappointing and inadequate,” especially in that the employers were

¹⁷In their “Joint Statement on the Future of the Social Dialogue” made at Palais d’Egmont, July 3 1992, the Social Partners agreed to replace the existing Steering Group and *Ad Hoc* Group by a “Social Dialogue Committee,” to affirm their determination to implement the new procedure of social policy-making laid down in the Maastricht Social Agreement (ETUC, UNICE, CEEP 1992).

“continuing to deny workers their right to be consulted and informed at [a] transnational level” and that they were “refus[ing] to accept that the negotiations to lay down the procedures for exercising that right should be conducted by a delegation which represents the workers concerned and the undertaking’s central management” (ETUC, *Press Report*, 9-94).

Expressing its surprise and disappointment at the ETUC’s refusal to accept its offer, UNICE criticized the ETUC for “prefer[ring] the legislative route [to the collective bargaining route]” (UNICE 1994c). However, given its weaker bargaining position, UNICE had to leave the possibility of negotiation open, and stated that “UNICE [wa]s willing to negotiate every possibility with ETUC -- including *transnational structures* -- that could lead to an improvement in information and consultation on transnational issues” (*Ibid.*; italics added). Ultimately, on March 28, UNICE together with CEEP finally came up with a proposal which largely endorsed the ETUC’s requirements. At the moment, however, the CBI issued a press release withdrawing itself from the negotiations and criticizing UNICE for conceding too much (ETUC 1995, pp. 55-56; Gold and Hall 1994, pp. 180-181). The CBI’s statement collapsed the whole negotiations on the preliminary agreements at the last moment of the second consultation period. Blaming the CBI for having “torpedoed the employers’ decision,” the ETUC argued that the CBI “ha[d] completely closed off this avenue towards negotiations” and that “the very credibility of the negotiations themselves ha[d] been cast into doubt” (ETUC, *Press Report*, 10-94; Agence Europe, 3/31/94, p. 16). Hence the collapse of the talks about talks.

Throughout the process, contrary to the pessimists’ expectations, it was the ETUC and not UNICE which had the upper hand in the EWC case. The ETUC could maintain a stronger bargaining position, since it always could fall back upon the legislative procedure which promised favorable legislation. UNICE was right when it deplored that the very presence of the proposal which clearly favored labor over business played a crucial role in depriving the labor side of the incentives to get into negotiation (UNICE 1994d, 1994f, 1994g). Given the monumental importance of establishing EWCs, the ETUC found few incentives to use the

collective bargaining procedure on this crucial issue, unless UNICE offered many concessions attractive enough to replace or delay the legislative process.

The employers' weaker bargaining position was aggravated by a couple of factors on the side of employers themselves. To begin with, the employers were disadvantaged by their own ideological stubbornness. UNICE continued to oppose the EWC directive proposal, contesting "the very heart of the Commission's arguments," that is, the need to establish some mechanisms for information and consultation at the European level (Agence Europe, 5/1/91, p. 14; UNICE 1991a, 1991b, 1991c). Only when the issue was placed under the new procedures of Maastricht Social Agreement, did UNICE begin to seriously consider the collective negotiation procedure to avoid the adoption of a Directive on this issue (UNICE 1991e; Ferrer 1993). Basically, the employers did not fully realize the political will of the Member States as well as the Commission. Even when the Member States reached a virtual and later formal common position around the Commission's April 1994 draft, for example, UNICE tried to get ride of the centralized structure of EWCs, which was one of the main excuses why the ETUC refused to talk with UNICE.

Worse, the peculiar position of the CBI within UNICE further undermined its weak bargaining position. The CBI was included in the representatives of UNICE to the "talks about talks," despite the British opt-out on the Maastricht Social Agreement. The problem with the presence of the CBI within UNICE was two-fold. On the one hand, the other members of UNICE did not exactly know what the CBI wanted and were therefore embarrassed when the CBI rejected the general principles agreed by the Social Partners at the last moment of the talks about talks. On the other hand, the CBI's rejection was crucial from the point of view of the ETUC. It was not acceptable to the ETUC even if the CBI could not block the other UNICE members from engaging in negotiation with the ETUC as UNICE argued. For the ETUC was keen to include the British labor unions on this issue as it was trying to offset the impact of British opt-out. At the same time, the rejection by the CBI provided an alibi for the ETUC to blame the employers side for the failure of the first attempt at European collective bargaining. Given that the ETUC had little incentive to negotiate with

UNICE on this issue, ironically, the CBI's rejection helped the ETUC more than UNICE.

Also, the pessimists' expectation that the employers side would use the collective bargaining procedure to "delay" the legislative procedure turned out to be groundless. The ETUC and the EC institutions understood that the employers would likely try to delay and block the EWC directive by dragging on the new procedure, and developed counter-strategies to reduce the delaying impacts of the failure of negotiation. In this respect, the ETUC formed a kind of alliance with the Commission and other EC institutions such as the EP and the ECOSOC (Economic and Social Committee). These actors pushed the legislative procedure very fast, *parallel to* (i.e., not after) the attempts at collective negotiation. One official in the ECOSOC attested that the ECOSOC was asked by the Commission to prepare a suitable legislative content on the issue of the EWCs even *before* the failure of the attempts at negotiation between the Social Partners (interview with Alan Hick, March 1995). The EP too approved its opinion on the Commission's April draft directive in a first reading on May 4, only three weeks after its submission, trying to minimize its amendments (*EIRR*, no. 245, p. 23). Noting that it generally takes six months for the EP to give a first reading, this speed in the EWC case is exceptional. The EP and the ECOSOC complied with the Commission's request to press ahead fast enough to make possible the adoption of a common position at the Council meeting due on June 22.

Instead of employers' using the collective bargaining procedure to block or delay the legislative procedure, the new procedure was used by some EC institutions to deny employers further voice. Stephen Hughes, Chairperson of the Committee on Social Affairs and Employment, the EP, could and did say to UNICE representatives who came to him to lobby against the EWC Directive: "Look. You had the opportunity to negotiate Unless you want people like me to be legislating on areas that should be subject to an agreement between [the] Social Partners, then you'd [better] get ... into negotiations with the European Trade Union Confederation" (interview, March 1995). In a word, contrary to the pessimists' expectation, the new procedure did not give the employers side a chance to block or delay legislation which they would like to avoid. Rather, the new procedure was used by the ETUC and the EC institutions to *preempt* further

opposition by employers in the legislative process after the negotiation process failed.

5. THE PARENTAL LEAVE AGREEMENT: WHY DID THEY DO IT?

The pessimists continue to have gloomy views on the prospects for collective bargaining at the European level, after the failure of the attempts to initiate collective negotiation on the EWC issue. Rhodes, for example, expects that “the breakdown of talks between UNICE and the ETUC [on the EWC issue] suggests that the dialogue route to policymaking will remain blocked” (Rhodes 1995, p. 118). Likewise, commenting on the prospects for collective bargaining on parental leave, Ramsay argues that “it seems likely that the employers’ line in European negotiation in future will follow the path of the Social Dialogue to date Where UNICE finds a proposal entirely unacceptable, it is hard to foresee progress, though discussion in the protocol/dialogue forum might well act as a significant delaying tactic at the least” (Ramsay 1995, p. 27). In short, the collapse of collective negotiation attempts in the EWC case has left the essence of the pessimist views intact, even though the experience defied their expectations about the power relations between organized labor and capital at the EC level.

Thus, the parental Leave Agreement, reached between the Social Partners in November 1995 and signed by them in December 1995, must have taken the pessimists by surprise. The Parental Leave Agreement is the first framework agreement ever concluded between the Social Partners at the European level under the procedures laid down in the Maastricht Social Agreement. It is a “framework agreement” establishing “minimum requirements” for “the reconciliation of parental and professional responsibilities for working parents.” The Agreement recognizes two types of family leave; one, “parental leave,” distinguished from maternity leave, and the other, leave for urgent family reasons. First, the Agreement recognizes to all men and women workers a “non-transferrable” individual right to parental leave to take care of a child, born or adopted, for at least three months, until a given age up to 8 years. Second, the Agreement establishes the

right to “time-off from work” “on grounds of force-majeur for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.” Since the Agreement is only a “framework” agreement, it leaves many specific issues to be decided “by law and/or collective agreement in the Member States” according to the subsidiarity principle.

The most significant aspect of the Parental Leave Agreement is that it is the first collective agreement ever concluded between organized labor and capital at the European level. The fact that this issue was less controversial than the EWC issue had been does not reduce the significance of its adoption. Indeed, the parental leave issue had been blocked in the Council for more than a decade since it was first proposed in 1983, mainly due to Britain’s veto. And, UNICE has continuously been opposed to EC regulation on parental leave, arguing that “a binding instrument on reconciliation of work and family life is not efficient, appropriate or necessary” (UNICE 1995a; see also TUC 1988, p. 2). The adoption of the first framework agreement under the collective bargaining procedure means that employers’ opposition to recognizing and talking with organized labor at a European level has finally been surmounted at least in this case.

The Agreement demonstrates that it is really possible for the two sides of industry at the supranational level to engage in collective bargaining in a constructive way and to conclude collective agreements based on mutual sacrifices and mutual gains. Table 2 summarizes the positions of the ETUC and UNICE on major issues relating to parental leave.¹⁸ It shows that the contents of the Agreement is a compromise between UNICE and the ETUC. On many issues, the two partners could reach agreements with relative ease, once UNICE came to the negotiation table abandoning its opposition to EC regulation on parental leave. Yet, on some issues there had been real negotiations. Three issues, among others, are

¹⁸The information in Table 2 and the following discussion is based on the following sources: (1) A letter from the ETUC to its national member organizations and European Industry Federations, not dated, but sent prior to the first negotiation meeting of July 12, which provides a summary table of the positions of the Commission, UNICE, and the ETUC; (2) A summary of the meeting of July 12 1995, titled “Negotiations on the Reconciliation of Work and Family Life, Summary Report No. 1, Meeting of 12 July 1995,” minuted down by Francois Ballesterio on July 18 1995; (3) *EIRR*, no. 261, p. 3; (4) TUC 1995 and 1996; and (5) UNICE 1995a.

Table 2. Positions of UNICE and the ETUC on Major Issues in the Negotiations on Parental Leave

issues	UNICE position	ETUC position
nature of instrument	<ul style="list-style-type: none"> - no binding instrument - framework agreement preferred than a directive - minimum requirements 	<ul style="list-style-type: none"> - framework directive, or framework agreement with general applicability - minimum requirements
scope	<ul style="list-style-type: none"> - parental leave only 	<ul style="list-style-type: none"> - parental leave - leave for descendants and ascendants - leave for pressing family reasons
duration	<ul style="list-style-type: none"> - 3 months 	<ul style="list-style-type: none"> - minimum 3 months
coverage	<ul style="list-style-type: none"> - full- or part-time - no recognition of a universal, individual right - threshold of 50 employees 	<ul style="list-style-type: none"> - full- or part-time - parental leave as a personal, universal, non-transferable right - no threshold
income	<ul style="list-style-type: none"> - no additional costs for employers 	<ul style="list-style-type: none"> - rights to maintain income and social security cover
job and other rights	<ul style="list-style-type: none"> - guaranteed return to a “corresponding” post 	<ul style="list-style-type: none"> - protection against redundancy - guaranteed return to the person’s post or an equivalent one - maintenance of all rights during the parental leave: e.g., length of service, vocational training, trade union rights
implementation of the agreement	<ul style="list-style-type: none"> - in a decentralized way by the social partners - unlimited derogation possible by social partners 	<ul style="list-style-type: none"> - by the social partners, but with Member States’ guarantee - no derogation; but, adaptations allowed

generally identified as the most contentious issues in negotiation on parental leave. (1) The scope of any framework agreement: UNICE wanted to restrict discussion to parental leave, i.e., parents caring for their own child, while the ETUC was in favor of leave which could also be used to care for dependent older relatives and also for unforeseeable circumstances and emergencies. (2) Income during leave: The ETUC maintained that workers taking parental leave must receive an income and social security cover during the leave, whereas UNICE was opposed to any additional cost for employers. (3) Company-size thresholds: UNICE was keen to restrict the right to parental leave to employees in companies over 50 workers, excluding smaller companies from the coverage, while the ETUC wanted to establish parental leave as a universal right, yet showing its readiness to accept some adjustments for small companies. Apparently, the ETUC largely gained on the first and last issues, and UNICE's position prevailed in the second issue.

Then, how can we explain the successful conclusion of a collective agreement on parental leave? Again, the focus of the question remains on the employers side; that is, why did UNICE consent to the Parental Leave Agreement? Two factors seem to be important: (1) the experience of the EWC case and (2) UNICE's desire to keep open the collective bargaining procedure as opposed to the legislative procedure.

First, the conclusion of the framework agreement on the parental leave issue was facilitated rather than aggravated by the previous experience of the failure in attempts at collective negotiation on the EWC issue. While the EWC case was an example of a failure in using the collective bargaining procedure, I assert, it nevertheless was an important step in establishing collective bargaining at a European level. Before the experience of the EWC case, the employers, like the pessimists, believed that collective bargaining at a European level, if ever initiated, would depend virtually entirely on the employers side. From the EWC experience, UNICE must have learned that its bargaining power *vis-à-vis* the ETUC is not necessarily stronger; that the political will of the Member States and the Commission to develop a social Europe is not simply "cheap talk" and should be taken seriously; and that it should be more conciliatory to the ETUC in engaging in collective negotiation if it wants to avoid legislation on certain issues. Without the failure in the

attempts at collective negotiations in the EWC case, it would have been much more difficult to reach a collective agreement on parental leave a year later.¹⁹

In particular, the CBI's refusal to endorse UNICE's agreement to the ETUC's pre-agreement requirements, which "torpedoed" the entire "talks about talks" on the EWC issue and gave the excuse to the ETUC to blame the employers side for the collapse of collective negotiation efforts, surprised and embarrassed the other member federations of UNICE. They lost some tangible benefits which they might have been able to obtain from engaging in collective bargaining with the ETUC on the EWC issue, due to the CBI's pigheadedness. The consequence was then that, in the processes of collective bargaining with the ETUC on the parental leave issue, the CBI was explicitly given only an observer status within UNICE, i.e., a "non-participating observer" or "non-voting participant" (TUC 1995; *EIRR*, no. 267, p. 21; *EIRR*, no. 261, p. 3). The restriction on the CBI's voice in UNICE must have contributed to the successful conclusion of the collective agreement on the parental leave issue, given the CBI's strong ideological opposition to collective bargaining at a European level and the labor unions' perception of the CBI as particularly antagonistic to establishing European collective bargaining.

Second, a more important incentive for UNICE to reach a collective agreement on parental leave seems to be its desire to maintain the collective bargaining route to EC social policy-making which was made available by the Maastricht Social Agreement. According to Stephen Hughes, "the employers would prefer under other circumstances, not to pursue the possibility of an agreement [on parental leave]. The factor which has brought them to the negotiating table is the impending 1996 Inter Governmental Conference and the fact that unless something has been agreed through [the] Social Dialogue before [the] Conference convenes [the] Social Dialogue might be judged to have failed and be deleted from [the] [P]rotocol" (personal

¹⁹On the part of the ETUC, the parental leave issue was a good opportunity to set a precedent for European collective agreement after having shown its bargaining strength to the employers side on the EWC issue. Parental leave had already been well established in most Member States, and thus the ETUC did not have to press hard on towards European legislation on this issue. Thus, the ETUC was eager to set a precedent for European collective bargaining on this issue.

correspondence, 9/11/95). As UNICE agreed on the Social Partners' Agreement on October 31 1991 as a way to avoid more social legislation in the EC, it still prefers collective bargaining to legislation. For instance, in its "Preliminary UNICE Contribution to Preparation of the 1996 Intergovernmental Conference (IGC)," dated July 5 1995, UNICE states that it "is broadly in favor of preserving the social dialogue provisions in Articles 3 and 4 of the [A]greement on Social Policy attached to the Social Protocol of the Treaty on European Union" (UNICE 1995b). As the 1996 IGC approached, therefore, UNICE felt the need to show that its preference for collective bargaining was not an alibi to avoid social policy legislation and to produce some tangible results from the collective bargaining procedure, in order to argue for the need to maintain the collective bargaining procedure.

The perception of the need to produce a tangible result from the collective bargaining procedure was further strengthened by the political pressures that the Member States collectively exerted on the Social Partners. The Social Affairs Council on December 6 1994 adopted under an initiative by the German Presidency, for the first time among eleven States without Britain, a resolution on the prospects for EC social policy, entitled "A Contribution to Economic and Social Convergence in the Union." There, the Council asked the Social Partners "to step up their dialogue and make full use of the new possibilities afforded them by the Treaty of European Union" and "to make use of the possibilities for conducting agreements" (Agence Europe, 12/9/94, p. 10; *Bulletin of the European Union* 12-1994, p. 94; *EIRR*, no. 254, pp. 33-35). Given the continuing political will of the Member States and the Commission to develop social Europe, UNICE had to come up with tangible results from the collective bargaining procedure to maintain the procedure which it still believed was better than the legislative procedure. Without the IGC impending, then, the Parental Leave Agreement might have been more difficult to conclude than it actually was. In short, the conclusion of the Parental Leave Agreement was facilitated and prompted by the experience of the failure in attempts at collective negotiation on the EWC issue and by the continuing political will of the Member States and the Commission to further develop a social Europe in the context of the impending IGC.

6. CONCLUSION

In addition to the two cases examined above, at least two other issues have so far been put under the procedures of the Maastricht Social Protocol and Agreement. First, the issue of “reversal of burden of proof” in sex discrimination cases, which aims to oblige the employers side to provide evidence against charges of discrimination between female and male workers, has been put under the Maastricht Social Agreement procedure, after it was blocked in the Council in September 1994. Yet, the Social Partners showed little interest in initiating collective bargaining on this issue after two rounds of consultation, reportedly because they had little experience of collective bargaining on this issue at a national level. The Commission thus proposed a draft Directive on July 17 1996, taking a legislative path. Second, the 1990 drafts on the social protection of “atypical workers,” which essentially revived the unsuccessful directive drafts of the 1980s and intended to give part-time workers, temporary workers and workers on fixed-term contracts the same rights as full-time workers, have been put under the Maastricht Social Agreement procedure, after they were definitely blocked in the Council in December 1994 by the firm opposition of Britain (Agence Europe, 12/7/94, pp. 6-7). In late June 1996, the Social Partners announced their intention to begin negotiation on this issue (*EIRR*, no. 271, p. 3), and started negotiations on October 21 with a view to reaching a European framework agreement (ETUC, *Press Report*, 25-96). At this writing, however, the negotiation looks unpromising mainly because the employers side insists on limiting the range of atypical workers to be covered by a European framework agreement on this issue (ETUC, *Press Report*, 3-97).

The analysis in this paper does not demonstrate that collective bargaining is firmly established at the European level as it is at the national level. Far from it. As the “atypical workers” case shows, it is still difficult, albeit not impossible, to reach collective agreements between the two sides of industry at a European level. As the “reversal of burden of proof” case shows, neither side may have much interest in collective bargaining on certain issues. Further, it is unlikely for the Social Partners to engage in collective

bargaining on those issues which are excluded from the Community's competencies, especially "pay." If European collective agreements are to be concluded again, they would be about qualitative issues (e.g., working conditions) rather than quantitative issues (e.g., pay and social security). Also, collective agreements to be concluded at the European level will be basically framework agreements which leave specific measures to be decided at lower levels.

Yet, the analysis in this paper reveals that the collective bargaining procedure installed by the Maastricht Social Agreement is now firmly established as an institutional route to EC social policy-making. As the Parental Leave Agreement shows, the two sides of industry may succeed in concluding framework agreements at the European level. Though collective bargaining may not be firmly established at the EC level as it is at the national level, the collective bargaining procedure is now firmly institutionalized as a route to EC social policy-making which is available to the Social Partners whenever they want to use it. The analysis also shows that in engaging in collective bargaining, the labor union side is not necessarily more underprivileged than the employers side is. Rather, provided that the Member States and the Commission continue to show their political will to further develop social Europe, the labor union side may have the upper hand in entering collective bargaining with employers at a European level, since it always can fall back upon the legislative procedure of EC social policy-making. Most significantly, thanks to the political will of the Member States and the Commission, the employers retreated from their firm opposition to any kind of collective bargaining and accepted the collective bargaining procedure as an important option. Of course, the fate of future attempts at European collective bargaining will depend on the nature of the issues, the conjunctural tactics employed by both sides of industry, and their interactions, and so on. Yet, through the failures and successes of attempts at collective bargaining, the European Community will develop into a space in which the employers and labor unions try to find mutual concessions and benefits through collective bargaining on relatively equal statuses, contrary to the pessimists' expectations.

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