

The EU and New Social Risks: The Need for a Differentiated Evaluation

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This paper looks at the EU's role in designing viable policy solutions that may help modern welfare states to cope with the challenge posed by the emergence of "new social risks". As an important example, we analyse the impact of one specific European policy, the Parental Leave Directive. We focus on both the European decision-making and the domestic implementation process in all 15 member-states, revealing that the Directive induced significant policy reforms in the majority of member states and thus facilitated the reconciliation of work and family life for many working parents. Drawing on the experience of a number of other EU Directives from the field of new social risk policies, however, we conclude by arguing that not all of the factors identified in this case apply to the area of regulating new social risks in general. Instead, we argue that the EU does not treat new social risks in a systematically different way than other social policy issues covering "old" social risks, and we make the case for a differentiated approach to studying the EU's role in the political regulation of new social risks.

1 Introduction: The EU and New Social Risks over Time

In recent decades, European welfare states have been confronted with "new social risks" whose emergence was "the result of multiple social transformations in the labour market, in family structures and gender roles as well as of changing general cultural orientations like secularisation and the decline of the work ethos of industrial society" (Armingeon/Bonoli 2003). At the heart of traditional welfare states was the typical "male breadwinner" working on a full-time basis and with an open-ended contract. Hence, the main function of traditional welfare programmes was to protect male workers from "old" social risks like invalidity, sickness, unemployment, or ageing. In contrast, employees nowadays are increasingly faced with new problems like reconciling work and family life, single parenthood, providing care for elderly, disabled, or sick relatives, unemployment as a result of low or obsolete skills, and insufficient

social security coverage due to child-related career interruptions or “atypical” forms of employment such as part-time, fixed-term, and temporary agency work (Bonoli 2003: 3-5).

In the light of these new socio-economic challenges, governments have reacted by introducing policies specifically aimed at supporting people negatively affected by these new social risks. Political responses to these new socio-economic challenges, however, have not only been confined to the national level. The European Union (EU) has also been active in this area. Although there is no specific and encompassing policy with regard to “new social risks”, some of the recent social policy measures have targeted this area.

One of the earliest manifestations of EU interest in what are now called new social risks could be found in the context of measures to combat *gender discrimination*. The Treaty of Rome adopted in 1957 already laid down the general principle of equal pay between women and men (Article 119 ECT, now Article 141). This was one of a small number of concessions for the more ‘interventionist’ delegations in the Treaty negotiations, among which there were different schools of thought on social policy. While some member states insisted on the neo-liberal concept of market-making and even wanted to unleash market forces in the realm of labour and social security costs (notably Germany), others opted for at least a limited degree of harmonisation with a view to social and labour costs (Beutler et al. 1987: 437). In the end, a compromise was found which did not provide for social policy harmonisation at the European level. The dominant philosophy of the Treaty was that welfare would be provided by the economic growth stemming from the economics of a liberalised market and not from the regulatory and distributive capacity of public policy (Kohler-Koch 1997: 76). The concession on equal pay was to accommodate the French who by 1957 already had provisions on equal pay for both sexes and therefore feared competitive disadvantages after opening up their market to the European partners.

However, it took a long time before any practical follow-up ensued, as the governments did not bother to fulfil their obligation to pay women workers equally. Starting in the 1970s, this non-discrimination principle was reinforced and considerably extended by the European Court of Justice in extensive case law (Warner 1984; Mazey 1995; Ostner/Lewis 1995; Hoskyns 1996). A number of Directives that outlawed discriminatory practices against women with regard to pay, working conditions, and statutory social security systems followed. In terms of addressing new social risks, these measures in general enhanced the social situation of the growing number of women participating in the labour market. More specifically, the EU’s gender equality policies also improved the position of part-time workers. After the ECJ had invented the concept

of “indirect discrimination”, arguing that most part-time workers were women and that therefore discrimination against part-timers also constituted an indirect form of sex discrimination, this principle was used to fight some of the most obvious disadvantages faced by this part of the workforce, such as the widespread exclusion from occupational and statutory social security schemes.

In the 1990s, the EU strengthened its policies to improve the *employment conditions of “atypical” workers*. A package of draft Directives was issued in 1990, targeting discrimination against part-time, fixed-term, and temporary agency workers (Falkner 1998). The European Commission, as the main promoter of this legislative project, suggested that such atypical work should only be used in exceptional cases. The general thrust of the Commission’s approach was to restrict atypical work as much as possible and to protect those actually working under such conditions by providing that their social protection should be equal to permanently employed persons.

Only one of these Directives was adopted shortly afterwards. It guaranteed fixed-term and temporary agency workers the same occupational health and safety protection as “normal” workers employed on a permanent basis. The debates surrounding the other proposals were much more protracted. Finally, two Directives on the non-discrimination of part-time and fixed-term workers concerning their employment conditions could be passed in 1997 and 1999.¹ It is crucial to highlight that the restrictive approach was largely dropped, the new strategy ‘en vogue’ in many EU countries being employment promotion via flexible labour markets. The Directives finally adopted combine the two goals of liberalisation/flexibilisation and of worker protection. At the moment, the last part of this “atypical workers” package, a proposal on equal pay and equal employment conditions for temporary agency staff, is still being debated in the Council of Ministers.

Another focus of EU social policy related to new social risks is the area of *reconciling work and family life*. In this context, a Directive on maternity leave and health and safety protection for pregnant workers was adopted in 1992. Among other things, this Directive guaranteed every working mother the right to at least 14 weeks of paid maternity leave and a right to return to her job afterwards. It is part of a large number of Directives in the field of “health and safety at the workplace”. That the EEC institutions “have permanently expanded their competence in the field of industrial safety” (Schnorr/Egger 1990: 82) relates, however, less to social concerns in a narrow sense

¹ As has already been noted, many forms of discrimination against part-time workers at the workplace had already been outlawed on gender equality grounds. Nevertheless, the Part-time Work Directive brought about an improvement since it defined very specific criteria for establishing discriminatory practices, and it extended non-discrimination to those part-time employees who had hitherto been unable to prove their being discriminated against since they lacked a comparable full-time worker belonging to the opposite sex.

than to the free movement of goods: the effective functioning of the Common Market was perceived to necessitate action with a view to common minimum provisions for worker protection. The issues regulated under various action programmes on worker health and safety include protection of workers exposed to emissions and loads as well as protection against risks of chemical, physical, and biological agents at work (e.g. lead or asbestos). The requirements of the Common Market reportedly made Community action necessary in the perception of relevant policy-makers (e.g. Schulz 1996: 18). Nevertheless, the rights conferred on pregnant mothers in this Directive are significant if compared to the status quo ante in a number of EU countries.

A wider perspective on reconciling work and family life was finally offered by the *Parental Leave Directive* enacted in 1996. This Directive applied not only to women, but also to men, and it covered not only provisions for parents to look after their babies, but also for employees to take care of sick or otherwise needy family members. This Directive will be the focus of the first part of this paper. More specifically, we aim to assess the policy effect of this particular measure in the member states to give one in-depth example for the effects of an EU measure in the field of new social risks. We can draw on the results of a collaborative project carried out at the Max Planck Institute for the Study of Societies entitled “*New Governance and Social Europe: Theory and Practice of Minimum Harmonisation and Soft Law in the European Multilevel System*”.² This project studied the negotiation and implementation of the main EU Directives of the 1990’s concerning labour law (on the subjects of written employment contracts, working time, protection of young workers, protection of pregnant workers, part-time work, and also on parental leave) from a comparative perspective in all 15 EU member states. When the Parental Leave Directive was adopted, experts (for example, see Keller/Sörries 1997, 1999; Streeck 1998) and specialist journals such as the *European Industrial Relations Review* (EIRR) had the impression that policy changes would only be required in a very small number of countries and that these changes would have only an altogether limited impact. We reveal that in actual fact, the impact is more profound and certainly more extensive than expected.

² Parts of the empirical data presented in this paper were gathered by our two collaborators Simone Leiber and Miriam Hartlapp. For further details on Germany, the Netherlands, Ireland and the UK see the forthcoming dissertation by Oliver Treib (2004), on Greece, Spain, Portugal, France and Belgium the forthcoming dissertation by Miriam Hartlapp (2005), and on Denmark, Sweden, Finland, Austria, Luxembourg and Italy see the forthcoming dissertation by Simone Leiber (2005). For a comprehensive comparison across all 15 countries and all six Directives studied, see our forthcoming book (Falkner et al. 2005). More details on the project group as well as information on publications resulting from this research are available on our project website at <http://www.mpi-fg-koeln.mpg.de/socialeurope>.

The paper is structured as follows. In the next section, we will sketch the process that led to the adoption of the Parental Leave Directive at the European level and provide an overview of its provisions and effects (2). Next, we will discuss the framework conditions that facilitated the adoption of this specific policy in the field of new social risks, outlining also how they were absent in other cases (3). We will conclude by discussing the lessons to be drawn from our findings with a view to the EU's role in the transformation of the welfare state to cover new social risks (4).

2 The EU's Success in Regulating New Social Risks: The Parental Leave Directive in Practice

The first Commission proposal for a Directive on parental leave and leave for family reasons dates back as early as 1983 (COM [83] 686 final). On the basis of the argument that the quite diverse national provisions were thought to hamper the harmonious development of the Common Market, an approximation on the basis of Article 100 EEC Treaty was suggested. The minimum standards suggested were: three months of parental leave for either parent (to be taken up to the third birthday of the child), and an unspecified number of days off for family reasons to be decided by the individual member state. With regard to social insurance and pay, leave for *family reasons* was to be treated as time off with pay. In contrast, pay or indemnity for parental leave was only an option, to be met by public funds. The Commission advocated an unequivocal non-transferability of these rights.

As a result of opposition by the UK and a number of other member states, however, unanimous agreement on the draft was impossible. While the Conservative UK government was opposed to the Directive for ideological reasons, the Belgian and German governments were reluctant to accept the proposal because it would have interfered with ongoing domestic reforms. However, party politics also played a role in triggering resistance by these countries. In Germany, debates on the establishment of a parental leave scheme were underway when the Commission tabled its draft. The envisaged scheme was relatively generous, but provided for parental leave to be a family entitlement which could be transferred between mothers and fathers. The draft Directive, in contrast, included the principle of non-transferability, which meant that fathers would have stronger incentives to go on leave. This was not acceptable for the centre-right German government,³ and therefore, Germany was among the opponents of the Commission's parental leave proposal (Buchholz-Will 1990). In Belgium, in the

³ In September 1985, the German Social Democrats tabled an alternative proposal (BT-Drucksache 10/3806). Although not including non-transferability, it provided for a prolongation of the leave period if both parents shared the leave. The government, however, refused this idea and went ahead with its own transferable scheme, which was finally adopted in December 1985.

early 1980s, the Ministry for Social Affairs had tabled plans to introduce a national parental leave scheme, but this motion encountered opposition within the centre-right government coalition. As a compromise, a more moderate (and more employer-friendly) scheme of career breaks was created which offered the possibility of up to one year off work, but depended on the employer's agreement and required replacement by an unemployed person. The draft Directive would have called for a significant upgrading of that compromise and was thus refused by the Belgian government in 1985 (Interview B6: 30-37, Malderie 1997). Hence, the proposal was set aside for almost a decade.

Surprisingly, it was the Belgian Council Presidency that brought the Directive back on the agenda in 1993. This policy shift was caused by a domestic change of government. The Liberals had switched place with the Socialists, who now formed a grand coalition with the Christian Democrats. Hence, the political climate for parental leave in Belgium was much friendlier than eight years earlier. Therefore, the Belgian presidency presented a new compromise proposal on parental leave. The new text did not provide for non-transferability any more, which made the proposal acceptable for Germany. British resistance continued, however. During the Social Council's November session, the UK reportedly tried in vain to obtain derogation from the Directive, and then restated its opposition.⁴ Fruitless negotiations continued until autumn 1994. Despite consensus among eleven delegations in the last relevant Council debate on 22 September 1994, adoption of the proposal was still not possible due to a British veto (Ministerrat 1994; Hornung-Draus 1995).

This was the ideal situation for an application of the Maastricht Social Agreement, which by then had already been in force for almost a year. It excluded the UK from the social policy measures adopted by the other (then) eleven member states and allowed for the adoption of Euro-collective agreements between the major interest groups on social issues that could be implemented by the EC Council Directives (for details on the Social Agreement, see Falkner 1998). Hence, consultation of labour and management on the issue of "reconciliation of professional and family life" was instigated by the Commission on 22 February 1995, and an agreement between the major interest groups was signed soon thereafter (see section 3 below).

The *general aim* of this so-called framework agreement (and hence the ensuing Council Directive) is, according to the preamble preceding the main text, "to set out minimum

⁴ At one point, a lowest-common-denominator solution seems to have emerged: the UK wished parental leave to be only granted to mothers, not to fathers. Reportedly, only the Irish delegation and the Commission were immediately against this "awful" change (as one Commission official described it in an interview), which made the Commission threaten to bring in the ECJ against this discrimination on grounds of sex.

requirements on parental leave and time off from work on grounds of force majeure, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women.” The purpose of the agreement is therefore to enable working parents to take a certain amount of time off from work to take care of their children. In this context, particular emphasis is put on enabling and encouraging men to take on a greater share of childcare responsibilities.

The *compulsory minimum standards* of the Directive thus encompass seven provisions: workers must be granted the right to at least three months parental leave (1); this entitlement is to be an individual right of both male and female workers (2); parental leave not only has to be provided for parents with children by birth, but also to those who have adopted a child (3); workers may not be dismissed on the grounds of exercising their right to parental leave (4); after the leave, workers must be able to return to the same, or, if that is not possible, to an equivalent or similar job (5); rights acquired by workers before the beginning of parental leave are to be maintained as they stand until the end of the leave period and have to apply again thereafter (6); and, finally, workers have to be granted the right to “force majeure leave”, i.e. a certain amount of time off from work for unforeseeable reasons arising from a family⁵ emergency making their immediate presence indispensable (7).

These binding provisions notwithstanding, establishing the access conditions and modalities for applying the right to parental leave and leave for urgent family reasons is left to the national governments and social partners. Hence, the Directive includes a number of *exemptions and derogations* from the above-mentioned standards. First, the entitlement to parental leave may be made subject to workers having completed a certain period of work or length of service, which, however, may not exceed one year. Furthermore, a worker planning to take parental leave may be required to notify his or her employer of the dates at which the period of leave is to start and finish. It is up to the member states to decide upon the length of the notice period. Moreover, employers may be allowed to postpone the granting of parental leave for “justifiable reasons related to the operation of the undertaking” (Clause 2.3.d of the framework agreement). In addition, member states can establish special parental-leave arrangements for small undertakings. Finally, the conditions of access and detailed rules for applying parental leave may be adjusted to the special circumstances of adoption.⁶

⁵ The Directive does not define the term “family”. This is explicitly left to the member states (Ministerrat 1996). It is crucial to note, however, that by using this term, force majeure leave cannot be restricted solely to sickness or accidents of children, but must at least cover unforeseeable emergencies of spouses, too (for a similar interpretation, see Schmidt 1997: 122).

⁶ In addition to these binding standards and derogation possibilities, the Directive contains no less than nine *non-binding soft law provisions*. The large amount of non-binding recommendations,

What was the difference between the binding standards of the Directive and the existing policies at the national level? Given the largely sceptical assessment of the Directive after its adoption, it might come as a surprise that our in-depth analysis of the Directive's compulsory reform implications reveals that some sort of *adaptational pressure was created in all 15 member states*. However, the amount of "hard" policy misfit differs widely among different countries. *Four countries did not have any generally-binding legal provisions on parental leave when the Directive was adopted: For Ireland, Luxembourg, and the United Kingdom, the Directive really meant a complete policy innovation in the sense that employees for the first time were given the right to take parental leave. Belgium also had no statutory parental-leave scheme covering all employees, but the practical relevance of this considerable legal misfit was somewhat softened by the fact that parental leave was already established in the public sector and that additionally, a scheme of career breaks was in operation.*

The remaining member states had parental leave systems in place. At first sight, these systems were all more generous than required by the Directive, e.g. concerning longer leave periods than the Directive's three months and/or some sort of payment during parental leave. However, an exclusive perspective on the length of, and payment during, parental leave overlooks crucial issues. In a considerable number of countries, parental leave was not an *individual right* of male and female workers alike. In these countries, the Directive hence demanded the introduction of qualitative improvements to the existing schemes. In *Austria* and *Italy*, the parental leave regulations were mainly focused on women, whereas fathers were entitled to take the leave only if the mother refrained from using her right. In contrast, the Directive required the entitlement to parental leave to apply equally to women and men. Less significantly, the *Austrian, German, Greek, and Portuguese* systems excluded single-income families, that is, the typical male breadwinner could not take parental leave if his partner was not employed but e.g. worked at home as a housewife, or studied. Meanwhile, almost all of these shortcomings have been removed as a reaction to the Directive.⁷

Moreover, two countries completely debarred further important categories of the workforce from being covered by the scheme. In *Greece*, all workers in small and medium-sized enterprises with less than 50 employees had no entitlement to parental leave. As a reaction to the Directive, this exclusion was repealed. In *the Netherlands*,

relating to important features of the envisaged leave schemes (such as social security coverage during parental leave, flexible forms of making use of the leave, or the time up to which the leave can be taken) seems to be due to the fact that trade unions and employers in the collective negotiations at the European level could not agree on definite standards on these issues.

⁷ At the time of writing, the Greek legislation still excludes single-income couples, while the Austrian scheme still includes a small advantage for the mother.

the pre-existing parental leave scheme excluded part-time employees whose weekly working time was below 20 hours from the right to take parental leave (Interview NL4: 60-76). However, when the Directive was adopted, a national review process of the existing legislation was already under way, and the reform proposals issued by the government as a result of that review already provided for an extension of the parental leave scheme to all employees (Clauwaert/Harger 2000: 68). As a result of this parallel domestic reform process, the incorporation of the Directive into domestic law did not pose any major problems.

Furthermore, the majority of member states needed to change their legislation in regard to force majeure leave. While Denmark, Ireland, Luxembourg, and the UK did not have generally binding legal rules on time off from work due to urgent family reasons,⁸ Finland, France, Greece, Spain, and Sweden had to adapt their existing regulations, mostly by including emergencies relating to family members other than children in the scope of the leave. Hence, certain improvements were also brought about in this area. In sum, there is *not one country whose rules and regulations were already completely in line* with the Directive.

In order to *categorise the observed domestic policy effects* of the Parental Leave Directive, we use a *fourfold typology*.⁹ The first category is *no or only negligible effect*, which means that there was no impact at all or that the effect was only very small. Four countries may be included under this heading. Denmark, Finland, France, and Sweden only had to adapt parts of their existing policies on leave for urgent family reasons and did not enact any further voluntary reforms in the context of implementing the Directive. The lack of reactions to the soft-law provisions in these countries may be explained by the fact that especially in Finland and Sweden, many of the recommendations had already been fulfilled (e.g. the possibility to take part-time leave). The second category is *reinforced policy*, denoting cases where the existing policies were neither transformed fundamentally nor supplemented with qualitatively new elements. Instead, the old policy remained in place and similar elements were added. This applies only to Spain, where the Directive brought about a more explicit protection

⁸ In Denmark, force majeure leave was granted to many employees on the basis of collective agreements, which reduces the policy impact of this lack of generally binding legislation considerably. However, adaptation to the Directive met with specific difficulties since the adoption of generally binding legislation in this area clashed with the Danish tradition of autonomous social partnership. As the focus of this paper lies on the policy impact of the Directive, we will not discuss this very interesting effect here. For more details, see Falkner/Leiber (2004).

⁹ This typology is a modified version of a number of other categorizations suggested in the literature (Héritier 2001: 54; Radaelli 2001: 119-120; Börzel 2004). Note that in principle, the typology includes five categories. But the fifth category, weakened policy, did not play a role in the present cases. Theoretically, however, it is well possible that a European policy undermines the existing domestic system without completely replacing it and without adding qualitatively new elements.

of leave-takers from dismissal as well as a small (voluntary) adaptation of the rules on force majeure leave.

The third category is *patchwork addition*. Here, the fundamentals of the existing system remained unchanged, but qualitatively new elements were added. This pattern could be observed in Austria, Germany, Greece, Italy, the Netherlands, and Portugal. The final category is *paradigmatic change*, including both the complete reversal of an existing policy and the creation of an entirely new policy from scratch. In this group, we have Belgium, Ireland, Luxembourg, and the UK. Ireland and the UK were forced to create completely new parental leave systems, but did not enact any significant voluntary reforms. Belgium already had to qualitatively transform its existing system of career breaks. However, the government supplemented this step by considerable voluntary reforms (higher payment during parental leave, right to work part-time), thereby again creating something qualitatively new. Luxembourg, finally, complemented the creation of a completely new system of parental leave with significant voluntary steps, especially by offering six instead of three months leave and by providing for generous payment during the leave.

To conclude, the example of the Parental Leave Directive highlights that the EU actually has the *potential* to be a powerful and effective player in the regulation of new social risks. It follows that we need to discuss, in the next section, why these potentials were not exploited to a similar extent in the field of other new social risks.

3 An Exception Rather than the Rule? Putting the Parental Leave Directive in Context

In the previous sections of this paper, we have looked at the EU's role in designing viable policy solutions that may help modern welfare states to cope with the challenge posed by the emergence of "new social risks". The EU has so far enacted several measures that relate to this area of social policy. Many other possible measures have not even been discussed at the EU level, have never been adopted, or have only been accepted by the Council of Ministers in seriously diluted versions. In fact, the industrial relations context was of primary importance when the Parental Leave Directive was adopted. This section will discuss the favourable framework conditions underpinning this particular case, which did not exist to the same extent when similar issues came on the agenda.

Most crucially, some recent EU social policy Directives have been negotiated by the EU level social partner federations. The Council of Ministers only accepted the details

agreed by UNICE, CEEP and ETUC.¹⁰ Within these collective negotiations, general industrial relations considerations have played as important a role as concrete policy preferences (for a detailed account, see Falkner 2000). The 1992 Maastricht Treaty set up the corporatist patterns which have since characterised EU social policy. The Amsterdam Treaty introduced into the EC-Treaty (which is binding for all) what had previously been rules pertaining to the Member States with the exception of the UK. The Treaty provisions effectively give primacy to agreements between management and labour. Euro-level interest groups may, on the occasion of obligatory consultation by the Commission on any envisaged social policy measure, inform the Commission of their wish to initiate negotiations in order to reach a collective agreement on the matter under discussion. This brings traditional supranational decision-making (which involves the Commission as initiator, the Council and its working groups as most relevant decision-maker, and the European Parliament as an increasingly important co-actor) to a stand-still for at least nine months (Article 137 TEC).¹¹ If a collective agreement is signed, it may, at the joint request of the signatories, be incorporated in a ‘Council decision’, on a proposal from the Commission (Article 138 TEC).¹²

The issue of introducing Works Councils at the European level was the first to be discussed using the Social Protocol as a legal basis. Since industry had until recently vigilantly opposed European Works Councils, the ETUC was sceptical regarding this (presumably tactical) new approach and suggested *preliminary talks* on the possibility of entering into formal negotiations. After two exploratory meetings between the three cross-sectoral peak federations, during the spring of 1994, the potential “social partners” indeed failed to conclude an agreement (for details see again e.g. Falkner 2000).

Therefore, great expectations rested on the next potential Euro-social partner agreement, on parental leave. Only a year after the failure of the talks on Works Councils, the Commission started the extensive consultation process again in early 1995. This time, the three major cross-sectoral federations UNICE, CEEP and ETUC were very keen to show that the Euro-corporatist procedures of the Maastricht Treaty could actually be put into practice. Reportedly, the issue was perceived as a suitable “guinea pig” (interview with Commission official). The industrial relations aspect was by then a central concern

¹⁰ The Union of Industrial and Employers’ Confederations of Europe, the European Centre of Enterprises with Public Participation and the European Trade Union Confederation.

¹¹ The Commission and the social partners may jointly decide to extend this period.

¹² The Council acts by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas which needs unanimous decision-taking. The alternative to implementation of Euro-level collective agreements via EU law is through “the procedures and practices specific to management and labour and the Member States” (Article 138 TEC). For background information on the new decision patterns, see for example Gorges (1996); Keller/Sörries (1997; 1999); Leibfried and Pierson (1995); Platzer (1997).

of both sides of industry since the impending Intergovernmental Conference preceding the Amsterdam Treaty could have changed the corporatist patterns if they were not perceived to be workable.

The collective negotiations had been well prepared behind the scenes and indeed were successfully concluded after only five months, on 6 November 1995 (Agence Europe 8 November 1995: 15). Soon after the formal signature of the agreement on 14 December 1995, the Commission proposed a corresponding Directive to the Council. Reportedly, the draft was a matter of controversy in the Social Affairs Council (Agence Europe 29 March 1996: 8).¹³ Nevertheless, a political consensus was reached on 29 March,¹⁴ and the Directive was formally adopted without debate on 3 June 1996.¹⁵ In the case of negotiating the Parental Leave Agreement and Directive, general considerations concerning the development of an industrial relations culture at the EU level have been as important as material interests in the negotiations between UNICE, CEEP and ETUC. They also mattered to several of the delegations in the Council of Ministers. In such a situation, the common interest of all “EU social partners” tends to be upgraded and each of the negotiators is rather more ready for compromise in the policy dimension, which may give rise to more far-reaching material outcomes than would otherwise possibly have resulted.

A similar effect, albeit to a probably somewhat lesser extent, was at work in the two ensuing collective negotiations under the Maastricht Social Agreement, on atypical work. Euro-collective negotiations on part-time and fixed-term work confirmed the corporatist patterns outlined above. However, the chances for further collective agreements seemed poor at the outset, considering that the issue of atypical work is at the heart of the contemporary debates on deregulation versus worker protection (and hence: on new social risks); that UNICE had always been opposed to regulative action at the Euro-level; and that various drafts had been discussed controversially in the

¹³ For some delegations, the content of the framework agreement left too much room for interpretation, making proper application in the member states a difficult task. Others thought that the social partners had neglected powers of the EU institutions by introducing a non-regression clause and a time limit for implementation.

¹⁴ There was unanimous agreement. Adoption was, however, postponed with a view to parliamentary approval in Germany (Agence Europe 30 March 1996: 7).

¹⁵ Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC, Official Journal L 145, 19/06/1996, pp. 4-9. Since the conservative British government had secured an opt-out from the European Treaty’s social chapter at the Maastricht summit, the UK was initially not covered by the Directive. Tony Blair’s Labour government, which had assumed power in May 1997, signed up to the social chapter and declared its willingness to implement the Directives that had been enacted during the UK’s opt-out (EIRR, 282: 2; EIRR 284: 2). As a consequence, the UK also had to implement the Directive, the only difference being that its transposition deadline was later than the one applying to the other member states.

Social Affairs Council since the beginning of the 1980s. However, political developments put pressure on the negotiators. An Intergovernmental Conference on EU Treaty Reform made the social partners want to prove that the corporatist patterns were operational more than once only. Additionally, the Renault affair¹⁶ brought to the attention of the wider public the question of whether European economic integration was sufficiently counterbalanced by social policy rules.

The consultations on “atypical work” under the Social Agreement started in September 1995. Under the heading “flexibility in working time and security for employees”, the Commission tried to reconcile employers’ needs for greater flexibility with part-time and temporary workers’ needs for job security. In October 1996, UNICE, CEEP and ETUC formally launched negotiations on an agreement concerning “flexibility of working time and security for workers”. Very antagonistic starting positions meant that the three federations were “stumbling over the content of the negotiation” (Agence Europe 28 January 1997: no. 35) for several months. UNICE argued that its negotiating mandate from the member organisations was (at least for the moment) restricted to “permanent part-time” work only, thus excluding the huge number of part-timers on atypical contracts (notably fixed-term workers). The ETUC wanted to cover all forms of atypical work, i.e. part-time, temporary, casual and agency work, homework and telework (although not necessarily all in the framework of these negotiations). Following the ETUC’s demand, the part-time agreement’s preamble included the statement that the signatories intended to “consider the need for similar agreements relating to other forms of flexible work”. With a view to content, the Part-time Work Agreement aims to “provide for the removal of discrimination against part-time workers and to improve the quality of part-time work”, while on the other hand it seeks to “facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time” (Clause 1). More specifically, it lays down (only) one broad compulsory minimum standard: with regard to working conditions, part-time workers may not be treated less favourably than comparable full-time workers unless such unequal treatment is objectively justified.

Separate negotiations on fixed-term workers were initiated in March 1998. This issue proved even more politically sensitive and technically difficult than the part-time one (EIRR 304: 15). Towards the end of the official nine-month deadline in late 1998, the positions still seemed irreconcilable. UNICE stressed that fixed-term contracts were a

¹⁶ A plant in Vilvoorde (Belgium) was shut down in order to profit from cheaper labour and higher subsidies in Spain (see e.g. Agence Europe 3 March 1997: no. 34). This provoked renewed controversies on the role of labour costs (and subsidies) in the Internal Market, and prompted ETUC support for simultaneous protest actions and strikes in Belgium, France and Spain. This may be considered a new quality of European trade union activism.

vital means of enabling employers to respond to fluctuating market demands and wanted to secure a significant degree of flexibility and autonomy for companies. The ETUC, by contrast, fought for more security for workers on such contracts and against potential abuse of fixed-term work. Nevertheless, a compromise was hammered out in January 1999 and an agreement formally signed by UNICE, CEEP and ETUC on 18 March 1999. This was made possible by the very strong framework character of the final text and by acceptance on the part of the ETUC that initial recourse to fixed-term contracts was not regulated. By contrast, the employers accepted measures against the potential abuse of successive fixed-term contracts.

When they were adopted, it seemed that in both cases *low substantive standards*¹⁷ were accepted by labour *in exchange for industrial relations interests*.¹⁸ Particularly in the part-time case, this may be considered a trading of women's interests (according to Eurostat data, 32 per cent of female but only 5 per cent of male employees were part-timers when the agreement was negotiated, see Agence Europe 20 September 1997: no. 30) against the organisational self-interests of the ETUC and its member organisations. The ETUC's Women's Committee's rejection of the deal did, however, not affect the result of the vote in the ETUC's executive committee because a simple majority of votes in favour was sufficient.

While on part-time and fixed-term work, compromises could finally be reached, the ensuing negotiations on temporary agency work failed entirely.¹⁹ Euro-collective negotiations have been conducted on *temporary work* but collapsed in spring 2001 (see Agence Europe 23 and 28 May 2001, EIROnline 28 June 2001). At least procedurally, the European-level management and labour organisations could have easily made temporary agency work the subject of a Euro-collective agreement since this issue represents the final part of the atypical work package as suggested by the Commission in the early 1980s and as incorporated in the second and third agreements under the

¹⁷ There was, at least initially, much criticism of the standards agreed (see e.g. references in Hartenberger 2001; Keller/Sörries 1999: 122). To date, there is no profound implementation study on the effect of these Directives in the member states. The Part-time Work Directive, at least, is covered in a forthcoming study (Falkner et al. 2005). Note that the crucial binding standard set by the Fixed-term Directive is again on non-discrimination, similarly to the above quoted standard of the Part-time Work Directive.

¹⁸ And for greater involvement of the "social partners" at all layers of the European multi-level system. Note that a multi-faceted role for the national social partners is foreseen in both the Part-time and the Fixed Term Agreements, e.g. in the specification of details during the implementation of the agreement and in the periodical review of certain aspects.

¹⁹ For sure, a number of other Commission proposals outside the field of new social risks were also not negotiated by the social partners, e.g. the burden of proof in sex discrimination cases (Council Directive already adopted), an instrument on sexual harassment (still pending) and a Directive on worker information and consultation in national enterprises (still pending).

“negotiated legislation” track (see above). However, these talks had been intricate from the very beginning, with several issues being very controversial. The crucial stumbling block was, in the end, the notion of a “comparable worker” when determining the conditions of non-discrimination of temporary workers.²⁰ In March 2002, the Commission presented a draft Directive to the Council and the European Parliament that has not been adopted to date (see EIRR 23 April 2002 and, on the most recent failure to come to an agreement, EIROnline 24 June 2003).

It must be mentioned that a further issue in the field of new social risk regulation (in the wider sense) has been on the EU’s agenda, albeit in a different perspective. A legally non-binding agreement on *telework* has been agreed between UNICE, CEEP and ETUC on 16 July 2002. From the outset, the goal of these negotiations was only a document of voluntary character since UNICE considered telework as a form of working (and not a legal status) and argued that it was inappropriate for a statutory instrument. This agreement will serve as the crucial test case for the potentials of a purely voluntaristic approach to EU-level industrial relations, and to the “regulation” of new social risks (on the concept of neo-voluntarism in EU social policy see Streeck 1995).²¹

4 Conclusions

The EU has at times co-shaped the regulation of new social risks to an extent that had not been foreseen even by experts. This has been underlined here with one particular policy, namely the Directive on parental leave and leave for urgent family reasons. However, there is no consistent or even pre-defined EU policy on new social risks, in general. There are also no stable actor coalitions (the UK has traditionally been very reluctant to regulate in this field but even this has changed after Labour had assumed power and after EU regulation shifted more towards liberalisation and flexibilisation).

Rather, changing circumstances have decided on the fate of the various proposals that were elaborated by the Commission over time. The most important factors included two crucial issues. First (and predominantly of relevance before the Maastricht Treaty), whether a proposal could be subsumed under the area of “health and safety at the workplace” with a distinctive and facilitating Treaty basis (not demanding unanimity in

²⁰ For the purposes of equal treatment, the ETUC was not ready to accept that the member states should be allowed to determine the comparator (from the level of either the respective user company or the agency). Instead, the unions wanted to establish the principle of the user firm as comparator and, at most, were prepared to allow derogations from this principle if endorsed in domestic collective agreements. UNICE, by contrast, was not prepared to allow for the agreement to stipulate that a comparison had to be made with the company using temporary work (except for a few defined areas).

²¹ It is not possible here to conduct a survey on the follow-up in the member states.

the Council of Ministers but only qualified majority). In the cases of the Pregnant Workers Directive and the Health and Safety of Atypical Workers Directive (see section 1), this was the case. Second (but of relevance only since the Maastricht Treaty), the industrial relations interests of the major Euro-federations also help decide the fate of proposed EU regulation on new social risks (see section 3). This helped push through the Parental Leave Directive with its significant adaptation pressures for the member states (see section 2) and two further Directives in the field of atypical work, but did not suffice to reach agreements in other cases (see section 3).

To conclude, EU citizens actually have at times benefited from supranational rules concerning one or the other new social risk. Most importantly, atypical workers and working parents have gained more rights through EU Directives. At the same time, there is still a very long way to go towards a fully-fledged EU policy vis-à-vis new social risks, in a larger sense. Recent EU policy-making in this area suggests that new social risks are not treated in a systematically different way than social policy issues covering “old” social risks. There is no specific EU policy on new social risks, and there is no particular actor coalition which would support these kind of policies more than other social policy initiatives. Just like in relation to EU social policy in general, therefore, a differentiated approach in evaluating the existing EU measures on new social risks (and in pondering the prospects of pending proposals) is indispensable.

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