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Europeanization through procedures and practices?

The implementations of the Framework Agreements on Telework and Work-related Stress in Denmark and UK

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Indholdsfortegnelse

Indholdsfortegnelse.....	2
Acknowledgements.....	3
List of acronyms used.....	4
Introduction.....	6
Literature Review.....	7
Argument.....	9
The implementations of the Framework Agreements on Telework and Work-related Stress in UK and Denmark ...	14
Conclusions.....	24
Bibliography.....	26

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List of acronyms used

AC - Danish umbrella organization covering professional employees

CBI - UK employers' organization

CEEP UK – The UK arm of CEEP, the European Social Partner that represents European public employers

COI – Danish bargaining cartel representing trade unions in the industrial sector

DA – Danish confederal-level employers' organization

DI – Danish employers' organization for the industrial sector

DFL – Danish insurance workers' trade union

DM – Danish metal workers' trade union

DTI – UK Government's Department of Trade and Industry

ETUC – European Trade Union Confederation

ETUI – European Trade Union Institute

EurComm – European Commission

FA – Danish employers' organization for the financial sector

FF - Danish financial workers' trade union

FPB – UK organization that represents small businesses

FTF – Danish trade union confederation

HK Trafik & Jernbanes – Danish rail workers' trade union

HSE – UK Health and Safety Executive

KL – Danish employers' organization for the local government sector

KTO – Danish bargaining cartel representing trade unions in the local government sector

LO – Danish trade union confederation

OMC – Open Method of Coordination (a non-legally binding method of European governance)

TUC – UK Trades Union congress

UEAPME – European Social Partner representing small businesses

UNICE – European employers' organization and European Social Partner

Introduction

The Framework Agreements on Telework and Work-related Stress represent a new form of European governance. Although scarcely revolutionary, the Agreements themselves nevertheless signify the first two instances of the European-level Social Partners concluding EU-level Agreements to be implemented by their member organizations via ‘the procedures and practices specific to management and labour in the Member States’¹. This is the first implementation route that was set out in articles 136 to 140 Social Protocol, annexed to the Maastricht Treaty in 1991, that gave the European-level Social Partners the right to conclude European-level collective agreements. The second implementation route, whereby the Agreements concluded were implemented as European Directives via Council Decision, was the form in which the three inter-professional level Framework Agreements of the 1990s, on Parental Leave (1995), Part-time Work (1997), and Fixed-term work (1999), were implemented. The key distinction between the two implementation routes is that the second is legally binding, whilst the first is non-legally binding. In this paper, we will discuss the problems associated with ‘the procedures and practices specific to management and labour in the Member States’ implementation clause that the Framework Agreements on Telework and Work-related Stress were to be implemented by. We will also discuss the extent to which the content of the two Agreements are of relevance to national regulatory contexts. These twin concerns of ours are of particular contemporary relevance, for the inter-confederal level European Social Partners are currently negotiating a proposed Framework Agreement on Harassment and Violence. This Agreement will also be implemented via the first implementation route, making it the third Agreement of its kind. Also significantly, the European Social Partners are currently debating the title of the final Agreement. That ETUC advocate the use of the term ‘autonomous Framework Agreement’ rather than ‘voluntary Framework Agreement’ suggests that the form that non-legally binding Framework Agreements are implemented in is being debated at the European level. This too makes our study the more relevant. In our paper, we will start with a review of the literature regarding the European Social Dialogue and ‘soft’ law, before setting out our argument. We will then examine the actual implementations of the two Agreements in UK and Denmark, before we finally offer a conclusion.

¹ Whilst this was the wording of the implementation clause of the Telework and Work-related Stress Agreements, the Social Protocol itself specified implementation ‘in accordance with the procedures and practices specific to management and labour *and the Member States*’ (italics added)

Literature Review

Academic appraisals of the legally-binding Social Partner Framework Agreements

A lavish level of scholarly attention was bestowed on both the new procedural rights granted to the European Social Partners to conclude EU-level collective agreements under the terms of the Social Protocol, and the three Directive-backed Social Partner Framework Agreements that followed (Jensen et al, 1999; Keller and Bansbach, 2001; Keller, 2003; Streeck, 1994; Falkner, 1998). The debates focused upon the robustness of the new procedural machinery (Falkner, 1998; Jensen et al, 1999) and the quality of the Agreements themselves (Keller and Bansbach, 2001; Falkner, 1998). Keller (2003) identified two schools of thought within the literature; the Euro-pessimist school and the Euro-optimist school. The latter were broadly positive about the European Social Partners' new procedural rights and the output of this process. Arguing for the deep political significance (Jensen et al, 1999; Falkner, 1998) of the development of such rights and the substantial quality of the three Framework Agreements themselves (Falkner, 1998), the school contended that the policy processes associated with the European-level Social Dialogue signified the *Europeanization* of national systems. The 'Euro-pessimist' school was rather less sanguine about the process. This group of scholars highlighted the limited quantitative output (Keller and Bansbach, 2001; Keller, 2003) of the procedure, the likelihood that the Agreements would not add significantly to national-level rights and the formidable structural and political barriers (Streeck, 1994; Keller and Bansbach, 2001) to the conclusion of Framework Agreements at the European level. For writers like Streeck and Keller, the European-level Social Dialogue was symptomatic of a fragmenting or *Americanizing* set of national systems in which the social aspect of European integration was severely lagging behind the economic aspects.

In a definitive 2005 empirical study of the implementation of six Social Policy Directives, Falkner et al at least appear to have slain the myth that the Framework Agreements on Parental Leave and Part-time Work failed to improve at all on the quality of national level rights. By unearthing that in the great majority of cases EU Social Policy Directives led to the alteration of national law to improve social rights, the authors conclusively demonstrated that EU Social Policy Directives such as those on Parental Leave and Part-time Work did lead, at least to some extent, to the *Europeanization* of national systems. Sceptics might add that this victory has been rendered pyrrhic by the turn towards legally non-binding European Framework Agreements. The concern of many (Keller, 2003; Branch, 2005) is that Framework Agreements implemented via the first route will be implemented in a sporadic fashion as a consequence of their non-legally binding form. Berndt Keller elaborated this view in a 2003 article, contending such Agreements were likely to have very limited impact in those states without integrated social dialogue structures.

Debates on 'soft' law

Defenders of the non-legally binding Framework Agreements would point out that 'soft' law has assumed an increasingly high profile in European governance over the last few years, and that there exists a substantial academic literature that asserts that 'soft' European modes of governance like the *Telework and Work-related Stress Agreements* can affect real change in the member states (Zeitlin and Trubek, 2003; De La Porte and Pochet, 2002). Several defences of 'soft' law have been put forward. One is that 'soft' law can add impetus to policies in existence or development at the national level (De La Porte and Pochet, 2002; Leonard, 2005). In a 2002 study of Social Policy and the OMC, De La Porte and Pochet argued that national Governments are more likely to implement OMC social policy initiatives if the form that the OMC takes coincides with the Government's policy goals. Thus, national level actors whom advocate the policy goals promoted by 'soft' law have their position bolstered by the existence of European 'soft' law on the policy.

A second point that has been repeatedly offered in defence of 'soft' law is its potential to bring new issues onto the national agenda. The literature also associates the introduction of 'new' topics into national policy debates with substantial impact given that the topics have not previously been managed (De La Porte and Pochet, 2002). Various authors have also argued that the processes associated with 'soft' forms of governance are vital in the extent that they inculcate a 'European' culture of policy making (Lopez-Santana, 2006; Jacobsson, 2003). In a 2003 article, Jacobsson asserted that 'symbolic' policies were seldom that and that real change was possible via the process inherent to a governance form like OMC. The author argued that the OMC's use of methods such as 'governance by persuasion; diffusion; standardisation of knowledge; strategic use of policy linkages; and time management' had the potential to transform national systems through the inculcation of national actors with EU-level policy discourses.

In their 2004 work on European Integration and Industrial Relations, Marginson and Sisson were cautiously positive about the potential of 'soft' forms of governance. The authors noted that the use of 'soft' law at the European level resolved the European collective action problem. The scholars also argued that the use of 'soft' tools at higher tiers of governance had the potential to stimulate the production of 'hard' results at lower levels. Many precedents for the transformation of 'soft' law into 'hard' law also exist at the level of the EU. The Euro first relied upon 'soft' forms of governance, whilst the Social Chapter was originally drafted as a 'soft' agreement before being incorporated in 'hard' form in the Social Protocol. The moral that should be taken is that 'soft' law should not be equated with weakness, but is often endowed with substantial 'symbolic' significance and possesses the ability to become 'hard' at a later date.

Argument

Analytical Starting points

As has been established above, the legally non-binding Framework Agreements on Telework and Work-related Stress are distinctive from the Directive-backed Framework Agreements of the 1990s and thus merit a separate approach to the appraisal of their potential to affect change in the member states. We feel that a two-fold approach to the legally non-binding Framework Agreements and their implementation is appropriate. The merits of this dual approach are that both the procedural and substantial dynamics (and the interplay between the two trends) of the Agreements and their implementation will be focused upon, thus allowing us greater scope to appraise the extent of the influence that the Agreements are exerting in the member states.

The first (1) part of this approach lies in an investigation of the ‘procedures and practices specific to management and labour in the Member States’ implementation clause. We focus on this because it is the sole criterion by which European-level actors may insist on the national implementation of their Agreements. The legally-binding nature of the first three Social Partner Framework Agreements ensured that the ‘correct’ implementation of the Agreements consisted of nothing less than the incorporation of the Agreements into national law and the subsequent complete coverage of the workforce. For Framework Agreements implemented via the first route, the national ‘procedures and practices’ implementation clause represents the only specification with which European actors may insist upon national implementation. This implementation clause is also likely to yield highly diverse implementation outcomes, for as the literature stresses (Hyman and Ferner, 1998), there are four main and differing types of systems in Europe; the Anglo-Saxon model, the German Corporatist model, the *estatic* model and the Nordic voluntarist model. A fifth should also be added now that numerous ex-Soviet bloc states have acceded to the Union (Meardi, 2002). Without the existence of the national ‘procedures and practices’ clause, the Agreements on Telework and Work-related Stress would assume the status of entirely voluntary agreements, in turn subject to whatever form of implementation national affiliates saw fit. It is thus crucial that the ‘procedures and practices’ implementation clause is both viable and respected at the national level, and our paper will discuss the extent to which this is the case.

The second (2) part of our approach consists of an examination of the substance of the Framework Agreements on Telework and Work-related Stress and their relevance to the national level policy agendas. The issue of the quality of the content of the Framework Agreements is crucial. Should it be concluded that the Agreements on Telework and Work-related Stress offer a dubious level of added value to national actors, then not only would this betray a weak EU-level instrument, but it would also severely impair the extent to which national systems had been ‘Europeanized’ via the EU-level Framework Agreement, thus undermining part of the rationale for EU-level collective agreements.

Our argument

Our argument in this paper is two pronged. Firstly, we will offer a critique of the national 'procedures and practices' implementation clause. It is our contention that implementation via 'the procedures and practices specific to management and labour in the Member states' is a problematic implementation clause. This is especially so when compared to the second implementation route, that offers legal backing of the Framework Agreements, their subsequent incorporation into national law, and complete coverage of national workforces. Several factors lead us to believe that the national 'procedures and practices' implementation clause is fragile. The first is that many states have very under-developed national 'procedures and practices' that relate to national confederal-level social dialogue. One such example is the set of eight ex-Soviet bloc states that acceded to the European Union in 2004. The youthful nature of their social dialogue structures is a familiar point in the literature (Vaughan-Whitehead, 2003), and it is thus highly arduous to specify implementation via national 'procedures and practices' where these 'procedures and practices' are far from prominent. This point was recognized by our EU-level interviewees (UNICE, UEAPME, ETUC, ETUI, EurComm), whom mentioned the positive role that the implementation of the Framework Agreements had played in developing such structures, but also noted the problems this posed when gauging 'effective' national implementations in these states. Another example of such a state is the UK, where precedents for national level social dialogue are exceptionally limited. In our UK research, we found that ambivalence over UK national 'procedures and practices', along with modest interest in the issues addressed by the EU Agreements, led to implementations of the European Agreements that were largely improvised.

It is also true that national labour markets are in a constant state of flux (Hyman and Ferner, 1998; Marginson and Sisson, 2004), and that implementation via national 'procedures and practices' is thus an implementation clause that is likely to be the subject of differing national interpretations, even in those states where there are traditions of national-level social dialogue. The plethora of tools used to regulate employment relations in states is a familiar point in the literature (Marginson and Sisson, 2004); in some states the law is preponderant over social partner governance, whilst in others the reverse is true. The reality is that most states regulate employment relations via a byzantine mixture of public and private governance and 'hard' and 'soft' law (Marginson and Sisson, 2004), the immediate constitution of which is likely to be subject to perpetual change and will vary from issue to issue. Whilst national 'procedures and practices' are discernible and should be subject to classification, they are also highly complex and fragmented. The point is that national 'procedures and practices' will naturally be the subject of differing interpretations, which makes the implementation clause of the Framework Agreements on Telework and Work-related Stress difficult. This also rings true for the emphasis of the European trade union movement (ETUI) on the latter aspect of the Social Protocol's implementation

clause², and their subsequent insistence on national Governments' role in national 'procedures and practices'. Statist action assumed no small part in the implementation of the Telework Agreement across Europe (ETUC et al, 2006), yet there still remains the possibility of Governmental ambivalence over their role in implementing an Agreement signed by national Social Partners rather than themselves (DTI), and also of debate as to the exact position of the state in relation to national 'procedures and practices' given the constitution of national labour markets that we have outlined above.

Whilst sectoral implementations of the European Agreements in Denmark did follow a logic that largely accorded with national 'procedures and practices' (FF, FA, HK Trafik & Jernbanes, KTO), there were various interpretations as to the make up of national 'procedures and practices' at the inter-confederal level (DA, LO, AC). The Confederations DA and LO had a long discussion as to the most fitting way to implement the Telework Agreement at the confederal level, whilst DA refused to enter into negotiations with AC on the implementation of the same Agreement, arguing that to do so was not a tradition in Denmark (DA, AC). It is also a striking paradox that much of the change in national labour markets over the last few decades has been caused by European-level developments (Marginson and Sisson, 2004). This also makes implementation of European Agreements via national 'procedures and practices' problematic. In Denmark, the concept of an inter-confederal 'follow up' agreement, the means used by DA and LO to implement the Telework Agreement, was itself developed to implement EU labour law directives. National systems very often interact with the European level in creative and innovative ways (Marginson and Sisson, 2004). That an European Agreement specifies implementation via national 'procedures and practices' is not without irony, and is likely to inspire various national interpretations.

Interpretations of national 'procedures and practices' are also likely to vary in relation to the topic and content of the European Agreement. Our research uncovered that national actors were often inclined to decide on an implementation route consistent with the issue addressed by and content of the European Agreement, rather than one based on a reading of national 'procedures and practices'. This was the stated strategy of many Danish employers' associations (DA, DI, KL). The trade union confederation LO also agreed not to conclude a confederal 'follow up' agreement on the Work-related Stress Agreement based on their view that such an agreement would not add value to the Danish context (LO). The great paradox of this is that work-related stress is a highly topical issue in Denmark (European Foundation, 2005), and it is thus quite an indictment of the content of the Agreement that LO assume such a position. In the UK, whilst TUC did advocate a 'hard' implementation of the Work-related Stress Agreement (Larsen and Andersen, 2006b), the organization's willingness to accept a very 'soft' implementation of the Telework Agreement was based on

² The Social Protocol specified implementation 'in accordance with the procedures and practices specific to management and labour *and the Member States*' (italics added). An ETUI interviewee argued that the inclusion of 'and the member states' meant that national Governments had to assume the role foreseen for them in their national systems.

the position that Telework was not a priority issue for the organization. It would seem that where there is a cool level of interest in the content of the Agreement, there is a low likelihood of great debate over national 'procedures and practices'.

This final point ties in with our second line of argument. This is that, at least in the cases of Denmark and UK, the European Agreements on Telework and Work-related Stress only inspire a limited amount of interest from national actors, in many cases are viewed as addressing somewhat peripheral issues that are already effectively regulated at the national level, and are sometimes viewed as overtly weak to offer comprehensive solutions to the problems that they address. This second aspect of our argument will be heavily intertwined with the first aspect, for, as illustrated above, it appears that a modest level of interest in the EU-level Agreements encourages lacklustre debate as to the constitution of 'national procedures and practices', which in turn encourages a drift towards ad hoc implementation strategies. One reason for this limited degree of interest is that in many cases regulation of the topics already exists at the national level. It thus appears that the European Agreements are of questionable relevance to national agendas given that many of their provisions are already in place. In our UK research, we found that many organizations (HSE, CEEP UK, CBI) regarded the existing UK legislation pertaining to work-related stress as quite adequate, and also that the UK Health and Safety Executive's 2004 *Management Standards on Work-related Stress* offered a more comprehensive voluntary set of guidelines than the European Agreement. UK interviewees also held similar positions regarding the Telework Agreement (CBI, TUC, CEEP). Interviewees reported that teleworking was merely an aspect of the employment relationship, and was therefore covered by legislation regarding health and safety and gender and race discrimination (CBI, TUC, CEEP). In Denmark, existing regulation also covered much of the content of the Telework and Work-related Stress Agreements. With the exception of the implementation of the Work-related Stress Agreement in the local Government sector, all of our trade union interviewees from sectoral and cartel-based organizations (KTO, HK Trafik & Jernbanes, FF) reported that the content of the two European Agreements were already covered by prior regulation. Confederal interviewees doubted the extent to which implementation of the Work-related Stress Agreement would break new ground. Representatives from DA, LO and AC all noted that the content of the Agreement was previously covered by Danish health and safety law. Although the issue of work-related stress is of great concern in both UK and Denmark (European Foundation, 2005; HSE), the combination of more comprehensive national regulation on the topic and a scepticism of the value of the European Agreement meant that the European Agreement on Work-related Stress was often pushed to the periphery of debates on the topic. Several interviewees were critical of the strength of the European Agreements. An interviewee from the TUC's Brussels office reported that there were elements in the TUC in Britain who regarded engagement with the European Work-related Stress Agreement as counter-productive, giving, as it were, UK employers a shield against more substantive national regulation. In Denmark, an LO interviewee also doubted the degree to which the content of the Work-related Stress Agreement would be likely to place any new obligations on employers in Den-

mark, whilst an AC interviewee argued that both the Telework and Work-related Stress Agreements were drafted in too 'soft' a manner to be of great use in the Danish context.

Methods

Our study is based on twenty-nine semi-structured research interviews with representatives from Social Partner organizations and public authorities in Denmark, UK, and the European level, conducted between September 2006 and March 2007. The details of the organizations may be found at the front of our paper. The data gathered from these interviews was then fully transcribed and coded.

The implementations of the Framework Agreements on Telework and Work-related Stress in UK and Denmark

In this section, we will discuss the course that the implementations of the Framework Agreements on Telework and Work-related Stress took in UK and Denmark. In line with our twofold approach, the section will be divided into (1) debates about national 'procedures and practices' and (2) the relevance of the content of the Framework Agreements to national contexts.

National 'Procedures and Practices'

European-level Debates

At the European level, a debate has and is occurring over the most appropriate way to gauge the implementation of the Framework Agreements on Telework and Work-related Stress. ETUC and its research arm ETUI are the most rigorous adherents of the view that the Framework Agreements on Telework and Work-related Stress be implemented in accordance with national 'procedures and practices'. All of our interviewees from these organizations insisted that the use of the standard was a crucial precondition to 'effective' implementation of the Framework Agreements (ETUC, ETUI). An ETUI interviewee argued that 'effective' implementation consisted of two strands; (1) the use of the normal national procedures to implement the Agreements, and (2) the use of the normal national legal means to implement the results of those procedures. Several examples were offered by interviewees to illustrate the dangers of a less than comprehensive approach to implementation in keeping with national 'procedures and practices' (ETUC, ETUI). Most prominent was the case of the Norwegian implementation of the Telework Agreement. Here, it was alleged that the Norwegian employers refused to implement the Agreement via a collective agreement and instead forced Norwegian unions to accept the production of common guidelines.

European-level employers espouse a different line (ETUC, ETUI, UNICE, UEAPME, CEEP). Their view is that implementation is solely a matter for national Social Partners, and that satisfactory implementation of European Agreements consists of the joint presentation to the European level of the results of national implementation by both sides of industry (UEAPME, UNICE, CEEP). A UEAPME representative contended that this was in keeping with the subsidiarity principle of European governance, and that this approach also allowed national Social Partners the flexibility to adopt solutions that were appropriate for their national contexts. A European Commission representative noted that both views had their relative merits.

All our EU-level interviewees recognized the problems inherent in extending the national 'procedures and practices' implementation benchmark to the new member states (ETUC, ETUI, UNICE, UEAPME, EurComm). As was acknowledged, social dialogue procedures are at a very youthful stage of development in these states, and it is thus exceptionally difficult to identify national

'procedures and practices' to gauge implementation by. All interviewees noted the importance of the Framework Agreements on Telework and Work-related Stress in developing such procedures however (ETUC, ETUI, UNICE, UEAP-ME, EurComm). A ETUI interviewee stated that in countries such as Poland, Hungary and Czech Republic procedures had had to be invented due to the weakness of existing structures, whilst a UNICE interviewee noted the diversity of methods used in these states to implement the Framework Agreements.

The UK

There are no, or at the most very few, traditions of national level social dialogue in the UK that cover the whole of the private labour market (Hyman and Ferner, 1998). An abortive incomes policy involving the CBI and TUC was attempted in the 1970s, yet was derided by contemporaries and subsequent commentators as 'beer and sandwiches at number ten'. Bargaining takes place between employers and unions at the national sectoral level in areas of the public sector, yet industrial relations in the UK is largely characterized by decentralized relations between management and unions where there is a trade union presence. There are thus no discernible national 'procedures and practices' involving all of the UK parties that were signatory to the European Agreements on Telework and Work-related Stress. In the absence of procedures for the conclusion of national inter-confederal agreements, the UK Social Partners implemented the Framework Agreements on Telework and Work-related Stress as non-legally binding guidelines. The UK Social Partner *Telework Guidance and Work-related Stress: A Guide* thus impart no new obligations on employers and should be considered as very 'soft' forms of implementation when compared to the activity carried out in other states (ETUC et al, 2006).

Our UK interviewees stated baldly that there were no clear precedents for national level dialogue in the UK. An interviewee at the TUC's Brussels Office contrasted Britain's voluntarist tradition to the more integrated social dialogue structures in other states, as did a UK-based TUC interviewee. A CEEP UK representative noted that there were no UK national 'procedures and practices' involving all of the parties involved in implementation of the Telework Agreement. A CBI official shared this sentiment. A variety of creative interpretations were offered however with regards to what, in the absence of robust national social dialogue structures, could be taken to constitute national 'procedures and practices' in the UK. A TUC official cited the example of the 2003 UK Social Partner Framework Agreement on Information and Consultation, yet added that this was a largely isolated example, and did not, along with the implementations of the Framework Agreements on Telework and Work-related Stress herald the onset of a new era of UK national level social dialogue. A CBI official identified the informal dialogue that CBI conducted with TUC as an example of regular association that the organizations had prior to the implementation of the Telework Agreement in the UK, and mentioned a report issued by the parties on skills and productivity years earlier. CBI and TUC have also aided the British Government in the implementation of EU Information and Consultation Directive (Larsen and Andersen, 2007); this being another example of the very limited degree to which national-level social dialogue exists in the UK.

None of the parties regarded these instances as comprehensive or exemplary however, and the UK implementations of the Framework Agreements on Telework and Work-related Stress thus took place in the shadow of the state's liberal employment relations machinery. The positions of the parties to implementation, although also heavily bound up, as we will argue below, in the issues addressed by and non-legally binding nature of the European Agreements, may be seen as attempts to accommodate themselves to this. Various different implementation strategies were suggested by the parties to implementation, all apparently based on what, in the absence of discernible national 'procedures and practices', the parties to implementation regarded as the most consistent with the issues addressed by the Framework Agreements. CBI firmly advocated the production of a set of guidelines for the implementation of both the Telework and Work-related Stress Agreement. This position sprang from the belief that creating new institutional machinery to implement the European Agreements would have been disproportionate to the issues addressed, and would also not be consistent with the non-binding nature of the two Agreements (CBI). The position of CBI was also, according to a TUC official, trenchant with regards to the implementation of the Telework Agreement. The organization were 'quite difficult' during the implementation process, bluntly refused anything that was called an 'agreement', and also disliked the use of the term 'Social Partners' (TUC). These findings accord with Larsen and Andersen's (2006a) account of this process, although these authors also found that the CBI had threatened to walk out during negotiations rather than sign a UK national agreement on Telework. Also according to Larsen and Andersen (2006b), TUC advocated a 'harder' implementation route for the implementation of the Work-related Stress Agreement. Larsen and Andersen's TUC interviewee contended that the European Agreement was very weak however, and the position of TUC on this was in opposition to the other UK Social Partners (CBI, CEEP), whom argued that a 'soft' implementation of the Agreement would be more appropriate.

CEEP UK also advocated the production of a set of guidelines for both the Telework and Work-related Stress Agreements. As was the case with CBI, CEEP UK based their implementation strategy on the recognition that there were no discernible national social dialogue structures in UK and subsequently advocated a practical route that they regarded as most appropriate for the issue at hand. A representative of the organization contended that the group formed to implement both of the European Agreements represented 'ad hoc' machinery and was very unlikely to become part of the permanent institutional scenery in the UK.

As with their employer counterparts, TUC's preferred implementation strategy for the implementation of the Telework Agreement in the UK was based not based on a precedent for such an arrangement, and sprung from what the organization regarded as the most appropriate means to manage the issue at hand. A TUC official asserted that the organization would have preferred the conclusion of an 'Agreement' on Telework rather than 'guidelines'. According to the representative, an 'Agreement' would have had a harder edge to it, would have had greater potential to inspire negotiations at lower levels and would have also involved the UK Social Partner organizations consulting with their mem-

bers over implementation. The organization did not pursue this implementation strategy with great vigour however, and was quite willing to cede to CBI's demands on many of the points (TUC). Our TUC interviewee contended that this was because the organization did not see telework as a greatly pressing issue.

Denmark

The Danish state has a century long history of national level dialogue between employers and organized labour (Due et al, 1994). The loci of collective negotiations between the parties moved from the national inter-confederal level to the national sectoral level in the late 1980s, but the inter-confederal Social Partners, primarily DA and LO but also AC and FTF, still play a key role in concluding cooperative agreements covering workplace representation and coordinating wage demands across sectors (Due et al, 1994). The Danish system is therefore a prime example of the type of system that Berndt Keller (2003) had in mind when he asserted that the autonomous Framework Agreement on Telework would only be implemented 'effectively' in states with integrated bargaining tiers.

The inter-confederal trade union federations LO and FTF were explicit as to what constituted national 'procedures and practices' in Denmark. Interviewees from both organizations contended that collective agreements between the Social Partners in Denmark at the relevant levels was the only interpretation possible of such an implementation clause, and it was also argued by LO that the interpretation did not differ from issue to issue, but was applicable to whatever the topic of the Framework Agreement was. LO will not seek to conclude a confederal 'follow up' agreement for the Work-related Stress Agreement, but this was attributed to the fact that the contents of the Agreement were already present in Danish labour law and that there were indeed precedents for such a position if one looks at the implementation of certain previous Social Policy Directives. The interpretation of national 'procedures and practices' as constituting collective agreements was also prevalent amongst Trade Unions at the Danish sectoral and cartel level. Representatives from the organizations Dansk Metal, KTO, HK Trafik & Jernbanes and FF all contended that collective agreements between the Social Partners at the sectoral level was the normal procedure for the management of industrial relations in their sector, and there was no distinction made on the basis of the issue at hand. The Finance Sector Employer Association FA concurred on this view. The Trade Union Confederation AC advocated a slightly less orthodox view of Danish national 'procedures and practices' and contended that given that their organization had signed the Framework Agreement on Telework at the European level along with DA, then a collective agreement should be concluded between AC and DA in Denmark. This was despite the fact that there was no precedent of this in Denmark.

Interpretations of national 'procedures and practices' differed on the employer side. Regarding the issue of a collective agreement with AC to implement the Telework Agreement in Denmark, DA contended that since there was no precedent for this in Denmark, it was not incumbent upon them to enter into such negotiations. Arguing that the tradition for members of AC was the conclusion of individual contracts with employers, DA asserted that to sign a

collective agreement would not be in keeping with Danish traditions. The positions of both parties are probably best ascribed to the 'power games' that Larsen and Andersen (2006a) described as occurring between national Social Partners when implementing European Agreements. The key concern that Danish employer associations had with the national 'procedures and practices' implementation clause however lay in the varying nature of the issues dealt with by the agreement. Our interviewees advanced several arguments to bolster this position. The sectoral employer association Dansk Industri asserted that implementation methods should be decided on the basis of the issue tackled by the European Agreement, rather than by a rigid definition of what constituted 'procedures and practices' in Denmark. It was further noted that the topic of work-related stress was not 'normally' handled by DI and COI, and that, as a topic, work-related stress belonged more naturally in a cooperative agreement. A similar point was made by the local Government employer association KL. A representative from this organization stated that, in the case of their sector, the implementation of the Work-related Stress agreement had been via the KL-KTO cooperative agreement rather than a traditional collective agreement given that the issue lay in 'the grey area between work environment and traditional collective agreements'.

Implementation on the basis of issue rather than on the basis of national 'procedures and practices' was also the position of the employer confederation DA. A representative summarized,

'We will deal with [European agreements] from issue to issue. We are not in default in favour of social dialogue... We do not need to implement the Work-related Stress Agreement as we did the Telework Agreement because what is in the Agreement is already covered by Danish legislation.'

Whilst the actual implementations of the Telework and Work-related Stress Agreement in Denmark were based on a consensual reading of national 'procedures and practices' by the Social Partners in many cases (FA, FF, KTO, HK Trafik & Jernbanes), several disputes stemmed from these diverse interpretations of national 'procedures and practices'. Of particular note is the long running dispute between AC and DA over the implementation of the Telework Agreement. According to an AC representative, a letter was sent by AC to DA soon after the conclusion of the Telework Agreement requesting that the parties enter into collective negotiations to implement the agreement in Denmark. A subsequent reply was received by AC stating that DA were 'considering what to do', but nothing was announced by DA after that. The current conclusion of AC is that DA are flatly unwilling to enter into negotiations with them, and this position was borne out in our interview with DA.

Also remarkable is the long tussle between LO and DA over the implementation of the Telework Agreement. Here, the issue was the form that the LO-DA 'follow up' agreement to cover those sectors of the labour market that had not implemented the Agreement would take. LO advocated a 'harder' route that would be incorporated into the parties' cooperative agreement, whilst DA pushed for the production of a set of guidelines. An eventual compromise was only reached in the Autumn of 2006, and with regards to our argument about the shifting nature of national 'procedures and practices' it is of note because (i) it

was implemented in the DA-LO cooperative agreement in a manner that had not been done before (LO), and (ii) the only precedents for a 'follow up' agreement to apply the writ of European policy to uncovered sections of the labour market lay in the LO-DA agreements on the implementation of EU Directives that had themselves substantially transformed the Danish national system.

The relevance of the content of the Framework Agreements on Telework and Work-related Stress to national contexts

The UK

It also appears that there were varying levels of interest in the European Agreements on Telework and Work-related Stress in the UK, and that this ambivalent level of interest reinforced the drift towards ad hocery that had been initiated by the absence of national social dialogue 'procedures and practices' in the state. A TUC official stated that teleworking had not been a big issue for TUC, and contrasted the modest level of concern that the organization had over the teleworking issue with the high levels of concern regarding the part-time work and fixed-term work issues. This lack of interest was justified by the fact that teleworkers generally had a strong position on the labour market as a group of workers, that the topic was largely covered by existing legislation on health and safety and discrimination, and that the organization received little information from their members over problems regarding teleworking and its practice. TUC's 'reasonably easy' approach to the implementation of the Agreement in the UK and their willingness to accept the CBI's demand for guidelines rather than an Agreement was also attributed to the fact that the topic of teleworking was not a priority for TUC. It was asserted by our TUC interviewee that had a non-legally binding Framework Agreement addressed an issue that was a priority for the organization then the position regarding implementation would not have been as liberal as it was on the implementation of the Telework Agreement. A representative from the TUC's Brussels Office also stated that there had been a modest level of interest from the TUC's members in the *Telework Guidance* that was issued by the UK Social Partners. This was attributed to both the form that the European Agreement had been implemented in and the actual level of interest in the telework issue amongst UK trade unions.

British employer associations firmly espoused the view that the topic of telework was not fitting for legal regulation. A CBI official noted that the issue was on the employer agenda when the Agreement was implemented in the UK, yet nevertheless argued that the issue called for the use of a non-legally binding implementation route. Part of the justification given for this approach was that the right to telework was often an employee, rather than an employer, demand. It was also argued that teleworking was an unsuitable topic for legal regulation due to the fact that teleworkers were already covered by existing health and safety legislation and other legislation covering other aspects of the employment relationship. Judging by the extent to which the Social Partners' *Telework Guidance* referred to existing legislation, this appears to have been the general consensus. Our CBI interviewee also stated that an area such as part-time work

was more suitable for legal regulation given the number of female part-time workers and the increasing proliferation of sex discrimination laws, but that an issue such as teleworking was not suitable for such an implementation. CEEP UK largely shared the approach of CBI. A representative from the organization contended that legal regulation of the area would have been 'disproportionate' and that a light approach was most fitting.

A similarly cool level of interest appears to have been exhibited towards the European Agreement on Work-related Stress in UK. Whilst an audience did exist for the Agreement in the state (HSE, CEEP UK, CBI) and the UK Social Partners' *Work-related Stress: A Guide* appears to have been popular amongst firms and unions (Larsen and Andersen, 2006b), the degree and form of this interest proved inadequate to stimulate lively debates over the constitution of national 'procedures and practices' in the UK, prejudiced as it were by the belief that the issue of Work-related Stress was most suitably managed via 'soft' means. As with the Telework Agreement, British employers argued that work-related stress was largely covered by existing legislation and was also unsuitable for 'harder' forms of regulation given the subjective nature of the phenomenon of stress (CBI, CEEP UK). A representative from the UK Health and Safety Executive (HSE) also stated that his organization advocate a voluntary approach to the matter of work-related stress in principle. This was based on the belief that gradual cultural changes in the understanding of stress at work are better achieved through a voluntary approach.

The UK Social Partner text *Work-related Stress: A Guide* was apparently received well by firms and unions. Larsen and Andersen found that a re-print had been required to meet the demand for the text (2006b). This popularity, however, appears to have been compromised by the non-binding nature of the UK text, the strength of the European Agreement (Larsen and Andersen, 2006b), the existence of prior legislation on the topic (HSE, CBI), and by the publication of more high profile voluntary guidelines on work-related stress by the HSE (HSE, CEEP UK). Elements of TUC were even reported to have been actively hostile to the European Agreement (TUC). The position of this section of the organization was attributed to the fact that they regarded the Agreement as too 'soft' to meet national needs, and thus likely to be used by British employers as a shield against more substantive national regulation. A very comprehensive set of guidelines regarding the work-related stress issue that were regarded by many as more high profile than the UK Social Partner guidance (HSE, CEEP UK) also emanated from the HSE at the same time as the implementation of the European Agreement in UK. The HSE's *Management Standards on Work-related Stress* had a gestation period of several years and utilized a large amount of scientific research on the topic. A CEEP UK representative reported that the UK implementation of the European Agreement on Work-related Stress involved the UK Social Partners 'throwing their weight behind' the work issued by the HSE. To a great extent then, in the UK the European Agreement on Work-related Stress was superseded by the more substantial national management of the issue represented by the HSE's *Management Standards on Work-related Stress*.

One notable paradox is that work-related stress is an issue of some priority in UK. A CEEP UK representative noted that it was one of the top causes of absence from work in UK, whilst a CBI official echoed this view. Our HSE interviewee stated that some 13 million days had been lost to stress in 2001, and argued that the condition was a burden on the costs of firms and a bane on their productivity. That the European Agreement on the topic did not stimulate more interest in UK and the creation of more robust national social dialogue structures may be a cause of concern for the European-level Social Partners. The fact that this is the case is best explained by the lack of strength of the European text, the existence of more high-profile national work on the topic, and the coverage of the issue by existing health and safety legislation.

Denmark

The topics of telework and work-related stress had been substantially addressed in Denmark prior to the conclusion of the European Agreements on the areas. There are various exceptions however. One such example lies in the local Government sector (KTO, KL). Here, despite an awareness of the problems caused by work-related stress, the issue of work-related stress had not been managed before the implementation of the European Agreement in the sector. The implementation of the European Agreement subsequently became a reasonably high priority for the Social Partners in the sector (KTO, KL), and the implemented agreement was subject to a series of promotions by the trade union cartel KTO.

Elsewhere at the Danish sectoral level the topics of telework and work-related stress were the focus of substantial previous regulation. In the industrial sector, a representative from the employer association DI stated that the topic of teleworking had been largely addressed by a 1998 collective agreement on distance working. The contents of this agreement had not been dissimilar to the European Agreement, therefore making the implementation of the Agreement in the sector an uncontroversial affair. Sectoral union representatives concurred. A Dansk Metal official contended that, in general and also with regard to the Telework Agreement, the industrial sector almost always fulfilled the content of European Agreements prior to their conclusion. A COI representative also doubted that, given the high degree of existing work on telework, the implementation of the Telework Agreement had made a great impact on industrial relations in the sector. A similar picture prevailed in the Finance sector. Here, a 1997 agreement on distance working had also been concluded prior to the European Agreement. Officials from the Trade Union FF and the Employers' Association FA therefore questioned the degree of impact that the implementation of the European Agreement, via an annex in the sectoral collective agreement, had had. The pattern reoccurred in both the Railway sector and the local Government sector. In the latter case, a union representative from the sector argued that the 1998 Teleworking agreement concluded in the sector had been superior to the European Agreement in the quality of rights granted to teleworkers, and that the sectoral employer association KL had attempted to lower the standards of rights in the Danish Agreement during the implementation of the

European Agreement. In the Railway sector, a HK Trafik & Jernbanes official reported that the degree of added value implied by the implementation of the European Agreement was very low given the work previously done.

The trend for existing work to cover the contents of the European Agreement, clear in the case of the implementation of the Telework Agreement, was also manifest at the sectoral level in the implementation of the Work-related Stress Agreement. In the Finance sector, a degree of work on work-related stress had occurred that, according to interviewees from both sides of industry (FA, FF), exceeded the contents of the European Agreement. This has led to a scenario where both parties see no need to implement the European Agreement (FF, FA). In the Railway Sector, an interviewee from HK Trafik & Jernbanes reported that the contents of the European Agreement on Work-related Stress had been more than fulfilled through previous work in the sector.

The Confederal level Social Partners offered the same prognosis. A DA official reported that telework was largely covered by existing agreements in Denmark, whilst our AC interviewee concurred. On the work-related stress issue, confederal level interviewees offered the view that the issue was largely covered by existing health and safety legislation (DA, LO).

As a result of this degree of previous work, the Social Partners in Denmark were sometimes critical of the level of content of the European Agreements on Telework and Work-related Stress. The case of the implementation of the Telework Agreement in the local Government sector illustrates this point. In this instance, KTO, the union cartel for the sector, accused KL, the employer association, of trying to downgrade sectoral standards on Teleworking via the implementation of the European Agreement. This scenario thus stemmed from the perceived inferior content of the European Agreement on Telework in relation to existing regulation in Denmark.

With regards to the issue of work-related stress, the great and recurring paradox is that the topic enjoys no small degree of primacy in both UK and Denmark. In the Danish context, various studies (European Foundation, 2005) have been conducted highlighting the large scale of the issue and a substantial volume of work has been done at the sectoral (HK Trafik & Jernbanes, FF, KTO, COI) level to attempt to manage the issue. A 2005 Eurofound survey revealed that work-related stress was both widely prevalent and on the rise in Denmark, whilst sectors such as Rail and Finance have in recent years pioneered new approaches to the phenomenon in a bid to tackle what is regarded as a growing and serious problem in the sectors (HK Trafik & Jernbanes, FF, FA). This recognition that work-related stress was an issue of great concern fed into a critique of the content of the European Agreement which was generally regarded by Danish interviewees as inadequate (FF, LO, HK Trafik & Jernbanes, AC). The Trade Union confederations were particularly vocal. An LO official reported that his organization had held low expectations for the content of the Agreement at the European level, and regarded the eventual Agreement as 'very softly drafted' and with little to offer in terms of added value to the Danish Trade Union movement. It was also added that the weak drafting of the Agreement would impair efforts by Unions in Denmark to implement the Agreement, given that there was little in the Agreement that Unions could specify as direct

obligations on employers that stemmed from the European level Agreement. The Trade Union confederation AC hold a similar position. A representative from the organization argued that there was a scarcity of binding formulation in the text, and that her organization saw the Agreement merely as a set of guidelines that implied little added value to the Danish context. Due to the lack of binding formulation in the Agreement, our AC interviewee stated that the Agreement was by and large un-implementable in Denmark. The Agreement was compared to the Framework of Actions on Lifelong Learning, a comparison that is telling if one bears in mind that the latter tool has, unlike the Agreement on Work-related Stress, no basis in the Social Protocol and exists merely as an inspirational tool (ETUI). On the confederal employer side, a DA official also asserted that the European Agreement on Work-related Stress implied no new obligations for employers in Denmark, and would be best used in the future as an awareness raising tool.

Trade Unions in the Railway and Finance Sector shared this set of concerns. A HK Trafik & Jernbanes representative stated that the Work-related Stress Agreement, although implemented in the sector, contained no new rights for her organization, and contended that her organization were far ahead of the Agreement in the progressive approach that they took to the issue of work-related stress. An FF representative echoed this view for her own sector, in which the European Agreement has not been implemented, and in likelihood will not be in the future (FF, FA). It was argued that the European Agreement did not contain sufficient provisions to imply an added value for unions in the sector, and that the work already done on the issue of work-related stress in the sector far exceeded the terms of the Agreement.

Conclusions

In this paper, we have argued that the frailty of the national ‘procedures and practices’ implementation clause makes it difficult for European level actors to insist upon the format of national implementations of the European Agreements on Telework and Work-related Stress, and that the level of added value offered by these Agreements to national actors is rather modest. It is thus consistent with our findings to argue that the Framework Agreements on Telework and Work-related Stress represent dubious modes of European Social Partner governance. Whilst it would be a gross overstatement to contend that our findings are symptomatic of an unravelling or ‘Americanizing’ social Europe in the post-Enlargement era, the data we have collected does seem to suggest that European-level developments have taken a turn towards both (1) greater procedural ‘subsidiarity’ via the national ‘procedures and practices’ implementation clause and its difficulties, and (2) weaker substantive content through the tendency of the Agreements on Telework and Work-related Stress to offer national actors little in the way of virgin content. This will be of concern to those seeking to create a robust social Europe, for the strains created by Enlargement of the European Union with its attendant dangers of downward pressure on terms and conditions (Meardi, 2002) means that there has perhaps never been a greater need for strong EU-level governance in the industrial relations sphere. That Enlargement itself has also partly precipitated the move towards ‘softer’ forms of governance (Marginson and Sisson, 2004) is an irony that few will miss.

Yet our findings require several caveats. Firstly, the arguments that we have made in this paper should not be read as a slur on ‘soft’ law *per se*. A range of scholars have demonstrated that in the right circumstances it can indeed be a potent mode of European and national governance (Zeitlin and Trubek, 2003; De La Porte and Pochet, 2002; Marginson and Sisson, 2004), and its continued use at a range of different governance tiers seems assured. Our argument is merely that our data would suggest that in the context of the Social Dialogue procedures set out in the Social Protocol the ‘soft’ route seems the less auspicious option. This, perhaps, is more to do with the juxtaposition of the difficult ‘procedures and practices’ implementation clause and limited content of the Agreements on Telework and Work-related Stress than it is to do with the use of ‘soft’ law.

A second qualification that must be made is that the conclusion of a non-legally binding Framework Agreement on a weighty issue that added substantial value to national contexts could change utterly the prospects of the non-legally binding implementation route. Our critique of the Agreements on Telework and Work-related Stress and their implementation centred on both the limited added value of the Agreements and the fact that this limited added value reinforced ambivalence over national ‘procedures and practices’. Although the other problems that we have discussed with the national ‘procedures and practices’ implementation clause would remain should an Agreement be reached on an area of key concern to national actors, such an Agreement would be greatly more likely to add value to national regulation and would also be likely to trigger more vigorous debate about the constitution of national ‘procedures and prac-

tices'. We found that the somewhat blasé attitude of national actors to the content of the European Agreements on Telework and Work-related Stress often fed into an indifference as to the composition of national 'procedures and practices' (LO, TUC). Should a 'priority' issue form the subject of a future European Agreement then this could well become different. This, however, will not be straightforward. Many 'hot' issues are not addressed by the European Social Partners for the very fact that reaching an Agreement on such a topic would be unlikely, and it is in this climate that a relatively non-divisive issue like Telework is brought onto the agenda.

Yet ETUC's continued participation in and promotion of the European Social Dialogue surely stems from the consideration that a more substantial topic may one day arise on the European agenda. Our findings, and those of other scholars (Larsen and Andersen, 2006a), might point to the questionable effect of the Framework Agreements on Telework and Work-related Stress, yet ETUC's commitment to the EU-level dialogue means that the organization has some level of political clout at the European level, and that the Social Dialogue ball is kept rolling. The latter point is vital, for if a key issue were to turn up on the European agenda then the organization would still have the use of the social dialogue procedures to effectively manage such a topic. European Agreements such as those on Telework and Work-related Stress also play an indispensable role in inculcating national actors with an EU-level outlook. Should the EU-level cease to conclude such Agreements, then trends towards the primacy of national level regulation of employment relations would gain even greater impetus.

It is also possible that the political balance of power in Europe may shift towards more socially minded actors. This is quite possible given the concerns that many European citizens and politicians hold about Enlargement of the European Union, and such a move could be facilitated by the election of new Governments in European states with such concerns. Were this to happen the constellation of political forces in Brussels could suddenly change. This, in turn, would have consequences for the European Social Dialogue. A new 'harder' topic could suddenly become the subject of the first implementation route, or the second legally binding implementation route could be employed once more. It would be rash to discount such developments.

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