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Implementing Social Europe in Times of Crises: Re-established Boundaries of Welfare?¹

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Abstract

This volume examines the state of Social Europe as it manifests itself when European Union (EU) principles and policies have to be implemented in the member states while the EU legitimacy crisis and Great Recession prevail. The volume explores diverse processes, stages and subjects of implementation in a variety of social policies to carve out how different institutional dynamics and actor behaviours are at play. The individual contributions thus takes us from examining the transposition of the patients' rights directive to, the Europeanisation of pension reforms, the role of national parliaments in transposing social Europe, judicial Europeanisation and the multi-level enforcement of EU decisions. Theoretically, the volume highlights that as we move down the implementation ladder, implementation is often conditioned by domestic politics or comes as a "random walk" due to organisational and cognitive constraints. Empirically, the volume has three main findings. First, the constitutive components of the EU tend to have a contradictory

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impact on the EU's social policies and the national welfare systems in times of crises. Second, crises impact the implementation of social Europe, at times leading to a modification of fundamental principles and content, but not across the board. Third, differentiated Europeanisation comes as a result.

The Implementation of Social Europe under pressure

In spring 2013, it was reported that public hospitals in debt-stricken member states of the European Union (EU), such as Spain and Greece, are more reluctant to serve chronically ill citizens from other EU member states (Claes 2013). In violation of EU law on access to social security and healthcare, they prefer to spend their shrinking health budget on their own citizens. Meanwhile, the British, German and other governments seek to constrain "benefit tourism" from poorer member states, such as Bulgaria and Romania, to limit access to their welfare and healthcare systems (Financial Times 7 March 2013; EU Observer 7 March 2013; Süddeutsche Zeitung 23 March 2014). In addition, the Belgian government has increasingly informed out-of-work EU citizens that they no longer have a right to reside in Belgium because they have become an 'unreasonable burden' on the country's welfare system (Financial Times 16 March 2014). Apparently, the non-discrimination of EU citizens and the free movement of persons cannot count on overwhelming support across the EU, despite being key principles of EU law. However limited it has ever been, a social Europe has thus become under even more pressure. In response, the guardian of the EU treaties, the European Commission, has already taken steps to enforce compliance with EU law in this respect. In early summer 2013, the Commission referred the United Kingdom to the Court of Justice of the European Union (CJEU) on the UK 'right to reside' test for access to certain social security benefits and sent an open letter against Denmark concerning EU citizens' access to Danish child benefits (European Commission, press release, 30 May 2013, EUobserver 30 May 2013; Politiken 18 June 2013). Though the European Commission finds benefit tourism "neither widespread

nor systematic”, it has offered assistance to the member states to apply social security coordination rules and prevent any abuse of welfare systems (European Commission 2013). Upholding the existing social rights in the EU thus demands extra effort in the recent years of crisis.

This volume examines the current state of Social Europe as it manifests itself when EU principles and policies are implemented in the member states. EU studies have mainly concentrated on the first stage of implementation, where EU directives are to be transposed nationally, but have left the further stages of policy execution – enforcement and application (Treib 2006: 6) – largely unexplored. This volume includes a full-stage perspective of implementation to capture the *de facto* scope and limits of welfare regulation in the EU. In addition, this volume analyses how case law of the CJEU has been implemented, in part because the CJEU has been of considerable significance in the development of social policies in the EU (Leibfried and Pierson 1995). Furthermore, it not only offers the application and refinement of ‘traditional’ explanations of correctness and timeliness of the transposition to other forms and stages of implementation, but it also has been open to other implementation approaches from domestic policy analysis.

Empirically, this volume contributes to the state-of-the-art of studies of Europeanisation, implementation and welfare retrenchment by asking what the *de facto* reach of EU-induced change is when the EU suffers from a legitimacy crisis and the Great Recession. Facing a critical juncture, we meet social Europe at a crossroads where established institutions are increasingly contested and have to prove their viability. The individual contributions in this volume take us through the different stages of the implementation processes. They present how the bits and pieces of social policies in the EU are transposed, Europeanised, politicised, enforced and applied through examinations of different cases, from labour inspectorates to healthcare and from workers’ co-determination to pension reforms. These processes of implementation and enforcement are where EU regulation meets the (national) boundaries of welfare and thus where social Europe faces its ultimate

test. We expect the implementation of social Europe to be hampered in the context of debt problems and ensuing austerity measures as well as the legitimacy crisis. At the same time, these crises challenge the durability of cross-border social sharing in the EU. The examples mentioned above suggest that social sharing becomes more constrained in an enlarging union in times of crises. Therefore, the key question here is whether the implementation processes are fraught with the re-established and increasingly politicised boundaries of welfare due to enlargement 'fatigue' and Euroscepticism and are crippled by a (perceived) lack of budgetary means. If so, how institutionally viable and politically and administratively effective would a social Europe be in such a context?

In this introduction, we first define 'social Europe'. We then present the state of social Europe, its historical achievements and current challenges. Next, we consider how the scope and limits of social Europe are *de facto* settled by means of national implementation processes, in practice defining the boundaries of welfare. We conclude the introduction by summarising the contributions to this volume.

Defining Social Europe

The concept of social Europe is often cited when the EU is compared with the socio-economic order of the USA (*cf.* Alber 2006). In the EU, improving living standards, supporting the socio-economically weak and equalising chances in life (Stuchlík and Kellermann 2009: 3) are more of a public concern. Formally regarded, the organisation of welfare in the EU continues to be a foremost national prerogative, and member states have acted as very sceptical gatekeepers when welfare initiatives have had to be discussed in the Council of Ministers (Leibfried 2010). Throughout the decades of European integration, welfare policies have been one of the few policy areas where national governments have usually resisted integration, not least because of the electoral

importance of most social programs (Leibfried *ibid.*). In contrast, the creation of a European market with free movement of goods, capital, services and workers has proceeded much further. A lasting asymmetry has thus been created:

“...the course of European integration from the 1950s onward has created a fundamental asymmetry between policies promoting market efficiencies and those promoting social protection and equality.” (Scharpf 2002: 665).

Firmly enshrined in the EU treaties, the removal of barriers to freedom of movement to create an internal market (so-called negative integration) has been pursued by the individual Member States, the European Commission and the Court of Justice of the European Union (CJEU) with relative ease. It has unsettled the territorial limitations on the beneficiaries, consumption, production and administration of welfare (Leibfried and Pierson 1995: 50ff). Meanwhile, market-correcting, “positive” integration through decision-making by the EU actors collectively has encountered many more obstacles and joint decision traps to overcome before a compromise could be established (Martinsen and Falkner 2011). Bypasses in EU decision-making, such as CJEU case law, soft law and framework legislation, did not allow for large-scale harmonisation and redistribution among increasingly diverse welfare regimes in the enlarging EU (Obinger et al. 2006). Consequently, the integration of national welfare states into a full-fledged European system has remained out of reach. Meanwhile, as part of the negative integration process to remove social barriers in the EU market, free movement principles and economic liberties prevail over national social rights, obligations and standards in the EU. Social policies have been used to foster loyalty and solidarity within national states, not least because of their compulsory nature (Ferrera 2005). A borderless Europe may thus weaken national social policies as an instrument of statecraft, despite its lack of Union social policies to nurture European loyalty and solidarity (Van Kersbergen 2006). ‘Social integration’ in the EU therefore means constrained policy options for the national welfare states rather than a positive build-up of a European social polity (Leibfried and Pierson 1995: 65; Scharpf 2002: 666; Maduro 2000: 327). Due to these different dynamics, the

making of social Europe both at the national and European levels has been of a contested nature.

To take full account of these dynamics, this volume takes a broad understanding of social Europe's evolution. It thus refers to EU law that establishes supranational social policies and to EU law affecting social rights and policies in the member states. In this way, it defines social Europe in a two-level perspective: 1) the protection and extension of social rights by means of positive integration and market correcting/restricting policies and 2) the other side of the coin of European integration, the intervention in national social policies to enforce the market and promote free movement, free competition and non-discrimination. This definition thus covers integration in the social domain as a result of not only market-enforcing and market-restricting integration but also integration stemming from the EU principle of non-discrimination (Höpner and Schäfer 2012). Whereas the imperatives of market correction and non-discrimination may establish (European) social rights, market enforcing and non-discrimination tend to weaken the spatial boundaries of the welfare state and challenge the traditional allocation principles for social sharing (Ferrera 2005; 2012b). The scope and limits of social Europe depend on how the balance is formed between those different integration imperatives *and* on how they are implemented. In regard to 'social policy', we define it according to the broad spectrum of welfare policies to improve living standards, enhance the position of the socio-economically disadvantaged and equalise chances in life, which includes labour market policies, healthcare, gender equality and welfare redistribution policies.

The State of Social Europe: Historical Achievements, Paramount Challenges

Scholars continue to disagree on the state of social Europe. One group of scholars has pointed to the social achievements of the European Union and claimed that it is misleading to consider the EU a neoliberal construction aiming to dis-embed markets from any

restraint on competition. EU legislation regarding social policies has been growing since the 1990s, not least due to the increasing use of qualified majority voting. The larger involvement of employers' federations, trade unions and the European Parliament may enhance the legitimacy of EU social legislation. In particular, the CJEU has been significant in the creation of social rights, thereby enabling individuals and groups to access rights at both the national and EU level (Cichowski 2007). Legal integration in the European Union has embedded the free market, and the CJEU has "emerged as a regulatory arbiter of compromises between international openness and social concerns" (Caporaso and Tarrow 2009: 595). Judicial decision-making is key to the spread of social rights (Caporaso and Tarrow *ibid.*). The work of Caporaso and Tarrow, however, does not examine whether the identified judicial embedding of the market is subsequently implemented at the national level. Thus, the ultimate effectiveness of legal integration is not explored but merely assumed.

Another group of scholars maintains 'social Europe' as politically weak or 'the road not taken' (Von Maydell 1999: 9; Scharpf 2002: 645; Scharpf 2010; Leibfried 2010; Höpner and Schäfer 2012). Judicial law-making may expand individual rights, but there are clear limits to what can be achieved by legal integration because social sharing in the EU cannot be established by judges (Höpner and Schäfer 2012: 450). According to Höpner and Schäfer, CJEU case law correcting the market or enhancing non-discrimination is only a limited part of the integration processes that cannot embed markets sufficiently. Market enforcing dynamics are foremost at play in the EU, and their impact on national and European social policies is considerable (Höpner and Schäfer 2012: 441-445).

Thus, social Europe consists of contradictory dynamics that may in part explain its contested nature. From a historical perspective, momentum for adopting social policies has varied but created some major achievements. However, in the light of current crises the policy area faces paramount challenges, where previous 'logics of opening' the welfare territory are challenged by voicing 'the need of closure'.

Building up a social Europe, contesting its raison d'être

The social policy of the European Union is a prominent example of a policy that has evolved 'against the odds'. The founding fathers of the community did not envisage any substantial integration of their welfare policies but instead wanted to cooperate in economic and peacekeeping policies (Hemerijck 2013: 300; 303). The Treaty of Rome 1957 had very little social content. One article was inserted, at the request of Italy, to support the free movement of workers (Holloway 1981; Romero 1993). The article set out that a worker moving from one member state to another would have the right to both access the social security schemes of other member states and export already earned social security rights to other member states.² Another article was written into the Treaty on the initiative of France, establishing that men and women were entitled to equal pay for equal work³ (Falkner 1994: 81-83; Cichowski 2001: 116-117).

Despite the rather sparse social content, both Articles came to spur social integration significantly. First, for migrant workers' social security rights, the Council adopted regulation no. 3 in 1958, which was later reformed into regulation 1408/71 (now regulation 883/2004).⁴ The regulation stipulated that migrant workers have a right to access social security benefits in another member state and take these with them when moving within the Community. This regulation, coordinating social security rights across borders, is a first crucial encroachment into the national membership space of social solidarity and constitutes a corner stone of social Europe as it prohibits welfare discrimination that favours national citizens (Cornelissen 1996; Van der Mei 2001). It was supplemented by the other early Regulation 1612/68 (now regulation 492/2011), which dictated that migrant workers have the same rights as national citizens to the social

² Article 51 of the Treaty establishing the European Economic Community 1957.

³ Article 119 of the Treaty establishing the European Economic Community 1957.

⁴ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.

advantages of the host member state where they work.⁵ Through judicial decision-making, the CJEU gradually expanded the personal and material scope of cross-border entitlements to social benefits, making it increasingly difficult for member states to reserve benefits to their own nationals (Martinsen 2005). Second, the Court's interpretations of the Treaty's article on gender equality gave the Community a key role ensuring equal pay and equal treatment between the sexes, which was later codified by Council secondary legislation.⁶ Additionally, judicial decision-making expanded social rights in the areas of disability rights, cross border healthcare, working time and occupational pensions, among others (Mabbett 2005; 2013; Martinsen 2009; Nowak 2010; Hemerijck 2013).

In a more reluctant manner, the Council of Ministers has adopted important binding norms concerning EU social policies and health protection. Falkner reports that in 2009, 80 binding norms existed in the main fields of social regulation: health and safety, other working conditions and equality in the workplace and beyond (Falkner 2010: 293). An EUR-lex advanced search informs us that in 2009, 43 binding norms existed in the field of health protection. In addition, major health issues, such as cancer and BSE, the free movement of health workers and products and engaging EU actors, have induced a patchy European health policy since the 1990s (Mossialos et al. 2010; Vollaard et al. 2013). More recently, the open methods of coordination have produced their share of soft law social regulation (Zeitlin 2011; De la Porte 2012).

Thus, from a historical perspective, social Europe has had its landmark achievements and developed a Community space of social sharing more strongly than originally intended by the member states (Ferrera 2005; Falkner 2010; Hemerijck 2013). Market correcting and non-discrimination dynamics have enhanced the scope of social rights within the EU. Except for a few redistributive instances, such as the European Social Fund and the more

⁵ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

⁶ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women; Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions.

recent European Globalisation Fund and Social Investment Package, European social policies have remained mostly regulatory in nature. The national complexities and salience of social policies and the increasing diversity of welfare regimes in the ever-enlarging EU have left their mark on European social regulation. Electorates have been reluctant to support EU health and social welfare policies, particularly when they fear the loss of benefits and have no European identity (Mau 2005). In addition, Member states have barely agreed on harmonising measures. Instead, when they could find agreement, they opted for a non-binding soft law or for framework legislation, such as directives, allowing them to select the policy instruments themselves for the policy goals set. On average, they were granted more time to transpose EU directives in national legislation than in other policy areas (Haverland et al. 2011). Nevertheless, the transposition of directives in the social and health and safety policy areas required more time than that required by any other policy area (Haverland et al. 2011). In addition, previous research has indicated major problems in the compliance with EU social legislation (Falkner et al. 2005).

Despite the expansion of European social policies, the impact of liberalising legislation has remained much larger in national social policies. Their market-enforcing dynamics have set their limits on the closed, compulsory nature of national welfare states. Over time, these different dynamics have increasingly limited national social sovereignty and conditioned national welfare privileges (Ferrera 2012a: 17; Ferrera 2012b: 256). Over the last decade, EU social policies and impacts have been increasingly addressed in the scholarly literature and in public debates (Hemerijck 2013: 291). The economic crisis and the enlargements of 2004 and 2007 have intensified the debate on welfare boundaries in the EU. Social Europe appears to face paramount challenges, but suggestions on supranational solutions remain limited. Ferrera draws parallels between the constitutive phase of European welfare states, where economic 'fusion' occurred and local privileges were dismantled, and what now happens at the European level, calling for European solutions:

“As was the case one hundred years ago at the domestic level, the Europeanization (‘fusion’) of national markets through freedom of movement and competition rules is (already has been) a tremendous trigger for growth and job creation in the EU’s economy, enhancing life chances and welfare for European citizens. But it is also a source of social and spatial disruptions. Again economic ‘fusion’ requires the introduction of some common social standards, rights and obligations through a socially-friendly institutional re-articulation of the novel Europeanized space of interaction” (Ferrera 2012a: 18).

The last decade marks fundamental changes in the socio-economic characteristics of the European Union. The two biggest enlargements of 2004 and 2007 have implied an enormous increase in the institutional, economic and social heterogeneity of the Community (Hemerijck 2013: 290; Höpner and Schäfer 2012: 436-437). Mutual distrust among European people has since grown because of the entry of Eastern Europeans, whom the old member states felt were culturally more distant (Delhey 2007; Lubbers and Gerritsen 2010; Thomassen and Back 2009). The 2005 no vote in France and the Netherlands expressed yet another deep legitimacy crisis for the EU but, this time, with a clear social component. The no votes, especially in France, expressed public dissatisfaction with the ‘Bolkestein directive’, personalised in the image of the ‘Polish plumber’, which clearly demonstrated “the resurgence of nationalist and welfare chauvinist sentiments” (Hemerijck 2013: 320). As mentioned at the beginning of this contribution, the financial and economic crisis since 2008 has added to the fear of social dumping and spurred suggestions of national welfare protectionism, with member states proposing to re-introduce welfare boundaries. The sheer reluctance among northern EU member states to provide aid to debt-ridden countries has underlined the limits of solidarity within the EU. Social indicators may have been included in the European Semester to monitor developments in the welfare domain, but they have no automatic consequences for national budgets. A free movement-welfare cleavage between old and new member states has become increasingly marked. UK Prime Minister Cameron has declared that EU free movement needs to be less free and access to cross border welfare limited (Financial Times 26 November 2013). Former President Lech Walesa responded that the UK acted in an “irrational and short-sighted way” (Financial Times, 23 December 2013). The Polish – UK

alliance to strengthen the internal market during Council negotiations on the posting of the workers enforcement directive was subsequently broken due to Cameron's statements (interview, Council, February 2014). Apparently, a line of conflict between fundamental free movement principles and national welfare protectionism divides the EU member states.

Meanwhile, as the EU tries to steer itself through economic and legitimacy crises, its rules and regulations are to be implemented at the national level. How are decisions that affect social policies implemented while they are increasingly contested and national welfare budgets are cut? In our view, the processes of implementation and enforcement will ultimately define the scope and limits of social Europe and settle the *de facto* spatial organisation of current welfare communities.

Implementing new boundaries of social Europe?

Free movement principles have gradually removed social boundaries and created a Community in which spatial demarcations are increasingly dismantled. Previous welfare building based on 'closure' has been pushed back by the Community imperatives of 'opening' and mobility (Ferrera 2005). The free movement of persons implies that when an EU citizen and his/her family have a right to reside in another member state, they are admitted into that welfare community. The free movement of services implies that healthcare rights are no longer demarcated by the territorial borders of one's home state. The freedom of establishment affects company law and workers' rights. When 'outer' social boundaries are abolished, 'inner' administrative and/or political boundaries may be established. The processes of implementation and enforcement may draw considerable *de facto* limits to social sharing and cross border activities. National politics and administrative practices may find new means to settle thresholds to 'entries' and 'exits'.

The 'right to have a right' becomes the new access point for membership in welfare communities (Ferrera 2012b), thus making legal residence a line of demarcation for entry into social Europe. As stated by Ferrera in the conclusion of this volume, the national control of legal residence constitutes the "only gate that is still under partial operational control of state administrations" (Ferrera 2014). In this context, the EU regulation of residence has become a new focal point through which membership is settled. Two days before enlargement, the European residence directive was adopted.⁷ The directive states that all EU citizens have an unconditional right to take up residence in another member state for up to three months. After these first three months, the member state can condition right of residence on that a person does not become "a burden on the social assistance system of the host Member State" and that a person has "comprehensive sickness insurance cover" (article 7.1.b of directive 2004/38). However, EU citizens cannot be automatically expelled for claiming social assistance (Martinsen 2011: 951). In this language of political compromise, the residence directive establishes a delicate balance between 'logics of opening', in which everybody has a right, and 'logics of closure', in which this right terminates if one becomes dependent on social assistance. It opens up residence for the 'non-worker' but conditions that right on the ability to provide for oneself.

The 'logic of opening' built into the residence directive marked a culmination of Union building, revised two days before the biggest enlargement in the history of the Community. The examples given in the introduction of this contribution clearly show that ten years later, the principles of free movement and non-discrimination seem to be increasingly challenged by the articulation and implementation of 'closure'. With the European Commission and member states, such as Poland, contesting the proposed limitations on the free movement of labour, the scope and limits of social Europe have

⁷ Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

become high politics. They have moved from being a mere annex to the internal market to becoming a policy area in their own right, a policy area in which some member states increasingly voice for rule correction and recuperation, dissatisfied with the course of social integration (Weiler 1991 p. 2411).

Overview of the volume

Social Europe and its implementation have thus become increasingly contested. This volume examines how member states meet their obligations to effectuate EU rules and rights when crises haunt them. In our view, the EU currently faces both a socio-economic crisis, in which national resources are limited and social disparities in EU-28 are considerable, and a legitimacy crisis, in which EU competences to regulate core parts of national sovereignty, such as the social area, are fundamentally questioned. We expect these crises to impact the way in which member states fulfil their EU obligations. Our central expectation is that national implementation processes face extra difficulties when national budgetary means are – de facto or by perception – limited and when the boundaries of social integration are increasingly politicised. Because the effectuation of EU policies relies on national instruments, resources and willingness, the fragility of the EU implementation process is expected to be higher under such conditions. The volume addresses this expectation from different perspectives. It takes a broad perspective on different phases in the implementation processes that involve the different actors and institutions that are likely to condition output and the outcomes of implementation. Our understanding of implementation goes beyond transposition and involves Europeanisation through soft law and enforcement through judicial or street-level enforcement. We aim to contribute to the study of EU implementation by highlighting its multi-faceted and sequential character, which in different forms and manners conditions how EU decisions are brought to the citizens and may re-establish social contracts and the boundaries of social sharing.

The volume starts with two contributions examining the transposition of cross-border healthcare. Are national healthcare services to be shared between EU citizens and across traditional boundaries? The contributions of Vasev and Vrangbæk as well as Vollaard and Martinsen analyse how the patients' rights directive has been transposed in four member states (Vasev and Vrangbæk 2014; Vollaard and Martinsen 2014). Vasev and Vrangbæk find that sector specific resources conditioned the transposition processes in Poland and Bulgaria and, in both cases, led to restrictive/minimalist and delayed transposition. Vollaard and Martinsen bring in the perspective of bounded rationality to explain inconsistencies in the timely and correct transposition of the directive in the Netherlands and Denmark. They find that cognitive and organisational constraints, such as the fluidity of participants, loss of institutional memory and lack of priority, conditioned transposition, especially in the Danish case. Although not hit as hard as many of its European counterparts, the crisis impacted on the transposition process in Denmark, where budget cuts replaced those in charge of transposition, delaying and confusing the process. In both cases, a somewhat protectionist transposition was carried through.

The contribution of De la Porte and Natali turns to the Europeanisation of welfare reforms, comparing how EU soft law influenced pension reforms in Denmark and Italy by using the metaphor of the two-level game (de la Porte and Natali 2014). They find that the crisis has significantly impacted on the content and effect of soft law regulation in social policy. On the one hand, the social open method of coordination has been side-lined since the crisis. On the other hand, the stability and growth pact, addressing the financial sustainability of pensions, has become more constraining, and national politicians have become more responsive to these EU policy recommendations. Policy windows for unpopular domestic reforms have thus been opened by EU recommendation in both member states. The contribution also shows that in Italy, which was severely hit by the crisis, the leverage of EU pressure (including direct inference from the European Central Bank) is even larger, thus creating stronger pressures for reforms. Thus, the first three contributions find that the EU impacts on the most significant parts of the national welfare budgets, health and

pensions, but the degree of EU-induced change is much conditioned by national actors, resources and institutions and takes the Europeanisation of welfare in different directions. The creation of new patients' rights was modified by the transposition processes in the analysed member states, whereas soft law, posing strong pressures on national policies, came to impact considerably the national pension reforms in Denmark and Italy.

The subsequent contribution examines the politicisation of such processes of EU-induced change. Mastenbroek, Spendzharova and Versluis ask whether national parliaments claw back control on social regulation during national transposition processes. They question the conditions under which parliamentary parties in the Netherlands engage in ex-post scrutiny over transposition and thus aim to regain political control. For this purpose, they analyse parliamentary scrutiny in the Netherlands over the transposition of two social policy directives of relative high political salience: the temporary agency work directive and the parental leave directive. They do not find that politicians try to shape transposition by means of parliamentary scrutiny. High-profile ex-post scrutiny is more likely to occur in times of great turmoil and media attention as part of a vote-seeking strategy. Thus, transposition is not found to be politicised. Despite the salience of EU social regulation, the government and executive can work without much parliamentary engagement. This finding should raise legitimacy concerns and invite scholars to link studies of transposition and Europeanisation to normative studies of legitimacy.

The next three contributions investigate the last stages of the implementation process in which EU decisions are enforced and applied – or not. The contributions of Schmidt as well as Blauburger and Krämer introduce the role of the CJEU and examine judicial Europeanisation. The CJEU has been interpreted as a key institution of social integration and Europeanisation, whereas politicians have tended to behave more reluctantly (Leibfried 2010). Schmidt's contribution examines how the case law of the CJEU affects national control over who are to be members of their communities and the way in which different member states respond to such Court intervention: do they react by 'justice

contained' or 'anticipatory obedience' (Schmidt 2014)? The contribution thus examines the outer boundary of the welfare community, where the right to have a right is laid down. Schmidt finds that judicial Europeanisation takes place and extends the membership space of social Europe but, at the same time, is contested by the application of national governments and the enforcement of lower courts.

The contribution of Blauburger and Krämer examines whether legal integration enhancing market freedoms for national companies has led to the downwards convergence of social rights. In concrete terms, it traces whether negative integration, as set forth by the CJEU's interpretation of freedom of establishment, has undermined workers' co-determination rights, as assumed when the Court came out with its first landmark ruling *Centros* in 1999. Despite 'hopes and fears', as the authors put it, such downward convergence has not been confirmed. Workers' co-determination rights have largely been upheld and remain strikingly different across EU member states. Blauburger and Krämer conclude that legal uncertainty with regard to the CJEU case law, ambiguous economic incentives for companies to engage in regulatory competition and political disagreement about how to respond to potential regime-shopping all explain why the same EU imperative for change has led to differentiated Europeanisation rather than convergence (Blauburger and Krämer 2014). Crisis has added to these uncertainties and reinforced the trend towards differentiation.

Hartlapp's paper brings us to the last phase in the implementation process, namely, that in which EU decisions are enforced from the perspective of the formation of a European administrative space (Hartlapp 2014). It brings in the hitherto unexplored multi-level enforcement system of the EU, which comprises national street-level enforcement and horizontal coordination between member states. Hartlapp compares the development in street-level enforcement of labour law over time in the EU-15 member states and finds that, whereas coordination and steering capacity have improved, the pressure capacity of the national inspectors enforcing EU rules on the ground has weakened. The national

application and street-level enforcement of EU social regulation constitute the locus of profound implementation challenges that need to be improved if social Europe is to achieve its stated aims.

Finally, Ferrara's paper concludes the volume and its various findings (Ferrera 2014). By tracing the *fil rouge* of social implementation, we move into the inner core of state sovereignty. In social Europe, most aspects of politics in the age of Europeanisation seem at stake. On the one hand, competences are delegated to the Union, through reluctant political decision-making or negative (legal) integration. On the other hand, the effectuation of social rules and rights still depend on national political responses and remain in the hands of the national executives. Implementation constitutes the locus where the practical balance between supranational authority and national autonomy, execution and discretion, is established (Ferrera 2014). The various contributions in this volume suggest that in times of crisis, this practical balance tilts towards the latter.

Thus, crisis has impacted social Europe. Its scope and direction are increasingly questioned by the member states and protectionist measures taken up on the ground. Fundamental principles and content are contested and modified through the stages of the implementation process. Welfare chauvinism is increasingly voiced and taken over by national politicians and governments. When politicians and head of states hold that the constitutive principle of free movement ought 'to be less free', the historical achievements of social Europe are put to the test and face a most critical moment. As some member states – in discourse or in practice – voice or act to re-establish their national boundaries of welfare, the nested solidarity spaces of social integration strive to prove their viability. Furthermore, the EU consists of different constitutive components that, at times, have a contradictory impact on the implementation of social policies in the EU. These contradictions complicate an adequate response to the asymmetric social shocks that the EU currently faces. Differentiated Europeanisation comes as a result. The implications of

such differentiation over time remain to be observed but could result in retrenchment as the direction of policy changes (Radaelli 2003, 35).

Theoretically, the volume demonstrates that implementation is not necessarily driven by rational actions or institutional determinism (Radaelli et al. 2012). Instead, as we move down the implementation ladder, the behaviour of actors is less bound by the institutional rationale that they are set to implement. At times, the institution instructs, but then national politics appear to be a decisive factor (Schmidt, 2014; De la Porte and Natali, 2014). At other times, implementation appears to be a 'random walk', conditioned by cognitive constraints, 'the personal factor' and 'satisficing logics of action' (Ferrera 2014). The volume thus suggests that to explain the complex nature of implementation, we need to analytically decouple behavioural, political and institutional logics and mechanisms because they impact the direction and outcomes of implementation differently.

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