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**The implementation of 'new phase' European  
social dialogue agreements and texts in  
European member states**

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**A thesis submitted in partial fulfillment of the requirements for the degree of  
Doctor of Philosophy**

**University of Warwick, Warwick Business School - November 2009**

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## List of abbreviations

ABVV/FGTB	Algemeen Belgisch Vakverbond/ Fédération générale du travail de Belgique (General Federation of Belgian Trade Unions)
AC	Akademikernes Centralorganisation (Danish Confederation of Professional Associations)
ACLVB/CGSLB	Algemene Centrale der Liberale Vakbonden van België/ Centrale générale des syndicats libéraux de Belgique (General Confederation of Liberal Trade Unions of Belgium)
ACV-CSC	Algemeen Christelijk Vakverbond/ Confédération des syndicats chrétiens (Confederation of Christian trade unions)
CBI	Confederation of British Industry
CEEP	European Centre of Employers and Enterprises providing Public services
CEEP UK	UK branch of CEEP
COI	CO Industri
CMKOS	Českomoravská konfederace odborových svazů (Czech-Moravian Confederation of Trade Unions)
DA	Dansk Arbejdsgiverforening (Confederation of Danish Employers)
DFL	Danske Forsikringsfunktionærers Landsforening (Insurance Workers' Association of Denmark)

DI	Dansk Industri (Confederation of Danish Industry)
DTI	Department of Trade and Industry
ETUC	European Trade Union Confederation
EU	European Union
FA	Finanssektorens Arbejdsgiverforening (Danish Employers' Association for the financial sector)
Febelfin	The Federation of Belgian Banking sector employers
FF	Finansforbundet (Danish Financial Services Union)
FPB	Forum of Private Business
FTF	FTF (Confederation of Professionals in Denmark)
HK	HK Trafik & Jernbanes (Danish state rail workers' trade union)
HSE	Health and Safety Executive
KL	KL (Local Government Denmark)
KTO	KTO (The Danish Association of Local Government Employees' Organisations)
LGA	Local Government Association
LO	Landsorganisationen i Danmark (Danish Confederation of Trade Unions)
OMC	Open Method of Coordination

SPCR	Svaz Prumyslu A Dopravy CR (Confederation of Industry of the Czech Republic)
TUC	Trades Union Congress
UEAPME	European Association of Craft, Small and Medium-sized Enterprises
Unice	Union of Industrial and Employers' Confederations of Europe (name changed to Business Europe since 2007)
Unizo	Unie van Zelfstandige Ondernemers/ Union des Entrepreneurs indépendants (Union of independent entrepreneurs)
VBO/FEB	Verbond Van Belgische Ondernemingen/ Fédération des entreprises de Belgique (Federation of Enterprises in Belgium)



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Thomas Prosser, November 2009

**Declaration**

The thesis is the result of my own work and it has not been submitted for a degree in another university.

## **Abstract**

The research evaluates the implementation of the Framework Agreements on Telework and Work-related Stress in Belgium, Denmark, UK, and Czech Republic and in the banking and local Government sectors within these countries. Further, it evaluates the various factors that explain divergent implementation outcomes in countries and sectors. It develops two benchmarks to assess the efficacy of the Agreements as modes of European social partner ‘soft’ law governance; a benchmark that assesses the procedural implementation of the Agreements, and a benchmark that assesses the substantive implementation of the Agreements. A multi-level governance theoretical approach is also adopted.

It emerged that ‘effective’ procedural implementation of the Agreements largely occurred in Belgium and Czech Republic, but did not occur to the same degree in Denmark and UK. It also emerged that the substantive effect of the Agreements was patchy and that the substantive impact of the Telework Agreement was greater than that of the Work-related Stress Agreement. Although structural factors were important in explaining divergent implementation outcomes, it also emerged that it was primarily policy and actor related factors that explained divergent national and sectoral implementation outcomes. The research ends with a rather skeptical evaluation of the Agreements as modes of European social partner ‘soft’ law governance.

## **Chapter 1: Introducing the European social dialogue**

This thesis studies the implementation of autonomous European social partner agreements. Specifically, the implementation of the Telework and Work-related Stress Agreements in four member states (Belgium, Czech Republic, Denmark and UK) and two sectors (banking and local Government). The goal of the study is to examine the potential and limits of autonomous European-level social partner agreements in terms of their ability to regulate industrial relations within European member states. Given the academic and policy concerns that have been raised about the extent to which these types of Agreements are likely to be implemented effectively (Keller, 2003; Branch, 2005), the thesis aims to make a key contribution to clarifying the issues at stake. Further, the thesis will identify the factors that explain variance in implementation outcomes within discrete national and sectoral contexts. Their identification will allow the thesis to come to a theoretical and empirical understanding of the relationship between European-level 'soft' law and change in national systems of industrial relations. Given the now widespread use of 'soft' law at the European-level and the substantial academic debates that surround its efficacy (Hodson and Maher, 2001; Jacobsson, 2002), the thesis will use the findings from the specific field of European social partner 'soft' law that the Telework and Work-related Stress Agreements represent to contribute to wider debates on the topic.

### **1.1 The European social dialogue: roots and development**

The term 'European social dialogue' refers to dialogue and negotiations conducted at

the level of the European Union between the European representatives of employers and organized labour within the European Union. The goal of the European social dialogue has been chiefly characterized as relating to the need to add a social dimension to the European single market in a manner that involves the representatives of European employers and organized labour within the process of European governance (Falkner, 2003). The European social dialogue started in earnest when Jacques Delors, then President of the European Commission, invited the chairs and general secretaries of all the national organizations affiliated to the European social partner organizations (ETUC, UNICE<sup>1</sup> and CEEP) to a meeting at Château de Val Duchesse outside Brussels on 31 January 1985. The result of this meeting was an Agreement to establish European inter-sectoral dialogue between the parties. In the subsequent months, the parties also established working groups at the European-level for the purpose of furthering social dialogue and concluded the first joint opinions on social dialogue. In following years, the European social dialogue was further institutionalized at the European-level with the establishment of working parties and a political steering group at the European-level that specifically focused on social dialogue. In sum, the process started at Val Duchesse produced 21 joint opinions and declarations, two key agreements and seven high-level summits between 1985 and 1995 (Hall, 1994; Falkner, 2003).

The Val Duchesse process also led to the formal institutionalization of European social dialogue. Article 118B EC that was inserted into the EC Treaty via the Single European Act that came into force on 1 July 1987 explicitly referred to the role of the European social partners within the European governance process. Article 118B

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<sup>1</sup> UNICE changed their name to Business Europe in 2007

committed the European Commission 'to develop the dialogue between management and labour at the European-level which could, if the two sides consider it desirable, lead to relations based on agreement' (Official Journal of the European Communities 1987, p.9). Crucially, the Val Duchesse process also led to an Agreement between the European social partners that would subsequently be annexed to the Protocol on Social Policy of the Treaty on European Union. The Agreement, known as the 'Agreement on Social Policy', was concluded by UNICE, ETUC and CEEP on 31 October 1991. The social partners' agreement proposed a constitutionally recognized role for the social partners in the Community legislative process, and a major extension of EC competences in the field of employment and industrial relations, allowing for qualified majority voting with respect to some of the new competences. Although the UK Government refused to be bound by this Agreement, the Agreement was eventually incorporated into the Protocol on Social Policy of the Treaty on European Union (Social Protocol) that was signed by the member states on 7th February 1992. This was subsequently annexed to the Maastricht Treaty that came into effect on 1 November 1993 (Falkner, 2003).

## **1.2 The European social dialogue: The post-Maastricht Treaty period**

Most crucially with regard to implications for the development of the European social dialogue, the Social Protocol, via Articles 138-139, contained clauses that stipulated statutory rights for the European social partners to be consulted by the European Commission on the topic of social policy. According to Article 138, the European Commission, before submitting proposals in the social policy field, had to consult management and labour on the possible direction of that Community action.

Moreover, if, after such consultation, the European Commission considered Community action advisable, it was obliged to consult management and labour on the content of the proposal envisaged.

Articles 138-9 further stipulated that the European social partners had the option of engaging in contractual relations with one another to conclude Agreements on the topic of the consultation issued by the European Commission. Should this option be chosen by the European social partners, it was to take precedence over the 'traditional' legislative route of a Directive. Should an Agreement be reached by the social partners, Article 139 (2) stipulated that the Agreement could be implemented via two possible routes. Firstly, a non-legally binding route was set out that allowed Agreements to be implemented via 'the procedures and practices specific to management and labour and the Member States'. A second route, 'implementation by Council decision', allowed for the implementation of the Agreement by a traditional Council Directive. Articles 138-139 envisaged that the European inter-sectoral social partners and sectoral social partners could be involved in the procedures foreseen. In order to ensure the representativeness of consulted organizations, the European Commission also engaged in a large scale exercise that assessed the representativeness of the inter-sectoral and sectoral organizations that had the procedural right to be consulted (Falkner, 2003).

A further development occurred in 1998 when existing European sectoral-level dialogue arrangements were regularized into European sectoral social dialogue Committees (SSDCs). Commission Decision 98/500/EC of 20 May 1998 allowed for the establishment of SSDCs at the European sectoral level and aimed to facilitate

their expansion. These SSDCs were provided with funding by the European Commission, began to cover a growing number of European sectors in the years after 1998, and, notably, produced a very large volume of non-legally binding 'soft' texts including sectoral 'joint statements' and 'codes of conduct'.

### **1.3 The Framework Agreements of the 1990s**

Immediately after the annexation of the Social Protocol to the Maastricht Treaty, there was a wave of optimism that the new procedural rights granted to the European social partners would herald the coming of a new era of 'Euro-corporatism' (Falkner, 1998; Kim, 1999; Jensen et al, 1999; Biagi, 1999). In 1994, the European social partners were afforded the opportunity to test the efficacy of their new rights when the European Commission consulted them on the direction of proposed regulation to establish European Works Councils. In this instance however, the European social partners failed to reach an agreement, and the European Commission went ahead with a legislative solution without the involvement of the European social partners. After this initial failure, the European Commission issued a consultation to the social partners on the topic of parental leave. This led to the conclusion of the first post-Maastricht Treaty agreement between the European inter-sectoral social partners. The Agreement stipulated a series of rights on leave from work in the case of pregnancy and maternity, childcare, and urgent family reasons. The Agreement was implemented via the second, legally binding, route available to the European social partners, and became Council Directive 96/34/EC of 3 June 1996. Two further Agreements were concluded by the inter-sectoral European social partners that were also implemented via the legally binding second route. A Framework Agreement on



part-time work became Council Directive 97/81/EC of 15 December 1997, and a Framework Agreement on fixed-term work became Council Directive 1999/70/EC of 28 June 1999.

Agreements that utilized the procedures enshrined in the Social protocol were also concluded at the European sectoral level. For example, Agreements on sectoral working time arrangements were concluded in the Maritime Sector in 1998 and the Civil Aviation sector in 2000 that were subsequently implemented as Council Directives. It is noteworthy that in this period, the first non-legally binding implementation route, via 'procedures and practices specific to management and labour and the member states', was not employed to affect the implementation of European social partner agreements. This meant that precise interpretations of the national 'procedures and practices' clause or potential difficulties with it had not been widely discussed by policymakers or academics in the ten years since the social policy protocol was adopted at Maastricht (Keller, 2003).

#### **1.4 A crisis in the European social dialogue?**

After having been consulted by the European Commission on the topic of temporary agency work, negotiations between the European inter-sectoral social partners on the topic collapsed in May 2001 (Prosser, 2006). Various commentators (Keller, 2003; Prosser, 2006) alleged that the failure was symptomatic of a more general malaise in the process of European social dialogue, and pointed to the limited quantitative output of the process in the years after the conclusion of the Maastricht Treaty, the lukewarm commitment of European employers' associations to the process, and the

continued exclusion of key issues such as pay from the process (Keller, 2003). Concurrently, three developments in the political-economic structure of European governance emerged that had major implications for the European social dialogue. These were (1) the development of the European Commission's Lisbon Strategy that aimed to make the European Union 'the most dynamic and competitive knowledge-based economy in the world by 2010', (2) the impending 2004 Enlargement of the European Union that would see the European Union expand from 15 member states to 25, and (3) the growing use of non-legally binding governance forms such as the Open Method of Coordination (OMC) that emerged in other European policy fields, most notably in the European Employment Strategy. The existence of the first factor meant that the focus of the European social dialogue shifted to topics more concerned with 'employability' and supply-side factors (Prosser, 2006), whilst the imminent enlargement of the European Union, to include many countries in which there were lower standards of living and working conditions, led to a general re-consideration of the role of 'hard' law in the European Union.

The development of the OMC mode of governance at the European-level also had key implications for the use of 'soft' law by the European social partners. Initially emerging in the late 1990s, the OMC is a non-legally binding mode of European governance that involves European and national-level actors identifying policy priorities that should be acted upon at the national level. Specifically, the OMC involves a fourfold process. Firstly, (i) the Council of Ministers agrees on overall goals, before (ii) member states then translate these policy goals into National Action Plans (NAPs). Benchmarks (iii) are then agreed upon by EU and national actors to gauge best practice across Europe, before (iv) the implementation of the various

NAPs is monitored and appraised. The OMC has spread from and to many different policy fields over the previous decade, and has been subject to contrasting academic evaluation. Some authorities have viewed the development of the OMC at the EU-level positively, have lauded its flexibility and ability to regulate diverse policy areas (Vandenbroucke, 2001), and have asserted that despite its non-legally binding form the OMC nevertheless possesses the 'teeth' to affect real change in member states (Jacobsson, 2003). Others have been more pessimistic. The most serious and repeated allegation that is made against the OMC (Hodson and Maher, 2001; Chalmers and Lodge, 2003) is that its non-legally binding form ensures that in reality it has little impact upon national-level policy contexts.

The growing use of the OMC and of 'soft' law more generally had key implications for the development of the European social dialogue. With the 1998 establishment of sectoral social dialogue committees that extensively used 'soft' forms of governance and the conclusion of the non-legally binding Framework of Actions on Lifelong Learning in 2001 at the inter-sectoral level, the European social dialogue began to increasingly use 'soft' forms of governance that mirrored OMC styles of policy-making. Further, in their joint contribution to the Laeken European Council in December 2001, the European social partners expressed their desire to develop 'a more autonomous social dialogue'.

### **1.5 The 'new phase' of the European social dialogue**

As a result of the above pressures, a 'new phase' of the European Social Dialogue emerged. This 'new phase' placed a premium on bipartite 'autonomous' interaction

between the European Social Partners, preferred 'soft' non-legally binding forms of governance, and tended to focus upon topics that were conducive to the development of the European Commission's Lisbon Agenda (Branch, 2005; Prosser, 2006).

Central to the 'new phase' of the European Social Dialogue was the development of multi-annual work programmes. The first of these covered the period 2003-2005 and committed the inter-sectoral European social partners to addressing an agenda that ranged from lifelong learning to equal opportunities. A further feature of the 'new phase' was the use of new tools such as 'Framework of Actions'. 'Framework of Actions' assumed the form of OMC style instruments that set priorities for national social partner organizations and then monitored, at the European-level, the compliance of national social partners with these priorities. A 'Framework of actions for the lifelong development of competencies and qualifications' was concluded by the inter-sectoral European Social Partners on 28 February 2002. This text identified four areas of priority action in the field of lifelong learning, and the European social partners agreed to monitor the impact of the text in member states from 2002 via a series of annual reports. This process culminated in the production of a report evaluating the overall impact of the text in 2006. SSDCs also continued to produce a large body of 'soft' texts. A notable text that mirrored the inter-sectoral level Framework of Actions on Lifelong Learning was the European Banking SSDC's 2003 'Joint Declaration on Lifelong Learning in the European Banking Sector'.

The most notable aspect of the 'new phase' of the European social dialogue however was the conclusion of Framework Agreements implemented via the first, non-legally binding, implementation route foreseen in Article 139 of the Social Protocol. The first Framework Agreement to take such a form was the Telework Agreement.

Following the issuing of a consultation by the European Commission on the topic, negotiations between the inter-sectoral level social partners led to the conclusion of a Framework Agreement on Telework that was concluded on May 23 2002 and formally signed on 16 July 2002. As foreseen by the non-legally binding implementation route set out in the Social Protocol, the Telework Agreement was to be implemented via ‘the procedures and practices specific to management and labour in the member states’. The Agreement was concluded between the European social partner organizations CEEP, UEAPME, UNICE and ETUC and committed the national affiliates of these organizations to implementing the Agreement nationally within three years of the date of the signature of the Agreement. Further, the Agreement foresaw the production of a report on the impact of the Agreement by the European social partners within four years of the date of the signature of the Agreement. In 2002, the European Commission began to consult the inter-sectoral European social partners on the topic of work-related stress. This led to the conclusion of a second Framework Agreement, on Work-related Stress, by the European social partners that was signed by the parties on 8 October 2004. This Agreement was also to be implemented via the first non-legally binding implementation route, was also to be implemented by the social partners’ national affiliates within three years of the date of the signature of the Agreement, and also foresaw the production of a report on the impact of the Agreement by the European social partners within four years of the date of the signature of the Agreement.

### **1.6 The implementation of the Agreements and texts: the acid test of their efficacy?**

A central issue that has attracted a considerable amount of attention from academics and policy makers is the extent to which the Agreements and texts produced in the 'new phase' of the European social dialogue are likely to be implemented 'effectively' (Keller, 2003; Branch, 2005; Larsen and Andersen, 2007). This stems from concerns about the non-legally binding nature of the Agreements and texts, and is similar to concerns that others have expressed about the general efficacy of the use of 'soft' law in the European governance process (Hodson and Maher, 2004; Chalmers and Lodge, 2003). Critical appraisals of the likely efficacy of the Framework Agreements as tools of European social dialogue generally tend to follow the pattern of critiques of the OMC. Some scholars regard the emergence of the non-legally binding approach to European social dialogue as a welcome development in terms of the flexibility it is likely to bring to the social dialogue and its propensity to involve national social partner organizations (Branch, 2005). Others, however, are sceptical about the ability of non-legally binding social dialogue agreements to regulate national systems as effectively as the legally binding social dialogue agreements (Larsen and Andersen, 2007; Keller, 2003). Given that the Telework and Work-related Stress Agreements are to be implemented in accordance with national 'procedures and practices' for social dialogue, factors such as low union density rates and limited traditions of social dialogue in certain countries have been identified as serious barriers to the 'effective' implementation of the Agreements (Keller, 2003).

A further concern relates to how the 'effective' implementation of the Agreements within member states and sectors may be appraised. Given that the Agreements are non-legally binding and thus need not be incorporated into national law, it is imperative to identify, in the absence of a 'legal incorporation' benchmark (Falkner et

al, 2005) that simply assesses whether legally binding Directives have been incorporated into national bodies of law, a means of assessing whether the Framework Agreements have been 'effectively' implemented or not within national and sectoral regulatory contexts. Should robust benchmarks to gauge 'effective' implementation not be identified, then there is a risk that the European-level social partners forfeit complete control of the implementation of the Agreements to their national affiliates. This would undermine the rationale for the existence of EU-level regulation of industrial relations (Falkner, 1998). To this end, a key task that the thesis will engage in is to identify appropriate benchmarks to gauge the 'effective' implementation of the Framework Agreements. This will allow the thesis to robustly appraise national and sectoral implementation outcomes and to compare differing national and sectoral implementation outcomes.

### **1.7 The research questions**

The growing prominence of 'soft' law both in European policy circles and the European social dialogue has been set out above. The major concerns regarding the 'effective' implementation of the Telework and Work-related Stress Agreements and other 'new phase' texts have also been outlined, as have political and intellectual debates surrounding variance in national and sectoral implementation outcomes. The thesis will thus address the two following research questions:

1) To what extent were the Framework Agreements on Telework and Work-related Stress and the Framework of Actions on Lifelong Learning and the Joint Declaration on Lifelong Learning in the European Banking Sector implemented 'effectively' in

European member states and sectors? And how might 'effective' implementation be robustly assessed?

2) What socio-economic, institutional and agency factors account for cross-national and cross-sectoral variance in the 'effective' implementation of the Agreements and texts?

### **1.8 The structure of the thesis**

After an (1) introduction, (2) a review of the literature that exists on the European social dialogue and on European governance more generally will be conducted. This literature review will outline the empirical and theoretical debates that exist on the European social dialogue and European governance. This will then allow the chapter to set out how the thesis expects to contribute to bodies of knowledge within the field and also to establish a robust theoretical framework for the purposes of the thesis.

Chapter three (3) will outline the benchmarks the thesis will employ to gauge 'effective' implementation. After establishing the need for benchmarks with which to assess 'effective' implementation, the chapter will recall the debates in the literature outlined in chapter two and will assess the merits of various benchmarks for appraising the 'effective' implementation of European social partner 'soft' law.

Then, the chapter will propose procedural benchmarks and substantive benchmarks to assess the 'effective' implementation of the Agreements and texts that are the subject of the study. Finally, the chapter will propose a set of variables, based on the



literature outlined in chapter two, that will help the thesis identify the differing factors that explain converging procedural and substantive implementation outcomes in member states and sectors. A (4) research methodology chapter will then be offered. This chapter will outline the epistemological and ontological approach of the study, and will describe the research methods that the thesis will employ to achieve its research aims, and the details of the fieldwork that was conducted. The chapter also sets out the countries and sectors chosen for the purposes of the study and justifies their selection in line with the set of variables developed in chapter three that potentially explain differing procedural and substantive implementation outcomes in member states and sectors.

Five chapters are then dedicated to the data collected in the course of the fieldwork. The first of these chapters (5), concerns the data collected at the European-level of industrial relations. The function of this chapter will be to outline the views of the European social partners on the national ‘procedures and practices’ clause, to survey the variety of means used to implement the Agreements and texts, and to demonstrate that the countries selected for further research capture the diversity of implementation outcomes that took place. The following four chapters will then set out the data collected in the countries studied and will all be structured along the lines of the benchmarks established in chapter three. The purpose of these chapters will be to set out the data objectively and in line with the analytic schemes established in earlier chapters so as to allow for transparent and balanced conclusions to be arrived at in later chapters. Chapter six (6) sets out the data collected in the fieldwork in Belgium , chapter seven (7) sets out the data collected in the fieldwork

in Denmark, chapter eight sets out the data collected in the fieldwork in UK, and chapter nine (9) sets out the data collected in the fieldwork in Czech Republic.

Chapters ten and eleven analyze the data collected in the course of the fieldwork and come to decisive conclusions regarding the research questions outlined in chapter one. Chapter ten (10) concerns the ‘effective’ procedural implementation of the Agreements and will review the data outlined in chapters five to nine against the procedural benchmarks established in chapter three and the variables outlined in chapter three regarding the sources of differential procedural implementation outcomes in countries and sectors. Conclusions will be arrived at regarding whether the Framework Agreements were implemented ‘effectively’, the viability of the national ‘procedures and practices’ implementation clause, and the factors that explain differing national and sectoral procedural implementation outcomes. Chapter eleven (11) concerns the ‘effective’ substantive implementation of the Agreements and lifelong learning texts and will review the data outlined in chapters five to nine against the substantive benchmarks established in chapter three and the variables outlined in chapter three regarding the sources of differential substantive implementation outcomes in countries and sectors. Subsequently, conclusions will be reached regarding the extent to which the Agreements and texts were implemented ‘effectively’ from a substantive perspective, and the facts that explain differing substantive implementation outcomes in countries and sectors. Chapter twelve (12) will conclude the thesis. The empirical and wider analytic findings of the thesis will be outlined, and the extent to which they confirm and/or contradict the

academic debates set out in chapter two will be discussed. In addition to this, a set of policy recommendations and suggestions for further research will be set out.

## **Chapter 2: Europeanization: The debates and their relevance to industrial relations**

### **2.1 Introduction**

Having introduced the study, the chapter will elaborate in greater detail the academic debates that are pertinent to a broader understanding of the topic of the European social dialogue. It will also outline ways in which the study aims to contribute to the body of knowledge in the field. Accordingly, this chapter has two main aims. Firstly, it will attempt to outline the theoretical framework that the study will adopt on the basis of a review of the existing literature. The theoretical view of the process of European integration and the Europeanization of industrial relations that will be assumed will be that of 'multi-level governance'. The literature review chapter justifies the use of this theoretical paradigm and outlines the body of theoretical work that exists on European integration, the Europeanization of industrial relations, and the European social dialogue.

Secondly, the chapter will attempt to map out the existing empirical work that exists within the field of enquiry. The rationale for doing this is that so the state of play within the field may be assessed in order to identify the gaps that exist, to sharpen the research questions, and also to justify the claim to contribute to the body of knowledge within the chosen subject area. A sound grasp of the empirical state of play within the field will also aid the thesis in developing appropriate benchmarks to gauge what constitutes 'effective' implementation of the Agreements and texts in chapter three of the thesis, and to develop the research methods that will be used for

the study in chapter four of the thesis.

The literature review will be structured around five sections. Firstly, (1) it will outline the various theoretical approaches to European integration found within the political science literature so as to adequately establish the theoretical backdrop to the study. Then, (2) it will highlight the debates that exist around the issue of the Europeanization of industrial relations and how these debates are informed by the theoretical approaches to European integration that are found within the political science literature. Next, (3) it will review the theoretical and empirical work that exists on the European social dialogue so as to outline the gaps that exist within the specific field of study, before (4) discussing the literature that exists on the Open Method of Coordination (OMC) and European governance. Finally, a (5) conclusion will be offered that will also outline how the chapter's content will allow, in chapter three, for the development of benchmarks to assess the 'effective' procedural and substantive implementation of the Agreements and texts and for the development of a set of variables that potentially explain differing procedural and substantive outcomes in countries and sectors.

## **2.2 Political science theory and European integration**

The theoretical writings that exist on European social dialogue and European industrial relations more generally have their genesis in political scientific works on the European integration process. It will thus be fruitful to set the broader scene by

outlining the body of scholarship that has been produced by political scientists on European integration.

The academic study of European integration has its roots in two main political scientific theoretical paradigms (Rosamond, 2000). The first, *neo-functionalism*, emerged in the 1950s and 1960s as an attempt to describe and predict the origins and drivers of the nascent process of European integration (Haas, 1958). The central thesis of the neo-functionalist school was that the development of an European polity would proceed from a series of inter-related 'spillovers'. The concept of 'spill-over' implied that integration in one policy area would lead to integration in other areas via the inter-locking of social and economic functions. As a result of the inter-locking of these functions it was hypothesized that national actors' loyalties would transfer to the 'higher' political level that could provide jurisdiction over the entire scope of the functions. Falkner (1998) identified five forms of 'spillover' that were forecast by the neo-functionalists. These were, i) functional spillover (where the inter-dependence of actors in one sector leads to inter-dependence in another), ii) political spillover (a shift in the political loyalties of national actors), iii) geographical spillover (the enlargement of the supra-national polity to incorporate new member states), iv) cultivated spillover (where supra-national institutions act as 'midwives' to the process of inter-state bargaining and gradually increase their power base), and v) cultural spillover (where the cultural expectations of national political elites shift to the supra-national level). As a result of these series of 'spillovers', neo-functionalist writers predicted the development of a supra-national European polity.

Adherents of the second theoretical approach to European integration, *inter-Governmentalism*, retorted that the process of European integration was primarily state-driven, and that nation states were very unlikely to cede substantive powers to a supra-national political body (Hoffmann, 1995). As a result of their association with realist and neo-realist international relations theory, inter-Governmentalists stressed the historic and contemporary supremacy of the nation-state as the loci of political power and hypothesized that the transferal of policy competencies to a supra-national level would be slight. Aside from the idea of member state pre-occupation with sovereignty, the core characteristics of inter-Governmentalist scholarship also lay in an emphasis upon the role of European institutions as facilitators for inter-state bargaining, and the pivotal role of ‘grand bargains’ in the European integration process. As the pace of European integration slowed in the 1970s, the inter-Governmentalist school of European integration theory gained the ascendancy (Falkner, 1998).

After a lull in the debate during the 1970s and 1980s, the debates reemerged in the early 1990s as European integration re-appeared on the political agenda (Falkner, 1998). Although the debate assumed a less teleological tone, the basic division between those who emphasized the processes underpinning European integration and those who emphasized the resilience of the European nation state were still evident. Refined inter-Governmentalist scholarship focused around the work of Scharpf (1988), who identified a ‘joint-decision trap’ (a process whereby individual states’ refusal to cede certain political competencies to the European-level led to inefficient outcomes in terms of European-level policy making) that precluded the development

of effective EU-level governance, and Moravcsik (1995), who formulated a theory of liberal inter-Governmentalism that combined a liberal theory of societal preference formation with a traditional theory of the international negotiation behaviour of states.

Neo-functionalism also re-emerged in a different format. The majority of scholars recognized that classic neo-functionalist theory with its emphasis on pre-conceived outcomes and the eventual onset of an Europe that resembled the traditional nation state was an inadequate way in which to analyze an European system that increasingly took on a hybrid form and in which levels of political integration markedly differed between policy areas (Rosamond, 2000; Marks et al, 1996). A new approach was therefore sought that could potentially describe an emergent system in which some policy sectors were subject to significant EU-level control and in which other policy sectors remained largely within the control of member states. The main theory that emerged became known as 'multi-level governance'. Marks et al (1996), the scholars who first coined the term, developed their ideas on the basis of a series of studies of the relationship between European institutions and regional governance in member states (Marks, 1993; Marks et al, 1998). This underpinned the argument that a series of autonomous relationships existed between different tiers of governance across Europe that often bypassed the sphere of control of central Governments. Marks and Hooghe provided a three-fold definition of multi-level governance. Firstly, the theory of multi-level governance stipulated that political power was distributed amongst the supra-national, national, and local governance levels prevalent across the European Community. Secondly, the theory stated that



collective decision making amongst states involved a significant loss of control for individual Governments. Thirdly, the theory affirmed that political arenas were interconnected rather than nested. By this, it was meant that the different tiers of governance were potentially liable to enter into co-operative or conflictual relationships with one another, sometimes involving a third party.

The views of multi-level governance theorists have been summarized by Andrew Jordan (2001). Jordan argued that the scholarship displayed five main features. These five features were identified as (1) the view that the process of European governance involves a great deal more than the mere conclusion of treaties between states, (2) that by participating in the process of European integration states have compromised their power by giving more power to sub-national and supra-national actors, (3) that there is a Europe of the regions where sub-national actors negotiate with the European level, (4) that European integration unleashes a dynamic of its own whereby states lose control of sub-national actors, and (5) that multi-level governance is a very recent phenomenon that has evolved since the 1980s. Hix (2005) concurred with Jordan in ascribing a similar set of premises to multi-level governance theorists. Hix added that multi-level governance theorists tended to see the European Union as a political system that operated on a day-to-day basis rather than as an inter-Governmental system that was based on periodic meetings by heads of states.

The multi-level governance theory of European integration also draws upon other

approaches to the European integration process. Jordan (2001) identified the influence of policy network theory and historical institutionalism. Jachtenfuchs (1995) argued that the fashion for the concept of 'governance' amongst political scientists with its emphasis on the diffusion of competencies, the links between levels, and the continuous re-negotiation of institutional power relationships contributed to the development of multi-level governance theory. The work of two other scholars in identifying the various levels of operation of EU governance should also be credited with anticipating the development of multi-level governance theory. Peters (1992) contended that the governance of the European Union was characterized by two levels of operation. Firstly, he argued, there were the forms of deal making and bargaining on 'high-level' policy issues within the European Council and Council of Ministers. This process was animated by an inter-governmental logic. Secondly, he argued, there was the 'day-to-day' work of the European Commission on 'low' policy issues that was characterized by a supra-national style of policy making. Peterson (1995) argued that European Union governance should be classified on the basis of three levels; the (1) 'super-systemic level, at which 'grand bargains' between states were made, (2) the 'systemic' level at which the power of the Council of Ministers was pre-dominant, and (3) the 'sub-systemic' level at which the influence of the European Commission, national civil servants and private actors was most pronounced.

The theory of 'transactionalism' that was developed by Sandholtz and Stone Sweet (1997) also complements multi-level governance theory and has also influenced many of the proponents of multi-level governance theory. 'Transactionalism' utilizes

parts of the neo-functional approach and closely resembles multi-level governance theory. The ‘transactionalist’ argument is that the higher the degree of cross-border transactions within a policy sector then the higher the degree of European integration the policy sector is likely to exhibit. The example of a policy sector such as trade, where there are extensive cross-border transactions and a high-level of integration, may be contrasted against an example such as the policy sector of defence, where there are low levels of cross-border transactions and low levels of integration. It was predicted by Sandholtz and Stone Sweet that the loyalties of actors would shift to the European level as cross-border transactions increased, and that subsequently, supra-national institutions were likely to be able to wrest power away from Governments in those policy areas where there were substantial cross-border transactions.

Different criticisms have been leveled against the theory of multi-level governance. Liberal inter-Governmentalists, the school most associated with the scholar Andrew Moravcsik (1993), have fundamentally criticized multi-level governance theory for paying insufficient attention to the role played by central Governments in the European integration process. This critique echoes the charge leveled against neo-functional writers by an earlier generation of inter-Governmentalist scholars. Jordan (2001) offered seven main criticisms of multi-level governance theory (see also Rosamond, 2000; Benz and Eberlein, 1999; Jeffrey, 2000). He argued that (1) multi-level governance is just an amalgamation of existing theories, and that (2) it describes rather than theorizes European governance. On the latter point, Jordan cited Rosamond (2000) who argued that multi-level governance theory resembled a ‘[dis]ordering framework’ that described the European Union rather than identifying

the dynamics that powered its operation. Thirdly (3), Jordan contended that multi-level governance theory overstated the autonomy of sub-national actors vis-à-vis national Governments, and that (4) it adopted a 'top-down' view of sub-national actors. Fifth (5), it was argued that it focused on sub-national actors to the exclusion of other actors, (6) that it mistook sub-national actor mobilization at the EU level for evidence of sub-national actor influence, and (7) that it ignored the international level of interaction whereby the European Union as a single political entity negotiated with sovereign states outside of Europe.

The criticisms advanced above have been re-butted by proponents of the multi-level governance paradigm (Jordan, 2001; Olsen, 2001; Hix, 2005; Sisson, 2007). Of Jordan's seven criticisms, the first four require the most serious consideration. With regard to Jordan's first criticism, this may be effectively countered by emphasizing multi-level governance's distinct contribution concerning the contested nature of the governance process, its incorporation of uncertainty, and its focus upon the articulation between levels of governance (Sisson, 2007). Its recognition of these factors ensure its originality and make it an auspicious theoretical tool with which to view an European Union that exhibits all of these characteristics. Concerning Jordan's second criticism that multi-level governance theory describes rather than theorizes European governance, this may also be rebutted. Firstly, attention should be drawn to the emphasis that multi-level governance theory places upon interactions between levels. This enables the scholar to consider the evolution of the relationships between levels and the relevant dynamics between 'bottom-up' and 'top-up' Europeanization, and horizontal and vertical aspects of Europeanization. Thus, the

multi-level governance approach to European integration becomes a theoretical lens for considering the dynamics and process of European integration rather than merely an ordering framework.

On Jordan's third point, it is important to note the extent of the process of regionalization and de-centralization that has occurred across European member states in previous decades (Marks and Hooghe, 1996). This political process has had major implications for the extent of the autonomy of sub-national actors vis-à-vis national Governments, and it is thus crucial that theoretical frameworks addressing the European integration process recognize the extent of the agency of sub-national actors. It is also notable that Jordan's fourth criticism would appear to be at odds with this third. In any case, multi-level governance theory's attention to the articulation between levels, the involvement of all actors in processes of change, and the agency it attributes to sub-national actors (Sisson, 2007) mean that it is unfair to describe it as adopting a 'top-down' view of sub-national actors.

### **2.3 Europeanization of Industrial Relations**

The debates that have occurred within the field of political science on the form and scope of European integration have inspired parallel debates within the field of European industrial relations. The specific pressures that have precipitated the process of the Europeanization of industrial relations are well established in the literature. Authors have identified key steps towards European integration, including

the creation of the single European market, the introduction of the Euro, and enlargement of the European Union as pivotal in placing pressure upon national systems of labour regulation and leading to demands for greater EU-level regulation of the employment relationship (Hyman, 2001; Hoffmann et al, 2002; Marginson and Sisson, 2004).

The theoretical debates that exist on the Europeanization of industrial relations generally mirror those to be found in the political science literature. On the one hand, there are those who assume the position that the governance of the employment relationship in Europe remains bound within the institutions that are peculiar to national member states (Streeck, 1994, 1998). These scholars generally argue that European integration in the field of industrial relations has been deeply constrained by the unwillingness of European states to delegate social policy making competencies upward, and are troubled by the potential of more considerable integration in policy fields such as trade and monetary policy to put pressure upon national labour markets that exhibit Europeanization only to a limited extent. On the other hand, there are those who argue that industrial relations in Europe is increasingly subject to supra-national forms of regulation, both in terms of procedures and substantial outputs (Falkner, 1998; Goetschy, 1994). These scholars utilize the concept of 'spill-over' to explain the development of an Europeanized system of industrial relations.

It is a characteristic of the literature of the 1990s and early 2000s that there are few comprehensive accounts that approach the changing system of industrial relations in

Europe holistically (Hoffmann et al, 2002). Rather, there are different works that address various components of the system from a given theoretical standpoint. One author who is notable for his application of political science theory to European industrial relations is Streeck. Streeck's writings are anchored in the inter-Governmentalist tradition of European scholarship, and his views on the Europeanization of industrial relations stem from this theoretical position. In a series of articles (1994, 1998), Streeck argued that the inter-Governmentalist form that European integration had assumed had led to the EU-wide liberalization of markets, but that the regulation of social and employment issues remained primarily at the national level as a result of the reluctance of member states to cede control of social policy to the European level. Streeck justified this position by citing the many scholars who have noted that 'negative' integration (the removal of national-level barriers to European integration) is easier to achieve than 'positive' integration (the construction of corrective mechanisms via supra-national initiatives) (Majone, 1994). Owing to this, Streeck hypothesized that 'regime competition' would occur between national systems that were economically integrated with one another but that had few mechanisms to jointly regulate employment relations. Further, Streeck was also pessimistic of the prospects of the future harmonization of national systems of industrial relations.

Regarding the European social dialogue, Streeck argued that its post-Maastricht impact was likely to be limited as a result of the limited competencies with which it had been endowed (1998). This thesis stemmed from Streeck's views, outlined above, about the nature of European integration process. A rebuttal of Streeck's

position on the European social dialogue and a notable espousal of the opposing theoretical position was made by Goetschy (1994) whose writings are rooted in the neo-functionalist school of European studies. Denying the inevitability of national actors vetoing the development of an European system of industrial relations and arguing for the autonomous role of EU-level institutions, Goetschy's identification with neo-functionalism meant that she suggested that 'spill-over' pressures were likely to lead to the development of an European level with strong social policy making capabilities.

A further study that located the development of an European industrial relations system in the neo-functionalist tradition of the study of European integration was Falkner's *EU Social Policy in the 1990s* (1998). Falkner's volume analyzed the right of the European social partners to conclude European collective agreements under the terms of the social protocol that was annexed to the Maastricht Treaty in the light of political theories of European integration. It concluded, on the basis of a corporatist and policy network theoretical analysis of European integration, that the rights of the European social partners to conclude European collective agreements signified the development of a 'corporatist policy community'.

A scholar who is notable for assuming a theoretical view of the emergent system of European industrial relations that straddles elements of neo-functionalist and inter-Governmentalist analysis is Teague (2000; 2001). The argument of Teague is that the process of European economic integration has been strong enough to weaken the link between European nation states and economic citizenship, but that, given the EU



level's limited competencies in areas such as fiscal redistribution, health and education, social benefits, pensions and pay and industrial action, 'it lacks the institutional capacity to replicate existing national social systems' (2001, p.26). Teague is dismissive, however, of the skeptical position that is assumed by scholars such as Streeck. Rather, he asserts that 'the EU has had an impact on national labour regimes which may be fragmented and contested but which nonetheless cannot be discounted' (2001, p.26). For Teague, the rise of processes such as 'credibility bargaining' (collective bargaining that aims to achieve sound macro-economic outcomes) and 'deliberative governance' (a style of governance that emphasizes problem-solving, flexibility, and involves actors at all levels) are manifestations of the European social policy regime that has emerged to complement existing national regimes.

A 2002 literature review by Hoffmann et al took stock of the various works that existed on the Europeanization of industrial relations. Six discreet areas of the emerging system of European industrial relations were identified; (1) the Europeanization of industrial relations actors, (2) the European social dialogue, (3) Employment policy and macro-economic dialogue, (4) the European coordination of collective bargaining, (5) European Works Councils, and (6) the European company statute. The authors found that, in each of the fields surveyed, disparate degrees of Europeanization were evident. It was concluded, however, that national systems of employment regulation in Europe had faced a common set of economic, political and social challenges since the 1970s, and that moves towards Europeanization in each of the fields surveyed had been a response to this common set of challenges.

In more recent years, two works have sought to analyze holistically the discreet pressures and trends that are peculiar to the changing system of European industrial relations. Both have firmly rooted their analysis of European industrial relations in the multi-level governance theoretical approach to European integration. The first is Keller and Platzer's edited volume *European Integration and Industrial Relations* (2003). On the basis of a series of contributions that addressed the forms in which national systems had become Europeanized, Keller and Platzer concluded that a truly 'European' system of industrial relations had not emerged, and that, furthermore, industrial relations and social policy appeared to be one of the EU policy competencies in which there was the least developed level of integration. It was argued that the development of a vertically integrated European system of industrial relations had been prevented by factors such as the diversity of economies evident in the member states, the existence of diverse national institutional arrangements, and the opposition of national employers' associations and trade unions to many of the processes associated with European integration. Further, it was contended that the 'softer' form that EU regulation had taken since the 1980s had had the effect of confirming 'path dependency' in member states. With regard to the precise nature of the system that was emerging, it was concluded that multi-level governance theory was the best analytic framework with which to view developments. It was contended that this theory best explained the co-existence and interaction of 'horizontal' forms of Europeanization with hierarchical forms of governance of the employment relationship in European member states.

The second work is Marginson and Sisson's *European Integration and Industrial Relations: multi-level governance in the making* (2004). Using empirical data from a series of national and sectoral studies, the authors attempted to identify the precise shape of the emerging system of European industrial relations through a thematic analysis of the various trends that have become manifest over the last decade or so. Cautious support was given to the converging-divergences theory of the internationalization of industrial relations that specifies that a series of common internal differentials are becoming manifest across countries. The authors argued that a series of 'multi-speed' Europeanizations were occurring, that different degrees and forms of integration were detectable across companies, sectors and countries, and these differing forms of integration were motored by bottom-up, top-down, and horizontal forms of Europeanization. These developments, it was contended, were best viewed through the prism of multi-level governance theory.

There are strong reasons for adopting the 'multi-level governance' approach to European integration as our theoretical stance. As has been emphasized, the findings within the literature establish that the framework of European industrial relations that has actually developed exhibits a variety of properties, and cannot be adequately described with the use of the more teleological theoretical paradigms of inter-Governmentalism and neo-functionalism. Multi-level governance would appear to be the most auspicious theoretical route to take when approaching such a system (Marginson and Sisson, 2004), for it stresses the multiplicity of actors, levels and processes within European integration. In addition to providing the thesis with a robust analytic framework, the adoption of the multi-level governance approach to

European integration by the thesis will also allow the study to add to the body of knowledge that exists on multi-level governance theory and European integration. Specifically, the findings that the thesis obtains on the relationship between the EU's multi-level framework of industrial relations governance and 'effective' implementation of 'new phase' agreements will contribute to theoretical understandings of how 'soft' law and non-Governmental actors function in Europe from a multi-level governance perspective.

There are four reasons why the thesis adopts the multi-level governance paradigm. Firstly (i), the theory of multi-level governance recognizes the role of non-Governmental actors and attributes a level of agency to them that no other potential theories do. It is of crucial importance that the study adopts a theoretical approach that recognizes that the bodies that are the primary focus of the study, namely the European and national-level social partner organizations, behave in a differing fashion from Governmental organizations. The adoption of the multi-level governance approach will, in this sense, allow the study to depict the social partner organizations in a manner that recognizes their specific purpose in the process of European governance. The findings the study obtains will also contribute to theoretical comprehensions of the behaviour of social partner organizations within the European Union, their engagement with 'soft' law, and the extent of their agency. Secondly (ii), the multi-level governance theory of European integration focuses on the relationships between levels of governance to a degree that other theoretical approaches do not (Jordan, 2001). This too is a key advantage of the theory given that a focus of the thesis concerns the forms in which national-level actors implement the output of the higher-level European actors and the exact conditions in which

'effective' implementation of this output takes place. The use of the multi-level governance paradigm will give a theoretical direction to this endeavour and, with regard to the eventual findings of the thesis, will allow the study to draw theoretical lessons from the forms of relationships formed between social partner organizations at different levels in the course of the implementation of the 'new phase'.

Multi-level governance theory's (iii) attention to bottom-up and top-down dynamics and its focus upon both the horizontal and vertical aspects of Europeanization also makes it an auspicious theoretical approach. In that the OMC implies that forms of political power are dispersed across levels and there is no fixed pole of authority, many of its characteristics as a form of governance are foreseen theoretically by multi-level governance theory. The processes associated with the implementation of the output of the 'new phase', i.e. peer review of implementation, implementation via the national 'procedures and practices' for social dialogue of the affiliates of the European social partners, also mean that the 'new phase' shares many characteristics with the OMC in this regard. In order to adequately describe this aspect of the 'new phase' and to frame it in a suitable analytic manner, it is necessary to adopt a theoretical framework that adopts this multi-directional view of governance processes. Finally (iv), multi-level governance theory's concern with change and innovation and actors' roles in implementing change makes it an appropriate theoretical tool for the purposes of the thesis. The thesis aims to identify the extent to which change is being affected through the 'new phase' of the social dialogue, and the precise role of actors and policy tools in bringing forms of change about. Thus, multi-level governance's theory's endorsement of such an approach makes it appropriate in this regard and will help to give a theoretical character to this goal of

the thesis.

## **2.4 European social dialogue**

The chapter now reviews the literature that concerns itself with the European social dialogue. Having established above the theoretical debates that exist on the Europeanization of industrial relations, empirically informed academic debates on the European social dialogue will be addressed. This section will be divided into two sub-sections. Firstly, that part of the literature which (1) concerns itself with the theoretical and procedural operation of the social dialogue at the European level and the associated potentials and problems will be analyzed, before (2) that part which concerns itself with the output of the social dialogue in terms of its substantive content and implementation at lower levels will be analyzed.

### **2.4.1 The European social dialogue: the institutional machinery and theoretical approaches to it**

A series of scholars, collectively described as ‘Euro-optimists’ (Keller, 2003), argued that the creation of an institutional mechanism for collective agreements between the European social partners at European-level entailed an impressive development in the Europeanization of industrial relations. On the basis of a neo-functionalist analysis of the social dialogue, Falkner argued that the rights granted to the European

social partners under the terms of the Social Protocol and the Agreements subsequently reached signified the development of a 'corporatist policy community' at the European level (1998). A similar position to Falkner's was developed by Jensen et al (1999) who viewed the social dialogue and European integration in similar theoretical terms to Falkner and based their analysis on a comparison of the historical development of the European social dialogue with the development of national systems of social dialogue. Although the limited output of the European social dialogue was acknowledged, it was nevertheless asserted that the existence of EU-level institutions and actors and the presence of a substantive output meant that one could talk of an European-level system of collective bargaining. Other authors espousing the 'Euro-optimist' position include Kim (2001) who argued that the set of processes and practices that had evolved in the post-Maastricht period represented a form of European collective bargaining that was taking place in 'the shadow of [the] law'.

Various scholars (Jensen et al, 1999; Kim, 2001) have also emphasized the key role of the machinery for European sectoral social dialogue in the development of a system of European industrial relations. The arguments for the significance of the European sectoral social dialogue committees (SSDCs) largely resemble those that are made regarding the inter-professional level social dialogue. The role played by the SSDCs in an European system are referred to by Kim (2001) and Jensen et al (1999), who stressed, as with the inter-professional dialogue, that the existence of a set of processes and actors for European social dialogue was more significant than the limited output of the process. Specifically in relation to the European sectoral

dialogue, Jacobi and Kirton-Darling (2005) argued that the existence of a growing number of SSDCs at the European level was indicative of the Europeanization of the social dialogue process.

A more voluminous body of work exists on the potential weaknesses of the social dialogue machinery established at European level. This scholarship has generally been penned by authors who adopt a more inter-Governmentalist view of European integration, and who have been collectively described as 'Euro-pessimists' (Keller, 2003). A series of factors have been identified by these scholars, amongst whom Keller is prominent, to explain the perceived weaknesses of the inter-professional level social dialogue. The first (1) relates to the continued reluctance of European-level employers' associations to participate in the dialogue. It was identified soon after the conclusion of the Social Protocol that the motivation of European employers in participating in European collective negotiations was primarily due to their wish to fend off the threat of legislation from the European Commission (Streeck, 1994; Hall, 1994; Gold, 1998). In recent years, others have attested to the continued key role of European employers' associations in vetoing the dialogue (Degryse, 2000; Keller, 2003). Several reasons have been put forward to explain the ability of European employers' associations to achieve this end. Firstly, there is the limited level of pressure that is placed upon European employers' associations to enter into negotiations for EU-level collective agreements. By the mid to late 1990s, the backlog of Social Policy Directives that the European Commission had been unable to get through the Council of Ministers in the 1980s had largely been cleared, and from then the number of legislative proposals emanating from the Commission in the



social policy field declined (Keller and Bansbach, 2001; Keller, 2003; Keller and Platzer, 2003). As a result of the lack of new legislative proposals from the European Commission, the pressure on European employers to enter into EU-level collective negotiations correspondingly faded.

A second (2) criticism that has been leveled against the social dialogue is the absence of key industrial relations topics and rights such as the issues of pay, freedom of association, and the right to strike from the process. The ETUC's lack of a strike weapon deprives the EU-level union movement of one of the key instruments that national unions have historically used to induce national employers to bargain collectively (Dolvik, 1999). Also, it has been argued that the absence of an issue such as pay, traditionally core to national collective bargaining regimes, from the agenda of EU-level collective bargaining deprives the European Commission of one of the major threats/enticements that characterize the operation of national corporatist systems (Streeck, 1994). Streeck attributes the absence of these issues from the European social dialogue and the subsequent emasculation of the process to the inter-Governmentalist shape that European integration has taken. He argues that the refusal of national governments to cede key social policy competencies to the European level has led to a system of inter-professional level European social dialogue that is a weak imitation of national systems of collective bargaining.

A third problem (3) that has been identified is the role of the organizational and financial problems that are internal to the European social partner organizations in

impeding the operation of the European social dialogue. The internal decision making processes of Business Europe, whereby a 'super-qualified majority' of 80% of members' votes is required to allow the organization to enter into negotiations with ETUC has been highlighted (Degryse, 2000), as have the lack of funding and resources that characterize all of the European social partner organizations (Dolvik, 1999).

Legal problems (4) have also been deemed to trouble the social dialogue. Jacobs and Ojeda Avilés (1999) have identified six legal problems that characterize the European social dialogue. These are given as (1) the voting procedures in the Council of Ministers (e.g. the differences in negotiating behaviour when the subject matter of the agreement requires unanimity or qualified majority) and the related importance of subsidiarity, (2) the relationship with the Council of Ministers (i.e. the checks made by the Commission and the Council when assenting to the incorporation of an agreement into a directive), (3) the ambiguous relationship between the European social dialogue and the European Parliament (particularly the legal possibilities for the European Parliament to overcome its restricted mandated role), (4) the ambiguous relationship with ECOSOC and the need to redefine its role; (5) the important but controversial role of the European Commission, and (6) the problems which might arise concerning subsequent interpretations of agreements/directives.

The criticisms that have been made of the inter-professional level dialogue have also

been leveled at the sectoral dialogue (Keller and Bansbach, 2001). A series of specific criticisms have also been leveled at the sectoral dialogue. One concerns the generally poor organization and funding of the European sectoral social partners. The criticism that has been made is that employers' organizations are poorly organized at the sectoral level (Keller, 2003), that many of the employers' associations are not representative and are often trade associations rather than employers' associations (Kirton-Darling and Clauwaert, 2003), and that both employers' associations and trade unions receive insufficient funding to engage in a meaningful dialogue at the European sectoral level.

To date, the multi-level governance approach to European integration has not been used extensively to analyze the European social dialogue as a mode of European governance. Given that this study will focus upon the output and implementation of the dialogue and the multi-level governance theory of European integration preoccupies itself extensively with the relationships between governance levels, the study will be afforded a good opportunity to explore the utility of a multi-level governance approach in analyzing the European social dialogue

#### **2.4.2 European social dialogue: the output**

A range of output has been produced by the European social partners in the previous two decades or so. This may be usefully divided into (i) output that has been aimed at the European public authorities or another third party (i.e. joint declarations, joint

statements), and (ii) output that involves a reciprocal commitment with lower level actors (i.e. Framework Agreements, Framework of Actions) (Keller, 2003). The concern and focus of this study is with output of the second kind.

A series of criticisms have been leveled at the output of the European social dialogue. The most common criticism that has been advanced is that only three Framework Agreements were concluded by the European social partners prior to the year 2000. This was evidence for many of the inherent weaknesses of the dialogue (Keller, 2003; Degryse, 2000). The quality and quantity of the output of the European sectoral social dialogue has also been subject to specific criticism. Pochet (2005) recorded that of the 353 documents produced by the European sectoral social partners since 1978 less than 2% had been Agreements. It was further noted that 60% of these documents were 'common positions', and that there was no statistical evidence of a progression from 'softer' tools to the conclusion of more substantial Agreements within sectors. A similar verdict was reached by De Boer et al (2005) who conducted a statistical survey of the output of the inter-professional and sectoral social dialogues. The conclusion of De Boer et al was that the system of social dialogue that had emerged was better considered a social partner lobbying system rather than a system of industrial relations given the lack of collective agreements and high quantity of non-legally binding texts.

Falkner (1998) analyzed the content of the first three Agreements concluded since the annexation of the social protocol to the Maastricht Treaty, and concluded that the

quality of the content of the Agreements was indicative of the development of a genuine system of 'Euro-corporatism'. Clauwaert and Harger (2001) examined the possible legal ramifications of the implementation of the Parental Leave Directive in member states, and argued that the Directive would be likely to have significant legal implications for the regulation of parental leave in member states.

The most noteworthy study of the implementation of the output of the social dialogue is Falkner et al's *Complying With Europe*. In this work, the implementation of six EU social policy Directives in fifteen member states was examined. This involved ninety-one individual case studies of the implementation of the six Directives in the fifteen member states. Although only two of the Directives were actually the product of the European social dialogue (the Parental Leave Directive and the Part-time Work Directive), the study is nevertheless a key source of information on the impact of social policy Directives and the likely impact of future Directives and Agreements. This is particularly the case given that Falkner et al deal with the implementation and impact of the 'hard' and 'soft' clauses of the Directives. Several key findings are relevant. One was that the Directives in question had actually imparted comprehensive new rights to national systems of social and employment regulation. In a mere four cases out of the ninety-one studied were all of the terms of the relevant Directive present within a national system. In the vast majority of cases then, the Directives imparted at least some new rights to national contexts. This would seem to refute the suggestion of some (Streeck, 1998) that the potential of the European level to impart major new employment rights to national contexts is minimal.

*Complying with Europe* also revealed the persistent failure of many member states to implement Directives correctly and on time. Of the ninety-one case studies conducted by the scholars, only in ten cases (11%) was implementation 'on time and fully correct'. Also, as of April 2003 (the point at which the scholars finished their data collection), in forty out of ninety-one cases there was not 'full' correctness of transposition, and in seventeen of ninety-one cases there was not 'essentially' correct transposition. Ten out of the fifteen states studied took over an average of thirty months to transpose the Directives 'essentially correctly'. These findings would suggest that although EU social policy Directives have the potential to impart key new rights to national systems there is a persistent problem with the ability of member states to implement the terms of the Directives efficiently and effectively.

Falkner et al found an ambivalent relationship between the 'soft' provisions of Directives and their implementation and impact in member states. In many cases, the 'soft' clauses of the Directives inspired activity within member states. For example, in the case of the Parental Leave Directive, 'no fewer than ten member states reflected one or more of these "soft" law provisions in their transposition measures'. In the case of the Part-time Work Directive, the 'soft' provisions of the Directive inspired transposition activity in nine member states. However, Falkner et al also established that there was an ambiguous relationship between the 'soft' clauses of the Directives and the countries in which they achieved an impact. In Denmark and Sweden, two of the countries in which the legally binding clauses were transposed in the most efficient manner, the 'soft' clauses of the Directives had a minimal impact. In contrast to this, in many of those countries where the transposition of the legally binding

clauses of the Directives were less efficient, the 'soft' clauses of the Directives had a major impact. This finding would appear to suggest that there is an ambiguous relationship between EU-level 'soft' law and domestic political trends. It will be auspicious to investigate the possible nature of this relationship in other areas of the literature in the next section of this literature review.

The explanatory factors advanced by Falkner et al to explain cross-national implementation outcomes are also worthy of comment. The concept of 'worlds of compliance' is introduced by the authors to explain varying national implementation performances. Falkner et al argued that there are three different 'worlds of compliance'; the 'world of law observance', the 'world of domestic politics', and the 'world of neglect'. Falkner et al then argued that the fifteen countries that are the subject of their study could be categorized within one of the groupings. Further, a set of political and social factors were identified that were deemed to drive the implementation performances of the various country clusters. Within the 'world of neglect', it was argued that a permanent culture of apathy to EU regulation precluded the effective implementation of EU social policy directives. Within the 'world of domestic politics', it was argued that domestic political factors such as the political programme of incumbent Governments determined the response to the Directives. Finally, within the 'world of law observance', it was argued that a set of cultural attitudes existed that encouraged 'good' compliance with EU social policy Directives. A fourth 'world of compliance' was added by Falkner and Treib in 2008 after research on the implementation of three EU social policy Directives in four new member states. Their research suggested that the four countries studied fitted into what was described as 'the world of dead letters'. This 'world of compliance' was

characterized by 'politicized transposition processes and systematic application and enforcement problems'. It was also added that Ireland and Italy would be best classed as belonging to this 'world of compliance'.

Little however exists on the implementation of the Agreements and texts produced by the European social partners during the 'new phase' of the European social dialogue. Further, the small existing body of scholarship occupies itself almost entirely with the procedural implementation of the Agreements and texts and has little to say about the impact of the Agreements and texts upon substantive aspects of the employment relationship in European member states and sectors. Those studies that do exist are broadly pessimistic, in line with Keller's (2003) expectation that the use of the first implementation route envisaged in the Social Protocol would involve a further weakening of the process given the existence of several member states in which there was little coordination between levels of social dialogue. Larsen and Andersen (2007), in a study of the implementation of the Telework Agreement across member states, contended that the national implementations that had occurred had reflected the logic of ongoing 'power games' between national social partners rather than those of actual national 'procedures and practices'. Koukiadaki and Deakin (2008), in their study of the implementation of the Telework Agreement in five member states, found that the ambivalent nature of the national 'procedures and practices' implementation clause inspired *ad hoc* implementation outcomes and that the weak nature of the Agreement meant that little in terms of new regulation was offered to national contexts.



## **2.5 The Open Method of Coordination and European governance**

Given the general paucity of literature on the ‘new phase’ of the European social dialogue and its implementation in countries and sectors, it will be particularly fruitful to examine the literature that exists on the OMC as a mode of European governance. This is because, as a mode of European governance, the OMC shares several characteristics with the Framework Agreements and texts that are the subject of our study. The Open Method of Coordination (OMC) is a form of EU-level ‘soft’ law and operates on the basis of a fourfold mechanism. First (1), a series of policy goals are identified and defined by the Council of Ministers. Then, (2) member states develop national action plans (NAP) in order to transpose the policy goals. Next, (3) a series of benchmarks and indicators to measure ‘best-practice’ are agreed upon, before (4) the results are monitored and evaluated at the European level using non-legally binding sanctions such as ‘peer pressure’ and ‘naming and shaming’.

Although the OMC primarily engages Governmental actors rather than social partner organizations, both the OMC and the Agreements and texts are non-legally binding forms of governance, and rely upon the close coordination of EU-level actors with national actors in order for the output to be effectively implemented. The following section will therefore outline in greater detail the similarities that exist between the OMC and Framework Agreements as modes of governance and the lessons that one can take from the literature on the OMC with regards to our study.

One area of the literature on the OMC concerns itself with the precise form of European governance that the OMC entails. Several authors are optimistic about the development of the OMC. Many have lauded it as a compromise between the rigidity of the Classic Community Method (CCM) of regulation and the possibility of an Europe where politics is de-centralized to the level of nation state (Zeitlin, 2005). In their study of the OMC, Scott and Trubek (2002) argued that the horizontal and loosely coordinated form that OMC governance took was suited to the European polity that was emerging in the twenty-first century. Jacobsson (2002), in her study of the implementation of the European Employment Strategy, argued that the OMC entailed a new form of policy discourse that combined supra-national and inter-Governmentalist elements and that ruled through non-traditional means such as 'naming and shaming'. Specifically, the OMC has been praised for its ability to manage an enlarged European Union, to handle issues that traditionally fall outside the competence of the European level, and to reconcile the divergent views of national actors. Vandenbroucke (2001) praised the flexibility of the OMC, and described it as a 'proactive and creative method that allows us to define 'social Europe' in more specific terms and to anchor it firmly as a common collective good at the heart of European co-operation'. De La Porte (De La Porte and Pochet, 2002), in her study of the Pensions OMC, lauded the OMC for its capacity to reconcile social and economic goals on an issue such as pensions.

Other authors are rather less optimistic. The common critique that is made of the OMC is that it is non-legally binding, and therefore unlikely to achieve adequate penetration within member states. Cini, in a 2001 study of the OMC and the

European Union's state aid policy, criticized it on these grounds, as did Scott and Trubek in their more general account of the OMC (2003). In a study of the OMC and European welfare states, Chalmers and Lodge argued that the non-legally binding nature of the OMC had the potential to undermine both the CCM and the *acquis communautaire*. Other scholars have characterized the OMC as an instrument that is used to achieve a set of supply-side economic goals, and that is potentially antithetical to the creation of a social Europe. Chalmers and Lodge (2003) contended that the OMC took place 'in the shadow of the Stability and Growth pact', whilst both Scharpf (2002) and Trubek and Mosher (2003) argued that the basic goals of the OMC were more orientated to supply-side economics than to market correcting social goals. De La Porte recorded that two of the Pensions OMC three pillars (financial sustainability and responding to changing needs) were related to economic stability, and argued that the Pensions OMC partly functioned as a legitimating tool for many national Pensions policies that were economically liberal in their orientation.

### **2.5.1 The implementation of OMC**

It is also important to take stock of the literature that exists on the implementation of the OMC given that this study relates to the implementation of European 'soft' law. The literature that exists on the implementation of different OMCs is sparser than the literature that addresses its potential benefits and costs as a mode of European governance. Several authors who have disparaged the OMC's non-legally binding

nature have also questioned the extent to which the output of the OMC is likely to penetrate national systems however. Trubek and Mosher (2003) contended that the impact of the European Employment Strategy in member states had not been significant. Chalmers and Lodge (2003), in their study of the relationship between the OMC and European welfare states, argued that the OMC was likely to produce sporadic implementation outcomes at the national level as a result of its non-binding nature. In a comprehensive analysis of the implementation of the Pensions OMC in member states, De La Porte (De La Porte and Pochet, 2002) contended that a substantial impact had not been achieved by the Pensions OMC. It was argued that the impact of the Pensions OMC had been rather questionable, and that path dependent national traditions of pensions regulation had precluded the OMC exercising a major impact.

Others have expressed greater optimism. Hodson and Maher (2001), in their study of the OMC and the Stability and Growth Pact, argued that the 'soft' approach had been successful in this instance. Jacobsson (2002), in a study of the implementation of the Employment OMC, argued that the 'soft' mechanisms associated with the OMC had the potential to bring about substantial change in the employment policies of member states. It was asserted that although processes such as 'peer review' and 'naming and shaming' were 'soft' modes of governance, the influence of 'socialization' upon national actors was likely to lead to the OMC affecting profound change within states. Many of the authors who have on the whole been pessimistic have also at least conceded that the OMC has the potential to lead to change in some areas. De La Porte (De La Porte and Pochet, 2002), for example, argued that the impact of the

Pensions OMC was likely to be considerable in those countries where the topic of pensions had thus far inspired few attempts at reform. Leonard (2005) and Lopez-Santana (2006), although both broadly ambivalent about the potential of the OMC as a form of European governance, also predicted that, in certain circumstances, the OMCs that they studied were likely to have a significant impact.

### **2.5.2 Factors promoting effective implementation**

The literature on the OMC also specifies a series of country-specific factors that are likely to enhance the level of impact that different OMCs have within countries. Given that this study will attempt to formulate a series of country and sector-specific factors that explain ‘effective’ implementation of EU ‘soft’ law, it is important to review the various factors that are outlined in the OMC literature. Firstly (1), the literature on the OMC stresses that where national policy agendas converge with the policy promoted by the OMC then the OMC is likely to have a greater impact. In their work on social policy and the OMC, De La Porte and Pochet (2002) argued that national Governments were more likely to implement OMC social policy initiatives if the form that the OMC took coincided with the Government’s policy goals. The authors provided the example of the UK Government’s assiduous implementation of the Social Exclusion/Poverty OMC. This, they argued, was mainly due to the existence of a prior long-term commitment from the Blair Government to significantly reduce child poverty. Leonard (2005) also contended that national Government preference can determine OMC implementation outcome, and added

that national social partner willingness to implement European-level policies is crucial. The argument was also advanced by Lopez-Santana in a 2006 article. In this work, it was argued that the effect that the OMC had upon national contexts was often contingent upon the status of the issue in national level political debate, and that the existence of an European-level OMC ‘strengthened the hand’ of those domestic advocates of the policy that the OMC promoted. This latter point is advanced in other areas of the literature, and De La Porte and Pochet also stressed the importance of this mechanism in the ‘effective’ implementation of different OMCs in member states.

Secondly (2), the literature emphasizes that the degree of work that exists nationally on the topic of the OMC prior to its inception is a determinant of the impact that the OMC has. De La Porte and Pochet (2002) argued that the impact of the OMC is low in countries where extensive work has already been done on the topic promoted by the OMC. They cited the case of the minimal impact that, they argued, the Employment OMC had had in Scandinavian countries. This, it was contended, was because the issues that the Employment OMC attempted to tackle had been extensively addressed in Scandinavian countries prior to the development of the Employment OMC. Jacobssen and Schmidt also argued (2002) that in countries where pre-existing policy on the topic promoted by the OMC is highly developed then the impact of the OMC is likely to be low.

A third (3) factor was suggested by Lopez-Santana (2006) who argued that should

social partners have experience of implementing similar EU-level initiatives then the effect of the OMC will be greater. Lopez-Santana found that some countries have ‘legacies’ of implementation activity that complement the Employment OMC. This concept was described as ‘ideational fit’ and was based on a study of the implementation of the European Employment Strategy in Spain. Lopez-Santana argued that Spain’s receipt of European Structural Funding and the implementation of reforms associated with the funding had created an institutional compatibility with European-level employment reforms, and that this had paved the way for the later successful implementation of the European Employment Strategy.

## **2.6 Conclusion**

As this literature review has attempted to outline, the literature that relates to the area of enquiry is highly diverse and also straddles many different disciplines. The lessons one may adduce from the review of the literature may be divided into those (1) that relate to the theoretical aspects of the study, and those (2) that relate to the empirical aspects of the study. On the subject of (1) theory, it is hoped that the review of the theoretical literature on European integration and the Europeanization of industrial relations has made a sound case for the adoption of the multi-level governance approach to European integration as the study’s theoretical standpoint. As stated earlier, the reasons for doing this are due to the pragmatic nature of multi-level governance theory, its emphasis on the role of non-governmental actors in the process of European integration, and its popularity as a theoretical standpoint within

the field of European industrial relations.

The ideas that adduced on the question of the (2) empirical aspects of the study should be outlined in greater detail. Firstly, it is relatively clear that there are no comprehensive empirical accounts of the implementations of the Framework Agreements on Telework and Work-related Stress. Although two studies exist on the implementation of the Telework Agreement (Larsen and Andersen, 2007; Koukiadaki and Deakin, 2008), these are by no means comprehensive and the question of the efficacy of the implementation of the Framework Agreements remains a terrain that is still largely unexplored. Secondly, it also appears that there is little empirically based work on the European social dialogue that attempts to discuss the theoretical implications of the empirical findings. No such accounts exist on the non-legally binding Framework Agreements, and the last comprehensive account that combined empirical data on the European social dialogue with a theoretical analysis was Falkner (1998), a decade or so ago. Finally, it appears that there is a need to attempt to identify the extent to which the country-specific factors that have been put forward to explain divergent national implementations of EU-level Directives and OMCs are able to explain the national and sectoral implementations of the form of EU-level Social Partner 'soft' governance that the Framework Agreements on Telework and Work-related Stress entail. Although the factors that may explain divergent national implementations are well established with regard to the implementation of the OMC (De La Porte and Pochet, 2002; Lopez-Santana, 2006) and EU Directives (Falkner et al, 2005), no work has been done on the extent to which these factors are transplantable to the area of this study.



The chapter also outlined in sections three and four the doubts that various authorities have about the extent to which the Framework Agreements and texts will be implemented ‘effectively’ within member states (Keller, 2003; Larsen and Andersen, 2007; Koukiadaki and Deakin, 2008), and the issue of the most appropriate means with which to benchmark the ‘effective’ implementation of the Agreements and texts (Falkner et al, 2005). In chapter three, these issues will be set out in more detail, and a framework will be proposed for benchmarking the ‘effective’ implementation of the Agreements and texts. In section four, factors promoting ‘effective’ implementation of OMC policy were also outlined. In chapter three, these factors will also be set out in more detail, and a set of variables that potentially explain differing procedural and substantive implementation outcomes of the Framework Agreements and texts will be advanced.

## **Chapter 3: Benchmarking the effectiveness of the Framework Agreements and texts**

### **3.1 Introduction**

Having addressed the theoretical and empirical rationales for conducting the study, this chapter will outline the analytical devices proposed by the thesis to grapple with its research questions. Specifically, it will define (i) how ‘effective’ implementation is operationalized by the thesis, and (ii) the series of factors that are likely to explain divergent implementation outcomes in member states and sectors. Thus, this chapter has two aims. Firstly (1), it will develop a set of criteria for evaluating the Framework Agreements on Telework and Work-related Stress and the lifelong learning texts as forms of ‘soft’ European governance. To this end, it will outline and assess benchmarks that are potentially suitable for the task of analytically appraising national and sectoral implementations of the Framework Agreements and texts from a procedural and substantive perspective. The procedural dimension of the analysis focuses only upon the Framework Agreements and the procedural form in which they were implemented in member states. The substantive dimension of the analysis focuses upon both the Agreements and lifelong learning texts and the extent to which their implementation added to substantive aspects of the employment relationship in member states on the basis of (i) their contribution to levels of employment regulation and (ii) the extent of their impact at lower levels. Secondly (2), the chapter will develop a set of factors that potentially explain differential effects of the

Agreements and texts upon country and sector specific contexts. These factors will be based upon the literature, and will potentially account for explanations for the procedural and substantive effects of the Agreements and texts upon national and sectoral contexts.

### **3.2 Developing benchmarks to appraise implementation**

It is necessary to outline the multi-dimensional framework of analysis will be developed to appraise the ‘effectiveness’ of the Agreements and texts as ‘soft’ forms of European social partner governance. In order to do this, the chapter starts by elaborating the analytical framework utilized by Falkner et al in their 2005 study of the implementation of six EU social policy directives, given that, as outlined in chapter two, Falkner et al’s work represents a key attempt to define the ‘effective’ implementation of EU-level policy in member states. Falkner et al developed a three-fold model to appraise ‘implementation’ that distinguished between the (1) implementation, (2) enforcement, and (3) application of Directives in member states. The (1) first of these categories, implementation, involved assessing whether the Directives had been implemented ‘essentially correctly’ and ‘on-time’ in the states concerned. Falkner et al’s measure of ‘correct’ implementation was straight-forward; it related to whether the legally-binding terms of the EU Directives had been transposed into national law.

The (2) second of these categories, enforcement, involved an assessment of whether minimum requirements existed for the enforcement of the Directives within the country concerned. Falkner et al identified three factors that were likely to guarantee effective enforcement of the Directives within countries; (i) a substantial national coordination and steering capacity (i.e. the capability of national-level actors to draw the attention of lower level actors to the terms of the Directives), (ii) a substantial national pressure capacity (i.e. the capacity of individuals and actors who are aware of a breach of the law to bring it to the attention of the public authorities), and (iii) the availability of information to individual employees (i.e. the extent to which individual employees are informed of their actual rights). It was also added that factors such as the number of inspectors, the type of controls, and the sanction capacity of the country in question was likely to influence the degree of enforcement of the Directive. The (3) third and final category, the application of the Directives in member states, involved conducting interviews with national labour law experts who hypothesised the degree of application that the Directives were likely to receive in individual workplaces.

### **3.2.1 Benchmarking the procedural implementation of ‘soft’ law**

It is important to outline the ways in which the thesis’ scheme for analyzing the implementation of the Telework and Work-related Stress Agreements is different from Falkner et al’s framework. Firstly, it is necessary to note that the form of EU governance evaluated by this thesis is different to that analyzed by Falkner et al. The

Directives<sup>2</sup> that were the subject of Falkner et al's study required an implementation that guaranteed 100% coverage of national workforces and also, as legally binding instruments, were subject to the enforcement and monitoring mechanisms that are associated with labour law in the member states. Falkner et al's benchmarks for measuring the implementation of the Directives stemmed from their legally-binding status. Thus, a straightforward benchmark of whether the Directives had been incorporated into national legal systems 'essentially correctly' and 'on-time' was developed by the authors. This benchmark had the advantage of simplicity and cross-national transparency and was an appropriate one for appraising cross-national implementations of legally binding EU Directives.

It is rather more problematic to benchmark the 'effective' implementation of the Framework Agreements on Telework and Work-related Stress. Although Falkner et al's 'on-time' benchmark may be adopted to assess the implementations of the Framework Agreements, the fact that the Agreements are non-legally binding means that it is unfeasible to gauge their 'effective' implementation with regard to the extent to which national implementations guarantee *erga omnes* coverage of national workforces. Thus, the benchmark employed by Falkner et al to gauge implementation is insufficient when considering the implementation of the Telework and Work-related Stress Agreements. Nevertheless, it is highly necessary for two reasons to construct a benchmark in addition to the 'on time' benchmark to appraise national implementations of the Telework and Work-related Stress Agreements.

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<sup>2</sup> It should be noted that the two of the six Directives studied by Falkner et al were European social partner Framework Agreements that subsequently received legal backing

Firstly, should a further benchmark to appraise cross-national implementations not be devised, then EU-level actors would be left with little to no leverage upon the Framework Agreements and their implementation. The implication of this is that implementation would become entirely a national-level prerogative, and thus subject to whatever form that national-level social partners deem appropriate. The Telework and Work-related Stress Agreements may then be the subject of indifference or negligence at the national-level. This may be regarded as objectionable as it runs against a key rationale for the existence of an European-level of industrial relations; that is, the existence of a peak-level that attempts to coordinate the behaviour of national actors and seeks to mitigate the potentially damaging effects of competitive behaviour between national systems (Marginson and Sisson, 2004). Were EU-level actors to entirely abdicate control of the Agreements and their implementation, then one of the primary functions of the EU-level social dialogue would be undermined. A benchmark to gauge cross-national implementations of the Agreements is desirable from this perspective.

A second rationale for the development and use of cross-national implementation benchmarks is more theoretical. Cross-national benchmarking of national implementation performances allows for the analytical comparison of national implementation outcomes, and allows one to determine what countries are ‘effective’ and ‘ineffective’ with regard to the implementation of EU-level social partner Agreements. Having established the importance of benchmarks to gauge cross-

national implementations, it is now necessary to discuss benchmarks that are potentially appropriate for this task.

### **3.2.2 Developing procedural benchmarks**

The study will imitate Falkner et al's in that one benchmark it will employ to assess 'effective' implementation is the extent to which the Agreements were implemented 'on time'. Thus, just as Falkner et al appraised whether the Directives that were the subject of their study were implemented in member states within the requisite time period, our study will assess whether the Framework Agreements were subject to some form of procedural implementation in member states in the three year timescale foreseen by the Framework Agreements.

In the absence of the 'legal incorporation' benchmark with which Falkner et al were able to appraise the implementation of EU Social Policy Directives, a further benchmark with which it will be auspicious to gauge the implementation of the Telework and Work-related Stress Agreements is the national 'procedures and practices' implementation clause by which the Agreements were to be transposed in accordance with. As Agreements that have their foundation in Article 139 of the Social Protocol that was annexed to the Maastricht Treaty, it is clearly specified in both Agreements that they be implemented 'in accordance with the procedures and practices specific to management and labour in the member states'. Thus, the study will also benchmark the implementation of the Framework Agreements with the

national ‘procedures and practices’ implementation clause in the same way as Falkner et al benchmarked the implementation of EU Directives by assessing whether the terms of the Directives had been transposed into national law.

Given the existence of the national ‘procedures and practices’ clause, it has been insisted by the European-level trade union movement that national social partners display fidelity to national ‘procedures and practices’ when transposing the two Agreements. This is the espoused position of ETUC (Prosser, 2007), and the national ‘procedures and practices’ clause is also referred to in the European social partner ‘Joint Implementation Report on the Telework Agreement’ (2006). Advocates of this view (Larsen and Andersen, 2007) argue that in practice this implementation clause impels national social partners to use the instrument they would ‘normally’ use at the national level to transpose the European Agreement. Thus, if in country  $x$  the ‘normal’ social partner tool for the regulation of an issue such as teleworking was a legally binding social partner national collective agreement, then the ‘effective’ procedural implementation of the Telework Agreement would entail the use of this method to transpose this Agreement. If the social partners in country  $x$  were to employ, for example, a set of non-legally binding guidelines to transpose the Telework Agreement, then this would imply that the Telework Agreement had been transposed ‘ineffectively’.

In their study of the implementation of the Telework Agreement in the member states, Larsen and Andersen (2007) explicitly identified the national ‘procedures and



practices' implementation clause as the criterion deployed for assessing the 'effective' implementation of the Telework Agreement. Others have advocated the principle in broader terms. Hoffmann et al (2002), in a work predating the Telework Agreement, argued that the most appropriate manner in which to evaluate the implementation of EU 'soft' law was to appraise how the EU text was treated when compared to equivalent national regulation. Marginson and Sisson (2004) also advocated the use of this benchmark, arguing that it offered a pragmatic and constructive way of appraising the effect of EU 'soft' law.

The national 'procedures and practices' implementation clause has also been the subject of criticism. The main objection that has been raised is the existence of a large body of states in which national 'procedures and practices' are either ill-defined or in their infancy. In the case of the former, critics such as Berndt Keller (2003) have pointed to examples such as the UK, where there is no forum for inter-sectoral collective bargaining, sectoral bargaining only exists in a minority of sectors, and collective relations between management and labour, where there is a trade union presence, primarily take place at firm or plant level. In the case of the latter, there are the majority of the new member states that have acceded to the European Union since 2004 (Prosser, 2007). In these states, structures for bipartite dialogue are developing at the inter-sectoral and sectoral levels, but the systems are as yet largely characterized by de-centralized plant or firm level social dialogue and/or inter-sectoral tripartite concertation with a heavy emphasis on the role of the state. Although European Agreements may stimulate the development of social dialogue in states such as the UK and the new member states (European Social Partners, 2006),

the extent to which the implementation of the Telework or Work-related Stress Agreements may be carried out in accordance with national ‘procedures and practices’ is debatable given the dis-organized nature of social dialogue structures.

Despite these criticisms, the national ‘procedures and practices’ implementation clause nonetheless provides a promising benchmark for the evaluation of the cross-national implementations of the Framework Agreements. It is widely used both by policy makers and scholars, and also crucially has a legal basis in the Social Protocol and is specifically referred to in the two Agreements.

### **3.2.3 Developing substantive benchmarks**

Also building on Falkner et al, the thesis’ system for analyzing the implementation of the Telework and Work-related Stress Agreements and lifelong learning texts will incorporate a framework for analyzing the effects of the Agreements upon substantive aspects of the employment relationship within national and sectoral contexts. This is necessary for several reasons. Appraising the degree to which various national implementations are ‘effective’ and the extent to which the terms of the Directives are monitored and transposed properly merely addresses the relationship between European and national-level procedures, and does not touch upon the extent of substantive effect that the Framework Agreements are likely to have upon national systems in terms of their contribution to levels of regulation and impact in workplaces. The ‘correct’ implementation of either of the Agreements and

their effective enforcement and application may in reality mean that no new employment rights are imparted to national contexts or that the Agreements themselves exercise a minimal level of impact in individual workplaces, and it is therefore vital to bolster the benchmarks developed by Falkner et al with an analytic dimension that focuses upon the substantive effect of the Agreements and texts.

National actors often implicitly appraise European Agreements and texts on the basis of their substantive effect within countries and sectors (Prosser, 2007; Larsen and Andersen, 2007). Should an EU-level instrument impart comprehensive new rights to national regulatory frameworks or exercise a clear impact in individual workplaces, then this is likely to form the basis of actors' assessment of the EU instrument itself rather than the more abstract issue of its 'effective' or 'ineffective' implementation. A substantive element to the analysis will therefore give the thesis' framework a more practical relevance.

The substantive dimension within the analytic framework has two aspects to it. Firstly, it will address the extent to which the Framework Agreements impart new rights to the regulatory contexts in which they are transposed. For example, it may be that in sector *x* the topic of work-related stress was comprehensively covered by sectoral regulation prior to the European Agreement and that the European Agreement contained no provisions that were not previously present within sectoral regulation on work-related stress. In this case, the European Agreement would have added no new rights to sectoral regulation given that all aspects of the European

Agreement had been covered prior to the implementation of the Agreement in sector *x*. Conversely, it may be that in country *y* there was an underdeveloped level of regulation on the topic of work-related stress prior to the European Agreement and that the European Agreement contained many provisions that were new to country *y*. In this case, the implementation of the European Agreement in country *y* would be likely to add several new aspects to the regulation of work-related stress in country *y*.

Secondly, it will assess the possible extent of the impact of the Framework Agreements and texts in workplaces in states and sectors. This will be done using two further tools. Firstly, the study will assess the extent to which the various policy tools (i.e. laws, collective agreements, guidelines) used to implement the Agreements are likely to have made the content of the Agreements ‘binding’ upon workplace level actors. This will allow for the construction of a typology of the efficacy of various policy tools in differing national and sectoral contexts. Secondly, the study will attempt to appraise the number of policies on the topics of teleworking and work-related stress that the implemented Agreements are likely to have inspired in workplaces as a result of their implementation. Although the study will not incorporate workplace level data, the fact that national and sectoral social partner representatives will be interviewed means that informed estimates of the extent to which the implemented Agreements were able to lead to such policies will be able to be made.

### **3.2.4 Summary**

The above section has addressed the question of the most appropriate benchmarks with which to gauge national implementations of the Framework Agreements and texts that are the subject of the study. Having assessed the merits of Falkner et al's approach, the section established that it would be fruitful to benchmark the procedural implementation of the Framework Agreements on the basis of (i) whether the Agreements had been implemented via some form of procedural means in the three year timescale foreseen by the Agreements themselves, and (ii) the national 'procedures and practices' clause by which the Agreements were to be implemented in accordance with. The section also proposed an analytical framework for assessing the substantive implementation of the Framework Agreements and texts. This analytical framework included the extent of the impact of the Framework Agreements and texts upon levels of national and sectoral regulation, and the level of impact of the Framework Agreements and texts upon sectors and workplaces.

### **3.3 Explaining the effects of the Agreements on differential country and sector specific contexts: a set of independent variables**

Having established the criteria with which to appraise the 'effectiveness' of the Framework Agreements and texts as forms of European 'soft' law, it is now necessary to identify the independent variables that are likely to explain the differential effects that the Framework Agreements may have in country and sector

specific contexts. These independent variables will be categorised into those that potentially explain differential implementations of the Agreements, and those that potentially explain the differential substantive effects that the Agreements may have. Owing to the fact that many of the theses advanced in the literature are based on empirical findings adduced from fields separate to European social partner ‘soft’ law and its implementation, a challenge is to assess the extent to which the findings of other studies and the theses they have produced are applicable to the thesis’ area of enquiry.

### **3.3.1 Independent variables related to the procedural implementation of the Agreements**

Three groups of independent variables that potentially explain the differing procedural implementations of the Agreements will be identified; (i) the ‘culture’ variable, (ii) policy variables, and (iii) institutional industrial relations variables.

#### *a) The ‘culture’ variable*

- (i) The ‘culture of compliance’ that exists within the member state

Falkner et al’s 2005 volume on the implementation of six social policy Directives in EU-15 member states identified what was described as the ‘culture of compliance’

that existed within a country as a crucial factor in explaining national implementation outcomes. The authors argued that explanatory factors such as ‘policy misfit’<sup>3</sup> and ‘negotiating preference’<sup>4</sup> that had previously been advanced (Anderson, 2002) only explained implementation outcomes imperfectly. Rather, it was contended that what was described as the ‘world of compliance’ in which an individual state should be classified was the crucial factor in explaining implementation outcomes within states. It was argued that three different ‘worlds of compliance’ existed, all of which displayed different characteristics and were driven by divergent factors. Those fifteen countries studied were categorized as belonging to one of these ‘worlds of compliance’ and it was argued that implementation outcomes within these countries would, broadly, follow a logic that accorded with the ‘world of compliance’ in which the country was grouped. A country such as Denmark, that was grouped as belonging to the ‘world of law observance’, was deemed likely to implement EU Social Policy Directives ‘effectively’ irrespective of whether the specific Directive exhibited high levels of ‘policy misfit’ or had not been supported by the Danish Government during the negotiating phase. It was argued by Falkner et al that a powerful ‘cultural’ force existed in such countries that ensured that the Directives were implemented ‘correctly’ whatever the potential costs of compliance with the Directive. In a country such as the UK, that was included in the ‘world of domestic politics’ bracket, it was forecast that factors specific to the domestic political context would assume the major role in determining implementation outcomes. In this type of country, it was argued that a ‘culture’ whereby the Directives were implemented correctly

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<sup>3</sup> The concept of ‘policy misfit’ relates to the extent of ‘fit’ that is perceived between the EU policy in question and existing policies on the topic at the national level

<sup>4</sup> The theory of ‘negotiating preference’ stipulates that individual Directives will be implemented more efficiently in member states should the member state in question have supported the Directive at the European level

irrespective of other factors was largely absent and that, in the absence of such a ‘culture’, implementation was contingent upon factors such as the preference of the national Government for the content of the specific Directive. The final country bracket hypothesized by Falkner et al was that of the ‘world of neglect’ and included a country such as France. It was contended that those countries that belonged to this category neglected their implementation duties as a matter of course and that ‘incorrect’ implementation of social policy Directives took place in these countries irrespective of the content of the Directive or the political climate within the state. In these countries, a ‘culture’ whereby EU Social Policy Directives were routinely complied with was deemed to be absent.

The concept of ‘worlds of compliance’ and the associated importance that Falkner et al place upon culture as an explanatory variable has several key implications for the study. Firstly, it is necessary to test the hypothesis that ‘culture’ is a key explanation for implementation outcomes within countries. Although Falkner et al’s volume is primarily concerned with the implementation of ‘hard’ EU law by national Governments, it is still crucial to establish the extent to which the variable of ‘culture’ helps explain variance in the implementation of EU social partner ‘soft’ law by national social partners. This is an opportunity given that little other academic work exists on the relationship between ‘soft’ law and ‘cultures of compliance’, and the extent to which Falkner et al’s hypotheses are translatable to the domain of EU ‘soft’ law will be explored.



Before the hypotheses developed by Falkner et al may be tested, it is important to establish the authors' precise definition of 'culture of compliance'. This is defined by Falkner et al as 'a socio-political mechanism' that involves national actors (specifically national politicians, civil servants, and social partners) becoming inculcated with a belief that compliance with legal requirement (in this case EU legal requirement) is a non-negotiable function of public administration. This, in turn, reinforces the tendency within countries to take compliance seriously and also overrides any political opposition that the Directive may encounter within the countries. It was further argued that the existence of this 'culture' of compliance in certain countries leads to an emphasis on the long-term benefits of compliance to all actors. In the long run, a 'culture' of good compliance as a self-perpetuating socio-political force becomes engrained in national actors within such a country.

In order to test the applicability and robustness of Falkner et al's thesis then, the study will attempt to test the hypothesis that the effective implementation of the Framework Agreements on Telework and Work-related Stress is contingent upon the positioning of the four countries to be studied within Falkner et al's typology of countries. On the basis of the data collected, the extent to which Falkner et al's thesis explains differential national and sectoral implementations of EU social partner 'soft' law will be evaluated.

*b) Policy variables*

- ii) Convergence of national and sectoral policy agendas with the topic of the Framework Agreement

This variable concerns to the extent to which the topic of the Framework Agreement converges with the policy priorities of national and sectoral actors. The hypothesis is that should the Agreement address an issue which is a policy priority within countries and sectors, then the implementation of the Agreement will be 'effective'. For example, should the topic of teleworking be a policy priority in country  $x$ , then the hypothesis states that it becomes more likely that 'effective' implementation will occur. Conversely, if the topic of teleworking is not a policy priority in country  $x$ , then the hypothesis states that it is less likely that 'effective' implementation will occur.

Although it assumes different forms, this hypothesis appears widely in the literature that exists on the implementation of European 'hard' and 'soft' law. In their work on social policy and the OMC, De La Porte and Pochet (2002) 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. The authors provided the example of the UK Government's assiduous implementation of the Social Exclusion/Poverty OMC. This, they argued, was mainly due to the existence of a prior long-term commitment from the Blair Government to significantly reduce

child poverty. Falkner et al (2005) pursued a similar line of analysis. They found that, in countries that belonged to the ‘world of domestic policy’ grouping, European-level policy had a greater chance of being implemented efficiently should it coincide with the political programme of the Government in power at the national level. Léonard (2005) also contended that national Government preference can determine OMC implementation outcome, and added that national social partner willingness to implement European-level policies is crucial. The hypothesis was also advanced by Lopez-Santana (2006) who argued that the effect that the OMC had upon national contexts was often contingent upon the status of the issue in national level political debate, and that the existence of an European-level OMC ‘strengthened the hand’ of those domestic advocates of the policy that the OMC promoted.

- iii) The degree of national and sectoral regulation that exists on the Framework Agreement prior to its implementation

This variable relates to the degree of regulation that exists within the country or sector on the policy promoted by the Framework Agreement prior to the implementation of the Framework Agreement. The hypothesis states that should a comprehensive level of regulation exist within the country or sector on the topic promoted by the Framework Agreement prior to the implementation of the Framework Agreement then the implementation of the Framework Agreement is less likely to be ‘effective’. For example, if in state  $y$  a comprehensive level of regulation existed on the issue of work-related stress prior to the implementation of the

European Work-related Stress Agreement, then the hypothesis states that the implementation of the Work-related Stress Agreement in state *y* will not be ‘effective’. Conversely, the opposite of this scenario is implied by the hypothesis. This is that there may be a very low level of prior regulation on the topic of work-related stress within state *y*, and, subsequently, the implementation of the Work-related Stress Agreement in state *y* is likely to be ‘effective’. This hypothesis is rooted in the literature. De La Porte and Pochet (2002) argued that the impact of the OMC is low in states where a high level of regulation already exists on the subject of the OMC. They cited the case of the minimal impact that, they argued, the Employment OMC had achieved in Scandinavian countries. This, the authors contended, is because the issues that the Employment OMC attempted to tackle had been extensively and effectively addressed in Scandinavian states prior to the inception of the Employment OMC. Falkner et al’s volume (2005) arrived at a similar conclusion. These authors found that in certain countries inactivity in response to European policy was sometimes attributable to pre-existing national regulation of the European-level policy. Finally, Jacobssen and Schmidt (2002) found that in countries where pre-existing policy on the topic promoted by the OMC was highly developed then the impact of the OMC was likely to be low.

iv) Prior social partner experience of similar EU-level initiatives

This hypothesis states that where national or sectoral social partners have experience of implementing or working on similar EU-level initiatives, then the implementation of the Agreements will be more likely to be ‘effective’. Specifically, it may be

possible that national and sectoral social partners may ‘learn’ through the implementation of the Telework Agreement how to transpose such Agreements, and, subsequently, the implementation of the Work-related Stress Agreement may be more ‘effective’. The thesis will therefore examine the hypothesis that, as a result of a ‘learning effect’, national and sectoral social partners are more likely to implement the younger Work-related Stress Agreement in a more ‘effective’ form given their prior experience of implementing the Telework Agreement.

The precedent in the literature for this hypothesis is found in Lopez-Santana’s 2006 study of the European Employment Strategy, which argued that prior national experience of implementing European-level output has an influence upon the quality of implementation. According to Lopez-Santana, some countries have ‘legacies’ of implementation activity that complement the Employment OMC. This concept was described as ‘ideational fit’. Lopez-Santana argued that Spain’s receipt of European Structural Funding and the implementation of reforms associated with the funding had created an institutional compatibility with European-level employment reforms, and that this had paved the way for the later successful implementation of the European Employment Strategy.

c) *Institutional industrial Relations variables*

v) The Coordination of social dialogue levels

A further variable that it is necessary to test is the coordination of social dialogue levels within member states. This variable is of particular relevance for an analysis of the implementation of the Agreements, for the structure of social dialogue levels within countries relates directly to the national ‘procedures and practices’ implementation clause by which the Agreements were to be transposed in accordance with. The concern that has been voiced (Keller, 2003) is that in those countries where there is a lack of clearly structured and tiered social dialogue levels the national ‘procedures and practices’ implementation clause will come under strain. In states such as the UK and many of the new member states, it has been argued that the lack of robust national inter-professional social dialogue structures will lead to ‘ineffective’ implementation of the Framework Agreements given that it is difficult to identify national ‘procedures and practices’ for social dialogue. In the light of such arguments, the thesis will test the hypothesis that in those countries where there are clearly structured levels of national social dialogue, then the Framework Agreements will be transposed ‘effectively’, and that in those countries where there are not clearly structured levels of national social dialogue then the Framework Agreements will not be transposed ‘effectively’.

Aside from Keller's concern that the Framework Agreements would not be implemented 'effectively' in those countries without structured levels of social dialogue, there are also precedents that support this hypothesis in the broader literature. Léonard (2005) argued that high levels of coordination between national bargaining tiers was necessary for employment pacts to be 'effectively' implemented. The countries in which employment pacts were 'effectively' implemented in Léonard's study were states such as Belgium, Denmark, and Finland where multi-employer bargaining systems prevail, whilst it was asserted that in a decentralized system such as the UK employment pacts had not been 'effectively' implemented.

### **3.3.2 Independent variables related to the substantive effect of the Agreements**

Three groups of independent variables that potentially explain the differing substantive effects of the Agreements and texts will also be identified; (i) policy variables, (ii) industrial relations structure variables, and (iii) institutional industrial variables.

a) *Policy variables*

i) Convergence with national level policy agendas

It is also appropriate to consider the ‘convergence with national level policy agendas’ variable with regard to the substantive dimension of the analysis. This variable is likely to be useful in assessing country and sector variance in terms of the effect of the Framework Agreements and texts with regard to *content* and *impact*. The hypothesis that will be tested is that should the topic that the Framework Agreement addresses converge with policy priorities within the country or sector, then the substantive effect of the Agreement or text in terms of *content* and *impact* is likely to be higher within the country or sector. The converse of the hypothesis, where the topic of the Framework Agreement or text is not a policy priority within the country or sector and subsequently the substantive effect of the Agreement or text in terms of *content* and *impact* is limited within the country or sector, will also be tested. The precedents for this hypothesis in the literature have been set out above (De La Porte and Pochet, 2002; Leonard, 2005; Lopez-Santana, 2006). Although the same broad principles apply for the two separate variables relating to the implementation of the Agreements and their substantive effect, it is possible that the study will obtain a different set of findings for the two variables.

ii) The degree of national and sectoral regulation that exists on the Framework Agreement or text prior to its implementation



This variable, advanced above as a potential explanatory variable for the procedural implementation of the Agreements, may also be advanced as a potential explanatory variable for the substantive effects of the Agreements or texts. The arguments that exist in the literature for this view have been described above (Jacobssen and Schmidt, 2002; De La Porte and Pochet, 2002), and with regard to the substantive effects of the Agreements and texts it is of relevance to both the extent to which the Agreements and texts add to the *content* of national and sectoral regulation, and the extent of the *impact* of the Agreements and texts. With regard to the extent that the Agreements and texts add to the *content* of national and sectoral regulation, the hypothesis that will be tested states that in a country or sector where there is a comprehensive degree of regulation on the topic of the Framework Agreement or text prior to the implementation of the Agreement or text, then the content of the Agreement or text is unlikely to add substantially to national or sectoral rights on the issue. Conversely, it will also be necessary to ‘test’ the opposite of this hypothesis; that the Agreement or text is likely to have a comprehensive effect on the *content* of national or sectoral regulation on the topic of the Framework Agreement or text when there was little previous regulation on the topic within the country or sector.

With regard to the extent of the *impact* of the Agreements and texts, the hypothesis here contends that in a country or sector in which the topic of the Framework Agreement or text is covered by existing regulation, then the impact of the Agreement or text will be limited. The converse hypothesis, where the impact of the

Agreement or text is extensive when there is little prior regulation on the topic of the Agreement, will also be tested.

*b) Industrial relations structure variables*

iii) Coordination of bargaining levels

This variable relates to variance in the *impact* of the transposed Agreements. Keller (2003) has argued that the non-legally binding EU Framework Agreements are likely to be limited in their impact in those countries where bargaining levels are uncoordinated. On the basis of this criticism, the hypothesis will be tested is that in those states in which social dialogue structures are uncoordinated that the *impact* of the Agreements or texts will be limited. The converse hypothesis will also be tested, that the *impact* of the Agreements and texts will be significant in those countries where social dialogue structures are coordinated.

iv) Rate of collective bargaining coverage

A further variable that may exercise an effect on the level of *impact* that the Agreements and texts achieve in countries and sectors is the rate of collective bargaining coverage in the relevant countries and sectors. Keller (2003) and Arcq, Dufresne and Pochet (2003) argued that in those countries and sectors with low rates

of collective bargaining coverage and no *erga omnes* procedure for the extension of collective agreements the impact of the Agreements and texts would be limited and that in those countries and sectors with high rates of collective bargaining coverage and/or an *erga omnes* procedure the impact of the Agreements and texts would be high. The hypothesis that where there are high rates of collective bargaining coverage and/or an *erga omnes* procedure the impact of the Agreements and texts will be significant will thus be tested. Conversely, the hypothesis that in those countries and sectors where there are low rates of collective bargaining coverage and no *erga omnes* procedure then the impact of the Agreements and texts will be limited will be tested.

*c) Sectoral variables*

The variables that are likely to explain differing substantive implementation effects between sectors will now be outlined.

v) Homogeneity of sector

This variable relates to the *impact* of the Agreement and texts, and concerns the homogeneity of the sector in which the Agreements and texts are implemented with regard to the range of sectoral economic activities. At the European level, sectors with SSDCs that may be considered ‘homogenous’ are inland waterways and private security, whereas sectors with SSDCs that may be considered ‘heterogeneous’ are

commerce and banking. The hypothesis that will be tested is that in those sectors that are ‘homogenous’ the *impact* of the Agreements and texts will be more significant. The converse of this hypothesis will also be tested; that in those sectors that are ‘heterogeneous’ the *impact* of the Agreements and texts will be less significant. A range of scholars have argued that ‘homogenous’ sectors are better equipped to address European-wide issues of concern to them than sectors that exhibit more ‘heterogeneity’ (Keller and Sorries, 1998; Leisink, 2002; Marginson, 2005). The argument that is advanced for this is that ‘homogenous’ sectors face a set of more coherent challenges than those sectors that are more ‘heterogeneous’, and that subsequently sectors with a ‘homogenous’ range of activities are more likely to manage European level output in an ‘effective’ manner.

vi) ‘Europeanization’ of sectoral markets (labour and product markets)

This variable relates to the *impact* of the Agreements and texts and concerns the extent to which sectoral markets are ‘Europeanized’, and involves labour and product market dimensions.

*1) ‘Europeanization’ of sectoral labour markets*

With regard to the ‘Europeanization’ of sectoral labour markets, the hypothesis that will be tested is that in those sectors where there is a high degree of sectoral labour market integration the Agreements and texts will have a significant level of impact.

The converse of this hypothesis will also be tested; that in those sectors where there is a low degree of sectoral labour market integration the Agreements and texts will not have a significant level of impact. Leisink (2002) argued that the existence of ‘Europeanized’ sectoral labour markets promotes political cooperation between the social partners at the European-level (see also Marginson, 2005). The thesis will thus examine the extent to which this general principle relates to the impact of the Agreements and texts within sectors.

## *2) ‘Europeanization’ of sectoral product markets*

With regard to the ‘Europeanization’ of sectoral product markets, the hypothesis that will be tested is that in those sectors where there is a high degree of sectoral product market integration the Agreements and texts will have a significant level of impact. The converse of this hypothesis will also be tested; that in those sectors where there is a low degree of sectoral product market integration the Agreements and texts will not have a significant level of impact. Precedents for these hypotheses are to be found in various parts of in the literature. Kollewe and Kuhlmann (2003), for example, argued that when European firms jointly face high cost competition as a result of integrated product markets they are more likely to engage in social dialogue. Leisink (2002) argued that the existence of ‘Europeanized’ sectoral product markets promotes political cooperation between the social partners at the European-level. The thesis will thus examine the extent to which these general principles relate to the impact of the Agreements and texts within sectors.

vii) EU-level pressures for the formation of an SSDC

This variable also concerns the *impact* of the Agreements and texts and addresses the extent to which an EU Sectoral Social Dialogue Committee (SSDC) exists and is active within the sector. The hypothesis that will be tested is that in those sectors where there is a SSDC that is active then it is likely that the *impact* of the Agreements and texts will be more significant. The converse of this hypothesis, that the *impact* of the Agreements and texts will be less in those sectors where there is not an active SSDC, will also be tested.

Several scholars have identified the EU-level pressures that encourage the formation of SSDCs. One of the most notable is Leisink (2002), who argued that the existence of a common European-level policy in a sector and a set of European-wide common challenges in the sector exerted what he called a ‘pull’ pressure on the sector to form an SSDC. Keller and Sorries (1998) also argued that Community-wide policies for particular sectors encouraged the formation of SSDCs. Kirton-Darling and Clauwaert (2003) added that the existence of a common sectoral interest in some European-level topic encouraged the formation of an SSDC. Given that these authors have convincingly identified these factors as ones that facilitate the ‘Europeanization’ of industrial relations in these sectors, it will be necessary for to test the extent to which these factors increase the level of *impact* of the Agreements and texts within sectors.

### **3.4 Conclusion**

This chapter has outlined the benchmarks that the thesis will employ to gauge the ‘effective’ implementation of the Agreements and texts and has also set out the group of independent variables, based on the relevant literature, that the thesis will use to establish the factors that explain varying levels of effect of the Agreements and texts upon different national and sector-specific contexts. The chapter established different benchmarks to appraise the ‘effective’ procedural implementation of the Agreements, and the ‘effective’ substantive implementation of the Agreements. Procedurally, the chapter established that whether the Framework Agreements had been implemented ‘on time’ and whether they had been implemented in accordance with national ‘procedures and practices’ were suitable benchmarks with which to assess ‘effective’ implementation. Substantively, the chapter established that the extent to which the Framework Agreements and texts added to the content of national and sectoral regulation and were likely to achieve an impact at workplace level were suitable benchmarks with which to assess ‘effective’ implementation. Having established these benchmarks for ‘effective’ implementation, the thesis will now be able to sub-divide the data chapters on the basis of these benchmarks, and will also be able to assess in chapters ten and eleven, on the basis of the benchmarks, the extent to which the ‘effective’ implementation of the Agreements and texts occurred in the countries and sectors that are the subject of the study.

The independent variables that the chapter developed to explain diverging implementation outcomes were also divided into those pertaining to the procedural effects of the Agreements and those pertaining to the substantive effects of the Agreements and texts. Procedurally, the chapter identified variables relating to (i) culture, (ii) policy, and (iii) institutions that it would be useful to test in terms of the extent to which they were likely to lead to ‘effective’ implementation outcomes. Substantively, the chapter identified variables relating to (i) policy, (ii) institutions, and (iii) the sector concerned that it would be useful to test in terms of the extent to which they were likely to lead to ‘effective’ implementation outcomes. Having identified these variables, the thesis will now be able to establish, in chapters ten and eleven, the extent to which the factors identified explain the differing effects of the Agreement and texts in varying national and sectoral contexts.

The identification of the differing variables that potentially explain divergent national and sectoral implementation outcomes also necessitates the careful selection of sectors and countries for the purposes of the study. Specifically, it is necessary to select countries and sectors for study that exhibit to differing degrees the cultural, political, institutional and sectoral properties outlined in section three of this chapter. Chapter four assumes this task and outlines in detail the rationales for the selection of the varying countries and sectors that are studied.



## **Chapter 4: Research Methods and Methodology**

### **4.1 Introduction**

Having developed the research questions and the analytic means that will be used to address them in previous chapters, in this chapter the research methods and methodology that the study will employ to answer the research questions will be outlined. This will involve establishing the study's epistemological and ontological approaches and how they tie into the goals of the study, before discussing the research methods that were selected to conduct the study. Then, the chapter will justify the selection of countries and sectors made, before discussing the actual process of conducting the fieldwork. Finally, the chapter will discuss the methods used to analyze the data collected before offering a conclusion.

### **4.2 Epistemological and ontological approach**

As outlined in chapter two, the study will adopt a multi-level governance theoretical approach to the subject of European integration and industrial relations. The adoption of the multi-level governance paradigm raises subsequent questions as to the most appropriate analytic approach to the study. The approach that will be adopted may be described as post-positivist and is consistent with the study's view of ontology and epistemology (Corbetta, 2003). Ontologically, a critical-realist stance is adopted.

This implies that social reality is ‘real’, but only in an imperfect and probabilistic manner. This position has been viewed as a compromise between a positivism that has been regarded as naïve, and a constructionism that has been regarded as overtly sceptical (Bhaskar, 1997). Further, it has been employed fruitfully in previous industrial relations research (Edwards, 2006). The thesis’ epistemological stance stems from its ontological position. In line with the critical realist stance, the position is taken that any results collected will be ‘probabilistically true’ and assume that any generalizations we will be able to make after concluding our study will be open to revision by future scholars (Corbetta, 2003).

The ontological and epistemological approaches also feed into the choice of research methods, which will be qualitative rather than quantitative. Whilst a post-positivistic analytical framework may make use of quantitative and qualitative methods (Corbetta, 2003), qualitative methods have been chosen because the research is primarily attempting to appraise a process that is political and organizational. The benchmarks developed in chapter three would be difficult to operationalize on the basis of quantitative benchmarks. The essentials of the process of the implementation of the Framework Agreements and texts will be assessed through the qualitative methods of semi-structured interviews and documentary analysis. The bulk of the research that has been carried out in our field also employs the qualitative methods that will be used. In their study of the implementation of six European social policy directives, Falkner et al (2005) primarily utilized semi-structured interviews and documentary analysis to carry out their research. Marginson and Sisson’s study of European integration and industrial relations also primarily employed qualitative

methods to arrive at their conclusions, as do the great majority of other works in the field (Keller, 2003; De La Porte and Pochet, 2002). If the study is to build on the work done by these scholars, it is important to use similar methods.

### **4.3 A case study approach**

For the purposes of the study, primary field research on the implementation of the Agreements and texts was conducted in four countries; Belgium, Czech Republic, Denmark and UK. A case study approach to the issue of the implementation of the Agreements and texts was therefore adopted. This case study approach was chosen for various reasons. Firstly, it is important to note that the choice of case studies as research methods reflects the study's post-positivist analytic approach. Also, the use of case studies as a research method are an established way of 'testing' in a deeper form generalizations in order to allow for broader application (Whitfield and Strauss, 2000). Case studies therefore allow the researcher to gain a more profound insight into social reality than other methods, and can also, with regard to the cross-national research that the study conducts, provide a sophisticated and embedded view of existing social realities and national actors' relationships to them. This endorsement of case studies within the literature is also specifically appropriate with regards to the study. Firstly, there are other studies that adopt a case study approach to appraise the implementation of the Framework Agreements and texts within discrete national contexts (Larsen and Andersen, 2007), and it is thus an established method for obtaining data on the implementation of the Agreements and texts. Case study

research also allows the researcher to employ a range of methods. Thus, the range of research methods that the study uses, outlined below will be compatible with a case study approach.

Semi-structured interviews will be the primary research method. This is due to the fact that semi-structured interviews allow the researcher a more 'in-depth' and 'interactive' view of social reality than the analysis of documentation, and will therefore allow the study to gain a more powerful insight into the workings of the actors involved in the study than a mere analysis of documentation would. However, documentary analysis will be used as a secondary research method, and will buttress the data collected through the use of semi-structured research interviews. Owing to the substantial resources used in organizing and conducting semi-structured research interviews, the level of data one can realistically obtain from them is limited. The scope of documentary data is greatly broader. Therefore, the analysis of documentary data will provide a key source of complementary data to that which we will obtain from the semi-structured research interviews. Finally, the study will draw on research reports by the European social partners and public authorities on the implementation of the Agreements and texts. Three of these have been issued (Visser and Martin, 2008; European social partners, 2006; 2008) and an analysis of these reports will allow access to a broad and rich range of data.

#### **4.4 The selection of countries**

There were several rationales for the choice of countries that were the subject of the study. First, the four countries that were selected represent four types of national industrial relations systems that are prevalent across European member states (Marginson and Sisson, 2004; Visser, 2008). Due to the absence of sufficient resources to conduct in-depth qualitative analysis of the implementation of the Framework Agreements and texts within each of the countries in which the Agreements and texts were implemented, this approach offered the best way in which to gauge the general effects of the Framework Agreements and texts across the countries in which they were implemented. Although there are limits to the extent that the study may generalize its findings given the high degree of diversity in national systems, the selection of four countries with very different systems at least provide the study with a decent claim to be able to generalize its findings. Further, the countries represent three of the four ‘worlds of compliance’ identified by Falkner et al (2005) and Falkner and Treib (2008)

The UK represents the model of an Anglo-Saxon industrial relations system of industrial relations and a country in the ‘world of domestic politics’ (Falkner et al, 2005). Within the UK, levels of social and employment protection are relatively low compared to other Western European countries, collective negotiations are largely conducted at the firm or plant level, and there is very little coordination between levels of collective bargaining. The UK is also a model of the type of Liberal Market

Economy (LME) that is widely discussed in the debate about varieties of capitalism (Hall and Soskice, 2001). In those countries in which the Agreements and texts were implemented, Ireland closely resembles the UK. The case of the implementation of the Agreements and texts in the UK is also likely to offer crucial clues about the relationship between European-level 'soft' law and states that exhibit LME style characteristics.

Denmark was selected as the model of a Nordic voluntarist-corporatist state, is a model of the type of Coordinated Market Economy (CME) that is widely discussed in the debate about varieties of capitalism (Hall and Soskice, 2001), and is grouped in the 'world of compliance' (Falkner et al, 2005). Within Denmark, there are very high levels of trade union and employer association density, collective negotiations between the Social Partners are conducted mainly at the sectoral level, there are very well established links between levels of social dialogue, and there are advanced levels of social and employment protection. Other countries in which the Agreements and texts were implemented that resemble Denmark closely are Norway, Sweden, and Finland.

Belgium was selected as it represents a Western European country in which the *erga omnes* procedure is used extensively to regulate employment relations and is grouped in the 'world of domestic politics' (Falkner et al, 2005). Within Belgium, collective agreements concluded at the inter-sectoral level are also implemented via a legally-binding *erga omnes* procedure. The case of Belgium represents that of countries such

as France, Spain, and Portugal where *erga omnes* mechanisms are also used extensively to regulate employment relations.

The Czech Republic was selected to represent the model of the type of system prevalent in Visegrad countries and is grouped in the 'world of dead letters' (Falkner and Treib, 2008). Within Czech Republic, a national labour code is used extensively to regulate employment relations, levels of trade union and employer association density are low, collective negotiations between the social partners take place predominantly at the enterprise and firm level, and there is little social dialogue at the sectoral or inter-sectoral levels. Many topics of regulatory concern at the European level are also 'new' within the Czech regulatory context. Although there is some diversity within Visegrad countries, the above conditions are generally present within these countries, and the case of the implementations of the Agreements in the Czech Republic is thus likely to be representative of the effect of the Agreements and texts within these countries.

The choice of countries was also informed by more practical considerations. Firstly, owing to the fact that the researcher's native language is English and that the researcher was based in the UK for the duration of the project, the selection of the UK as one of the countries was a somewhat obvious choice given the proximity of the social partner organizations and the use of the English language by the UK social partners. Practical reasons also facilitated the choices of Denmark and Belgium. Firstly, the researcher had existing contacts within the two states through his

participation in the European Foundation for the Improvement of Living and Working Conditions' network of correspondents, and was provided with office space at the University of Copenhagen and Université Catholique de Louvain for the duration of the fieldwork within the two countries. The fact that the majority of officials within the Danish and Belgian social partner organizations also speak English also lay behind the choice of the countries.

The researcher was unable to include in his country sample states from the Baltic, Mediterranean and Germanic variants of industrial relations systems. Owing to time and financial restraints, conducting research in more than four countries would have been unfeasible.

#### **4.5 The selection of sectors**

The selection of the local Government and banking sectors was inspired by analytic and practical rationales. Analytically, the selection of these sectors allow the study to appraise the effects of the Framework Agreements and texts within public and private sector contexts in European member states. The two sectors also illustrate very different degrees of Europeanization. In the case of the local Government sector, organizations within the sector are based solely within individual member states. In the case of the banking sector, the sector is highly internationalized and many firms operate in several member states. As a result of these differing degrees of Europeanization, gauging the effects of the Agreements and texts within the two



sectoral contexts will allow the study to gain clues of more general analytic relevance about the development of sectoral systems of industrial relations with regard to their relationship with European 'soft' law.

The choice of the two sectors was also informed by more practical considerations. Access to interviewees was, for example, readily available within the two sectors in Belgium, UK, and Denmark. Owing to the under-developed nature of sectoral social dialogue within Czech Republic, a study of the two sectors in the Czech context was not deemed viable and was therefore not conducted. The disadvantages of not selecting certain sectors should also be outlined. The selection of a sector that acts as a 'pattern setter' for others (e.g. manufacturing) or a sector with great European cross-border mobility (e.g. construction or air transport) would have added further richness to the study. However, owing to the existence of time and financial constraints studying the implementation of the Agreements and texts in more than two sectors was not viable.

#### **4.6 Conducting the research**

The field research for the study was conducted between September 2006 and January 2008. In all, 42 semi-structured interviews were conducted. Three 'core' case studies were adopted for the purpose of the study; Belgium, Denmark, and UK. Given restrictions on resources Czech Republic represents a supplementary case. Appendix A provides details on the organizations interviewed.

Access for the interviews was gained through a variety of means. Access to officials for the set of interviews at the European level was achieved through contacts that the researcher had gained during a previous project. In the UK, the researcher used a combination of contacts possessed by his supervisor and through contacts at the European-level to arrange interviews with the relevant officials within the UK. In Denmark, the researcher had prior contact with a team of researchers at the University of Copenhagen that had been gained through the researcher's participation in the network of correspondents for the European Foundation for the Improvement of Living and Working Conditions. This team of Danish researchers was able to arrange for the researcher to have access to the relevant officials within Denmark. The researcher was then based for three months at the University of Copenhagen in which time the interviews with Danish officials were conducted. Contact with officials in Belgium and Czech Republic was achieved through similar means. Through membership of the European Foundation's network of correspondents, the researcher was able to arrange for the Belgian and Czech correspondents to provide information on the most suitable officials to interview in Belgium and Czech Republic. The researcher was based for three weeks at Université Catholique de Louvain in Belgium in which time the interviews with Belgian officials were conducted. As appendix A illustrates, some extra interviews were conducted by telephone with officials in Belgium, Denmark, and UK where it was more convenient for the researcher to conduct the research by this means.

The researcher conducted the interviews with the Czech social partner officials at a

conference in Dublin in which the researchers and the officials had planned to be present at. An attempt was made to conduct field research in Prague but due to resource problems it was more convenient to conduct this aspect of the research in Dublin. Through these contacts, the researcher was able to obtain quite systematic access across countries and sectors. The exceptions were at the sectoral level in the Czech Republic (where the lack of development of sectoral social dialogue meant that the researcher was unable to identify appropriate organizations to interview), the employer side in the Belgian local Government sector, and the employer side in the UK banking sector. The researcher was unable to obtain access in these instances due to logistical problems. Also due to these problems, research was not conducted on the implementation of the Framework of Actions on Lifelong Learning in Belgium or on the implementation of the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking sector in Czech Republic.

The interviews that were conducted were designed in a semi-structured format. This was in accordance with the researcher's analytic views that were set out above. The average interview that was conducted by the researcher took one hour and concerned procedural and substantive aspects of the implementation of the Agreements and texts and the constitution for national 'procedures and practices' for social dialogue in the countries in question. All the interviews were recorded, and were fully transcribed by the researcher after they were conducted. With regards to the design of the interviews, an initial draft was agreed upon by the researcher and his supervisor. This draft was used in the first interviews that were conducted, and was then modified slightly on the basis of the experience of the researcher and the

feedback of interviewees. Although the basic format of the interview remained the same in all of the countries and sectors in which the interviews were conducted, some of the questions were altered to fit differing national and sectoral contexts. As is normal with semi-structured research interviews, the researcher also posed *ad hoc* questions to interviewees that were formulated on the basis of the response of the interviewees to the set questions.

The documents that were analyzed by the researcher were collected through a variety of means. Some, for example, were given to the researcher by the social partner officials whom he interviewed. Others were publicly available via organizations such as ETUC, Business Europe and the European Commission.

#### **4.7 Data Analysis**

As is noted within the literature, the robust analysis of data is also a crucial part of a research project. The method used to analyze the interview and documentary data collected by the study was through the data analysis software package Nvivo. The use of this package is consistent with the epistemological and ontological basis of our study, and is also used extensively by other qualitative researchers within our field. Further, the manner in which Nvivo critically filters empirical data in line with the researcher's preferences is consistent with the choice of critical-realism as an ontological stance.

After the data from the interviews was transcribed, this data, along with documentary data, was input into Nvivo. The interview and documentary data was integrated with one another, and no distinction was made between the two forms of data for the purpose of the data analysis. In the limited instances where there appeared to be conflicts in the data, the researcher critically assessed which data source was more likely to be accurate on the basis of the source of the data and other evidence available. The research reports that were used in the course of the study (Visser and Martin, 2008; European social partners, 2006; 2008) were not input into Nvivo. This was due to the fact that they were authored by other researchers, and were thus not primary data in the way that the data from the semi-structured interviews and social partner and public authority documents were. Then, data 'categories' or 'nodes' were created that were consistent with the aims of the research. These 'nodes' separated, on a country by country and sector by sector basis, data pertaining to procedural and substantive aspects of the implementation of the Agreements and texts and the issue of national 'procedures and practices' for social dialogue. Thus, the researcher was able to assess easily the data obtained for each of the Agreements, texts, countries, and sectors that were the subject of the study. This then allowed the researcher to methodically and impartially present the data collected in chapters five to nine of the thesis, and to arrive at judgments as considered as possible in chapters ten to twelve.

## **4.8 Conclusion**

In summary, a 'post-positivistic' analytic view was employed by the researcher for the purposes of the study that in turn fed into the researcher's epistemological and ontological views. A qualitative research methodology was adopted by the researcher for the study. This qualitative research methodology used semi-structured interviews and documentary analysis for research methods, and adopted a case-study approach for the purposes of the fieldwork. Case studies of the implementation of the Agreements and texts were conducted in four countries (Belgium, Czech Republic, Denmark, and UK), and two sectors within the four countries (local Government and banking). The four countries were selected because they are representative several main forms of industrial relations regimes found amongst European member states, whilst the two sectors were selected because they exhibit differing degrees of 'Europeanization'. Access to the relevant officials within the countries and sectors was largely achieved via prior contacts possessed by the researcher. After the fieldwork was conducted, the interviews were transcribed and the data analyzed using the data analysis software package Nvivo.

## **Chapter 5: The European-level: perspectives and monitoring activities**

### **5.1 Introduction**

The following chapter outlines the data collected at the European-level of industrial relations in the course of the fieldwork and also draws on social partner and European Commission reports on the implementation of the Agreements and texts. The chapter fulfills four main functions in relation to the main objectives of the thesis. Firstly (i), it outlines the details of the Framework Agreements on Telework and Work-related Stress and the interpretations of the European social partners with regard to the national 'procedures and practices' implementation clause. Secondly (ii), it sets out the details of the monitoring exercises that were conducted by the European social partners and European public authorities to appraise the implementations of the Agreements and Framework of Actions on Lifelong Learning and the results of these monitoring exercises. Thirdly (iii), it establishes the variety of means by which the Agreements and Framework of Actions on Lifelong Learning were implemented across European member states. Finally (iv), it outlines why the four countries selected for further research allow for generalization with regard to the applicability of findings.

### **5.2 Benchmarking the implementation of the Framework Agreements**

The Telework Agreement was concluded by the European Social Partner organizations CEEP, UEAPME, UNICE and ETUC on May 23 2002 and formally signed on 16 July 2002. The Work-related Stress Agreement was concluded by the

same parties on 8 October 2004. The Telework Agreement contained the following clauses:

- (2) A specification of the definition and scope of teleworking
- (3) The voluntary nature of teleworking
- (4) The right of teleworkers to the same employment conditions as normal workers
- (5) Data protection issues
- (6) The right of teleworkers to privacy
- (7) The issue of the provision and maintenance of teleworking equipment
- (8) The health and safety of teleworkers
- (9) The organization of teleworkers' workload
- (10) The right of teleworkers to training
- (11) The inclusion of teleworkers in the terms of collective agreements applicable to 'normal' workers

The Work-related Stress Agreement contained the following clauses:

- (2) A statement outlining the Agreement's aim to draw attention to the issue of work-related stress
- (3) A description of work-related stress
- (4) How to identify the problem of work-related stress
- (5) The responsibility of both managers and workers to manage work-related stress
- (6) The identification of potential measures to prevent, eliminate, or reduce work-related stress



The subject of the most appropriate benchmarks with which to gauge national implementation outcomes divided the European social partners. The official position of ETUC was that national implementation outcomes should be assessed on the basis of whether they accorded with established national 'procedures and practices' for social dialogue. An ETUC official outlined the position of the organization,

*'What ETUC consider to constitute the correct implementation of these forms of Agreements is, firstly, the use of the normal initial social partner procedures to implement the Agreements and then, secondly, the use of the normal policy instrument to implement the results of these procedures. So, if national 'procedures and practices' in one country are a collective agreement that then receives legal backing that is how we would expect the Agreements to be implemented... we would consider implementation routes that deviated from the 'normal' routes to be incorrect.'* (ETUC)

It was also emphasized that ETUC did not view the Agreements as voluntary instruments. The official added,

*'Our position is clear; the only voluntary thing about the Agreements was entry into the negotiations. Once the Agreements had been signed they became contractually binding, although not legally binding, as are other labour and commercial contracts across Europe. Parties are bound to implement these contracts and the non-legally binding nature of the Agreements should not be used as an escape route.'* (ETUC)

The official positions of the European employers' associations Business Europe and

UEAPME differed from ETUC concerning their interpretation of the national 'procedures and practices' implementation clause. Three arguments against ETUC's interpretation of national 'procedures and practices' were advanced. Firstly, it was stressed that national social partners should not be burdened with too onerous obligations. Secondly, it was emphasized that national social partners were in the best position to select the appropriate policy tool for the implementation of the Agreements. Finally, it was stressed that all of the implementations that had been affected for the Telework Agreement had been jointly agreed by national social partners. A UEAPME official stated,

*'It's not our task to judge whether different national implementations are good or bad. We have to respect the principle of the autonomy of national social partners, and can't just insist at the European-level that implementations are affected in a certain manner. National social partners are in the best position to judge what they have already in terms of legislation and collective agreements and we can't create good pupils and bad pupils out of our affiliates.'* (UEAPME)

A Business Europe official stated,

*'All of the implementations of the Agreements were jointly agreed by national social partners. Therefore, Business Europe doesn't see how actors at the European-level can inform national social partners that they have not implemented the Agreements correctly.'* (Business Europe)

The European Commission assumed a stance between those adopted by ETUC and Business Europe and UEAPME. A Commission official stated that although the

Commission recognized that the Agreements were to be implemented in accordance with national 'procedures and practices' it was important to allow scope for national flexibility and also to recognize that national 'procedures and practices' for social dialogue themselves evolved.

The European social partners and European Commission were also unanimous in considering Frameworks of Actions as differing tools to the Framework Agreements. An ETUC official stated,

*'The Frameworks of Actions are different instruments. These are more OMC style instruments that are about defining and organizing a set of priorities at the European and national level rather than Agreements that must be implemented nationally. Also, the Frameworks of Actions do not have a legal status in the Social Protocol.'*  
(ETUC)

### **5.3 Monitoring implementation outcomes: the activities of the European social partners and European public authorities**

The European social partners undertook two major joint exercises to monitor the implementation of the Framework Agreements on Telework and Work-related Stress. These exercises involved obtaining joint reports from the national affiliates of the European social partners and then publishing overview reports. The report on the implementation of the Telework Agreement was published in 2006, whilst the report on the implementation of the Work-related Stress Agreement was published in 2008. These exercises concerned themselves with the procedural implementation of the

Agreements and the extent to which the Agreements had added to levels of employment regulation in member states. Further, an evaluation of the substantive effect of the Framework of Actions on Lifelong Learning in member states was published in 2006. As a result of concerns that the Telework Agreement had not been implemented sufficiently in member states, the European Commission also conducted a monitoring exercise to appraise national implementations of the Agreements. This was conducted by the Dutch academic Jelle Visser and published in January 2008.

### **5.3.1 European social partner reports: procedural results**

**Table 5.1: National implementations of Telework Agreement according to European social partner report**

Implementation method	Country
Social Partner Agreements	Finland, Spain, Latvia, Netherlands, Germany Sweden, Norway, Poland, Austria
National, sectoral and company collective agreements	Belgium, France, Italy, Luxembourg, Greece, Iceland, Denmark, Sweden,
Standard company and sector agreement models	Germany
Guides and codes of good practices	UK, Ireland, Norway, Latvia

Implementation through national legislation	Czech Republic, Poland, Hungary, Portugal, Belgium, Luxembourg, UK
Other tripartite activities	Latvia, UK, Malta

The European social partner report on the implementation of the Telework Agreement classified the procedural forms in which the Telework Agreement had been implemented in the member states on the basis of six groupings. Some countries were included in two or more of the groupings. Table one charts how the report grouped the various implementations that were affected. Firstly (i), the report described ‘social partner’ agreements that had been concluded. These were defined as ‘general social partner agreement which does not have the same legal status as a collective agreement’. As table one demonstrates, this form of implementation outcome occurred across European member states and was not confined to one sort of European system. Secondly (ii), the report identified ‘national, sectoral and company level collective agreements’. As table 1 shows, this form of implementation was confined to old member states (with the exception of Iceland). In many of these countries, a social partner collective agreement implementing the Agreement was given subsequent *erga omnes* effect, and the terms of the European Agreement entered national law. Third (iii), the report outlined ‘standard company and sector agreement models’. Germany was the only country included in this bracketing, and ‘standard company and sector agreement models’ were taken to mean unilateral or joint social partner ‘models of collective agreement for use in bargaining at sector, company, and/or establishment level’. Fourth (iv), the report identified non-legally binding ‘guidelines and good practices’. Two of the four countries included in this

bracketing were UK and Ireland, the two EU countries that are commonly described as Liberal Market Economy (LME) (Hall and Soskice, 2001) countries. Fifth, the report identified ‘implementation through national legislation’. As table one demonstrates, many of the countries that chose this implementation route were those that acceded to the European Union after 2004. The definition of national legislation was very broad however, and included a country such as the UK by virtue of the fact that a measure was included in the 2003 UK budget, unrelated to the European Agreement, that impart upon employers the obligation to pay for some of the costs incurred by employees who work at home. Finally, the report identified ‘other tripartite activities’. This grouping included ‘soft’ activities that national social partner organizations engaged in with national public authorities on teleworking.

**Table 5.2: National implementations of Work-related Stress Agreement according to European social partner report**

Implementation method	Country
Social Partner Agreements	Sweden, Austria, Spain, Finland, Latvia, Czech Republic, Cyprus, Poland, Spain, Hungary, Slovenia
National, sectoral and company collective agreements	Belgium, Iceland, Romania, Denmark, Netherlands, France, Sweden, Norway, Hungary, Spain, Slovak Republic, Germany, Portugal
Implementation through national	Norway, Denmark, Belgium, Czech

legislation	Republic, Latvia, Poland, Hungary, Slovak Republic
Tripartite activities	Slovenia, UK, Hungary, Luxembourg, Latvia, Netherlands, Norway, Portugal
Complementary activities	Portugal, Germany, Austria, Denmark, Sweden, Norway, Netherlands

The European social partner report on the implementation of the Work-related Stress Agreement classified the procedural forms in which the Work-related Stress Agreement had been implemented in the member states on the basis of five groupings. Table two charts how the report grouped the various implementations that were affected. Firstly (i), ‘social partner agreements’ that varied ‘in their legal status and differ in terms of their obligations upon the signatory parties’ were identified by the report. As was the case with the report on the Telework Agreement, the report on the Work-related Stress demonstrated that these forms of implementations had been affected in a cross-section of European countries. Secondly (ii), the report described ‘national, sectoral and company level collective agreements’. The report noted that ‘collective agreements specifically on work-related stress have not been a common method of implementation’. Although there were instances of collective agreements in new member states, it was mainly in old member states that collective agreements were concluded to implement the Work-related Stress Agreement. This is demonstrated in table two. Thirdly (iii), the report classified ‘implementation through national legislation’. In most cases, as the report states, national legislation actually preempted the content of the European Agreement and implementation took place in

a *de facto* form. This occurred in both new and old member states. The report also lists (iv) instances of implementation that are described as ‘tripartite activities’. These tripartite activities were mainly ‘soft’ in scope, and involved the social partners and national authorities in the countries concerned. Finally (iv), a set of tools described as ‘complementary activities’ were listed. These were essentially *ad hoc* measures taken by national social partners to attempt to tackle the problem of work-related stress.

### **5.3.2 The European Commission’s monitoring activities**

The Visser report for the European Commission monitored both the procedural and substantive implementation of the Telework Agreement. On the procedural side, the report outlined on a country by country basis the actions that had been taken by national social partner organizations to implement the European Agreement. Nine forms of procedural implementation outcomes were identified.

- (1) Joint guidelines, recommendations, model agreements
- (2) Autonomous national agreement
- (3) Separate guidelines , model agreements by one of the social partners
- (4) Collective agreements (sector, company, establishment, staff or works agreements)
- (5) National agreement turned into law
- (6) Law preceded by joint consultation
- (7) Special legislation, not based on consultation or agreement



(8) Implementation process not yet completed

(9) Other, unknown, no final report to European social partners on implementation

Visser's appraisal of the implementation of the Agreement was largely positive. It was asserted that in the majority of cases national 'procedures and practices' for social dialogue had indeed been followed during the implementation process. Three discrete 'clusters' of implementation outcomes were identified by Visser. Firstly, there were those countries in which guidelines and agreements were primarily used to implement the Agreement. These countries were identified as 'Scandinavia, the British Isles, the Netherlands, Germany and Austria... Italy and Spain'. A second cluster of countries was identified in which legal instruments, following consultations with or collective agreement by national social partners, were used to implement the Agreement. These countries were identified as 'Belgium, Luxembourg, France, Greece, Portugal, Poland, the Czech Republic, Hungary and Slovakia, possibly also Slovenia'. It was also stated that in some cases there was an overlap between the two clusters, as the use of a collective bargaining tool and a legal instrument were not mutually exclusive. Overlap was deemed to have occurred in 'Belgium, France, Greece and, possibly Spain and Italy'. Finally, a cluster of countries was identified in which implementations of the Agreement had not been affected or completed as of 2007. These countries were identified as 'the three Baltic States, Malta and Cyprus, and Bulgaria and Romania'.

### **5.3.3 European social partner substantive findings**

The European social partners also monitored the substantive impact of the Agreements and texts upon systems of regulation in member states. In addition to outlining the procedural form in which the Agreement was implemented, the European social partner report on the implementation of the Telework Agreement described, on a clause by clause basis, the ways in which the implementation of the clauses of the European Agreement had contributed to levels of employment regulation in member states. The clauses regulating the voluntary nature of teleworking and the provision of equipment of teleworkers achieved a particular impact within member states according to the report. The former clause contributed to levels of substantive regulation in old and new member states alike, and in France, Luxembourg, Poland and Belgium social partners elaborated upon the terms of this clause. In the case of the clause regarding the provision of equipment to teleworkers, in some contexts (German public sector, Belgian private sector) the report outlined that implementations had been affected that imposed all of the duties regarding the provision, installation and maintenance of teleworking equipment upon employers. In other contexts (France, Ireland, Poland, Luxembourg) duties in this regard were shared between employer and employee.

The European social partner report on the implementation of the Work-related Stress Agreement also outlined the substantive impact of this Agreement. In this instance it was stated that the existence of large bodies of prior regulation on health safety and

work-related stress in member states implied that the Agreement had mostly triggered ‘fine-tuning existing regulations,... raising awareness of the European Agreement at national, sectoral and company levels... [and] elaborating and providing concrete and targeted measures and tools to help employers, workers and their representatives to tackle work-related stress at the work floor level... rather than the creation of new legislation and/or collective agreements’ (ETUC et al 2008, p.33). However, it was noted that the implementation of the Agreement in member states had been successful in that it had triggered the development of many new tools to help combat work-related stress and that it had led to a growing awareness of the role management should play in tackling work-related stress.

The European social partner evaluation report of the Framework of Actions on Lifelong Learning outlined the work national social partner organizations had carried out on the four clauses of the European text. Although the report did not engage in a discussion regarding the extent to which the measures listed had been specifically precipitated by the European text, it was emphasized that it was evident that national social partner organizations had ‘intensively debated the issue of competence development’. Specifically, the report stated that the text had directly triggered 7 examples of ‘creating or reforming forums to discuss national labour market and education policies with public authorities’, 5 examples of ‘launching or relaunching national social dialogue on lifelong learning’, 4 examples of ‘organising European events to share good practices with social partners from other Member States’, and had produced ‘joint translation and dissemination of the European text’ in almost all European countries.

### **5.3.4 The European Commission's substantive findings**

An appraisal of the substantive effect of the Telework Agreement was also conducted by the Visser report. This involved assessing the eleven clauses of the Telework Agreement and establishing the effect they had achieved in national regulatory contexts. Although it was stated that guaranteeing the coverage of all workers via the Telework Agreement was highly unlikely given the non-legally binding nature of the Agreement and the differing rates of trade union and employer association membership density within European member states, cautious optimism was nevertheless expressed concerning the extent to which the implementation of the Agreement had improved levels of employment protection for teleworkers across Europe. The argument was made that given that teleworking is a form of work that 'normal' workers engage in on an often part-time basis then it was a topic suitable for regulation via a non-legally binding framework agreement. Further, it was contended that the status of teleworking as a mostly 'non-distributive' issue made it most suitable for the development of social dialogue in those countries where the social dialogue was emerging.

### **5.4 Conclusion**

As has been outlined and as tables 1 and 2 demonstrate, a range of policy tools were used to implement the Framework Agreements within European member states. The

selection of the four countries that are the subject of study in the following chapters represents this diversity. Belgium represents a country which uses the *erga omnes* principle to regulate industrial relations, where collective negotiations are centralized, and in which the Telework Agreement was implemented via the law and the Work-related Stress Agreement was implemented on a *de facto* basis. Countries that are similar to Belgium in terms of industrial relations system and the tools used to implement the Agreements are France, Italy and Spain. Denmark represents a Scandinavian system in which levels of trade union density are high, collective negotiations are conducted largely at the sectoral level, and the Framework Agreements were implemented primarily via sectoral collective agreements. Certain central European countries such as Germany also resemble Denmark in that the sector is the primary level at which collective negotiations take place and the European Agreements were primarily implemented via collective agreement. The UK represents a liberal system of industrial relations (Hall and Soskice, 2001) in which levels of collective negotiations are de-centralized, and the Framework Agreements were implemented via non-legally binding guidelines. A country that is similar to UK in terms of industrial relations system and the tools used to implement the Agreements is Ireland. The UK's status as a key Liberal Market Economy according to Hall and Soskice's typology also ensures that the potential effects of the Agreements and texts upon LME style countries will become apparent. The Czech Republic represents a new member state system in which the Framework Agreements were implemented via legal mechanisms. Countries that are similar to Czech Republic in terms of industrial relations system and the tools used to implement the Agreements include Hungary and Poland.



## **Chapter 6: Implementation in Belgium**

### **6.1 Introduction**

This chapter will present the data collected in the course of the fieldwork in Belgium. The chapter will open with (i) a brief description of the system of industrial relations in Belgium, a description of the key actors, and its record with regard to the implementation of the European social partner Framework Agreements of the 1990s and European Social Policy more generally. Then, the chapter will (ii) describe the process of the procedural implementations of the Agreements in Belgium and the related issue of actors' reading of national 'procedures and practices' in the context of the Belgian system. Here, it emerged that the procedural implementations that the Agreements were subject to differed greatly on the basis of the level of pre-existing regulation on teleworking and work-related stress in Belgium, and also that there was little debate on the constitution of national 'procedures and practices' for social dialogue in Belgium. Then, the chapter will (iii) set out the data collected on the substantive impact of the Agreements in Belgium. Here, it emerged that the impact of the Telework Agreement appears to have been more considerable than that of the Work-related Stress Agreement, even though there were several social and cultural factors that were likely to have quite steeply precluded the impact of the Telework Agreement in Belgium. Finally, the chapter will (iv) analyze the impact achieved by the Joint Declaration on Lifelong Learning in the Banking Sector in Belgium. Here, it emerged that although the text inspired no specific policy activity, it had some coordinating influence upon the work of the Belgian banking sector social partners in the field of lifelong learning policy and also led to significant indirect effects.

### **6.1.1 Industrial Relations in Belgium**

The Belgian system of industrial relations is characterized by relatively high rates of trade union and employment association density, a relatively centralized wage setting system in which collective bargaining coverage is close to 100%, and a 'pyramid' of negotiating levels in which collective agreements are concluded on a framework basis at the national inter-sectoral level and then implemented and supplemented for sector and firm specific contexts by actors at lower levels (Arcq et al, 2010). In recent years, the sector level has increased in importance and substantial negotiations between the Belgian social partners occur at this level that complement negotiations at the inter-sectoral level. In recent decades, the Belgian Government has intervened to a greater degree in private sector actors' negotiations in order to preserve the competitiveness of firms, and the lower levels of negotiations have also become more important. However, the Belgian model of industrial relations is still a very centralized and organized one when compared to other European countries. The key forum in which national private inter-sectoral industrial relations is conducted is the National Labour Council (NLC). The NLC consists of twenty-four seats that are representative of the Belgian social partner organizations, and possesses the mandate to conclude collective agreements on wages and other topics related to the employment relationship that are applicable to the whole of the Belgian private sector. These agreements are then made legally binding by virtue of royal decree. Generally speaking, a NLC Agreement followed by a royal decree would be considered as national 'procedures and practices' for social dialogue in the private-sector in Belgium. In the Belgian public sector, a parallel system of collective



negotiations exists in which agreements are reached at the national, regional and local levels. A federal-level General Committee is established in which agreements may be concluded that apply to the Belgian public sector as a whole and is chaired by the Belgian Prime Minister.

On the trade union side, there are three main trade union organizations in Belgium that are also divided along political, religious, and social lines. Firstly, there is the Catholic trade union, ACV-CSC that is the largest in Belgium, and has a membership of approximately 1.7 million and six seats on the NLC. Then, there is the socialist trade union, ABVV-FGTB, that has a membership of approximately 1.4 million and six seats on the NLC. Finally, there is the liberal trade union ACLVB-CGSLB. This union is the smallest of the three and has approximately 260,000 members and one seat on the NLC.

On the employer side, the main employer body is FEB-VBO. FEB-VBO represents 30,000 firms and has eight seats on the NLC. There is also UCM-Unizo, a Flemish organization for SMEs that represents 82,000 small and medium sized firms and has 3 seats on the NLC. The smaller employers organizations FWA-Boerenbond, representing employers in the agricultural sector and CSPO/CENM, representing employers in the health-care, socio-cultural and educational sectors also have a seat each on the NLC.

### **6.1.2 The Belgian system and European social policy**

In Belgium the three Directive backed European social partner Framework Agreements of the 1990s were implemented by Government laws and their implementations were also not subject to substantial delays in implementation (Falkner et al, 2005). Further, there were no major political debates that surrounded their implementation within Belgium. This is possibly due to the fact that much of the content of the Directives was present within Belgian regulation prior to their implementation.

### **6.2 The Procedural Implementations of the Telework and Work-related Stress Agreements in Belgium**

This section of the chapter will address the procedural implementation of the Telework and Work-related Stress Agreements. Also, it will address the related issue of actors' interpretations of national 'procedures and practices' in the Belgian context. Given the differing regimes of industrial relations in the private and public sectors, the section will distinguish between the private and public sector procedural implementations of the Agreements in Belgium.

## **6.2.1 The Telework Agreement**

### *Private-sector*

The European Telework Agreement was implemented in Belgium as NLC collective agreement number 85 in November 2005. Shortly after the conclusion of the European Agreement in 2002, a debate was conducted between the Belgian social partners on the most appropriate means by which the Agreement should be implemented in Belgium. FEB/VBO argued that given that the European Agreement did not have legally binding status at the European-level then it would be most appropriate to implement the Agreement via non-legally binding guidelines in Belgium. The rationale of FEB/VBO in proposing such a route was to minimize the level of extra regulation upon Belgian employers. Furthermore, FEB/VBO were concerned that Belgium would be one of the only European states in which the Agreement had been implemented via legally binding means and did not wish the country to assume such a status. Belgian trade unions opposed FEB/VBO's advocacy of such an implementation route. Belgian trade unions advocated implementation of the European Agreement via a NLC collective agreement. The grounds of the unions in advocating such a route lay in their desire to afford teleworkers the maximum level of employment protection, and also in the belief that national 'procedures and practices' for the implementation of the Agreement in Belgium should consist of an NLC collective agreement. The Belgian Government did not assume a position on the debate. Their stance was that the Agreement had been signed by the Belgian social partners at the European level, and that its implementation was thus a matter

for the Belgian social partners. An FGTB official explained what happened subsequently.

*'After the Belgian employers refused to implement the Agreement as an NLC agreement because they viewed it as non-legally binding guidelines, discussions stalled for months. However, at the national inter-sectoral level in Belgium issues are always inter-related, and there is normally a lot of horse-trading. In this instance, they agreed to implement the Telework Agreement as an NLC agreement, because we made it a precondition on engaging in discussions on another unrelated topic.'* (FGTB)

According to a CGSLB official, FEB/VBO also became more willing to accept implementation via a NLC agreement after 'benchmarking' implementation outcomes in other states and seeing that the Telework Agreement was being implemented in legally binding forms in many other countries.

The content of the NLC Agreement to implement the Telework Agreement mirrored the content and wording of the European Agreement in areas such as the definition of teleworking, its voluntary character, the health and safety of teleworkers, data protection, training and career development, and the collective rights of teleworkers. The NLC Agreement also went further than the European Agreement in certain areas. In that the Belgian Agreement required a detailed written agreement between teleworker and employer, specifically excluded work in employers' satellite offices from the definition of teleworking, and detailed how the costs of teleworking should

be calculated, it surpassed the content of the European Agreement (Visser and Martin, 2008). The two sides of industry had specific concerns related to the practice of teleworking in the course of the negotiations. The issues that troubled Belgian trade unions concerned maintaining the revocable nature of teleworking arrangements between employees and employers, ensuring that teleworkers were treated in the same manner as 'normal' workers working at the site of the teleworker's employer, upholding the health and safety conditions in which teleworking was practiced, and controlling the costs of teleworking. The fear of Belgian trade unions in these regards was that workers would be coerced into teleworking against their wills, that teleworkers would become isolated from workers engaged at the employers' sites and would potentially be deprived of key collective rights, that teleworkers would suffer from inferior health and safety conditions, and that teleworkers would bear a disproportionate element of the costs of teleworking. Representatives from the Belgian trade unions stated however that the Agreement had been concluded in such a way as to assuage these concerns. On the employer side, Belgian employers were particularly afraid of losing the ability to monitor workers engaged in teleworking, and had fears about the costs that teleworking was likely to entail for employers.

The 2005 NLC Agreement also triggered a change in Belgian labour law. An act passed by the Belgian Government in July 2006 amended the pre-existing 1996 law on homeworking to ensure that workers covered by the Telework Agreement were no longer covered by the 1996 law and classified as homeworkers. This revision stemmed from concerns within the Belgian trade union movement that classifying

teleworkers as homeworkers would lead to them being treated in a different way to normal workers. An FGTB official stated,

*'In Belgium we have a system where homeworkers are not subject to the same working time regulations as normal workers. But the law that exists about homeworking is an older act for workers who are engaged in piece-working. This is not the same as teleworking! So, we wanted to alter Belgian law to ensure that teleworkers were considered as normal workers.'* (FGTB)

#### *Public sector*

Within the Belgian public sector, the Telework Agreement was implemented by a November 2006 royal decree on teleworking. However, the royal decree was applicable only to those workers employed in the Belgian federal-level public administration and thus did not apply to those workers employed in other areas of the Belgian public sector. The decree itself followed closely the content and wording of the 2005 NLC Agreement, yet contained specific references to the workplace level information and consultation bodies that are established in the Belgian public sector. Through this example, the Belgian Government hoped to encourage autonomous local and regional authorities to implement the Agreement in a similar form in their jurisdictions. However, a representative from FGTB stated that there was no information on the number of local public sector bodies who had taken action to implement the Agreement, and that, furthermore, it was thought that the number who

would have implemented the Agreement would be very small. This was attributed to a lack of interest in the teleworking topic in the Belgian context and to the non-legally binding nature of the European Agreement. A 2006 sectoral collective agreement for the Flemish civil service contained provisions on teleworking related to its voluntary character, and the provision of equipment and coverage of costs by the employer. However, the extent to which this was inspired by the European Agreement was unclear (Visser and Martin, 2008).

### **6.2.2 The Work-related Stress Agreement**

#### *Private Sector*

Unlike the Telework Agreement, the Work-related Stress Agreement was not subject to implementation by National Labour Council Agreement in Belgium. Indeed, the Agreement was not subject to any form of formal implementation process in the private sector, and was implemented in a 'de facto' form. This was due to the existence of a 1999 National Labour Council Agreement on the topic of work-related stress that was regarded as innovatory in that it had dealt with the subject of stress as a collective rather than an individual problem, had developed enterprise level procedures for dealing with the condition, and had also acted as the inspiration for the European-level Agreement on the topic. This 'de facto' implementation route specifically involved the Belgian social partners reporting to the European social partners that the 1999 Agreement covered the content of the European Agreement and that a 'de facto' implementation had subsequently occurred in the Belgian

private sector. There was also relative consensus on this implementation route between the Belgian Social partners. An official from the Belgian trade union CGSLB stated,

*‘The Work-related Stress Agreement was different to the Telework Agreement. Here, we had a pioneering agreement that had acted as the inspiration for the European Agreement. So, we had the content of the European Agreement already present within our collective regulation and there was no debate about implementing the European Agreement as implementation was de facto.’ (CGSLB)*

An official from Unizo stated,

*‘The position of Belgian employers was that we had a very advanced existing Agreement on Work-related Stress and that the issue at hand was the implementation of that Agreement rather than the content of the existing Agreement. We knew that we had to implement what we had rather than do anything new.’ (Unizo)*

Although the CGSLB official did not allude to the existence of any conflict over the most appropriate implementation methods, it was alluded to by an Unizo official that there were in fact ‘sections’ within the Belgian trade union movement who wished to use the existence of the European Agreement to strengthen the existing Belgian Agreement and to put extra obligations upon employers. However, these elements appear to have been within the minority and the choice of a ‘de facto’ implementation route was formally supported by all of the Belgian social partner organizations involved in the implementation process.



Although it did not trigger any formal activities on the part of the inter-sectoral level Belgian social partners, the existence of the European Work-related Stress Agreement nevertheless inspired activities to raise awareness about the condition of work-related stress. An Unizo official stated,

*‘Our organization held a lot of workshops and information sessions because of the European Agreement. And the media also picked up a lot on the topic of stress because of these sorts of events.’ (Unizo)*

Also, the existence of the European Agreement acted as an added stimulus to efforts to promote the quality of the implementation of the Belgian Agreement at enterprise level. It was stated by an FEB/VBO official that the European Agreement had been concluded when the Belgian Social partners were evaluating the impact of their 1999 Agreement, and that efforts to improve the implementation of the Belgian Agreement had been encouraged by the existence of the European Agreement. As part of the evaluation process of the 1999 Agreement, the Belgian Social partners on the National Labour Council published an information brochure on the application of the Belgian Agreement in firms and also published guidelines that were intended to help firms and trade unions deal with the phenomenon of work-related stress. At least indirectly, these measures were inspired by the European Agreement (European Social partners, 2008).

### *Public sector*

The existence of the European Agreement also encouraged the Belgian social partners on the National Labour Council to issue an opinion calling for the implementation of the 1999 NLC Agreement within the Belgian public sector. The existence of this opinion led to a Royal Decree in May 2007 on the prevention of psychosocial burdens caused at work that applied to the Belgian federal-level public administration. This decree placed upon employers the obligation to identify areas where psychosocial burdens may exist, including areas such as work content, work organization and work relationships. The extent to which the European Agreement precipitated agreements or policies on work-related stress in other areas of the Belgian public sector is unclear.

### **6.2.3 National ‘Procedures and Practices’**

The chapter will now address the interpretation of Belgian actors of the national ‘procedures and practices’ implementation clause and its implication in the Belgian context. This will be done in order to explore more deeply the rationales of the Belgian social partner organizations for the implementation routes they advocated, and also to establish the robustness of the national ‘procedures and practices’ implementation clause in the Belgian context.

There was little debate regarding the constitution of national 'procedures and practices' for social dialogue in the Belgian private sector. All of the social partner

organizations in the private sector took the national 'procedures and practices' clause of the European Agreement to imply implementation via a legally binding NLC agreement. An Unizo official stated,

*'National 'procedures and practices' in the Belgian context was interpreted as a National Labour Council Agreement. There were no alternative routes discussed as we have a tradition of collective agreements at this level.'* (Unizo)

An FGTB official stated,

*'There was no debate on the wording of the national 'procedures and practices' implementation clause. Very simply, we advocated a collective agreement.'* (FGTB)

Although a debate about the legally binding status of the European Telework Agreement was conducted between the Belgian social partners, alluded to above, the existence of this debate was conceived of by the Belgian social partners as a separate issue to that of the nature of Belgian national 'procedures and practices'. It was stressed by the Belgian social partners that this debate took place prior to the implementation of the Telework Agreement in Belgium, and that, furthermore, the debate centred around the legal status of the European Telework Agreement, rather than the constitution of Belgian national 'procedures and practices'.

Despite the fact that the Work-related Stress Agreement was also not implemented via a NLC agreement in Belgium, the Belgian social partners were keen to emphasize that the implementation route that had taken place nevertheless

conformed to national 'procedures and practices' in the context of Belgium. The argument was made by the social partners that the content of the Work-related Stress Agreement had already been subject to an NLC agreement within Belgium and that subsequently a *de facto* implementation of the European Agreement had taken place.

### *Summary*

In summary, the Telework Agreement was subject to a comprehensive implementation in the Belgian private sector that implemented the European Agreement via legally binding means and also elaborated upon the content of the European Agreement in certain regards. By contrast, the Work-related Stress Agreement had been preceded by an innovative national agreement in 1999, and was not formally implemented in the private sector. It did, however, trigger promotional activities on the part of the Belgian social partners. The differing procedural implementations that the Agreements were subject to within the private sector were largely attributable to the differing levels of regulation concerning the topics of teleworking and work-related stress in the Belgian private sector prior to the conclusion of the European Agreements. In the Belgian public sector, both Agreements were subject to implementation by royal decree in the Belgian federal administration. However, the extent to which they were implemented in other areas of the Belgian public sector is unclear. On the question of national 'procedures and practices', there was very little debate on this in the Belgian private sector. National 'procedures and practices' for social dialogue were unanimously viewed as an NLC agreement followed by a royal decree making the NLC agreement legally binding.

## **6.3 The Substantive impact of the Telework and Work-related Stress**

### **Agreements in Belgium**

This section of the chapter will present the data collected on the substantive impact of the Telework and Work-related Stress Agreements in Belgium. It will address the two Agreements separately, and will outline the extent to which the Agreements and their implementation added value to the content of Belgian regulation on the teleworking and work-related stress issues, the data that is available upon their impact within Belgian sectors and companies, and the level of potential impact that the Belgian social partners regard them as likely to achieve.

#### **6.3.1 Telework Agreement**

##### *Content*

Prior to the 2005 NLC Agreement implementing the European Telework Agreement, there was very little regulation concerning teleworking in Belgium, either at the national inter-sectoral or at the sectoral level. At the inter-sectoral level, the only regulation that pertained to the topic of teleworking prior to the European Agreement was a 1996 Belgian Government act on homeworking. This act specified a series of rights for those workers who worked at home, particularly in the domain of health and safety regulation. The 2005 Agreement was thus in virgin territory at the national inter-sectoral level when it addressed the topic of teleworking and the issues that

related specifically to it such as the definition of teleworking and the costs of teleworking. An Unizo official stated,

*'Before the 2005 Agreement there were parts of Belgian regulation that related to health and safety, accidents at work, and working at home or at a different place. But with the 2005 Agreement it was the first time that all of the elements related to teleworking were presented in one place and regulated through a legally binding Agreement.'* (Unizo)

At the sectoral level, there was also little evidence of any regulation of teleworking preceding the 2005 inter-sectoral agreement. In the Belgian banking sector, there was no sectoral level policy on teleworking prior to the 2005 Agreement. It was also not thought by interviewees that many firm level policies had existed on the topic. This was attributed to concerns that trade unions had about the isolation of workers, concerns that employers had about the control of workers, and to the fact that many occupational groupings within the sector who worked closely with customers would be unsuited to teleworking arrangements.

Within the local Government sector, no comprehensive policies or agreements on the topic of teleworking were known of outside of an instance in the Flemish police force. In this case, a major administrative upheaval had taken place in the Flemish police force that had required many employees to relocate to sites far from their homes. The option of teleworking was offered to some of those employees affected

in this manner. The existence of a central police force computer system that was able to measure teleworkers working time was also able to solve the problem of the measurement of teleworkers working time that was potentially problematic in other teleworking schemes. Elsewhere in the Belgian local Government sector, no other examples were known of. This was attributed by trade union officials within the sector to concerns that existed on the issues of worker isolation, the covering of the costs of teleworking, and the fact that Belgium was a very small country in which people were unlikely to live far away from their workplace.

#### *Data and perspectives on impact*

As of January 2008, there was a NLC exercise being conducted to monitor the impact of the 2005 Agreement. It was stated by interviewees that this was likely to yield significant data on the impact that the Agreement had achieved. However, as of January 2008, no data had been published on the results obtained by this exercise. On an individual organizational level, none of the inter-sectoral social partner organizations interviewed had engaged in any exercises to monitor the impact of the 2005 NLC Agreement on Telework. This was attributed to the existence of the NLC exercise and also to the fact that none of the organizations had the resources to engage in an exercise that they would not obtain discernible added value from. Further, a CGSLB stated that the organization saw the value of the Agreement in its potential to lessen disputes over the correct procedures to be followed in the case of the adoption of teleworking policies. The official stated,

*'The added value of the collective agreement is that there is no more discussion at the level of the enterprise. An enterprise that wants to introduce teleworking may take the collective agreement and formulate a solution. There are no more confrontations then, because the rules are clear. Since the adoption of the collective agreement, we have seen a massive change in enterprises in this regard.'* (CGSLB)

The inter-sectoral level social partner organizations were not particularly optimistic about the extent to which teleworking was likely to be adopted in Belgium as a result of the 2005 NLC agreement. This was attributed to several factors. Firstly, it was thought that many occupational categories were unsuited to the adoption of teleworking policies. Whilst it was considered that in sectors like I.T and sales teleworking was likely to be reasonably popular, it was also acknowledged that in occupations where there was a great deal of customer contact teleworking solutions were very likely to be unsuitable. An FGTB official stated,

*'For low skilled workers, it is more difficult to engage in teleworking. In Belgium, there are some jobs where workers are able to engage in teleworking, but there are also many where the solution is not viable.'* (FGTB)

Secondly, it was thought that the loss of managerial control potentially entailed by the practice of teleworking was likely to make it unattractive to employers. Thirdly, trade unions were concerned that the risk of the isolation of teleworkers would have negative consequences with regard to the propensity of workers for collective action,



the level of social contact that teleworkers were likely to have with other workers, and the potential availability of training and lifelong learning opportunities to teleworkers. Belgian trade unions were also concerned about the potential health and safety risks of teleworking, the potential for teleworkers to incur extra domestic costs as a result of teleworking, and the risk of teleworkers not following working time regulations. A CGSLB official stated,

*'One big danger associated with teleworking is the danger of isolation. For a teleworker it is more difficult to have access to a trade unionist who can defend their rights. It is also more difficult to make a teleworkers aware of trade union activity within an enterprise. We also are worried about the potential implications of teleworking for the measurement of working time and health and safety issues.'*

(CGSLB)

At the Belgian sectoral level, there was also skepticism about the number of teleworkers that the Agreement was likely to facilitate. Within the banking sector, BVB/ABB, the sectoral employers' association, stated that the level of uptake was likely to vary between individual banks, but added that the potential of social isolation for teleworkers, coupled with the problem of the control of teleworkers by management, was likely to preclude the level of impact. With particular regard to the sectoral context, the official stated that the large amount of 'customer facing' roles in the sector was also likely to preclude the level of impact of the 2005 NLC Agreement within the sector. However, it was also stated that for occupational groups like

project leaders and translators teleworking was likely to be more viable. A

BVB/ABB official stated,

*'The popularity of teleworking in our sector really is likely to depend on the occupational context. If you are a branch worker who is in regular contact with the client then it is very difficult to engage in teleworking. However, a project leader for example could engage in teleworking and then sometimes have contact with colleagues in the bank.'* (BVB/ABB)

Setca, the sectoral trade union organization, were particularly skeptical about the likely impact that the Agreement was likely to have in the sector. Arguing that the social isolation entailed by teleworking went against the deeply engrained collective mentality of Belgian workers, the official stated,

*'Trade unions are there to collectively help the workers! If you separate workers you can't help them, so that would undermine our core goal. We are against teleworking and its uptake as it potentially undermines our key mission of collective action.'*

(Setca)

There was also doubt about the number of agreements and policies that the 2002 European Agreement would achieve in the Belgian local Government sector. Trade unionists in the sector stated that Belgium was a very small country, and that in small

communities people lived very close to their place of work, and that in big cities there were normally very good public transport systems. An FGTB official stated,

*'Belgium is a very small country and most local Government employees live within 15km of their workplaces. Also there are very good public transport systems in cities like Antwerp and Ghent and in small communities employees normally live very close to the office.'* (FGTB)

### **6.3.2 Work-related Stress Agreement**

#### *Content*

Prior to the European Work-related Stress Agreement being concluded in 2004, the topic of work-related stress was comprehensively covered in the Belgian private sector by a 1999 NLC Agreement on work-related stress. Indeed, the 1999 NLC Agreement on work-related stress partly acted as the inspiration for the 2004 European Agreement. All inter-sectoral interviewees reported that the Belgian Agreement set high standards for the regulation of the condition of work-related stress within the Belgian private sector. Further it was stated that the Agreement was innovative in that it defined work-related stress as a collective, rather than an individual, condition. An FEB/VBO official detailed the process that firms complying with the 1999 Agreement went through,

*‘Typically, companies go through their communications processes first, and try and identify whether stress in the company is due to a lack of clear information and communication. Then, a risk analysis is conducted, to attempt to identify within the company what factors can potentially cause stress. Then, an evaluation process is conducted in the company to assess what the company has done to tackle stress.’*

(FEB/VBO)

In Belgium, there was also the 1996 Welfare at Work Act. This covered the Belgian public and private sectors, and imparted the obligation upon employers to formulate yearly plans for health and safety conditions within their enterprises. The definition of health and safety used by the act included ‘psycho-social aggression’, and this potentially included the condition of work-related stress. A range of other work was also conducted on the topic of work-related stress by the Belgian social partners prior to the European Agreement. An FGVB official stated that his organization had engaged in a great deal of work on the organization of work in workplaces and work-related stress, and had also trained union representatives in ways to deal with the phenomenon of work-related stress.

At the Belgian sectoral level, various policies were also in place on work-related stress prior to the European Agreement. Within the banking sector, the NLC Agreement of 1999 had inspired the sectoral social partners to produce a major sectoral questionnaire on work-related stress in 2000 that had cost one million Euros and had sought to identify the scale of work-related stress within the sector. A

representative from BVB/ABB stated that policies on work-related stress differed in firms within the sector, and depended upon what steps individual banks had deemed it appropriate to take. A representative from Setca was skeptical about the quality of the measures taken by individual firms within the sector to manage work-related stress,

*'Companies are willing to acknowledge the existence of stress but not the fact that it is down to them! They won't own up to the problem of stress. In our view, the general problem is that there is too much work in the various firms for the employees.'*

(Setca)

Within the Belgian local Government sector, there was no general sectoral collective agreement on work-related stress and policy on work-related stress was generally determined at the level of individual boroughs. However, the 1996 Welfare at Work Act, described above, was applicable in the Belgian local Government sector. A representative from the local Government sector branch of FGTB stated that, owing to the lack of a public sector-level agreement on work-related stress and the very decentralized nature of employment regulation in the Belgian local Government sector, approaches to the topic of work-related stress differed at the level of the borough. It was also added that the quality of regulation on work-related stress was likely to be contingent upon the quality of social dialogue within individual boroughs.

### *Data and perspectives on impact*

Owing to the fact that the European Agreement was not formally transposed within the Belgian private sector at all, the impact of the implemented European Agreement within the Belgian private sector cannot be discussed directly. However, the promotional activities that were organized by the Belgian Social partners to raise awareness of the topic of work-related stress had varying levels of impact within Belgium. An Unizo official was optimistic that the activities had achieved an impact, and stated that awareness of work-related stress in Belgium had been raised as a result. Crucially, the awareness raising activities also helped inspire a royal decree on work-related stress that was applicable to employees in the federal level Belgian public sector. However, an FGTB official in the local Government sector stated that he thought that the awareness raising activities carried out by the Belgian private sector social partners had achieved no impact within the sector. The official stated,

*‘Nothing has been done as a result of the EU Agreement and its promotion in our sector. The reason for this is that if you get a “soft” law you get a “soft” reaction.’*

(FGTB)

### *Summary*

In summary, the Telework and Work-related Stress Agreements achieved a level of substantive impact within Belgium that was consistent with the procedural implementations that they were subject to, and with the level of regulation that

existed on the topics in Belgium prior to the conclusion of the European Agreements. Very little regulation existed on teleworking prior to the European Agreement, and the European Agreement was implemented within Belgium as a legally binding collective agreement. Subsequently, the Telework Agreement had a key influence upon the content of Belgian employment regulation. By way of contrast, comprehensive regulation existed on work-related stress prior to the conclusion of the European Agreement, and the European Agreement was not formally implemented in Belgium. Thus, the European Work-related Stress Agreement exercised little influence on the content of Belgian employment regulation. However, the promotional activities the European Agreement inspired appear to have had some level of impact, not least in inspiring a royal decree on work-related stress in the Belgian federal-level public sector.

#### **6.4 Joint Declaration on Lifelong Learning in the European Banking Sector**

The Belgian Banking Sector Social partner organizations BVB/ABB and FGTB were both involved in the negotiation of the European Banking sector text Joint Declaration on Lifelong Learning in the European Banking Sector at the European level as members of EBF and Uni-Finance. The organizations had also been involved for many years prior to the negotiation of the text in policy work on lifelong learning in the Belgian banking sector. Both organizations emphasized that the content of the European text was already covered by lifelong learning policy within the Belgian banking sector. Further, it was emphasized that the state of lifelong learning policy within the sector was very advanced, and in many regards superior to other sectors in Belgium and to the majority of other banking sectors in Europe. An official from

BVB/ABB emphasized that the average level of salary per worker within the Belgian banking sector dedicated for lifelong learning purposes was 2.61% in 2005, whilst the average in other Belgian sectors was 1.09%. Officials from both BVB/ABB and Setca also referred to the work that the organizations had carried out in implementing, within the Belgian banking sector, a Belgian social partner initiative to dedicate 0.10% of the average salary per worker within sectors for the lifelong learning of 'risk groups'. These 'risk groups' were defined as older workers with a low level of qualification.

Whilst the Joint Declaration on Lifelong Learning in the European Banking Sector did not specifically precipitate any policy within the Belgian banking sector, officials from BVB/ABB and FGTV both noted its significance in shaping the context in which lifelong learning policy was framed and in exerting an indirect effect upon lifelong learning policy in the sector. A BVB/ABB official stated,

*'Before the existence of the declaration we did a lot on lifelong learning and education policy with the trade unions. And after the declaration we did not say that the various policies that we were carrying out were executions of the declaration. We think that by doing what we did before and continuing along the same path then we are fulfilling our obligations to the text. But what the declaration did was put the topic of lifelong learning in the picture more. It made people in Belgium think about it a little more.'* (BVB/ABB)

A Setca official stated,



*'We concluded a 2003 agreement on lifelong learning within the sector, and I cannot say it was unrelated to the European text, but we were looking at this area anyway. The inspiration for the Agreement was a mix of various influences; there were the trade unions who wanted this Agreement anyway, and there was the influence of the European text.'* (Setca)

The sectoral social partner organizations also derived benefit from being involved in the OMC style governance processes associated with the European text. A BVB official reported that involvement in the text had led to the development of a small, informal group of European banking sector employers' associations who met occasionally to informally discuss developments in their different national contexts. A Setca official stated that being involved at the European level in texts such as the Joint Declaration on Lifelong Learning had led to the development of informal networks between national unions in which valuable information had been exchanged between the unions on topics such as lifelong learning and competence development. Through this informal network, the official stated that Setca had developed a Belgian agreement on leavers' certificates in the banking sector that would help banking sector employees who were mobile on an European scale.

## **6.5 Conclusion**

This chapter has presented the data gathered on the Belgian implementation of the Telework and Work-related Stress Agreements, and Joint Declaration on Lifelong Learning in the Banking Sector. Many points are notable in summary. Firstly, the contrast between the implementations of the Telework and Work-related Stress

Agreements in the Belgian private sector was particularly marked. The Telework Agreement was implemented via a NLC collective agreement, whilst the Work-related Stress Agreement did not receive a formal implementation. The reason for this largely relates to the level of regulation which the topics of teleworking and work-related stress were subject to in Belgium prior to the conclusion of the European Agreements. The topic of teleworking was by and large unregulated prior to the European Agreement, and the European Agreement therefore triggered a key new national inter-sectoral private sector collective agreement. By contrast, the topic of work-related stress was comprehensively covered in the Belgian private sector by an earlier agreement prior to the conclusion of the European Agreement, and the European Agreement did not therefore trigger a NLC collective agreement as did the Telework Agreement. It is particularly notable that this pre-existing agreement led to a 'de-facto' implementation of the European Agreement. This was not a trend anticipated by the European social partners or European Commission prior to the conclusion of the European Agreement. A further notable trend regarding the general difference in implementation outcomes is that even in a state such as Belgium with a centralized, inter-sectoral negotiating system that mirrors that established at the European-level, the implementation of the two Agreements was not consistent between the two. Thus, even in the most favourable of institutional circumstances, procedural implementation outcomes are far from automatic or predictable.

Both Agreements were implemented via royal decree that was applicable to the Belgian federal-level public administration. However, there are only isolated examples of either of the Agreements precipitating specific policies within other

areas of the Belgian public sector. This is likely to be attributable to the de-centralized nature of employment regulation within the Belgian public sector. In the Belgian private sector, national ‘procedures and practices’ for the implementation of the Agreements were subject to very low levels of debate. All parties who had been signatory to the Agreements concurred that national ‘procedures and practices’ for the implementation of the Agreements should consist of an NLC Agreement followed by a legally binding royal decree. Although Belgian employers initially opposed an NLC Agreement for the implementation of the Telework Agreement and the Work-related Stress Agreement was implemented in a de facto manner, these episodes were attributed to specific conditions rather than dispute over the actual constitution of Belgian national ‘procedures and practices’ for social dialogue. However, the fact that Belgian employers interpreted the Telework Agreement as falling outside the remit of Belgian national ‘procedures and practices’ is remarkable given that it demonstrates a separate interpretation of the status of EU-level regulation.

The Telework and Work-related Stress Agreements both had differing levels of substantive impact upon employment relations in Belgium. Given that there was little to no regulation on teleworking prior to the European Agreement being concluded, the implementation of the Telework Agreement in Belgium imparted key new rights to the Belgian context. By way of contrast, the issue of work-related was comprehensively regulated in Belgium prior to the conclusion of the European Agreement. Thus, the Work-related Stress Agreement was unable to achieve a notable impact upon the content of employment regulation within Belgium. With regards to the impact of the implemented Agreements at lower levels, it is reasonable

to assert that a range of factors are likely to have impeded the impact of the Telework Agreement in Belgium in this regard. On the trade union side, there were major concerns of the potential of teleworking to isolate individual workers, and to present problems with regard to the health and safety of teleworkers and the measurement of working time. On the employer side, there were concerns about losing control of workers who engage in teleworking. As the Belgian social partners stated, these factors were likely to preclude the impact of the Telework Agreement in Belgium. Owing to the fact that the Work-related Stress Agreement was not implemented in a formal way in Belgium, it is very difficult to talk about the specific impact of the Agreement in Belgium. However, the promotional activities that the Agreement triggered in Belgium would appear to have been influential to some degree. Although the Joint Declaration on Lifelong Learning in the European Banking sector did not inspire any specific policy activity in Belgium, it appears to have had at least an indirect effect on the activity of the Belgian banking sector social partners in this field, despite the fact that lifelong learning was comprehensively regulated in Belgium prior to the inception of the text at the European level. Further, the OMC style processes associated with participation in the text also appear to have had key indirect effects on the banking sector social partners' engagement on an European scale.

## **Chapter 7: Implementation in Denmark**

### **7.1 Introduction**

This chapter will present the data collected in the course of our fieldwork in Denmark. The chapter will open with (i) a brief description of the system of industrial relations in Denmark and its record with regard to the implementation of the European Social Partner Framework Agreements of the 1990s and European Social Policy more generally. Then, the chapter will (ii) describe the process of the procedural implementations of the Agreements in Denmark and the related issue of actors' reading of national 'procedures and practices' in the context of the Danish system. Here, it emerged that the processes of procedural implementation were highly contingent upon the Agreement, sector, and level in question and that interpretations of national 'procedures and practices' in Denmark diverged at the sectoral and inter-sectoral levels. Then, the chapter will (iii) describe the data collected on the substantive implementation of the Agreements in the Denmark. Here, it emerged that the impact of the Telework Agreement appears to have been more considerable than that of the Work-related Stress Agreement. Finally, the chapter will (iv) analyze the impact achieved by the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the Banking Sector in the Denmark. Here, it emerged that the impact of both texts had been limited by the advanced nature of existing lifelong learning policy in Denmark yet had initiated some indirect policy activity in Denmark.

### **7.1.1 Industrial Relations in Denmark**

Traditionally, the Danish model of industrial relations is characterized by the institutionalization of conflicts, high membership rates of trade unions, and a well-established pattern of cooperation fostering industrial peace and stability (Due and Madsen, 2008). Levels of regulation of health and safety, working conditions and the working environment are also very high when compared to other countries, and social dialogue assumes a key role in maintaining such standards (Hasle and Petersen, 2004). Two further notable characteristics of the Danish model are the traditional absence of the state from the arena of industrial relations and labour law, and the existence of an inter-sectoral 'Basic Agreement' that is concluded between the inter-sectoral social partners and ensures that lower level collective agreements are in effect compulsory codes (although not legally enforceable). In line with these features, the Danish system of industrial relations has also been conceived as one demonstrating a mixture of voluntarist and corporatist characteristics (Due and Madsen, 2008).

The main Social Partners in Denmark are the employer association Dansk Arbejdsgiverforening (DA) and the trade union confederation Landsorganisationen (LO). DA is composed of thirteen employer organizations from different sectors with a membership of 29,000 Danish private companies, whilst LO has 25 affiliated trade unions and trade union cartel organizations in which approximately 1,300,000 workers are members. On the trade union side, there are also the inter-confederal level trade union organizations FTF and Akademikernes Centralorganisation (AC). FTF is primarily a public sector trade union confederation (although it has some

affiliated trade unions in the private sector), and has a membership of approximately ninety affiliated trade unions in which 450,000 workers are members. AC is a trade union confederation for trade unions that represent professional and managerial employees working in the private and public sectors. Since the late 1980s, there has been a tendency towards the de-centralization of collective bargaining and social dialogue, yet social dialogue in Denmark remains relatively centralized and coordinated and the pre-dominant level at which collective relations between the Social Partners take place is at the sectoral level. Generally, scholars (Due and Madsen, 2008) have characterized Danish national ‘procedures and practices’ for social dialogue as consisting of sectoral collective agreements concluded between the Social Partners.

### **7.1.2 The Danish system and European Social Policy**

European Social Policy Directives exercised a key impact upon the way in which Danish industrial relations operated from a procedural perspective (Falkner et al, 2005). Owing to the fact that the implementation of the Working Time Directive via the usual voluntarist mode of Danish Social Partner regulation could not guarantee the *erga omnes* coverage of the Danish workforce required by the Council, the Danish Social Partners and Government were forced to formulate an innovative implementation route. This involved the Social Partners in various sectors being granted a period of time to implement the Directive in their sectors, before the Danish inter-sectoral Social Partners concluded a ‘follow-up’ agreement to cover the

firms that were members of DA and who were not covered by a sectoral collective agreement (Falkner et al, 2005). Finally, the Danish Government passed a law to cover those workers who were still not covered by the terms of the Working Time Directive. This mode of implementation was also used to implement the three European Social Partner agreed Social Policy Directives of the 1990s. The decision to adopt such an implementation route was not without controversy. Various commentators (Due and Madsen, 2008) regarded the use of the law by the Danish Government to regulate industrial relations as representing a major departure from the state's traditional voluntarist approach to Danish labour law. Indeed, the Danish social partner organizations worried that the state's regulation of an area that was traditionally a prerogative of the social partners would upset the balance of the Danish model (Falkner et al, 2005).

## **7.2 The Procedural Implementations of the Telework and Work-related Stress Agreements in Denmark**

This section of the chapter will address the procedural implementation of the Telework and Work-related Stress Agreements. Also, it will address the related issue of actors' interpretations of national 'procedures and practices' in the Danish context. The section will distinguish between the inter-sectoral and sectoral procedural implementations of the Agreements.



### **7.2.1 The Telework Agreement**

The conclusion of the European Telework Agreement was welcomed by the Danish Social Partners. The stance of the Social Partners was that the non-legally binding Telework Agreement would be more likely to preserve the integrity of the Danish model of industrial relations, and that the conclusion of the Telework Agreement represented the imitation of the Danish system at the European level.

#### *Inter-sectoral procedural implementations*

#### *The DA-LO implementation*

After the conclusion of the Telework Agreement at the European level in 2002, a series of meetings were held by DA and LO to discuss the most suitable way to implement the Agreement in Denmark. The decision taken by the organizations was to allow their sectoral affiliates a period of time of approximately three years in which to implement the Telework Agreement autonomously within their sectors. This decision was then communicated by the organizations to their members. DA and LO also agreed to review the implementations that had taken place after three years and consider whether further action at the inter-sectoral was required. The rationale of the organizations in advocating this implementation route lay in the fact that they viewed sectoral collective agreements as the ‘normal’ way to regulate

employment relations in Denmark, and also that they wished to promote an implementation route that would preserve the integrity of the Danish model of industrial relations rather than threatening it, as the implementation of previous European Social Policy Directives had been perceived to do. Further, a DA representative also stated that DA advocated this route due to their desire to demonstrate to the European-level Social Partners that the existing Danish system of collective agreements could adequately implement EU-level collective agreements. However, as of January 2008 within the Danish private sector only three Agreements in the industrial, finance and commerce sectors had been concluded by affiliates of DA to implement the Telework Agreement. An LO official attributed this lack of uptake to a deficit of interest in the content of the European Agreement from Danish trade unions and also to the fact that some employer organizations were likely to question the legal value of the European Agreement.

The second aspect of the DA-LO implementation of the Telework Agreement involved the conclusion of an inter-sectoral ‘follow up’ agreement that would apply to those affiliates of DA who had not concluded a sectoral agreement implementing the Telework Agreement within their sectors. The decision to affect such an implementation route was taken after a review of the sectoral implementations of the Agreement that had occurred. An LO official explained the rationale of LO in concluding this,

*'As affiliates of ETUC, we had to make sure that the agreement covered every workplace in Denmark in which there is a DA member enterprise... in the private sector, we saw that many sectoral agreements hadn't been concluded, and we said that we have to make an agreement with DA to cover those sectors that had not concluded agreements.'* (LO)

This 'follow up' Agreement was inserted in September 2006 into the pre-existing DA-LO 'cooperative' Agreement that dealt with enterprise level information and consultation issues. DA and LO regarded this implementation strategy as innovative given that it was the first time that a non-legally binding European Agreement had been implemented in such a manner in Denmark. LO and DA had a protracted dispute with regards to the legal form that the 'follow-up' agreement should assume. LO argued that full implementation of the European Agreement should consist of the terms of the Agreement entering the 'cooperative' Agreement in full, whilst DA argued that it would be appropriate to merely include the terms of the Telework Agreement within the 'cooperative' Agreement as recommendations. A compromise was eventually reached after the topic became part of a broader series of DA-LO discussions on the content of the parties 'cooperative' agreement that was being negotiated simultaneously to the Telework 'follow up' agreement. An LO representative stated that the compromise reached satisfied 'most' of LO's original demands with regards to the whole content of the European Agreement entering the 'cooperative' Agreement.

### *DA-AC implementation*

The inter-confederal sector trade union organization AC advocated implementing the Telework Agreement in Denmark via a private sector collective agreement with DA in order to maximize the coverage of the Telework Agreement with regards to those AC members working in the private sector. Although AC and DA do not traditionally conclude collective agreements to cover the private sector, the position of AC was that both organizations had been signatory to the Agreement at the European level and that, subsequently, DA were duty bound to implement the Agreement in Denmark. As of January 2008 however, and following several attempts by AC to engage DA in negotiations, such an Agreement had not been concluded between the parties. An AC official stated,

*'We took part in the negotiations with DA in Brussels but apparently things are different in Brussels than they are in Denmark. In Denmark, it has been difficult to make them see that we need this Agreement to be a reality to our members as well.'*

(AC)

The position of DA on an AC-DA Agreement was that a collective agreement with AC in Denmark would not be in keeping with national 'procedures and practices' and that they were subsequently not compelled to conclude such an Agreement.

### *The public sector*

The public sector trade union confederation FTF advocated the implementation of the Telework Agreement via a series of sectoral collective agreements on the part of their public sector affiliates. This was due to the fact that FTF do not possess a mandate to conclude collective agreements within Denmark, yet wanted to maximize the coverage of the Agreement that they had been signatory to at the European-level. The organization formed negotiating groups to aid their public sector affiliates in implementing the Agreement, and reported that the majority of their sectoral affiliates in the public sector had implemented the Agreement. According to an FTF representative, approximately 400,000 out of the 450,000 Danish public sector employees who were members of a trade union affiliated to FTF had been covered by the Agreement. A representative from AC also stated that implementation of the Telework Agreement in the public sector had not been problematic.

### *Summary*

In summary, the picture was therefore mixed at the inter-sectoral level. Although a DA-LO 'follow up' Agreement was concluded to implement the Telework Agreement, this did not occur between AC and DA. FTF also did not possess a mandate to conclude a collective agreement implementing the European Agreement at the inter-sectoral level.

### *Sectoral procedural implementations*

As stated above, the Danish inter-sectoral social partners reported that in only a minority of sectors in the private sector was the Telework Agreement implemented via a sectoral collective agreement. In the finance sector, the Telework Agreement was implemented in April 2003 as part of the general sectoral collective agreement between the Social Partner organizations FA and FF. Prior to the European Agreement, there had been a sectoral agreement on distance working that the sectoral social partners regarded as partly fulfilling the content of the European Agreement. Implementing the European Agreement subsequently became a matter of updating the content of the existing Agreement to incorporate further points that were present in the European Agreement. According to an FA representative, the trade union FF put forward a ‘small’ number of proposed changes to the sectoral Agreement regarding health and safety issues. These proposed changes were subsequently accepted by FA. An FA official reported that,

*‘There were no real points of disagreement over the proposed changes. We agreed on FF’s proposals because they did not have any significance that would be of any negative effect to our companies, and we wanted our collective agreement to be in line with the European Agreement.’ (FA)*

In the Danish insurance sector, there was no prior Agreement on distance working, yet the Telework Agreement was not implemented in the sector. This is despite the fact that the finance employers' association FA also collectively bargain with trade unions in the insurance sector. A DFL official stated that this had occurred because,

*'We wanted the implemented Telework Agreement to cover all of our members, including those working as mobile insurance salesman. However, FA were concerned that the inclusion of this group of workers in the Agreement would lead to employer incurring higher costs, and they didn't want that. They said the Agreement would be implemented if these members were excluded, but we said no, all of our members have to be included in the Agreement.'* (DFL)

In the industrial sector, the Social Partner organizations DI and CO had concluded prior agreements on homeworking. Subsequently, the implementation of the Telework Agreement involved the extension of the existing agreements on homeworking to include provisions that specifically related to the teleworking issue. Due to the perception that the content of the Telework Agreement and the existing agreements on homeworking were not greatly dissimilar, the implementation of the Agreement in the sector was not characterized by great debate between these sectoral Social Partners, who, according to an LO official, took 'pride' in implementing EU Directives and Agreements fully and with alacrity.

As outlined above, it was reported by an FTF official that in the majority of sectors in the Danish public sector the Telework Agreement was implemented via a series of sectoral agreements. The FTF official also alluded to the existence of a 'culture' of implementation and compliance with EU regulation within the Danish public sectors. In the Danish state railway sector, the Telework Agreement was implemented in December 2002. A HK rail official reported that this implementation had been achieved without a high level of debate. In the Danish local Government sector, by way of contrast, the Agreement was implemented in 2005 after a protracted debate between the sectoral Social Partners. A prior 1997 Agreement had existed on the topic of teleworking, and, after a year of discussion on the relationship between the content of the Danish and the European Agreement, implementation within the sector merely consisted of the social partners stating that the existing Danish Agreement fulfilled the content of the European Agreement. KL, the sectoral employers' association, had advocated simplifying the operation of the existing Agreement at firm level by minimizing the role of unions at this level. KTO, the trade union cartel for the sector, resisted this proposal on the grounds that it would entail a downgrading of sectoral employment standards, and, according to a KTO representative, also regarded the provisions in the Danish Agreement safeguarding the voluntary nature of teleworking for the employee as stronger than in the European Agreement. KTO advocated the insertion of extra rights regarding training and education of teleworkers into the existing Agreement on the grounds of a clause in the European Agreement, but this was resisted by KL as a result of KTO's resistance to their proposals to make the initial Agreement more flexible. The result of this stalemate was that the sectoral social partners ended by simply stating that the



contents of the European Agreement were already present in their existing collective agreement.

### **7.2.2 The Work-related Stress Agreement**

#### *Inter-sectoral procedural implementations*

#### *LA-DO implementation*

After the conclusion of the Work-related Stress Agreement at the European-level in October 2004, DA and LO also held a series of meetings regarding the most appropriate way to implement the Agreement. As with the Telework Agreement, the policy of DA and LO was to grant their sectoral level affiliates a period of time in which to autonomously implement the European Agreement within their sectors for the same reasons as was the case with the Telework Agreement. It was stated by both DA and LO that, as of January 2008, they were only aware of a private sector Agreement within the industrial sector to implement the Work-related Stress Agreement. A representative from LO attributed the lack of sectoral implementations of the Agreement to the deficit of specifically worded clauses contained within the European Agreement, and also to the fact that many employers' organizations saw the Agreement as 'voluntary'. An official from DA also noted that the existence of several sectoral collective agreements and general legislation on the topic of work-

related stress in Denmark might preclude the conclusion of many sectoral collective agreements on the topic given that the issue was in many cases regulated prior to the European Agreement.

Unlike with the Telework Agreement an LO-DA inter-sectoral ‘follow up’ Agreement was not concluded on the Work-related Stress Agreement in Denmark. From the outset, the argument of DA was that the content of the Agreement was already present in Danish labour law and that subsequently there was no need for a ‘follow up’ agreement to be concluded given that this would merely become a burden on Danish firms. A DA official stated,

*‘We did not conclude a [‘follow up’ Agreement] to implement the Work-related Stress Agreement as we did with the Telework Agreement because what was in the European Agreement was already covered by Danish legislation.’ (DA)*

After a period of internal deliberation in which the added value of concluding such a ‘follow up’ Agreement was debated, LO decided that their position was also that there was not a need for a ‘follow-up’ agreement. This was based on the view that the topic of work-related stress was already comprehensively regulated in Danish labour legislation, and that the conclusion of a ‘follow up’ Agreement on the European Agreement, that contained little in the way of specific clauses in any case, would add very little in the Danish context. An LO representative further justified the approach by citing the example of the Danish Government’s previous declarations

that EU Social Policy Directives need not be implemented given that their content already existed in Danish legislation.

Owing to the fact that DA and LO decided not to conclude a 'follow up' Agreement, a series of promotional activities were organized by the parties to promote awareness of the issue of work-related stress in Denmark. Both organizations advocated these activities as they were seen as an useful way of highlighting the problem of work-related stress in the absence of a DA-LO 'follow up' Agreement to implement the European Agreement. An AC official stated that AC had not attempted to engage DA in collective negotiations for an agreement to cover AC members in the private sector,

*'Since we don't have a general agreement with DA about negotiating in the private sector, they would probably answer as they did with the proposed negotiations on the Telework Agreement. Also, if there is a lack of binding formulation within the Agreement, then it becomes difficult to persuade them for the need for an implementation of the Agreement.'* (AC)

#### *The public sector*

An LO official reported that the organization's policy was to allow its affiliates in the public sector a period of time in which to conclude autonomous implementations of

the Agreement, as was the policy of the organization in the private sector. It was further stated that in the majority of sectors in the public sector collective agreements had been concluded, although it was added that the extent to which value had been added to sectoral contexts was questionable given the weak content of the European Agreement. The policy of FTF was also to allow its affiliates scope to implement the Agreement autonomously for the same reasons as such an approach was adopted in the case of the Telework Agreement. An FTF representative stated that, as in the case of the Telework Agreement, the number of sectors in the public sector implementing the Agreement had been considerable. This was attributed to the aforementioned culture of ‘duty’ in the public sector with regard to the implementation of European Agreements.

### *Summary*

In summary, a key difference was evident between implementation outcomes in the private and public sectors. Whilst only one sectoral implementation of the Work-related Stress Agreement was affected in the private sector and there was no ‘follow-up’ Agreement concluded, in the public sector the majority of sectors implemented the European Agreement.

### *Sectoral procedural implementations*

In the Danish industrial sector, the implementation route chosen to implement the Work-related Stress Agreement was via the DI and COI cooperative agreement that was agreed during the 2007 bargaining round. This implementation route was selected given that this was perceived as the ‘normal’ way of regulating a topic such as stress within the sector, and entailed the content of the European Agreement being inserted in the part of the existing cooperative agreement that dealt with bullying and sexual harassment. This would then be subject to use in workplace cooperation committees that were regulated by the DI and COI cooperative agreement, and that formulated workplace specific policies on topics such as bullying and sexual harassment and work-related stress. It was also stated by DI and COI officials that it was normal practice within the sector to implement European Directives and Agreements precisely and efficiently.

Within the finance and insurance sectors, the Work-related Stress Agreement had not been implemented as of January 2008. A representative from the employers’ organization FA stated that FA had not advocated the implementation of the Agreement in either the finance or insurance sector, owing to the fact that the topic of work-related stress was regarded as more appropriately managed at the company level rather than the sectoral level. An FF representative stated that FF were rather indifferent to whether the Agreement was implemented or not,

*‘We believed that we were doing work that was far beyond what the European Agreement could provide. We didn’t believe it was a very good Agreement, and we*

*thought that we were carrying out work far in advance of the European Agreement.'*

(FF)

A representative from DFL stated that DFL wished to implement the European Agreement within the insurance sector, but that FA had refused to do this thus far.

The social partners in the Danish state rail sector implemented the Work-related Stress Agreement within their sectoral cooperative agreement in 2004. As in the industrial sector, the agreement was then intended for further use within work-place cooperative committees that set work-place specific policies on issues like work-related stress in workplaces within the sector. The process was markedly conflict free given that the content of the European Agreement had been present in sectoral regulation prior to the implementation of the Agreement. A HK rail official stated,

*'When the Agreement was implemented in the sector, I was surprised that there was even a need. I thought that this was already covered within our existing agreement!'*

(HK Rail)

In the local Government sector, the European Agreement was also implemented via a cooperative agreement, in 2005. After the experience of the deadlock with the implementation of the Telework Agreement, the sectoral Social Partners delayed regulation that had been planned on the work-related stress issue until after the

European Agreement was concluded. This was in order to avert another dispute over the relationship between the content of the European Agreement and existing regulation.

### *Summary*

In summary, the procedural implementations to which the Agreements were subject to were often contingent upon the level of existing regulation on the topic in question, and on the degree of existing contestation between the parties to implementation. The key reason for the decision of the inter-sectoral Danish social partners to decide to conclude a ‘follow-up’ agreement on the Telework Agreement but not on the Work-related Stress Agreement lay in the existing levels of regulation on the topics in Denmark. Also, in the cases of the DA-AC dispute over the implementation of the Telework Agreement, the DA-LO ‘follow-up’ Agreement on the Telework Agreement, and the local Government sector implementation of the Telework Agreement, the degree of contestation between the social partners often played a crucial role in determining implementation outcomes. It was also notable that implementation outcomes were more complete in the public sector in comparison to the private sector. Further, within the private sector, the implementation outcomes secured by LO were more ‘effective’ than those secured by AC. Finally, implementation outcomes within differing sectors within the private sector diverged. The industrial sector performed particularly well with regard to the extent it implemented the Agreements ‘effectively’.

### **7.2.3 National ‘Procedures and Practices’**

The chapter will now address the interpretation of Danish actors of the national ‘procedures and practices’ implementation clause and its implication in the Danish context.

#### *The interpretation of inter-sectoral level actors*

At the Danish inter-sectoral level, the interpretation of Danish trade unions of national ‘procedures and practices’ in Denmark centred around an appreciation of the key and primary role of collective agreements between parties in regulating industrial relations in Denmark. The trade union confederations FTF and LO emphasized the pivotal role of collective agreements in the Danish system, and stated that, in the context of Denmark, national ‘procedures and practices’ could not mean anything other than collective agreements between social partners at various levels. Despite the fact that LO did not advocate the conclusion of an inter-sectoral collective agreement to implement the Work-related Stress Agreement given that the content of the Agreement already existed in Danish regulation, an LO official stated that this stance could nevertheless be understood as national ‘procedures and practices’ given previous examples of the Danish Government declaring that EU Social Policy Directives need not be implemented because their content was already present within Danish labour law. AC also conceived of national ‘procedures and practices’ for social dialogue as consisting of collective agreements between social partners.



Specifically, in the case of the proposed DA-AC private sector collective agreement to implement the European Agreement, AC argued that the lack of a precedent for such an Agreement was not relevant given that both DA and AC had been signatory to the Telework Agreement at the European level.

The interpretation of DA of national ‘procedures and practices’ for the implementation of the Agreements was rather more nuanced. A DA official stated that the implementation of the Telework Agreement that had taken place, where affiliates of DA had been granted the autonomy to conclude collective agreements within their respective sectors, reflected national ‘procedures and practices’ in Denmark given that similar methods had been used by DA and LO to implement EU Social Policy Directives. However, it was also emphasized that the DA-LO ‘follow up’ Agreement, that was placed in the Social Partners’ cooperative agreement for information and consultation for lower level affiliates, was in itself an innovation, and it was therefore difficult to describe this implementation method as Danish national ‘procedures and practices’. Furthermore, it was said by DA that the Telework Agreement was itself a new form of European regulation, and that it was potentially problematic to specify that such an Agreement be implemented in accordance with national ‘procedures and practices’ when the Agreement itself was an innovation. The stance of DA that the Work-related Stress Agreement need not be the subject of an inter-sectoral ‘follow-up’ Agreement was also used as ammunition for the argument that national ‘procedures and practices’ were not in themselves fixed, and should be selected on an ad hoc basis.

### *The interpretation of sectoral level actors*

Within the sectors studied, all of the trade union organizations who had affected implementations of the Telework and Work-related Stress Agreements asserted that national ‘procedures and practices’ within their sectoral contexts could consist of nothing else than sectoral collective agreements. It was asserted that no other means would reflect the ‘normal’ mode of social dialogue within the sector, and that subsequently, no other tools for implementation had been considered by the social partners within the sector. Although the Work-related Stress Agreement had been subject to implementation via cooperative agreement rather than via the core collective agreement in the local Government and industrial sectors, trade unionists within the sector asserted that this merely implied a variation of collective relations between the sectoral social partners rather than a ‘new’ way of interpreting ‘procedures and practices’.

As was the case at the inter-sectoral level, the interpretation of sectoral employers’ associations of national ‘procedures and practices’ was more subtle. In the case of the Telework Agreement, employers’ associations shared the view that the national ‘procedures and practices’ implementation clause implied sectoral collective agreements. This was based on the view that a topic such as teleworking was traditionally regulated via such an instrument. However, in the case of the Work-related Stress Agreement, certain sectoral employers’ associations emphasized that the nature of the work-related stress issue made it lie outside the scope of ‘normal’

Danish national ‘procedures and practices’. This formed the basis of an argument that it was more appropriate to interpret the national ‘procedures and practices’ implementation clause on a contextual basis rather than on a fixed interpretation of the clause. A representative from the local Government sector employers’ association KL stressed that the implementation that occurred within their sector was an innovatory one and one that differed from the means used to implement the Telework Agreement, whilst the industrial sector employers’ association DI also asserted that the fact that a different implementation route was appropriate for the Work-related Stress Agreement as opposed to the Telework Agreement demonstrated that national ‘procedures and practices’ was best interpreted on a ‘case-by-case’ basis.

### *Conclusion*

In summary, there appears to have been more conflict over the interpretation of the national ‘procedures and practices’ implementation clause in the case of the Work-related Stress Agreement. Although Danish trade unions consistently adopted a definition of national ‘procedures and practices’ that emphasized collective agreements between Social Partners, certain Danish employer associations used the case of the Work-related Stress Agreement to advance the argument that national ‘procedures and practices’ were not in themselves something fixed and should be interpreted on a case by case basis.

## **7.3 The Substantive impact of the Telework and Work-related Stress**

### **Agreements in Denmark**

This section of the chapter will present the data collected on the substantive impact of the Telework and Work-related Stress Agreements in Denmark. It will address the two agreements separately, and will discuss the data that is available upon their impact within Danish sectors and companies, the level of potential impact that the Danish Social Partners regard them as likely to achieve, and the extent to which the Agreements and their implementation added value to the content of Danish regulation on the teleworking and work-related stress issues.

#### **7.3.1 Telework Agreement**

##### *Content*

At the inter-sectoral level, representatives of the social partners reported that many aspects of the European Telework Agreement were present within sectoral level collective agreements prior to the Telework Agreement being implemented in Denmark. An AC official stated that in the majority of Danish public sector collective agreements there were clauses on homeworking that covered the major provisions of teleworking such as health and safety and the provision of equipment for teleworkers. LO and DA officials also noted that, in many private sector

collective agreements in Denmark, many of the terms of the Agreement had either been the subject of pre-existing sectoral agreements on teleworking or homeworking. However, a DA official stated that one key value of the Agreement lay in the manner in which it had consolidated existing regulation and had provided potential teleworkers with a coherent frame of reference to develop future teleworking arrangements. An LO representative also reported that the Telework Agreement had contained a certain number of clauses, such as those pertaining to the duty of the employer to provide equipment, that had not inconsiderably strengthened the position of teleworkers in Denmark.

At the sectoral level, the extent to which the Telework Agreement contributed to the substantive regulation of teleworking varied. An official from HK Rail stated that although the pre-existing 1997 sectoral agreement on teleworking had been specific on the duty of employers to ensure a safe work environment, it had not been specific with regard to the regulation of the work load and working time of teleworkers, and the implementation of the European Agreement had thus improved the sectoral regulation of teleworking in this regard. In the finance sector, the terms of the European Agreement had been largely present within a 1997 collective agreement on distance working. According to a representative from FA, implementation of the European Agreement had merely consisted of slightly altering the existing agreement to take into account the stipulations of the European Agreement regarding the health and safety of teleworkers. In the local Government sector, the position of KTO was that the contents of a pre-existing sectoral Agreement on teleworking had been superior in terms of the protection it afforded to workers to the European Agreement.

KTO subsequently resisted, successfully, the attempts of the sectoral employers' association KL to affect an implementation of the European Agreement that would allow employers and employees to organize teleworking arrangements directly and without consulting local trade unions. The clause in the Telework Agreement that forbids using the Agreement to downgrade national employment standards was cited by KTO. KTO did, however, regard one aspect of the Telework Agreement that stated the right of teleworkers to receive appropriate training and education as surpassing the content of the Danish Agreement, but were unable to persuade KL to implement this clause given the refusal of KTO to agree to the implementation of the clauses advocated by KL. In the Danish industrial sector, two collective agreements, covering blue collar workers and white collar workers, existed that specified a set of rights for homeworkers. It was reported by officials from DI and COI that many of the terms of these Agreements largely anticipated the terms of the European Agreement. However, it was also reported that the implementation of the European Agreement had been valuable in that it had provided a simplified and streamlined set of rules for prospective teleworkers to refer to.

#### *Data and perspectives on impact*

None of the Danish social partner organizations at the inter-sectoral or sectoral levels interviewed reported engaging in any formal monitoring exercises to appraise the impact of the implemented Telework Agreement. A KTO official stated that KTO had informally requested its lower level affiliates to provide the organization with

details of any local agreements concluded, but reported that no information had been received by the organization as of January 2008. The rationale of the social partner organizations in not conducting such exercises lay in the fact that they did not have the resources to conduct monitoring exercises on the impact of the Agreement and also did not see sufficient added value in conducting such an exercise. An LO official stated that a monitoring exercise would be superfluous given that any major transgressions of the implemented Agreement would attract the attention of the social partners via the self-monitoring mechanisms that characterize Danish collective agreements. DA concurred with this view, as did the social partners in the industrial sector. A DI official stated,

*'The Telework Agreement now forms part of our general collective agreement with CO Industri so trade unions now have the right to complain if something is done that is in breach of the collective agreement. There's a monitoring mechanism built into the collective agreement, so we don't see the point in conducting further exercises.'*

(DI)

Despite there being no actual data on the impact of the Telework Agreement in Denmark, the Danish social partners had various perspectives regarding the level of impact that the Agreement was likely to achieve in terms of its ability to regulate teleworking in Denmark and its ability to increase the uptake of teleworking in sectors and companies. Although it was acknowledged that the Agreement and its implementation was likely to stimulate and encourage teleworking in many cases, it

was also stated that the impact of the Agreement in terms of the number of teleworkers it was likely to inspire would be precluded by the nature of work within many sectors. A DA official cited the construction sector as an example of a sector where teleworking would not be viable for the majority of employees, whilst an LO official highlighted the example of the public sector where many employees were engaged in frontline services and teleworking would subsequently not be viable. However, it was also recognized that in many professions, such as white collar professions, the use of teleworking as a way of flexible working was likely to become more popular as a result of the Agreement. A DA official stated that DA were not overtly concerned about the number of teleworkers the Agreement was likely to produce. For DA, the significance of the implemented Agreement lay in the fact that it provided employees and employers wishing to engage in teleworking with an appropriate framework of reference rather than in the number of teleworking arrangements that the Agreement would be likely to influence.

In the finance sector, a FF official stated that FF doubted that the uptake of teleworking in the sector had been widespread due to the Agreement. This was attributed to the existence of many jobs within the sector that were based upon interaction with customers and that were subsequently not suited to teleworking, and the fact that many employees dealt with confidential information that it would not be appropriate to store on teleworking equipment kept in the homes of employees. The FF official stressed however that teleworking had been popular amongst IT workers and employees in managerial positions. An FA representative also stated that teleworking was 'quite' popular within the sector.



It was also noted by the Danish social partners that the impact of the European Agreement was likely to be less as a result of the pre-existing regulation of the teleworking issue that has been described above. It was argued that the prior existence of numerous sectoral agreements on teleworking and distance working would mean that the impact of the European Agreement was likely to be less than if the Agreement had addressed entirely virgin ground.

### **7.3.2 Work-related Stress Agreement**

#### *Content*

Inter-sectoral level interviewees were rather pessimistic regarding the degree to which the European Work-related Stress Agreement was likely to contribute to the general level of Danish regulation of work-related stress. Representatives from the trade union confederations AC and LO argued that the clauses within the European Agreement were very vague, and that subsequently there were no specifically worded clauses that could be actually implemented within Denmark. An AC official stated,

*'[If you read the Work-related Stress Agreement] then there is nothing which can be implemented! If you don't have any binding formulation but only recommendations*

*and considerations then employers will rightly query whether there is actually anything concrete in the Agreement that can be implemented.’ (AC)*

Inter-sectoral social partners also commented upon the high degree of prior regulation of the work-related stress issue in Denmark. Officials from DA and LO stated that the content of the European Agreement was already fulfilled in Danish health and safety legislation. Indeed, the main reason why an inter-sectoral ‘follow-up’ agreement was not concluded to implement the European Agreement was that LO and DA considered that the European Agreement had little to offer the Danish context in the form of new regulation.

At the Danish sectoral level, the extent to which the Work-related Stress Agreement contributed to sectoral regulation varied markedly. There were those sectors in which it was reported that the European Agreement had added a negligible amount to sectoral regulation. In the state rail sector, a HK rail official stated that the European Agreement had added almost nothing to the regulation of work-related stress in the sector. This was attributed to the fact that work-related stress had already been regulated through collective agreement in the sector, and had also been the subject of considerable promotional activity by the social partners within the sector. In the insurance and finance sectors, the Work-related Stress Agreement was not implemented because the sectoral social partners did not consider that its implementation would add anything to the sectoral regulation of the issue. An FF official stated,

*'We didn't implement the European Agreement because we believed that we were carrying out activity in Denmark that was far beyond what the European Agreement had to offer us.'* (FF)

In the local Government sector, the Work-related Stress Agreement exercised a considerable impact upon the sectoral regulation of the issue. Prior to the European Agreement, the topic of work-related stress had not been regulated by the social partners, and the European Agreement provided a chance for the sectoral social partners to conclude an agreement on the topic. Given that sectoral representatives reported that concern over the work-related stress issue was growing, and that the topic was a priority for the Presidents of both KTO and KL, it is reasonable to conclude that the European Agreement acted as a stimuli to a major piece of regulation in the sector. Within the industrial sector, the Work-related Stress Agreement also appears to have stimulated a key new agreement on the topic. A COI official stated that the Agreement that the social partners in the sector had concluded to implement the European Agreement entailed an innovative new way of managing work-related stress in the sector.

### *Data and perspectives on impact*

As of January 2008, none of the Danish social partner organizations had conducted any comprehensive monitoring exercises on the impact of the Work-related Stress Agreement. The local Government trade union organization KTO had, however, collected tentative statistics and estimated that in the Danish local Government sector and healthcare sector between 5% and 8% of local co-operative committees had concluded agreements on procedures to handle work-related stress that were inspired by sectoral level agreements. The rationale of the Danish social partners for not conducting exercises on the monitoring of impact was the same as was advanced in the case of the Telework Agreement; the organizations did not have the resources to conduct an exercise that they saw dubious added value from, and also believed that the Danish system of industrial relations had inbuilt mechanisms for the monitoring of collective agreements that meant that the Social Partners at higher levels would hear of breaches of the Agreement.

In place of actual data on the impact of the Agreement, a expectations were advanced by social partner organizations regarding the level of impact they expected the Agreement to achieve. The inter-sectoral social partners were rather pessimistic about the potential of the Agreement to achieve a significant level of impact. This was due to their view, described above, that the wording of the European Agreement was 'weak' and contained very little that could be unambiguously interpreted by lower-level negotiators. DA and LO were more positive about the extent of influence

that their promotional activities to raise awareness of the topic of work-related stress could achieve. Officials from both organizations stated that their promotional activities would be likely to inspire a fair level of activity on the topic of work-related stress in Denmark through awareness raising about the condition of work-related stress and through alerting the Danish social partners about the existing regulation surrounding the issue. An LO official stated,

*'Legally speaking, the Work-related Stress Agreement offers very little to Denmark. However, practically speaking, if we do a lot of awareness raising on the subject of work-related stress with DA then it will have a very positive impact.'* (LO)

At the Danish sectoral level, the social partners also made predictions about the level of impact that the Agreement would be likely to achieve in their sectors. In the state rail, insurance and finance sectors, those sectors in which prior regulation had existed on work-related stress, the fact that the content of the European Agreement offered a minimal level of value to the sectoral social partners, described above, meant that the social partners within the sectors predicted that the European Agreement would achieve a minimal level of impact within their sectors. In those sectors where there had not been comprehensive regulation of the work-related stress issue prior to the European Agreement and the European Agreement had subsequently triggered the conclusion of innovative agreements within the sectors, described above, then the sectoral social partners predicted that the Work-related Stress Agreement would be likely to achieve a far more significant impact. A COI official described the

implemented Agreement as an useful tool that had the potential to significantly reduce stress levels within the sector. In the local Government sector, an official from the trade union cartel KTO stated that the existence of the Agreement made it more acceptable for employees to talk about stress, and also alluded to the evidence, presented above, of local cooperative committees concluding agreements for the management of work-related stress as a result of the sectoral Agreement.

#### **7.4 Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking Sector**

The chapter will now consider the impact of the Framework of Actions on Lifelong Learning and the Joint Declaration on Lifelong Learning in the European Banking Sector in the Denmark. Owing to the fact that the texts are not Article 138-9 Agreements and thus do not have to be implemented in specified procedural forms, only the substantive impact of the texts in Denmark, rather than the procedural implementation of the texts will be considered.

##### **7.4.1 Framework of Actions on Lifelong Learning**

Danish actors, on both sides of industry, stated that the advanced nature of the regulation of lifelong learning within Denmark precluded the European text from exercising a substantial impact in Denmark. An official from the organization AC

compared the non-legally binding nature of the EU text unfavourably with the ‘binding formulations’ of Danish collective agreements on lifelong learning, whilst a DA official stressed that the content of the European text had been present within Danish social partner regulation for decades prior to the negotiation of the European text. Subsequently, actors reported that the impact of the Framework of actions on Lifelong Learning had been limited within Denmark. An AC representative stated that the value of the text for AC had been negligible given the limited form of the content and its non-legally binding nature, and reported that all participation in the text had implied for AC was annually compiling a list of activities on lifelong learning that AC were engaging in independently of the European text. An AC official stated,

*‘We have obtained no value from participating in this exercise. Of course we report on the activities that we are engaged in, but there are no bridges or links between European and national activities.’ (AC)*

The employer organizations DA and KL also stated that participation in the European text had imparted no new obligations onto their organizations, and participation in the text had merely consisted of annually compiling a list of national policies that derived their inspiration from elsewhere. The organizations attributed this situation to the fact that lifelong learning policy was highly developed in the Danish context. Representatives from both organizations acknowledged that the text

may have had a slight coordinating and indirect role in the formation of lifelong learning policy within Denmark however.

A representative from KL also reported that the Framework of Actions on Lifelong Learning had had one significant indirect effect within the Danish local Government sector. Traditionally, human resource managers within the sector had regarded lifelong learning as a policy to be managed at the firm level. The KL official reported that the existence of the Framework of Actions on Lifelong Learning had helped contribute to the development of a new attitude in which lifelong learning policy was seen as also being legitimate subject matter for sectoral agreements. The existence of the text gave sectoral representatives the opportunity to justify sectoral level work on lifelong learning as fulfilling part of their obligations to the European level.

#### **7.4.2 Joint Declaration on Lifelong Learning in the European Banking Sector**

Within the Danish finance sector, a 2003 collective agreement was concluded on educational funds that was, to an extent, inspired by the European Banking sector Joint Declaration on Lifelong Learning. This agreement aimed to facilitate the employability of workers within the sector by establishing special funds for the competence development needs of workers. According to representatives from the Danish banking sector social partners, the existence of the European text partly inspired and shaped the content of the Danish Agreement, without having a pivotal



or primary influence on the decision of the sectoral social partners to conclude the Agreement. An FF official stated,

*‘Education and competence development is extremely important so whether or not this Agreement would have happened anyway is difficult to say... but I believe we derived a lot of inspiration from the joint declaration.’ (FF)*

An FA official also stated that the European text had exercised a fair degree of influence upon the Danish Agreement. Further, it was emphasized by the FF representative that the fact that FA and FF had both been closely involved in the European-level drafting and negotiation of the text meant that a sense of ‘ownership’ was felt regarding the text and that the parties subsequently felt an ‘obligation’ to engage in some sort of activity within Denmark that would reflect the influence of the text. To illustrate the latter point, the existence of a joint statement by the Presidents of FA and FF emphasizing that the Danish Agreement specifically addressed the points raised by the European-level text was alluded to. Finally, the FF representative asserted that FA’s membership of the European Banking Federation and non-membership of Business Europe meant that they had been more likely to take the European Banking sector text more seriously than the inter-sectoral level European Agreements.

However, the influence of the European text within the sector should not be overstated. According to an FA representative, the impact of the European text upon

the decision to conclude the Danish Agreement was ‘quite small’, and the Agreement would have been concluded anyway without the existence of the European text. An FF spokesperson also stressed the pivotal status of the debates around education and competence development within the sector prior to the European text, and acknowledged that the European text had played a coordinating, rather than a precipitating, role. Furthermore, the impact of the Danish collective agreement upon industrial relations within the sector appears to have been modest. Representatives from both sectoral social partner organizations noted that there had been a limited uptake of the training initiative from employees in the sector.

## **7.5 Conclusion**

This chapter has presented the data gathered on the Danish implementation of the Telework and Work-related Stress Agreements, and Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking sector. With regard to the procedural forms in which the two Agreements were implemented, these varied in relation to three factors; these were the Agreement being implemented, the level at which the implementation was affected, and the sector in question. The Telework Agreement was subject to an inter-sectoral ‘follow up’ Agreement whilst the Work-related Stress Agreement was not. This is an example of the content of the Agreement exercising a key influence over the implementation strategy preferred by social partners, and in several sectors the content and topic of the Agreement played a crucial role in determining the

implementation strategy eventually chosen. Implementation outcomes also became enmeshed in existing processes of contestation occurring between the Danish social partners. The case of the DA and AC dispute over the implementation of the Telework Agreement is an instance of this, as is the manner in which the content of the DA-LO ‘follow up’ Agreement to implement the Telework Agreement became part of a wider series of discussions conducted by DA and LO. With regard to the issue of the Danish social partners’ interpretation of the national ‘procedures and practices’ implementation clause, a clear difference is evident between the interpretation of Danish trade unions and employer associations, and this difference also became more pronounced when considering the implementation of the Work-related Stress Agreement. Danish trade union organizations consistently adopted an interpretation of national ‘procedures and practices’ that was based on an interpretation of the clause as implying collective agreements between the social partners, whilst Danish employer associations advocated a more contextual implementation of the clause, and in some cases argued that a topic such as work-related stress was not appropriate for implementation via traditional collective agreement.

In terms of the substantive impact of the Agreements in Denmark, the overall picture is somewhat mixed. Whilst it is clear that the implementation of the Telework Agreement in Denmark generally added an useful set of new rights to Danish industrial relations and also is likely to have inspired a number of new teleworkers and protected existing ones, it is also true that the area was regulated to a fair degree prior to the implementation of the European Agreement, and also that the issue of

teleworking is generally not pivotal to the debates that are conducted upon industrial relations in Denmark. The Work-related Stress Agreement would appear to have had less of an impact. Not only did Danish trade unionists regard the content of the European Agreement as 'weak', but the topic of work-related stress was also fairly comprehensively covered in Denmark prior to the implementation of the Agreement. The exceptions are the industrial and local Government sectors in which the Agreement appeared to achieve a rather better level of impact. Finally, the impact of the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking Sector appear to have been rather minimized by the existence of substantial prior regulation on the topic of the texts prior to their inception. Both texts did, however, play a role in coordinating and very indirectly influencing the work of Danish Social Partners in the field of lifelong learning policy.

## **Chapter 8: Implementation in UK**

### **8.1 Introduction**

This chapter will present the data collected in the course of the fieldwork in the UK. The chapter will open with (i) a brief description of the system of industrial relations in the UK and its record with regard to the implementation of the European Social partner Framework Agreements of the 1990s and European Social Policy more generally. Then, the chapter will (ii) describe the process of the procedural implementations of the Agreements in the UK and the related issue of actors' reading of national 'procedures and practices' in the context of the UK system. Here, it emerged that these processes were somewhat technocratic and characterized largely by the absence of conflict between the parties to implementation. Further, it emerged that, given the 'disorganized' nature of national 'procedures and practices' in the UK, actors' interpretations of national 'procedures and practices' were contested. Then, the chapter will (iii) describe the data collected on the substantive implementation of the Agreements in the UK. Here, it was found that there was generally a deficit of information on the impact of the Agreements, and that, although the Agreements appear to have been the subject of interest at lower levels, it is doubtful that a major impact was achieved. Finally, the chapter will (iv) analyze the impact achieved by the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the Banking Sector in the UK. Here, it emerged that both texts had initiated very limited specific policy activity in the UK.

### **8.1.1 Industrial Relations in the UK**

Historically, the UK system has been described as the classic voluntarist system of industrial relations (Hyman, 2003; Dickens and Hall, 2006). This system entailed the state abstaining from becoming involved in relations between trade unions and employers, and merely establishing a minimum level of workplace health and safety regulation. In the post-war years, there were several multi-employer sectoral agreements in the private sector, but these have almost completely disappeared after they were abandoned by employers in the 1980s. Further, these differed from multi-employer sectoral agreements in other European countries in that they were neither legally enforceable nor subject to regulation by peak-level social partner organizations. The UK also differs from other Western European states in that, aside from a brief period in the 1960s and 1970s, there is no tradition of inter-sectoral concertation by the social partners.

After the 1997 victory of the New Labour Party, a series of New Labour Governments regulated, via the law, substantive aspects of the employment relationship for the first time. Most notably, a national minimum wage was introduced, and the implementation of the European Working Time Directive, although with a clause allowing individual workers to 'opt-out' of the regulations, regulated working time in the UK. National 'procedures and practices' in the UK is now characterized by a range of trends, and has been described by scholars as representing a bifurcated model (Kersley et al, 2005). Sectoral collective agreements exist within areas of the public sector, yet the private sector is characterized by firm-

level collective agreements and, in many cases, unilateral managerial authority. The role of the law has also grown since 1997 and some have commented that the UK system is moving in a statist direction (Hyman, 2003; Dickens and Hall, 2006).

The main UK Social partner organizations are the Trades Union Congress (TUC) and Confederation of British Industry (CBI). TUC is the confederal umbrella trade union organization for 58 UK trade unions, whilst CBI represents UK businesses. In addition to TUC and CBI, the Social partner organizations CEEP UK, who represent UK public sector employers, the Forum for Private Business (FPB), who represent small businesses in the UK, and the Health and Safety Executive (HSE), an arm of the UK public authorities concerned with health and safety regulation, were involved in the implementation of the Agreements. The UK Government Department of Trade and Industry (DTI) were also involved in the implementation of the Agreements.

### **8.1.2 The UK system and European Social Policy**

The Major Conservative Government secured a UK 'opt-out' from the Social Protocol that was annexed to the Maastricht Treaty in 1991. This 'opt-out' was then reversed by the New Labour Government that assumed power in 1997. As a result of this, the European social partner agreed 1995 Parental Leave Directive was not implemented in the UK until after the UK 'opt-out' was reversed. The Parental Leave Directive was then implemented in the UK by the UK Government as were

the Part-time Work Directive and Fixed-term Work Directive. Along with other EU social and employment regulations, the implementation of these social partner agreed Directives formed a cornerstone of the Blair Government's strategy of setting a 'floor' of legal rights in the sphere of industrial relations. As a result of the legalistic implementation of these Directives, the issue of national 'procedures and practices' for social dialogue in the UK did not arise during the implementation process. Worries about the compatibility of UK national 'procedures and practices' for social dialogue with the Working Time Directive did, however, motivate policymakers in the UK to secure the individual 'opt-out' from these regulations. The concern of the UK Government was that the derogations contained in the Directive available via collective agreement would be difficult to trigger in the context of the UK system.

The 2002 conclusion of the Telework Agreement was met with skepticism in some trade union circles in the UK. This attitude may have partly reflected the success of the Directive-based approach in the UK context, and also the suspicion that the 'dis-organized' nature of social dialogue in the UK would ensure that such agreements would achieve minimal impact within the UK.



## **8.2 The Procedural Implementations of the Telework and Work-related Stress Agreements in UK**

This section of the chapter will address the procedural implementation of the Telework and Work-related Stress Agreements. Also, it will consider the related issue of actors' interpretations of national 'procedures and practices' in the UK context.

### **8.2.1 Telework Agreement**

The Telework Agreement was implemented in the UK in August 2003 as a non-legally binding UK social partner text entitled 'Telework Guidance'. The content of the text was agreed upon by CBI, CEEP UK, and TUC, and was published by the UK Government Department of Trade and Industry (DTI). The text referred heavily to the European Agreement, and cited the content of the European Agreement whilst demonstrating how UK legal regulation already covered many of the clauses of the European Agreement. There were also references to what was regarded as 'good practice' concerning the operation of teleworking policies.

The implementation of the Telework Agreement in the UK was not particularly marked by conflictual relations between the UK social partners, and was primarily characterized by the desire of the UK social partners to affect an implementation that

would satisfy their obligations to the European level. DTI were particularly keen that the UK social partners' meet the requirements of the European Agreement, and, to this end, took the initiative in organizing meetings between the UK social partners and providing logistical and financial support to the social partners in the course of the implementation process. DTI did not express a desire for any particular type of implementation form, and saw their role as ensuring the production of 'some sort of agreement' that would satisfy the UK's obligations to the European-level. The DTI also did not assume a role in negotiating the content of the text and regarded this as the task of the social partners.

Although the process of implementation of the Telework Agreement in the UK was not particularly marked by conflict between the social partners, there was a disagreement between the social partners regarding the form in which the Agreement should be implemented in the UK. According to a TUC official, the CBI's attitude was 'difficult' with regard to their refusal to countenance the TUC's proposal for a national inter-sectoral collective agreement on telework. This confirms Larsen and Andersen's report (2007) that the CBI had threatened to leave the negotiations should their demand for guidelines rather than a national inter-sectoral Agreement be refused. However, in other respects, the implementation process was conducted without controversy. Aside from the debate over the form in which the Agreement should be implemented, the TUC official described the process of implementation as pragmatic and 'friendly'. CBI and CEEP UK officials reported that the negotiation process had been conducted in a 'pragmatic' and 'common-sensical' fashion. The fact that the process took such a form was attributed by the employers' groups to the

perception that the Agreement was a ‘voluntary’ or ‘non-legally binding’ agreement rather than an autonomous one, and also to the fact that TUC had already agreed to this non-legally binding mode of implementation given that they had signed the Agreement at the European level. Also, it was regarded by the organizations that the issues touched upon by the topic of teleworking were relatively uncontroversial.

Various rationales underpinned the implementation routes advocated by the UK social partners. The UK employer associations CBI and CEEP UK strongly favoured the adoption of a non-legally binding text. The CBI assumed this position for several reasons. Firstly, the organization viewed the Telework Agreement as a voluntary instrument rather than an autonomous agreement that was subsequently to be implemented via non-legally binding means. Also, given CBI’s view that the rights of teleworkers were already protected by existing regulation, the organization regarded anything more than a non-legally binding implementation as ‘excessive’. Finally, CBI were opposed to TUC’s proposition for a inter-sectoral collective agreement on telework on the grounds that they regarded such a procedural development as undesirable, and also that teleworkers in firms with no unions would be potentially excluded from such an agreement. This approach to the development of national inter-sectoral social dialogue structures is in line with the organization’s consistent opposition to the development of such mechanisms within the UK. CEEP UK assumed a similar position to that of CBI. The view of the CEEP UK was that the topic of teleworking did not require legal regulation or an inter-sectoral collective agreement given the topic was largely covered by existing regulation, and that it would have been disproportionate to implement a non-legally binding EU instrument

through more than non-legally binding means. Although both CBI and CEEP UK were opposed to anything other than the production of a non-legally binding text, both organizations nevertheless had a strategic interest in the implementation of the Telework Agreement by some means. This was due to the desire of both organizations to demonstrate to the European social partners and European public authorities that non-legally binding EU-level instruments could be implemented efficiently and effectively within the UK, and were thus a viable means of regulating social Europe. A CEEP UK official stated,

*‘As an employer association, we are very favourable to these sorts of Agreements as opposed to Directives. So, we wanted to demonstrate that they could be implemented effectively and efficiently in the UK.’ (CEEP UK)*

The TUC advocated a UK national inter-sectoral collective agreement on Telework. A TUC official stated what this would have entailed and why the organization advocated it,

*‘[A UK national collective agreement] would have been a bit harder edged. It would have obliged us to consult with our members, although we did, and it would have obliged CBI and CEEP UK to consult with their constituent parts, and go through a rather more formal negotiated process... if it was an agreement we [also] feel it then would have been used more by companies and then if they had converted it into*

*collective agreements that would have been incorporated into individual contracts of employment.’ (TUC)*

The TUC abandoned this idea in the face of strong employer opposition to the proposition. TUC’s relative willingness to abandon the proposal was attributed by a TUC official to the lack of importance that the organization attached to the topic of teleworking. The official stated that teleworkers were typically workers who enjoyed a relatively privileged position in the labour market and also that the demand for teleworking often came from employees rather than employers. Further, the TUC felt that the EU Agreement made a clear distinction between teleworking and homeworking, the latter of which the TUC did consider a key employment relations issues. A legal implementation route was not considered by the TUC. Although the organization ‘would not have opposed a law’ had it been proposed by the UK Government, the TUC thought that a non-legally binding EU instrument implied a non-legally binding implementation method.

Although it was estimated by CBI and CEEP UK officials that the Telework Agreement had inspired firm level teleworking policies, only in one instance was a case of a collective agreement specifically referring to the European Agreement known of. This case was in the local Government sector, where the sectoral social partners were planning to update an existing collective agreement on distance working to refer to the existence of the European Agreement. The apparent lack of an uptake in other sectors and firms was attributed to a lack of interest in the

teleworking issue, and to the dis-organized nature of collective relations between the social partners in the UK.

### **8.2.2 Work-related Stress Agreement**

The Work-related Stress Agreement was also implemented in the UK as a non-legally binding set of guidelines in July 2005 that was entitled 'Work-related Stress: A Guide'. The text was concluded by the UK Social partner organizations CBI, TUC, CEEP UK, FPB, and HSE. As was the case with the Telework Agreement, the meeting in which the implementation was discussed and negotiated was hosted by the DTI. The text that was agreed by the parties referred to many of the issues raised by the European Agreement and discussed how these were covered by existing UK legislation and also by a HSE document entitled *Management Standards for Work-related Stress*.

The implementation process of the Work-related Stress Agreement in the UK was not a radically different one to that of the Telework Agreement. No UK social partner interviewees alluded to the existence of any overt conflict between the parties and the process was described as a pragmatic one. A CEEP UK official reported that more time was spent discussing the graphic design of the text that was to be published than was spent negotiating the content of the text. A number of smaller differences in the processes of the implementation of the two Agreements were evident. Firstly, there was less discussion on the content of the text on work-related

stress than on the text on teleworking. This was attributed to the fact that there was more existing literature and regulation on work-related stress in the UK than on teleworking and that it was thus easier to draft the document given the existence of several precedents. Also, the UK Health and Safety Executive (HSE) and Forum of Private Business (FPB) were involved in the implementation of the Work-related Stress Agreement yet had not been involved in the implementation of the Telework Agreement. The former organization was invited to partake in the process owing to the substantial work they had done in the field of work-related stress, whilst the latter participated after requesting to DTI that they be involved in the process. The FPB's involvement in the process of implementation is also significant in that there was greater representation on the employer side in the course of the implementation of the Work-related Stress Agreement than there was during the implementation of the Telework Agreement.

There would also appear to have been a 'learning effect' in the case of the implementation of the Work-related Stress Agreement whereby the parties to implementation felt more comfortable with the process and subsequently took on more tasks. For example, whilst DTI still provided logistical support to the social partners, the social partners drafted the text of the text on work-related stress whereas the DTI had done this with the text on teleworking. A CEEP UK official stated,

*'I think there was [a learning effect] to the extent that it brought around the table more or less the same people [as the Telework Agreement] and it helps that you meet*

*and build up trust with them the more often you meet and make these agreements.*

*The more you meet, the more you can trust each other to draft various sections and then it's easier to reach agreements' (CEEP UK)*

The strategies adopted by the UK social partner organizations with regard to their preferred implementation route for the Work-related Stress Agreement were not greatly different to those adopted with regard to the Telework Agreement. As was the case with the Telework Agreement, the employer associations CBI and CEEP UK strongly advocated the route of non-legally binding guidelines that was eventually adopted. The rationale of the organizations was that the European Agreement was non-legally binding, or, in the words of the CBI, 'voluntary', and that the existence of existing regulation on the topic of work-related stress meant that more was undesirable. Further, CBI did not wish to conclude a national inter-sectoral collective agreement implementing the Agreement for the reason that it would set a procedural precedent that would be advantageous to the agenda of TUC. The FPB also assumed the view that further regulation of the work-related stress issue was unnecessary, and took part in the negotiations with the goal of minimizing the burden that would be placed upon the small businesses that constitute the organization's membership. The TUC's stance was also similar to that it had taken on the implementation of the Telework Agreement. Although the organization proposed a national inter-sectoral collective agreement, the strength of the employers' associations' assertions forced it to accept the implementation route that was eventually adopted. The HSE also advocated the voluntary implementation route that was eventually taken. This was due to its desire to promote the non-legally binding



approach to work-related stress that was set out in their *Management Standards for Work-related Stress*.

Although it was thought by CBI and CEEP UK officials that ‘Work-related Stress: A Guide’ was likely to have inspired several firm level policies on the management of work-related stress, in no instances was a case of a sectoral or firm-level collective agreement specifically referring to the European Agreement known of. This was attributed to the dis-organized nature of collective relations between the social partners in the UK and non-legally binding nature of the text.

### **8.2.3 National ‘Procedures and Practices’**

The various implementation strategies that were proposed by the parties were underpinned and informed by specific interpretation of the national ‘procedures and practices’ clause by which the Agreements were to be implemented in accordance with. As was stated at the beginning of this chapter, there are no established forums for national inter-sectoral social dialogue in the UK. This problem was highlighted by all interviewees, who stated that the lack of such a forum made it particularly arduous, in the case of European Agreements that had to be implemented by the national inter-sectoral social partners, to identify the ‘correct’ national ‘procedures and practices’ for their implementation. A reading of implementation by national ‘procedures and practices’ that incorporated the variety of firm and plant level

collective negotiations and sectoral level public sector negotiations evident in the UK was not embraced by the parties to the implementation and was considered ‘disproportionate’. A CEEP UK official stated,

*‘The only way [the Telework Agreement could be implemented in the UK via established national ‘procedures and practices’] would be to take it to sectoral level in the public services and to sub-sectoral level in the private sector. It might end up in individual workplace agreements, and that would be completely disproportionate to the issue involved.’ (CEEP UK)*

Given the variety of legislation that UK Governments have passed since 1997 on substantive aspects of the employment relationship, it is possible to conceive of UK national ‘procedures and practices’ as consisting of legal regulation. ETUC also read national ‘procedures and practices’ as incorporating the role that national Governments usually play within national systems of employment regulation. None of the UK social partner organizations interpreted the national ‘procedures and practices’ implementation clause to imply this or were aware of the ETUC’s reading. The Agreements were perceived primarily as non-legally binding Agreements and thus not intended for legal implementation within member states.

Owing to the fact that there were no identifiable established institutional mechanisms with which the UK social partners were able to interpret UK national ‘procedures

and practices’, the actual interpretations of national ‘procedures and practices’ in the UK by the social partners took place in a vacuum. In this vacuum, the social partner organizations assumed different positions as to what was constitutive of national ‘procedures and practices’. UK employers’ associations offered an interpretation of national ‘procedures and practices’ that centered on voluntary guidelines and was consistent with their existing relationships with their affiliates. CBI stressed their existing relationships with TUC on non-legally binding policies that the two organizations had worked on together,

*‘We’d already had very strong relations with the TUC in the employment area, for example we’d already worked a couple of years ago on a major report that we did with the TUC on skills and productivity... We also have good relations between the director generals and good relations between the staff... So we have a strong history of working together and producing joint publications.’ (CBI)*

CEEP UK and FPB interpreted UK national ‘procedures and practices’ for social dialogue as consisting of the inter-sectoral forum that had been established to implement the Telework and Work-related Stress Agreements. This forum was further conceived of by the organizations as a very ‘informal’ and ‘temporary’ institution that had been established solely to implement the European Agreements via non-legally binding guidelines. DTI and TUC also both adopted distinct positions on the constitution of national ‘procedures and practices’ for social dialogue in the UK. For DTI, the matter was solely a question for the UK social partner

organizations and was not deemed an issue which the UK public authorities should occupy themselves with. TUC understood national ‘procedures and practices’ for social dialogue in the UK to consist of a national inter-sectoral collective agreement between the parties to implementation. It was considered by the organization that this would give the implementations a ‘harder edge’ and would lead to a greater likelihood of the European Agreements inspiring lower-level collective agreements in the UK.

### *Summary*

In summary, the implementations of the Telework and Work-related Stress Agreements in the UK were not characterized by particularly high levels of conflict between the UK social partners. This was attributable to the view that the Agreements were non-legally binding and therefore to be implemented in a non-legally binding form, and also, in the case of the Telework Agreement, to the view of the UK social partners that teleworking was not an issue of high priority. Concerning national ‘procedures and practices’ in the UK, it emerged that the UK social partners regarded national ‘procedures and practices’ as unidentifiable in the context of the UK system. In the resulting void, interpretations of national ‘procedures and practices’ were advanced that differed between the social partner organizations.

### **8.3 The Substantive Impact of the Agreements**

This section of the chapter will address the substantive impact of the Telework and Work-related Stress Agreements in the UK, in addition to the substantive impact of the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking sector in the country.

#### **8.3.1 Telework Agreement**

##### *Content*

There was no specific legal regulation or national inter-sectoral collective agreement concerning teleworking in the UK prior to the conclusion of the European Telework Agreement. However, as the UK social partners recognized, much of the content of the European Agreement was already covered in existing UK regulation. The health and safety aspect of teleworking was covered by the 1974 Health and Safety at Work Act, the issue of data protection for teleworkers by the 1998 Data Protection Act, and the potential for teleworkers to be discriminated against by the body of UK employment law that prevents discrimination on the basis of race, sex, and religion. A TUC official stated,

*'[The TUC] felt that because telework in the UK is already regulated through health and safety laws and discrimination laws that the territory for us was relatively uncontroversial.'* (TUC)

The position of the DTI was also that the topic of teleworking was largely covered by existing UK legislation. Also, the DTI had issued a non-legally binding set of guidelines on teleworking that had been published prior to the implementation of the European Agreement in the UK and that covered much of the same ground as the European Agreement.

There were also policies on teleworking in the UK local Government sector that existed prior to the implementation of the European Agreement. A CEEP UK official said that he was aware of UK local authorities who had formulated teleworking policies at the level of their authority. At the national local Government sector level, there was also a document related to teleworking included in the sectoral collective agreement. The document, entitled 'Finding the balance', was non-legally binding and made several recommendations with regard to 'best practice' regarding teleworking. However, data from the CBI's Employment Trends Survey would suggest that in the majority of firms teleworking schemes were not in operation prior to the social partner text. Their 2004 survey revealed that in 2004 only in 11% of cases did firms have teleworking schemes in operation. This point was also stressed

by other employer-side interviewees, who stated that in many firms, particularly SMEs, there were no policies on telework in operation.

#### *Data and perspectives on impact*

None of the UK social partner organizations had conducted specific monitoring exercises on the impact of ‘Telework Guidance’. A variety of reasons were cited for this. CBI and CEEP UK stated that they did not see an added value in conducting such an exercise given that the purpose of the agreed text had been to provide a ‘soft’ framework for interested parties, and also added that it would be methodologically difficult to attribute a rise in teleworking to the existence of the document. CEEP UK also stated that they did not have the resources at the disposal of their organization to engage in such an exercise. A TUC official stated that the organization did not perceive teleworking to be important enough an issue as to merit committing scarce resources to such a project. DTI also did not conduct such an exercise. A DTI official stated that DTI regarded such a potential exercise as coming under the remit of the UK social partners rather than the DTI given that ‘Telework Guidance’ was viewed as primarily a document of the UK Social partners.

In place of specific data on the impact of the implemented Agreement, social partners alluded to various other sources that contained data on general trends regarding the use of teleworking in the UK labour market. Specifically, the UK

Government's Labour Force Survey and the CBI's Employment Trends Survey were mentioned. Despite the difficulty in establishing a causal link between 'Telework Guidance' and the data within such sources, the surveys provide a rich level of data on teleworking in the UK. The 2008 CBI Employment Trends Survey found that 46% of all employers surveyed offered teleworking to staff. This figure was 14% in 2006, and 11% in 2004. Although it is very problematic to attribute this rise to the influence of 'Telework Guidance', it is fair to say that the existence of the text has formed part of the overall political and social context in which such a rise has taken place. UK social partner organizations also had anecdotal information on the impact of the text. A CEEP UK official referred to 'several' of their member organizations who had developed teleworking policies that had been inspired by the text. A CBI official also stated that the organization had received feedback, particularly from smaller firms, stating that the text had led to the development of teleworking policies.

In the absence of substantial data on the impact of the implemented Telework Agreement, the UK social partners made a variety of hypotheses about the level of impact that 'Telework Guidance' would be likely to achieve in the UK. CBI and CEEP UK stated that although the existence of the text was unlikely to revolutionize the practice of teleworking in the UK, the text would nevertheless be likely to raise awareness about teleworking and also be likely to inspire those parties who were interested in teleworking. A DTI official concurred that the text was likely to achieve this effect. A CBI official also expressed the view that the 'soft' approach of the text, where 'best practice' on teleworking was presented by the social partners rather than the UK Government imposing regulation on the topic, would be more likely to lead



to a more enthusiastic level of uptake of the text in many firms. CBI and CEEP UK also contended that the text was likely to have more impact in small organizations than large ones. This was attributed to the fact that larger organizations were likely to have had teleworking policies in existence prior to the publication of 'Telework Guidance'. In the local Government sector, an LGA official hypothesized that the text was likely to have a fair level of impact in the sector as it provided an 'useful frame of reference' for teleworkers. However, it was also stated that there were many occupational groups within the sector such as teachers and refuse collectors for whom teleworking policies were very unlikely to be developed due to the 'frontline' nature of the occupations.

The TUC were rather less optimistic about the potential impact of the text. Firstly, an official expressed the view that there appeared to be only limited levels of interest in teleworking amongst employees who were members of TUC affiliated unions. It was argued that this would preclude the level of potential impact that the text was likely to have. Also, the fact that the text was not a legal instrument meant that TUC were skeptical as to the level of impact it was likely to achieve given the de-centralized nature of collective bargaining in the UK. An official stated,

*'We feel that in Britain that to get an impact, at the lower than national level, you need legislation, not just voluntary texts... We don't know quite frankly whether employers are taking these things very seriously. At the moment we're skeptical.'* (TUC)

### 8.3.3 Work-related Stress Agreement

#### *Content*

Prior to the implementation of the European Work-related Stress Agreement in the UK, there was no single legal regulation or national inter-sectoral collective agreement on the issue of work-related stress in the UK. However, in practice, the topic of work-related stress came under the remit of the 1974 Health and Safety at Work Act. This Act imparted upon employers the obligation to ensure the mental wellbeing of their employees. Various ‘soft’ policies also covered the topic of work-related stress. Specifically, there was the HSE’s 2004 *Management Standards for Work-related Stress*. This document drew on four years of scientific research after consultation with the UK social partners and public authorities, was non-legally binding, and enjoyed a very high profile within the UK context. Interviewees stressed that the HSE document had a higher profile than the European Agreement. A CEEP UK official stated,

*‘With [the implementation of the Work-related Stress Agreement] we said that the UK management guidelines covered more or less the same ground as the European agreement, so let’s just throw our weight behind the UK management guidelines, and*

*refer in passing to a contemporary EU-level agreement that covers the same ground.’ (CEEP UK)*

In the course of the research in the UK local Government sector it emerged that the HSE document also enjoyed a higher profile than the European Agreement within the sector. Officials from the trade union Unison and the employers’ association Local Government Association (LGA) both stated this. Further, other regulatory approaches to work-related stress existed at the level of the UK local Government sector. A non-legally binding document entitled ‘Correcting stress in the workplace’ had been produced by the LGA years earlier, and, according to an LGA official many local authorities had individual policies designed to tackle and prevent work-related stress for years prior to the European Agreement. However, it should also be emphasized that many firms did not have a work-related stress policy prior to the implementation of the European Agreement, and that the topic of work-related stress as an area of concern in UK employment relations is relatively recent. A CBI official stated that many of their member firms, particularly the smaller firms, did not have policies in place.

#### *Data and perspectives on impact*

As was the case with ‘Telework Guidance’, no formal monitoring exercises were conducted by the UK Social partners to assess the impact of ‘Work-related Stress: A

Guide'. The rationales for the decision not to undertake monitoring exercises were largely the same as those advanced for the decision not to undertake monitoring exercises for the text on teleworking. CBI stated that they did not perceive an advantage in undertaking such an exercise given that, in their view, the value of the text lay in that it merely provided a framework for parties seeking to formulate policies on work-related stress. CEEP UK took a similar view of the text, stated that they did not have sufficient resources to undertake such an exercise, and that the organization's rationales for being involved in the process of the negotiation and promotion of the UK text did not extend to participating in an exercise that they regarded as unnecessary. As was the case with the Telework Agreement, DTI did not engage in an impact monitoring exercise as they viewed such an exercise as the task of the UK social partners. Whilst HSE did not conduct a specific monitoring exercise on the impact of 'Work-related Stress: A Guide', as of January 2008 the organization were in the process of conducting substantial research on the impact of the *Management Standards for Work-related Stress*. A HSE official stated that, given that they saw the European Agreement and the *Management Standards* as sibling texts, the HSE did not see the need to conduct specific research on the impact of the European Agreement. A HSE official stated however that the organization regarded the data they were collecting on the incidence of work-related stress in the UK and on the impact of the *Management Standards* as a proxy for the level of impact that the European Agreement was likely to have in the UK.

In the absence of actual data on the impact of 'Work-related Stress: A Guide' in the UK, the UK Social partners made various hypotheses about the likely effect of the

text. CEEP UK and CBI officials emphasized that work-related stress was a major issue in the UK for employers, and stated that, although there was a fair level of existing regulation on the issue, the rising profile of the topic was likely to lead to the text achieving a fair level of impact. A CEEP UK official stated that the text was likely to be more popular amongst CEEP UK members than the text on teleworking, owing to the fact that many of CEEP UK's members did not have policies on work-related stress yet did have policies on teleworking. Both CBI and CEEP UK also stated that the text had gone through two printing runs, and offered this as evidence of the text's popularity. A CBI official also noted that the text was likely to achieve a greater impact in smaller firms. This was attributed to the brevity and practicality of the text that was, according to the official, likely to appeal to smaller firms.

However, an official from FPB stated that the text was not likely to have a great impact in the small firms that comprise FPB's membership. According to the FPB official, the complexity of the document was likely to make it unappealing for small business owners.

The extent of the potential impact of the text was also placed in a wider context. A CBI official stated,

*'Stress is a big issue in the UK and I think that's why we thought that this was exactly the right issue we needed to address at the European level. So have they given us an extra bit of stimulus and were they helpful to the smaller firms? Yes. Have they themselves driven this agenda? I'll have to be honest and say no they're*

*not doing that because we didn't need that but they are another milestone in a sense to increasing awareness.'* (CBI)

Representatives from DTI and HSE contended that, although it would be very hard to hypothesize the exact impact of the text, the fact that it existed and that the UK Social partner organizations had been signatory to the document would ensure that the European Agreement would have at least some influence upon the policy context in which work-related stress was managed in the UK. However, as did CEEP UK and CBI, both organizations noted that the potential for the text to change practice in UK workplaces was somewhat limited given its status as one of many tools used to regulate work-related stress in UK.

A TUC official was rather less sanguine about the likely impact of the text. Arguing that the non-legally binding nature of the instrument would entail a very small impact in the context of the de-centralized UK system, the official stated:

*'[Employers associations] don't tell their members that this is something that they should do something about. They inform them that they've reached a text through negotiating, and just say that their members might find it useful. One suspects that they just put it in the bottom draw of their filing cabinet.'* (TUC)

The level of impact that the text was likely to achieve in the UK local Government sector was also viewed skeptically by an LGA official. The official stated that the fact that ‘Work-related Stress: A Guide’ had assumed a role of secondary importance behind the HSE’s *Management Standards* meant that the impact of the text in the sector was likely to be rather limited. Further, when questioned on the text, an Unison official who worked on the topic of work-related stress in the local Government sector stated that he had never heard of the text. This would suggest that the status and potential impact of the text within the sector is rather limited.

### *Summary*

In summary, the Telework Agreement added modestly to the content of UK regulation. Despite the fact that the topic of teleworking was regulated indirectly by UK law prior to the implementation of the European Agreement, there was no coherent national inter-sectoral policy that specifically pertained to the teleworking issue prior to the implementation of the European Agreement. By contrast, the existence of the more high profile HSE Management Standards for Work-related Stress and the existence of UK health and safety law pertaining to the issue of work-related stress meant that the Work-related Stress Agreement contributed little to the levels UK regulation. It emerged that the impact of the Telework Agreement was also greater than the Work-related Stress Agreement in the UK. This was also attributable to lower existing levels of regulation on teleworking than work-related stress.

## **8.4 Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the EU Banking Sector**

The final section of the chapter will present the data collected on the work done on the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking Sector in the UK.

### **8.4.1 Framework of Actions on Lifelong Learning**

Interviewees were unable to identify an instance in which the European Framework of Actions on Lifelong Learning precipitated a specific policy initiative in the UK. This was partly attributed by interviewees to the high level of pre-existing work on the topic of lifelong learning and skills evident in the UK. All of the social partner organizations interviewed stated that they were active in the field of lifelong learning, and that, subsequently, they had fulfilled the content of the European text prior to its conclusion at the European level. Interviewees also reported that participation in the exercise was detached from the course of normal lifelong learning policy in the UK, and that participation in the text largely entailed compiling a retrospective list of existing policies on lifelong learning. A TUC official stated that the compiling of the annual reports required by the European text often merely involved the exchange of emails between the UK Social partner organizations. An FPB official also stated,



*'[On the Framework of Actions] we all did our own thing, and then realized we had to put a report together.'* (FPB)

The relatively weak impact of the text in the UK context was attributed by a CEEP UK official to the de-centralized nature of collective negotiations in the UK.

According to the official, the lack of coordination of collective bargaining levels in the UK, when compared to other European states, meant that there was a comparatively low level of awareness about the text in the UK.

However, some social partner interviewees stated that the text had been useful in that it had made their organizations aware of good practice in other European countries and that it had reinforced existing policies on lifelong learning. A CBI official stated that the text had focused the organization's attention on the issue of skills, and also alluded to several instances where CBI had learned valuable lessons on the topic of lifelong learning from social partner organizations in other countries. A CEEP UK official stated,

*'By getting everyone singing from the same EU hymn sheet I think [the text] does add value. It legitimizes good practice. And if you're legitimizing it in a joint employer and union document that is valuable.'* (CEEP UK)

#### **8.4.2 Joint Declaration on Lifelong Learning in the European Banking Sector**

The Joint Declaration on Lifelong Learning in the European Banking Sector had a very limited impact in the UK banking sector. As was the case with the Framework of Actions on Lifelong Learning, no interviewee was able to identify a policy that had been specifically developed as a result of the text. The UK banking sector trade union Amicus stated that their motivation for participating in the text had been primarily to raise EU-wide, rather than UK specific, standards in the EU banking sector. The Amicus official also stated that the main reason why the text had not achieved a greater impact was because all of the firms in the UK banking sector had very advanced policies on lifelong learning in existence prior to the agreement of the text. The official stated,

*'I know of [no policies directly inspired by the text]. What I'd say is that conditions in all of the major banks are ahead of the text. That's why the social dialogue in the European banking sector is not given a high priority by trade unions in the UK.'* (Amicus)

The Amicus official also stated that the de-centralized nature of collective bargaining within the UK banking sector also limited the potential impact of the text. As was the case with Framework of Actions on Lifelong Learning, the lack of coordination of

collective bargaining processes within the sector meant that trade unions and employers in the sector had limited levels of knowledge about the text.

## **8.5 Conclusion**

This chapter has presented the data collected in the course of the UK fieldwork. In summary, a few general remarks on the trends evident in the data collected should be made. Firstly, the procedural implementations of the Telework and Work-related Stress Agreements in the UK are remarkable for the relatively few signs of conflict that occurred between the UK social partners during the implementation processes. Aside from a dispute between the TUC and CBI over the precise form in which the Telework Agreement should be implemented, the implementations consisted of little more than the UK Social partners agreeing upon the most pragmatic way in which the Agreements could be implemented in the context of the UK system. That the implementations took these forms seem to be attributable to the widespread view that the Agreements were ‘voluntary’, and that the content of the Agreements was not particularly controversial. A ‘learning’ effect in the case of the Work-related Stress Agreement, where the UK social partners took on more tasks than had been the case with the Telework Agreement, was evident, yet on the whole the implementation of the Work-related Stress Agreement was not particularly different from that of the Telework Agreement. With regard to the issue of national ‘procedures and practices’, the lack of an institutional forum for national inter-sectoral social dialogue in the UK had a major impact upon the forms of implementation strategies advocated by the

UK social partners. In the absence of such a forum and the resulting vacuum, interpretations of national ‘procedures and practices’ varied markedly between the UK social partners and public authorities and led to minor conflict during the implementation process.

In terms of the substantive impact of the Agreements in the UK, a couple of trends are particularly evident. Firstly, the topics of telework and work-related stress were not specifically the subject of UK legislation prior to the implementation of the European Agreements, and, according to our interviewees and official data, there also appears to have been a great many firms who did not have policies in place on either of the topics. However, much of the content of the Agreements was, in practical terms, covered by existing UK legislation and there were also important, pre-existing ‘soft’ policies on the topics in place prior to the implementation of the Agreements in the UK. With regard to the level of impact that the implemented Agreements have achieved or are likely to achieve in the UK, the picture is also mixed. Whilst many interviewees, particularly from employer associations, stated that the implemented Agreements provided useful frameworks for interested parties and were likely to be the subject of some interest at lower levels, union interviewees were less optimistic. Their stance was that, as non-legally binding instruments, the Agreements would be unable to achieve a comprehensive impact in the context of the UK system. The picture was also rather bleak with regard to the texts on Lifelong Learning. Neither text was able to precipitate a specific policy in the UK, and both would seem to have had a low profile within the UK.



## **Chapter 9: Implementation in Czech Republic**

### **9.1 Introduction**

This chapter will present the data collected in the course of the fieldwork in Czech Republic. The chapter will open with (i) a brief description of the system of industrial relations in Czech Republic, before describing the process of the procedural implementations of the Agreements in Czech Republic and the related issue of actors' reading of national 'procedures and practices' in the context of the Czech system. Then, the chapter will (iii) set out the data collected on the substantive impact of the Agreements in Czech Republic. As stated in chapter four, the implementation of the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the Banking Sector were not studied in Czech Republic. Finally, the chapter will (iv) offer a conclusion.

#### **9.1.1 Industrial Relations in Czech Republic**

Trade union density is low at 22% in Czech Republic, and collective bargaining coverage is also low at 35% (Bluhm, 2008). Social dialogue is also typically decentralized, with the majority of collective negotiations taking place at firm or workplace level. Sectoral level collective agreements exist in certain areas of the private sector however, and data collected by the trade union CMKOS revealed that there were 18 sectoral collective agreements covering approximately 5,634

employers and 607,952 employees in 2008. Should a sectoral collective agreement cover a certain sector then the minimum terms established by the agreement are binding upon lower-level negotiators. Accession to the European Union had a major impact on industrial relations and labour law in Czech Republic. The Czech labour code was systematically revised in the late 1990s to meet European Union standards, and the process of accession to the European Union had the effect of substantially lifting social and employment standards within the state. The Czech Labour Code establishes legally binding minimums in the sphere of employment whilst collective agreements typically concern themselves with topics such as wages and working time. The Czech Council for Economic and Social Agreement is the key tripartite body that exists at the inter-sectoral level. There are seven representatives from employers, trade unions and the Czech public authorities on the council, and it is consulted by the Czech Government on issues which include economic policy, labour relations, social policy and collective bargaining. It was also responsible for drafting the Czech Labour Code

The main actor on the trade union side in Czech Republic is the trade union confederation CMKOS, which in 2004 had 34 affiliated trade unions with 611,000 members and is a member of ETUC. On the employer side, the two main employers' organizations are SPCR and KZPS CR. The main difference between the two is that SPCR's membership is composed of firms of all size, whilst KZPS CR's is composed mainly of large firms. The two are both similar in size, but only SPCR is a member of Business Europe. Subsequently, KZPS CR was not involved in the process of the implementation of the Framework Agreements

## **9.2 The Procedural Implementations of the Telework and Work-related Stress Agreements in Czech Republic**

This section of the chapter will address the procedural implementation of the Telework and Work-related Stress Agreements in Czech Republic. Also, it will address the related issue of actors' interpretations of national 'procedures and practices' in the Czech context.

### **9.2.1 The Telework Agreement**

The European Telework Agreement was implemented in Czech Republic via a range of mechanisms. Firstly, implementation was affected via Sections 317-9 of the Czech Labour Code that came into force on January 1<sup>st</sup> 2007 and that had been drafted by the Czech social partners and Government in years prior to this. After the conclusion of the European Agreement, SPCR and CMKOS had conducted internal consultations with labour law experts within the organizations on the best way to implement the European Agreement. Subsequently, the heads of SPCR and CMKOS agreed that the Agreement should be implemented via the Czech Labour Code and jointly approached the Czech Ministry of Labour. Owing to the fact that the practice of teleworking was perceived as a 'positive-sum' working practice by the Czech social partners that was both flexible and employee-friendly, and that the topic of teleworking was not particularly controversial given the already enshrined principle of equal treatment of workers in Czech Republic and the relatively small number of



teleworkers within the country, the process of the implementation of the Agreement was not marked by conflict between the Czech social partners. A CMKOS official stated,

*‘There were no real points of tension or disagreement in the negotiation process because teleworking is not very popular in Czech Republic. Only about 2.25% of the workforce are engaged in it, and it is so scarce therefore that the topic does not have much scope to create conflict! Also, in Czech legislation, there is a tradition of the equal treatment of workers, whether they are part-time or full-time, or whether they work in the workplace or at home. So, the principles and ideas of the Telework Agreement didn’t seem strange to us.’ (CMKOS)*

In terms of the content of the part of the labour code that addressed the Telework Agreement, Sections 317-9 of the code did not specifically mention teleworking, but made provisions for workers who wanted to work away from the site of their employer. The provisions included arrangements for workers organizing their own working time, and for those employees who worked away from the site of the employer on a public holiday.

The Czech social partners also implemented the Telework Agreement via other mechanisms. The Czech social partners viewed the existence of the European Agreement as a potential means of helping to stimulate the development of a bipartite social dialogue within the Czech Republic. To this end, a bipartite, non-legally binding, agreement that was concluded between CMKOS and SPCR in November 2004 cited the existence of the Telework Agreement and stated that both

organizations would attempt to encourage their affiliates to implement it. The two organizations then unilaterally issued recommendations to their respective members to attempt to encourage them to implement the Agreement at lower levels in forms that were sector and firm specific. A series of promotional activities were also undertaken by CMKOS and SPCR to attempt to raise awareness of the European Agreement. These included the publication of the Agreement in mediums such as the organizations' websites, internal social partner bulletins, and social partner publications that are regularly distributed to members.

### **9.2.2 Work-related Stress Agreement**

The Work-related Stress Agreement was implemented via Sections 101-2 of the Czech Labour Code that took effect from 1<sup>st</sup> January 2007. After the Agreement was concluded at the European level, the Czech social partners translated the Agreement into Czech and, during this process, discussed the best means to implement the Agreement. During 2006, the Czech Social partners drafted the form in which the European Agreement was to be incorporated into the Czech Labour Code. As was the case with the implementation of the Telework Agreement, the wording with which the Work-related Stress Agreement was implemented within the labour code did not bear great resemblance to the wording of the European Agreement. Rather, the labour code mentions the need for employers to create safe working conditions and to ensure the dignity of workers and equal conditions. The actual existence of the work-related stress issue is not specifically referred to. According to SPCR and CMKOS officials, the Work-related Stress Agreement held less appeal for the Czech social partners than the Telework Agreement. An SPCR official stated,

*'The teleworking issue was an example of a 'win-win' issue for companies and employees. But stress is a different issue, and frankly it is not such a high priority for our member companies. This is because we are still in a transformational economic process and our companies do not think that the topic of stress is particularly important.'* (SPCR)

As with the Telework Agreement, the Czech social partners also attempted to stimulate social dialogue within Czech Republic via the promotion of the Work-related Stress Agreement to their affiliates. CMKOS included the topic of work-related stress in their 2008 guidelines for collective negotiations, whilst SPCR attempted to raise awareness of the condition in sectors such as the retail and hospital sector in which the organization perceived stress to be a particular problem. Further, a series of promotional activities were engaged in by CMKOS to publicize the existence of the Agreement. This included the publication of manuals on work-related stress and the translation and publication of an ETUC guide for the implementation of the Agreement. However, according to an SPCR official, the level of bipartite activity to promote and implement the Work-related Stress Agreement did not occur to the same degree as it had with the Telework Agreement. This was due to the existence of tension between the Czech social partners on discussions concerning the content of the Czech Labour Code. The official stated,

*'There were no such bilateral activities to promote the Work-related Stress Agreement as there were with the Telework Agreement. This is because from 2005 to 2007 bilateral relations between SPCR and CMKOS were placed under strain*

*because of the negotiations we were having on content of the Labour Code regarding the appropriate trade off between security and flexibility in Czech labour legislation. The atmosphere was not very favourable for bilateral discussions.’ (SPCR)*

### **9.2.3 National ‘procedures and practices’**

Although it was understood that the European Agreements were intended to stimulate the existence of bipartite dialogue between employers and trade unions and that work had been done towards this end in Czech Republic as a result of both the Agreements, it was also stated by officials from the two sides of industry that the only way in which the national ‘procedures and practices’ implementation clause could be understood in the Czech context was by reference to the tripartite consultations and regulatory involvement assumed by employers’ associations, trade unions, and the public authorities in Czech Republic. It was thought that bipartite dialogue was at too ‘young’ a stage to be considered national ‘procedures and practices’ in Czech Republic. A CMKOS official stated,

*‘There is no question of another interpretation of national “procedures and practices” in Czech Republic than implementation through the Labour Code, and no one considered anything different. The tradition in our country is of tripartite regulation, and until now the vast majority of labour law has been passed through the Labour Code.’ (CMKOS)*

An SPCR official stated,

*‘Social dialogue is at a very early stage in Czech Republic, and although we tried to encourage collective agreements at lower levels with the Telework Agreement, the only real way to implement the Agreement in Czech Republic was through labour regulation.’ (SPCR)*

### **9.3 The Substantive impact of the Telework and Work-related Stress**

#### **Agreements in Czech Republic**

This section of the chapter will present the data collected on the substantive impact of the Telework and Work-related Stress Agreements in Czech Republic. It will address the two Agreements separately, and will outline the extent to which the Agreements and their implementation added value to the content of Czech regulation on the teleworking and work-related stress issues, the data that is available upon their impact within Czech sectors and companies, and the level of potential impact that the Czech social partners regard them as likely to achieve.

#### **9.3.1 Telework Agreement**

##### *Content*

There was very little pre-existing policy on teleworking in Czech Republic before the implementation of the Telework Agreement, and the existence of the European Agreement went some way towards introducing the concept of teleworking into policy discourse within the state. Prior to the Telework Agreement there were clauses

in the old Czech Labour Code that referred to those employees who worked away from the site of employers. However, there was nothing that specifically pertained to the teleworking issue. Further, prior to the existence of the European Telework Agreement, there was very little ‘soft’ or informal policy activity related to the teleworking issue. This was attributed to the lack of teleworkers within Czech Republic.

#### *Data and perspectives on impact*

As of January 2008, the Czech social partners had no data on the impact of their activities to promote the inclusion of the Telework Agreement into lower level collective agreements or on the impact of the revisions to the Czech Labour Code that related to teleworking. However, an exercise was planned by CMKOS which involved studying the data for the collective agreements concluded by CMKOS affiliates, and assessing the number of Agreements that had been concluded on the topic of teleworking. This monitoring activity was part of a programme that CMKOS regularly conducted on the content of their affiliates’ collective agreements, and which aimed to establish the extent to which collective agreements incorporated the guidelines which CMKOS offered their affiliates on collective bargaining.

In the short term, the Czech social partner organizations were sceptical about the extent to which teleworking would become widespread in Czech Republic as a result of the implementation of the European Agreement, and it was stressed that there were very few teleworkers in Czech Republic. However, the Czech social partners were rather more optimistic about the extent to which teleworking would become

popular in the future in Czech Republic as a result of the European Agreement. A SPCR official stated,

*'I think that if we continue promoting the European Agreement, then companies will begin to understand the advantages of teleworking. As they begin to grasp this, we will see an increase in the number of teleworkers. For example, there are lots of young mothers who use teleworking to balance home and work life, and I think we will increasingly see the flexible and progressive benefits of teleworking.'* (SPCR)

A CMKOS official also offered the example of women on maternity leave as a potential group for whom teleworking could become very popular, and stated that given that maternity leave was for a duration of six months in Czech Republic but that women could then remain at home for a further two and a half years then the existing legal framework on maternity leave was likely to be conducive to the development of teleworking within the country

### **9.3.2 Work-related Stress Agreement**

#### *Content*

Prior to the existence of the European Work-related Stress Agreement, the issue of work-related stress was partly covered in the Czech Labour Code by a provision on health and safety risks. However, the existence of work-related stress as a condition was not specifically alluded to. More generally, the topic of work-related stress was also not part of mainstream policy discourse in Czech Republic prior to the existence

of the European Agreement. According to our interviewees, this was due to the view of many firms that work-related stress was not a matter of pressing concern given the other economic and social problems within Czech Republic. Given this situation, the implementation activities triggered by the European Agreement may well have brought the issue of work-related stress for the first time onto the industrial relations agenda in Czech Republic.

#### *Data and perspectives on impact*

As of January 2008, the Czech social partners had not conducted any specific exercises to monitor the impact of the Work-related Stress Agreement. However, as with the Telework Agreement, the Czech social partners planned an exercise to monitor the content of collective agreements concluded at the lower levels. It was stated that this exercise would be included in their general work on the monitoring of collective agreements, and would be likely to yield information on the impact that the Work-related Stress Agreement had had upon collective negotiations within Czech Republic.

Although it was stated that in many Czech companies the management of work-related stress was not seen as a pressing issue, the Czech social partners forecast that the European Agreement would have a more comprehensive level of impact in the future. It was felt that work-related stress would become a more visible issue within Czech Republic, and understanding of the condition of work-related stress was likely to improve. An SPCR official stated,



*'The performance of firms is faster and faster so I think that the phenomenon of work-related stress will become more visible. So, I think that our Agreement will have a good impact as it has a very clear structure for managing work-related stress.'* (SPCR)

#### **9.4 Conclusion**

In conclusion, several points may be made about the Telework and Work-related Stress Agreements and their implementation and impact within Czech Republic. Firstly, it is notable that the two both introduced relatively new issues into the Czech context. To this end, the existence of the texts was able to stimulate regulation on topics where little had existed before. Although the immediate impact of the Telework and Work-related Stress Agreements may have been lessened by the fact that the subject of both Agreements were new in the Czech context, the longer term impact of the Agreements may be enhanced by virtue of this fact. National 'procedures and practices' in the Czech Republic revolved around an emphasis of the traditional role of the Czech Government in determining social and employment conditions via the use of legal instruments and also the key role of the tripartite Council for Economic and Social Agreement in helping to formulate such regulation. Although it was stated that an aim of the Telework and Work-related Stress Agreements was to help stimulate the development of bipartite social dialogue structures in Czech Republic, it was also recognized that, as of the time of the implementation of the Agreements, bipartite social dialogue was at too youthful a stage to be considered as national 'procedures and practices' in the Czech context.

However, it is notable that the existence of the European Agreements helped to stimulate the development of bipartite social dialogue mechanisms within Czech Republic. The Telework Agreement, in particular, encouraged a 2004 inter-sectoral bipartite text between the Czech Social partners, and both Agreements also led to further attempts by the Czech Social partners to stimulate bipartite social dialogue at lower bargaining levels. In this sense, the European Agreements led to quite significant procedural effects within Czech Republic.

## **Chapter 10: The Procedural Implementation of the Agreements**

### **10.1 Introduction**

This chapter will analyze the data pertaining to the procedural implementations of the Framework Agreements. As stated in chapter three, there are several clear rationales for carefully considering the procedural dimension of the implementation of the Agreements. To briefly recap, these rationales are (i) the necessity of establishing the efficacy of the implementations that took place in European member states, (ii) the need to establish the robustness of the national 'procedures and practices' implementation clause, (iii) and the theoretical and intellectual challenge of comparing the reaction of discrete national and sectoral systems of industrial relations to European 'soft' law.

The first section of this chapter will outline the key themes related to the procedural implementations of the Agreements that emerged in the data collected and will also assess the viability of the national 'procedures and practices' implementation clause. In the second section of the chapter, the extent to which the data collected demonstrates that 'effective' implementation occurred within the member states and sectors that were the subject of the study will be outlined. The conditions in which 'effective' implementation becomes more likely to occur in national and sectoral contexts will also be demonstrated. A third section will then review the findings outlined in section two of the chapter against the set of variables that were outlined in

chapter three of the thesis regarding the extent to which the set of factors advanced in the literature explain 'effective' procedural implementation outcomes. Finally, a conclusion will be offered.

## **10.2 The procedural implementations of the Agreements: five key themes**

This section will outline the five key themes that emerged in the analysis of the data pertaining to the procedural implementations of the Agreements. These five themes are (1) the form of procedural implementation that the Agreements received within national and sectoral systems, (2) the prevailing definitions of national 'procedures and practices' for social dialogue within countries, (3) the stability of national 'procedures and practices' for social dialogue within countries, (4) the mandated role of the signatory organizations to the Framework Agreements in countries and sectors, and (5) the issue addressed by the Framework Agreement and its relationship to procedural forms of regulation in countries and sectors. The section will end by summarizing the viability of the national 'procedures and practices' implementation clause in the light of the themes outlined.

**Table 10.1 Implementation outcomes in countries and sectors**

Country/ sector	Telework Agreement	Work-related Stress Agreement	Actors' definition of national 'procedures and practices'
Belgium	Implemented in November 2005 via a legally binding National Labour Council (NLC) Agreement	'De facto' implementation through existence of 1999 NLC Agreement on topic	Legally binding NLC Agreement
Belgian banking sector	No formal implementation	No formal implementation	Sectoral collective agreement
Belgian local Government	Implemented at federal-	Implemented at federal-	Collective agreements

sector	level public administration level with 2006 Royal Decree. No evidence of autonomous implementations at local authority level.	level public administration level with May 2007 Royal Decree. No evidence of autonomous implementations at local authority level.	between trade unions and local authorities
Denmark	Implemented through autonomous sectoral agreements in a minority of sectors and through a September 2006 DA-LO 'follow up' Agreement	Implemented through autonomous sectoral Agreements in a minority of sectors. Not subject to 'follow up' Agreement.	Sectoral collective agreements. Ambivalence over correct procedures at inter-sectoral level
Danish banking sector	Implemented in April	No formal implementation	Sectoral collective

	2003 collective agreement		agreement
Danish local Government sector	‘De-facto’ implementation	Implemented in 2005 collective agreement	Sectoral collective agreement
UK	Implemented in August 2003 through non-legally binding guidelines	Implemented in July 2005 through non-legally binding guidelines.	No national ‘procedures and practices for social dialogue at inter-sectoral level. Firm-level agreements identified as most prominent procedure for social dialogue
UK banking sector	No formal implementation	No formal implementation	Collective agreements at firm-level, where there is a

			trade union presence
UK local Government sector	Implementation in the next negotiated sectoral agreement planned by sectoral social partners as of January 2008	No formal implementation	Sectoral collective agreement
Czech Republic	Implemented through Czech Labour Code in January 2007. Also implemented through non-legally binding bipartite means.	Implemented through Czech Labour Code in January 2007. Also implemented through non-legally binding bipartite means.	Implementation through Czech Labour Code



### **10.2.1 Forms of procedural implementations of the Agreements within national systems**

A key theme that emerged in the analysis of the collected data were the forms and varieties of implementations that the Framework Agreements were subject to in differing national and sectoral contexts. Table 10.1 demonstrates this diversity. In Belgium, the Telework Agreement was implemented in the private sector as a National Labour Council Agreement in November 2005. As is customary in Belgium, the Agreement was then extended by royal decree to cover all workers in the Belgian private sector. In the Belgian public sector, the Telework Agreement was implemented via a November 2006 Royal Decree that covered only employees in the federal-level public administration. Aside from a 2006 collective agreement in the Flemish civil service, no other implementations of the Agreement were carried out within the public sector. The Work-related Stress Agreement was not implemented within the Belgian private sector, owing to the view of actors that a prior 1999 National Labour Council Agreement that was also extended by royal decree fulfilled the content of the European Agreement. In the public sector, a May 2007 Royal Decree that covered only employees in the federal-level public administration implemented the European Agreement. No other implementations of the European Agreement were carried out in the Belgian public sector.

In Denmark, the Telework Agreement was implemented autonomously within the industrial, local Government, commerce and finance sectors. All of these implementations took place within the requisite three-year implementation period. At the Danish inter-sectoral level, a 'follow-up' Agreement was concluded in September

2006 that applied the writ of the European Agreement to those sectors that had not autonomously implemented the European Agreement. The Work-related Stress Agreement was implemented autonomously only in the Danish state, local Government and industrial sectors. All of these implementations took place within the requisite three-year implementation period. The Work-related Stress Agreement was not subject to an inter-sectoral 'follow-up' Agreement in Denmark, owing to the view of inter-sectoral level actors that the content of the European Agreement was already present within Danish legal regulation.

In the UK, the Telework and Work-related Stress Agreements were both implemented at the national inter-sectoral level by the UK social partners as non-legally binding guidelines. Both implementations also took place within the requisite three-year implementation time-scale, with the Telework Agreement being implemented in August 2003, and the Work-related Stress Agreement being implemented in July 2005. The extent to which the Agreements were implemented autonomously at sector and firm levels in the UK was very limited. Aside from the anticipated implementation of the Telework Agreement in the UK local Government sector sectoral agreement, no social partner interviewees were aware of the existence of any other formal autonomous implementations at these levels. The Agreements appear only to have inspired managerial policies on the topics of teleworking and work-related stress rather than precipitating formal lower level implementation agreements.

In the Czech Republic, the Telework and Work-related Stress Agreements were

implemented via the Czech Labour Code that took effect on January 1st 2007. The Work-related Stress Agreement was thus implemented within the requisite three-year time period, whilst the Telework Agreement was implemented late. The Agreements were also subject to bipartite and unilateral 'soft' implementations by the inter-sectoral level Czech social partners, who issued recommendations to lower-level affiliates with the aim of encouraging implementations at lower levels. No social partner interviewees were aware of the existence of any autonomous implementations at lower levels however.

### **10.2.2 The identification of national 'procedures and practices' by national actors**

A second theme that emerged in the data collected relates to actors' definitions of existing national 'procedures and practices' for social dialogue. In the Belgian private sector, national 'procedures and practices' for social dialogue were unanimously described as consisting of a National Labour Council Agreement followed by a legally binding royal decree. Officials from all social partner organizations considered this to be the established and legitimate mechanism for the conclusion of collective agreements within Belgium.

Danish definitions of national 'procedures and practices' for social dialogue centered on an emphasis of the tradition of collective agreements in regulating industrial relations within Denmark. The emphasis was particularly placed upon sectoral-level

collective agreements; the main level at which collective agreements have been concluded at in the last two decades. The composition of national 'procedures and practices' at the Danish inter-sectoral level was rather more contested. It was acknowledged that collective relations were indeed conducted between the Danish social partners at this level. However, there was a dispute over the conclusion of a DA-AC collective agreement at this level, owing to the argument of DA that no precedent existed for such an Agreement. Also, there was a disagreement over the status of the DA-LO 'follow-up' Agreement for the implementation of the Telework Agreement given that the use of such an instrument was not traditional within the Danish context. The employer association DA argued for an 'issue by issue' interpretation of national 'procedures and procedures' given that the topics of the Framework Agreements were liable to differ. Even at the Danish sectoral level, the employers' association DI argued for an 'issue by issue' interpretation of national 'procedures and practices' on the basis of the same rationale.

Within the UK, national actors stated unanimously that there were no established procedures for national inter-sectoral social dialogue and very few procedures for sectoral level social dialogue. This was attributed to the absence of a tradition of national inter-sectoral collective agreements within the UK, and also to the 'dis-organized' nature of social dialogue. Although it was acknowledged that national 'procedures and practices' could be defined as consisting of lower-level collective agreements and sectoral agreements in areas of the public sector, it was considered that such a definition was unrealistic for the purposes of the implementation of the Framework Agreements given the multitude of separate collective negotiations

conducted at these levels.

In place of a coherent definition of national 'procedures and practices' for social dialogue in the UK, the UK social partner organizations adopted different and contesting definitions of national 'procedures and practices' for the purpose of the implementation of the Framework Agreements. The definition advocated by employers involved adopting a procedure that would be 'fit for purpose' in the UK's de-centralized industrial relations system and that would involve the organizations who had been signatory to the Agreements at the European level. UK trade unions conceived of national 'procedures and practices' as consisting of a national inter-sectoral agreement, whilst the UK public authorities regarded the question of the constitution of national 'procedures and practices' as solely a question for the UK social partners.

In Czech Republic, national 'procedures and practices' for social dialogue were conceived of as consisting of legal implementation via the Czech Labour Code. This was the case given that the Labour Code had been the primary instrument for regulating working conditions in Czech Republic over the last two decades, and also because there was little tradition of autonomous social dialogue or collective agreements between the Czech social partners at the national inter-sectoral or sector levels. Further, the Czech social partners had been substantially involved in the drafting and development of previous labour codes. Although the Czech social partners considered that the implementation of the Agreements via bipartite

mechanisms would help develop autonomous social dialogue within the state, these methods were not considered as national 'procedures and practices' for social dialogue as such given the very limited tradition of them in Czech Republic.

In summary then, the data revealed that there were no available national 'procedures and practices' for implementation within the UK, that national 'procedures and practices' for implementation were identifiable at the Danish sectoral level but not readily at the inter-sectoral level, and that national 'procedures and practices' for implementation were easily and unanimously identified by social partners within Belgium and Czech Republic.

### **10.2.3 The stability of national 'procedures and practices'**

A third theme that emerged was the extent to which existing national 'procedures and practices' were stable and liable to reform themselves. In Belgium, national actors conceived of existing national 'procedures and practices' for social dialogue in the private sector as basically consisting of a National Labour Council Agreement followed by a legally binding royal decree. Actors described the National Labour Council as a traditional and entrenched institution within the Belgian private sector, and also one that was likely to remain a core feature of the system in future decades. In the Belgian public sector, the means of regulating industrial relations via royal decree was also considered stable by actors within the sector.

Within the Danish context, national 'procedures and practices' for social dialogue were regarded as stable in the sense that collective agreements between social partners regulating working conditions had been and were expected to remain the regulatory norm in Denmark. However, it was also stated by actors that the Danish model had been substantially reformed through the implementation of EU social policy Directives that meant that legal mechanisms were used more extensively than previously to regulate industrial relations in Denmark. The Danish social partners also regarded the 'follow-up' Agreement that had been utilized to implement the Telework Agreement as a new element in the Danish system.

Within the UK, existing national 'procedures and practices' for social dialogue were conceived of as relatively stable. Although it was acknowledged that the implementation of EU social policy Directives and the legislative programme of New Labour Governments in the previous decade had meant that the law was used more extensively to regulate industrial relations in the UK than previously, it was considered by both sides of industry that the basically de-centralized and liberal nature of UK industrial relations was unlikely to change in coming years.

The Czech social partners stressed the constant reform that national 'procedures and practices' for social dialogue had been subject to and would continue to be subject to in the Czech Republic. It was emphasized that the Czech system of industrial relations was a young one against the context of Western European states, and that a

great deal of economic and social change had occurred within the country in the previous twenty years. Although the tradition of legal regulation and tripartite engagement was acknowledged, the ongoing process of the development of an autonomous bipartite social dialogue at inter-sectoral, sectoral, and firm and workplace level was stressed. It was also stated that the influence of the European-level had done much to bring about these changes to the Czech system.

#### **10.2.4 The mandated role of signatory organizations within national systems**

A fourth theme that emerged during the process of data analysis was the mandate possessed by the signatories to the European Agreements to conclude collective agreements within their respective national systems. The Belgian private-sector signatories of the European Agreements (FEB-VBO, ABVV/FGTB, ACV/CSC, CGSLB, Unizo) possess mandates to conclude collective agreements at the inter-sectoral level within Belgium. All of the organizations are represented on the Belgian National Labour Council, and the trade unions are also mandated to engage in social dialogue and conclude collective agreements at the sector and firm level in Belgium. In Denmark, the organizations who were signatory to the Framework Agreements on Telework and Work-related Stress Agreements (AC, DA, LO, and FTF) possess differing forms of mandates to bargain collectively. In the cases of AC and FTF, neither organization are mandated to conclude any sort of collective agreement in Denmark. DA and LO have the ability to conclude the 'cooperative agreement' at the inter-sectoral level, and also have recent tradition of concluding 'follow up'



agreements to implement European social policy Directives at the national inter-sectoral level. Neither DA nor LO conclude collective agreements at the Danish sectoral level however; the level at which collective agreements are typically concluded within Denmark.

In the UK, the signatories of the European Agreement at the European level were CBI, CEEP UK, FPB and TUC. These organizations do not possess a mandate to conclude collective agreements within the UK, neither at the inter-sectoral level nor at the sectoral or firm levels. The Czech signatories of the European Agreement (CMKOS and SPCR) do not possess the procedural right to conclude collective agreements at the national inter-sectoral or sectoral level.

#### **10.2.5 The issue addressed by the Framework Agreement and the degree to which the issue is typically regulated by national social partner organizations**

The extent to which the issues addressed by the Framework Agreements fell within the area of policy in which the signatories to the European Framework Agreements had regulatory competence was a fifth theme that became prominent during the process of data analysis. In Belgium, the topics of teleworking and work-related stress were traditionally regulated by the Belgian social partner organizations that were signatory to the European Agreements. In the case of the work-related stress issue, a 1999 NLC Agreement had been concluded by the Belgian social partners that regulated the topic in the Belgian private sector. In the case of the issue of

teleworking, an agreement at the NLC level had not been concluded on the topic prior to the implementation of the European Agreement. However, it was traditional for NLC collective agreements on forms of work-organization such as teleworking to be concluded by the Belgian social partner organizations. In Denmark, the topic of teleworking was typically regulated by the Danish sectoral social partners who had concluded several collective agreements on the topic. Prior to the implementation of the European Agreement, teleworking as an issue had received little attention from the inter-sectoral Danish social partner organizations who were signatory to the European Agreement. This was also the case with the issue of work-related stress. In this instance, the topic had been subject to substantial legal health and safety regulation by the Danish state, and had also been regulated in many instances through sectoral agreements by the Danish sectoral Social Partner organizations.

In the UK, the topics of teleworking and work-related stress had not typically been the focus of policy attention from the UK social partner organizations that had been signatory to the Agreements at the European-level. Rather, when the issues were the focus of regulatory attention at firm or sectoral level, policies had typically been developed by individual firms and/or individual trade unions. The two issues had also been the subject of legal and non-legally binding regulation by the UK public authorities. In certain cases, the UK public authorities had involved the UK social partner organizations in the development of regulation on the topics. In Czech Republic, the topics of teleworking and work-related stress had been subject to a minimum amount of regulation within the country prior to the implementation of the European Agreements. However, typically such issues would have been subject to

regulation by the Czech public authorities via the Czech Labour Code and would often have involved substantial consultation with the Czech social partners.

#### **10.2.6 Summary: National 'procedures and practices': A weak implementation clause?**

In summary, the five factors that have been outlined above lead to the conclusion that the national 'procedures and practices' implementation clause is a weak implementation clause. This finding is supportable on several bases. The data demonstrates that it is highly arduous to identify national 'procedures and practices' for social dialogue in some national contexts. Despite the fact that actors were able to adopt coherent definitions of national 'procedures and practices' in Belgium and Czech Republic, this was not the case in UK and Denmark. In the UK, actors struggled to define coherently national 'procedures and practices' for social dialogue owing to the lack of a tradition of national-level social dialogue within the UK, and the variety of levels and tools with which employment relations in the UK is regulated at and with. As a result of this inability to effectively define national 'procedures and practices' in the UK, contrasting definitions of national 'procedures and practices' were adopted by the UK Social Partners *en lieu* of a coherent definition of national 'procedures and practices'. Despite the country's reputation for highly coordinated relations between national social partners, national actors also struggled to concur over national 'procedures and practices' for social dialogue in Denmark. This was evident in the cases of the dispute between AC and DA over the nature of collective relations between the two organizations at the inter-sectoral

level, and the uncertainty amongst DA and LO officials as to the exact constitution of national 'procedures and practices' at the inter-sectoral level. In the former case, the debate resulted in a stalemate between the two organizations over the implementation of the Telework Agreement, whilst in the latter case the debate led to uncertainty with regards to the precise tool that should be used to implement the Agreements at the inter-sectoral level.

Secondly, the data demonstrates that national 'procedures and practices' for social dialogue are liable to shift and reform themselves over a period of time. This was especially so in the case of Czech Republic, where the vast economic and social reforms that have occurred over the past twenty years and their implications for the changing regulation of working conditions were referred to by social partner officials. It was also noted that bipartite social dialogue was currently in the process of being constructed, and that national 'procedures and practices' for social dialogue was currently in a period of reform within Czech Republic. In Denmark and UK, it was stated by officials that the implementation of EU Directives within national systems had had effects on national 'procedures and practices' for social dialogue by increasing the role of the law in the regulation of working conditions. The implications for the viability of the national 'procedures and practices' implementation clause are two-fold. Firstly, it becomes theoretically more challenging to conceptualize national 'procedures and practices' given their propensity to shift. It is also particularly ironic that the European-level has been a major precipitator of change in national 'procedures and practices' for social dialogue in some cases. Secondly, given the propensity of national 'procedures and practices' to change over time, national 'procedures and practices' are liable to be subject to

various definitions by national actors with different agendas.

Finally, the data demonstrates that the issue addressed by the Framework Agreement sometimes lies outside the policy mandate of national social partners or is sometimes located within an ambiguous area of their competencies. In turn, this often produces ambiguity regarding 'correct' national 'procedures and practices' for social dialogue.

In Denmark, the topic of work-related stress is primarily and traditionally regulated by the Danish state rather than the Danish social partners. This led to ambiguity regarding the form in which the Work-related Stress Agreement should be implemented by the Danish inter-sectoral social partners given the existence of a large body of labour law on the work-related stress issue. In the UK, there was a very limited tradition of the inter-sectoral social partners engaging in regulatory activity on the topics of work-related stress and teleworking. This also led to ambiguity over the relationship between the form of instrument with which the Agreements were implemented and the lower levels at which the issues of teleworking and work-related stress have traditionally been regulated in the UK.

### **10.3 Evaluating and conceptualizing 'effective' implementation**

This section presents its findings on the extent to which the Agreements were 'effectively' implemented in the countries and sectors concerned. It then considers three factors that shape the extent to which the Framework Agreements are 'effectively' implemented within countries and sectors. These are (1) the existence of an established national inter-sectoral level tier of social partner collective bargaining or policy forum, (2) the existence of congruence between the signatories of the Agreements and their roles in national and sectoral systems, and (3) the level of pre-existing regulation on the topic of the Framework Agreement.

**Table 10.2 : Did ‘effective’ implementation occur ?**

Country/sector	Actors’ definition of national ‘procedures and practices’	Telework Agreement	Work-related Stress Agreement
Belgium	Legally binding NLC Agreement	Yes, national ‘procedures and practices’ followed	Yes – ‘de facto’ implementation
Belgian banking sector	Sectoral collective agreement	No implementation affected	No implementation affected
Belgian local Government sector	Collective agreements between trade unions and local authorities	No, there is very little evidence of authority level implementations	No, there is very little evidence of authority level implementations
Denmark	Sectoral collective agreements. Ambivalence over correct procedures at inter-sectoral level	Only in a limited number of cases were the Agreements subject to autonomous sectoral implementations	Only in a limited number of cases were the Agreements subject to autonomous sectoral implementations
Danish banking sector	Sectoral collective agreement	Yes, national ‘procedures and practices’ followed	No implementation affected
Danish local Government sector	Sectoral collective agreement	Yes, national ‘procedures and practices’ followed	Yes, national ‘procedures and practices’ followed
UK	No national ‘procedures and	No, there is very little evidence of	No, there is very little evidence of

	practices' for social dialogue at inter-sectoral level. Firm-level agreements identified as most prominent procedure for social dialogue	firm or sectoral Agreements implementing the Agreement	firm or sectoral Agreements implementing the Agreement
UK banking sector	Collective agreements at firm-level, where there is a trade union presence	No, there is very little evidence of firm-level Agreements implementing the Agreement	No, there is very little evidence of firm-level Agreements implementing the Agreement
UK local Government sector	Sectoral collective agreement	Yes, national 'procedures and practices' followed	No implementation affected
Czech Republic	Implementation through Czech Labour Code	Yes, national 'procedures and practices' followed	Yes, national 'procedures and practices' followed





### **10.3.1 Did 'effective' implementation occur?**

As outlined in chapter three, two benchmarks will be utilized to assess the procedural implementations of the Framework Agreements. The first, and more elementary, benchmark will involve assessing whether the Framework Agreements were subject to procedural implementations at the national-level within the three year implementation timescale stipulated by both Agreements. The second, and more complex, benchmark will involve assessing whether or not the Agreements were implemented in accordance with national 'procedures and practices' for social dialogue. As detailed in chapter three, it is appropriate to use this benchmark to gauge cross-national implementation outcomes given that it is clause by which the Agreements were to be implemented in accordance with.

If one considers that in all four countries national social partners affected some form of procedural implementation of the Agreements and that these implementations were mostly carried out within the requisite three-year time period, then, according to the first benchmark, the data demonstrates that the Framework Agreements were more or less 'effectively' implemented within the four countries. Although the Telework Agreement was implemented marginally late in Czech Republic and the Belgian public sector, these examples do not constitute major infringements. The Visser report on the implementation of the Telework Agreement (2008) and the European social partner reports on the European-wide implementation of the Framework Agreements (2006; 2008) reveal that this was not the case in all

countries. For example in Latvia, Lithuania, Estonia, Malta, Cyprus, Bulgaria and Romania, the Telework Agreement had not been implemented as of January 2008.

With regard to the more contested second benchmark, the extent to which the implementations of the Agreements followed the definitions of national 'procedures and practices' that were offered by national Social Partner officials, the data demonstrates that the picture is more mixed and that there are key 'gaps' in the implementations that were affected in the countries that were the subject of our study. Table 10.2 demonstrates several cases of mismatch between definitions of national 'procedures and practices' for social dialogue and the implementation outcomes that actually occurred. As table 10.2 also shows, within the UK the Agreements were not implemented in a form that one could describe as in accordance with national 'procedures and practices' for social dialogue. A sole example of either of the Agreements being implemented autonomously at either the sectoral or firm or workplace level was cited by respondents. The data leads to the conclusion then that the implementations that the actual Agreements were subject to in the UK were not ones in accordance with national 'procedures and practices'. In Denmark, although the Agreements were implemented via Social Partner collective agreements in several sectors, the absence of autonomous implementations in the majority of Danish sectors demonstrates that Danish national 'procedures and practices' for the implementation of the Agreements were not followed to the letter. It is also somewhat difficult to conceive of the LO-DA 'follow-up' Agreement by which the Telework Agreement was implemented at the inter-sectoral level as national 'procedures and practices' given that this was seen as a 'new' tool in the

Danish context.

In Belgium, the data reveals that national 'procedures and practices' for the implementation of the Agreements were followed faithfully within the Belgian private sector and that the implementations may therefore be considered 'effective'. Despite the fact that the Work-related Stress Agreement was not formally implemented in the private sector, it is reasonable to consider that 'effective' implementation took place in a *de-facto* form given the existence of a previous Agreement at this level that fulfilled the content of the European Agreement. In the Belgian public sector, despite the fact that both Agreements were implemented via national 'procedures and practices' at the level of the federal public administration, the absence of autonomous implementations at lower levels within the sector implies that the Agreements were not implemented in accordance with national 'procedures and practices' in this instance.

In Czech Republic, the implementations of the Agreements via the Czech Labour Code followed existing national 'procedures and practices' for social dialogue. Despite the fact that the Czech social partners do not play a primary role in the execution of these 'procedures and practices', their traditional proximity to this process and the fact that alternative social dialogue routes are not well developed within the country implies that implementation was carried out in accordance with national 'procedures and practices' in Czech Republic.

### **10.3.2 Accounting for variance in effective implementation**

Having established the extent to which the Framework Agreements were implemented ‘effectively’ within the countries that were the subject of the study, it is now important to consider those factors that increase the likelihood of ‘effective’ implementation outcomes within countries and sectors and that are likely to minimize the level of debate over the constitution of national ‘procedures and practices’.

*The existence of an established national inter-sectoral level tier of social partner collective bargaining or an established inter-sectoral policy forum involving social partners*

In those countries where there is an established forum for national inter-sectoral bargaining between social partners or an established inter-sectoral policy forum involving social partners, the data demonstrates that ‘effective’ implementation becomes more likely and that it is more probable that there will be lower levels of debate on the procedural form in which to implement the Framework Agreement. This is shown in table 10.2. In such cases, the existence of a centralized, inter-sectoral mechanism allow social partners to affect implementations that bind lower-level actors to the Framework Agreements. The case of the implementations of the Agreements in the Belgian private sector demonstrates this principle. In this instance, all of the Belgian social partner organizations identified implementation via the

Belgian National Labour Council as the 'correct' Belgian national 'procedure and practice' for the implementation of the Agreements, and were able to act in unison to affect an implementation that became binding upon lower level actors within the sector. The results of the Visser report (2008) on the implementation of the Telework Agreement and the European social partner reports (2006; 2008) on the implementation of the Agreements also confirms that 'effective' implementation is more probable in other countries with similar forums for the conclusion of inter-sectoral collective agreements. In France, Italy, and Luxembourg, all countries with traditions of inter-sectoral collective agreements, the Telework Agreement was implemented via routes that utilized existing national 'procedures and practices' for inter-sectoral collective agreements (Visser and Martin, 2008) and appear to have involved low levels of debate on the constitution of national 'procedures and practices'.

Although there is no inter-sectoral level bargaining within Czech Republic and the system is very different to that of Belgium and France, the fact that the Czech social partners are involved in national-level tripartite concertation with the Czech public authorities and there is a tradition of regulation via the labour code meant that a very similar outcome to that of Belgium occurred in the country. In Czech Republic, the existence of an established means by which the Czech social partners were able to influence the regulation of the employment relationship led to 'effective' implementation outcomes and also to a lower level of debate on national 'procedures and practices'. The same essential principle was in operation as in Belgium; the existence of established national level traditions with the propensity to bind lower-

level actors to the terms of the Framework Agreements led to ‘effective’ implementation and a very low level of debate regarding national ‘procedures and practices’.

The data also demonstrates that in those countries where there are no established national inter-sectoral forums for the conclusion of collective agreements or an established inter-sectoral policy forum involving social partners ‘effective’ implementation outcomes are less likely to occur and there is also likely to be greater debate over suitable national ‘procedures and practices’ for implementation. This effect also becomes more pronounced when social dialogue levels are more de-centralized and characterized by low degrees of coordination between tiers of social dialogue. This is demonstrated by table 10.2. In such cases, the lack of a centralized, inter-sectoral mechanism governing employment relations implies that the activities of lower-level actors are uncoordinated, and sporadic implementation outcomes result. In the UK, the lack of a traditional means for concluding national inter-sectoral agreements led to ambivalence over a fitting implementation route for the Telework and Work-related Stress Agreements. Also, the fact that national ‘procedures and practices’ for social dialogue were de-centralized and not coordinated by a centralized organ meant that ‘effective’ implementation did not take place in the UK context. The fact that industrial relations in the UK is renowned for its de-centralized nature and lack of coordination between bargaining levels meant that the effect was particularly pronounced in the case of the UK. A similar effect was also manifest in the cases of the Belgian public sector. In this case, the limited level of authority that the Belgian federal administration had over lower-level actors

within the sector implied that ‘effective’ implementation was not widespread within the sector. The case of Denmark lies between Czech Republic and the Belgian private sector on the one hand, and UK and the Belgian public sector on the other hand. In the instance of Denmark, the conclusion of an inter-sectoral agreement to implement the Telework Agreement and the general existence of negotiations between LO and DO demonstrates that inter-sectoral social dialogue structures are available. However, the fact that the sectoral level is the level at which the social dialogue is strongest had key implications. Specifically, the autonomy of sectoral level actors and limited authority of the national inter-sectoral social partners led to scenarios where the Agreements were only implemented autonomously and ‘effectively’ in certain sectors. Given the high levels of coordination between bargaining tiers in Denmark and the existence of some form of inter-sectoral social dialogue however, the situation was not as extreme as that of the UK. A further notable effect in the Danish context was that the relative weakness of the inter-sectoral level policy forum led to debate about the nature of national ‘procedures and practices’ in the Danish context. Secondary sources (Visser and Martin, 2008) also demonstrate that similar trends were evident in other countries in which the sectoral level is the prevalent level at which the employment relationship is regulated. In countries such as Germany, Sweden, Austria and Netherlands, the relative weakness of established national inter-sectoral forums for the conclusion of collective agreements meant that national inter-sectoral actors were forced to produce innovative implementation routes that aimed to coordinate the implementation activities of sectoral level actors and that in many sectors there were not autonomous implementations of the Agreements.



*Congruence between the signatories of the Agreements and their role in national systems*

A second finding is that when the national signatories to the European Agreements possess the mandate to conclude collective agreements within their national systems or have an established role within the policy process then 'effective' implementation outcomes become more likely and it becomes less likely that there will be contestation over the constitution of national 'procedures and practices'. This finding is linked to the one above.

The case of the Belgian implementation of the Agreements illustrates this. The Belgian signatories of the European Agreements (FEB-VBO, ABVV/FGTB, ACV/CSC, CGSLB, Unizo) possess a mandate to conclude collective agreements within Belgium at the National Labour Council level, and the trade union organizations possess mandates to bargain collectively at the sectoral and firm levels. Owing to the fact that the signatories of the Agreements already had an established means by which the Agreements could be implemented, there was subsequently a low level of debate over the constitution of national 'procedures and practices' for social dialogue in the Belgian private sector and 'effective' implementation was guaranteed. The principle was also manifest in the case of the implementation of the Agreements in Czech Republic. In the Czech Republic, the Social Partner organizations SPCR and CMKOS were signatory to the European Agreement. These organizations are normally substantially engaged by the Czech Government in

consultation over the direction of labour law and social policy. Owing to this, there was little debate regarding the implementation of the Framework Agreements via the Czech Labour Code.

The case of the implementation of the Agreements within the Belgian public sector demonstrates the inverse of the principle. In this instance, the fact that the decentralized local authorities that conduct the majority of collective negotiations within the Belgian public sector had not been signatory to the European Agreements mitigated against the Agreements 'effective' implementation within the sector. The case of the implementations of the Agreements in Denmark and UK also illustrate the inverse of this principle. In Denmark, the Danish organizations who were signatory to the European Agreements (AC, DA, FTF, and LO) have a limited tradition of conducting and competence to conclude collective agreements with one another in Denmark. As a result of this, there was a considerable level of debate over the form in which the Agreements should be implemented within Denmark. This was evident in the cases of the AC-DA dispute over the implementation of the Telework Agreement, and the debate between DA and LO over the conclusion of 'follow-up' Agreements for the implementation of the Agreements. The organizations who are typically involved in the conclusion of collective agreements in Denmark, namely the sectoral employer associations and trade union cartels, were not directly signatory to the European Agreements. As a result, implementations of the Agreements at the Danish sectoral level were patchy, and the Agreements were not implemented 'effectively'.

In the UK, the organizations who were signatory to the European Agreement (CBI, CEEP UK, FPB, TUC), do not possess any mandate to bargain collectively in the UK and also do not possess statutory rights to be involved in public policy. This led to debate over the constitution of national 'procedures and practices' in the UK as the organizations who had been signatory to the European Agreements did not possess any obvious existing policy mandate by which the Agreements could be implemented. The organizations who are typically involved in collective agreements and social dialogue in the UK (individual trade unions and individual employers) had not been directly signatory to the European Agreements. This led to limited awareness of the Agreements at these levels and low levels of implementation. Subsequently, 'effective' implementation of the Agreements in the UK was not achieved.

*The level of pre-existing regulation on the topic of the Framework Agreement*

A third finding of the study is that another factor that is likely to lead to lower or higher levels of debate over the most fitting procedural form with which to implement the European Framework Agreement is the level of existing national or sectoral regulation on the topic of the European Framework Agreement. Should there be a low level of existing regulation on the topic of the European Framework Agreement the data demonstrates that there will be a lower level of debate on the most fitting procedural form with which to implement the Agreement. Alternatively, should there be a high level of existing regulation on the topic of the European Framework Agreement the data demonstrates that there will be a higher level of

debate on the most fitting procedural form with which to implement the Agreement. Various national and sectoral implementations of the Agreements provide several instances of this principle in operation. In these cases, the ‘sticking point’ between Social Partners was often the relationship between the content of the Framework Agreement and that of existing regulation, and there was subsequently disagreement over the most appropriate form of procedural implementation given varying interpretations of existing regulation.

In Belgium there was a disagreement between the Belgian social partners over the most fitting means to implement the Work-related Stress Agreement. The stance of the Belgian employers' association was that the content of the European Agreement was present in Belgian regulation due to the existence of a 1999 National Labour Council Agreement, whereas sections of the Belgian trade union movement advocated a revision of the Agreement to incorporate new clauses related to the content of the European Agreement on the basis of the argument that the European Agreement contained new clauses that were not present in the existing Belgian Agreement. Although the European Agreement was eventually implemented in a *de facto* form, the existence of the debate nevertheless illustrates the potential of existing regulation to stimulate extra debate over procedural implementation routes. The case of the implementation of the Telework Agreement in the Danish local Government sector also involved a similar dispute over the content of a pre-existing sectoral agreement on teleworking. The Danish local Government trade union organization KTO accused the Danish local Government employers' organization KL of attempting to downgrade sectoral employment standards through the

implementation of the Agreement, and the subsequent result was a year long dispute over the implementation of the Agreement.

There are also examples of the converse. In Belgium, the lack of pre-existing regulation on the topic of teleworking was one of the reasons why a National Labour Council Agreement was immediately identified to implement the Telework Agreement. In the Danish local Government sector, the Danish local Government sector social partners decided to delay concluding an Agreement on work-related stress until after the conclusion of the European Agreement. This was in order to avoid the disputes that had occurred over the implementation of the Telework Agreement in the sector. In Czech Republic, the lack of existing regulation on the issues teleworking and work-related stress underpinned a consensus between the Czech social partners that a legal implementation of the Agreements was the most fitting implementation route.

### **10.3.3 Summary**

The findings of the thesis regarding the extent to which the Framework Agreements had been implemented 'effectively' according to the two benchmarks developed in chapter three and the factors that are likely to facilitate 'effective' implementation were presented above. In the countries that were the subject of study the Agreements received a basic level of 'effective' implementation according to the first benchmark, but in the cases of some countries, and in line with the second benchmark developed, it was not clear that national 'procedures and practices' for implementation had been

followed faithfully. It was also demonstrated that the existence of an established national inter-sectoral level tier of collective bargaining, congruence between the signatories of the European Agreements and their role in national systems, and a lower level of existing regulation on the topic of the Framework Agreement were all likely to facilitate 'effective' implementation outcomes.

#### **10.4 Independent variables related to the procedural implementations of the Agreements**

The chapter will now review its findings against the variables advanced in chapter three regarding the extent to which the series of factors advanced in the literature were likely to explain the forms of procedural implementations that the Agreements were subject to and the related issue of the extent of their 'effectiveness'.

Accordingly, the findings are reviewed against five variables; (1) the existence of a 'culture of compliance' with EU regulation in countries and sectors, (2) the convergence of national and sectoral policy agendas with the topic of the Framework Agreement, (3) the degree of existing regulation on the topic of the Framework Agreement, (4) prior Social Partner experience of implementing EU-level output, and (5) the coordination of social dialogue levels within countries and sectors.

**Table 10.3 Variables explaining differential procedural implementation outcomes**

Country/ sector	'Culture' of compliance	Convergence of national and sectoral policy agendas with topic of Framework Agreement	The degree of existing regulation on the topic of the Framework Agreement	Prior social partner experience of implementing EU-level output	The coordination of social dialogue levels	The existence of an inter- sectoral level policy forum involving national social partners	The possession of a mandate to conclude collective agreements by the national social partners signatory to the European Agreement	
Belgium	1	2	3	1	1	3	3	

Belgian banking sector	1	2	2	1	1	3	3	
Belgian local Government sector	1	3	2	1	1	3	3	
Denmark	2	2	3	2	2	3	3	
Danish banking sector	1	1	3	2	2	3	3	
Danish local Government sector	3	3	3	2	2	3	3	
UK	2	3	3	2	2	3	3	



UK banking sector	1	1	3	1	2	3	3	
UK local Government sector	2	2	2	1	2	3	3	
Czech Republic	1	1	3	1	1	3	3	

Key (rankings are ordinal rather than cardinal):

3 = Strong relationship between existence of factor and implementation outcome

2 = Medium relationship between existence of factor and implementation outcome

1 = Weak relationship between existence of factor and implementation outcome

#### 10.4.1 The 'culture' variable

Falkner et al (2005) argued that the 'culture of compliance' that existed in a country was crucial in understanding the degree to which 'effective' implementation of EU social policy Directives was likely to occur. Falkner et al conceptualized the 'culture of compliance' as a 'socio-political mechanism' with which national officials became inculcated and which was subsequently likely to guarantee 'effective' implementation. Three 'worlds of compliance' were identified; the 'world of compliance', in which Directives were always 'effectively' implemented, 'the world of domestic politics' in which 'effective' implementation was subject to domestic political realities, and the 'world of neglect', in which 'effective' implementation almost never occurred. A fourth 'world of compliance' was added by Falkner and Treib in 2008 after research on the implementation of three EU social policy Directives in four new member states. This was 'the world of dead letters' and was characterized by 'politicized transposition processes and systematic application and enforcement problems'. The UK and Belgium were classified as belonging to the 'world of domestic politics', and Denmark to the 'world of compliance'. The implication of Falkner and Treib's 2008 article is that Czech Republic belongs to the 'world of dead letters'.

The data demonstrates a modest link between the existence of a 'culture of compliance' and the 'effective' implementation of the Framework Agreements in countries and sectors. In several instances, it was evident that the existence of a

'culture of compliance' within the countries or sector concerned had motivated actors to affect measures to implement the Agreements. This 'culture of compliance' was evident in several Danish sectors and in this sense validates Falkner et al's description of Denmark as belonging to the 'world of compliance' grouping. In the Danish industrial sector, it was reported that the sector's status as the 'pattern-setting' sector in Danish industrial relations implied that actors within the sector saw it as their duty to implement European Agreements 'effectively' and with alacrity. In the Danish local Government sector, sectoral officials reported that actors within the sector had waited to conclude a collective agreement on the topic of work-related stress until after the conclusion of the European Agreement so as to ensure that the European Agreement would be 'effectively' implemented. In the Danish public sector at large, the existence of a general 'culture of compliance' with European regulation was also alluded to. A 'culture of compliance' was discernible in the UK also. This was most evident in the case of the actions of the UK DTI, who had taken the lead in the implementation of the European Agreements so as to ensure that the obligations of the UK towards the European-level were met. A further finding is that this 'culture of compliance' did not seem to be contingent upon domestic political factors but was rather an entrenched feature of the workings of the DTI as an organization. This finding raises questions about the viability of Falkner et al's bracketing of the UK in the 'world of domestic politics'.

Further, the findings of the thesis also demonstrate that the 'world of domestic politics' is a viable analytic category. As will be outlined below, it emerged in the course of the analysis of the data that the convergence of national and sectoral policy

agendas with the topic of the Framework Agreement was a crucial factor in explaining divergent national and sectoral implementation outcomes. The findings of the study thus support Falkner et al's argument that in many countries political factors are key in explaining diverging implementation outcomes. In none of the countries in which research was conducted was evidence of 'the world of neglect' found. However, the fact that the Telework Agreement was not implemented in Latvia, Lithuania, Estonia, Malta, Cyprus, Bulgaria and Romania (Visser and Martin, 2008) demonstrates that these countries may belong in this world. The finding that 'effective' implementation by and large occurred in Czech Republic also challenges Falkner and Trieb's view that Czech Republic belongs in the 'world of dead letters'.

Yet the relationship between 'effective' implementation and a 'culture of compliance' also emerges as somewhat tenuous. There are significant methodological hurdles in the way of establishing such a link. For example, it is very difficult to gauge and quantify 'culture of compliance' as an actual social phenomenon and it is arduous to isolate its influence from other factors. Whilst 'effective' implementation of the Framework Agreements may be said to have largely taken place within Belgium and Czech Republic, the existence of a 'culture' of compliance was never alluded to nor were national actors' obligations to the European-level discussed explicitly as they had been in UK and Denmark. The rationales for the implementation of the Agreements were couched in alternative terms, and it was subsequently very hard to establish the extent to which the existence of 'cultural' factors had exerted a major impact upon implementation outcomes. Thus, it is a finding of the study that whilst 'culture' exerts an impact upon implementation outcomes in some cases, it is too

methodologically arduous to identify it as the main driver of implementation outcomes.

#### **10.4.2 Convergence of national and sectoral policy agendas with the topic of Framework Agreement**

As discussed in chapter two, a further factor that that is identified in the literature as facilitating the extent to which EU-level regulation and 'soft' law are likely to be effectively implemented is the extent to which existing national and sectoral policy agendas converge with the topic of the EU-level regulation. De La Porte and Pochet (2002) and Leonard (2005) advance the argument that where the policy preferences and agendas of national actors converge with the topic of the EU-level regulation then 'effective' implementation is more likely to take place. The converse is also implied; namely that if the topic of the EU-level regulation does not converge with the preferences of national-level actors then 'effective' implementation will not take place.

The results of the data offer much to support this argument, and demonstrate that this factor was often key in stimulating autonomous implementations of the Agreements. In the UK, the employers' association CBI were eager to implement the Agreements within the UK as they considered that the topics of teleworking and work-related stress were becoming of greater concern to their affiliates. In Denmark, the extent to which there were autonomous sectoral implementations of the Agreements was often

dictated by the extent to which the topics of the Agreement converged with the agendas of sectoral level actors. In the sectors in which the Telework Agreement was implemented autonomously such as the commerce and industrial sectors, it was reported that there were generally higher levels of interest in the topic within the sectors than in those sectors where the Agreements had not been implemented autonomously. The data also confirms the inverse of this principle. In the Belgian public sector and in Czech sectors, there were very low levels of autonomous implementations of the Framework Agreements. This was attributed by actors to the fact that actors at these levels had little interest in the topics of teleworking and work-related stress.

#### **10.4.3 The degree of national and sectoral regulation that exists on the Framework Agreement prior to its implementation**

As described in chapter two, a further factor that is identified in the literature as facilitating the extent to which EU-level regulation and 'soft' law are likely to be effectively implemented is the extent to which there is existing national and sectoral regulation on the topic of the Framework Agreement. Following De La Porte and Pochet (2002) regarding the implementation of the OMC in member states, the argument advanced in chapter two is that the greater the level of existing regulation in national and sectoral contexts the less likely 'effective' implementation becomes. The converse is also implied; that the lesser the level of existing regulation in national and sectoral contexts the more likely 'effective' implementation becomes.

The data demonstrates that a strong relationship between the extent to which the Framework Agreements were implemented 'effectively' and the level of existing regulating on the topic of the Framework Agreement exists. In the case of the UK, it was evident that differing levels of existing regulation on the teleworking and work-related stress issues affected the extent to which the individual agreements influenced policy at lower levels. Owing to the existence of the HSE 'Management Standards on Work-related Stress', it was thought by the UK social partners that the European Agreement would inspire few policies on work-related stress at firm and sector levels. Alternatively, the smaller degree of existing regulation on teleworking in the UK implied that there was likely to be a greater number of lower level policies on teleworking inspired by the European Agreement. The level of existing regulation on the Framework Agreements also exercised a key effect on the extent to which the Framework Agreements were 'effectively' implemented in Denmark. The Work-related Stress Agreement was not implemented in the finance sector or at the inter-sectoral level as a result of the view of actors that there was a sufficient degree of existing regulation on the topic of work-related stress. Alternatively, the major reason for the implementation of the Agreement within the local Government sector was that there was no regulation on work-related stress within the sector.

The extent of regulation on the topics of teleworking and work-related stress was also a crucial factor in explaining the differing forms of implementation that the Framework Agreements were subject to in Belgium. In the case of the national private inter-sectoral level, the forms of implementations that the two individual

Agreements were subject to were primarily contingent upon the level of regulation that the issues of teleworking and work-related stress had previously been subject to. In the case of the former issue, the lack of regulation on the topic within Belgium led to the conclusion of a National Labour Council Agreement to implement the European Agreement. In the case of the latter issue, the existence of a National Labour Council Agreement on work-related stress led to the Belgian social partners carrying out a *de facto* implementation of the agreement. Within the Belgian public sector, the fact that the Work-related Stress Agreement was implemented via royal decree was primarily attributable to the lack of existing regulation on work-related stress within the sector. The operation of the principle was also evident in the case of the Czech Republic. In this instance, the lack of existing regulation on the teleworking and work-related stress issues exercised a major effect on the decision of the social partners and Government to implement the Agreements via the Czech Labour Code and via bipartite means.

#### **10.4.4 Prior social partner experience of similar EU-level initiatives**

As considered in chapter two, a further factor that that is identified in the literature as facilitating the extent to which EU-level regulation and 'soft' law are likely to be effectively implemented is the extent to which social partners have experience of implementing prior European-level output. This argument has been advanced by Lopez-Santana (2006) with regard to the implementation of the European Employment Strategy. The converse is also implied; that the lesser the level of



experience of social partners in implementing EU-level output the less likely 'effective' implementation becomes.

The findings only offer patchy support for this variable. There were some examples of the prior experience of social partners in the implementation of EU-level output increasing the extent to which 'effective' implementation was likely to occur. In the case of the Danish implementation of the Telework Agreement, it was stated that the process of the implementation of the Telework Agreement via the method of autonomous sectoral Agreements followed by an inter-sectoral 'follow-up' agreement was easier given that a similar method had been used to implement legally binding EU Social Policy Directives. In the UK, actors stated that, logistically speaking, the implementation of the Work-related Stress Agreement was an easier process given that national actors had prior experience of implementing the Telework Agreement. However, there were scant instances of such an effect in other countries and sectors, and it thus becomes difficult to regard the 'learning effect' as a key ingredient of 'effective' implementation.

#### **10.4.5 The coordination of social dialogue levels**

As elaborated in chapter two, a further factor that that is identified in the literature as facilitating the extent to which EU-level regulation and 'soft' law are likely to be effectively implemented is the extent to which there is coordination of social dialogue levels in the country concerned. The argument advanced by Keller (2003)

with specific regard to the implementation of the Telework Agreement is that the greater the degree of coordination of social dialogue levels within countries the greater the likelihood of 'effective' implementation. The converse is also implied; that the lesser the degree of coordination of social dialogue levels within countries the less likely 'effective' implementation becomes.

The data reveals that there is not a robust link between 'effective' implementation and the degree of coordination between social dialogue levels. In Czech Republic, a country in which there is a very low level of coordination between social dialogue levels, the data reveals that 'effective' implementation may be said to have by and large taken place. In Denmark, a country with a high degree of coordination of social dialogue levels, there were many sectors where the Agreements were not autonomously implemented and it can thus be said that 'effective' implementation did not entirely take place. Although the high degree of coordination of social dialogue levels in Denmark allowed the inter-sectoral social partners to coordinate sectoral implementations to a degree that was not possible in a state such as the UK, the high degree of coordination of social dialogue levels in Denmark was not sufficient to ensure comprehensive implementation outcomes. The crucial structural factor that explains 'effective' implementation performance is whether or not there is an established forum for the conclusion of national inter-sectoral agreements or an established policy forum involving all of the national social partners within the state concerned. The existence of such forums in Czech Republic and the Belgian private sector led to 'effective' implementations in these contexts. However, the absence of such forums in the Belgian public sector and the UK led to implementations that

were often piecemeal.

#### **10.4.6 Summary**

The above section has reviewed the findings of the thesis against the variables advanced in the literature on the extent to which EU-regulation was likely to be procedurally implemented 'effectively'. It found that (1) there was some evidence to support the 'culture of compliance' argument although this was hard to establish methodologically, and that there was much evidence to support the variables on the (2) convergence of national and sectoral policy agendas with the topic of the Framework Agreements and (3) the degree of existing regulation on the topic of the Framework Agreement. It was also found that (4) there was only limited evidence to support the prior social partner experience of implementing EU-level output variable, and (5) that there was little evidence to support the coordination of social dialogue levels variable.

#### **10.5 Conclusion**

The chapter isolated five discreet strands in the data collected that were key from the perspective of the procedural implementations of the Agreements. These were (1) the forms of procedural implementations that the Agreements were subject to within member states and sectors, (2) the prevailing definitions of national 'procedures and

practices' for social dialogue within countries, (3) the stability of national 'procedures and practices' for social dialogue within countries, (4) the existing mandated roles of the signatory organizations to the European Agreements within countries and sectors, and (5) the issue addressed by the Framework Agreement and the level at which it is regulated in countries and sectors.

The chapter then outlined the extent to which 'effective' implementation had taken place within the countries and sectors that were the subject of the study. It was demonstrated that on a basic level the Framework Agreements were implemented 'effectively' in all of the countries in which the research was conducted. This was due to the fact that both the Agreements were implemented in some procedural form in all of the countries concerned, and also that the majority of these implementations fell within the specified three-year time periods for the implementation of the Agreements. However, it was also demonstrated that if one adopted a more stringent reading of the national 'procedures and practices' implementation clause (based on the given definitions of national actors) that 'effective' implementation had not taken place in several national and sectoral contexts. Following this finding, the chapter demonstrated shortcoming in the national 'procedures and practices' implementation clause on several grounds. These grounds were identified as the frequent difficulty of establishing national 'procedures and practices' for social dialogue, the liability of national 'procedures and practices' for social dialogue to reform themselves, and the possible tendency of the issue addressed by the Framework Agreement to fall outside the competence area of national social partners. The chapter also identified several factors that were likely to enhance the likelihood of 'effective' implementation

outcomes within member states. These factors were identified as (1) the existence of an established national inter-sectoral level tier of social partner collective bargaining or equivalent established inter-sectoral policy forum involving social partners, (2) congruence between the signatories of the European Agreements and their role in national systems, and (3) the level of pre-existing regulation on the topic of the Framework Agreement.

Finally, the chapter reviewed the variables advanced in the literature regarding the conditions that were likely to enhance or impede the 'effective' implementation of EU-level regulation against the data collected in the course of the study. It was concluded that there was a moderately discernible link between the 'culture of compliance' with EU-level regulation in a state that was identified by Falkner et al and the extent to which the Framework Agreements were likely to be implemented 'effectively'. However, it was also concluded that it was very hard to establish the methodological robustness of this link. It was also concluded that the data provided much evidence to support two other variables advanced in the literature; namely that 'effective' procedural implementation is more likely to occur if national and sectoral policy agendas converge with the topic of the EU-level regulation and if there is a minimal body of existing national and sectoral regulation on the topic of the EU-level regulation. With regard to the extent that prior social partner experience of implementing European-level output facilitates 'effective' implementation, it was found that there was some limited evidence of this principle occurring in sections of the data, but that it was not a widespread occurrence. Finally, it was found that the degree to which social dialogue levels in countries were coordinated had little to no

relationship with the 'effective' implementation of the Agreements.

## **Chapter 11: Evaluating substantive implementation outcomes**

### **11.1 Introduction**

This chapter will analyze the effects that the Agreements and texts had upon substantive aspects of employment relations in the countries in focus. As stated in previous chapters, the potential of the Agreements and texts to contribute to levels of social and employment protection in European member states is a crucial function of European social policy; thus, it is pivotal that the study identifies the extent to which the Agreements and texts did this.

The chapter will therefore aim to establish the efficacy of the Framework Agreements and texts in terms of their substantive effectiveness. As stated in chapter three, this will be carried out using two indicators of substantive effectiveness.

Firstly, (i) the extent to which the content of the Framework Agreements and texts added to the content of social and employment regulation across member states will be assessed. This will be carried out through an analysis of the extent to which the terms of the Framework Agreements and texts were present in various forms of regulation in member states prior to the implementation of the European Agreements and texts. It will then appraise the extent to which the Framework Agreements and texts, as a result of their implementation, added new content to social and employment regulation in the member states.

Secondly (ii), the chapter will seek to assess the extent to which the Framework

Agreements and texts achieved an impact upon employment relations in sectors and firms in member states. This will be done in two ways. Firstly, the chapter will assess the extent to which the policy mechanisms used to implement the Framework Agreements and texts were likely to bind actors at the sectoral level to the content of the Framework Agreement and texts. Assessing this is vital for several reasons. Crucially, if the Framework Agreements and texts are implemented via a mechanism that has little potential to bind sectoral level actors, then this implies that the impact of the Framework Agreement or text has been very limited. Appraising the potential of the differing policy mechanisms that have been manifest across European member states to implement the Agreements and texts will also allow the thesis to develop a typology of the effectiveness of the various policy mechanisms used by social partners across Europe to implement the Agreements and texts. This will allow the thesis to compare and contrast the differing potential of EU-level 'soft' law to reform and change national systems, and will also provide crucial theoretical clues about the development of industrial relations systems in member states (Crouch and Traxler, 1995; Traxler et al, 2001). To this end, and following Falkner et al (2005), in the conclusion the chapter will propose three 'worlds' in which countries may be classified with regard to the extent that the Framework Agreements and texts became binding on sector and firm-level actors and were likely to lead to an increase in workplace level policies on the topics of teleworking and work-related stress.

The chapter will also consider the extent to which the Agreements and texts have had an impact on employment relations in member states and sectors in terms of the extent to which the Agreements and texts are likely to have led to increased firm-level policies on the topics they addressed. It is vital to consider these aspects as



considering merely the extent to which the content of the Agreements and texts contributes to national regulation and the extent to which the content is likely to be binding upon sector and firm level actors gives only one side of the picture. For example, it may be that in country  $x$ , Agreement  $y$  added comprehensively to national regulation, was binding upon all participants, but in reality had very little impact upon practical employment relations due to the fact that the topic of the Agreement failed to inspire lower level actors. A converse scenario may also be possible. Although no actual data on the quantity of workplace level policies on the topics addressed by the Framework Agreements and texts was obtained, the fact that a comprehensive level of data on the extent to which national social partner representatives estimated that the implemented Agreements and texts would impact upon firm-level contexts was obtained means that the chapter will at least be able to hypothesize the extent to which this was the case.

The chapter will also assess the extent to which the hypotheses advanced in the literature, outlined in chapter three, regarding the factors that explain divergent substantive implementation outcomes, are supportable on the basis of the findings. This will help the thesis identify and analyze the factors that drive differing national and sectoral substantive implementation outcomes. Finally, the chapter will offer a conclusion. This will assess the main findings of the chapter and will also propose the idea of three 'worlds' in which European member states may be bracketed with regard to the degree of the substantive impact of the Agreements and texts within them.

## **11.2 The extent to which the Agreements and texts contributed to the content of national and sectoral regulation**

Firstly, the chapter will outline the extent to which the Telework Agreement added to regulation in member states and sectors, before conducting the same analysis for the Work-related Stress Agreement. Then, it will demonstrate the extent to which the Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking Sector added to national and sectoral forms of regulation, before briefly analyzing the similarities and differences between the Agreements and texts and the differences evident in country and sector specific contexts.

### **11.2.1 Telework Agreement**

As stated in chapter five, the Telework Agreement contained the following clauses:

- (2) A specification of the definition and scope of teleworking
- (3) The voluntary nature of teleworking
- (4) The right of teleworkers to the same employment conditions as normal workers
- (5) Data protection issues
- (6) The right of teleworkers to privacy

- (7) The issue of the provision and maintenance of teleworking equipment
- (8) The health and safety of teleworkers
- (9) The organization of teleworkers' workload
- (10) The right of teleworkers to training
- (11) The inclusion of teleworkers in the terms of collective agreements applicable to 'normal' workers

The data collected during the course of the fieldwork demonstrates that in the countries that were the subject of the study the Telework Agreement often added markedly to the content of national and sectoral regulation. In the Belgian private sector, teleworking had been previously indirectly regulated by regulation on homeworking, but the implementation of the European Agreement for the first time led to regulation that tackled problems that were specific to the teleworking issue. In Belgium, a 1996 Act on Homeworking had developed guidelines related to the contracts of homeworkers and these guidelines had included teleworking as a form of homeworking. However, this Act did not specifically refer to issues such as the organization of the working time of teleworkers and the provision of equipment, and in these fields and others, the implementation of the European Agreement was able to contribute to the level of regulation within the sector. The results of the data from Belgium are also significant due to the fact that the Belgian private sector implementation of the Agreement 'over-implemented' the Agreement in terms of its specification, via Article 6 of the 2005 National Labour Council Agreement on Telework, that contracts agreed upon prior to the commencement of a teleworking arrangement must contain a series of more specific contractual obligations related to

the practice of teleworking. Secondary data sources such as the Visser Report (2008) demonstrate that the phenomenon of 'over-implementation' was by no means confined to Belgium. These sources reveal that in countries such as France and Poland, the European Agreement was also 'over-implemented' in terms of its specifications regarding the contract of teleworkers.

An analysis of the data also reveals that the Telework Agreement added to the body of Danish regulation on the topic of teleworking. This is despite the fact that teleworking had been comprehensively regulated in certain sectors within Denmark prior to the implementation of the Agreement. Within Denmark, teleworking had not been the subject of regulatory attention at the inter-sectoral level or in the majority of sectors, but in sectors such as the local Government and finance sectors, prior Agreements had been concluded that in certain cases provided greater levels of social protection than the European Agreement. In Denmark, the existence of the European Agreement eventually led to a 2006 inter-sectoral Agreement between the Danish social partners that, for the first time, made the topic of telework and the issues particular to it the focus of detailed regulatory attention at the inter-sectoral level. Notably in Denmark, the prior issuing of guidelines to sectoral level negotiators also led to Agreements in sectors such as the industrial sector and commerce sector that took into account sector specific conditions with regard to the regulation of teleworking. Secondary sources demonstrate that in other countries with systems based on sectoral negotiations between social partners similar outcomes took place (European Social Partners, 2006; Larsen and Andersen, 2007). In countries such as Sweden and Germany, the issuing of 'soft' guidelines by the peak level social

partners in many cases led to sectoral implementations of the Agreement that engaged with the teleworking topic in sector specific contexts and subsequently added substantial value to sectoral regulatory contexts.

The implementation of the Telework Agreement also added regulatory value in the UK despite the fact that certain precedents for the regulation of teleworking existed within the state. Various clauses of the Telework Agreement, such as those relating to the health and safety of teleworkers, the issue of data protection, and the discrimination of teleworkers, were indirectly addressed by existing UK laws. The non-legally binding form in which the Telework Agreement was implemented in the UK also had certain precedents within the UK. Non-legally binding guidelines had been drafted on the teleworking topic by several firms and employers associations, and in sectors such as the local Government sector there also existed non-legally binding policies on teleworking. However, the implementation of the Telework Agreement within the UK consolidated, for the first time, a body of guidance on the topic of teleworking that was drafted and signed by the UK social partners and public authorities. Its source of regulatory value lay in the fact that it offered this to the UK policy context.

In the case of the Czech Republic, the data demonstrates that the implementation of the Telework Agreement also added comprehensively to the level of regulation on the teleworking issue. Within the country, there was almost no 'soft' policy or collective regulation on the topic of teleworking prior to the implementation of the

Agreement, and the old Czech labour code contained only references to the topic of employees who worked away from the site of employers without mentioning the topic of teleworking. As a result of the implementation of the Telework Agreement within Czech Republic, teleworking, and the problems specific to it, became regulated for the first time via the law and also through the series of 'soft', bipartite activities that the Czech Social Partners engaged in to implement the Agreement. Secondary sources also demonstrate that this trend replicated itself in certain other new member states. According to the Visser report (2008), in Poland and Hungary few to none of the clauses of the European Agreement had been subject to regulatory attention, and the implementation of the European Agreement via Polish and Hungarian law added to the content of national regulation in an evident manner.

**Table 11.1: Existing regulation on the topic of teleworking prior to the implementation of the European Agreement**

	Belgium	Czech Republic	Denmark	UK
National-level laws/collective agreements	None directly regulating telework	None directly regulating telework	None directly regulating telework	None directly regulating telework
Sectoral agreements	One known agreement in	None	Comprehensive agreements	None

	Flemish police regarding teleworking		regarding practice of teleworking in local government and finance sectors. Agreement on distance working in industrial sector.	
Non-legally binding regulation	Firm-level policies in some firms	Very few firm-level policies	Firm-level policies in some firms	Several firm-level policies. Employers' associations had also published guidelines on topic.

## *Summary*

In summary, it must be stated that a major finding of this study was that the Telework Agreement contributed to the level of national and sectoral regulation in most cases in the countries that were the subject of the study. That the Telework Agreement achieved this level of effect upon the content of national and sectoral employment regulation is attributable to the fact that the subject of the Agreement had not been comprehensively regulated in most of the countries in which the data was collected prior to the conclusion of the Agreement, and also because the clauses contained within the Agreement were specifically and clearly drafted. In many contexts, the key value of the implemented Agreement lay in consolidating existing bodies of regulations and unifying them in one regulation on teleworking. Secondary data also demonstrates that such outcomes occurred in other EU member states. The Visser expert report (2008) on the implementation of the Agreement reveals that clauses such as the definition of teleworking (clause 2), the voluntary character of teleworking (clause 3), and the collective rights of teleworkers (clause 11) had only been indirectly tackled in the great majority of countries, and that the implementation of such clauses subsequently added regulatory value in most member states. A further finding is that, for the most part, there was not a great degree of divergence in outcomes between countries and sectors in terms of the extent to which the Telework Agreement added to the body of existing regulation on the teleworking issue. In the national and sectoral contexts that were the focus of the study, most of the trends were similar. One exception is that of Denmark, where the tendency for regulation to be determined at the sectoral level and the generally high degree of existing social



protection meant that in many sectoral contexts there was existing regulation on the topic of teleworking.

### **11.2.2 Work-related Stress Agreement**

As stated in chapter five, the Work-related Stress Agreement contained the following clauses:

- (2) A statement outlining the Agreement's aim to draw attention to the issue of work-related stress
- (3) A description of work-related stress
- (4) How to identify the problem of work-related stress
- (5) The responsibility of both managers and workers to manage work-related stress
- (6) The identification of potential measures to prevent, eliminate, or reduce work-related stress

In the case of Belgium, the data reveals that the Work-related Stress Agreement did not add substantially to the content of employment regulation within the Belgian private sector. The entire content of the European Agreement was already present in the Belgian private sector via a 1999 Belgian National Labour Council Agreement that had partly acted as the inspiration for the 2004 European Agreement. This

Belgian Agreement exceeded the content of the European Agreement in that it defined work-related stress as a collective condition, and also in that it placed specified obligations upon employers to conduct risk assessments on work-related stress and to develop policies to manage the condition. In Belgium however, the existence of the European Agreement acted partly as a 'trigger' for the conclusion of a 2007 Royal Decree that extended the 1999 National Labour Council Agreement to the Belgian public sector. Further, the existence of the European Agreement led to awareness raising activities in the Belgian private sector that were aimed at increasing the quality of the firm-level implementation of the 1999 Agreement.

The case of Denmark was similar to Belgium in that the European Agreement added substantially to the content of regulation on the work-related stress topic only in certain sectors. The great majority of Danish sectors did not implement the terms of the European Agreement, and an inter-sectoral 'follow-up' Agreement was also not concluded to implement the Agreement. This was due to the view of the Danish social partners that the content of the European Agreement was already present within Danish health and safety regulation and several existing sectoral agreements and that subsequently the European Agreement had little to offer the Danish social partners. However, the European Agreement was implemented in the Danish industrial and local Government sectors in forms that contributed markedly to the extent of sectoral regulation. In these sectors, the phenomenon of work-related stress was clearly identified and defined, and procedures for the work-place level management of the condition were set out. Indeed, these Agreements clearly improved upon the terms within the European Agreement. Secondary sources

(European social partners, 2008) indicated that similar outcomes occurred in Sweden, Germany, and Austria; countries that are also characterized by sectorally based systems of industrial relations. In these countries, although the European Agreement did not add comprehensively to general regulation on the topic of work-related stress, its existence and the subsequent promotion of it by peak-level social partners in these countries led to the Agreement adding to the content of regulation on work-related stress in a certain, limited, number of sectors and firms.

The data also demonstrates that the Work-related Stress Agreements did not add markedly to national regulation on the topic of work-related stress in the UK. Despite the country's reputation for liberal labour market regulation, the issue of work-related stress was already covered by UK health and safety law and also by the UK Health and Safety Executive's Management Standards on Work-related Stress, a non-legally binding set of guidelines on work-related stress. The latter document drew on a substantial body of scientific research to identify a series of elaborated, specific steps that would aid firms in developing work-place policies to identify and tackle the problem of work-related stress. The document also enjoyed a higher profile in the UK policy context than the European Agreement. The above factors precluded the Work-related Stress Agreement from exercising a major impact upon the content of UK regulation on work-related stress.

The data demonstrates that the implementation of the Work-related Stress Agreement contributed to the content of employment regulation on a scale in the Czech Republic

that it did not in the other three countries that were the subject of the study. Within Czech Republic, the topic of work-related stress had been subject to no legal regulation prior to the implementation of the European Agreement, and had also attracted very little in the way of sector and firm level regulation and non-legally binding guidelines. The implementation of the Agreement thus made the topic of work-related stress subject to legal regulation in the Czech Republic for the first time, and also led to the topic entering mainstream policy discourse through the non-legally binding bi-partite and unilateral promotional activities that the Czech social partners engaged in that addressed all areas of the phenomenon of work-related stress. Secondary sources also reveal that the implementation of the Work-related Stress Agreement had a key impact upon the content of employment regulation in other new member states (European social partners, 2008). Similar outcomes to that of Czech Republic occurred in Latvia and Hungary where the Agreement was implemented via the law, and Slovenia, where a tripartite agreement was concluded between the social partners and the Slovenian Government.

**Table 11.2: Existing regulation on the topic of work-related stress prior to the implementation of the European Agreement**

	Belgium	Czech Republic	Denmark	UK
National-level laws/collective agreements	1999 National Labour Council Agreement in private sector that regulated the topic of work-related stress in greater detail than European Agreement.  Nothing in public sector	Indirectly regulated through health and safety regulation	Comprehensively covered through Danish health and safety legislation	Indirectly regulated through health and safety regulation
Sectoral	None reported	None	Comprehensive	None reported

agreements		reported	agreements on topic in financial services and state sector	
Non-legally binding regulation	Some firm- level policies on work- related stress	Very few firm-level policies on work-related stress	Some firm-level policies on work- related stress	2005 Health and Safety Executive Management Standards on Work-related Stress  Several firm- level policies on work- related stress

*Summary*

In summary, it is a key finding of this study that the Work-related Stress Agreement did not contribute markedly to the content of national and sectoral regulation in three of the countries in which the study was conducted. This is attributable to the

existence of prior forms of regulation in the majority of contexts, and also to the fact that the content of the European Agreement was viewed as 'weak' by many national actors. With regard to the issue of divergence amongst countries, several trends are remarkable. Firstly, in UK, Belgium and Denmark, the Agreement contributed, on the whole, little to national regulation on the work-related stress topic. However in certain sectoral contexts, such as the Danish local Government and industrial sectors, the Agreement made a contribution to existing levels of regulation. In Czech Republic, the Agreement did contribute to the level of national regulation. This is attributable to the lack of existing regulation on the topic of work-related stress within Czech Republic prior to the implementation of the European Agreement.

### **11.2.3 Framework of Actions on Lifelong Learning and Joint Declaration on Lifelong Learning in the European Banking Sector**

As stated in chapter five, the Framework of Actions on Lifelong Learning identified the following four priorities with regard to lifelong learning policy.

- (1) To identify and anticipate the competencies and the qualifications needed
- (2) To recognize and validate competencies and qualifications
- (3) Informing, supporting and providing guidance
- (4) Mobilizing resources

The Joint Declaration on Lifelong Learning in the European Banking Sector mirrored

the four priorities of the cross-sectoral text, yet applied them specifically to the European banking sector.

It emerged that in the old member states that were the subject of the study the Framework of Actions on Lifelong Learning seldom had a discernible impact upon the formulation of policy on lifelong learning. In Denmark, the text had little impact upon the content of national regulation on lifelong learning due to the fact that lifelong learning policy within the country was more highly developed than the terms of the European text. This was also the case in the UK, where lifelong learning policy had been a priority for national social partners prior to the existence of the European text. The data gathered at the European level also confirms that similar outcomes occurred in other old member states. These outcomes were also attributable to the existence of advanced existing policy on lifelong learning in these countries.

It is a further finding of the study that the Joint Declaration on Lifelong Learning in the European Banking Sector had a rather greater impact upon the content of lifelong learning policy in the European banking sector in old member states than the Framework of Actions on Lifelong Learning did in old member states. This was attributable to the fact that the European sectoral level text offered targeted solutions to sectoral level actors and engaged them more directly than in the inter-sectoral text. In the Danish and Belgian banking sectors the Joint Declaration on Lifelong Learning in the European banking sector acted as an inspiring factor for the



development of collective agreements on lifelong learning in the two sectors. Data obtained at the European-level also demonstrates that the existence of the text helped coordinate sectoral policy on lifelong learning in many national banking sectors. This was particularly the case in new member states. In the Hungarian banking sector for example, the terms of the European banking sector text inspired an agreement on lifelong learning that introduced the topic into sectoral regulation for the first time.

### *Interim conclusion*

The study found that the extent to which the Framework Agreements and texts on Lifelong Learning impacted upon levels of regulation within countries was contingent upon three main factors. These were (1) the Agreement or text in question and the level of existing regulation within countries, (2) whether the country in question was an old or new member state, and (3) the relative emphasis on sectoral regulation within a given country. A clear division (1) between the degree of impact that the Telework and Work-related Stress Agreements achieved in states was apparent. In the majority of national contexts, the Telework Agreement achieved a significant degree of impact upon the level of regulation. By way of contrast, the Work-related Stress Agreement did not achieve this in the majority of cases. This was mainly attributable to differing levels of existing national regulation on the topics of teleworking and work-related stress. The texts on Lifelong Learning, owing to their 'softer' nature, did not achieve a key level of impact.

There was also a basic difference (2) between the effects of the Agreements and texts upon regulatory contexts in old and new member states. In Czech Republic, the data revealed that the Agreements had a greater impact upon levels of regulation owing to the fact that there was less regulation on the topics addressed by the Framework Agreements prior to their implementation. Secondary data largely corroborates this picture with regard to the other new member states. Finally (3), there was a tendency for internal diversity with regard to the extent to which the Agreements contributed to regulation to be more pronounced in those countries where the sector is the level at which employment conditions are mainly determined. In Denmark, the impact of the Agreements upon differing sectors was more variable owing to the tendency of the Agreements to have differing levels of impact upon differing sectors. This was also manifest in Belgium, where there was a marked difference in the effect of the Agreements upon policy contexts within the private and public sectors.

### **11.3 The Impact of the Agreements and texts**

As outlined in the introduction to the chapter, the chapter will now assess the impact of the Agreements and texts in terms of their effect upon the firm and sector levels in member states. This section will incorporate a sub-section on (i) the extent to which the policy tools used to implement the Agreements and texts were able to bind sectoral level actors to their content, and (ii) the extent to which the Agreements were likely to lead to an increase in firm-level policies on the topics of teleworking and work-related stress and lifelong learning.

### **11.3.1 The extent to which the tools used to implement the Agreements and texts were able to bind lower level actors to their content**

Concerns are expressed within the literature that 'hard' regulation emanating from the inter-sectoral level is not always implemented effectively by sectoral level actors (Falkner et al, 2005; Marginson and Sisson, 2004). However, it is a finding of the study that with regard to the implementation of the Agreements in national contexts, 'hard' regulation appears to have been able to bind sectoral level actors at least adequately to the content of the Agreements and texts, and also appears to have achieved this more effectively than several of the non-legally binding alternatives used to implement the Agreements and texts. This was demonstrable in the cases of Belgium and Czech Republic. In these countries, the view of social partners was that the only way to comprehensively bind sectoral level actors to the content of the Framework Agreements and texts was to use legal instruments for implementation. The alternative 'soft' means used to implement the Agreements and texts within the countries were unlikely, in the view of the Belgian and Czech social partners, to bind sectoral level actors to the content of the Agreements and texts as effectively as the 'hard' means used to implement the Agreements and texts within the states.

It is a further finding of the study that certain non-legally binding policy instruments are able to bind the content of the Agreements and texts more effectively upon sectoral level actors than other non-legally binding policy instruments. This was

evident in the case of Denmark, where the Framework Agreements were partly implemented at the inter-sectoral level via the issuing of non-legally binding implementation guidelines to the Danish sectoral level social partners. As a result of the issuing of these guidelines, the Framework Agreements were implemented autonomously in several Danish sectors. It was also found that the Danish social partners regarded that implementation through the established route of collective agreements, rather than through legal instruments, was likely to solicit greater commitment to the terms of the European Agreements in the context of the Danish system.

In countries such as Denmark, where there is a high degree of coordination between tiers of collective bargaining, secondary sources such as the Visser Report (2008) and the European social partner report (2006) on the implementation of the Telework Agreement also indicate that the use of non-legally binding guidelines by peak level actors to draw the attention of affiliates to the existence of the European Agreements can imply a greater likelihood of the content of the Agreements being incorporated into lower level collective agreements. In states such as Germany and Sweden, several sectoral level agreements were concluded to implement the Telework and Work-related Stress Agreements as a result of the prior publication of peak-level guidelines on the Agreements.

In countries with systems with a lesser degree of coordination between levels, it was found that the use of non-legally binding guidelines to implement the Agreements

and texts were less effective in inspiring the conclusion of sectoral agreements to implement the Agreements and texts. In the UK, the data strongly indicates that the non-legally binding guidelines used at the inter-sectoral level to implement the Framework Agreements and texts were very likely to have been unable to produce agreements at the sectoral or firm level within the country. In the UK, although it was forecast that the non-legally binding nature of the tools used to implement the Agreements might make the Agreements more attractive to certain employers, it was generally considered by social partner officials that the dis-organized nature of bargaining arrangements and low levels of trade union density in the country implied that very few sectoral or firm level agreements had been concluded as a result of the Agreements and texts.

### **11.3.2 Hypothesized impact of the Agreements at firm-level**

Although no data was collected on the firm-level impact of the Agreements, data were obtained on the degree to which national social partner organizations regarded that the Agreements would alter workplace level practices on the topics of teleworking and work-related stress. In the absence of actual data obtained by this study, this social partner data may throw light upon the issue of the impact of the Agreements at the company and workplace level. However, caution is required in interpreting these views as they are not necessarily dispassionate observers, but may have an interest in ‘talking up’ regulatory initiatives which they are implicated in.

### *Telework Agreement*

It was found by the study that the Belgian social partner organizations were generally skeptical about the degree to which the implementation of the European Agreement in Belgium would lead to the uptake of teleworking in Belgium. It was forecast by the Belgian social partners that the impact of the European Agreement in Belgian workplaces would be very limited as a result of a trade union culture that feared that teleworking would individualize and isolate workers, and the existence of concerns that teleworkers would be subject to exploitation in the areas of working time measurement and health and safety regulation despite the fact that the implemented European Agreement specifically addressed these areas. The Belgian social partners also forecast that the impact of the Agreement would be limited as a result of fears about the potential loss of managerial control of workers and because Belgium was a small country in which the majority of employees lived near their workplace and teleworking solutions were thus not required.

In Denmark, the Danish social partners reported that the impact of the Telework Agreement upon the uptake of teleworking within Denmark was likely to have been mixed. This was attributed to the degree of existing regulation on the topic of teleworking within Denmark, and also to the fact that in many sectors (such as education and construction), teleworking solutions were likely to be unsuited to the pre-dominant forms of working within the sector. However, in certain sectors, it was forecast by the social partners that the Agreement would be likely to achieve an

impact.

In the UK, despite the fact that the Telework Agreement was implemented via a non-legally binding instrument, it was found that the UK social partner organizations reported that the Telework Agreement was likely to achieve a modest impact at firm-level in the UK. This was attributed by the interviewees to the rising popularity of teleworking in the UK, the fact that the implemented Telework Agreement was one of the only documents that existed offering guidance on the issue, and also because the social partner organizations reported high levels of interest from their members on the topic of teleworking.

In Czech Republic, it emerged that the Czech social partners did not consider that in the short-term, the Telework Agreement would lead to a major uptake of teleworking in Czech firms. This was primarily attributed to the existing lack of popularity of teleworking within the country. However, it was forecast by the Czech social partner officials that, in the longer term, the impact of the Agreement was likely to be greater. This was attributed to the status of the Agreement as the only form of regulation on the topic of teleworking in Czech Republic and the possibility that teleworking as a mode of working was likely to increase in fashion in Czech Republic.

### *Work-related Stress Agreement*

In Belgium, the prospect of the European Agreement achieving a direct impact upon work-related stress policies in the Belgian private sector was precluded by the fact that the Agreement was not implemented in the Belgian private sector owing to the existence of prior regulation. However, it emerged that the Belgian social partners regarded that the promotional activities to raise awareness of the 1999 Belgian Agreement that the European Agreement had triggered were likely to have a positive impact at firm-level in terms of the degree to which the 1999 Agreement was likely to aid the management of work-related stress in individual workplaces within the Belgian private sector. It was also found that Belgian social partner interviewees considered that the 2007 Royal Decree in the Belgian public sector that had implemented the European Agreement within the sector was likely to lead to a greatly increased level of policies on work-related stress in public sector workplaces.

In Denmark, it emerged that the Danish social partners predicted that, in the majority of sectors, the Work-related Stress Agreement would trigger few workplace-level policies to regulate work-related stress. This was attributed to the existence of prior regulation on the topic of work-related stress and the perceived weakness of the content of the European Agreement. In sectors such as the industrial sector and local Government sector where the Agreement was implemented comprehensively however, social partners reported that the European Agreement was likely to have a key impact upon the regulation of work-related stress within the sector. Social



partner officials alluded to the existence of several works council agreements in these sectors that had been inspired by the European Agreement. It is a further finding of the study that, in the UK, UK social partner interviewees generally did not consider that the implemented Work-related Stress would achieve a major impact upon the work-place level management of work-related stress in the UK. Although it was acknowledged that 'Work-related Stress: A Guide' had been popular amongst some firms, it was also stated that the existence of the more high profile HSE 'Management Standards on Work-related Stress' and the very 'soft' nature of the UK text implied that the implemented European Agreement was unlikely to achieve a major impact in UK workplaces.

In Czech Republic, it was found that Czech social partner officials doubted that the implemented Work-related Stress Agreement would exercise a key impact upon the management of work-related stress in Czech workplaces within the short term. This was attributed to a lack of interest in the topic amongst firm-level actors. However, it was also stated by Czech social partner officials that the impact of the Agreement at the firm-level was likely to be greater in the longer term. This was attributed to the fact that the implemented European Agreement was one of the only existing regulations on the topic and that the pace of work was likely to increase in intensity in Czech workplaces in future years.

### *Interim conclusion*

Various points must be made in summary. In line with the expectations of the literature (Marginson and Sisson, 2004), it emerged that the capacity of 'hard' regulation to bind sector and firm level actor to the terms of European Framework Agreements was greater than that of 'soft' law. Within the countries researched, it was demonstrable that in the cases where the Agreements and texts were implemented via the use of a 'hard' regulatory mechanism the Agreements and texts became binding upon sectoral and firm level actors. This was the case in both Belgium and Czech Republic. It is a further finding of this study that the capacity of 'soft' implementations to bind lower level actors varies according to the form of 'soft' implementation and the national system in question. In Denmark, it was demonstrable that the high level of coordination between bargaining tiers implied that the 'soft' guidelines issued by the inter-sectoral social partners were more effective than in countries such as the UK and Czech Republic, where there is a low level of coordination between bargaining tiers and the 'soft' means used to implement the Agreements and texts had little effect.

It is a further finding of the study that there is not a necessary relationship between the extent to which the Framework Agreements are binding upon lower level actors, and the extent to which the Framework Agreements inspire policies at lower levels. In Belgium, despite the fact that national actors regarded that the implemented Telework Agreement would be binding upon firm-level actors, they also considered

that the Agreement would be unlikely to inspire the uptake of teleworking in many contexts owing to the existence of several cultural and social factors within Belgium that would be likely to impede the development of teleworking. The study also found that the Telework and Work-related Stress Agreements were likely to inspire policies on teleworking and work-related stress to differing degrees in differing national contexts. In Belgium and Czech Republic, several potential impediments existed that were likely to prevent the spread of teleworking, whilst in the UK social partner representatives regarded the practice of teleworking as far more likely to be taken up at the firm level.

#### **11.4 A review of the hypotheses advanced in chapter three**

In line with the hypotheses outlined in chapter three of the thesis regarding the factors that were likely to enhance or impede the extent of the substantive effectiveness of the Agreements and texts, the thesis will now review its findings against the hypotheses established in the literature. These findings will then to establish the country and sector specific factors that are likely to enhance the substantive effectiveness of the Agreements and texts.

**Table 11.3 Variables explaining differential substantive implementation outcomes**

Country/ sector	The existence of a pre- existing policy on the topic of the Framework Agreement	The level of interest in the topic of the Agreement or text	Coordination of bargaining levels	The existence of an erga omnes procedure	Union and employer association density rates	Homogeneity of sector	'Europeanization' of sectoral markets (labour markets and product markets)	EU-level pressures for the formation of an SSDC	
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Belgium	3	1	1	3	1	n/a	n/a	n/a	
Belgian banking sector	2	1	1	3	1	1	1	1	
Belgian local Government sector	2	1	1	3	1	1	1	1	
Czech Republic	3	1	3	3	3	n/a	n/a	n/a	
Denmark	3	2	3	2	3	n/a	n/a	n/a	
Danish	3	2	3	2	3	1	1	1	

banking sector									
Danish local Government sector	3	2	3	2	3	1	1	1	
UK	3	1	3	3	3	n/a	n/a	n/a	
UK banking sector	2	1	3	3	3	1	1	1	
UK local Government sector	2	1	3	3	3	1	1	1	

Key:

3 = Strong relationship between existence of factor and implementation outcome

2 = Medium relationship between existence of factor and implementation outcome

1 = Weak relationship between existence of factor and implementation outcome

#### **11.4.1 Factors that enhance the extent to which the Agreements and texts are likely to contribute to the content of national and sectoral regulation**

i) Convergence with national level policy agendas

Within the literature, it is a well established point that where the topic of the EU-level policy converges with the policy agendas of national and sectoral actors then the effect upon national and sectoral forms of regulation is likely to be greater (Leonard, 2005; Lopez-Santana, 2006; De La Porte and Pochet, 2002; Falkner et al, 2005). With regard to the extent to which the Agreements and texts that are the subject of the study added to the content of national and sectoral regulation, the study found only limited evidence of the above principle in operation. In Belgium, where the topic of teleworking was not particularly prominent within the existing Belgian policy agenda due to limited interest in the topic, the European Telework Agreement nevertheless substantially added to the content of regulation on teleworking. The same was true with regard to the cases of the implementation of the Telework and Work-related Stress Agreements in Czech Republic, where there were limited levels of interest in the topic of the Agreements, but the Agreements nevertheless had a significant effect upon the content of national regulation.

The data collected by the study offered limited evidence of the principle that interest in the topic of the Agreement or text led to the Agreement or text in question



achieving a greater level of effect upon national and sectoral regulation however. In many sectors in Denmark, the Telework and Work-related Stress Agreements were not implemented autonomously by sectoral level actors due to a lack of interest in the content of the Agreements. Secondary data sources such as the Visser report (2008) also reveal that in countries such as Germany and Sweden with similar sectorally based systems of collective bargaining to Denmark such an effect also occurred. The European social partner report on the implementation of the Telework Agreement also reveals that in Lithuania, Estonia, Bulgaria, Cyprus and Malta the Telework Agreement was also not implemented at all due to a lack of interest in its content from national social partners.

- ii) The degree of national and sectoral regulation that exists on the Framework Agreement or text prior to its implementation

As outlined in chapter three, various scholars assert that there is a relationship between the extent to which EU-level regulation contributes to the level of regulation within national policy contexts, and the extent of existing regulation on the relevant policy at the national level (Falkner et al, 2005; La Porte and Pochet, 2005; Jacobssen and Schmidt, 2002). With regard to the extent to which the Agreements and texts that are the subject of the study contributed to the level of regulation within national policy contexts, the study found that the effect of the Agreements and texts is greatly facilitated when there is no existing policy on the topic of the Agreement or text within a country or sector. This was evident in the case of the implementation of the Telework Agreement in the Belgian private sector. In this instance, the lack of

the existence of prior regulation specific to the teleworking issue meant that the majority of the content of the European Agreement was new in the context of Belgian private sector regulation. With regard to the Work-related Stress Agreement, the case of the implementation of the Agreement in the Danish local Government sector also demonstrates this principle. In other sectors in Denmark, the existence of prior regulation on the topic of work-related stress meant that the content of the European Agreement had little to no effect upon sectoral regulatory contexts. However, within the local Government sector, the fact that there was no regulation on the topic of work-related stress meant that the European Agreement had a marked effect upon sectoral regulation. In Czech Republic, the lack of pre-existing regulation on work-related stress meant that the European Agreement had a comprehensive effect upon the content of Czech regulation on the topic.

Conversely, the data confirms the argument that when a body of regulation on the topic of European regulation exists in a country or sector then the impact of the Framework Agreement or text upon the content of employment regulation will be more minimal. In the Danish local Government and finance sectors, the European Telework Agreement had very little impact upon the content of sectoral regulation owing to the fact that quite developed regulation on the topic of teleworking existed prior to the implementation of the European Agreement. Also in Denmark, the existence of comprehensive labour law on the topic of work-related stress and several sectoral agreements on the topic meant that the European Agreement generally had a very small effect upon the content of employment regulation in the country. In the UK, the existence of the HSE 'Management Standards for work-

related stress' also prevented the content of the European Agreement from having a major impact upon the level and quality of UK regulation of the work-related stress issue. In Belgium, the existence of a 1999 NLC agreement on the topic of work-related stress precluded the European Agreement from exercising an impact in the Belgian private sector. The general effect of the Framework of Actions on Lifelong Learning upon the content of lifelong learning policy in UK and Denmark also confirm this principle. Here, the existence of developed lifelong learning policies prior to the existence of the EU text led to the European text achieving minimal effects.

#### **11.4.2 Factors that enhance the extent to which the Agreements and texts are likely to impact upon lower levels**

##### *Industrial Relations variables*

##### iii) Coordination of bargaining levels

Keller (2003) argued that in those countries where collective bargaining levels were coordinated the Framework Agreements and texts were likely to achieve a greater impact at lower levels. The data demonstrates that there is a discernible relationship between the level of impact of the Agreement and texts and the extent to which there is coordination of collective bargaining tiers in the country concerned. In Denmark,

the fact that there was substantial coordination between bargaining levels and an inbuilt collective agreement monitoring system meant that the terms of the two Agreements were largely binding upon lower level actors. Further, it was reported that several firm-level policies were also concluded on teleworking and work-related stress as a result of the Agreements; according to social partner representatives this was due in part to the coordination of bargaining levels within Denmark. Secondary sources report that similar effects were evident in states such as Germany and Sweden with high degrees of coordination between tiers of collective bargaining (Larsen and Andersen, 2007). Despite the high degree of coordination between bargaining tiers in Belgium however, the high degree of impact of the Telework Agreement was found to be attributable to the use of an *erga omnes* procedure within the Belgian context rather than the high degree of coordination between bargaining levels. Thus, it is a further finding of the study that where both an *erga omnes* procedure and a high degree of coordination between bargaining levels exists within a country it is the existence of the *erga omnes* procedure that is the more primary in securing higher degrees of impact.

Cases that demonstrate the converse of this principle were found in Czech Republic (with reference to the supplementary tools used to implement the Agreements) and UK. In these countries, very similar effects were evident in that it was found that the non-legally binding routes that were used to implement the Agreements and texts were unlikely to bind lower level actors to the terms of the Agreement and texts. Further, it was also thought by national social partners that the non-legally binding routes used to implement the Agreements were unlikely to inspire many firm-level

policies on the topics of teleworking and work-related stress. In both cases, the lack of coordination between bargaining levels within the countries was a major cause of this.

iv) Rates of collective bargaining coverage

Keller also argued (2003) that high rates of collective bargaining coverage in countries and sectors was likely to increase the substantive effectiveness of the Agreements and texts. The data demonstrates that there is clear evidence of a relationship between rates of collective bargaining coverage in countries and sectors and the extent to which the content of the Agreements and texts are likely to be binding upon firm-level actors. In the Belgian private sector, the use of an *erga omnes* mechanism to implement the Telework Agreement and the 100% rate of coverage this entailed led to the content of the Agreement becoming more binding upon firm-level actors within the sector. In Denmark, the Framework Agreements binded lower level actors to their terms more successfully and also, according to social partner representatives, inspired a moderate amount of workplace level policies on the topic of teleworking and work-related stress. This outcome was linked to the high levels of collective bargaining coverage within the country according to the social partner representatives. Secondary sources report that similar effects were also evident in a country such as Sweden with relatively high levels of collective bargaining coverage (Larsen and Andersen, 2007). Conversely, in countries and sectors where there were lower rates of collective bargaining coverage, the

Agreements and texts were less binding upon firm-level actors. Within UK, the lack of impact of the Agreements was attributable to low rates of collective bargaining coverage within the country. In the Czech Republic, the non-legally binding mechanisms that were used as supplementary tools to implement the Agreements did not achieve significant levels of impact within firms and sectors due to the low rate of collective bargaining coverage within the country.

### *Sectoral variables*

#### v) Homogeneity of sector

Keller and Sorries (1998) argued that sectors that were 'homogenous' in scope were likely to be more effective in implementing European-level output. With regard to the impact of the implemented Agreements and texts, evidence was found of this to only a limited degree and a robust link between the extent of sectoral homogeneity and the level of impact of the Agreements and texts thus cannot be established. As was stated in chapter three, in the countries that are the subject of the study, the local Government is a more homogeneous sector than the banking sector in terms of its sphere of economic activity. It emerged that the impact of the Agreements and texts had been more considerable in the local Government sectors that were the subject of the study than the banking sectors (see table 3). In the Danish and UK local Government sectors, implementations were affected of the Work-related Stress Agreement that guaranteed an impact within the sectoral contexts, whereas

implementations of the Agreement in the Danish and UK banking sectors were not affected. However, it is very arduous to establish a causal link between the level of impact manifest and the economic homogeneity of the sector. Therefore, a robust link cannot be inferred from the findings of the study between homogeneity of sector and the extent of the impact of the Agreements and texts.

- vi) 'Europeanization' of sectoral markets (labour markets and product markets)

Leisink (2002) argued that where there were 'Europeanized' sectoral labour and product markets within sectors then the impact of European-level output within the sectors was likely to be greater. With regard to the extent of the impact of the implemented Agreements, the data found no link between this factor and the extent of the impact of the Agreements. As was stated in chapter four, there is greater 'Europeanization' of sectoral markets to be found in the European banking sector than in the European local Government sector. However, it emerged that there was more impact of the Agreements in the local Government sectors that were the subject of the study than the banking sectors (see table 3). Further, there was no evidence found of a discernible link between factors related to the economic profiles of the sectors and the extent of the impact of the Agreements and texts. Owing to this, the hypothesized link does not find support from the findings.

vii) EU-level pressures for the formation of an SSDC

Leisink (2002), Keller and Sorries (1998), and Kirton-Darling and Clauwaert (2003) argued that where there were significant EU-level pressures for the creation of an European sectoral social dialogue committee (SSDC) within sectors then the impact of EU-level output within the sectors was likely to be greater. As was stated in chapter four, there are equal EU-level pressures for the formation of an SSDC in both the European banking sector and the European local Government sector. However, the data obtained offered no evidence of any potential link between the series of factors identified by Leisink that increase EU-level pressures for the creation of an SSDC, and the extent of the impact of the Agreements and texts within the two sectors. Thus, the hypothesized link does not find support from the findings.

*Summary*

Above, the variables outlined in chapter three regarding the extent of the substantive effectiveness of the Agreements and texts were outlined. It emerged that the existence of a pre-existing policy on the topic of the Agreement or text was a key variable in explaining substantive implementation outcomes, but that there was only limited evidence of a link between ‘effective’ substantive implementation outcomes and the level of social partner interest in the topic of the Agreement or text. Further, it emerged that there was a strong relationship between ‘effective’ substantive implementation outcomes and the coordination of social dialogue levels and rates of



collective bargaining coverage in countries. Finally, no link was found between substantive implementation outcomes and the sectoral variables advanced.

## **11.5 Conclusion**

Several key findings emerge from the analysis presented. Firstly, there was a basic variance in the degree to which the different Agreements and texts that were the subject of our project had an effect upon substantive aspects of the employment relationship in the countries and sectors that were the subject of study. The Telework Agreement had a quite comprehensive impact upon levels of regulation within states and sectors. This is attributable to the lack of prior regulation on the topic of teleworking in the majority of countries and sectors. By way of contrast, the Work-related Stress Agreement did not achieve a comprehensive impact upon levels of regulation within countries and sectors. This is attributable to the fact that, in the majority of countries and sectors, there was a relatively high degree of existing regulation on the topic of work-related stress, and to the fact that many national actors perceived the content of the Work-related Stress Agreement as 'weak'. The Framework of Actions on Lifelong Learning did not achieve a great impact upon levels of substantive regulation in member states and sectors. This is due to the content of the text being largely present in the majority of member states and sectors. By way of contrast, the Joint Declaration on Lifelong Learning in the European Banking Sector had a rather greater impact upon levels of substantive regulation in the European banking sector. This is attributable to the fact that the text focused very specifically upon regulation within the banking sector.

The factors that explain differing substantive implementation outcomes were also outlined. With regard to the extent to which the Agreements and texts impacted upon substantial aspects of the employment relationship, a different set of explanatory factors animate the set of outcomes that were found by the study regarding (i) the extent to which the Framework Agreements and texts contributed to the level of employment regulation within member states, and (ii) the extent to which the Framework Agreements became binding upon lower level actors and were, according to the views advanced by social partner officials, likely to lead to an increase in workplace level policies on the topics of teleworking and work-related stress.

With regard to (i) the extent to which the Framework Agreements and texts contributed to the level of employment regulation within member states, it is a major finding of this study that the key factor that explains the impact of the Agreements and texts upon levels of national and sectoral regulation is the level of pre-existing regulation on the topic of the Agreement or text prior to the implementation of the Agreement or text. Thus, it is a policy related factor, rather than a structural factor, that is the major explanatory factor in this case. Further, there is also a basic division between the extent to which the Agreements and texts impacted upon national and sectoral regulatory systems in old and new member states that was driven by the differing levels of existing regulation on the topics of the Agreements and texts in the differing contexts. Within old member states, the generally high level of existing regulation on the topics of the Agreements and texts often precluded the Agreements and texts from exercising a key impact upon regulatory contexts. By way of contrast, in new member states generally low level of existing regulation on the topics of the

Agreements and texts facilitated the extent to which the Agreements and texts exercised an impact upon regulatory contexts. As table 3 demonstrates, it is a further finding that there are no greatly consistent inter-old member state or inter-new member state trends, and the basic division is thus between old and new member states.

In terms of (ii) the extent to which the Framework Agreements became binding upon lower level actors and were likely to lead to an increase in workplace level policies on the topics of teleworking and work-related stress, various trends were manifest. Concerning the degree to which the implemented Framework Agreements became binding upon sector and firm-level actors, the data demonstrates that European member states may be classified on the basis of three 'worlds'. This classification of states into 'worlds' follows Falkner et al's (2005) fruitful use of such an analytic mechanism. Firstly, there is what will be called the 'world of static regulation'. In this 'world', the existence of a tier of national inter-sectoral collective bargaining or the proximity of the social partners to the legislative process allows the relevant national social partners to affect implementations that are generally binding upon lower-level actors. Of the countries studied, the Czech Republic and the Belgian private sector fit into this classification. Secondly, there is what will be called the 'world of coordination'. In this world, although the inter-sectoral social partners who were signatory to the European Agreements do not have the appropriate policy tools to make the Agreements binding upon all lower level actors, the generally high degree of coordination between bargaining levels within these countries implies that the inter-sectoral social partners are able to coordinate implementation outcomes to ensure that the Agreements are implemented, and subsequently become binding, in

several sectors. Denmark may be classified within this 'world'. Other countries that were not the focus of the study but may be classified as belonging within this 'world' include Germany and Sweden. Finally, there is what will be termed the 'world of non-coordination'. In this world, the national inter-sectoral social partners do not possess the appropriate policy tools to make the Agreements binding upon all sectoral and firm-level actors, and, owing to the non-coordinated nature of collective bargaining tiers within the countries, also do not possess the ability to coordinate the implementation activities of lower level actors. As a result of this, the implementation activities affected in these countries are generally unlikely to bind lower level actors to the content of the Agreements. The UK may be classified as belonging to this 'world'.

## **Chapter 12: Assessing the findings and their implications**

This chapter concludes the thesis and is divided into four sections. Firstly (i), the chapter will summarize the empirical findings of the thesis. Here, the findings of the thesis on the extent to which ‘effective’ implementation took place, the efficacy of the national ‘procedures and practices’ implementation clause, and the factors that explain variance in national and sectoral implementation outcomes will be set out. Secondly (ii), the chapter will set out the wider analytical implications of the empirical findings that emerged. These implications relate to the literature, reviewed in chapter two, and relate to the Europeanization of industrial relations, EU-level industrial relations and European ‘soft’ law governance. Then (iii), the chapter will establish the implications for European social policy, and will set out a series of policy recommendations based on the findings that emerged. This section will discuss the relative advantages of the non-legally binding and legally binding routes for the implementation of European social partner framework agreements, and will also identify ways in which the Agreements and texts could operate more effectively as instruments of European social partner governance. Finally (iv), the chapter will make a series of recommendations for future research studies.

### **12.1 Empirical Findings**

The section reviews the main findings that relate to (i) the procedural implementation of the Agreements, (ii) the substantive implementation of the Agreements and texts, and (iii) the factors that explain differing national and sectoral implementation outcomes.

### **12.1.1 The procedural implementation of the Agreements**

Two procedural benchmarks were developed to appraise whether 'effective' implementation outcomes had occurred in member states and sectors. The first of these related to whether the Agreements were implemented in some procedural form in member states and sectors. This benchmark has been widely employed by other authorities who have sought to assess the implementations of the Agreements (European Social Partners, 2006, 2008; Visser and Martin, 2008). The findings that emerged largely mirrored those of these authorities. Specifically, the Agreements were implemented 'effectively' in most cases. Aside from very minor infringements with the implementation of the Telework Agreement in the Belgian private sector, Denmark and Czech Republic (where, in all three cases, the Agreement was implemented marginally late), both Agreements were implemented in some procedural form within three years in the countries that were the subject of the study. On the basis of the first benchmark then, it was found that the Agreements were largely implemented 'effectively'.

Chapter three proposed a second benchmark to assess the 'effective' implementation of the Agreements. This involved assessing whether the Agreements had been implemented in accordance with national 'procedures and practices' for social dialogue in the member states. This benchmark was not elaborated by other authorities in their implementation reports. Visser (2008) considered that national

'procedures and practices' had mostly been adhered to in the case of the implementation of the Telework Agreement, but did not critically dissect the viability of the national 'procedures and practices' clause. Chapter three outlined that it was crucial to do this given that the national 'procedures and practices' implementation clause represents the only specific way European-level actors may insist on implementation outcomes.

It has been demonstrated that if implementation outcomes are assessed on the basis of the national 'procedures and practices' implementation clause then the picture of whether 'effective' implementation took place is rather more mixed. If the implementation outcomes that took place are compared against national actors' definitions of national 'procedures and practices' for social dialogue, then, in many cases, the Framework Agreements were not implemented in forms that were consistent with national 'procedures and practices' for social dialogue. In the UK, where national 'procedures and practices' were understood as being composed of a mixture of de-centralized social dialogue and the use of the law, 'effective' implementation cannot be said to have occurred. In Denmark, where national 'procedures and practices' were interpreted as sectoral collective agreements, the fact that the Framework Agreements were not implemented in many sectors implies that 'effective' implementation cannot be said to have taken place. In the Belgian private sector and Czech Republic however, implementation outcomes did take place that were consistent with actors' interpretations of national 'procedures and practices' for social dialogue within the countries. This was largely attributable to the existence, in both countries, of an inter-sectoral level policy forum in which the organizations who had been signatory to the European Agreements were able to regulate the

employment relationship.

A further key finding was that in many respects the national ‘procedures and practices’ implementation clause is a fragile one. Four problems with the clause were identified. Firstly (i), in several countries the constitution of national ‘procedures and practices’ for social dialogue are not clearly defined and are often contested by national actors. In the UK, the fact that national ‘procedures and practices’ for social dialogue are composite of a number of differing modes of regulation meant that national actors found it very hard to develop a definition of national ‘procedures and practices’ that all parties agreed upon. Secondly (ii), it was found that the issue addressed by the Framework Agreement sometimes fell outside the remit of social partner competence. The fact that the topic of work-related stress was traditionally regulated by the Danish state rather than the Danish social partners meant that there was confusion regarding the form in which the Work-related Stress Agreement was to be implemented in Denmark. Also (iii), many of the organizations who had been signatory to the European Agreements did not play a mandated role in national ‘procedures and practices’ for social dialogue. In such instances, it became difficult for these actors to participate in national ‘procedures and practices’ for social dialogue during the implementation phase. Finally (iv), it was found that national ‘procedures and practices’ for social dialogue were themselves liable to change, and that in several new member states, national ‘procedures and practices’ for social dialogue were at a youthful stage in their development. These factors were found to place serious strain upon the viability of the national ‘procedures and practices’ implementation clause.



In conclusion, that the national ‘procedures and practices’ implementation clause would appear to be characterized by these problems should be of concern to European-level actors. Indeed, the fact that the clause was drafted two decades ago when the European Union numbered only the twelve member states may imply that the clause is ill-equipped to deal with an enlarged European Union in which industrial relations regimes have also evolved.

### **12.1.2 Substantive implementation outcomes**

Chapter three also proposed a benchmark to assess the effect of the Agreements and texts on substantive aspects of the employment relationship in member states. This was based on Falkner et al's (2005) use of such a benchmark to appraise the effect of European Social Policy Directives on systems of labour law in European member states. Specifically, Falkner et al assessed the degree to which the clauses of the relevant Directive had been present within systems of labour law prior to their implementation. This substantive benchmark formed the basis for Falkner et al's verdict on the success of the Directives in contributing to levels of employment regulation in member states. The substantive benchmark adopted by chapter three consisted of two elements. Firstly (i), and following Falkner et al, the extent to which the implementation of the Framework Agreements and lifelong learning texts contributed to levels of employment regulation in member states and sectors was considered. Secondly (ii), the extent of the impact of the Agreements and texts upon employment relations in member states and sectors was considered.

In terms of the extent to which the Agreements contributed to the content of national

and sectoral regulation, there was major variance in the degree to which the Telework Agreement and Work-related Stress Agreement achieved this. The Telework Agreement managed to add new content to regulatory contexts in the majority of countries and sectors in which it was implemented, whilst the Work-related Stress Agreement did not do this. This was attributable to two factors. Firstly, the Telework Agreement addressed a topic that had not been subject to regulatory attention in most countries and sectors. Thus, the Agreement offered new content to actors and it subsequently was able to add to existing regulation. By contrast, the topic of work-related stress had been regulated in many national and sectoral contexts prior to the implementation of the European Agreement. Secondly, the Telework Agreement was drafted in such a way as to specify clearly the obligations upon lower level actors. Therefore, there was little debate at lower levels regarding the interpretation of the Agreement's clauses. In contrast, the Work-related Stress Agreement was described by several national-level social partner organizations as having been drafted in a manner made it hard to interpret concrete obligations. That such variance in the substantive effects of the two Agreements was identified is significant. One implication is that the form in which the European Agreement is concluded at the European-level is pivotal to its success during the implementation stage.

A further finding was that The Framework of Actions on Lifelong Learning did not achieve a great impact upon levels of regulation within national and sectoral contexts. This was attributable to two factors. Firstly, the status of the Framework of Actions as a non-article 138-9 social dialogue instrument was crucial. Given that national actors were not obliged to affect a procedural implementation of the text, as

they were with the Telework and Work-related Stress Agreements, the terms of the text simply did not enter the content of national and sectoral regulation in the majority of cases. Secondly, the Framework of Actions on Lifelong Learning suffered from similar problems to the Work-related Stress Agreement. The topic of lifelong learning had been the subject of regulatory attention in the majority of countries and sectors, and the terms of the text were also deemed to be ‘weakly’ drafted by many national actors. These two factors also precluded the text from achieving a significant impact upon national regulatory contexts.

The Joint Declaration on Lifelong Learning in the European Banking Sector achieved a rather greater form of impact upon the content of sectoral regulation than its sibling text impressed upon national regulation. Although the sectoral text suffered from similar problems to the inter-sectoral text, it nevertheless managed to achieve an impact upon the content of banking sector lifelong learning regulation in Belgium and Denmark that was greater than the inter-sectoral text achieved in either country. This was attributable to the fact that the text directly engaged actors within the banking sector and addressed the topic of lifelong learning within the banking sector in a form that the inter-sectoral text did not.

Regarding the substantive impact of the Agreements and texts in terms of their impact at lower levels, one finding was that the capacity of ‘hard’ regulation to bind lower level actors confirm many of the assertions in the literature (Keller, 2003; Marginson and Sisson, 2004). This is that ‘hard’ regulation binds lower level actors to it more effectively than ‘soft’ law. In the cases of Belgium and Czech Republic, it emerged that the use of ‘hard’ regulation to implement the Agreements guaranteed

that the Agreements would be binding upon workplace level actors in a way that ‘soft’ implementations would be unable to achieve. In terms of the findings regarding ‘soft’ law, it was found that the capacity of ‘soft’ law to bind lower level actors was context dependent. In a country such as UK, where there is de-centralization of collective bargaining and low levels of coordination between the social partners at different bargaining levels, the publication of non-legally binding guidelines by peak-level actors on the topics of the Framework Agreements did not lead to the content of the Framework Agreements becoming binding upon workplace level actors. However, in a country such as Denmark, where there is tight articulation between tiers of collective bargaining, the publication of ‘soft’ guidelines on the implementation of the Agreements by the peak-level social partners led to the Agreements being implemented via several sectoral collective agreements and subsequently becoming binding upon workplace level actors.

In terms of the number of company and workplace level policies the Agreements and texts inspired, it became evident that the impact of the Agreements mirrored the effect of the Agreements in terms of their contribution to national and sectoral regulation. Specifically, the fact that the topic of work-related stress had been subject to substantial regulation prior to its implementation meant that it appears to have inspired few company and workplace level policies on the topic of work-related stress. By contrast, the fact that the topic of teleworking had not been subject to substantial regulation prior to its implementation meant that it appears to have inspired rather more company and workplace level policies on the topic of teleworking.

### **12.1.3 Factors explaining differing procedural and substantive outcomes**

Chapter three identified factors that potentially explained differential procedural and substantive implementation outcomes in country and sector-specific contexts. Three sets of variables were identified to potentially explain divergent procedural implementation outcomes; the 'culture' variable, policy variables, and institutional industrial relations variables. Three sets of variables were also identified to potentially explain divergent substantive implementation outcomes; policy variables, institutional industrial relations variables, and sectoral variables. The findings on the factors shaping procedural implementation outcomes are reviewed first.

*Differential procedural implementation outcomes: the findings that emerged in comparison to the expectations within the literature*

#### (i) The 'culture' variable

As outlined in chapter three, Falkner et al (2005) identified 'worlds of compliance' that explained divergent national implementation outcomes of European Social Policy Directives. As outlined in chapter ten, there is mixed evidence to support Falkner et al's 'culture' thesis with regard to the implementation of the Framework Agreements. A 'cultural of compliance' was found to exist in several Danish sectors that validates Falkner et al's insertion of Denmark in the 'world of law observance' grouping, and the identification of a 'culture of compliance' in the UK DTI with regard to the need to implement the Framework Agreements in an 'effective' manner was also found. However, it also emerged that 'cultural' obligations to implement the

Framework Agreements were not present in many national and sectoral contexts, and that it was also methodologically difficult to establish a link between 'culture' and 'effective' implementation outcomes.

(ii) Policy variables

Three policy variables that potentially explained differing national and sectoral implementation outcomes were identified. These were a variable that stated that procedural implementation outcomes were likely to improve if national and sectoral policy agendas converged with the topic of the Framework Agreement (De La Porte and Pochet, 2002; Leonard, 2005; Lopez-Santana, 2006), a variable that stated that procedural implementation outcomes were likely to improve if there was a lower degree of national and sectoral regulation on the topic of the Framework Agreement prior to its implementation (De La Porte and Pochet, 2002; Falkner et al, 2005; Jacobssen and Schmidt, 2002), and a variable that stated that procedural implementation outcomes were likely to improve if social partner organizations had prior experience of the implementation of similar policies (Lopez-Santana, 2006).

Concerning the first two variables, the findings supported the expectations expressed in the literature. Across the countries studied, a strong relationship was found between 'effective' and 'ineffective' procedural implementation outcomes and the convergence of national and sectoral policy agendas with the topic of the Framework Agreement and the degrees of national and sectoral regulation on the topic of the Framework Agreement prior to its implementation. Little evidence was however found to support the influence of the third variable. Isolated cases were confined to

the Danish inter-sectoral implementation of the Telework Agreement and the UK inter-sectoral level implementation of the Work-related Stress Agreement.

(iii) Institutional industrial relations variables

In chapter three, the variable was also advanced that there was a relationship between high levels of coordination of social dialogue levels in countries and 'effective' implementation outcomes (Keller, 2003). The findings did not provide this hypothesis with support. In the Czech Republic, a country with low levels of coordination of social dialogue levels, 'effective' procedural implementation of the Framework Agreements was found to have occurred. In Denmark, a country with high levels of coordination of social dialogue levels, 'effective' procedural implementation of the Framework Agreements was found not to have occurred in certain instances. However, the analysis of the data suggested the significance of another institutional variable. It was demonstrated that the structure of national 'procedures and practices' for social dialogue within countries bore a crucial influence on the extent to which 'effective' implementation outcomes occurred. As outlined in chapter ten, should there be an inter-sectoral level of collective bargaining within a state or an established national policy forum in which national social partners are represented, then 'effective' implementation outcomes become more likely.

*Differential substantive implementation outcomes: the findings that emerged in comparison to the expectations within the literature*

i) Policy variables

In chapter three, two policy related variables were advanced concerning the potential substantive impact of the Framework Agreements and texts. These stipulated that the substantive impact of the Agreements and texts was likely to increase if the topic of the Agreement or text converged with national level policy agendas (De La Porte and Pochet, 2002; Leonard, 2005; Lopez-Santana, 2006) and if there was a low degree of national and sectoral regulation on the topic of the Framework Agreement prior to its implementation (Jacobssen and Schmidt, 2002; De La Porte and Pochet, 2002).

There was limited evidence to support the former variable, but considerably more evidence to support the latter variable. Although in some Danish sectors levels of interest in the Telework Agreement led to implementations that added markedly to the content of sectoral regulation on teleworking, in countries such as Belgium and Czech Republic the Telework Agreement added to levels of regulation on teleworking despite the fact that there were limited levels of interest in the topic of teleworking.

(ii) Institutional industrial relations variables

In chapter three, variables were advanced that related to the potential substantive impact of the Framework Agreements and texts and the institutional character of national industrial relations systems. Three variables were established; that levels of



substantive impact were likely to be higher should be there high levels of coordination of collective bargaining levels in countries (Keller, 2003), that they would be higher with high rates of collective bargaining coverage in countries (Keller, 2003; Arcq, Dufresne and Pochet, 2003), and that they would be higher with should an *erga omnes* procedure exist in countries (Keller, 2003). The findings provide some support for all three variables. In Denmark, the fact that there were high levels of coordination of collective bargaining tiers meant that the Framework Agreements were able to inspire several lower level policies on the topic of the Agreements. In the UK, the fact that there were low levels of coordination of collective bargaining tiers meant that this did not occur. With regard to the existence of an *erga omnes* procedure, in Belgium the existence of the procedure ensured that the content of the Telework Agreement was binding upon lower level actors. Finally, in Denmark, the fact that there were high levels of trade union and employer association density meant that the Framework Agreements were able to inspire several lower level policies on the topic of the Agreements. In the Czech Republic, the fact that there were low levels of trade union and employer association density meant that this did not occur.

### iii) Sectoral variables

In chapter three, three variables were outlined that concerned the sectoral profile of the sectors in which the Agreements and texts were being implemented. Specifically, it was advanced that the substantive effects of the Agreements and texts would be enhanced in sectoral contexts if the sector in question was more homogenous in terms of its commercial profile (Keller and Sorries, 1998; Leisink, 2002; Marginson,

2005), if markets within the sector were more 'Europeanized' (Leisink, 2002; Marginson, 2005; Kollewe and Kuhlmann, 2003), and if a SSDC existed within the sector in question (Leisink, 2002; Keller and Sorries, 1998; Kirton-Darling and Clauwaert, 2003). The findings demonstrated that there was no relationship between the substantive impact of the Agreements and texts within sectors and the variable factors identified.

Although the implementation of the Agreements and texts was studied in only four countries and it is undeniable that specific national implementations differ in some way (European Social Partners, 2006), wider applicability can be claimed on three grounds. Firstly, the analysis of documentation in chapter five (European Social Partners, 2006, 2008; Visser and Martin, 2008) outlining the various national implementations that took place and the subsequent use of this data to arrive at conclusions in chapters ten and eleven gives the findings wider applicability. Secondly, and as chapter four outlines, the fact that four countries were selected for the study that represented a cross-section of differing systems of industrial relations in Europe means that the findings obtained are likely to be applicable to other countries that share institutional characteristics with, respectively, Belgium, Denmark, UK and Czech Republic. Finally, the fact that it was policy/actor-related factors rather than structural factors that primarily explained divergent implementation outcomes has key implications for the issue of applicability. Given that one of the key rationales for regarding national implementations as likely to be different is the existence of different systems of industrial relations in member states (Keller, 2003), the fact that structural factors peculiar to these systems did not play the major role in determining implementation outcomes suggests that the factors that

explain differential implementation outcomes may converge across member states more than previously thought.

## **12.2 Wider Analytical Implications**

The empirical findings of the thesis lead to a number of key analytical implications for European industrial relations and European governance. In chapter two, the analytic debates concerning European integration and the Europeanization of industrial relations were outlined. Pessimists such as Keller (2003) and Streeck (1994, 1998) argue that the processes associated with European integration are leading to the 'Americanization' of industrial relations in Europe, whilst optimists such as Falkner (1998) and Goetschy (1994) argue that a genuinely European system of industrial relations is emerging. The findings of this study provide the pessimists with more ammunition than the optimists. Firstly, the frailty of the national 'procedures and practices' implementation clause weakens the control of European-level actors upon implementation outcomes within member states. The ambiguity of the clause allows multiple interpretations to arise implies that national implementation outcomes are likely to be dependent on the will of national actors to a great degree. When benchmarked against the ability of Directives to impose specific procedural and substantive outcomes upon national actors, the non-legally binding Framework Agreement approach implies a weakening of the European-level of industrial relations. Secondly, the fact that the substantive contribution of the Agreements and texts to national systems of employment regulation was only modest also leads to concerns regarding the form of regulatory regime that is emerging at the

European-level. Whilst the Telework Agreement offered new content in most cases to national and sectoral regulatory systems, the same cannot be said with regard to the Work-related Stress Agreement and the Lifelong Learning texts. Given that it has been demonstrated that previous European Social Policy Directives have indeed provided national systems of employment regulation with new content (Falkner et al, 2005), the performance of the 'new phase' when benchmarked against European Social Policy Directives is therefore disappointing.

In chapter two, the concerns of some regarding the potential of the post-2004 enlargements of the European Union to further weaken the social dimension of the European Union were outlined. Authorities such as Marginson and Sisson (2004) have argued that the entry of countries with significantly lower levels of wages and employment conditions threatens to place pressure upon the terms and conditions of workers in old member states and will lead to an exacerbation of the collective-action problem at the European-level. In so far as the 'new phase' and its use of 'soft' policy is a symptom of enlargement of the European Union, these concerns have some justification. The procedural and substantive problems that characterize 'new phase' regulation, outlined above, would appear to be a response to a political system in which there are greatly diverse levels of wages and working conditions and very different means of regulating the employment relationship are used.

The findings of the study also imply various things for other 'soft' law mechanisms that are employed at the European-level. It emerged that although structural factors are important in explaining implementation outcomes it is primarily actor and policy

related factors that drive implementation processes rather than factors related to the structures of national systems. Although it was found that the existence of an *erga omnes* procedure and the level of coordination of social dialogue tiers was an important factor in explaining substantive implementation outcomes, the key explanatory factor was whether a pre-existing policy on the topic of the Framework Agreement or text existed. Although the structure of national 'procedures and practices' were very important in explaining procedural implementation outcomes, key factors explaining procedural implementation outcomes included the extent to which national and sectoral policy agendas converged with the topic of the Agreement and text and the level of pre-existing policy on the topic of the Framework Agreement or text in countries and sectors. Given that it emerged that the design of European-level policy in terms of the issue it addresses and its propensity to offer new content to national policy contexts correlates so strongly with national implementation outcomes, it becomes of the utmost importance that European-level actors select topics that are likely to relate to the interests of national-level actors and that do not cover ground that has already been addressed at the national-level. This finding will give cause for optimism to European-level actors, for it implies that it is in the hands of European-level actors to markedly shape national policy via the use of 'soft' law.

The findings that emerged during the analysis of the data also have key relevance for debates in the literature. One implication concerns Falkner et al's 'worlds of compliance' argument and its associated emphasis on 'culture of compliance' as a key precipitator of 'effective' implementation outcomes. As stated above, the study only found some evidence to support Falkner et al's assertions. In some sectors in

Denmark, a 'culture of compliance', whereby a powerful cultural sense of obligation impelled actors to implement the Framework Agreements 'effectively', was evident. A 'culture of compliance' was also found to exist in the UK DTI. However, such a 'culture' was not found in other regulatory contexts, and, as was also found, it was very difficult to establish a robust link between 'effective' implementation and 'culture'. In conclusion then, our study only provides Falkner et al's' argument with lukewarm support. Concerning the study's findings with regard to the literature on the OMC, a variety of themes emerged. Firstly, the attention paid by OMC writers to actor and policy centred factors such as the convergence of national and sectoral policy agendas (De La Porte and Pochet, 2002; Lopez-Santana, 2006) and the degree of national and sectoral regulation that exists on the Framework Agreement prior to its transposition (Jacobsson and Schmidt, 2002; De La Porte and Pochet, 2002) was validated by the findings that were obtained in the course of this study. It is thus a conclusion that the literature on the OMC's attention to such factors when explaining variation in implementation outcomes is a fruitful one. The demonstration that the factors that shape OMC implementation outcomes also shape 'new phase' implementation outcomes also reveals that the explanatory factors advanced by OMC scholars are generalizable on wider scale.

The employment of a multi-level governance analytic framework also had benefits in two regards. Firstly, and as outlined in chapter two, one reason for the adoption of the multi-level governance theoretical paradigm was its attention to the relationships between levels of governance. This aspect of multi-level governance theory underpins the finding, outlined above, that the weakening of the European-level of industrial relations that the 'new phase' of the European social dialogue represents

has major implications for institutional developments at lower levels. Specifically, the weaknesses found to characterize the 'new phase' of the European social dialogue are likely to lead to increased levels of diversity within national systems of industrial relations. Secondly, multi-level governance theory's attention to non-Governmental actors and their agency allowed the 'new phase' of the social dialogue to be adequately framed as a particular species of European-level 'soft' law that is distinct from OMC policy processes that are mainly the preserve of Governmental actors. A key finding was that the 'new phase' of the European social dialogue represents a distinct form of European 'soft' law when compared to other varieties. Most notably, the Telework and Work-related Stress Agreements use of the national 'procedures and practices' implementation clause and the challenges that this presents with regard to implementation outcomes means that the 'new phase' of the social dialogue is clearly different from other forms of 'soft' law.

### **12.3 Policy recommendations and implications for European social policy**

Three main policy recommendations are identified and the implications of the findings for European social policy and its development are considered. Firstly (i), the section will identify ways in which European-level actors could ensure that the procedural implementation of the Agreements is more effective before (ii) identifying how the substantive effects of the Agreements and texts could be enhanced. Finally (iii), the relative merits of Article 139's non-legally binding implementation route in comparison to the legally binding implementation route set out in Article 139 will be outlined.

### **12.3.1 Improving procedural implementation outcomes**

It was established that the problematic nature of the national 'procedures and practices' implementation clause is the source of many of the difficulties encountered in the implementation process by national actors. Accordingly, four specific recommendations are made regarding ways in which the national 'procedures and practices' implementation clause could be strengthened, national actors' comprehension of it increased, and procedural implementation outcomes improved. Firstly, if European-level and national-level social partners were able to agree a set of definitions related to national 'procedures and practices' for social dialogue in each national context then it is likely that the debates surrounding the procedural implementation of the Agreements would be lessened. Admittedly, such an exercise would be controversial given that coherent national 'procedures and practices' for social dialogue do not exist in many national contexts and that national social partners often wish to be afforded the flexibility to select an implementation tool that suits the topic of the Agreement at hand. However, if such an exercise at the least attempted to define national 'procedures and practices' and then allowed national social partner organizations the option of straying from these definitions in certain circumstances the benefit would be that a given definition of national 'procedures and practices' would at least exist at the European-level. As research on the OMC has demonstrated, even non-legally binding 'symbolic' pronouncements on national level political structures that are made by European-level actors can be potent (Jacobssen, 2003).

A second recommendation also draws lessons from the experience of the OMC (De



La Porte and Pochet, 2002; Jacobssen, 2003). This is that European-level and national-level actors would do well to compile national action plans (NAPs) prior to the implementation of the Agreements regarding the steps that national actors plan to take during the process of the implementation of the Agreements. As research on the OMC has demonstrated (Jacobssen, 2003), the production of NAPs has the effect of focusing the minds of national actors on the implementation of European-level output and often leads to more efficient implementation outcomes. Further, the ‘moral’ pressure that is borne on national actors who stray from their NAPs ensures that the political processes associated with the NAPs are more than symbolic. Specifically, national social partner organizations could jointly agree NAPs with the European-level social partners in the months after the conclusion of Framework Agreements. Social partner compliance with these NAPs would then be monitored by the European-level social partners, and national social partners failing to honour their NAPs would be ‘named and shamed’ at the European-level.

Thirdly, it would be useful to establish an European-level arbitration body composed of representatives from the European social partners and European Commission to rule on differing national implementation processes where disputes have arisen. The creation of such an institution has been suggested by sections of the Danish trade union movement, and could potentially be modeled on the inter-sectoral level arbitration bodies that exist in the Scandinavian countries. Such an institution could be composed of a suitable number of representatives from the European-level social partners and European Commission, could rule on complaints lodged by national social partner organizations, and would return non-legally binding judgments. Should a case arise, such as the dispute of the Norwegian social partners in the case of the

Telework Agreement, the institution would be able to return a judgment taking account of the views of the differing national social partners and also the constitution of national ‘procedures and practices’ for social dialogue within the country concerned. Although non-legally binding decisions would not carry the weight of legally binding ones, the moral pressure that such decisions would be likely to bear upon the national-level social partner organizations concerned would be likely to be very considerable.

Fourth, it is recommended that the European-level social partners engage in review exercises establishing the exact role of their affiliate organizations in national ‘procedures and practices’ for social dialogue in the member states. A key source of strain on the national ‘procedures and practices’ implementation clause was that many of the organizations who were signatory to the Agreements at the European-level did not play a mandated role in national ‘procedures and practices’ for social dialogue. Further, many of the organizations who did assume a key function in national ‘procedures and practices’ for social dialogue were not directly signatory to the European Agreements. Such an exercise would allow the European social partners to anticipate the capacity of their affiliates to implement the Agreements in accordance with national ‘procedures and practices’. Also, it would allow the European-level social partners to establish the organizations who do play major roles in national ‘procedures and practices’ and increase their level of engagement with these organizations.

### **12.3.2 Improving substantive implementation outcomes**

There are two recommendations on ways in which the substantive implementation outcomes of the Agreements and texts could be improved. The first relates to the topic addressed by the Framework Agreement or text. As was emphasized in section one, a key influence on the degree of the substantive impact of the Agreement or text upon national and sectoral contexts is the extent to which the topic of the Agreement or text is ‘new’ in regulatory contexts. The implication for the European social partners and European public authorities is that a precondition to Agreements and texts adding regulatory value to national systems is that they address a topic that has not been substantially regulated at lower levels. Accordingly, the European Commission would be advised to establish existing levels of regulation on relevant topics before issuing consultations on the topics, and the European social partners would also be advised to do this before negotiating a Framework Agreement or text on a particular topic. Such a task could potentially be carried out by surveying national social partners or public authorities, or by engaging with experts to conduct research on existing regulation in member states. The result of such research would be an increase in the substantive effectiveness of any Agreements or texts that were subsequently concluded and also a role for EU-level regulation in filling regulatory gaps in member states.

A second recommendation relates to the drafting of the clauses of the relevant Framework Agreement or text. The extent to which the Framework Agreements and texts were precisely drafted bore an important influence on the extent to which they were able to contribute substantively to regulation in countries and sectors. The

implication is that the European-level social partners must ensure that Agreements and texts agreed at the European-level are drafted in terms that are unambiguous. As evident in the case of the Work-related Stress Agreement, a lack of clear wording means that the Agreement or text in question is likely to be misinterpreted by lower level actors and will not achieve a key impact upon levels of regulation in countries and sectors.

### **12.3.3 Non-legally binding Framework Agreements versus legally binding Framework Agreements**

Given the debates that exist in academic and policy circles (Larsen and Andersen, 2007; Keller, 2003), it is also necessary to address the question of the performance of the Framework Agreements that were implemented via Article 139's first, non-legally binding route, against those Framework Agreements that were implemented via the second legally binding route. In keeping with the expectations of several commentators, the implementation of the Framework Agreements via the legal route leads to far more predictable implementation outcomes within member states. As Falkner et al (2005) demonstrated, the use of the legally binding route to implement social partner Framework Agreements ensured that the content of the Framework Agreements of the 1990s entered into bodies of legal regulation within member states. Our findings demonstrate that this did not occur to the same degree with the Framework Agreements that were implemented via the non-legally binding route. As a result of the problematic nature of the national 'procedures and practices' implementation clause and the non-legally binding nature of the Agreements, European actors were often unable to specify given implementation outcomes and

the content of the Agreements often did not enter national legal systems or collective agreements. Thus, the use of the legally binding route foreseen in Article 139 guarantees the more predictable and uniform implementation of social partner Framework Agreements.

With regard to the use of the non-legally binding implementation route, certain advantages do exist for the European social partners however. Firstly, it is notable that the process of implementation of the Framework Agreements on Telework and Work-related Stress involved the European social partners and their national affiliates to a far greater degree than the implementation of the legally binding Framework Agreements of the 1990s. In the case of the non-legally binding Framework Agreements, the fact that the Agreements were largely implemented by national social partners rather than public authorities, and that the implementation of the Agreements was monitored by the European social partners implied a key social partner role in the European governance process. This was not the case with the legally binding Framework Agreements, in which national public authorities took the lead in the implementation process and the European Commission monitored national implementation outcomes. Thus, the use of the non-legally binding implementation route implies the involvement of the European and national social partners in the European governance process to a greater degree. In terms of the extent to which this encourages broader and more participative forms of governance, this would also appear to be a positive outcome for the European polity.

## **12.4 Recommendations for future research**

Three issues calling for future research are (i) the process of the European-level negotiation and drafting of the Agreements and texts, (ii) outcomes within other countries and sectors regarding the implementation of the Agreements and texts, and (iii) the impact of the Agreements and texts at workplace level.

Given that the topic of the Framework Agreement or text and the form in which the clauses in the Agreement or text are drafted has a key impact on the level of substantive effect that the Agreement or text has in countries and sectors, the role of the European-level social partners in producing Agreements and texts that offer new content to lower level actors and that are clearly drafted is of crucial importance. Accordingly, it would be fruitful for future research to explore the process of the European-level drafting and negotiating of the Agreements and texts. Such a study could explore several themes. Firstly, the relations of the European social partner organizations with their affiliates in the course of the negotiating process. Many authors have identified the collective action problem as a key barrier to the development of effective EU governance (Marginson and Sisson, 2004), and an exploration of the processes by which the European social partners consult and secure a negotiating mandate from their affiliates would potentially be able to identify many of the impediments to the production of useful Agreements and texts at the European-level. Further, such a study could explore the process of the negotiation of the Agreements and texts at the European-level. Given its influence on the eventual efficacy of the Agreements and texts, a comprehensive understanding of the process and the issues that present themselves would do much to shed light on

barriers at this level to the development of more effective social dialogue

Agreements and texts.

More research could also be conducted on the procedural implementation of the Telework and Work-related Stress Agreement in other European countries and sectors. Our study was able only to analyze implementation within four countries and two sectors, and other researchers (Larsen and Andersen, 2007) have scarcely been able to cover the gaps that still exist regarding the processes that animated implementation outcomes within other countries and sectors. A body of knowledge does not yet exist that compares to that generated by Falkner et al, who were able to carry out a study of implementation of European social policy directives within each EU-15 country. Some of the discrepancies between the results of our study and other researchers' studies with the official reports of the European social partner organizations and public authorities suggests that the data offered by the European social partners and public authorities is inadequate in this regard. Rather, academic research that engages with the underlying analytic problems within countries and sectors is required.

A final recommendation relates to the impact of the Agreements and texts at workplace level. Almost no data are available on the workplace level impact of the Agreements and texts. Although the thesis was able to make informed comment on the extent of the workplace level impact of the Agreements and texts, this does not negate the need for comprehensive research on the impact of the Agreements and texts within workplaces. Although such a study would have problems isolating the effects of the European-level Agreements and texts upon workplace level policies

from other factors, this could also lead to interesting findings regarding the methodological issues presented by an analysis of the effects of European-level 'soft' law upon workplace level policies.

## **12.5 Conclusion**

The specific contribution of this thesis has been to increase knowledge of the effect of 'new phase' Agreements and texts in European member states, consider the form of 'Europeanization' that the 'new phase' entails and its relationship to other forms of European 'soft' law, and to identify the factors that drive differential implementation outcomes of 'new phase' output in national and sectoral contexts. As stated in chapter two, these themes had previously been insufficiently explored, and the thesis can therefore claim to have made an important contribution. The key empirical findings that were obtained were (i) that the procedural implementations of the Telework and Work-related Stress Agreements were sometimes 'ineffective' and that the national 'procedures and practices' implementation clause was fragile; (ii) that the substantive effect of the Agreements and texts in member states was patchy and there was a key difference between the substantive effect of the Telework Agreement in comparison to the substantive effect of the Work-related Stress Agreement and lifelong learning texts; and (iii) that it was actor-policy related factors, rather than structural factors, that primarily explained divergent national and sectoral implementation outcomes.

Concerning the implications for the 'Europeanization' of industrial relations and the European social dialogue's role in it, it was concluded, in line with the empirical



findings, that the 'new phase' represented a backward step in terms of the ability of European-level actors' to regulate industrial relations in member states. The silver lining for European-level actors is that the findings on the importance of actor-policy related factors in explaining implementation outcomes demonstrates that European-level actors may affect real change via 'soft' law should the 'soft' law in question be designed carefully. In summary then, it was found that the 'new phase' of the European social dialogue has achieved modest success in improving levels of employment protection in member states. Also, the continued existence of an European-level social dialogue means that there is at least a symbolic European-level of industrial relations, and that if a more socially minded European Commission were to emerge then the European social dialogue could become a more powerful regulatory force. However, the final verdict on the 'new phase' of the European social dialogue must be that it represents a disappointing development for Europeans who wish to see decent levels of employment protection.

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## Appendix A: List of organizations interviewed

Name of organization	Date of interview	Form of interview
<b>EU-level</b>		
Business Europe	September 2006	Face to face
CEMR	September 2007	Telephone
EBF	September 2007	Face to face
EPSU	September 2007	Face to face
ESBG	September 2007	Face to face
ETUC	September 2006	Face to face
ETUI	September 2006	Face to face
European Commission	September 2006	Face to face
UEAPME	September 2006	Face to face
UNI	November 2007	Face to face
<b>Belgium</b>		Face to face
ABVV/FGTB	September 2007	Face to face
ABVV/FGTB local Gov branch	September 2007	Face to face
ACLVB/CGSLB	September 2007	Face to face

ACV-CSC	September 2007	Face to face
Belgian Ministry of Labour	September 2007	Face to face
Febelfin	September 2007	Face to face
Setca	September 2007	Face to face
Unizo	September 2007	Face to face
VBO/FEB	November 2007	Telephone
<b>Denmark</b>		Face to face
AC	February 2007	Face to face
COI	February 2007	Face to face
DA	February 2007	Face to face
DFL	February 2007	Face to face
DI	February 2007	Face to face
FA	February 2007	Face to face
FF	February 2007	Face to face
HK	February 2007	Face to face
FTF	February 2007	Face to face
KL	February 2007	Face to face

KTO	February 2007	Face to face
LO	February 2007	Face to face
<b>UK</b>		Face to face
Amicus	November 2007	Face to face
CBI	November 2006	Face to face
CEEP UK	November 2006	Face to face
DTI	November 2006	Face to face
FPB	November 2006	Face to face
HSE	November 2006	Face to face
LGA	January 2008	Telephone
TUC	November 2006	Face to face
Unison	January 2008	Telephone
<b>Czech Republic</b>		
CMKOS	November 2007	Face to face
SPCR	November 2007	Face to face