

**HAVING A ‘SAY’ WITHOUT HAVING TO ‘PAY’?
THE DIFFERENTIAL
EFFECT OF SOFT LAW ON
INTRA-GOVERNMENTAL RELATIONS¹**

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1. INTRODUCTION

As the European Union has strengthened, policymaking and implementation processes unfold within a complex web of relations and levels of government (e.g., supranational, national, sub national, and local). Given the development of a multi-tiered system, debates about the consequences of European integration for the authority, the autonomy, and the shape of nation-states in Europe have become increasingly salient. On the one hand, some have talked about the 'Europe of the Regions' and the decline of the state-centric model of governance. More specifically, authors who study regionalization, processes of devolution, and the development of multilevel governance structures have argued that the process of European integration has empowered sub national levels of government, making them important and autonomous actors at both the domestic and supranational levels.

In contrast, others have not been some optimistic about the empowerment of sub national levels in the process of integration. For instance, Börzel (2002a) contends that at some points the sub national levels of government have had to 'pay' the costs of integration (implement) without having much 'say' in the process (participate in decision making processes at the national and the EU levels). Also, others posit that Europeanization strengthens national governments because they are the main players in the process of integration (Moravcsik 1998).

These contradictory propositions about the ability of European integration to influence Member States' (hereinafter MS) balances of power and institutions assume that the EU uses legally binding instruments (i.e., hard law) and coercive powers to affect domestic settings. Thus, national governments would coordinate with sub national entities in their effort to comply with EU rules to avoid punishments. Nowadays, the EU increasingly creates non-binding and voluntary rules in order to guide states and achieve a set of common goals without MSs having to cede power to the supranational level. In these scenarios, the EU has invited national governments to involve sub national and societal actors in the process of complying with the reporting requirements and the implementation of soft law. These developments lead me to ask,

do national governments ignore EU recommendations? Or, do these entities bring in sub national levels, even if there is no obligation and no sanctions for not doing so? More precisely, what is the effect of soft law on MSs' intra-governmental relations?¹

On one hand, given that national governments are directly accountable to the supranational level (not the sub national entities), one could anticipate that under soft law national governments would monopolize the process of reporting and implementing soft law. Consequently, national levels would not significantly implicate sub national entities, leaving them largely unaffected by soft law (Jacobsson and Vifell 2005). Based on these expectations, national governments would bring in sub national entities only if it entails "modest departures from what they would have done in the absence of an agreement" (Downs, Rocke, and Barsoom 1996: 380).

In contrast, others might argue that the lack of sanctions and enforcement are not significant factors to understand domestic transformations (Chayes and Chayes 1993 1995). Based on these propositions, national levels of government could include sub national entities if the EU persuades them to do so through the use of soft law. This means that changes in the nature of intra-governmental relations are possible given that, for instance, non-binding rules are efficiently administered and Members States internalize the message that in order to achieve a set of public and private goods sub national levels must be involved.

The potential involvement of sub national governments with non-binding rules is particularly puzzling in the policy areas of labor market policy and employment given that national levels of government tend to dominate these scenarios and sub national levels of government are mainly administrators and implementers of policies created at the national level (Keating 1998b). Accordingly, I ask, does soft law challenge the central role of national governments in labor market policy?

¹ I define *intra-governmental* as the relations between levels of government within a MS. The notion *intra-governmental* does not include the relationships between MSs and the supranational level.

The purpose of this paper is twofold. First, the initial part of the paper describes and explains the effect of soft law on intra-governmental structures in MSs. I argue that the implementation of European soft law increases domestic coordination between national and sub national levels. Soft law creates or reinforces political networks and political channels, which ultimately affect de facto intra-governmental relations. More specifically, this process has opened a window of opportunities for sub national levels to coordinate with the national level and have a ‘say’ in policymaking without being obliged to ‘pay’ the costs of implementation.²

Furthermore, in the second part, I move into the realm of comparative politics as I focus and explain the differential influences of soft law on intra-governmental relations in Spain, Belgium and Sweden.³ In these sections, I argue that the differential influence of soft law on sub national entities is determined by the formal configuration (de jure) of domestic institutions.

The rest of the chapter proceeds as follows. Section 2 links the theoretical puzzle with the literatures on devolution and multilevel governance. Then I introduce background information to understand the sub national dimension of the European Employment Strategy (EES). Section 3 focuses on the mechanisms that bring out change in intra-governmental relations. Subsequently, the fourth part addresses the differential influence of the soft law on intra-governmental relations. To frame this issue I develop a typology of intra-governmental relations. This typology helps us understand why soft law affects intra-governmental relations differently. Section 5 briefly summarizes the effect of soft law in Spain, Belgium and Sweden. Finally, I conclude with the theoretical and practical implications of this research for studies of the effect of ‘external’ mandates on component states, Europeanization, and multilevel governance.

² Refer to Börzel (2002a: 33).

³ The case selection allows me to analyze whether the EES affects intra-governmental relations differently, given different domestic configurations—Sweden represents a state where the central level dominates employment policy, Spain is a state where sub national levels are consulted by the national level in policymaking but the national level is the key actor in decision making, and Belgium is a federal state in which sub national entities are primarily responsible for labor market policy.

2. LACK OF BINDINGNESS, IMPLEMENTATION, AND INTRA-GOVERNMENTAL RELATIONS

In multi-layered systems, ‘weak interconnections between higher and lower levels of government’ is a central factor to explain implementation deficits and policy failures (e.g., Pressman and Wildavsky 1984). Multi-tiered systems, such as the European Union and the United States, have pursued the development of vertical (national-sub national) and horizontal (sub national-sub national) coordination mechanisms to diminish the gap between higher and lower levels of government by making sub national levels and ‘civil society’ key actors in policymaking.⁴ Work on *governance* pays special attention to these developments by capturing the expansion of the range of actors, forms of organizations, and instruments involved in policymaking, decision making, and implementation (Svensson and Östhol 2001). This line of thought acknowledges that traditional hierarchical modes of regulation (where national governments dominate) have become more inclusive and based on negotiated relations between different types of governmental and non-governmental actors.⁵

Broader discussions of governance fit within debates on devolution and decentralization given that these strands of work emphasize that economic restructuring, internationalization, and the process of European integration have empowered a range of sub national and societal actors in decision making and policymaking (Jones and Keating 1995; Keating 1998a 1998b; Gren 2002; Keating and McEwen 2005).⁶ Moreover, these regional and global factors have triggered the development of ‘a new type of regionalism’ that is characterized by a more complex system in which regions are in more direct contact with international regimes and organizations (Van der Laan and Ruesga 1998).

In a similar fashion, scholars studying European integration have developed the notion of *multilevel governance* to describe a process in which the development and solidification of the

⁴ For example, see Armstrong (2002).

⁵ For example, see Rhodes (1996); Kochler-Koch and Eising (1999); Schobben (2000).

⁶ In addition, see for example, Marks, Hooghe and Blanck (1996); Keating and Loughlin (1997); Loughlin (2000); John (2001); Hooghe and Marks (2001); Hooghe and Marks (2003); Agranoff (2004).

EU has challenged the central role of national institutions and the dominant domestic patterns of territorial interaction. These authors argue that sub national entities have become important actors at the supranational and the domestic levels through the transfer of power, authority, and resources by the EU to lower levels of government. Scholars studying the development of multilevel governance have emphasized growing levels of interdependence (*vis-à-vis* hierarchy) between the supranational, the national and the sub national levels of governments, as well as between these entities and societal actors. The development of multilevel governance is grounded in the supranational promotion of the development of partnerships and inclusive strategies between multiple levels of government and governmental and non-governmental actors.

Nearly all of these arguments about the relationship between European integration and the development of multilevel governance structures and devolution of power to sub national entities were developed under the expectation that the involvement of sub national levels in the process of complying with supranational mandates is crucial given that these entities are the main implementers of European binding law. Since most policies ‘take place’ at lower levels of government, if national levels do not incorporate lower levels of government in these processes it is very likely that MSs are not giving effect to EU binding laws. Therefore, central governments run the risk of being punished by the EU. With the increasing development of non-binding rules and the promotion of governance by the EU, we must ask: does the lack of bindingness reverse the development of multilevel governance in MSs?

Soft law does not have tangible enforcement mechanisms and sanctions; therefore, its implementation is mostly grounded in diffusion and persuasion. The argument about diffusing soft law to the entities closest to citizens justifies EU’s requests to national levels to involve sub national entities in the implementation of the EES. In this context, sub national participation is essential as these entities can pressure states to implement a EU guidelines; in addition, they are responsible for ‘making policy happen,’ specifically making strategic decisions about

employment and training services that help foster local development. For example, Public Employment Services are managed by sub national and local entities. Furthermore, in theory, the chances of soft law affecting domestic settings increases as the process of implementation becomes more open, participatory, and inclusive by being propagated to a variety of private and public actors. Before I move on the discussion of intra-governmental internalization, in the following section, I provide background information about the sub national dimension of the EES.

2.1 THE SUB NATIONAL DIMENSION OF SOFT LAW AS AN APPROACH TO BETTER GOVERNANCE

After the launching of the EES (1997) the implementation of soft law relied mainly on efforts at European and national levels. In 2000, as part of a broader commitment to the reform of European governance,⁷ the European Commission officially recognized the importance of involving and mobilizing the regional and the local levels in the implementation of the EES. In the Communication, “Acting Locally for Employment: A Local Dimension for the European Employment Strategy” (Commission of the European Communities 2000a), the Commission analyzed the potential for local job creation through cooperation among local authorities, enterprises, and social partners. Such initiatives aimed to include all levels of government—local, regional, national, and European-- in the creation of jobs within the framework of the EES, to reduce implementation deficits and to promote the development of governance structures in labor market policy. In addition, the promotion of sub national participation by the EU was partially grounded in the idea that decentralization represents an institutional solution to the problem of unemployment.

MSs expressed their opposition to the development of the local dimension of the EES, and alternatively agreed to include “relevant actors in the field of employment at national and regional level that have important contributions to make” (Nauerz 2003). The 2000 Employment

⁷ For a discussion of the multilevel aspect of this paper, refer to Scott (2002).

Guidelines reflected this emphasis on the development of the local dimension, specifically a special guideline on regional and local action for employment and the horizontal priorities of the European Structural Funds (ESF) rules. Accordingly, the 2001 and the 2002 employment guidelines included a regional and a local dimension.

Furthermore, to encourage the involvement of sub national to implement the strategy, the European Commission along with the European Structural Fund funded the “Acting Locally” campaign and the development of local pilot programs. The goals of these programs were to create Local Action Plans for Employment, as well as to diffuse the European strategy and support innovation at the regional and local levels. The local dimension of employment also became a priority in the 2000-2006 structural programming of the ESF. To advance the strategy at the sub national level, the Commission increasingly has framed the ESF as the ‘financial arm’ of the EES. By providing technical and financial resources, the EU encouraged sub national levels to experiment with employment policy and serve as policy laboratories through the creation of local action plans for employment and partnerships.

The aforementioned developments should be seen as part of EU’s commitment to structural change, reform of European governance, and diminishment of the democratic deficit. Yet, the EU has not provided a set of specific instructions about how to involve sub national entities, mainly out of respect to the notion of subsidiarity.

These developments lead me to ask: what has been the effect of these EU developments on domestic settings? Do these soft European instructions have affected intra-governmental relations in MSs? If so, how? The remaining sections of this chapter assess how soft law has affected the relationship between national and sub national entities.

3. INTRA-GOVERNMENTAL RELATIONS AND SOFT LAW

The main objective of section 3 is to put on the table the elements of soft law that influence the shape of domestic institutions and the nature of intra-governmental relations, as it is

a type of influence that is overlooked by scholars. As already explained, the EU has asked national entities to involve sub national actors in the implementation of soft law. For any MS, adjusting the formal (*de jure*) or informal (*de facto*) nature of national-sub national coordination could be a challenging and costly matter as these adjustments go against the ways in which national and sub national levels ‘conduct business.’ Faced with soft law, centralized and decentralized MSs have various options; they can: 1) ignore European mandates, 2) change their formal (*de jure*) institutions, or 3) transform their informal (*de facto*) institutions.

First, ignoring European mandates is not necessarily costly since there is no obligation and no sanctions for disobedient states. Alternatively, transforming *de jure* (formal) institutions is highly improbable as it involves legal changes in the division of power and competencies between national and sub national governments. Moreover, if there is no obligation and no sanctions, there are very limited incentives to engage in formal change. Yet, MSs may be willing to adjust *de facto* institutions (i.e., informal arenas and collaborative procedures) with the end of complying with reporting requirements and/or achieving a set of goals promoted by the EU, such as increasing employment at the local level. For instance, national governments can create arenas and mechanisms to coordinate labor market policy with sub national governments and societal-actors.

When considering these issues, policymakers face the following questions: why should we adjust domestic intra-governmental relations? Furthermore, to further frame this discussion, we should refer to two interrelated questions: 1) why does a level of government want to control a policy area?, and 2) why does a level of government want to cede or share decision making with another level?

The literatures on federalism and devolution provide important insights to these questions. Several authors refer to the notion of “efficiency” to explain which level of government should control the provision of goods and services (Qian and Weingast 1997; Volden 2005). In contrast, scholars have also pointed out that the less efficient level of government could

be providing a public good in popular policy areas (Peterson 1995). Others have assessed these issues by locating which level of government is better at managing a policy area (Hayek 1945). Given that sub national levels can provide informed and pragmatic solutions to local problems these governments might be better able to manage and deliver, for example, public employment services.

Along the same lines, some authors have argued that decentralization might be a good solution when there is a high degree of diversity of circumstances across sub national levels of government (Seabright 1996). Under the former expectations, decentralization may provide benefits to tackle unemployment, such as administrative and implementation flexibility, delivery efficiency, and innovation. Finally, by locating various decisions at the regional and local levels, national governments may foster participation (Rubin and Freeley 1994). With the goal of better managing labor market, several international organizations, such as the Organization for Economic Co-operation and Development, have followed these types of prescriptions and have promoted decentralization, the creation of partnerships, and local governance reform programs.⁸

Nonetheless, decentralization can also create inefficiencies, such as lack of transparency and accountability, as well as policy duplications. These inefficiencies could be diminished by developing a network of national-local and public-private partnerships and by the central government being a strong overseer. More specifically, under decentralization, a strong monitoring and enforcing role of central of governments is essential to increase accountability, solve free-riding problems, facilitate the trade-offs between involved actors, as well as for achieving full policy consistency.

A strong role of the national government seems especially plausible in the case of labor market policy given that voters heavily weight (un)employment circumstances when evaluating governments' performance. In the case of the MSs of the EU, given that national governments

⁸ The OECD 'Local Economic and Employment Development Programme' is an example of such type of initiatives.

are directly accountable to the EU, they would want to control a policy area to avoid being blamed and shamed by the supranational level. Under these circumstances, national control may be the best option, especially if we take into account the high degree of problem difficulty in labor market policy (Kollman, Miller, and Page 2000).

The former arguments are especially relevant to frame the discussion of implementation of soft law for various reasons, but mainly because they help us understand why national governments might want to bring in sub national entities into policymaking and decision making spaces. First, it is important to point out that to overcome the inefficiencies and problems of centralization and decentralization, national and sub national levels of government can engage in intensive coordination. National-sub national coordination helps overcome free-riding problems, reduce information gaps, increase accountability, achieve policy consistency across levels of government, and avoid inefficiencies, such as policy duplications. Second, since national levels are directly accountable to the EU, in decentralized states stronger coordination between national and sub national levels benefits the former entity when playing the supranational game because it has more and better information about domestic circumstances. However, national governments may find coordination costly as it could threaten existing formal structures and domestic balances of power. Having discussed the attributes of intra-governmental coordination, the following section directly addresses how and why soft law promotes intra-governmental internalization.

3.1. HOW IMPLEMENTING SOFT LAW AFFECTS NATIONAL- SUB NATIONAL COORDINATION?

Since 1997 all European MSs have formed part of the EES. The EU compels national administrations to include interested parties (e.g., sub national administrations, social partners, and non-governmental organizations) in the reporting and implementation process. By participating in this interactive and iterative process, a MS explicitly agrees to bring the issues posed by the European Council (in the form of employment guidelines) back to their State. The main goal of this iterative, collaborative, and consultative process is gathering information about

the practices and programs regarding employment policies. In addition, the EU wants states to strategize on labor market policy.

Given that national levels of government are directly accountable to the EU, these entities want to 'be good Europeans' and 'look good' at the supranational level by complying with reporting requirements and having complete information about the programs and practices in their country. From the perspective of national governments, creating spaces and arenas to gather and share information does not necessarily entail that states will later implement EU non-binding rules. However, I argue that the simple iterative and interactive task of collaborating and gathering information to report to the EU created new political networks and political channels which had a set of unintended consequences on MSs, specifically on the nature of de facto intra-governmental coordination and relations.

In Spain, Belgium, and Sweden representatives of the sub national governments have been included in the process of drafting NAPs. This also has been true in other MSs, such as Germany, the UK, Denmark, and Austria. Sub national governments have participated in national arenas by providing information to the national government about the sub national practices and policies. For example, in Spain the Autonomous Communities have actively participated in national forums to discuss the goals of the EU guidelines and recommendations, as well as to provide information about the implementation of these EU policies. Most importantly, the reporting requirements attached to soft law have opened the door for frequent coordination between levels of government and societal actors and have created opportunity structures for coordinating labor market policy across levels of government. For instance, in Belgium, the Regions have created Regional Action Plans to report their practices and policies to the national level.

Through the creation of new collaborating arenas and routines to report to the supranational level, MSs were able to improve domestic coordination between levels of government on the policy area of labor market policy. After the introduction of the EES, national

governments have regularly brought in sub national levels of government to these national coordinating spaces. In the process of creating NAPs, national governments (especially in Spain and Belgium) became increasingly aware of instances of sub national free riding and of their inefficiencies as overseers. Thus, this exercise served as a monitoring device for national governments, and this in turn represented a great development in many MSs.⁹ For example, in the process of gathering data for the NAP, the Spanish national level was able to detect policy duplications and inefficiencies in government spending; while in Belgium, policymakers did not hesitate to say that one of the most important influences of the EES is the strengthening of coordination between the federal level and the Regions. Since the Belgian federal government is directly accountable to the EU, but the Regions are responsible for many aspects of labor market policy (training and public employment services, for example), the NAP process forced both levels of government to create coordinating spaces to gather information. This, in turn, pushed for more cooperation by, for example creating common indicators to monitor performance across Regions.

In Belgium, Sweden and Spain, multiple interviewees considered that the process of domesticating the EE increased the frequency of interactions between national, sub national, and societal actors (trade unions, for example) and between policymakers at the sub national levels. In addition, subjects frequently referred to the idea that the implementation of soft law broadened the opportunity structures available for sub national levels to influence the process of policymaking at the national level by, for example, tying together spaces and actors that were not previously viewed as interconnected. Many interviewees also suggested that the EES improved internal domestic coordination in employment policy by spreading the message that multiple

⁹ Although, we would expect for governments to regularly monitor the practices and policies of sub national entities (even in decentralized states), it has been the case that in many states such practices and mechanisms have been inefficient (or almost non-existing). For example, in Spain where national and sub national levels share competencies over labor market policy, the constitution does not provide the central government with tools and spaces to practice shared competencies.

levels of government and governmental and non-governmental actors should collaborate and coordinate to create a global and integrated policy plan.

Throughout this process national governments acknowledged the need of creating 'global' labor market policy plans and targets to make sub national and societal actors follow the similar policies and goals and have put effort in disseminating such goals to the sub national levels. For instance, in Sweden, the national level organized conferences at the sub national level to propagate EU policies and goals. While in Belgium, the federal government launched 2003 'National Conference for Unemployment' where the federal government, the sub national levels of government, and the social partners participated with the end of drawing up measures to create 20,000 new jobs by 2007. Similarly, in Spain, interviewees referred to the NAPs as the 'central government labor market policy plan' which guides the creation of policy and its implementation across levels of government.

Another important consequence of the EES is that sub national levels have systematically formally and informally reported to the national level and also have received information from this entity about a set of goals and policies. In several MSs, such as Sweden, UK, Belgium, Denmark, Ireland, Germany, the Netherlands, Spain, Italy, Finland, Ireland, Greece, Austria, and Portugal, sub national levels of government have created their own labor market plans.¹⁰ In Belgium, for example, the Regional Action Plan of the Community of Brussels followed the guidelines of the EES and it was mainly created to organize sub national participation at the national level. Sub national reporting in Belgium initiated processes of sub national concertation and coordination in the Region of Brussels. For example, in the process of creating regional action plans the Belgian Regions also engaged in the creation of social pacts. This social pact included many of the policy guidelines and targets of the EES.

As a consequence, of these collaborative spaces sub national levels of government have had the opportunity to have a 'say' (participate in decision-making) at the national and the

¹⁰ The organization of such plans is dependent on the domestic organization of labor market policy.

supranational levels. This means through the process of implementing soft law, the role of sub national entities is not limited to ‘pay’ (implementation) given that it is not solely dominated by parliaments. Thus, the task of reporting to the national and the supranational levels has brought some degree of transparency and accountability into MSs’ decision making and policymaking.

In MSs, sub national entities have engaged in such tasks for various reasons. First, they want to demonstrate to the national levels that they are dependable and credible policymakers who also form part of national and EU arenas and agendas. In this way, the creation of sub national programs is a way for sub national levels to assert participation at the national level and to showcase their capabilities as implementers and managers. Furthermore, in some countries this exercise has provided sub national entities the discourse and the tools to claim (further) decentralization. For example, an interviewee representing sub national entities in Sweden said that in official and unofficial meetings he used the ‘governance’ framework promoted by the EU strategy to persuade key ministerial policymakers about the importance of furthering the role of sub national entities in labor market policy. In Spain, for example, sub national levels have used to further claim their key role in the creation and management of active labor market policies (a policy that is in the process of being transferred to the Autonomous Communities).

Second, sub national levels have a set of economic incentives to participate in the reporting tasks and to ‘translate’ national and EU guidelines into sub national settings. Soft law and the attached supranational resources have provided these levels of government with the discursive and financial resources to initiate (or strengthen) ‘bottom-up’ projects to manage their labor market problems. By ‘talking the same language’ as the national and the EU level, sub national levels increase the chances of getting additional resources (financial and technical) from the EU level. For instance, the EU has funded a set of programs (local action programs, territorial employment plans, or regional action plans) to implement the EES guidelines at the sub national level.

In sum, in this section I have argued and illustrated that soft law, even if it is non-binding, affects the institutional structures of MSs and can guide sub national coordination and policies. Specifically, I assert that the process of implementation has had unintended consequences which have altered *de facto* nature of intra-governmental relations (i.e., informal practices that are not codified) and domestic balances of power in MSs by increasing coordination between national and sub national levels. It is important to emphasize that in most MSs labor market policy and employment policy have tended to be very centralized, even in federations. In the process of reporting to the supranational level, sub national levels claimed their participation in the creation of NAPs and the implementation of the strategy. Thus, increasing national-sub national coordination and the development of a sub national dimension of European soft law challenges the logic of centralization because it emphasizes the importance of lower levels in labor market policy by opening a window of opportunity for sub national levels to claim their role. In this way, soft law promotes the creation of multilevel governance structures, partnerships and inspire (or reinforce) processes of devolution by slowly transforming domestic opportunity structures.

However, we do not observe convergence on the degree in which soft Europeanization has affected *de facto* institutional configurations in MSs.¹¹ In other words, there are cross-national differences in the degree of intra-governmental internalization. In Sweden, after the introduction of soft law, representatives of sub national entities have *reported* to the national level and increased interaction with the central level. Representatives of sub national organizations provided information to the national ministries and participated in the creation of NAPs. In contrast, in Belgium, the federal and the federated entities have been *cooperating* and *bargaining* on labor market policy. More specifically, the federal level invited sub national entities to participate in the EES process and as consequence both levels of government have engaged in coordination of labor market policy. For example, the federal level organized an Employment

¹¹ For example, Börzel (2002) concludes that Europeanization is leading to a certain degree of convergence towards similar institutional mechanisms.

conference and both levels of government bargained on a set of policies and targets. In addition, through a coordination cell (ENIAC) both levels of government have collaborated to create common quantitative indicators and to coordinate the implementation of the EES. Finally, in Spain, *consultation* between national and sub national levels has increased. In this country, the Autonomous Communities have been participating in national arenas to draft ‘global labor market plans’ and to exchange information about sub national policies. What explains these cross-national differences in the degree of national-sub national coordination? The following section focuses on this question. More specifically, I argue that shape of formal (*de jure*) institutions in MSs explains cross-national differences in the degree of intra-governmental coordination after the introduction of soft law.

4. EXPLAINING CROSS-NATIONAL DIFFERENCES AND *DE JURE* INSTITUTIONAL STRUCTURES

Students of national-sub national relations (i.e., intra-governmental) tend to focus on the elements that differentiate federations from unitary states. Though federations vary on many respects, including the degree of centralization and the formal powers of sub national entities, federations tend to share one characteristic: there is *de jure* recognition of the levels below the federal entity (Loughlin 2000). The formal acknowledgment of component states entails a grant of decision making capabilities to levels below the national level, in addition to exclusive powers of their own.

In contrast, we tend to assume that in unitary states power is concentrated at the national level, and consequently sub national levels have little spaces to act autonomously from the national level. With recent formal processes of regionalization and devolution of power to sub national in the UK and France, for example, these assumptions about the concentration of power in unitary states have been challenged. Increasingly, as power diffuses through various levels of government (including the supranational level), sub national governments in unitary systems have become strong and autonomous actors. This means that ongoing processes of decentralization

and regionalization often blur the informal distinctions between federal and decentralized unitary states.

As hinted above, formal powers of sub national levels in federations and unitary systems differ markedly along several dimensions, such as the configuration and division of policymaking responsibilities and the nature of the relationship between national and sub national levels (Elazar 1987). These two categories are not exhaustive as they do not capture the complications of intra-governmental relations in states. Therefore, I argue that to capture the different types of unitary and federal systems, it is essential to pay attention to the design, content, and form of decentralization and centralization as these factors tend to be glossed over by scholars (Rodden 2004).

The first step in this theoretical exercise is to determine whether national and sub national levels have *exclusive* or *concurrent* powers over a policy area. In states where national and sub national have exclusive competences over a policy area each entity cannot formally interfere with other's reserved competencies. For example, defense and monetary policy tend to be exclusive competencies of national levels, hence sub national levels have little or no say in decision making. In contrast, national and sub national levels can share competencies over a policy area. Thus, in theory, both levels of government must cooperate when creating policy. In some political systems, even if the national and sub national levels formally (*de jure*) share competencies over a policy area, the national level has the ability to overrun the decisions of sub national levels. For example, in Spain, sharing competencies does not necessarily entail joint action of the two levels of government. Rather, the central state authorizes the CCAAs to 'share' its powers by developing and implementing its framework legislation (*legislación básica*) (Börzel 2002: 94). This means that the national level is still responsible for designing, defining the objectives and the goals of ALMP, and regulating most aspects of labor relations, without much intervention of the sub national entities. For this reason, we must look at a second factor--the *nature of intra-governmental relations* in a MS.

This dimension captures the distribution of power in states and it is defined by the ability of national entities to act autonomously and override sub national levels. In other words, we must ask to what degree the national level is obliged to take into account sub national governments? *Ceteris paribus* sub national levels of governments are more powerful in federal states than in unitary states. Still, some federations are more centralized than others. In the same vein, when comparing unitary systems, in some systems sub national entities are more powerful than in others. To capture these complications, a fruitful way to categorize the *nature of intra-governmental relations* in MSs is to examine whether the relationship between national and sub national levels is organized in a *hierarchical* or a *horizontal* manner.

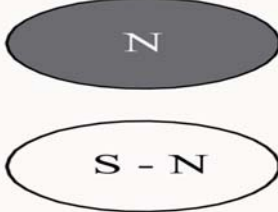
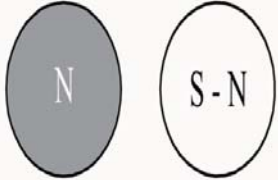
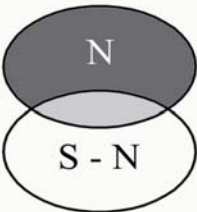
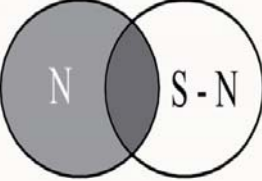
In states where *hierarchical* divisions of power are predominant the national level overrules sub national entities and the latter entities are nested into the national level. As Kovziridze (2004) argues, hierarchy is a vertical structure of inter-level relationships characterized by unilateral dependence of lower levels on higher ones. In these type of system, the distribution of power and competencies favors the national level, thus, this entity has many opportunities to create policy independently from sub national levels. Furthermore, dominant logics of policymaking and decision making tend to be ‘top-down’ and sub national levels have a propensity to be mere managers and implementers of policies created at the national level. Thus, there is little space for sub national levels to be active decision makers and policymakers at the national level. Consequently, in many instances (especially in federal states where hierarchical structures are predominant) the nature of the relationship between national and sub national levels is competitive given that sub national levels have to claim (and sometimes protect) their autonomy in policymaking.

Alternatively, in systems where the balance of power is organized *horizontally* the national and the sub national units share authority, and in many instance policy competencies are a unique responsibility of the latter entities. Moreover, sub national entities are not nested into the national level, but linked to each other and the national level. In horizontal systems, the

desirable scenario is to achieve high levels of coordination between both levels of government to achieve a common good and/or common goal. In addition, when playing the ‘two level game’ (Putnam 1988), in many cases, the national government must coordinate with sub national entities because the former entity cannot make agreements without the latter (e.g., Belgium), unless the national level has exclusive competence over a policy area (e.g., defense, monetary policy).

Based on these two dimensions, we can think about four ideal types of scenarios: 1) exclusive hierarchical, 2) exclusive horizontal, 3) concurrent hierarchical, and 4) concurrent horizontal. For the purpose of this analysis, it is important to clarify that this typology is policy area specific. This means, for example, that even if the overall nature of intra-governmental relations is hierarchical in a country and, consequently most policy areas are organized in a hierarchical way, other policy areas may be organized in a horizontal way. In addition, the typology mostly refers to policymaking, rather than legislative processes (therefore, political parties are excluded from this model). Further extensions of this project will take into account the former elements, as well as the fiscal and legislative constraints. Figure 1 illustrates the differences between these settings.

Figure 1. A typology of the nature of intra-governmental relations

	HIERARCHICAL	HORIZONTAL
EXCLUSIVE		
CONCURRENT		

This section has presented a typology of intra-governmental relations. In the following section, I will summarize the findings already the main findings of the influence of soft law in Spain, Belgium, and Sweden and I link these ideas with the main findings of my study.

5. SUMMARY OF FINDINGS

As already explained in section 3, in all three countries the implementation of soft law increased coordination between national and sub national levels. Table 1 summarizes the different national settings and the experiences with the implementation of the EES.

In Sweden, in the process of NAP creation, the national government consulted the sub national peak organization. As explained in chapter 4, the Ministry of Industry, Employment and Communications carried out informational sessions at the sub national levels to disseminate and diffuse the objectives and policies of the EES. In this centralized country, where sub national

levels are mainly implementers of labor market policy, these entities did not participate as much as in the other countries. Given that in this country labor market policy is extremely centralized, the formal institutional structures allowed sub national entities to report and coordinate limitedly with the national level. In other words, the degree of intra-governmental coordination in Sweden after the introduction of soft law was determined by the exclusive competence of the national level over labor market policy and the hierarchical nature of intra-governmental relations. In Sweden, the act of reporting to the national level influenced the nature of intra-governmental relations as this process opened a door of opportunities for the national and the sub national entities to collaborate with different types of governmental actors at different levels. For instance, in its 2005 plan the government announced that in 2006 it will present a coherent strategy to strengthen governance and dialogue between national, sub national, and local levels.

In Spain coordinating spaces have been created at the national level and sub national entities have actively participated in these arenas, mostly through active consultation. After the introduction, of soft law the Spanish Autonomous Communities have actively and more often participated in national coordinating arenas. For example, in Spain the Sectorial Conference (the body that gathers the sub national entities) is responsible for approving the NAP. Higher levels of national-sub national coordination are important developments as in this country there were no formal mechanisms to coordinate policies. Furthermore, the implementation of soft law reinforced current processes of devolution as sub national levels have been increasingly consulted by the national level, and included in decision making processes regarding the labor market which allows these entities to bargain with national ministries. In this country, the EES has made the relationship between national and sub national levels less competitive and hierarchical by giving the opportunity to sub national levels to claim their role as decision makers. In addition, at the practical level, these events have been especially significant as they provide the

Table 8.1: Summary of domestic experiences: domestic structures and the European Employment Strategy

	DOMESTIC POLICYMAKING AND INSTITUTIONAL SET UP			EES PROCESS				
	Type of System	Configuration of Labor Market Policy	Role of Sub-National Levels in Labor Market Policy	NAP Creation	Nature of sub national coordination	Sub national Initiative Linked to the Strategy	Role of the ESF	Links: EES and ESF
Sweden	Hierarchical	Centralized and exclusive competency of the national level	Implementers	Highly centralized	Very limited 'say': Inclusion of sub national peak organization only in <u>reporting</u>	Local Action Plans	Weak	Very weak almost none
Spain	Hierarchical	Centralized and concurrent	Implementers and enforcers, increasingly formulators and decision makers (through consultation)	Centralized, but open	More 'say': Inclusion of sub national entities through <u>consultation</u>	Local Action Plans and Best Practices	Very Strong	Weak
Belgium	Horizontal	Highly decentralized and exclusive	Main Actors, with the exception of Social Security	Intergovernmental	Active say-- <u>Bargaining</u> between national and sub national entities in new arenas	Regional Action Plans, Social Pacts	Strong	Strong ENIAC, EPs

national level with the opportunity to create ‘global’ policies and detect inefficiencies, such as policy duplications.

Finally, in the process of reporting to the supranational level in Belgium both levels of government gathered at the federal level to actively bargain about labor market policy, which significantly increased intra-governmental coordination of this policy area. Both levels sat on the bargaining table as equals, even if the federal level is responsible for delivering the NAP to the EU. Multiple Belgian interviewees considered that the implementation of soft law had important consequences on internal coordination, specifically national-sub national coordination. Policymakers within the federal government were especially optimistic about these new opportunities, mostly because they felt that the EU policies provided all levels of government with common points of reference, a policy framework and targets--an important matter in this country given the exclusive powers of the Regions.

In Belgium, the process of reporting to the supranational level forced the national government to create spaces to collaborate and gather information from the Belgian Regions. For example, interviewees at the federal level commented that they had to actively include sub national levels because Regions are responsible for many aspects of policymaking. Concurrently, by being actively involved at the federal level, the federated entities utilized European policy principles to better coordinate policies at the national level, and to re-organize sub national policymaking procedures and labor market policies. These events illustrate that central governments do not take their procedural obligations lightly and they put much effort into the reporting tasks mainly because they want to be ‘good Europeans’ and look good at the supranational level.

These events are significant given that before the introduction of soft law there was little coordination between these entities even when all three levels of government in Belgium have exclusive competencies over different aspects of labor market policy. This means that the

process of reporting in Belgium opened the door for coordination; consequently, in this country *de facto* labor market policy is not longer viewed as a exclusive competence of one level of government, rather various levels of government perceive it as their responsibility. The exclusive competencies of labor market policy and the horizontal nature of federalism was extremely relevant to understand these events as the federal level was forced to bring in sub national levels and engage in intensive coordination with these entities. In this case, these events entailed some degree of *de facto* centralization as the EU strategy has further legitimized the role of the federal level as overseer and coordinator. Yet de formal institutional (*de jure*) structures remained intact in Belgium.

It is important to note that in all three countries *de jure* institutional set up determined the nature and the degree of sub national involvement in the implementation of soft law. Moreover, even if *de jure* institutional set up did not change as a consequence of the implementation of soft law, *de facto* institutional set ups were affected given that the degree and the frequency of national-sub national coordination increased after the introduction of soft law.

6. DISCUSSION

In this paper, I have argued that the collaborative elements of the EES have pushed for the creation of new political networks and political channels at the national level which have increased *de facto* coordination between levels of government and this, in turn, has informally affected the nature of intra-governmental relations in MSs by promoting intra-governmental internalization. In these settings, the availability of information and the ability to share it across levels of government have had an important impact on intra-governmental practices and routines.

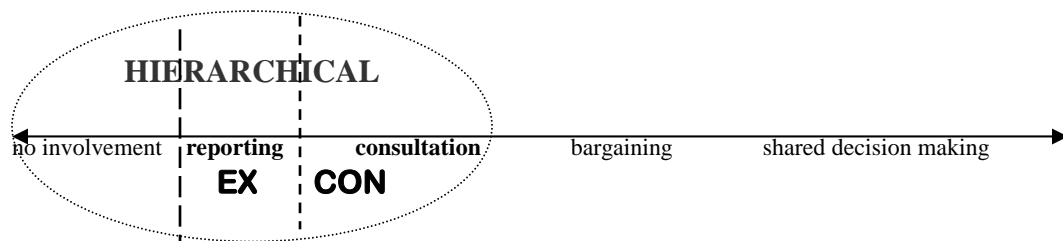
These arguments are important as they show that if non-binding rules are constructed and managed in a manner that promote collaboration they have the power to significantly affect domestic settings and institutional structures. Moreover, along the lines of the 'managerial model' (Chayes and Chayes 1995), the findings suggest that reporting requirements, interaction

and iteration, and surveillance mechanisms can drive change, specifically accommodation, even in the absence of enforcement and sanctions.

Second, I have shown that formal (*de jure*) institutional configurations mediate the nature of the involvement of sub national actors in the implementation of soft law. Thus, even if all countries have experienced intra-governmental internalization, there are cross-national differences in the nature of the influence of the strategy that are explained by the aforementioned factor. In contrast to the arguments about regionalization and internationalization leading to institutional convergence, I assert that Soft Europeanization does not lead to uniform outcomes. More specifically, there are cross-national differences on how states react to the implementation of soft law and these differences are explained by *de jure* domestic institutions. Thus, when evaluating the prospects of non-binding rules for affecting domestic institutions, specifically the nature of intra-governmental relations, we have to examine whether and how the institutional set up of a country allows sub national entities to participate in the first place.

When referring to the differential internalization of soft law, I argue that national governments member States will involve their sub national entities in different ways in the implementation of soft law. More specifically, the process of implementation will strengthen the level of coordination between national and the sub national governments. How they are involved depends on the formal structure of MSs. Figure 3 illustrates my predictions for hierarchical systems. The following paragraphs explain these predictions.

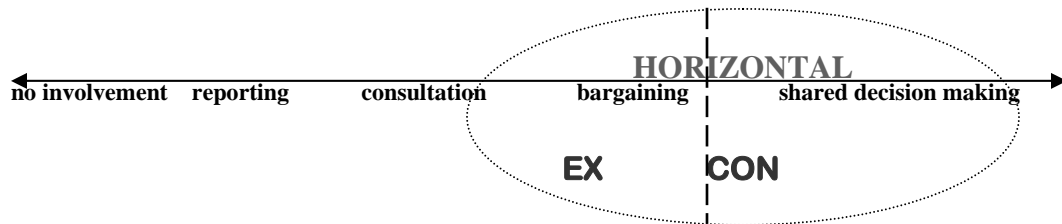
Figure 3. Predictions for hierarchical systems



The oval represents the type of system, in this case a hierarchical system, while the dashed lines depict the division of competencies (exclusive or concurrent). First, the reader should note that the nature of coordination in hierarchical systems will range from ‘no involvement to consultation.’ Second, the reader should refer to the bottom left side of the continuum. This area illustrates the expectation that in hierarchical systems where one level is responsible for a policy area (exclusive, **EX**), we will expect for sub national levels to **report** to the national level. Next to it, I illustrate the following expectation: in hierarchical systems where both levels are responsible for a policy area (concurrent, **CON**) sub national levels will be **consulted** by the national level. As already argued, the implementation of soft law will push hierarchical systems to move to the ‘right’ (towards consultation) along this continuum.

Now, let me refer to horizontal systems. Figure 4 illustrates my predictions for horizontal systems.

Figure 4. Predictions for horizontal systems



The oval on the right side represents hierarchical system, while the dashed lines depict the division of competencies (exclusive or concurrent). The reader should note that the nature of coordination in hierarchical systems will range from ‘active consultation to shared decision making.’ Second, the reader should refer to the bottom right side of the continuum. This area illustrates the idea that in horizontal systems where one level is responsible for a policy area (exclusive, **EX**), we will expect sub national participation at the national level to verge from

active consultation to bargaining. Next to it, I illustrate the idea that in horizontal systems where both levels are responsible for a policy area (concurrent, **CON**) we will expect the sub national levels to be share decision making with the national level. As already argued, the implementation of soft law will push hierarchical systems to move to the right (toward shared decision making) on this continuum.

This typology and predictions move beyond our usual understanding of intra-governmental relations (e.g., federations, unitary states) by capturing how the nature of the relationship between the national and sub national governments is organized in a country. This type of analysis allows us to capture the complications of intra-governmental relations in different types of political systems, specifically the amalgam of arrangements in unitary and federalized systems. This is an important theoretical development given ongoing processes of decentralization in European MSs.

Finally, the findings and theoretical propositions presented in this chapter are not only relevant to the literatures on compliance, implementation and Europeanization, but they also have important implications for research on the development of multilevel governance structures in the EU. It is important to note that my empirical findings expand current research on multilevel governance, devolution, and decentralization as they point at the idea that the development of multilevel governance structures will take place even when there is no obligation to comply with EU rules. Most importantly, the propositions presented above are especially relevant to these bodies of work as they provide important insights about under what conditions multilevel governance structures in MSs are more likely or less likely to be created, an argument that is still underdeveloped. More specifically, these propositions indicate that sub national entities would be more active in processes of Europeanization in horizontal systems than in hierarchical systems, even in unitary systems. Further extensions of this research project will test the applicability of these arguments on policy areas ruled by hard law.

7. CONCLUSIONS AND IMPLICATIONS

What are the implications of these findings for studies about the effect of international non-binding measures on domestic settings, specifically for research on Europeanization, multilevel governance, and devolution? First, the paper shows that ‘Soft Europeanization’ does not change the *de jure* institutional set ups—for instance, centralized states remained centralized, while decentralized systems remained decentralized. Nevertheless, collaborative soft law changed *de facto* institutions because it created coordinating spaces and collaborative mechanisms at the national and the sub national levels. When referring to the outcomes of internalization, I contend that the collaborative elements of the EES have been *absorbed* (i.e., accommodations) by domestic settings, and have not led to domestic *transformations* (i.e., paradigmatic change). The absorption of the collaborative elements of soft law should be seen as is one of the multiple factors that promote (or reinforce) devolution and decentralization in MSs. Consequently, it is plausible that in the long-run *de facto* changes can lead to (or reinforce) *de jure* changes in intra-governmental relations. This argument effects parallels the influence of hard law on multilevel governance as binding rules have not changed domestic *de jure* institutions, rather they have informally influenced the shape of domestic institutions. Thus, soft law reinforces the influence of European integration on multilevel governance structures.

In addition, *de facto* changes have important consequences as they open opportunity structures for sub national policymakers to claim their roles as key in decision making and policymaking. More specifically, soft law has opened a window of opportunities for sub national levels, especially in decentralized states, to have a ‘say’ in policymaking at the central level without being obliged to ‘pay’ the costs of implementation. These trends are exceptional in the case of labor market policy as this policy area has tended to be very centralized in most MSs and sub national entities have tended to be mere managers and implementers of policies created at the national level. In addition, they go against the literature on regionalization and Europeanization (Börzel 2002a), which show that Europeanization under hard law has resulted in uneven

distribution of power where sub national levels have had to ‘pay’ the costs of Europeanization without having much ‘say’ in decision making at the national and sub national levels.

My contribution to the literatures on multilevel governance and the scholarly debate about the need for sanctions and coercion to influence domestic settings is to indicate that the lack of obligation to the EU does not slows down the development of multilevel governance structures. Therefore, I assert that the degree of bindingness is not a crucial variable for multilevel governance to develop; rather, the availability of collaborative spaces for sub national levels to become active actors is the important factor in these scenarios. More specifically, the implementation of EU soft law serves as one of the overlooked policymaking “elaborated mechanisms for resolving intergovernmental disputes in devolved systems” (Keating and McEwen 2005).

This argument should also be applicable to binding rules launched by higher levels of government, international and/or regional organizations because they point out that intra-governmental internalization is likely to occur as long as non-binding rules are managed in a manner that compels states to involve and collaborate with sub national and societal actors in processes of compliance and implementation. More specifically, if soft law is constructed in a way that compels MSs to involve lower levels of government, then these events increase the likelihood of domestication and implementation.

In sum, by softly pressuring states to follow a course of action, by framing these courses of action as necessary, and by opening spaces for sub national participation in national policymaking processes, soft law influences MSs’ behavior. If this were not true, how could we explain that national governments created new arenas for coordination by including sub national levels in the process of domestication, when they are not obligated to do so? In these settings, the information, structure, and resources provided by international or regional organizations are especially important because they strengthen ‘cooperation without enforcement’ by informally empowering sub national levels in implementation. Therefore, in the end, soft law should not be

just considered “window dressing” (Abbott and Snidal 2000), but a legal instrument that can inspire and trigger complicated processes of domestic change.

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