

The domestic implications of European soft law: framing and transmitting change in employment policy

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ABSTRACT The Treaty of Amsterdam launched the European Employment Strategy, a supranational non-binding instrument to boost employment rates and competitiveness. The open method of coordination, a new governance regulatory instrument, rules this common strategy. The article argues that the ‘framing effect’ of soft law is significant to policy-making across states, especially in the case of policy formulation. The analysis is grounded in the argument that to understand the effect of ‘foreign’ non-binding governance instruments researchers studying these types of governance instruments should unpack the ‘black box of policy-making’ and focus on process. Specifically, the article contributes to the literature on Europeanization by studying an instance of ‘soft Europeanization.’ To sustain and illustrate my argument, I present data from interviews conducted in the European Union, in Sweden, Spain, and Belgium at the national and subnational levels.

KEY WORDS Belgium; employment policy; open method of coordination; soft Europeanization; Spain; Sweden.

INTRODUCTION

In the mid-1990s, Europe was experiencing an acute crisis. Compared to its main competitors, in most European countries unemployment rates were dramatically high and welfare states did not have the capacity to handle these pressures. On top of these unfavorable conditions, most European countries raised the question of the sustainability of their welfare states given adverse demographic conditions, transformations of household structures, and external threats, such as globalization (e.g. intensified international competition, higher levels of capital and labor mobility, increasing development of knowledge-based economies). To be competitive in this era and endure internal and external demands, European economies and institutions need to adapt to these pressures. The matter in question was how to achieve coordination to reform and modernize existing social policies and institutions, and how to spread them where they have been missing (e.g. new member states), while maintaining and restructuring

member states' welfare institutions. Common problems suggested a supranational European-wide response.

The Treaty of Amsterdam formalized the idea of a *European Employment Strategy* (EES), a supranational instrument to boost European employment rates and competitiveness. This process is ruled by the *open method of coordination* (OMC), a new regulatory framework launched by the European Union (EU) for developing 'sensitive' policy areas (e.g. labor market policies, inclusion policy, and fiscal policy). The OMC diverges from traditional EU legal instruments in that it is a non-binding regulatory instrument that leaves ultimate responsibility for a policy area within the nation-state. In addition, under the OMC, the EU cannot punish non-implementers because it lacks tangible coercion mechanisms (such as infringement processes) and institutions (the Court).

Conventional accounts of the development and transformation of welfare states assume that the sources of welfare activity are found within the boundaries of the nation-state. Therefore, it is rarely considered that 'foreign' entities have a direct effect on domestic welfare settings. The development of this 'soft' regulatory framework by the EU to coordinate labor market policies across the member states begs the following question: What are the implications of the development of a soft supranational social dimension for domestic processes, policies, and institutions? Does the EES affect member states in similar ways? What explains the differences in how states experience soft law?

The answer to these questions might seem straightforward. Nonetheless, the study of the effect of non-binding instruments on domestic settings is a complicated task since it does not necessarily include changes in legal frameworks. This article addresses these issues by drawing on a *policy process framework*. 'Opening the black box of policy-making' allows for the identification of important changes that are not necessarily linked to parliamentary activities, such as the inclusion of a policy item in the domestic agenda and/or the reformulation of existing policies and institutions by domestic policy-makers. I argue that, by acting as a framer of employment policy, the supranational level has restrained several dimensions of employment policy and labor market policies in the member states, mainly by: (a) defining (and reinforcing) what problems domestic policy-makers should attack to increase member state competitiveness, and to deal with internal and external challenges; (b) pointing out and/or reinforcing the idea that a policy line is good or bad and necessary; (c) restricting and limiting the policy options and courses of action that domestic policy-makers should develop; and (d) providing potential courses of action that allow policy-makers to 'draw lessons' and to 'learn' about ways to solve or diminish the problem in question. To develop my argument, I mainly present data from interviews conducted in the EU, and at the national and subnational levels in Sweden, Spain, and Belgium.

By looking at how supranational soft social policies influence domestic settings, this piece adds a new dimension to the study of contemporary changes in welfare states because the findings show that 'non-domestic pressure' is an important variable to understand such developments. Furthermore, the paper seeks to expand the literature on Europeanization, or the study of the effect

of the EU on member states, by studying the implementation of non-binding regulations in the member states. By addressing this literature, it sheds light on the types of governance instruments that divided power systems (e.g. decentralized countries, multi-layered systems, federations) can use to coordinate a policy area without component states having to cede power to a higher level of government.¹

This article proceeds as follows. The following section explains the research design and case selection. The third section presents a historical background to introduce the reader to the 'world' of the EES. Then I introduce the literatures that provide the framework for the research question. Next, I pose an argument about how the EES affects the policy-making stages of problem identification, agenda-setting, and policy formulation. Finally, I conclude with the implications of my research for the study of soft law, Europeanization, and welfare reform.

RESEARCH DESIGN AND CASE SELECTION

This article identifies and explains general patterns, cross-national similarities, and variations in the effect of soft law on the early stages of policy-making. From June 2002 until December 2003, I conducted more than sixty in-depth semi-structured interviews with elites, policy-makers, experts, and members of trade unions and employers' organizations in the EU,² in Spain, Belgium, and Sweden at the national and subnational levels.³ These countries were chosen using a very different system design methodology (Przeworski and Teune 1970). The reasoning behind this selection is to analyze whether the EES affects member states differently given their domestic institutions.

The choice of cases is grounded in the empirical findings and theoretical propositions of the literature on implementation of hard law measures. This body of work points out that the degree of compatibility (i.e. fit/misfit) between EU measures and domestic institutions matters, when explaining compliance with EU hard law (Cowles *et al.* 2001). Since this study concentrates on labor market policy, I focus on labor market institutions as an indicator of the domestic institutions, and each of the chosen cases represents a specific labor market configuration – Southern welfare regime (high levels of misfit), a Continental regime (medium levels of misfit), and a Scandinavian case (low levels of misfit) (Esping-Andersen 1990; Ferrera 1997). Given that many aspects of the EES are grounded in Swedish employment policy,⁴ (e.g. full employment, strong partnerships with social partners, activation), it is accurate to argue that this state from the Scandinavian regime has high levels of fit. Moreover, Continental regimes have medium levels of fit, and Southern regimes have low levels of fit (e.g. high unemployment levels, 'under-developed' welfare states). These divergent cases allow me to explore whether the effect of soft law on domestic settings is related to the institutional configuration of a country. For instance, if we observe similar outcomes in Sweden and Spain, we can hypothesize that the 'level of fit' is not an important variable to understand

‘soft Europeanization.’ Alternatively, if we find dissimilar outcomes in these two cases, we can suggest that the level of compatibility between domestic institutions and European guidelines matters to understand these developments. Accordingly, the reader can draw lessons from the case studies that could be further tested and applied to other member states within and/or across ‘regimes,’ and across policy areas.

BACKGROUND

After the passage of the Single European Act (1986), the discussion about the need for a European social dimension grew steadily in the EU. For instance, issues such as gender equality in the workplace and employment policy became increasingly salient. The 1991 Maastricht Summit resulted in several institutional changes, including the creation of a Social Protocol. This agreement, signed by eleven of the twelve member states, contains provisions for cooperation between national and supranational social partners (i.e. trade unions and employers’ organizations), member states, and the EU on social matters. The Treaty of Amsterdam (1997) included an Employment Chapter (Art. 125–130), which stated that the EU and the member states should consider employment policy ‘as a matter of common concern.’ At the Employment Summit in Luxembourg (1997), the former principles were developed by an annual coordinated process for employment – the EES.

These innovations reached a climax at the Lisbon European Council (2000) when the EU launched the *Lisbon Process* and a new strategic goal – ‘to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion’ (Conclusion of the Portuguese Presidency). This process gave the EES new impetus by creating a ten-year plan to reach, for example, a 70 percent employment rate, a 60 percent female employment rate, and an activation target of 20 percent. An important feature of the EES is the incorporation of a new type of regulative regime – the OMC. The OMC allows for greater flexibility, variation, and voluntarism than the *Community Method* (Senden 2004) because, instead of launching detailed binding rules, it proposes non-binding general standards and guidelines.

In December 2003, this European strategy was renewed through streamlined timetables to coordinate and complement the EES with other soft processes – the Broad Economic Guidelines (BEGs) and Social Inclusion and Pensions (Hodson and Maher 2004). The goal of this development was to create mutually reinforcing objectives in both economic and social policies (Goetschy 2003)⁵ and to coordinate policy areas over which the EU has little control – fiscal policy and welfare states. In sum, the inclusion of employment policy at the EU level is one of the multiple pieces that hold the Single Market and the monetary program together. Concurrently, it underlines the importance of employment and inclusion policies for maintaining a distinctive European social model, while promoting individual and collective competitiveness.

SOFT LAW AND EUROPEANIZATION

As the EU has strengthened, the issue of the effect of the supranational level on component states has become increasingly important to European leaders and ordinary citizens. Yet, until very recently the growing impact of 'Europe' on the member states was largely ignored by scholars. Most studies on the EU focused on the construction of a supranational level, such as the transfer of competencies from the national to the supranational level, and decision-making in Brussels. Then scholars began to expand the field by studying and theorizing *Europeanization* (e.g. Cowles *et al.* 2001; Featherstone and Radaelli 2003; Héritier *et al.* 2001). This 'top-down' perspective of European integration focused on 'why, how, when, and to what degree' Europe matters on domestic settings. Works in this tradition share one similarity – they interpret instances in which European regulatory instruments are legally binding and compliance is obligatory. These studies are grounded in the assumption that domestic settings must change when the EU launches binding law. Under these circumstances, EU institutions provide coercive instruments (infringement processes and litigations) to threaten and punish member states that do not comply with EU law, and European institutions, specially the European Court of Justice (ECJ), act as enforcers. How, then, is the OMC different from the Community Method?⁶

First, under the OMC states are not obliged to change their domestic settings because compliance is voluntary. Second, compliance with these regulations does not necessarily include transposition, and/or change in domestic legal frameworks because these actions are not prerequisites for implementation. Therefore, domestic changes may take many different forms. Third, the EU's role as an enforcer is weaker because the ECJ cannot legally threaten disobedient states or employ the coercive mechanisms available under the Community Method (Trubek and Trubek 2005). This means that the public, other member states, and/or the supranational level cannot hold a member state accountable for its failure to comply with EU guidelines.

This neo-regulatory regime is rooted in iterative benchmarking of national progress toward commonly agreed objectives. Every year (and since 2003, every three years), member states 'face' the EU and other member states through reports about the domestic implementation of the strategy, better known as National Action Plans (NAPs). Through benchmarking and exchange of best practices, guidance (i.e. Employment Guidelines), evaluation (i.e. recommendations and peer reviews), periodic interaction and reporting and surveillance, the EU monitors and softly enforces the EES (Borrás and Greve 2004a; Zeitlin 2003). In addition, the OMC is grounded in interaction among non-governmental groups (e.g. social partners) and different levels of government (national and subnational), as these actors ought to participate in supranational and domestic arenas to discuss, bargain, and coordinate policies with the end of implementing the strategy.

There is a growing literature on the OMC and its potential effect on domestic settings (e.g. Borrás and Jacobsson 2004; de la Porte and Pochet 2002;

GOVECOR Project; Zeitlin *et al.* 2005). The academic discussion about the impact of the OMC has led to dissimilar arguments given the diverse theoretical understandings and analytical frameworks (Borrás and Greve 2004b). This article seeks to contribute to this literature by focusing on a particular aspect of the effect of the EES – its influence on domestic policy-making processes – and by presenting a number of factors that are linked to the differential influence of soft law on member states.

POLICY-MAKING PROCESSES AND THE EES

Some authors have framed policy-making as a process composed of multiple stages (Anderson 2000; Jones 1984; Lindblom 1971). Scholars take the ‘policy-making stages’ heuristic as a baseline, and have focused on specific stages of the process of (re)creating policy to understand policy change and policy success/failure (Kingdon 1984; Lin 2000; Pressman and Wildavsky 1984). This type of work has warned us that the creation of or change in legislation is one of the multiple products of the policy-making process. Furthermore, these authors remind us that adjustments and transformations in domestic settings are not always apparent to the student’s eye and that we have to look deeper and focus on process to have a better understanding of various scenarios.

These insights are helpful when looking at instances where modifications in legal and policy structures are not obligatory. Many changes throughout the policy process are not observable, yet they are as valid and important as policy adoption. The case studies show that the EES has activated innovative dynamics that are not necessarily linked to policy changes in parliaments, but are related to transformations in early stages of the policy-making process by those who are responsible for managing policy on a daily basis. For instance, the majority of the interviewees argued that soft law significantly affects domestic settings, and the number of interviewees who mentioned that the EES had little or no effect on domestic settings was very small (two in Belgium, one in Spain, and five in Sweden). The following sections unpack and trace the policy-making process with the goal of presenting the logic of domestic change under non-binding legal instruments.

Problem identification and agenda-setting

The EES changes the way that responsible politicians and employees see problems.
(Interview, Belgium, December 2003)

The EES can set the agenda because the government feels it is legitimate to take certain actions that otherwise would seem less attractive.
(Interview, Spain, March 2003)

During the policy-making stage of problem identification and agenda-setting, a ‘condition’ (e.g. an event, a situation) is perceived, identified, and framed as a ‘problem’ by policy-makers, and consequently it is set in the domestic

agenda. In other words, throughout a selection process, what once was a condition later becomes part of the ‘official list’ of matters that a government seeks to solve (Anderson 2000).⁷ Contemporary accounts of processes of change in labor market policy and welfare states in Europe ought to include the EES in their analyses because this supranational process plays a pivotal role when problems are defined as such, while others are not. First, the European Employment Guidelines define common European problems that domestic policy-makers should act upon. By framing a set of common guidelines, Europe is establishing the idea that X (e.g. low levels of spending on active labor market policies) is a common problem and, therefore, policy-makers should perceive, identify, and/or define X as such. As a consequence, conditions defined by the EU as problems have an advantage over other conditions because the supranational level legitimizes and frames them as matters of individual concern.

Second, individual recommendations to a member state define what the EU perceives as a domestic problem, which consequently will persuade domestic actors to, at the very least, initiate a discussion about why X is considered a problem by the EU, and why domestic policy-makers should also define X as such. This means that domestic policy-makers need not come on their own to the realization that a policy must be revised and that ‘something is wrong’ because the supranational level points it out for them. In addition, the EU highlights relative disadvantages and advantages by providing explicit performance comparisons (quantitative indicators) across member states. In this sense, if a member state is not achieving what others are accomplishing, then the EU frames this relative disadvantage as a domestic problem.

As Figure 1 illustrates, the EES has highly influenced the stage of problem definition in Spain and Belgium by helping policy-makers to perceive the problems that they currently face by raising awareness of common and individual problems, and/or by providing an analytical framework for further action. In these countries, for instance, the policy approach of the ‘active welfare state’ became especially relevant since the EU emphasized that member states

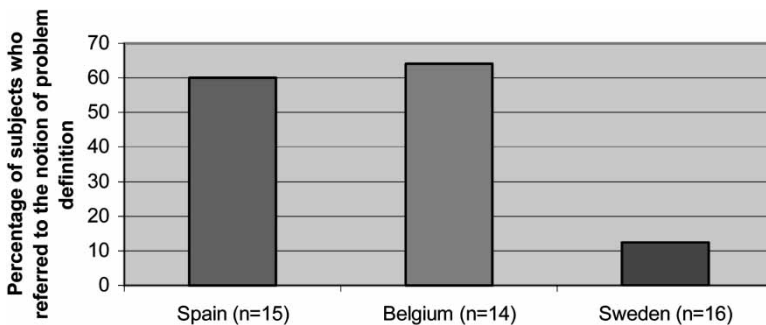


Figure 1 Percentage of interviewees who referred to problem definition⁸

should decrease unemployment insurance and develop institutions and programs to actively (re-)insert people in the workforce.⁹

As presented in Figure 1, Swedish respondents did not emphasize the idea of the EES influencing problem definition as much as Spanish and Belgian interviewees. This finding is not surprising if we refer to the notion of goodness of fit (Cowles *et al.* 2001). Since its 1995 accession to the EU, this Scandinavian country fervently pushed for the creation of a supranational social dimension, and consequently various aspects of the EES were modelled after Swedish labor market policy. For this reason, in Sweden the EES did not have the power to considerably frame labor market problems because most domestic policies and institutions were already compatible with EU standards, in part because this country defined major aspects of the EES and its Guidelines. For instance, EU 'activation' policies were not relevant to Sweden, as this country already devised these policies in the 1960s. In contrast, the level of incompatibility between EU Guidelines and domestic settings can explain the important influence of the EES in Spain and Belgium.

Repetition and continuous interactions are essential in policy areas ruled by soft law since these factors help to harden its effect. These characteristics of the EES 'game' help to overcome the coordination problem and the lack of formal coercive instruments that distinguish this type of soft mechanism as it serves an indirect coercion mechanism. The repetitive message of the EU reminds states that they should act on the problem; if they do not do so, they run the risk of not being competitive. In addition, the supranational level continuously revises and sets the standards, and frames which policies are 'good/bad' and/or 'necessary.' These events push civil servants to place a problem framed by the EU on the domestic agenda. In other words, policy-makers include these problems in the list of the things that they should work on because they are accountable to the EU and other member states.

The arguments posed above were confirmed by interviews conducted in Spain, Belgium, and Sweden. Policy formulators in these countries referred to similar problems in their labor markets, as well as similar obstacles to further growth and reform of welfare states. For example, many policy-makers did not refer to high unemployment rates as the common and individual problem; rather they mentioned low employment rates and the weak inclusion of women, the elderly, youth, and immigrants in the workforce as the problems that they must attack. For instance, besides active labor market policies, the strategy also influenced policies related to inclusion of women in the workforce. In Spain, the strategy consolidated the notion that the social partners and the government need to prioritize and further develop policies and institutions to (re-)insert women in the workforce, promote equality in the workplace, and reduce pay gaps (López-Santana 2004).¹⁰ On the contrary, policy and institutions to promote gender equality in Belgium were already quite solid before the EES was launched, and the strategy reinforced these policies by certifying that it 'was on the right track.' In Sweden, a country with high rates of female employment but with a recognizable problem of gender

segregation, the strategy reinforced the idea that segregation is a labor market problem that hinders competitiveness and fairness. Thus, greater efforts must be taken to incorporate women into the private sector (a male-dominated domain).

Once these EU ideas ‘hit’ home, what is the logic of change? Do these ideas have the same effect across the member states? The EES process initiates different types of mechanisms at the domestic level. If a ‘condition’ has not been defined as a problem at the domestic level, the process pushes policy-makers to consider and frame a condition as a domestic problem, and consequently to set it on the domestic agenda. But, if a condition is already perceived as a problem, the EES strengthens the notion that X is a problem that the government should act upon. By the EES reinforcing the importance of finding a solution to a problem, it can become a domestic priority and it will move to the top of the domestic agenda (if the item is not a domestic priority), or it can reinforce the notion that it should remain at the top of the agenda (if the item is already a domestic priority). The supranational repetitive pressure increases the odds of an idea surviving and making it into formal policy or legal structures, rather than regressing to condition status.

Moreover, the exclusion of a policy from the supranational agenda can regress a domestic problem into condition status. This means that a policy item may disappear from the domestic agenda, or move to the bottom of the agenda if the EU ceases to issue a guideline and/or recommendation on the policy. This action can be interpreted by policy-makers as a certification of the adequacy of their actions. For instance, a Spanish policy-maker said,

Until this year, Spain always got a recommendation about articulating the issue of lifelong learning (LLL). But now the Commission considers that Spain can claim that it has a LLL strategy, given the new measures taken by Spanish ministries . . . Firstly, we know that we should develop these systems. But, secondly, I cannot deny that the EES has been very important to stimulate us to achieve this.

(Interview, Spain, March 2003)

The quote highlights how the EES stimulates member states to place certain issues on the agenda and to take action to resolve them, and how in the same way an item can drop to the bottom of the agenda if the EU certifies that a country has taken the necessary actions to develop a guideline or recommendation.

In practice, the stages in the policy-making process are intertwined because they are iterative and multi-directional. Nonetheless, for analytical purposes, this article differentiates among these stages because they involve different types of activities, calculations, and in most cases, actors. In the following section, I focus on the influence of the EES on policy formulation.

Policy (re)formulation

Once a condition is framed as a problem, it becomes part of the domestic agenda. If a problem remains on the domestic agenda, a government should address it and formulate potential courses of action; this is known as policy formulation. 'Policy formulation involves developing pertinent and acceptable proposed courses of action for dealing with public problems. Policy-makers may be confronted with several competing proposals for dealing with a problem; or they may have to struggle with devising their own alternatives' (Anderson 2000: 113).

A consistent and powerful finding from this study is the ability of non-binding legal instruments to significantly affect policy formulation in member states. As illustrated in Figure 2, in all three countries the majority of the interviewed policy-makers referred to the EES as a force initiating domestic debates about what constitutes good and necessary policy; for example, to be competitive in this area and/or modernize welfare states. In addition, policy-makers commented that the EES pushed them to (re)formulate their courses of action – 'what once was good policy may not be good anymore.' The important findings to note here are: (a) 100 percent of the interviewees in Belgium referred to such notions; and (b) there are no significant differences between Sweden and Spain.

These data are important to understand the differences across cases, especially between Spain and Belgium. In Spain, many of the policy approaches prescribed by the EES were already present mainly because the European Structural Fund (ESF) fervently introduced them in this country in the late 1980s and early 1990s (López-Santana 2004). These developments made European labor market policy frameworks more tangible in Spain than in Belgium. Thus, at the level of policy discourse and awareness (i.e. ideational fit) about European employment policies, Spain has medium levels of fit, not low levels as expected. In contrast, many of the policy frameworks recommended to Belgium by this supranational strategy were not as prominent as in Spain (e.g. activation) because this country has not received as many funds and as much assistance from the ESF.¹¹ These differences between Spain and Belgium suggest that, when understanding instances of implementation of soft law, we must take into account whether a country has actively been exposed to a set of regional

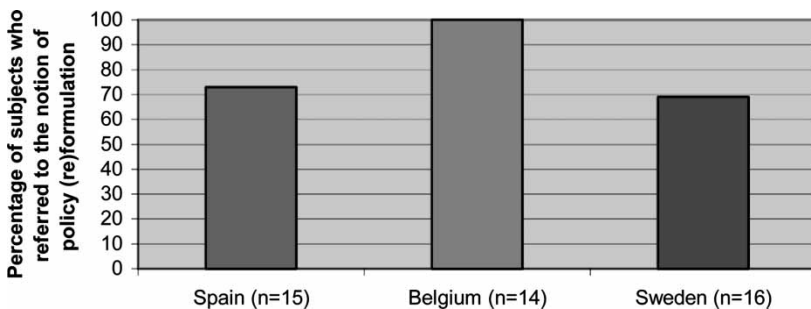


Figure 2 Percentage of interviewees who referred to policy(re)formulation

or international ideas before the introduction of soft law, given that these legacies (that in the case of the EU are present through the provision of monetary and technical resources) will shape domestic responses to soft regional mandates. Moreover, the differences between these countries illustrate that 'ideational fit' is not always equivalent to 'institutional fit.'

Another relevant variable for explaining the differential influence of soft law in domestic settings is the configuration of domestic intergovernmental relations. In the case of Belgium, the horizontal nature of federalism partly determines the resilient impact of soft law on policy formulation. In this country, different dimensions of labor market policy are distributed across all levels of government, and competencies are not shared but exclusive. By framing employment as a multi-dimensional policy area that involves many types of actors, the EES influenced the modes of interaction between national and subnational levels of government because it opened new collaborative spaces to coordinate this policy area. This type of impact is illustrated by the fact that 79 percent of Belgian interviewees argued that the EES had been beneficial in improving internal coordination of employment policies, as opposed to Sweden (54 percent) and Spain (48 percent). Given space constraints in this piece I do not focus on this variable.¹²

An unpredicted finding, given the theoretical propositions of the 'fit' school, is that in the country with high levels of fit, Sweden, 70 percent of the interviewees declared that the EES had influenced policy formulation. The reasoning behind this development is that the EES allows them to directly evaluate their institutional assets and disadvantages, as the cases of gender segregation (discussed above) and tax reform illustrate. In the years 2000, 2001, and 2002, Sweden received Council's recommendations on reforming tax labor systems to reduce the burden on labor, particularly on low wage earners, which have pushed policy-makers to reconsider the viability of these institutions. Several Swedish actors, such as the political opposition and employers' organizations, have used the European message to discredit the policies of the Social-Democratic government. Currently, the government is reforming its tax system and these changes are somewhat attributed to the soft messages coming from Europe (the BEGs and the EES). These findings suggest that soft law pushes policy-makers to (re)formulate their domestic policies even in countries with overall 'good levels of fit' because this instrument provides them with a diagnostic tool to interpret and measure the adequacies and deficiencies of their policies and institutions.

What mechanisms potentially drive the relationship between the EES and policy formulation? First, we must refer to the idea of framing by the EU (Knill and Lehmkuhl 2002). The EES imparts frames to analyze and (re)formulate domestic problems and policies because the EU softly dictates a set of targets, courses of action, and policies. For example, policy-makers in all three countries used the notion of 'activation' to describe the provision of skills to potential employees to (re-)insert them in the workforce. These categories involve causal links that affect the nature of domestic policy, such as potential cuts in unemployment insurance to implement active labor market policies. Second, the relationship between supranational soft mandates and

domestic policy (re)formulation is also driven by the information gathered by policy-makers at the supranational level, and linked to the former point, to the amount of information available to domestic policy-makers, and the accessibility of spaces and opportunities to draw and transfer lessons from other member states. At the supranational level, member state representatives are able to learn, i.e. modify their belief system,¹³ about individual and common labor market problems; in addition, they can learn about possible ways to solve these problems. In the national arena, this acquired information and knowledge pushes actors to rethink their pre-existing notions and the costs and benefits attached to maintaining the status quo. Moreover, given new opportunity structures (e.g. peer reviews, exchange of best practices, supranational committees, NAPs), policy-makers are able to 'draw and transfer lessons'¹⁴ from and to other member states with the goal of constructing powerful and viable courses of action to solve a domestic problem (Dolowitz and Marsh 1996; Rose 1993). Ultimately, this process facilitates the diffusion of policies from one jurisdiction to another.

The former sources of change compel domestic policy-makers to rethink or reinforce certain domestic employment policies. For instance, in all three countries, interviewed policy-makers persistently argued that one of the most important aspects of the domestic influence of the EES is the ability of policy-makers to learn, transfer and borrow lessons from other countries and from their own states about their institutions and policies. The following statements illustrate this argument:

An important factor is the fact that we know much more about other countries nowadays. And you get to see that there are so many similar problems and learn how they are dealing with the same problem that we have. But also that you can evaluate what is done in your country . . . And that is a very important injection to the policy debate.

(Interview, Sweden, November 2003)

The EES provides lessons from other countries. An example: reducing the security contribution of the employer. Some countries have said, 'No, we do not want to talk about it.' But they come here and see what other countries are doing, and see that it works. In Europe, more countries will go in that direction, and follow a trend, but not at the same speed. And it is not always recognized at that time . . . That is a benefit of the strategy. But in the end, we are moving, and we are moving together.

(Interview, Belgium, December 2003)

The definition and framing of common problems and common goals at the supranational level, and the possibility of drawing lessons about member state policies and problems, have pushed domestic actors to debate the status of their labor markets. Consequently, they have been able to reconsider and/or to fully reinforce their policy positions. Thus, if an actor already perceives a policy, such as activation, as a priority, the 'soft pressure' from Europe reinforces

this set of beliefs during the stage of policy formulation. However, if an actor does not perceive activation as a priority, the EES has the power to redefine policy-makers' calculations and views about its degree of need; consequently, a policy can move to the top of the agenda.

The re-ranking of policies pushes national actors to (re)consider courses of action. In this case, reformulation of policy occurs because key policy-makers visualize policy X as necessary, plus 'the shadow of Europe' and most importantly the 'threat of falling behind' are present. Besides, this stage of reformulation opens the door for (further) bargaining and potential cooperation among involved parties because the promotion of governance by the EES has enhanced cooperation and coordination of labor market policies at the domestic level. To increase the chances of bargaining and cooperation, involved actors always have the option to cite 'Europe' in order to legitimize their views and actions to their peers and opponents. In the same vein, policy-makers may resort to the tactic of 'it is necessary because Europe said so' to persuade other national actors to reformulate their position with the end of cooperating on and coordinating a set of policies. In addition, policy-makers are aware that in the future (once policy is in place) they could use the same strategy to justify their policies in the eyes of the public, especially when these are unpopular policies. Figure 3 summarizes my argument about the effect of soft law on domestic policy-making processes.

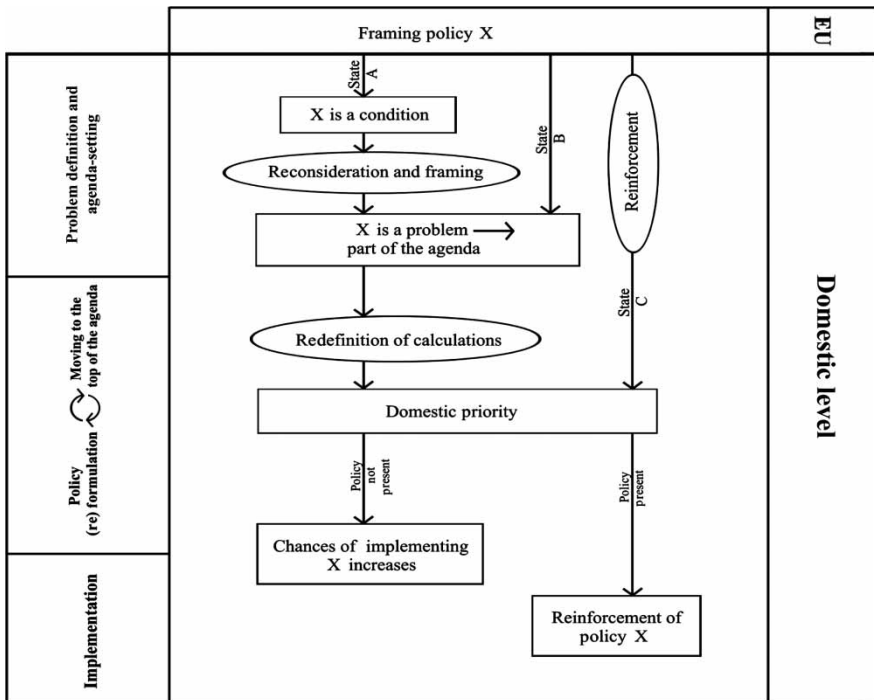


Figure 3 The logic of change under soft law

IMPLICATIONS AND CONCLUSIONS

This article has developed a narrative about the effect of non-binding instruments on member states. I have shown that the 'framing effect' of soft law is significant to early stages of the policy-making process, especially when referring to policy (re)formulation. Yet, we must ask, does soft law have a *coercive effect*? The data indicate that the influence of soft law at the domestic level is mostly grounded in its 'framing effect,' which in the case of the EES is strengthened by its interactive and iterative elements, rather than on the potential coercive power of this instrument. Based on the interviews, the threatening effect of Europe (e.g. coping with Europe for not implementing the strategy, facing other member states, peer pressure) is present in these scenarios, but not as tangible as the 'framing effect.' For example, in Belgium 21 percent of the interviewees referred to the notion of peer pressure. Similarly, in Sweden, 25 percent of the subjects mentioned this notion, while in Spain only one interviewee talked about it. In this way, even if there are no tangible punishments from the supranational institution, the 'framing effect' of soft law is directly linked to indirect coercive transfer (Dolowitz and Marsh 1996) of policies from the supranational to the domestic level.

The 'framing effect' persuades domestic policy-makers to reflect on soft European prescriptions and then construct their proposals within the limits of these frameworks. Subsequently, they develop their potential courses of action within the range of the options promoted by the EES and tend not to move outside the policies recommended by the EU. Given the broad nature of this regulative instrument, member states maneuver within the multiple policy configurations promoted by the supranational level; for instance, activation can be implemented in many ways. Therefore, the EES *expands* the courses of action available to policy-makers by providing information and opening new spaces for cooperation, while simultaneously *restraining* their options by framing good and bad policy.

The data, in addition, suggest that at the aggregate level member states have been experiencing a *Europeanization of labor market problems and solutions*. For instance, policy-makers across these three countries with very different types of institutions and labor market problems referred to the same type of policy frameworks to define their current situations, assets, and disadvantages. Yet, member states have not been experiencing policy convergence because institutional legacies are very salient.

As in policy areas ruled by hard law, the level of compatibility between European soft policy frameworks and domestic settings matters when explaining the soft Europeanization of problem definition and agenda-setting, especially in countries with high levels of fit. This finding was not as salient for policy formulation as suggested by the case of Sweden. Based on the interviews, policy-makers in this country were influenced by the strategy as much as policy-makers in Spain, but less than in Belgium. The differences between these three countries in the influence of soft law in policy (re)formulation

point at the idea that to comprehend how and how much soft law can affect domestic policy-making processes it is also important to capture the level of 'ideational fit' in a country – i.e. the degree to which domestic policy-makers already accept and recognize regional policy frameworks. In the EU, this variable is highly determined by the presence of the ESF in a member state. Therefore, if a country has already been actively exposed to a set of regional policies through the provision of technical and financial resources, the likelihood of soft law influencing domestic policy formulation decreases, even if the country has high levels of institutional misfit. I contend that the differences in the effect of the EES in Spain and Belgium, and the similarities between Spain and Sweden, were determined by this factor (i.e. Spanish policy-makers widely accepted EU soft policies), and not by the institutional fit of their labor market, economies, and institutions.

The results presented in this article should be applicable to other member states. In particular, the findings on Sweden can be relevant to other Scandinavian member states and in some aspects of employment policy to Austria and the Netherlands. In the same vein, the conclusions about the effect of soft law on Spain should be pertinent to countries with low levels of institutional fit that have been intensely exposed to European soft policies throughout other mechanisms (e.g. the ESF), such as Portugal, Ireland, Greece, and in the future the ten new member states. Finally, the case of Belgium illustrates how countries with medium to low levels of ideational fit could be influenced by soft law.

The framing effect of soft law on member states has some limitations regarding the ability of the EU to become 'the most competitive and dynamic knowledge-based economy in the world' given that individual and collective normative changes do not necessarily translate into effective policies and positive policy outputs to increase employment rates and promote growth, as underscored by recent analysis of European conditions (Barroso 2005; Kok 2004). I acknowledge that changes in the early stages of the policy-making process do not guarantee successful outcomes, such as booming employment rates and growth, given that there is not a direct relationship between compliance, implementation, and policy effectiveness. As Shelton (2000: 17) argues, 'once international regulations [are] perceived as necessary and action has been taken, compliance is expected and necessary, but not always sufficient, for the norm to become effective.' This gap between the creation of norms and policy effectiveness can be explained by multiple factors, such as weak or improper domestic implementation, the nature of intergovernmental and societal relations, changes in fiscal policy, monetary instability, unstable electoral cycles, and international uncertainty. Nevertheless, this gap is not necessarily related to the non-binding and non-coercive nature of soft law given that the availability of sanctions does not necessarily lead to successful compliance (Falkner *et al.* 2005; Kok 2004) and/or policy effectiveness. Recent developments in the EU (Barroso 2005) imply that the framing effect of soft law could lead to better 'practical compliance'¹⁵ if soft law becomes more integrated into supranational and domestic structures by linking several

policy areas, involving different types of domestic actors in its implementation and increasing accountability.¹⁶

To conclude, the development of soft law can have major implications for European labor market policies and institutions, since the EU is softly prescribing and pushing certain policy lines and prescriptions to the member states. This type of governance instrument allows higher levels of government (e.g. international organizations, central levels in decentralized or federal systems) to influence component states' policies with the end of achieving coordinated reform, without states ceding power to higher levels on 'sensitive' policies. Thus, higher levels of government may establish and/or reinforce policy paradigms while discarding others, in order to influence the behavior of domestic actors and the content and shape of labor market policies and welfare policies.

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NOTES

- 1 The goal of this project becomes even more relevant if we accept Goldstein *et al.*'s (2000) argument about a rising worldwide movement towards legalization and an increase in the regulation of important actors' behavior by international organizations. For a detailed analysis of soft law, refer to Abbott and Snidal (2000), Mörth (2004), and Shelton (2000).
- 2 In the EU, I interviewed people working in the European Commission and in the European Structural Fund, as well as the people working with the three main EU social partners.
- 3 Given that most of the interviewees were elites and high-ranking policy-makers, it was agreed not to disclose names or identities.
- 4 For example, Vifell (2004: 8) argues: 'at the time when the co-ordination was initiated, Sweden was one of the most active member states in developing and promoting the EES.'

- 5 For an account of how the European monetary union affects the macroeconomic foundations of the European Social Model, refer to Martin and Ross (2004).
- 6 For a detailed analysis of the OMC and other 'new' soft modes of governance, refer to Bruno *et al.* (2006).
- 7 When I refer to the government, I am primarily talking about the national ministries involved in the process, because they are the main 'players' in the EES process.
- 8 The goal of this analysis is to illustrate the trends discerned from the interviews by showing aggregate descriptive figures. Yet some points should be clarified. First, the interviews conducted in the EU were not included in this analysis because these policy-makers do not participate in the domestic implementation of the EES. Second, I coded as 'problem definition' the statements that referred to the EES affecting policy-makers' understanding of a problem, and/or raising awareness of problems, and/or providing a framework to understand the problems. I did not test these data for statistical significance because this is a small non-random sample. The samples were chosen similarly across sites, as I mainly conducted interviews with experts and elites.
- 9 The Organization for Economic Cooperation and Development (OECD) has also promoted the idea of the active welfare state. Most of the interviewees recognized the existence of these international policies; yet they believed that the EU had a major role in the promotion of active labor market policy. These differences are partially explained by the fact that the EES is a treaty-based and political process, while OECD processes are mainly of an administrative nature. For a detailed discussion of these issues, refer to Noaksson and Jacobsson (2003).
- 10 The EU utilizes both hard and soft law to promote and regulate gender equality; refer to Fuhrmann (2004).
- 11 On this point, also refer to Pochet and Plaaschaert (2003/2004).
- 12 For a thorough discussion of the influence of the EES on intra-governmental relations, refer to López-Santana (2005).
- 13 Haas (1990: 194) defines learning as the process by which an organization questions basic beliefs in a way that the results affect the content of public policy. Moreover, the objective of learning is to promote the welfare of an organization and its ability to survive and prosper.
- 14 Lesson-drawing implies that decision-makers voluntarily draw and transfer lessons (negative and positive) from and to other countries. The availability of lessons is relevant when making policy because the chances of a problem regressing into condition status diminish when there are solutions available (Kingdon 1984).
- 15 I define practical compliance (*vis-à-vis* legal compliance) as an acceptance of policy frameworks that leads to changes in the standards of procedure used by policy-makers. Practical compliance could be more effective than legal compliance given that in many instances law remains on paper and does not have any effect on the behavior of policy-makers.
- 16 For example, the Commission proposed that each member state should appoint a 'Mr. or Ms. Lisbon' (Barroso 2005).

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