
Routledge Handbook of the Welfare State

Second Edition

Edited by Bent Greve

Second edition published 2019
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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First edition published by Routledge 2012

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Names: Greve, Bent, editor.

Title: Routledge handbook of the welfare state/edited by Bent Greve.

Description: Second edition. | Abingdon, Oxon; New York, NY: Routledge, 2018.

Identifiers: LCCN 2018004646 | ISBN 9781138631649 (hardcover) |

ISBN 9781315207049 (ebook)

Subjects: LCSH: Public welfare. | Welfare state.

Classification: LCC HV31.R766 2018 | DDC 330.12/6-dc23

LC record available at <https://lccn.loc.gov/2018004646>

ISBN: 978-1-138-63164-9 (hbk)

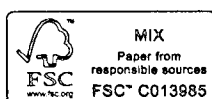
ISBN: 978-1-315-20704-9 (ebk)

Typeset in Bembo
by Wearset Ltd, Boldon, Tyne and Wear

Ruhr-Universität Bochum
Fakultät für Sozialwissenschaft
- Bibliothek -

W4-597 | 2019/12

HT0934190 ✓



Printed in the United Kingdom
by Henry Ling Limited

Contents

<i>List of figures</i>	ix
<i>List of tables</i>	xi
<i>Notes on contributors</i>	xiii
 Introduction <i>Bent Greve</i>	 1
 PART I Key concepts	 3
1 What is welfare and public welfare? <i>Bent Greve</i>	5
2 What is a welfare state? <i>Johanna Kuhlmann</i>	13
3 Fiscal welfare <i>Adrian Sinfield</i>	23
4 Occupational welfare <i>Kevin Farnsworth</i>	34
5 Prevention: the cases of social security and healthcare <i>Jos Berghman, Annelies Debels and Ine Van Hoyweghen</i>	46
6 Poverty <i>Peter Saunders</i>	58
7 Benefits in kind and in cash <i>Manos Matsaganis</i>	71

Contents

8	Gender issues in welfare states <i>Sheila Shaver</i>	81
9	Welfare states and the life course <i>Mara A. Yerkes and Bram Peper</i>	92
10	Well-being and the welfare state <i>Daniel Sage</i>	101
PART II		
	Typologies and methods	113
11	What are welfare state typologies and how are they useful, if at all? <i>Kees van Kersbergen</i>	115
12	Nordic welfare states <i>Olli Kangas and Jon Kvist</i>	124
13	Central European welfare states <i>Daniel Clegg</i>	137
14	Central and Eastern Europe <i>Steven Saxonberg and Tomáš Sirovátka</i>	148
15	Southern Europe <i>Maria Petmesidou</i>	162
16	Liberal welfare states <i>Hugh Bochel</i>	176
17	Third Way <i>Martin Powell</i>	187
18	Welfare states in North America: social citizenship in the United States, Canada and Mexico <i>Robert Henry Cox</i>	198
19	Welfare state changes in China since 1949 <i>Bingqin Li</i>	208
20	India as a post-colonial welfare state <i>Sony Pellissery and T.V.S. Sasidhar</i>	223
21	Inequality, social spending and the state in Latin America <i>Peter Lloyd-Sherlock</i>	232

22	The Middle East <i>Rana Jawad and John Gal</i>	243
23	States of health: welfare regimes, health and healthcare <i>Clare Bambra, Nadine Reibling and Courtney L. McNamara</i>	254
24	How to analyze welfare states and their development? <i>Barbara Vis</i>	267
25	How ideas impact social policy <i>Daniel Béland</i>	278
26	Drivers for change <i>Virginie Guiraudon and Claude Martin</i>	288
27	Ten ideal-typical worlds of welfare regimes and their regime characteristics <i>Christian Aspalter</i>	300
28	Real-typical and ideal-typical methods in comparative social policy <i>Christian Aspalter</i>	314
29	Fiscal crisis, financial crisis and the fragile welfare state <i>Kevin Farnsworth and Zoë Irving</i>	329
30	Globalisation and welfare states <i>Patrick Diamond</i>	340
PART III		
	Central policy areas	353
31	Social security <i>Frans Pennings</i>	355
32	Labour market: focus on active labour market policies <i>Madelene Nordlund and Bent Greve</i>	366
33	Housing policy, the welfare state and social inequality <i>Gregg M. Olsen</i>	378
34	Homelessness and social policy <i>Gregg M. Olsen and Lars Benjaminsen</i>	393
35	Healthcare <i>Claus Wendt</i>	407

Contents

36	Old age and pensions <i>Karl Hinrichs</i>	418
37	Disability <i>Bjørn Hvinden</i>	432
38	Family policies <i>Chiara Saraceno</i>	443
39	Risk and the management of crime <i>David Denney</i>	457
40	Financing the welfare state and the politics of taxation <i>Nathalie Morel and Joakim Palme</i>	467
41	EU social policy and national welfare state reform <i>Caroline de la Porte</i>	477
42	Evaluation, evidence and review <i>Ian Greener</i>	488
43	Long-term care <i>Bent Greve</i>	498
44	The welfare state and international migration: the European challenge <i>Grete Brochmann and Jon Erik Dølvik</i>	508
PART IV		
Future		523
45	Future of the welfare state? <i>Bent Greve</i>	525
<i>Index</i>		<i>534</i>

Figures

4.1	Breakdown in non-wage labour costs, EU 27	40
4.2	Scatter plot of statutory versus statutory occupational provision, 2012	41
4.3	Public social expenditure and private mandated expenditure (occupational welfare), 2013	42
4.4	Occupational welfare, various economies	43
5.1	Basic social policy chain	48
6.1	International comparison of poverty rates before and after transfers and taxes in 2010	67
6.1a	Addendum: data for Figure 6.1	67
10.1	The relationship between GDP per capita and life satisfaction	102
12.1	Generosity and universalism of social insurance in 18 OECD countries, 1950, 1970, 1990 and 2010	127
12.2	Poverty rate, material deprivation and poverty gap in Europe, 2015	129
13.1	Social protection expenditure as a percentage of GDP, selected countries and regional averages, 2014	138
15.1	Inequality of income distribution (income quintile share ratio)	173
18.1	Social spending as a percentage of GDP	206
19.1	Urbanisation rate (percentage of urban population)	216
21.1	Analytical framework for the distributional effects of social policy	233
26.1	Projected old age dependency ratio in the EU, 2060	293
26.2	Expenditure on care for the elderly as a percentage of GDP in EU states, 2013	294
29.1	Fiscal balance (percentage of GDP)	332
29.2	The depth of the 2008 crisis compared with others in the recent past	333
29.3	Gross public debt (percentage of GDP)	335
29.4	IMF prescribed adjustment, 2010 to 2020 and average public expenditure, 2000 to 2008	337
34.1	The domains of homelessness/housing exclusion (ETHOS)	396
35.1	Ideas, interests and institutions in healthcare	409
35.2	Total health expenditure (THE) as a percentage of GDP, 1970 to 2015	411
35.3	Public financing and level of total healthcare expenditure, 2010	413
35.4	Health expenditures and healthcare providers, 2003	414
38.1	Length of adequately compensated postnatal maternity, paternity and parental leave in the EU (in weeks)	447
38.2	Proportion of children aged 0 to 2 attending centre-based childcare, 2013	449

Figures

38.3	Proportion of children aged 3 to school age attending centre-based childcare, 2013	449
38.4	Country-specific rates of long-term care recipients as a percentage of the dependent population, 2009 to 2013	452

Tables

5.1	Human damage theory	47
10.1	Indicators of subjective well-being in the annual population survey	109
15.1	Social expenditure	165
15.2	Poverty and severe deprivation, 2009 and 2015 (based on 2008 and 2014 incomes)	166
17.1	An adaptation of the table presented in Powell (1999)	189
19.1	Social expenditure and percentage of total government expenditure	214
20.1	Developmental and social sector expenditure incurred by Union and state governments, 2005 to 2015 (in billion rupees)	228
21.1	Government spending on social policies, selected Latin American countries, 1991 to 2013/2014 (percentage of GDP)	234
21.2	Sectoral allocation of government social spending for selected Latin American countries, 2001/2002 and 2009/2010 (percentage of GDP)	236
21.3	Distribution of government social spending across income quintiles, 1997 to 2004 (percentage of total government social spend)	237
21.4	Allocation of social security budget, Chile and Mexico, 1996	238
21.5	Coverage of social insurance pension programmes for selected Latin American countries	239
21.6	Proportion of income derived from social spending and from primary income sources by income quintile, 1997 to 2004 (percentage of total income for each quintile)	241
23.1	Main welfare state and healthcare typologies used in health research	256
23.2	Infant mortality rates and life expectancy at birth for 30 countries and 6 welfare state regimes, 2003	261
26.1	Social expenditure 1995 to 2016 (aggregated data source OECD)	290
28.1	Advantages and disadvantages of ideal-typical and real-typical methodology compared	316
28.2	Welfare regimes following Wood and Gough (2004)	319
28.3a	A brief outline of the ten ideal-typical worlds of ideal-typical welfare regimes capitalism (identified so far)	323
28.3b	A brief outline of the ten ideal-typical worlds of ideal-typical welfare regimes capitalism (identified so far), <i>continued</i>	324
30.1	Government spending as a percentage of GDP and public sector employment rates	344
30.2	Welfare state responses to the service economy trilemma	348

Tables

34.1	Conceptualizing and operationalizing homelessness and housing exclusion (ETHOS)	395
36.1	Labor force participation rates in OECD countries, selected years	420
36.2	Population aging in selected countries (2030 and 2050 projections)	420
36.3	Design of pension systems	421
36.4	Income situation of the elderly population, net pension replacement rates and pension expenditure in selected OECD countries	424
36.5	Pension reform measures	426
41.1	EU social policy: three modes of governance	479
43.1	Development in spending on long-term care as percentages of GDP	502
43.2	Development in marketisation, austerity, role of civil society, rehabilitation, etc.	505

EU social policy and national welfare state reform

Caroline de la Porte

Introduction

This chapter analyses the modes of governance through which the EU influences social policies of member states. I argue that, because the EU influences public policy, welfare state scholars should consider EU-level policy and governance in their analyses. The EU's welfare states – although institutionalised in diverse configurations (Korpi and Palme, 1998; Esping-Andersen, 1990) – provide protection to their citizens against social contingencies, such as ageing, illness and unemployment. In the shift to dual-earner societies welfare reforms have dealt with challenges, such as balancing work and family life (Esping-Andersen *et al.*, 2002; Taylor-Gooby, 2004).

Although domestic politics and processes are determinant for reform decisions, the EU's modes of governance increasingly influence welfare states and labour markets. However, both the EU and national levels of governance interact in 'two-level games' addressing economic and other societal challenges, such as ageing populations, new family forms and changed labour markets (de la Porte and Natali, 2014). Thus the result of decades of European integration is that member states are 'semi-sovereign' in their welfare states and labour markets (Ferrera, 2005; Leibfried, 2010).

Some scholars have characterised early EU initiatives in social policy as examples of 'encapsulated federalism', entailing a strong, direct EU impact limited to specific areas (e.g. gender equality and health and safety at work) that are not connected with the core redistributive function of welfare states (Streeck, 1995). In contrast, other scholars have argued that early initiatives affected welfare states by enhanced equality and, with it, fundamental social rights for citizens in the EU (Falkner, 1998, 2010; Kantola, 2008). Early EU legislation also codified the free movement of workers, whereby nationals from other EU countries have the same social rights as those of the host nation. Recently, this political issue has become controversial, especially in conjunction with Brexit. While neo-nationalist political debates proclaim the free movement of workers to be a burden for welfare states, there is no evidence to support this claim (Martinsen and Pons Rotger, 2017).

The influence of EU policy on welfare states and labour markets takes place not only through regulation but also through other modes of governance. The EU influences core redistributive

areas – such as pensions and healthcare, unemployment schemes and labour market regulation – through hard and soft policy coordination, both of which have played an important role since the institutionalisation of the Economic and Monetary Union (EMU).

This chapter is organised as follows. The first section develops the analytical framework, and the second section analyses the three modes of governance. The third section concludes with the implications of EU modes of governance for welfare states and labour markets.

Three modes of EU governance affecting welfare states and labour markets

To understand how EU policies may influence welfare states and labour markets, one must identify the features of the modes of governance concerned. A mode of governance is a means for governing a policy area, a means aimed at involving more actors horizontally and vertically at different stages of the policy process, from agenda-setting to implementation and evaluation (Scott and Trubek, 2002). In the EU, the governance approach is particularly important because it takes into account both distinct levels of governance (European, national, regional and local (Hooghe and Marks, 2001)) and various actors (government, social partners and NGOs).

The three modes of governance presented in this chapter are (social) regulation, hard coordination and soft coordination.¹ Social regulation means setting legal standards and norms in social policy at the EU level. Hard coordination is EU-facilitated policy coordination that is legally binding and that involves high surveillance and enforcement of member state policy. In contrast, soft coordination is EU-facilitated policy coordination that, while including surveillance, involves weak enforcement (de la Porte and Heins, 2015). The main features of the EU modes of governance affecting welfare states and labour markets are listed in Table 41.1.

Each mode of governance is presented according to the following factors. Governance covers the ‘operational means’ connecting the EU with national and/or regional and local levels of governance and actor involvement, and the ‘mechanisms of influence’ through which each mode of governance may influence welfare states and labour markets: the challenges addressed and the policy solutions. Most modes of governance primarily have a market-making aim, although aspects of market correcting are present as well, especially in the European Employment Strategy (EES) and the Open Method of Coordination in social policy (hereafter, social OMCs).

Social regulation

The EU has no competences to decide upon national social security, the principles of distribution, the access to social rights or the level of generosity of various benefits. However, the EU (through the ordinary legislative procedure or the social dialogue process) has developed market-making legislation, facilitating workers’ freedom of movement. The mechanism of influence is regulation, often spurred by the unintended consequences of this free movement of labour: the Court of Justice of the European Union (CJEU) has played a prominent role in interpreting core EU principles relative to access to social rights and social security (Martinsen, 2015; Bell, 2012).

In terms of policy, regulation coordinates the free movement of workers and their rights in host countries. The coordination of social security systems enables workers (and now many other categories of citizens) to work in other EU countries under the protection of the social security countries of their host countries. The jurisprudence in this area has been considerable, resulting in the extension of the material scope of coordination of social security over time, now

Table 41.1 EU social policy: three modes of governance

<i>Mode of governance</i>	<i>Legal basis and denomination of formal processes</i>	<i>Actors</i>	<i>EU operational mechanisms</i>	<i>Mechanisms of influence</i>	<i>Challenges addressed</i>	<i>Policies</i>	<i>Intended output on welfare state and labour markets</i>
Social regulation	Treaty of Rome (1957); Treaty of Amsterdam (1997) Labour law and equal treatment	EU social partners + DG EMPL, European Court of Justice, National public administration,	EU standards and legal norms	Regulation, standardization	Labour market dualization, labour standards, reconciliation of work and family life	Labour law, health and safety at work; equal treatment/non-discrimination; parental/maternity leave	Market-making; market-correcting
Hard coordination and regulation	Maastricht Treaty (1992); Stability and Growth Pact; six-pack, two-pack, fiscal compact	DG ECFIN + Ecofin Council National Ministries of Finance	Policy coordination; Prevention/monitoring; correction; country-specific policy advice (preventive and corrective)	EU facilitated learning and coercion	Ageing populations, (high) public debt and deficits	Sound fiscal policy (max. 60% public debt and 3% budget deficit); balanced budgets	Market-making; fiscal consolidation in pensions, healthcare; tightening access to unemployment schemes; labour market deregulation
Soft coordination: labour markets	Amsterdam Treaty (1997); European Employment Strategy	DG EMPL + National Ministries of Employment; social partners	Policy coordination; country-specific advice (in country-specific recommendations)	Monitoring; diffusion of ideas; EU facilitated learning	Flexible labour markets, reconciliation of work and family life	High employment rates; quality and productivity at work; flexibility; gender equality	Market-making and market-correcting dual-earner model; flexibility
Soft coordination: welfare states	Lisbon Summit (2000); Europe 2020; OMCs in social inclusion, pensions, healthcare	DG EMPL + Social Affairs Council; Ministries of Social Affairs; Civil society organisations and NGOs	Policy coordination: country specific policy advice (in country-specific recommendations)	Monitoring; diffusion of ideas; EU-facilitated learning	Ageing populations, poverty and (in)equality, access and quality in healthcare	Decrease poverty; reform pensions to maintain high replacement rates and standard of living; access and quality in healthcare	Market-correcting; decrease poverty through inclusion (mainly in the labour market); make pension and healthcare systems socially and economically sustainable

Source: author's conceptualisation.

reaching such areas as family allowances and student grants. The CJEU's interpretation of core principles – such as equality of treatment (access to benefits), exportability (the right for individual workers to export social benefits) and 'additionality' (the right to add periods of social security, especially pensions) – have led to a wide range of social rights for EU citizens.

These social rights have been codified and extended in the EU's citizenship directive, thereby broadening the notion of citizenship and enhancing access to rights in the country of destination (Wind, 2009). A novel area where the EU's coordination principles have been extended is healthcare, marked by the recent patient mobility directive, which codified the existing case law without altering member state authority in the area of healthcare (Vollard and Martinsen, 2014; Vasev and Vrangbæk, 2014). The coordination of social security systems, and with it the free movement of workers, has been central in the Brexit debate, with populist-right parties presenting the high number of workers in the UK from Central and Eastern Europe as a burden on the UK welfare state. The 'welfare burden' hypothesis – whereby EU migrants are assumed to put a financial burden on the welfare state in the host country – has been tested in Denmark, where findings show that EU immigrants make a positive net contribution to the welfare state (Martinsen and Pons Rotger, 2017). Thus, migrants are a gain for, rather than a burden on, the welfare state.

The EU also has strong and extensive legislation on anti-discrimination, due to the strong legal base provided in the 1999 Amsterdam Treaty. Two of the directives in this area relate anti-discrimination both to the labour market and to areas such as housing, healthcare and education. The EU treaties and directives consider discrimination arising as not only from gender but also from race and ethnicity, religion, gender, sexual orientation and disability (Kantola 2010, 2014; Bell, 2008).

The EU also regulates the labour market via EU directives on working time, vacations, and maternity and parental leave. For maternity and parental leave standards are minimal, particularly due to opposition from member states with low standards in these areas. The growing gap between those on permanent open-ended contracts, with job security and extensive social security, and those on atypical contracts, with less job security and social security coverage, is conceptualised as 'labour market dualization' (Emmenegger *et al.*, 2012). This gap has led to three framework directives at the EU level, one each on part-time, fixed-term and temporary agency work. Contouris (2007) has coined the adoption of the directives on atypical work as an attempt to 're-regulate' labour law. The directives aim at ensuring equal treatment of a worker on an atypical fixed-term contract with a comparable worker on an open-ended contract.

As the directives are broad in scope, an unusually high amount of case law has followed their adoption, especially for fixed-term work, where the Court has applied an expansive interpretation of equal treatment (for a comparable worker on an open-ended contract) for pay, bonuses, promotions and access to training. Individual rights for fixed-term workers are strengthened through CJEU judgements, although these workers have less security than those on permanent contracts (de la Porte and Emmenegger, 2017). Overall, EU regulation is extensive for fundamental social rights and may contribute to market-braking. Nonetheless, recent directives in labour law do not hinder developments such as labour market dualisation, which arises from domestic reform decisions.

Hard coordination and regulation

Since the Maastricht Treaty established the EMU in 1991, the EU intervenes indirectly but strongly – as a functional spill-over from monetary integration – in social and fiscal policy. In 1997, the Stability and Growth Pact (SGP) – a process of hard policy coordination with EU

policies of budgetary restraint, represented by benchmarks (a maximum of 60 per cent public debt and 3 per cent budget deficit) and EU surveillance of member state policies – was developed for ensuring continuous member state compliance with EMU aims. The EMU requires member states to run budgets that do not jeopardise the functioning of the EMU, in turn enabling the EU to provide advice on social security reform where relevant, particularly when member state public budgets are deemed dangerous for the EMU (de la Porte and Natali, 2014). As social spending constitutes the biggest share of public expenditure in member states (28.3 per cent for healthcare and pensions in 2012: Eurostat, 2015), the SGP pressure on national welfare states is considerable, especially during economic recessions.

The main mechanism of EU influence, in conjunction with the SGP, is EU-facilitated learning. This learning is in the shadow of coercion, because, in the case of non-compliance, the EU has several mechanisms for ensuring that member states correct their deficits. The procedure for requiring that a correction of public deficits be in line with the EU's requirements in the SGP is the 'excessive deficit procedure' (EDP), which is a country-specific path defined by member states together with the EU, to correct excessive deficits. If member states do not correct their deficits when under the EDP, the EU can ultimately impose a financial sanction. In addition, 'country-specific recommendations' (CSRs) are given yearly, in the European Semester process, which connects all coordination processes in economic and public policy. However, only non-compliance with CSRs in the SGP can lead to a fine.

Since 2010, the EU has developed a new mechanism within hard coordination to keep member states on track with their budgets and deficits, thereby strengthening the potential influence of the EU on welfare states. The new directives and regulations have been grafted onto the EMU institutional framework (see de la Porte and Heins (2015, 2017) for more details). These instruments were adopted to tighten the monetarist policy aims and increase EU-level authority for enforcing policy in member states.

In July 2016, the European Council agreed unanimously to levy fines on Spain and Portugal due to their insufficient efforts in correcting their excessive deficits, as specified in their EDPs. In line with their legal rights, both countries then submitted requests asking the European Commission to reduce sanctions on the grounds of exceptional economic circumstances. In the aftermath of the Brexit referendum and increased euroscepticism, both of which have led to social unrest and the success of populist parties across the EU, the European Commission decided on 27 July 2016 to opt for a 'zero' penalty (de la Porte and Heins, 2017). Thus it has used the fine symbolically, an act that may or may not suffice to remind countries to make efforts to correct their deficits and prevent imbalance in the eurozone.

Hard coordination has also been enhanced by more focus on public debt, which has been high on the agenda due to the sovereign debt crisis affecting countries severely hit by the 2008 Great Recession. Member states are required to report to both the European Commission and the European Council on their national debt issuance. Furthermore, the breach of the public debt criterion now allows the European Commission to launch an EDP, an action it could not take before the crisis. Another post-crisis change in SGP governance is the definition of a common budgetary timeline and rules for all euro area countries. Member states are now required to send their budget proposals for approval to the Commission and the Eurogroup before submitting them to their national parliaments. The fact that national budgets and thus details of (welfare) policy reforms are the object of close scrutiny, with strong potential for the EU to intervene in reform plans, implies that euro area countries are now developing budgets in the shadow of EU surveillance. If a country is in 'particularly serious non-compliance', the European Commission and the Eurogroup may request a revision of the draft budgetary plan. These changes to the governance of the EMU represent strengthened ex-ante monitoring and

ex-post surveillance of member state economies and budgets, of which pensions and healthcare are important components. Another key policy being promoted indirectly through coordination of monetary policy is labour market deregulation, because labour market rigidity and high labour costs are considered detrimental to a successful EMU (de la Porte and Heins, 2015).

The consequence of the SGP and directives and regulations introduced following the financial crisis signify that national governments may have less leverage in defining (or rather differentiating among) their national policy agendas with regard to welfare state reforms. The new directives and regulations that strengthen the EMU have an indirect, but strong spill-over on welfare policy, to which a large part of public expenditure is devoted. Although the policy of (too) tight fiscal restraint is now being discussed among the European élites, with their growing consensus on the need for dealing more with demand management, this new debate has not altered EMU policy aims or governance (which remain driven primarily by supply-side dynamics) (Martin, 2015).

The literature on the Europeanisation of pension reform suggests that EU policy advice on pension reform coincides with the reforms undertaken by member states (de la Porte and Natali, 2014; Hassenteufel and Palier, 2014). Particularly for countries under the EDP, the EU has explicitly advised reforming pension systems to meet the challenges of ageing populations and fiscal pressure. The EU's advice on pension policy became even more relevant since the Great Recession (Natali, 2008; de la Porte and Natali, 2014). In a recent report on reforms between 2005 and 2015, the European Commission notes: 'In the context of large budget deficits and a reinforced economic governance framework at EU level, Member States have adopted many pension reforms to control the increase in spending on public pensions' (European Commission, 2015: 2). Continuous reforms may be detected in long-term projections of age-public spending that have been the basis of EU policy advice on pension reform since the mid-1990s. For the first time since the Commission started to project budgetary effects of pensions spending, the Commission noted that it *does not* expect an increase in public spending on pensions at the end of its current projection period (2060). The European Commission report suggests that pensions have been comprehensively reformed by the member states (European Commission, 2015). These findings are corroborated in academic research on pension reform (Hinrichs and Jessoula, 2012).

The mechanism of influence is EU-facilitated learning, where monitoring and individual policy advice both play an important role. The literature on the influence of the EMU's monetarist regime and the convergence criteria shows that the EU has helped put pension reform on the domestic agenda. However, it is through domestic politics that the decisions about pension reform are made, with a country's economic vulnerability constituting an important condition enabling decision-making about pension reform (de la Porte and Natali, 2014; Hassenteufel and Palier, 2014). Nonetheless, aside from countries subject to Memoranda of Understanding (Theodoropoulou, 2014; Pavolini *et al.*, 2014; Dukelow, 2015; Sacchi, 2014), domestic actors made decisions mainly to ensure macro-economic balances and to avoid high debt.

Soft coordination: labour markets, pensions, social exclusion and healthcare

The soft coordination of European social and labour market policy, subordinate to the constraining SGP, takes place in the EES and social OMCs. The social OMCs aim to achieve high levels of employment in combination with high levels of social protection, low levels of poverty, high equality, and the economic and social sustainability of pensions and healthcare systems with broad access. The EES and the social OMCs mimic the policy coordination governance of the EMU, and support EU growth by promoting employment and activation, and by increasing

inclusion and improving social protection. The main mechanisms of influence are diffusion of ideas and iterative monitoring of policies – and with it EU-facilitated policy learning (especially through country-specific recommendations, now coordinated in the European Semester). The EES involves mainly governmental actors, but social partners must be consulted in the governance process, while the governance of social exclusion OMC involves civil society organisations. The CSRs developed through the OMCs are now centralised in the European semester, to increase the coherence and the overall impact of the different coordination processes. However, in contrast to the CSRs related to the SGP, the CSRs in the area of social OMCs are not binding.

The policy cycle of the OMCs – EU agreed-upon policy aims and benchmarks, national reports, Commission Council surveillance of member state policies and country-specific recommendations – unfolds yearly in the European Semester (de la Porte and Heins, 2015). Many aspects of the OMCs are dependent on significant government expenditure which governments encumbered by high public debt are barely able to provide. In the context of permanent austerity, as well as the global financial crisis, Europe 2020 has been reframed around social investment. Social investment is a comprehensive paradigmatic approach that emphasises the need to invest in individuals and their skills throughout the life course (European Commission, 2010b). Social investment involves investing in institutions for early childhood education and care, schools, vocational training, upper tertiary education, activation and lifelong learning (Morel *et al.*, 2012). At the same time, temporary leave from the labour market should be facilitated without workers' fear of job loss. Social investment ideas build on the foundations of the universal welfare state, which is designed to meet these aims (Esping-Andersen, 1999; Kvist, 2014).

In the area of employment and labour market policy, the main policy aim is to increase labour market participation to 75 per cent (European Commission, 2010b). This is part of the shift towards the 'dual-earner' model, which has been ongoing for the past two decades, represented by very substantial increases in employment rates, particularly among women (especially in conservative welfare states of continental and Mediterranean countries). In this transformation process, the EES contributes to ideas about ways of reconciling work and family life in dual-earner societies (de la Porte and Jacobsson, 2012; de la Porte and Pochet, 2012). The EES is an effective ideational tool for developing policies for sustaining welfare states across the European Union.

To support the increase of labour market participation, the EES involves various aims, such as skills development, improvement of job quality, working conditions and flexicurity (a combination of labour market flexibility, activation and unemployment benefit). By adhering to labour market deregulation, which is central in the EMU, flexicurity is centripetal in the EES. The EES also supports comprehensive lifelong learning strategies, together with appropriate social security (European Commission, 2007). In member states, flexicurity has been embraced discursively as a notion. However, actual reforms within member states have focused mainly on creating flexible labour markets. Less effort has been made to develop comprehensive activation and generous unemployment benefits. In fact, unemployment insurance has been reformed in most member states, increasing conditionality while decreasing the level of benefits and the period of the receipt of benefits. 'Activation' schemes are hardly comprehensive and individually tailored in line with the social investment agenda; rather, they are workfarist, and they now include more counselling than comprehensive training (Bengtsson *et al.*, 2017). Other aims of the EES – to facilitate job creation – include targeted reductions of non-wage labour costs and the promotion of self-employment (European Commission, 2010a).

Other social policy aims are coordinated in softer OMC processes, with little indication of direct causal influences of any social OMC. In other words, the OMC has never been the single

cause of a reform decision (de la Porte and Pochet, 2012). However, the role of the OMC at the EU level of governance is to counterbalance the weight of the economic policy actors. For example, in the pensions OMC, *adequacy of pensions* has been integrated into policy debates by highlighting universality, decent replacement rates, as well as solidarity and fairness between and within generations.

Recent recommendations of the European Commission include policies for equalising retirement ages for men and women and for developing pension schemes for low-income earners or those with weak employment histories (European Commission, 2015; Hinrichs and Jessoula, 2012). The gender pension gap is on average 40 per cent in the EU. This means that women are at risk when they reach pensionable age, unless reforms are made to respond to this imbalance. In addition to a gender imbalance in pensions, the European Commission identifies younger workers, migrants, low-skilled workers and low-wage workers as groups for which measures need to be adopted if decent pensions in old age are to be ensured (European Commission, 2015). The pensions OMC provides an institutionalised forum for dialogue between the economic and social policy actors (DG EMPL and DG ECFIN) around the issue of pension reform. However, the pensions OMC does not have as much leverage as the SGP and hard coordination (de la Porte and Pochet, 2014).

The social exclusion OMC aims at promoting social inclusion – intimately linked to increasing labour market participation – and combating poverty. It involves the Directorate-General of employment, social affairs and EU-level NGOs. At the national level, the social ministries are responsible for reporting activities to combat social exclusion to the EU. Since the financial crisis of 2008, the issues of poverty and exclusion, while more relevant than ever, have barely been in the EU spotlight. Nonetheless, there is an overarching aim under Europe 2020 in which member states have committed to 'lift at least 20 million people out of the risk of poverty and exclusion' by 2020 (European Council, 2011). Member states have to specify their own national targets. This loose benchmark reflects the lack of both political will and a legal mandate for dealing with poverty at the EU level (Copeland and Daly, 2013; Barcevicus *et al.*, 2014). Social exclusion issues such as poverty, child poverty and now homelessness have been raised on national agendas, partly due to the social exclusion OMC (de la Porte, 2014; Barcevicus *et al.*, 2014; Armstrong, 2010). However, this influence is more patchy than that through the more constraining SGP, particularly when public finances are tight.

Conclusion

The EU is part of the multi-level governance process in which governments are embedded in the redefinition of the welfare state as a 'social investment state'. While the EU has no direct influence on the way in which welfare states are organised and funded, the time when national welfare states were insulated from EU influence is over. The borders of national welfare states are permeable to EU influence (Ferrera, 2005) through the modes of governance presented in this chapter: regulatory, coordinative (soft and hard) and redistributive. Drawing general conclusions on the impact of EU governance upon welfare states is thus difficult, if not impossible.

Through the regulatory mode of governance, the EU has developed a comprehensive regime of social rights for EU citizens, especially based on anti-discrimination. Anti-discrimination represents the anchor of the complex legislative regime on the coordination of social security systems. Thus far, reciprocity and equality have ensured that the free movement of citizens functions surprisingly well. Importantly, EU migrants do not represent financial burdens on their host societies or welfare states.

There is also an emergent regulatory system concerning workers on various different types of contracts. Although patchy, this emergent regulatory system provided a legal base where all workers – irrespective of contractual arrangements – are to be treated equally. Anti-discrimination legislation covers discrimination on various grounds, beyond gender, and has also extended beyond labour market issues.

The EU influences reform processes in core redistributive areas of the welfare state, such as pensions, through policy coordination. Following the Great Recession, EU policy coordination associated with the EMU has become more constraining, while policy coordination through the OMC has become weaker. However, the two are now joined in a single process: the EU-level coordination of public policies takes place in the European Semester, when EU advice to each member state – primarily through the focus on balanced budgets but also on the aims of equity and access – is developed in yearly ‘CSRs’.

The overview of EU modes of governance in social and labour market policy in this chapter points to the importance of considering EU influence in any analysis of welfare state reform. In fact, recent challenges in labour markets, notably labour market dualisations, include an EU dimension, via the SGP, that aims to liberalise labour markets, but also via regulation, that aims to ensure equal treatment of workers, irrespective of their contractual arrangements. The notion of social investment, which has grabbed scholarly attention throughout the 2000s, is also part of the policy approach at the EU level. Thus, the EU-level modes of governance should be included in all analyses of welfare state reform.

Note

- 1 The EU also has a redistributive mode of governance that affects welfare states and labour markets, including the European social fund and the European structural funds.

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