Free-movement as a threat for universal welfare states?

Abstract

Free movement of workers has been a cornerstone within the European Union since it was founded in 1957. A gradual improvement of rights also to other groups than workers has implied that rights related to free movement already have had an impact on universal welfare states social security, especially in the area of pensions. Given the enlargement in the last 10 years and further also strong increase in the inter-EU migration this might be even stronger than earlier. This article, using Denmark as a case, indicates how the free-movement can imply over time pressure towards convergence and thereby Europeanization of welfare states in Europe, and focusses especially on the pressure on the universality of the Danish welfare state moving it away from one of their distinctiveness in the Nordic welfare state model: the universal access to benefits. It also raises the question whether or not recent development once again is opening the debate on social dumping in Europe.

Key-words: free-movement, Nordic welfare states, Europeanization, welfare benefits

### 1 Introduction

Welfare states and welfare state policies are argued to be national prerogatives, but seemingly there is also an international perspective. This article has as focus how the interrelated issues combining supranational rules, decisions and policies and national approaches might have an impact on the welfare states structure of social security benefits especially with a focus on benefits related to the free-movement, but also to a more limited extend related to social services. The free movement of workers has been central since EU was founded. This has also implied an impact on social security co-ordination[[1]](#footnote-1), and, thereby on the development and structure welfare states can take. Naturally, the equal treatment of men and women, as well as the free movement of goods and services might also influence the welfare states. Theories of Europeanization will first be touched upon, albeit only briefly, given that the focus here is on impact on the Danish welfare state especially by the rules regarding the free-movement of workers. A short section on EU’s possible influence on welfare states will then be presented. Thereafter the article will have a discussion on changes specifically related to the free-movement and possible pressures on the principle of universality in the Danish welfare state. The Danish welfare state has been chosen as a case for the analysis due to and given it’s in principle universal approach, high degree of equality and financing by a collective approach (Kangas and Kvist, 2013). It is thus a case-study based approach (Gerrring, 2004, Yin, 2013) with the intention to understand the impact on a small, universal welfare state of EU-regulation and court decisions. Further, Denmark is a deviant case from other welfare states types in most of Europe in which universality is less prominent. Universality here understood in the meaning of having rights to and equal access to benefits, financed out of general taxation and uniform and designed for all in a country (Anttonen, 2002).

The article present changes in the Danish welfare state which has been argued to be necessary to implement due to the rules of free-movement, including recent court cases and a commission opinion on family benefits. This also includes, albeit more limited, a discussion on other welfare service areas. This can be seen as having an impact on national welfare states with the possibility of convergence at least in the way rights are accrued to welfare benefits. However, whether this is gradual convergence of cross-convergence (Aurich, 2011) or other types of convergence is not the focus here. Finally, if the pressure towards convergence is strong this can open the historical discussion on social dumping in the EU (Alber and Standing, 2000). Just around 10 years ago it was concluded that: “It is fair to conclude that these studies by and large do not provide empirical support for expectations of a general "race to the bottom," but emphasize the path-dependent resistance of welfare-state regimes to the downward pressures of economic competition” (Scharpf, 2002, p. 10). A question is whether the new developments open for another interpretation and expectation for future welfare state development.

### 2 Europeanization

A central aspect relates to what can be understood by the impact of the EU on national welfare state policies. The traditional understanding of the study of the EU and its impact has been revolving around neo-functionalism, neo-federalism, neo-realism, liberal inter-governmentalism, governance or fusion (Wessels, in Wessels and Monar (ed.), 2001). The EU has directives and recommendations as direct instruments, but also plays the possible role of agenda-setter. The ability to act as agenda-setter can influence the national welfare states ability and choice of how to deliver social services in modern welfare states. Furthermore, the European court of Justice has acted and has had a role influencing the development of national welfare states (Martinsen, 2012). Viewpoints of the commission also influence nation states, especially when they are arguing that they will open a case against a country, cf. also later. This also in the light of that economic policies seems to have had the strongest impact on European integration (Barbier and Colomb, 2012).

Analysis of European integration and understanding of the mechanism is not easy given that Europeanization is not a specific theory, but more “a way of orchestrating existing concepts and to contribute to cumulative research in political science” (Radaelli, 2004). Furthermore, there is at least three different ways to understand Europeanization:

1. Development of a European level of governance
2. The process of impact and influence from the supranational level to the national level
3. Processes focusing on the development of shared beliefs and norms that might then be transferred to nation states, but also in both a bottom-up and top-down understanding (Börzel and Risse, 2007).

However, in general Europeanization can be understood as the impact of the EU on European integration and member states, in line with Radelli (2003), as this implies a focus on the link between the supranational development and national welfare state development. Impact can in principle be in both directions based on either uploading or downloading of ideas and policies, however in this article focus is on the possible top-down impact.

There are several approaches to the understanding of Europeanization. One is to see that “Subjective Europeanization refers to Europe’s growing role in the cognitive, affective and normative perceptions and orientation of people, and the weakening of the fixation on the nation state. Europe appears as an additional frame of reference, superimposed on the level of the nation state but without necessarily replacing it” (Mau and Verwiebe, 2010 p. 329). An interpretation indicating only limited impact on welfare in the member states, although cf. later this depends at least of the type of welfare state.

The impact on a national welfare state from Europeanization can be direct by a duty to impose a directive and/or change due to a court decision. In principle impact can also take place indirectly through the gradually more integrated European economies. A core argument is that “most of the effects of economic and political integration within the EU: on social insurance and social services appear to have been indirect, with high unemployment serving as the main catalyst” (Korpi, 2003, p. 604). A distinction of the impact is between positive and negative integration (Kuhnle, 1999). It has been argued that EU social policy is driven mainly by negative integration, or by courts and markets. Furthermore, that positive integration is not done by the transfer of sovereignty from national states to the EU level, but more through collaboration among the member states (Kvist and Saari, 2007). Europeanization thus is also argued as something that “walks on two legs – market efficiency and political voluntarism” (Verdier and Breen, 2001). In this article focus is on the possible impact mainly from the understanding of negative integration coming through as a consequence of external pressure from the EU on national welfare policies especially due to regulation and court cases.

In principle, the EU might influence national welfare policies, not only through “hard” law (e.g. such as directives), but also steering through the OMC. This is albeit not the focus here, and it is given the difficulty in having a counter-factual position difficult present evidence hereof (Falkner, 2010). A simple model of the Europeanization of social protection thus looks into how development at the EU level regarding policy processes, internal market and so on is mediated by the welfare regime, country size, etc. – this then might imply different kinds of responses and welfare reforms. The conclusion just a few years ago was that since 2000, the EU has had an increased influence on social protection, but also that “in sum, EU developments have influenced national welfare reform, but in varied ways and to different extents” (Kvist and Saari, 2007 p. 238).

The impact of the EU has often been measured by looking into whether or not convergence or divergence takes place. Convergence can be related to factors such as ideas, structure and spending; it might be equally argued that it is easier to agree upon ideas than implementation (Radaelli, 2005), which indirectly also can be seen to be confirmed by the fact that a common understanding of the concept of flexi-curity and policy aims of transforming labour market policy from passive to active are in general accepted by member states without looking more into the details of a more precise understanding and implementation of active labour market policy. Convergence in the labour market policy seems to have taken place (Aurich, 2011), however, it can be that this is in the instruments used, and further, that convergence might not always be the same as Europeanization (Vliet, 2010). A further possibility is that it is the level of social benefits that is converging, although evidence is mixed given that unemployment benefits seemingly has converged whereas this is not the case for social assistance (Caminada et. Al, 2010). Convergence on a lower level of benefits opens for a race to the bottom.

Convergence has been one of the expected outcomes of a more common approach and integration of the European economies, also revolving around issues such as policy innovation, diffusion and transfer. There have therefore also been several approaches to try to find out whether there has been an impact from analysis using different dependent variables such as goals, content, instruments, outcomes and style of policy-making, also with an argument of that policy output might be correlated with especially the levels of technological and economic development. There has from 1985 to 1999 seemingly, for example, been a trend towards convergence within EU (Alsasua, J. et.al, 2007). An analysis of the EU 14 (excluding Luxembourg) in the time-span from 1980 to 2005 showed that there has been in central welfare issues such as pension and unemployment a tendency towards convergence (Paetzold, 2013), as a classical way of catching up. In the same vein, there has further been an attempt to analyse whether there is convergence in convergence research (Heichel, Pape and Sommerer, 2005). There has also been pointed out that OMC might ensure an Europeanization of the employed working in the different welfare states in various policy areas (Teague, 2001). However, it is also obvious that the capacity of convergence policy is lower within the OMC given the focus on bench-marking, recommendations and peer-pressure compared to situations where direct legally binding regulations or court decisions are available (Citi and Rhodes, 2007). Still, the indication being that there have been pressures from the EU towards integration also having an impact on national welfare systems, and not only in relation to benefits, but also services (Sindbjerg, 2012), see also section 5.

Overall, it thus seems that the EU has developed into a multilevel, but highly fragmented policy system, and also a system with shared competences (Falkner, 2010), who also argues that one form of EU social policy is coordination in order to stimulate voluntary harmonization in the core field of employment policy, social assistance, pensions and education. Here the central focus is that the rules supporting co-ordination also implies that a specific welfare state type with universal access to benefits is increasingly difficult to withheld.

### 3 Core areas in the EU in relation to the welfare state

Historically, the EU in principle has had only limited influence on the structure, financing and type of the national welfare states. The increasing demand for fiscal prudence, especially within the EMU, can influence the options available for nation states. The possible impact stemming from the EU’s understanding of and use of the European structural fund and pressure for taking specific actions in relation herewith (e.g. for a possible scenario cf. Verschraegen et.al. (2011) for the impact on activation in Belgium) also have an impact.

From the early days till the present, the core influence of the EU has been related to the free- movement of workers. Rules were laid down with the now changed Directive 1408/71 (Regulation 883/2004) as the core instrument for ensuring the easy free-movement of workers. The regulation originally covered employed and self-employed people, but was later broadened with Regulation 883/2004 so that all those “who are or have been subject for the legislation of one or more Member States” are covered (Pennings, 2009, p. 6). In combination with the case law of the European court and combined with the increased internal migration (within the EU), especially in the wake of EU enlargement from 2004 and the fiscal crisis since 2008, has increased the possible pressure on universal welfare states.

The general idea behind free-movement was that if a worker moved from one country to another, the rules should not be a hindrance, but instead should support the free movement. For example, this should make it possible to combine the earned right to pensions from different countries; the right to welfare benefits should also be given to workers; child benefits should be available even if the child is not residing in the country where the work takes place. Rules preventing people with disabilities have also been said to hinder free-mobility, given the restrictions on exporting benefits and non-legal barriers in several areas such as transport and housing (Morgan, 2005).

The use of regulations and other attempts to harmonize has been the main approach for a long time, until it became clear in the mid-nineties that due to the fact that most areas needed unanimity, it would be difficult to decide on binding directives. There have, for example, been directives on social security (1997/7/EEC) and equal treatment (1976/207/EEC) that could have an impact on the nation state’s ability to pursue welfare policies. Later there was also a directive with regard to leave in relation to the birth of a child (Parental leave 1996/34); nevertheless, in general the EU as such has not been a central player in relation to having a direct impact on nation state’s welfare policies, with the court of Justice presumably being an exception, although the indirect influence due to free movement can be witnessed (cf. below on the Laval case and the debate on the service directive). The fiscal crisis, including the demand to fulfill the EMU criteria if receiving support from the EU, which includes in several countries a reduction of the public welfare sector and its structure, seems also to be an example of the growing impact of the EU on welfare state policies.

Since the Amsterdam Treaty and with a better focus on how to promote employment, there has also been a concern with regard to the reconciliation of work and family life. This has included a focus on gender equality policy, equal treatment at work, parental leave and child care. There have been directives on equal opportunities, on services in the internal market and on equal treatment (also being one of the cornerstones of the Rome Treaty), communication on a better work-life balance, council conclusions and targets related to the employment rate of women, etc., and also increased funding (European Social Fund) in these areas (Jacquot et. al., 2011). Thus despite that the EU in general only have a weaker role with regard to welfare services the interaction between EU policy and national policy has gradually become stronger, and case law has moved the boundaries between the ability to make decisions between the EU and the nation states.

The difficulty in reaching consensus also helps to explain why the development in the EU and its member states in several areas often is more driven by court decisions than by EU formal decisions, for example in the area of health care services (Greer, 2011). The court’s starting point in relation to welfare issues has been an interpretation of the aim with the treaty including gradual a higher level of integration and reduction in hindrances directly or indirectly of free-movement. The implication being that the EU has been more focussed on use of the market and thereby in liberalizing than making formal decisions about how and to what extent there should be an overall way of regulate welfare state developments.

For example, part of the reason why there have been court decisions in the area of health care is that there has been difficulty in drawing a line between hospital and non-hospital care services. This presumably also explains why health care was taken out of the service directive; implicitly this meant that the court was still left with the free movement of goods and services as the main guiding line when regulating health care. The distinction made differed based upon whether the person needing treatment has to be in the hospital for more than one day. The implication is that day to day services can be treated as part of the free-movement of services, thereby reducing a nation state’s option to regulate the area as part of a welfare approach. To state this even stronger, “there is essentially no evidence of economic, political, or social supporting coalitions behind the ECJ’s move into health care services” (Greer, 2011 p. 191).

It is with this focus of how European integration influence national welfare states, especially through the free-movement, that the following section looks into the impact on a universal welfare state: Denmark.

### 4 Changes in welfare approach in Denmark as a consequence of the free-movement

In a universal welfare state, as the Danish, it can have important implications if the basic criteria for receiving benefits as a citizen or legally living as a person in Denmark are undermined by EU regulation or court decisions. Undermining can be related to the welfare states legitimacy, the financing of the welfare state or the inner cohesion of the welfare state. Focus here is on whether the free-movement and rules and understanding hereof has de facto implied changes in the Danish welfare state or changes as a consequence either of the understanding of social rights, due to recent court cases or viewpoints of the commission. Even though the case specifically is Denmark it will be argued that changes is in principle far reaching for other countries social security systems having universality in either part of or the whole social security system. The analysis will be based upon official documents, and will cover the central income transfer areas, however especially with a focus on recent changes.

Already when Denmark entered the European Union it was necessary to change the fully universal access to the state basic pension system, where the only rule for receiving pensions was reaching the pension age, towards a system with a rights to pension depending on the number of years living in Denmark, implying that there is a demand now for having stayed 40 years in Denmark, as in many other Nordic countries, in order to obtain the maximum state pension. There is also a requirement to have lived in Denmark after the age of 15 most of the time in order to be able to receive full disability pension, otherwise it will be calculated as only a part of the pension benefit (Regeringen, 2011). The disability and the old age pension are, when first been eligible, transferable if one starts to live in another country. So, in the pension system the universality approach has been reduced already when entering the European Union as there is now also a demand for having stayed or worked in Denmark for 40 years in order to obtain the full pension.

Regarding sickness benefit there is no time limit for living in Denmark to receive sickness benefit. This presumably due to that the first 21 one days is paid by employers where one should have been employed for at least 8 weeks with a minimum of 74 hours of work. To receive state sickness benefit a total of 13 weeks connection to the labour market with at least 120 hours should be documented. Thus this seems to be less a risk for the universal welfare state, although as also argued in the report (Regeringen, 2011) that the option to follow up to control that, for example, sickness benefits should still be paid out is difficult when a person after becoming sick has moved to live in another country. Furthermore, in 2009 10.600 persons from the EU received sickness benefit with a total value of with a cost of approximately 46 million Danish Kroner. The right to maternity and paternity leave is dependent on 13 weeks of employment, and here work done in another country in the EU can be included in the calculation, if migrants are legally residing in Denmark.

The rules related to social assistance also implies that one should have stayed seven out of the last eight years in Denmark and have been in full-employment in at least 2½ years out of the last 8 years. It is argued that social assistance is a social advantage which therefore not, to the same degree as other benefits, can be taken away from Denmark – and this is also the case for EU-citizens. However, whether this relatively long time-frame, see also later, can be uphold is questionable.

Regarding the early retirement benefit it was first also decided that this could not be exported to another EU-country, however this was later changed under pressure from the EU, and given that this system also requires long-time member-ship and specific payment to an early-retirement benefit scheme one can question whether this de-facto is a universal scheme under threat from the EU.

In relation to unemployment benefit it is possible if having worked and been member of an unemployment insurance fund in one’s home-country for 9 months after three months’ work in Denmark to receive the relatively higher level of unemployment benefit in Denmark. In 2012 11.000 foreign citizens got Danish unemployment benefits. The portable rights as part of the free-movement might thus make a pressure on the Danish unemployment system.

The impact on the Danish welfare system will and has therefore not only come through due to cases where Denmark is directly involved, also other cases have had an impact. As an, by now classical, example of the impact on welfare states, the Laval judgement of 2007 implied a break with the Danish labour market model. This due to that the Parliament created legislation in areas that had previously been taken care of by labour market partners by including a new rule on how to define minimum wages in the law concerning the posting of workers in 2008 (Kristiansen, 2011). Kristiansen also argues that the EU rules concerning the free movement of workers seen from the employee organisation point of view generally implies the possibility and risk of social dumping. Thus rules of free-movement also increase the risk for other parts of the welfare state or labour market model.

In 2002 the above-mentioned rule of demand to stay in Denmark in order to receive social assistance where introduced and if not fulfilling this people entering would only be eligible for a so-called start-help. Although start-help was abolished on the 1st of January, 2012 it indicate that the time living in Denmark has been used to reduce who gets access, under what conditions and the pressure on welfare state spending, but thereby also universality in the welfare state. However, as discussed later, a question is how long a time spell to acquire social rights will be accepted by the European court, and thereby also that the rules on social assistance might be in need of revision to only have a shorter time to live in Denmark before being fully eligible for social assistance.

A continuation of the road to have to fulfill time lived in Denmark in order to receive certain benefits was done in 2010. Here a change in the family allowance system was enacted. The change implied that the full child benefit would first be received when having lived in Denmark for at least two years. After 6 months within the last 10 years 25 % would be paid, and then gradually increasing so after 2 years within the last 10 years full benefit would be paid. In the suggestion for the change[[2]](#footnote-2) it was argued that the main reason for the change being that child and family allowances is within the scope of 883/04 and therefore without the change already when entering to work or staying in Denmark and covered by the labour market regulations persons would be eligible for full child benefits even when the child is not residing in Denmark. So, in order to avoid that persons working in Denmark for a short time-spell should have the right to receive the full benefit a change in the legislation was made, and, as also argued in the proposal to the parliament: “they should have a real connection to the Danish society to be able to receive the full-benefit” (my translation). In November, 2012 there was a slight change to ensure that refugees with children not fulfilling the above mentioned requirement from day one could receive the full-benefit.

However, in June, 2013 the Danish Government announced that: “It is our conclusion, that it is not possible that workers from other EU-countries shall have a certain amount of employment, before one can received the benefit”[[3]](#footnote-3). This conclusion was reached based upon that the EU-commission has argued that this is against the rules regarding the free-movement concerning co-ordination of social security, including the aggregation principle.[[4]](#footnote-4) How long and how many hours one should work in Denmark as employed is it argued to be at least 9 hours per week, and, for self-employed at least 18.5 hours.

The numbers with a right to family allowances from Eastern Europe increased from 2676 in 2006 to 5772 in 2010, and from EU in total from around 11.000 persons in 1995 to 19.000 in 2010 (Politiken, 2013[[5]](#footnote-5)). This increase in the numbers and lack of options to reduce the right to get the benefit has opened for a public and political debate on the legitimacy of the welfare state in the sense that some voters is not prepared to pay a benefit to children not living in Denmark, and, therefore besides the increase in spending also questioning the legitimacy of the universal Danish welfare state.

Besides the above mentioned and enacted changes in 2010 a committee was set down to analyse the option and possibility of enacting in more areas, that one should have resided in Denmark for at least some time to be eligible for different welfare benefits. A report was published in March, 2011 (Regeringen, 2011). The report focused on the challenges for a universal welfare state of migration including free-movement in relation to welfare benefits and further, in certain social services areas, including free education, and thereby that not only regarding benefits there could be a need to have waiting periods. In the area of educational grants recent cases also illustrates the risk for a universal welfare system on spending and access.

A court decision on the 21st of February, 2013[[6]](#footnote-6) implied that if a person is taking up a job giving a person the position as a migrant worker then there will be access to educational study grants if entering a study. The court argued that regarding the free-movement: “ must be interpreted as meaning that a European Union citizen who pursues a course of studies in a host Member State whilst at the same time pursuing effective and genuine employment activities such as to confer on him the status of ‘worker’ within the meaning of Article 45 TFEU may not be refused maintenance aid for studies which is granted to the nationals of that Member State” (Case C-46/12 – ruling on the 21st of February, 2013). Following the court decision it has been estimated to cost the Danish welfare state around 30 million EURO, and has raised an issue about how to change the rule also in this area by a demand for having lived in Denmark for some time before being eligible for study grants.

In another case (Giersch – C-20/12) a preliminary ruling stated that for frontier workers Luxembourg could not deny children study grant with the existing criteria related to condition of stay as the existing “condition nevertheless goes beyond what is necessary in order to obtain the objectives pursued” (Giersch – C-20/12 p. 14)[[7]](#footnote-7). There is thus room for some criteria, but presumably not a strong demand of long time staying in a country before being eligible for benefits. This is also the opinion of the Advocate General (Joined Cases C-523/11 and C-585/11) regarding funding abroad for higher education. Germany have a rule demanding three years of residence before having the right, and, in the case two children who has been abroad with their parents, who had been working in other countries, was denied the benefit. Due to a proportionality argument three years is too long, although this is not an argument for that a time condition is not at all possible, however it is likely that only a relatively short time up to around one year will be accepted. The Danish educational grant system will thus also need to be changed as Denmark has a two year rule out of the last 10 years. This also raises the issues on the size of the benefit as the high level in Denmark if reduced could make it less interesting to move to Denmark in order to obtain a study grant.

The different cases[[8]](#footnote-8) and also historical changes depicted above is a clear indication of that the combination of EU-rules on free-movement with court cases and commissions intervention implies a pressure on the legitimacy and cost of a universal welfare states such as the Danish. There will thus presumably also be a constant pressure to change these systems mainly in such a way that length of stay as far as it is possible only can have a limited impact on the right to and level of welfare benefits. Other ways will be to reduce the size of the benefits and make discretion more central and by this reduce the pressure on spending. This will reduce the universality related to citizenship, and can move the system towards a more social insurance based system or a system more targeted based upon and within the social assistance system. The changes might not only be related to welfare benefits, but also social services, as the development of the service directive are an example of.

### 5 The Service directive – a case and possible impact on social services

The Service Directive provides a further and also more general case, which will be described below, illustrating how the principles of state and market involvement sometimes interact and can lead to different outcomes, and if the court especially has a focus on market and market provision this will drive a wedge in the provision and structure of the universal Danish welfare service model and implying over time a less strong state involvement. This is due to that a central issue related to social services is whether the service is a good that should be provided by the market and be available for purchase on the market at a given price, or whether it is a public good provided as a result of some of the logics for providing public goods. Over time the boundaries between state, market and civil society has changed. Care for the elderly could, as an example, in principle be provided, not only as earlier mainly by the family, but also by the market. Given that it is very difficult to estimate the precise need for elderly care before the need actually is there, this has been coped with financially by the welfare state in one way or another, seen as argued by Barr that the welfare state is a Piggy Bank. The same is to a large degree the case of health care, where recent years of development have seen some changes.

Part of the reason for the development of the Service Directive has been the change in case law, or more importantly that a number of cases gave a clear indication of the fact that “judicial activism has clarified that the Community principles of free movement of goods and service apply to health care policy field” (Martinsen, 2005 p. 1031), and that national rules regarding the authorization of who to provide non-hospital care for was a barrier that was not in accordance with the rules of the free movement of services. In general this has implied that since the end of the 1990s, a number of European court cases have expanded the citizen’s right to planned health care also in other countries beyond that of the home country (Kumlin, 2010). The idea is that people could also travel or use services in neighbouring countries in areas such as physiotherapy, dental and medical treatment, including visits to a general practitioner and having prescriptions delivered. Nation states supporting this economically will therefore have to pay the same amount to a citizen even if the treatment takes place outside the home country. Individuals also have the right to move to another country to search for a job and claim unemployment benefits in another country. So, the implication being that it is not only free movement of labour, but also free movement of goods and services that poses problems for welfare states and thus not only as discussed in Section 4 to welfare benefits, but also in relation to social service. In principle, as argued in Section 2, the starting point is that the EU in general only has a more limited role in welfare state policies. At the same time, the court has by referring to the free movement of goods and services changed the rules and the way the system is working (cf. e.g. the three cases regarding Kohll, Decker and Peerbooms). Another example was the Watt case from 2006 (Martinsen and Vrangbæk, 2008), where the court came to the conclusion that Mrs. Watt could get the cost of a hip-operation reimbursed, despite the fact that it took place outside the physical borders of the UK. The court also argued that medical services are within the scope of freedom with regard to the provision of service. The Decker and Kohl cases changed the Danish perception from that it was clearly a national issue to that health care was not clearly outside the scope of the internal market. This lead to a change in the Danish legislation allowing for the purchase of specialist services (e.g. dental assistance) abroad and then being reimbursed with a fixed amount of money equal to what the Danish providers would get; there was also the interpretation that “services as services normally carried out in return for remuneration” (Danish report – here quoted from Martinsen and Vrangbæk, 2008, p. 179).

In this way part of the welfare states social services are open to international competition, and by this also a change with regard to steering and governing in these areas. This also includes whether they should be universally available or that more specific criteria is needed to reduce the risk that they are part of the rules concerning the free-movement or easy to be used by people who has not been participating in the financing of the universal welfare state.

This has been even stronger presented by the argument over the Service Directive (the Bolkenstein Directive). This is a further indication of the possibility of a movement away from and difficulties for the universal welfare states to provide specific social services. If a national welfare state cannot provide without too much delay (and this is not precisely defined) health care services, then a citizen may have the right to go to another country to obtain the treatment.

The Directive on service in the internal market is a clear indication of the ongoing debate and struggle between state and market led development. The draft directive from 2004 was “aimed to reduce national regulation of services, unless they were non-discriminatory, justified with respect to public interest and proportionate” (Grossman and Woll, 2011 p. 346). One debate circled around the country of origin for setting up a business in the sense that those having residence in one country should only abide to the rule in that country. Another issue was related to the inclusion of public service in the suggestion for the directive, including services of general interest (Crespy, 2010). A third issue revolved around the position of posted workers, where the understanding in the posted worker directive from 1996 was that working conditions and pay should be in accordance with the rules in the country where the work was carried out; the suggested directive was seen as “being *de facto* ruin of these provisions by making controls impossible” (Crespy and Gajewska, 2010 p. 1191). After changes reducing and amending these elements, including explicit to exclude services of general interest, the directive was adopted on 12 December 2006.

The court still has a central role in these areas and they constantly seems to inflict upon the option for diversity in the structure and rules regarding not only welfare benefits in general, but also the access to social services. This thereby questions the possibility for a continuation of the universal welfare states. This despite, as argued by Pennings, (2011) that if there is a risk of undermining the financial strengths of a social security system this can justify “a barrier to the principle of freedom to provide service” (Pennings, 2011 p. 435). How strong, this risk should be is a still more open question, and the possibility to create barriers seems weakened by the last court cases.

### 6. Conclusion

There has been a movement towards a larger role for the EU in the core area of welfare states, with regard to welfare benefits as well as services, although the way to a higher impact on welfare state policies has been very diverse and uneven over time. In some areas, this has been achieved through court cases (e.g. Laval, SU, Giersch); in others through agenda-setting as part of the communication of viewpoints and the OMC; still in other areas are used gradual economic integration, implying a progressively weaker role for individual member states in the field of social policy. Finally, the use of directives has opened the discussion, as is seen in the case of the service directive, for example. Generally, the impact has been stronger where there have been directives and/or court decisions.

However, given the financial crisis pressures from convergence and tendencies towards it, the role of the European Union can imply further development towards welfare state models moving in the same direction. Given the issues and problems related to having a universal approach in several areas without having the option to set specific and detailed arrays of criteria, this opens for that the universal Nordic welfare states, in this specific analysis the Danish, will have to be more restrictive and move in a more continental direction as a way of reducing the fiscal and legitimacy pressure on the welfare states. This could also imply a reduction in the level of benefits to make them less generous and thereby less attractive for migrant workers to enter Denmark, and, this opens for a risk of a movement towards the bottom.

The universal elements might thereby wither away and instead citizens having more rights derived from being on the labour market and have paid to a social insurance fund for a long-time or they will to have to have stayed in Denmark for longer time in order to be eligible for benefits or the full-benefits, although this seems not in all areas to be accepted by the court or only a more limited time-span. This pressure might thereby also reduce the distinctiveness of the Danish and other Nordic welfare state models moving them more towards a European welfare model and the elements of universality weakened.

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1. Cf. For example, as an overview Special Issue on 50 Years of European Social Security Coordination. European Journal of Social Security, no. 1-2, 2009 [↑](#footnote-ref-1)
2. Forslag til Lov om Ændring af lov om en børnefamilieydelse og lov om børnetilskud og forskudsvis udbetaling af børnebidrag. Fremsat den 17. november 2010 af skatteministeren. [↑](#footnote-ref-2)
3. My translation based upon press-information from the Ministry of Taxation on the 18th of June, 2013 ([www.skm.dk/presse/presse/pressemeddelelser/9648.html](http://www.skm.dk/presse/presse/pressemeddelelser/9648.html)). [↑](#footnote-ref-3)
4. It has not been possible to get the letter from the commission to see the more detailed arguments. [↑](#footnote-ref-4)
5. The data are based on estimates from a think tank called Kraka. [↑](#footnote-ref-5)
6. L.N., mod Styrelsen for Videregående Uddannelser og Uddannelsesstøtte (C-46/12,LN). [↑](#footnote-ref-6)
7. This was confirmed by court ruling on the 18th of July, 2013. [↑](#footnote-ref-7)
8. In another area, albeit only implicit related to the above-mentioned, the commission has on the 26th of April, 2013 in a letter (SG-Greffe(2013)D/5810) argued according to the Danish Ministry of Foreign Affairs that reduction of the Danish threshold for paying tax cannot be reduced if a person is working in both Denmark and another member state. [↑](#footnote-ref-8)