

Andrej Stuchlík, Christian Kellermann

## Europe on the Way to a Social Union?

The EU Social Agenda in the Context of  
European Welfarism

- Despite the fact that social policy remains the province of the member states, the European Commission has outlined a framework for European social policy, the »Renewed Social Agenda«.
- This Agenda stands for a genuine EU social policy that complements the Union's direct influence on welfare states through internal-market policy.
- EU social policy focuses on the regulatory level, mainly setting minimum standards. Other levels, such as redistributive social policy, are developed only marginally.
- A European Social Union should effectively combine national and European social policy. Europe still has a long way to go before this comes into being, however.
- This paper analyses the EU's current social policy and makes suggestions for an enhanced European welfarism.

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## 1 Introduction: The EU's Renewed Social Agenda

The European Commission's »Renewed Social Agenda«, published at the beginning of July 2008, bears the auspicious subtitle »Opportunities, Access and Solidarity in Twenty-first Century Europe« (European Commission 2008b). The Agenda outlines a framework for European social policy in the areas of employment and social affairs, education and youth, health care and the information society. However, since social policy remains the responsibility of the member states, the Commission avoids defining its policy proposals as such. At the same time, the EU sees itself in an »ideal position« to pursue social policies in reaction to socio-economic change resulting from technological development and globalisation. Contemporary social policy should be »cross-cutting and multidimensional«, both conceptually and with regard to implementation.<sup>1</sup>

In the Commission's view, finding the *right* mixture of European and national decision-making is the key to a fair and efficient social policy for the twenty-first century. Thus, the Commission rightly poses the question of whether there might be scope for cross-sectoral measures at EU level and whether the instruments available to the EU »to support and supplement the Member States should be reviewed« (European Commission 2008b: 4). This question delves deep into the EU's current structure and touches upon its relationship with the member states. This explains the number of critical and dismissive reactions to the Social Agenda. While some believe that the Agenda does not go far enough, others criticise it for gratuitously increasing the role of the EU. No doubt, the EU's social dimension will continue to be the subject of much political infighting. Why is it so difficult to make proposals for social policy? One thing is certain, the high level of complexity produced by the interdependence of policy areas and the number of different levels involved does not help.

This paper seeks to introduce the EU's social policy to a wider audience by outlining the current situation as clearly as possible. We will proceed in stages: first, we will discuss the difficulty of the very concept of social policy in the EU. Next we will look briefly at »political economy«, that is, the balance of power and interests which play a role in this field of European integration. In Section 4 we will examine the

evolution of European social policy. In Section 5, we will classify, describe and evaluate the current state of affairs. The conclusion provides a trajectory into the future, pointing out some areas with potential for further development of European social policy. We will focus on areas where we believe the EU could bring added value in terms of welfarism – food for thought in the discussion of Europe's way towards social union.

## 2 What Is EU Social Policy?

Any analysis of European social policy is characterised by an initial conceptual difficulty: the terms »European social model« and the »social dimension« of the European Union are often used interchangeably, but interpreted differently. For the most part, national perspectives determine European perspectives. As the desired level of state intervention in the market varies depending on the national economic makeup and welfare regime associated with it, the desired level of, if any, EU power in social policy matters varies as well.

In EU member states, social policy is intended to benefit the disadvantaged, equalising chances in life and living standards within society. This includes conferring an equal start in life through education policy, but also equalising the safety nets for the main risks of life, such as illness and unemployment. On the other hand, social policy is also a potential growth factor for the national economy. Still, the scope of market intervention varies.

Alongside the conceptual difficulties, there is a second problem: in the member states the political aims of market creation and market regulation are generally on an equal footing in legal terms (cf. Scharpf 2002). »Market creation« refers to the activities of private actors in the market, which should be protected by the state. »Market regulation«, in contrast, implies regulatory intervention in markets, which has to be justified. It is this relationship that clearly distinguishes member states from the EU. At the EU level, emphasis on the Internal Market and its competition principles is closely linked to the Union's limited social powers. Although the Community's competence in social policy has increased, particularly since the Maastricht and Amsterdam Treaties, the parallelism of European responsibility and ECJ rulings – for example, protection in the workplace – and national powers (for example, minimum wages) makes it difficult to reach compromises in the European multi-level governance system (Pierson and Leibfried 1998).

**Andrej Stuchlík** is a research associate at the University of Administrative Sciences in Speyer and **Christian Kellermann** is a project manager for European economic and social policies at the Friedrich Ebert Foundation in Berlin.

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<sup>1</sup> The Renewed Social Agenda was preceded by a process appraising »social reality« in Europe, designed to reflect the changes in employment relations, family structures, lifestyles and support structures (cf. also European Commission 2007a).

This scepticism regarding Europe also stems from the fact that EU legislation – and particularly European case law – is often at odds with national social policy agendas, although social policy is still seen as a key area of national competence.

Finally, a third difficulty ensues concerning the effects of international conditions and differing national starting points. The following factors are particularly important in this regard: (heterogenously) ageing societies, various types of welfare state financing at national level – tax-based versus contribution-based – and the increasing tax competition in the Union, as well as the detrimental effects of globalisation.

Against the backdrop of differing national traditions and institutions, forays in the area of social policy under the banner of European integration often trigger *different* effects in the member states. Hence, social policy at European level – particularly where it aims at harmonisation – is a highly complex political process which makes obtaining a majority (both in national parliaments and in the European Parliament) a lot more difficult. The level of complexity increases in line with the level of integration desired; »integration« refers to the Europeanisation of national competences; that is, to the delegation of these competences to Brussels.

A transfer of powers can be the result of new institutional solutions, such as the recently created European Globalisation Fund. Alternatively, it could be brought about by national legislation, either through regulations or directives – which set binding requirements for the member states – or through common aims and recommendations, for example, in the form of best practices.

European social policy takes shape at three levels:

1. At the substantive level, European social policy emulates the social policy of member states: national social security systems – funded by general taxation or contributions – provide *substantive benefits*, such as unemployment or housing benefits, for those in need. These benefits are financed on a contribution or a pay-as-you-go basis. For now, the European Social Fund (ESF) for the active reintegration of workers is one of the few mechanisms through which the EU provides substantive social policy.
2. European social policy is found much more frequently at the *regulatory level*. The Internal Market requires regulation in the area of European minimum standards, for example, in labour law and the coordination of social systems (e.g. the portability of pension rights). These measures create a framework designed to prevent dumping and exclusion. They do not, however, result in redistribution. Eu-

ropean legislation aims to balance adverse social effects of the four freedoms,<sup>2</sup> particularly in the area of worker mobility. The regulatory level is therefore part of »hard legislation«, which includes the possibility of EU sanctions.

3. European social policy also concerns coordination in the area of »soft law«. Soft law sets common objectives for member states – for example, concerning vocational training. However, these aims are not binding but merely serve as benchmarks for national governments. »Naming and shaming« of national policy measures puts pressure on governments to achieve common objectives. National standards are compared mainly by means of the Open Method of Coordination (OMC).<sup>3</sup> However, since there are no penalty mechanisms the OMC is primarily used in policy areas in which the EU has little or no power.

### 3 One Union – Many Welfare Models

European welfarism in terms of Europeanisation of social policy is dependent on the common interest of member states in ceding powers to the EU. There are three factors at play: (i) the degree of homogeneity of the member states (and in particular their respective living standards), (ii) the rivalry between the member-state and EU levels with respect to optimum problem-solving ability and (iii) the policy area in question.

In terms of redistribution, European integration affects member states very differently, depending on their welfare regime (cf. Busemeyer, Kellermann et al. 2008). With regard to their economic makeup and welfare systems, recent EU members from Central and Eastern Europe seem to have established a category of their own, thereby diversifying the already heterogeneous EU mix. This complicates attempts to reach a common interest in further integration. In addition, transformational processes in the last twenty years or so have created a large »have-not« population segment in the new member states (see, inter alia, Dauderstädt 2005).

2 The four freedoms are the free movement of goods, services, people and capital.

3 The OMC was initiated in 2000 and is geared towards the process of coordinating EU employment policy as introduced in the Treaty of Amsterdam. It is a coordination instrument for areas outside EU competence. Once common aims – and common indicators – are drawn up, Action Plans are produced in the Member States which, in turn, are assessed in the Council at the Commission's behest. Aside from improving comparability of individual policies in the EU, the aim is to identify »best practices« and thereby instigate knowledge transfers for possible political reform.

Although the institutional aspects of accession are almost complete, the »social consolidation« phase in these countries still lags far behind (Ágh 2006: 5ff).

As heterogeneous as the group of new member states might otherwise be, income convergence with the EU-15 is the principal membership aim of them all. Ultimately, EU accession offers this group of low-wage countries the prospect of considerable transfers of wealth from the rich countries (Boix 2004: 3). In this connection, proposals concerning regulatory social policy are immediately suspected of aiming first and foremost to protect the interests of the old member states. According to the *European Social Survey* Poland – alongside the UK and Denmark – is the member state most reluctant to increase EU powers in the area of social policy (Heien 2006: 245).

There is a fundamental asymmetry between the economic regimes of the EU and of the member states: while in the latter the policy aims of »market creation« and »market regulation« – as defined in Section 2, paragraph 3 above – are on an equal footing this is not the case at EU level (Scharpf 2002: 649). Instead, the EU imposes both economic and legal fetters on national welfare states (Scharpf 2002: 648; Leibfried 2006), exerting influence on national social welfare policy primarily in three ways, two of them direct – »positive« and »negative integration« – and the other indirect, in the form of a general pressure towards integration (Leibfried 2005, 2006; Leiber 2007).

So-called »positive integration« involves all three of the abovementioned levels of European social policy: substantive, regulatory and process-oriented. »Negative integration« involves mainly EU efforts towards market creation. When European regulation clashes with national law the European Court of Justice (ECJ) tends to decide in favour of Internal Market legislation (Leibfried 2006: 527). Indirect integration pressure on European welfare states ultimately results from monetary and finance policy: for example, the Maastricht criteria imposed financial restrictions on welfare states. Similarly, the emerging tax competition, intensified by Eastern enlargement, has increased the pressure on progressive income tax systems (cf. Kellermann, Rixen et al. 2007).

Given the different forces acting on the EU and on the member states, not to mention the variety of welfare state models, the question arises whether there can possibly be any sort of uniform principle for the exercise of powers at European level. In accordance with the principle of subsidiarity, when should the EU intervene in social matters and when should it refrain from doing so? Besides conflicts of interest between the EU and the member states this is also a matter of

the extent to which problems can be solved at these two levels (Scharpf 1999: Chapter 3). The more difficult it is considered to be to manage a particular policy area at national level and the stronger the expectations concerning a putative »European contribution«, the greater the incentive to delegate powers to the EU (Scharpf 1999: 108f). In Section 4 we outline the levels at which there has been »positive« integration of European social policy so far.

#### 4 Development of European Welfarism

The EU has so far been reluctant to enter the realm of social policy as the project of the Single Market unfolds. *Negative integration* characterised by market creation and consolidation of the principle of competition continues to predominate. Therefore at the beginning of the unification process social policy at European level was banished to the realm of regulation and not conceived as redistributive in nature, as it is at national level. European social legislation in the narrow sense, then, includes only regulations arising directly from the freedom of movement of workers (and the self-employed), the principle of anti-discrimination and the requirement of equal treatment (in particular Articles 39–42 and Article 141 of the Treaty). The structure and essence of these provisions are clearly directed towards the protection of so-called »citizens of the internal market« [*Marktbürger*] (Fuchs 2005: 38, reference number 114), namely those who really do exercise the EU's fundamental freedoms. Accordingly, notwithstanding a long history of European social policy formal EU powers in this area remain weak. Apart from the numerous directives and ECJ case law »at least 95 per cent of all questions of labour and social legislation are decided at national level« (Däubler 2004: 280). The European Social Charter (ESC) was adopted as early as 1961 but this Council of Europe agreement envisaged as the social policy counterpart of the European Convention on Human Rights (ECHR) has not been able to exert a comparable effect on subsequent legal rulings.<sup>4</sup>

At the same time, the initiatives of the European Communities, particularly since the 1970s, have been remarkable: even if the measures actually taken fell short of the ambitious »Social Policy Action Programme« of 1974, for example the Equal Pay Directive of 1975 or the Directive on the equal treatment

4 »European Social Charter« of 18.10.1961, Turin, <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>

of men and women in matters of social security of 1978 merit attention.<sup>5</sup> Decisive for the coordination of social security systems, as a precondition and crucial element of the free movement of workers, was the Migrant Workers Regulation of 1971.<sup>6</sup> Since then EU workers have had the same rights as domestic workers in the host country. The aim was to ensure that no one seeking to take advantage of freedom of movement should lose out in terms of social security. However, it was expressly not the intention to seek to harmonise member states' social legislation (Seewald 2007: reference number 24).

Generally speaking, in the first years of European integration social policy served the interests of the Single Market, the aim being to improve economic efficiency by underpinning the basic freedoms with social policy measures.

### *The Single European Act*

After the changes due to the Single European Act in 1986 there was a »renaissance of social policy activities« (Ribhegge 2006: 366) through the introduction of qualified majority voting in issues of health and safety at work (new Art. 118a, 2 TEC). Moreover, the social dialogue (new Art. 118b TEC) got under way »understood as the cooperation of the social partners at Community level – as a new and autonomous element of regulation in terms of Community law« (Eichenhofer 2005b: 731).

At the outset of the Single Market project the intensified demand for a social dimension of the EU led to the Social Charter of 1989.<sup>7</sup> The fundamental rights laid down here establish a European labour law model (for example, the right to strike) by means of which these Community principles are to be implemented in the member states and, depending on the applicable powers, at EU level. By way of example, one consequence of the Social Charter and the equal treatment as regards working conditions it enshrines was the

Posted Workers Directive adopted in 1996.<sup>8</sup> To begin with, however, it was not possible to incorporate the Social Charter in the Treaties, in particular due to the opposition of the UK.<sup>9</sup>

### *The Maastricht Treaty*

This incorporation took place only with the Maastricht Treaty, but even then it was incomplete: »With the adoption of the ›Social Protocol‹ which was then implemented in the ›Social Agreement‹ an extension of social policy powers was agreed upon« (Ribhegge 2006: 366f). In this way the EU at first landed itself in a »social policy blind alley« since now the regulations contained in the Social Protocol did not apply to the UK (ibid. 367).

However, this Protocol made it possible – on the basis of the Social Agreement concluded by the 11 other member states – to initiate legislation »in almost every area of labour and social law« and so to introduce European minimum standards in central areas of social policy (Däubler 2004: 276). In addition, qualified majority voting was extended to social policy:

- measures related to working conditions;
- improvements in the working environment for the protection of workers' health and safety;
- information and consultation of employees;
- equal opportunities for men and women and equal treatment in the workplace;
- integration of persons excluded from the labour market.

These changes duly led to Europe-wide regulation of occupational health and safety without the agreed minimum standards being set at the lowest possible level. Certainly, the principle of subsidiarity enshrined in the Maastricht Treaty also reinforced the tiering of the EU's social policy powers. In questions of remuneration, the right of combination, strikes and lock-outs the member states preserved their full autonomy.

### *The Treaty of Amsterdam and the Treaty of Nice*

The two most important innovations of the Treaty of Amsterdam were, first, the formal transposition of the Social Protocol – and the Social Agreement – into the

5 This prohibited sex discrimination, for example in the calculation of contributions or access to social assistance. Directive No. 79/7/EEC of 19.12.1978 [Official Journal L 6, 10.01.1979].

6 Regulation No. 1408/71/EEC of 14.6.1971 [Official Journal L 149, 5.7.1971]. The Migrant Workers Regulation was amended in 2004. The successor regulation 883/2004 on the coordination of social security systems is already in force, although it has no legal effect because the implementing regulation has so far not been adopted. Due to the complexity of it – and the requirement of unanimity – the Council has in the meantime turned its attention to adopting changes on the basis of individual steps.

7 Community Charter of Fundamental Social Rights for Workers, 9.12.1989, Strasbourg.

8 Directive No. 96/71/EC of 16.12.1996 [Official Journal L 18, 21.1.1997]. It contains provisions on the application of member state regulations on labour on the working conditions of employees who are sent by an employer based in one EU member state to perform services in another member state.

9 The United Kingdom would sign the document eventually only after the Blair government came into power in 1998.

European legal framework (Art. 136–145 EC Treaty), and second, the inclusion of a separate chapter on employment (Art. 125–130 EC Treaty), as well as the setting up of a special employment committee for the exchange of information between member states. Certainly, the employment policy thus brought into being as the so-called »Luxembourg process« has only a coordinating function. That rules out any harmonisation of national employment policies by this means. Nevertheless, the Treaty of Amsterdam constitutes »both a turning point and a high point in the development of EU social policy powers« (Leibfried 2006: 525).

The amendments negotiated in Nice in December 2000 scarcely touched on social policy, apart from the minor extension of majority voting. In the run-up to the intergovernmental conference the Charter of Fundamental Rights, relevant to social policy, was passed, though it did not constitute a binding part of the European Treaties.<sup>10</sup>

#### *The Constitutional Treaty/Lisbon Treaty*<sup>11</sup>

The gradual extension of European social policy was finally formally recognised in the Treaty establishing a Constitution for Europe (TCE) of 2004: the inclusion of the Charter of Fundamental Rights as Part II of the Treaty now confirmed binding social basic rights, that to some extent were formulated more comprehensively than, for example, in the German Basic Law (Treib 2004: 12f; Eichenhofer 2005a: 9).

In addition, the planned creation of »European framework laws« made it possible to enact »minimum requirements« on social policy (Art. III, 210(2)b, TCE). It is true that European regulation could still »not entail harmonisation of Member States' laws or regulations« (Art. 2a(5) Treaty of Lisbon), but the text sounded optimistic: the EU and the member states

expected that the realisation of social policy aims »will ensue ... also from the procedures provided for in the Constitution and laid down by law, regulation or administrative action of the Member States« (Art. III, 209, para 3, TCE).

However, alongside the important legal embedding of long-standing EU social policy aims, a further – institutional – aspect merited particular attention: the Constitutional Treaty strengthened the majority principle in the Council, the current co-decision procedure between the Council and the European Parliament was upgraded to a »ordinary legislative procedure« and so now constitutes the rule. In addition, its areas of application were extended (Council of the European Union 2007).<sup>12</sup>

The Treaty of Lisbon, signed in December 2007, in large part adopted these amendments.<sup>13</sup> The Charter of Fundamental Rights, together with its social basic rights, is attached to the Treaty as a protocol, but it is to have binding effect (Art. 6(1) EU Treaty new). Certainly, the possibility exists of separate ratification and so of rejection of the Charter by individual states and, once again, double track social policy development analogous to the Social Agreement.<sup>14</sup>

However, the EU for the first time cites »social market economy« and »full employment« as explicit Community objectives. In accordance with the amended Art. 2 the EU is working towards »a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment« (Art. 3(3) EU Treaty new).<sup>15</sup>

Also likely to prove interesting is the horizontal »social clause«. It was already contained in the Constitutional Treaty and generally affects all policy fields. Analogous to the existing environmental clause, in future: »in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level

10 Charter of Fundamental Rights of the European Union of 07.12.2000. Although it remains non-binding this document is referred to frequently. For example, the ECJ recently, in a ruling against the European Parliament, referred to it specifically (ECJ 27.6.2006, Case 540/03, §38).

11 The text of the Constitution rejected in 2005 was incorporated in the so-called Reform Treaty under the German presidency of the Council. After its signing on 13 December 2007 in Lisbon the two-part Treaty is supposed to become ratified by 2009: (a) the Treaty of Lisbon amending the Treaty on the European Union (the »new« EU Treaty) and (b) the Treaty on the Functioning of the European Union (TFEU, formerly EC Treaty), 13.12.2007 [Official Journal C 306/01, 17.12.2007]. The consolidated text version has been published on 9 May 2008. OJ. C115/01. [http://eur-lex.europa.eu/JOIndex.do?year=2008&serie=C&textfield2=115&Submit=Search&\\_submit=Search&ihtmlang=en](http://eur-lex.europa.eu/JOIndex.do?year=2008&serie=C&textfield2=115&Submit=Search&_submit=Search&ihtmlang=en)

12 A qualified majority comprises 55 per cent of the votes and 65 per cent of the population; valid from 2014. In the Treaty of Nice 137 policy areas were subject to majority decision; in the Lisbon Treaty, as in the case of the Constitutional Treaty, it is 181. Unanimity still holds as regards foreign policy, defence, taxation and social security.

13 On the legal assessment of the differences between the Draft Constitution and the Treaty of Lisbon see, for example, Weber (2008).

14 At the intergovernmental conference in 2007 the UK carried through a derogation; Poland is likewise considering separate ratification.

15 The numbering of articles of the Lisbon Treaty refers to the consolidated text version of 09.05.2008.

of education, training and protection of human health« (Art. 9, TFEU).

These new regulations on social policy – assuming successful ratification of the Treaty by the member states – will, as Title IX (Employment) and Title X (Social Policy) of the Treaties, henceforth give rise to intensified political conflict. The Eurozone member states in particular can pursue new social policy paths: »The Union may take initiatives to ensure coordination of Member States' social policies« (Art. 5(3), TFEU).

All this optimism notwithstanding, even in the Lisbon Treaty the emphasis is on social policy activity that arises directly from the Internal Market and that ensures workers' freedom of movement. The general extension of the majority principle in the Treaty in some cases has led to retrogressive tendencies on points of detail: the modified Article 42 (now Art. 48 TFEU), which, for example, regulates the aggregation of benefit entitlements, if workers have been employed in several EU states, now provides for a derogation: if a member state takes the view that a European legal initiative would affect »important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system«, it can virtually suspend the majority voting procedure. In such cases, individual member states can, for example, refer the initiative back to the European Council to take advantage of the unanimity that prevails there and so ensure they could no longer be outvoted (Art. 48(2), TFEU).

#### *European Commission Initiatives and the Lisbon Strategy*

At the latest since the White Paper of 1994 (European Commission 1994) the EU's social dimension has been the focus of particular attention from the European Commission which consolidates its agenda-setting power by means of action plans, the social policy agenda and consultation processes. Certainly, the outcome of this position is that its initiatives are always directed towards extending its own influence and sphere of control (Majone 2006: 622).

The central element for bundling social policy initiatives since 2000 is the so-called Lisbon Strategy. It is at once a European economic policy agenda and a barometer of progress, which is intended to help the member states to modernise by providing for quantitative policy objectives, creating favourable framework conditions and, if necessary, coordinating reform proposals in the EU.<sup>16</sup>

The deliberate aim here is »policy learning« between the member states: the member states should be »inspired by best practice where this has delivered visibly positive results in terms of growth and jobs«. <sup>17</sup> In order to achieve the long-term objective of »growth and jobs« the Strategy combines the previous means of coordination. In this way procedures laid down in the Treaties, such as the coordination of employment policies and supplementary forms of governance such as OMC, are brought together and better harmonised. For now, actual implementation remains a matter for the member states. However, as part of the EU's economic policy coordination (Art. 99 EC) the Commission will present its strategy report on progress made in the member states at the spring summit.

Originally, by 2010 the Lisbon Strategy was supposed to make the EU the most competitive and dynamic economic area in the world, but as early as 2005 difficulties had begun to emerge as regards implementation, and a reform process was introduced whereby all objectives would be reviewed every three years.

Similar to this halfway-stage evaluation of the Lisbon Strategy for growth and jobs, the Social Policy Agenda and European scope of action in this policy area were also assessed in 2005. In advance of this the »Report of the High Level Group on the Future of Social Policy in an Enlarged European Union« (European Commission 2005a) provided the Commission with some room for manoeuvre as regards further initiatives. It is true that no proposals for substantive social policy emerged as a result, but there was a tighter bundling of existing instruments with a clear focus on long-term efficiency as regards public finances.

Among the tasks of the European Employment Strategy (EES), accordingly, is to ensure that working lives are lengthened, to support lifelong learning and to help people cope with structural change. Social security systems would have to be reformed and social inclusion promoted, for example, by means of quantitative objectives to reduce social exclusion (European Commission 2005a: 61). Finally, demographic changes should be addressed by means of a European immigration policy and support for family formation. The Social Policy Agenda 2005–2010 incorporated these proposals and laid down three priorities: (i) employment, (ii) reducing poverty and (iii) equal opportunities (European Commission 2005c).

[ec.europa.eu/growthandjobs/index\\_en.htm](http://ec.europa.eu/growthandjobs/index_en.htm).

<sup>17</sup> See the Guidelines on Cohesion Policy for 2007–2013, Council Decision 702/2006/EC of 6.10.2006 [Official Journal L 291/11, 21.10.2006, p. 4].

<sup>16</sup> For an overview see the Commission website: <http://>

Generally speaking, as far as the European Commission is concerned social policy often appears to be merely a component of competition policy, albeit an important one (cf. Majone 2006: 617) – not much more than an auxiliary element for the »productive use of workforce potential« (Klecha 2008). In contrast, system stabilisation and legitimation, which are important in the national context, are of less consequence. Critics allege that so-called »dynamisation« and flexibility, both of individuals and of social security systems, form the political subtext of the Lisbon Strategy, too. »Competitive solidarity« is the aim (Daly 2006: 469). Certainly, there are also signs of a »productive social policy«, considering that policy areas such as poverty and social exclusion were first made important issues of European policy by Commission initiatives (ibid.: 470).

At least a procedural rethink finally took place in the course of the self-prescribed »pause for reflection« in the wake of the failure of the Constitutional process in 2005. One direct result was the launching of an open consultation process concerning »Social Reality in Europe«. This »Social Reality Stocktaking« – mentioned at the beginning of this article – began in March 2007, serving among other things as preparation for the new Lisbon Cycle (Liddle and Lerais 2007). The renewed Lisbon Cycle for 2008–2010 (European Commission 2007c) indeed emphasises the significance of the social dimension, but the member states could not agree on a specific social policy orientation at the Spring Summit in 2008.

It is true that labour market reforms have commenced that also take account of poverty and social exclusion. For example, by 2020 there is to be a »comprehensive evaluation of future requirements as regards qualifications« with a view to reintegrating persons who are particularly hard to place in the world of work (Council of the European Union 2008: 9). The »Renewed Social Agenda« of July 2008 seeks to revise existing legal provisions, particularly in respect of discrimination, health and safety, new forms of work organisation (European works councils and reconciliation of family and work) and ECJ rulings (European Commission 2008b). However, implementation of the Social Agenda in national law is still a long way off.

Social policy, and in particular employment and social security, remain the province of the member states. However, we would advocate a change of perspective, rather than focusing on the harmonisation achieved so far and the exclusive regard for the standards that have been set to the actual forms and effects of the EU as a social union. Although hitherto European social policy has in many areas aimed at policy formulation and the development of a policy para-

digm rather than at implementation it has had an effect across a broad spectrum and in that way has had a lasting influence on the actions of member states (cf. Leibfried 2006).

## 5 Levels of European Social Policy

The EU's contribution to social policy is oriented towards the three great sets of objectives and cross-sectional tasks it has set for itself: (i) economic growth (as well as more and better jobs), (ii) a high level of social protection and (iii) equality of opportunity for all. In order to perform these tasks the EU and, in the European Commission, DG Employment, Social Affairs and Equal Opportunities, have five main instruments: (i) the European Social Fund, (ii) social policy legislation together with ECJ rulings, (iii) the Social Dialogue, (iv) the Open Method of Coordination (OMC) and (v) the Civil Society Dialogue.<sup>18</sup> In the context of individual policy areas these instruments are assigned to three levels of social policy: substantive, regulatory and process-oriented (soft law).

### 5.1 Substantive Social Policy

Direct substantive payments to those in need – for example, income support or housing benefit – require social security systems financed on a contribution/funded or pay-as-you-go/unfunded basis. The level of redistribution varies considerably. Social benefits financed through taxation usually have a stronger redistributive effect than those financed directly by individual contributions.

At European level the resources of the European Social Fund (ESF) can be assigned to this category of classic social policy redistribution, of the kind characteristic of nation states. The purpose of the ESF is the labour market reintegration of workers in the member states. It must be said that besides the ESF there have been few examples of substantive assistance in European social policy. In keeping with the existing Community competences as regards the social policy underpinning of Internal Market freedoms the emphasis is on work and employment. This includes the financial instrument PROGRESS (Community Programme for Employment and Social Solidarity) and the newly established European Globalisation Fund (EGF).

<sup>18</sup> The Dialogue regulates the participation of NGOs in consultation processes and policy implementation.

### *European Social Fund (ESF)*

The European Social Fund (Art. 146–48 EC) is the Community's strategic financial instrument for the implementation of labour market reforms and improving employment possibilities in the Internal Market; the ESF helps the member states to meet their commitments in terms of national reform programmes. As the first of the structural funds it channels the EU's efforts first and foremost to promote investment in people (in economic jargon, »human capital«). This individual support is oriented towards three major aims: first, to increase the adaptiveness and competitiveness of workers and enterprises; second, to improve human capital in the transition from school to work; and third, to improve access to employment and the integration of disadvantaged groups.

Coordinated with the superordinate Lisbon Strategy, in concrete terms this involves the strengthening of economic and social cohesion through targeted support for the member states in the European Employment Strategy, the areas of social inclusion, non-discrimination, promotion of equal opportunities and general and occupational education and training. Support for employees in the 2007–2013 budget period totals €75 billion. Particular care is taken in this process to direct resources towards EU regions where unemployment is particularly high or average incomes particularly low.

The Community initiative EQUAL is funded through the ESF. It aims directly at the cross-sectional objective of »more and better jobs«: as a »laboratory of innovation« it supports the European Employment Strategy in combating discrimination in the workplace. In contrast to other ESF projects, however, transnational cooperation and networking are deliberately promoted. Since it was set up in 2001 around €524 million have been disbursed for projects in Germany.<sup>19</sup>

To be sure, overall this form of regional policy has so far not fulfilled expectations as regards increasing social cohesion in Europe, although regional convergence is expressly understood as a social policy task of the EU (Oppermann 2005: 562, line reference number 11).

### *PROGRESS*

Alongside ESF resources the Commission has a number of other budget lines at its disposal for social activities. These are brought together in the Community programme for »employment and social solidar-

<sup>19</sup> As with all ESF support the principle of co-financing applies.

ity« (PROGRESS 2007–2013), replacing the Commission's previous action plans.<sup>20</sup> Up until 2006 four individual action plans were aimed at combating discrimination, equality for men and women, combating social exclusion and incentives for more employment.

The Social Policy Agenda 2005 and the renewed Lisbon Strategy – here too serving as a model – constituted the point of departure for PROGRESS. In total, €628 million were made available in support of the Lisbon Strategy. The Community programme covers five policy areas that encompass EU social policy: (i) »Employment«: as in the case of EQUAL this involves support for the Employment Strategy; (ii) »Working conditions«: in the foreground are the development of labour law, for example, or the improvement of working conditions; (iii) Equal opportunities; (iv) Social inclusion and social protection: PROGRESS supports in particular the OMC, for example, by means of expert networks, or finances statistical basic research; (v) Non-discrimination: for example, PROGRESS resources are used to support media campaigns promoting equal opportunities and European NGOs.

In these terms this Community programme is the direct financial arm of the Lisbon Strategy. Although modest in extent, it does constitute a meaningful development of individual action plans in the direction of a coherent promotional tool based on networks.

### *European Globalisation Fund (EGF)*

The European Globalisation Adjustment Fund (EGF) was launched in 2007 and constitutes a direct Community response to the hardships arising from globalisation. Worked out in 2005,<sup>21</sup> the EGF supports re-integration measures for »workers made redundant as a result of significant structural changes in global trade patterns due to globalisation«. Unlike long-term funds such as the ESF this instrument serves the purpose of coping with short-term crises. The criteria for »structural changes« and so for disbursement of resources are clear: more than 1,000 persons must be made redundant at an enterprise within a period of four months.<sup>22</sup> The Fund, which is embedded in the Financial Framework 2007–2013, may not exceed €500 million each year. Criticisms of the EGF, on the one

<sup>20</sup> Decision No. 1672/2006/EC of 24.10.2006 [Official Journal L 315, 15.11.2006].

<sup>21</sup> In legal terms, the EGF is also based on three directives on the »approximation of the laws of the Member States relating to collective redundancies«.

<sup>22</sup> Or 1,000 redundancies in a number of small and medium-sized establishments in the space of nine months, if it occurs in a region that is structurally weak.

hand, are directed towards the instrument's modest financial allocation, and on the other take the view that it was set up as an – inadequate – side-payment for the European Commission's one-sided Internal Market policy.

As an interim verdict we can say that the EU does have substantive competence in social policy, but that it is comparatively poorly endowed and from time to time has efficiency problems. To this extent substantive social policy as a genuine instrument of redistribution within the European Union is underdeveloped and largely symbolic.

## 5.2 Regulatory Social Policy

In contrast to substantive – and so, as a rule, redistributive – social policy, the regulatory level is limited to rule-making. No substantial financial resources are required for this purpose and consequently such measures can be pushed through far more easily in the European power structure. It is true that this aspect of European social policy is strongly under the influence of the European Court of Justice (ECJ) and its rulings often lead to an extension of EU powers. In the area of regulatory social policy European law sets minimum social standards and basic rights at European level, and so creates uniform framework conditions for the Internal Market. The Treaties – in particular Art. 137, 1 EC – contain legal provisions in the areas of equal treatment of men and women in employment and work, anti-discrimination, free movement of labour, health and safety in the workplace, labour law and working conditions, as well as information and consultation of workers.

### *EU Legislation and ECJ Case Law*

The two most important Regulations in European law, and hence the supporting pillars of EU social policy powers, are those on Freedom of Movement and on Migrant Workers.<sup>23</sup> Their influence extends to many other policy areas. EU regulation stops short at harmonisation, which is expressly ruled out. Instead, minimum requirements are possible which may not infringe on the systems of member states in terms of their basic principles. In this way the demarcation between the member states and the EU leads to sometimes intense conflicts and once more reveals the institutional differences between countries.

<sup>23</sup> These European regulations govern individual freedom of establishment and ensure social protection in the case of employment in other European countries.

In labour law, the ongoing dispute concerning the Working Time Directive<sup>24</sup> may serve as an example (Klecha 2008: 85f). While the British government in particular resisted a European regulation that among other things would have meant upper limits on working time and stronger consultation rights for British workers, German trade unions too have so far not seen much incentive to support it. Certainly, their perspective was very different: their own successful working time policy was unlikely to be improved by a European directive, while it was very important to them that their codetermination regulations should not be infringed. The British trade unions, in contrast, were too weak to influence the government in their favour. In the end, the UK was able to achieve an opt-out and henceforth lay down higher limits for working time.

Workers' freedom of movement in accordance with Art. 39 EC, on the other hand, is a good example of the significance of European rulings in this debate. Even if ultimately the difficulties of regulatory social policy are due to the rivalry between the European and member state levels the European Court of Justice has the central control function. So far its social policy rulings have resulted above all from promotion of the four freedoms, while at the same time these freedoms have to be protected from national restrictions (Ribhegge 2006: 368). However, in certain areas such as health care,<sup>25</sup> national regulations are safeguarded. Likewise, individual benefit entitlements arise from Internal Market freedoms,<sup>26</sup> as well as from EU citizenship:<sup>27</sup> so, for example, students and pensioners were gradually put onto an equal footing with other market participants on the basis of Art. 18 EC (see Dörr 2008). The market orientation of social policy has been extensively interpreted by the ECJ, although that extensive interpretative practice has from time to time also led to an extension of »citizens' rights«, at least to some extent (Fuchs 2005: 39, line reference number 114). Negative integration, which we described at the beginning, and the conflict between national and primary law associated with it means among other things an extension of the basic freedoms against the will of the member states.

Recently, the ECJ has given rise to controversy with rulings that run counter in particular to free collective bargaining, a central pillar of social integration in Europe. Examples are the much discussed »Viking Line«

<sup>24</sup> Directive No. 2003/88EC of 4.11.2003 [Official Journal L 299, 18.11.2003].

<sup>25</sup> See in particular the ECJ rulings on state monopolies in the provision of health services.

<sup>26</sup> Judgments »Kohll«, ECJ of 28.4.1998 – Case C-158/96, and »Decker«, ECJ of 5.3.1998 – Case C-120/95.

<sup>27</sup> Judgment »Sala«, ECJ of 12.5.1998 – Case C-85/96.

and »Laval« cases: in the Viking Line case the Court ruled against Finnish trade unions that had organised strike action after the Finnish shipping company Viking Line had reflagged a Finnish ferry to Estonia for reasons of costs, thereby enabling it to hire Estonian – and therefore cheaper – seamen. At issue is the precarious hierarchy between ensuring freedom of movement in the EU on the one hand, and rights to collective action organised at national level on the other.<sup>28</sup>

The ruling in the Laval case was a further infringement of national collective agreements. Here national collective bargaining law clashed with free movement of services in the Internal Market: the Latvian construction company Laval had paid Latvian workers in Sweden below the collectively agreed rate. The Swedish trade unions contested this, calling for payment of the minimum rate.<sup>29</sup> According to the ECJ in principle the possibility exists to apply minimum standards also for posted workers, but not those which go beyond national legislation. In the Swedish case the minimum rate is set by the parties to the collective agreement, but the law on the posting of workers there does not establish its exact value.

A third case was Ruffert<sup>30</sup> in which a building company circumvented the pay rate commitment of the Federal State of Niedersachsen – which guarantees that a contractor shall pay the standard regional wage rate (»Tariftreue«) – by using a subcontractor and paid his workers a wage well below the minimum wage for construction work provided for in the law on the posting of workers, which in turn is below the standard wage. The subsequent termination of the contract by the State and the demand that a penalty be paid for breach of contract was unsuccessful before the Celle regional appeal court and later before the ECJ, and Niedersachsen's allocation procedure was declared contrary to European law.

As a result the ECJ rulings constitute a weakening of European basic law on free collective bargaining and – from a welfare perspective – represent a highly problematic reinterpretation of the Posted Workers Directive. The interpretation of competition law with reference to public services is a further point of conflict between the European and national levels, repeatedly resulting in one-sided rulings in favour of the market and against national welfare arrangements.

28 Judgment »Viking Line«, ECJ of 11.12.2007 – Case C-438/05.

29 Judgment »Laval«, ECJ of 18.12.2007 – Case C-341/05.

30 Judgment »Ruffert«, ECJ of 3.4.2008 – Case C-346/06.

### *The Social Dialogue*

The Social Dialogue has something of a special place in European social policy. It is laid down in the Treaties and the role of the social partners is widely recognised. At the same time, the Social Dialogue provides for little in the way of substantive guidelines, but serves as a consultation forum for debate and as a procedural level between autonomous social partners. At the EU level it serves as an instrument to find consensual and autonomous solutions between the social partners. However, it is not restricted to non-binding exchange of views: »Should management and labour [the social partners] so desire, the dialogue between them at Community level may lead to contractual relations, including agreements« (Art. 139, 1 EC). Such agreements can be achieved either with the help of the Council (for example, the Framework Agreement on Part-Time Working 1997) or completely autonomously between the social partners (for example, Framework Agreement on Teleworking 2002).<sup>31</sup>

For this purpose the Commission has developed a permanent dialogue with the social partners, conducted with leading representatives of the European employers' organisations (BusinessEurope<sup>32</sup> and CEEP) and the European Trade Union Confederation (ETUC). Within the framework of this Dialogue positions are worked out on education and training, organisation of the labour market and economic policy. In the area of employment the active participation of the social partners is at the centre of the European Employment Strategy and Integrated Guidelines.

In support of the Social Dialogue at enterprise level the Directive on European Works Councils was adopted in 1994. This directive applies to enterprises with at least 1,000 employees, at least 150 of whom have to be employed in at least two member states. However, in contrast to many national regulations information and consultation rights, not codetermination, are in the foreground here. Certainly, these reduced obligations on the part of employers are already inadequately implemented (see Waddington 2006). At present, European works councils exist in 1,366 multinational companies.<sup>33</sup>

A substantial point of criticism of the Social Dialogue is the imbalance between the social partners due to the employers' de facto veto right. In conse-

31 So far, only three autonomous agreements have been adopted.

32 Since 2007 – previously UNICE (Union of Industrial and Employers' Confederation of Europe).

33 As of July 2008. Source: [http://www.ewcdb.org/list\\_agreements](http://www.ewcdb.org/list_agreements).

quence, the Commission should act more purposefully in terms of social policy in order to stimulate more interest in the Social Dialogue among employers. A further option is to strengthen the integration of the social partners in decision-making. Given the weak coordination at the sectoral level, moreover, stronger coordination between European works councils and sectoral trade unions is advisable.

Summarising this section, it is clear that European social policy at the *regulatory* level is on a fairly large scale. For the time being, no redistribution is linked to the abovementioned minimum standards. Instead, there is only a framework within which the status of social security in the member states can be enhanced, but also undermined. The latter occurs primarily when welfare state institutions are not compatible with freedom of movement in the EU and the ECJ rules in favour of the market.

### 5.3 »Soft Law«

Coordinated social policy is often designated »soft law« in EU jargon, ordinarily understood in contrast to »hard« legislation (of the *Acquis communautaire*). This encompasses the Community's numerous social policy activities that lie outside direct Treaty-based competences.

At European level the »Open Method of Coordination« (OMC) is the central element for policy co-ordination. In essence it is a settlement procedure for national policies and not a binding instrument: there is no formal transfer of powers. In the foreground is the coordination of policy objectives rather than social policy convergence.

The OMC is envisaged as a response to the problem that the different welfare systems in the EU are not (do not wish to be) harmonised (Scharpf 2002: 651f) and the EU – for now – lacks the power to bring this about (Art. 137, 2a EC Treaty). The OMC is tasked with instituting social policy measures that do not distort competition. Rather the OMC is supposed to promote competition among rules at European level (cf. Eckardt and Kerber 2004). To the Commission, the OMC's goal should be to promote national reforms (European Commission 2008a: 4).

Certainly the OMC and this form of extension of EU social policy activities are attended by numerous difficulties. In terms of content, a discursive reevaluation of EU social policy is taking place, but the focus is mostly on social policy that promotes competition and enhances market creation. This is not surprising given that the central committee of economic policy coordination is the Economic and Financial Affairs

Council (ECOFIN). ECOFIN has considerable influence on the policy agenda and in the past has contributed substantially to the extension of OMC topics (cf. Scharpf 2002).

In addition, any advances or successes for which OMC might be responsible remain difficult to measure methodologically. In any case, the procedure does not address conflicts of interest within member states. »Open method« can also mean fear of conflict (Edquist 2006: 510). Some states expect to gain a competitive advantage from the rejection of common social standards (Klecha 2008). Instead, the logic of competition among rules – which the OMC adheres to – suggests that there are objective »best policies« which merely need to be identified.

#### *European Employment Strategy (EES)*

Since the Treaty of Amsterdam fostering employment has been a matter of common interest to the member states and a Community aim laid down in the Treaties (Art. 128 EC). The European Employment Strategy takes this into account. Introduced as part of the Luxembourg Process the Strategy anticipates the coordination mechanisms of the OMC and serves as a »methodological laboratory« (Witte 2004: 9). The idea is that comparison between national labour market reforms should bring added value to the EU through the adoption of employment policy guidelines and of policy objectives.

In 2005 – within the framework of the interim review of the Lisbon Strategy – the EES was also put under examination and transposed into the so-called »Integrated Guidelines for Growth and Jobs« (European Commission 2005b) and given an extended reference period of three years (European Commission 2005). In this way the long separate coordination processes on labour market policy (Luxembourg Process), microeconomic and structural reforms (Cardiff Process) and macroeconomic measures (Cologne Dialogue) were transposed to »National Reform Programmes« on the revised Lisbon Strategy and scrutinised in annual implementation reports (»EU Annual Progress Reports«). The Integrated Guidelines comprise only three categories: macroeconomic, microeconomic and employment policy guidelines.

After publishing a new Green Paper on labour law in 2006 (European Commission 2006) the European Commission's Communication on »Flexicurity« caused quite a stir (European Commission 2007). This was an attempt to render a number of elements originating in Danish labour market policy applicable to other member states and the EU as a whole. In essence it concerns the reconciliation of employment security

and job security, in terms of which workers must be prepared to bid farewell to »lifelong job guarantees, but nevertheless maintain the permanent prospect of employment by changing jobs« (Kaufmann and Schwan 2007: 2). Certainly, the Commission's assumption, suggested in the Green Paper, that many labour law regulations are too rigid was sharply criticised. Above all the trade unions complained that collective agreements were not sufficiently adhered to in the member states (Barbier, Ghailani et al. 2007: 271f). Finally, in December 2007 common flexicurity principles were agreed; however, they expressly do not constitute a »generally binding model«, but are to be implemented nationally.

The question of actual workers' mobility in Europe remains a matter of primary economic concern, however.<sup>34</sup> The coordination of employment policies is just as much in need of justification as at national level: the less worker mobility there is in the EU, the lower the transnational effects. If these fail to appear, however, coordination is unnecessary.

#### *Social Protection and Social Inclusion*

Other policy areas have been added alongside employment policy since the introduction of OMC in 2000: social inclusion (2000), pensions (2001) and health (and long-term care) (2001). Subsequent to the Lisbon Strategy the EU commenced an action programme on social inclusion. Around €75 million was expended for this purpose in 2002–2006.

After the streamlining of economic policy coordination<sup>35</sup> and harmonisation with the revised Lisbon Strategy in 2005 the »OMC for Social Protection and Social Inclusion« (hereinafter »Social OMC«) was also tightened up: henceforth there will be a joint report »Social Protection and Social Inclusion« for the policy areas of social inclusion, pensions, health and long-term care, thereby transferring them to a single OMC process (cf. Daly 2006: 475): since 2006 the framework of the OMC on social protection has comprised three policy objectives: (i) elimination of poverty and social exclusion, (ii) adequate and sustainable pensions and (iii) accessible, high quality and sustainable health and long-term care (Edquist 2006). Within the framework of the Renewed Social Agenda the Social OMC has also become a focus of attention and its reinforcement has been discussed (European Commission 2008a).

<sup>34</sup> In 2003 a mere 1.5 per cent of workers were employed in another EU state. On average they spend 10.6 years in the same job (in the USA the average is 6.3). Source: Eurostat.

<sup>35</sup> The many reports and evaluation processes, as well as the reference periods were better coordinated.

#### *Pension Policy*

Since the summit meetings in Lisbon and Feira in 2000 pension systems have increased in importance in terms of European coordination processes. For the first time the significance of the »long-term sustainability of pension schemes« for the modernisation of social protection was grasped (Council of the European Union 2000a), and in Feira pension policy was included in the at that time still new OMC process (Council of the European Union 2000b, point 35). The member states agreed to focus on three overarching policy goals: 1) adequacy of pensions, 2) the financial sustainability of pension systems and finally, 3) the modernisation of pension systems to enable them to cope with upcoming economic and societal changes (Council of the European Union 2001: 7). It is true that within the European Commission it was not DG Employment and Social Affairs, but DG Economic and Financial Affairs that pushed the topic of pension policy. Accordingly, the approach was based on a liberal orientation towards the revenue side and the financial »sustainability« of pension schemes (Willert 2008). This means that pension systems were scrutinised primarily in the context of the Stability and Growth Pact and critical demographic developments. Financial sustainability therefore took precedence over the goal of adequate pension payments. Recently an agreement on the transferability of pension entitlements as regards company pensions foundered due to the opposition of some member states. However, this is a major prerequisite of workers' mobility.

#### *Health Policy*

Health policy is a good example of the gradual extension of the EU's derived social policy powers. Originally, EU authority extended only to health in the workplace (Art. 137, 1 EC). In the meantime, however, the Commission has developed a coordinated approach to European health policy, which means that a high level of health protection (Art. 152 EC Treaty) should be ensured in the laying down of all Community policies. Apart from that it is the declared aim of the European Union to guarantee every citizen high quality health protection, ensure its financial sustainability and resolve previous inequalities of access. Most recently, the Commission drafted a White Paper on a EU Health Strategy (European Commission 2007e) to create a coherent framework for EU health policies. Reducing inequalities in health among the member states will become one of the priorities, thereby applying European Community Health indicators. But, similar to the OMC in respect of pensions

there is a conflict between coordination policy and supply policy goals, which tends to be decided in favour of cost reductions in the health sector (Gerlinger and Urban 2004).

#### *Family Policy and Gender Equality*

Family policy is intertwined in many ways with aspects of the European social model, in particular in the area of equality policy, combating poverty, and education and training. Central to this is women's integration in the labour market in the context of a knowledge-based society. Women's employment rates are highest in those countries in which access to child care facilities is most developed (Liddle and Lerais 2007: 27). In 2004 women's employment rate in the EU-27 was 55.4 per cent; Denmark had the highest rate, at 71.6 per cent, while Greece and Malta had the lowest rates, at 45.2 per cent and 32.7 per cent, respectively (Eurostat).

In Europe it seems that the dual earner model is developing decisively into a social norm that determines whether and when to start a family (Liddle and Lerais 2007). However, the availability of family-friendly services is inadequate as far as enabling couples to have children is concerned.

In fact, women have benefitted from job growth disproportionately in recent years; since 2000 they have consistently posted higher employment growth than men. It is true that labour markets remain strongly segregated and changes that result in greater flexibility for workers have a disproportionate effect on women since their share in part-time employment is much higher. Women-friendly employment practices must therefore be promoted in order to support qualitative catch-up too.

#### *Education Policy*

The wide variety of social policy arrangements in the EU is also reflected in EU education policy. Although scarcely Europeanised (Art. 149, 150 EC) it has a decisive influence on the member states – comparable with the OECD's PISA Studies. In connection with the Lisbon Strategy education activities and the possibility and promotion of lifelong learning are coming to the fore as part of employment policy.

In this policy area too the Community seeks first of all to achieve greater comparability between the different education systems of the member states. For example, uniform basic indicators were recently agreed on vocational training to accompany the »Work programme on the follow-up of the objectives of education and training systems in Europe« (Euro-

pean Commission 2007b). The most recent European initiative is aimed at the European knowledge space and specifically at promoting the mobility of researchers and scientists. The goal is to establish the free movement of knowledge as a »fifth freedom« of the Internal Market (Council of the European Union 2008: point 8). At the same time, some national actors use the EU's complex framework of powers to reinforce their relative position in the domestic political arena. The European Qualifications Framework in particular (cf. Council of the European Union 2008), for example, makes it possible for German employers to pursue their demands for the modularisation and flexibilisation of occupational training, which they have been making for 20 years, with renewed energy.

It is crucial to understand that the general European framework for study and occupational training systems is more than merely a prerequisite for Europe-wide comparability. A one-sided »outcome orientation« towards employability has replaced the Humboldtian ideal as the aim of education.

Taking the three levels of European social policy together we can assert that, in comparison with the member states, the EU has scarcely any relevance as regards *substantive social policy*. Direct financial intervention is comparatively poorly developed. It is true that a gradual Europeanisation of social policy is taking place, although mostly beneath the radar of the general public. The level of *regulatory social policy* accounts for the bulk of European powers in social policy. As a result, European minimum standards and coordination-based solutions undoubtedly harbour potential conflicts given different conceptions in the member states. Finally, the juxtaposition of Europeanised policy areas and purely national powers leads to a multiplicity of new forms of coordination operating under soft law. By means of lists of non-binding goals and the application of common measurement parameters an attempt is being made to set in motion inter-state learning processes and social policy debates.

## **6 Summary: Value Added Europe – Steps on the Way to a Social Union**

European social policy finds itself between a rock and a hard place. On the one hand, »regulatory« competition between the member states concerning social standards is increasing, and as a result nation states are losing control and the ability to solve problems. On the other hand, conflicting interests are preventing possible agreement on the Europeanisation of certain areas of social policy, even where potential ben-

efits might be expected in terms of efficiency and equity.

These different positions in turn are connected to institutional and distribution policy effects of European policy: these effects are determined by the different welfare state models and a country's respective position as net contributor or net recipient of substantive social policy in the EU and EU funds in general (cf. Busemeyer, Kellermann et al. 2008).

There is no prospect of a real European community based on solidarity with a developed substantive European social policy and, at the same time, a commitment to redistribution. But enhancement of the social dimension *in* Europe does not necessarily have to take place *through* Europe. Protecting and increasing the scope of national social policy is one way of bringing about more equity and efficiency in the EU. The formation of Europe's social dimension through the harmonisation of national social policy institutions is ruled out in principle. Rather, the different national paths constitute a source of strength in the EU. Not harmonisation as such, but the homogenisation of *welfare outcomes* must therefore be the goal of European social policy. All three levels of »positive« social policy presented here can contribute to this in their own way. However, this is conditional upon constitutional and discursive parity for both the promotion and the social embedding of the market in the European Union. To that extent the level of European governance entails a potential added value for the European social dimension. The decisive question concerns the areas in which this added value may be sought and what the ideal »governance mix« might be between the EU level and national or local competences. Current reactions to the »Renewed Social Agenda« show how strongly divergent are the ideas of the relevant actors. Against the background of the EU's current lack of institutional powers the central question posed by this article must therefore be answered in the negative: Europe is not on the way to a Social Union and even the most recent moves will do little to change things.

As we have shown, European social policy exists in a number of areas; nevertheless, Europe is often regarded as a purely economic community suspected of being a Trojan horse for neoliberal globalisation processes. As the Irish referendum showed acceptance of the EU is dwindling. To that extent the EU's social agenda is a first step in the right direction; however, a great deal more thought must be given to a genuine reorganisation of the European social dimension, in order to be able to counter effectively the difficulties and dilemmas of integration processes as well as the doubts of Europeans. As the most recent ECJ ruling

on collective bargaining law shows a European minimum wage might be considered, for example, oriented sectorally in terms of different levels of purchasing power in different member states. Alternatively, the adaptation of existing legal provisions protecting cross-border free collective bargaining is conceivable. The ongoing conflict concerning public services, such as communal water supply, is also subject to legal rulings. Such services have so far found themselves in an intermediate area of European social and economic policy and have been torn between European legislation and national preferences. Protection of services of general interest could, for example, be ensured by a European directive that outlines minimum standards and core areas. Portable company pensions would also provide added value.

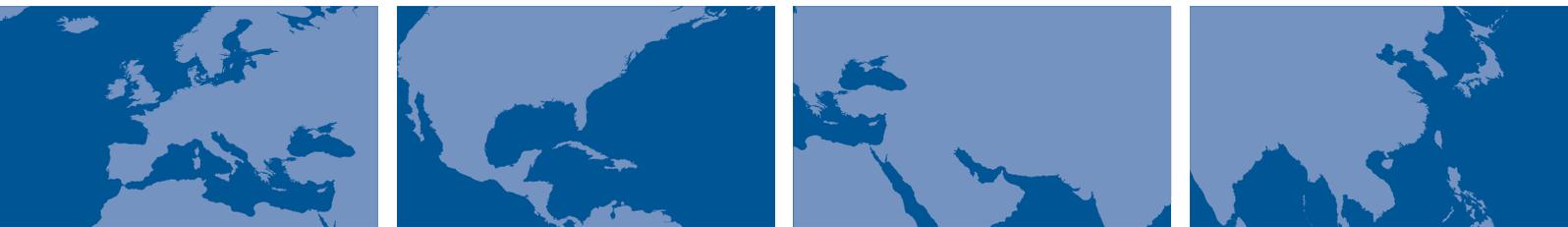
At present, the transfer of company pension entitlements is not automatic, which restricts workers' mobility unnecessarily. So far, the debate on portability is a typical example of the difficulties of regulatory social policy and the conflict between integration and subsidiarity. The interests of EU member states are so diverse, depending on funding ratios and the organisation of these occupational pensions, that so far no agreement could be reached on European workers. Education policy is one area in which EU coordination could be reinforced and, by means of tangible OMC goals, help to distribute access to education – and so opportunities for upward mobility – in the member states more fairly.

All the abovementioned examples represent steps in the direction of a more social Union, which would to some extent correct the current imbalance between market creation and social embedding of the market. Economic and social policy are not irreconcilable here, but complementary parts of a European social market economy that understands social policy as a productive, not as a cost factor.

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