

Europe's Social Policy as a Difficult Negotiation Process: Actors and Options with Particular Reference to Working Time Policy

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The political Left once associated the project of European unification with an almost euphoric vision. In the Heidelberg Program of 1925 the SPD laid down its federalist and supranational idea of a United States of Europe. In the 1950s social democracy and the trade unions allied with it were presented with the formation of the conservative project for Europe and the coming into being of the European Coal and Steel Community, the European Atomic Energy Community, and the European Economic Community. The focal point was the attempt to bind the Western European economies to one another in such a way that, on the one hand, they would assert themselves as a stronger economic area than Eastern Europe, and on the other hand, by means of the close relationship between national economies, render military conflict between the member states impossible (Audiso/Chiara 1999: 63f). The conservative project therefore incorporated the ideas of the social democratic project and restricted their implementation to the economic project, which was backed by all the participating states.

The European Union eventually grew out of the three Communities and the number of members has increased from six to 27. In the 50 years since the signing of the Treaty of Rome the Union has both enlarged and consolidated itself. As a result of this process over the years the European Union has become more complex and multilayered. At the beginning of the decade this resulted in a debate on a Constitutional Treaty for Europe. The Constitutional Convention established for that purpose worked out a draft that as a matter of priority was intended to reform the EU institutions.

In ballots on the Treaty in 2005, however, a majority in France and the Netherlands voted against it, which not only delayed ratification of the Constitution – if it did not put an end to it once and for all – but also in part called the European project into question. The two negative votes confirmed Europe's legitimization deficit. Investigations and studies point to the fact that the project of European unification is no longer associated

with the goals of the early years, but rather is identified, by a significant portion of the population, as a purely economic liberalization project without a social dimension (Schäfer 2006: 540). This being the case, what is at issue is less a matter of the distribution of powers than the effectiveness of policy measures. For that reason the population's marked skepticism towards the idea of social policy being decided at European level should not be interpreted to mean that the notion of subsidiarity is particularly strongly entrenched (Heien 2006), but rather that doubts exist concerning the social grounding of the European project.

In any case, social-policy questions have acquired immense significance in the public perception, which is also reflected within the framework of nation-states: national elections in Germany, Austria, and the Netherlands have shown how, on account of unpopular social-policy positions, political parties have experienced defeat in the face of certain victory (for example, CDU/CSU in Germany and the ÖVP in Austria), or how oppositional forces on the Left have notched up significant election victories by emphasizing necessary social-policy corrections (for example, the left-populist SP in the Netherlands). The election victory of the conservative coalition in Sweden can also be traced back to the fact that it did not attempt a break with the social-policy emphasis of its social democratic predecessors.

This indicates that the emotional words of DGB chair Michael Sommer, following Kurt Schumacher – »Europe will be social, or there will be no Europe« (DGB 2006) – are of the most pressing relevance. In what follows we shall first show in general terms how the social policy of the European Union has developed, which actors are cooperating in this, and what difficulties have been encountered in the implementation of a common European social policy. We shall pay particular attention to the blocking of the Working Time Directive. Finally, we shall look at trade union strategies and options in the formation of Europe's Social Dimension.

The Difficult Path to European Social Policy

Such slogans and demands as »form Europe socially« or »strengthen the European Social Model« have been expressed frequently. It is often pointed out that within Europe there are very different variants of social-policy regulation (the basic work on this is Esping-Anderson 1990), which seek by various means to promote social cohesion. For example, educa-

tion policy or employment policy can be understood to form part of social policy. What is special about the European Social Model – with reference to an assessment by Lothar Witte – is that, despite the differences in the scope, range, and requirements of the Social Dimension, social cohesion is not only a »goal in itself, but also a means towards economic development, which for its part must ensure the material basis of the European Social Model« (Witte 2004: 13). This means that economic and social development are very closely linked. However, it does not mean that the steps taken towards European unification have always sought a close en-folding of the two dimensions.

In the beginning was the economic dimension, accompanied in the Treaty of Rome by only a few clauses of social-policy relevance. These regulations, related to the freedom of movement of workers in Europe and the equality of women and men, were in the early years the central standards that enabled the Community to take social-policy measures. At first, it was not the Commission or the legislative organs, but rather the European Court of Justice that, based on these regulations, from the 1960s developed into an important actor (Leibfried 2006: 527; Treib/Leiber 2006: 548). The European Court of Justice's jurisdiction that has developed since then ultimately created Community law and was equally the point of departure for the social-policy initiatives of the Commission (Marginson/Sisson 2004: 83; Pierson/Leibfried 1998: 396). That may also be the case in future since we can assume that this jurisdiction, on the basis of European citizenship, detaches the claims and liabilities to pay contributions to the social security system from the territorial bond, so exerting pressure for an alignment of the various systems (Leibfried 2006: 527).

From the 1970s the Commission itself took the initiative and tried to supplement advancing economic integration with social-policy measures, although in their effect they largely skirted the margins of social policy. The first Action Programme and the first timid attempt at social dialogue between trade unions and employers followed the efforts of the European Commission under Jacques Delors who, in the 1980s, declared a policy of the parallel construction of economic and social integration (Wendler 2005: 56 ff.; Deppe 2005: 81; Delors 2004: 363 ff.; Delors 1989: 13). In institutional terms, the Single European Act of 1987, realizing the Internal Market, created conditions in which unanimity was no longer required in the Council, but a qualified majority on questions of health and safety in the workplace, which gave rise to considerable leeway for social-policy

initiatives (Leibfried 2006: 525; Treib 2006: 6). Before this, for example, directives on paid leave for new mothers or fathers or against sex discrimination had foundered due to the British veto (Wendler 2005: 58). The passing of the European Social Charter in 1989, at first not ratified by the UK, was the prelude, linked to the pertaining Action Programme, to a veritable wave of European social legislation. Although the regulations of Articles 129 and 137 of the European Treaty prohibit the Union from harmonizing legal and administrative provisions in employment policy or even to interfere directly in industrial relations, the Commission has undertaken a number of initiatives to fulfill the promise of a Social Europe proclaimed in the 1980s. Social Europe provided the Commission with a decisive basis of legitimation in the realization of the Single Market in 1993 (Hall 1998: 96; Delors 1989). Even the Council was unable to get around this. However, in the course of the 1980s the dominance of conservative-led governments increased, attaining such hegemony that a uniform European social policy became a distant dream, particularly since the governments of the UK and of Germany expressed fundamental reservations concerning European powers on this question, though on account of realization of the Single Market the pressure had grown to establish minimum social standards in order to eliminate possible obstacles to trade (Hall 1998: 111ff).

The directives submitted by the Commission and passed by the Parliament and the Council were substantially effective, for example, the Directive on the employees' right to information in writing concerning their contractual conditions of 1991, the Directive on protection of pregnant and breastfeeding employees of 1992, the Directive on paid leave for new mothers or fathers of 1996, the Directive on protection of temporary workers of 1997, the Directive on fixed-term employment contracts of 1999, as well as the Working Time Directive of 1993. The Single European Act became a »gateway for more general labour law regulations,« and the Maastricht Treaty, finally, significantly extended these powers (Treib 2006: 7; Falkner/Treib 2005: 223–25; Röpke 2006: 110).

Since Maastricht, trade unions and employers' organizations have in principle had the possibility to jointly enact binding directives, although this has seldom been exercised (Wendler 2005: 89ff; Marginson/Sisson 2004: 83). Furthermore, the social partners were given scope to open European wage negotiations, although essential areas of state regulated labour and social legislation were still subject to unanimity in the Council, chiefly to satisfy British reservations (Delors 2004: 379). The Treaty of

Amsterdam, with the inclusion of the Employment Chapter, was finally a clear signal that the Union wished to play a more active role in social and employment policy. The coordination of employment policy within the framework of the open method of coordination, the creation of new pillars and goals for European integration, and the macroeconomic dialogue between the European Central Bank, the Council, and the social partners had been developed in order to make progress with a social-policy agenda by cooperative means (Sloam 2005: 162; Magnusson/Stråth 2004: 15).

In a first phase, therefore, the numerous new consultation mechanisms were to be »consolidated« (Wendler 2005: 114) before implementation of a comprehensive social-policy agenda would be possible, for the purpose of which the Commission's Action Programme for the years 1998–2000 (European Commission 1998) was restrained in terms of legislative proposals. However, a second phase failed to materialize. Economic and Monetary Union, enlargement to include another 12 states, mostly from Central and Eastern Europe, and the draft Constitution have taken precedence over other subjects in recent years.

With the Lisbon Summit in 2000 the political development of the European Union became subject to an ambitious political goal that was also relevant for European social policy: »the aim of making the EU the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion.«¹

The Council's formulation reveals an understanding of the welfare state that emphasizes its function for the productive use of labour potential (concerning the historical foundation of welfare-state concepts, see Andersson 2004) rather than the emancipatory, transformative, or system-stabilizing character of the welfare state. In this sense social policy is redefined as something derived exclusively from economic policy and, to some extent, from competition policy. As a result, on the one hand, the unification process can no longer be imagined without it and to that extent it continues in the tradition of the European Social Model, but on the other hand, as part of economic policy it is clearly subordinated or supplementary to the latter. In these circumstances social policy can be effective only if it can manifestly contribute to growth. Certainly, it falls down the European Union's list of priorities if such proof cannot be

1. Presidency Conclusions, European Council (Lisbon), 23–24 March 2000, http://consilium.europa.eu/ueDocs/cms_Data/docs/pressData/de/ec/00100-r1.do.htm

Table 1:
Vertices of European Social Policy Development

| <i>Period</i> | <i>Scope of European Social Policy</i> |
|-----------------------------|--|
| Treaty of Rome 1957 | A few social-policy clauses constitute the point of departure for social-policy regulations (particularly gender equality) |
| 1970s | First Commission proposals for the formation of a common social policy fail, among other things because of constitutional obstacles |
| Single European Act 1987 | Social policy as a basis of legitimation for the Single Market Extended room to maneuver in social policy |
| Maastricht Treaty 1991 | Expansion of powers Trade unions and employers' organizations given their own regulatory powers Status of the European Parliament enhanced |
| Treaty of Amsterdam 1997 | Inclusion of the Employment Chapter Open method of coordination and macroeconomic dialogue as soft instruments of governance |
| Lisbon Strategy 2000 | Subordination of social policy to growth |

brought forth in policy negotiations. Otherwise, social-policy subjects are only taken up by member states if they – as a rule, unanimously – agree to it.

However, it is very difficult to bring things to this point, and it is becoming more and more difficult. The voting mechanisms involving the now 27 member states are much more complex than when, for example, the European Union had only 15 or 12, still less six members. Moreover, with the European elections of 1999 and the changes of government in Austria (2000), Italy and Denmark (2001), and France, Portugal, and the Netherlands (2002) the majorities in the EU's two legislative organs clearly shifted to the political Right, so that initiatives in this respect were not easy.

Under these circumstances, no wonder the motor of social unification visibly came to a halt towards the close of the 1990s, while at the same time the process of economic integration went on unchanged. Schäfer writes in this connection of a »return to former values in the Single Market« (Schäfer 2006: 543). This is particularly evident in relation to the

efforts of member states as regards monetary union. The envisaged budgetary policy convergence and the Maastricht criteria, for their part, have contributed to diminishing the autonomous room to maneuver of national policies (Witte 2004: 6). At European level there is now a range of coordination and harmonization mechanisms for the various policy areas, although they function very differently. In those policy areas which were directly linked to economic issues the European Union was able to create a regulatory framework by means of decrees and directives that was binding on nation states. In monetary and budget policy a very restrictive sanction mechanism is even envisaged. In the area of European social policy, on the other hand, the EU concentrates on the open method of coordination and so eschews explicit policy formation. This consensus-oriented instrument of benchmarking on the one hand opens up far-reaching scope for action, since subjects can be included which expressly remain in national competence, and on the other hand this method, in contrast to legislative acts in the area of the Single Market, refrains from compulsion (Bruno et al. 2006; Randzio-Plath 2006: 466).

While economic integration was consolidated, therefore, and as a result policy-making options were Europeanized, labor and social law took second place, although complex societies do not respond well to isolated policy action in one segment and, as a consequence, the continuing economic integration ultimately had to have an effect on the social-policy agenda too (Pierson/Leibfried 1998: 399). On the example of the previously unsuccessful amendment of the Working Time Directive, in what follows we shall depict the practical difficulties that arose in the course of implementing binding common regulations.

The Evolution of the Working Time Directive 1993

Working time and wage issues constitute the core of trade union collective bargaining policy. Most EU member states at best regulate minimum conditions in this area and leave the practical organization to the trade unions and the employers. Most EU countries have different regulations in this respect. However, they are rarely applied because collective agreements have priority or are adopted by the employers on the basis of established practice.

Although the Treaty explicitly prohibits the creation of basic regulations on industrial relations the Commission has repeatedly taken up the

issue. The various attempts reveal changing ideas over the last 30 years: at the close of the 1970s some trade unions aggressively pursued the goal of reducing working time to below 40 hours. The trade unions aimed above all during a period of conjunctural slowdown to distribute jobs more evenly and at the same time to boost purchasing power by means of wage adjustment and so contribute to overcoming the crisis induced by the two oil price shocks. The trade unions were to some extent successful. In France the change of regime in 1981 made possible a legal reduction of working time to 39 hours. In Germany after a tough strike debate in the metal and electrical industries in 1984 it was possible, by means of the Leber compromise, to reduce working time to, first, 38.5 hours a week, and then to 35 hours (Marginson/Sisson 2004: 271). In return, the trade unions had to accept flexibilization of working time, which in turn made possible the intensification of work and so diminished the hoped-for employment effect (Neumann 2001).

Developments in the two largest member states of the European Community at that time led the Commission prematurely to the first attempts at working time reduction. As early as 1975 the Commission presented a recommendation that reduced working time to 40 hours and granted all employees four weeks' holiday. Since the European Union lacked the power of direct regulation, for the time being it remained a non-binding recommendation, which was followed in 1983 by the draft of a further recommendation on the reduction and reorganization of working time (Pillinger 2000: 7; Wendler 2005: 58; European Commission 1983).

The European Parliament, which at that time participated in this plan solely on a consultative basis, agreed in principle to a communication in 1983 and at the same time demanded set targets on working time reduction and the Community's options by way of intervention. In particular, the Parliament was minded to reward those who embraced working time reduction rather than those who turned their backs on it.² Certainly at that time a deep rift revealed itself between the Conservatives and the Left in the European Parliament. Decisions were markedly scarce.³ The above-mentioned conservative majorities in the Council ultimately prevented further initiatives.

This was not changed by the fact that direct elections to the European Parliament in 1989 for the first time resulted in a relative majority of so-

2. Official Journal of the European Union C 342/149 of 19.12.1983.

3. Ibid.

cialists, Greens, and communists as against conservatives, Christian Democrats, liberals, and nationalists. The political Left was unable to maintain this apparent electoral preponderance of June 1989 beyond the autumn of the same year when in Eastern Europe the bloc system collapsed economically, politically, and ideologically, as a consequence of which an important implicit aim of the Community's conception was achieved. That is, communists came under pressure in particular to transform and re-establish themselves, but the social democratic/socialist parties too were examining their historical mission.

As a result, after 1989 the Left in Europe at first found it very difficult to win elections. A glance at the large member states illustrates this clearly: in 1990 Helmut Kohl won re-election in Germany thanks to reunification; the Socialists who had returned to power in France in 1988 went back into opposition after a major defeat; John Major maintained the Tory majority in the UK in 1992; and in Italy the whole party system collapsed, and cabinets of technocrats alternated with governments of the Left and the Right. In Spain Felipe González lost his majority in Parliament in 1993, although he was able to continue in power until 1996. The circumstances for the implementation of a common working time policy were extremely unfavorable.

However, when from the mid-1990s government majorities in Denmark, the UK, France, Germany, the Netherlands, Greece, Italy, Belgium, and Portugal temporarily shifted to the Left, and with Finland, Sweden, and Austria moreover there were still three countries with social democratic governments, the Commission had finally lost sight of its plan dating from the beginning of the 1980s and officially declared it defunct in 2000.⁴

But this by no means signified that the Commission remained inactive during this period. Jacques Delors still wished to link Economic with Social Europe and in that way also to establish the framework conditions for working time. In 1993 the Commission, with the White Book on Growth, Competitiveness and Employment (European Commission 1993), moved away from a single strategy of working time reduction and at the same time turned to the topic of employment policy as a European topic (Pillinger 2000: 7). Based on the European Social Charter and the provisions on health protection and workers' freedom of movement, the Commission presented a draft directive on working time. The directive

4. Official Journal of the European Union C/2004/5.

itself was »not particularly ambitious« (Röpke 2006: 112), since national collective agreements and legislation for the most part went substantially beyond what became EU law: a 48-hour week and a minimum four weeks' holiday did not constitute a breakthrough in the direction of a general reduction in working time. The Working Time Directive at first sight is in keeping with what Streeck describes as a »neo-voluntaristic« approach in accordance with which social-policy directives are always formulated in such a way that in practice they have no effect (Streeck 2001: 23).

Accordingly, what, for example, the German legislator had to transpose into national law was not exactly impressive: the maximum working time of 60 hours a week dating from the Second World War was reduced to 48 hours, although based on all sorts of exceptional circumstances working time of more than 49 hours remained possible. In addition, this legislation lagged far behind collective agreements, which often envisaged working times of 40 hours a week or less. The same applied to the question of minimum holidays which was raised by law from three to four weeks (Treib/Leiber 2006: 549); however, many collective agreements already envisaged five or six weeks' holiday.

But when the Directive was transposed into national law, it influenced the working time policy of individual countries, as well as the strategies of the trade unions (Pillinger 2000: 11). Although in Germany at first sight there were more advances *de lege lata* than *de ferenda*, in other states new regulatory forms were instituted, for example, in the UK and Ireland, both countries having markedly weak protection of employees, either legal or based on collective agreements (Treib/Leiber 2006: 549). The Tory government at first totally opposed legal regulation, disputed the regulatory powers of the Community, and unsuccessfully complained to the European Court of Justice (European Commission 2000; Pillinger 2000: 11). This shows that it is quite possible for the European Union, on the proposal of the Commission, to make progress in the areas of regulation which in fact are explicitly prohibited in the Treaty but which are of relevance in connection with other areas of regulation.

Yet even after the British government had been thwarted by the Court in Luxemburg it was able to avoid implementing protection standards. The Directive itself in Article 22 provides an opt-out. This makes it possible to deviate from the working time regulation if this is contractually agreed on an individual basis. In view of the asymmetry between Capital and Labor it is not surprising that under this regulation the protective aim of the Directive is reduced to absurdity (Röpke 2006: 114). Moreover,

it is left to member states to exempt a range of branches from the Directive's application. Greece and the UK have made particularly liberal use of this regulation, omitting all the branches cited in the Directive and establishing the opt-out too (European Commission 2000).

Amendments to the Directive since 2003

While the protective aim of the Directive was counteracted in those countries in which transposition of the Directive had taken immediate effect the jurisdiction of the European Court of Justice developed a new dynamism. In the judgments *SIMAP*⁵ and *Jäger*⁶ the Luxemburg judges decided that the on-call time of doctors should also in principle be included in working time. These judgments also affected Germany whose working time regulations had been deemed to be in conformity with European law since transposition of the Directive. That meant that via Europe German working time policy had been substantially affected. In reaction to these judgments the Commission initiated moves to attempt to amend the Working Time Directive. With the definition of rest time and inactive working time the regulations originally laid down and made substantial by the European Court of Justice were to be qualified, and at the same time the opt-out regulation was to be reviewed, as at that time, incidentally, had been promised in the Directive. The Commission here chose the path of least resistance: collective regulations were to be preferred, and the structure of the opt-out rule was basically retained (European Commission 2004).

However, both areas of regulation came up against considerable resistance in the legislative process, and at any rate the softening of the original Directive's working time concept represented the first diminution of a commonly agreed European social standard (Röpke 2006: 118). The opt-out regulation in particular is a peculiar instrument whose development is owing to the particular British reservations concerning Europe during the period of Margaret Thatcher and John Major. Enlargement of the European Union to include countries from Central and Eastern Europe, in the meantime, brought with it states that, so to speak, had no developed tradition of industrial relations and whose governments for

5. Judgment of 3 October 2000, Case C-303/98.

6. Judgment of 9 September 2003, Case C-151/02.

that reason were interested in the opt-out. In addition, labor law traditions in the core countries of the Community were affected by the jurisdiction of the European Court of Justice, because of which Luxemburg and Germany, as well as Spain under Aznar sought to apply in individual branches this regulation originally intended as an exception for the UK (Reichstein 2004).

The European Parliament energetically opposed the Commission's plans. The MEPS did not approve either the softening of the working time regulation or the opt-out regulation. The report presented by Socialist representative on the Employment Committee Alejandro Cercas, and approved by MEPS, demanded that the opt-out regulation be allowed to fall into abeyance within 36 months and also sought a restoration of the former working time regulation. Earlier demands from the ETUC to reduce maximum working time in the Directive from 48 to 44 hours (Pillinger 2000: 12) played no part in the negotiations, however. Cercas and his faction colleagues did not wish to jeopardize the fragile majority of Socialists, sections of the Liberals, the Greens, and the EPP against the opt-out.

As far as the European Commission was concerned, the Parliament's proposals went too far. In a reworked draft, alongside a number of concessions to the Parliament, two things were largely unchanged, differentiation between working time and on-call time was maintained, although the Commission did meet the Parliament half way to the extent that it instituted a new differentiation, distinguishing between on-call time and inactive time during on-call service (European Commission 2005). In relation to the opt-out regulation, however, the Commission maintained its existing standpoint, although not without some dispute in the Council. There the social democratic Ministers of Social Affairs of Belgium, Portugal, Spain, and Italy, together with their conservative colleagues from France pressed for an end to the opt-out. On the other hand, the social democratic Labor Ministers from the UK and Germany held out against it (No author 2006; Smillie/Osborne 2006).

The British and the Germans were linked by more than a preference for the opt-out: the British had come to an arrangement with the Germans then under Chancellor Gerhard Schröder to support the latter's position on enterprise codetermination, while the Germans would support the British on the working time question (Dornbey et al. 2004; Claasen 2005). Prime Minister Tony Blair's reputation was at stake since before his election he had assured the CBI that the British government would block

any attempt by Europe to establish consultation rights for employees or to change the Working Time Directive with its opt-out. Since Blair was finally outvoted in the Council in respect of the first-named project it became particularly important to keep his second promise.

The Strategy of the Trade Unions

From the trade union standpoint the amendment of the Working Time Directive quickly concentrated on the question of the opt-out; the trade unions feared that more countries would make use of it (Reichstein 2005) and so it would not only undermine the effectiveness of the regulation but also provide an opportunity for individual governments, under the pretext of European requirements, in the course of transposition into national law to shift the balance of power in industrial relations to the detriment of the trade unions. The Executive Committee of the ETUC also saw in the amendment of the Working Time Directive presented by the Commission an attack on employees' rights and took up a defensive position. This consisted largely of three strategic elements. First, to influence the Council of Ministers, that is, the governments of the member states through targeted lobbying in order to thwart the original Commission plan; second, European representatives were to be brought into line on this issue; and third, the trade unions were to organize »innovative ways and actions to get public attention and support for ETUC views on modern working time policies« (ETUC 2004).

All three elements demonstrate the specific problems faced by the trade unions in developing a coherent strategy at European level. The nation-state remains their central frame of reference and action. Here they possess their own practical resources, primarily extensive knowledge, experience, and self-confidence in dealings with employers and governments. A range of European trade unions to a considerable extent pursue decentralized collective bargaining policies, in contrast to which other countries are characterized rather by sectoral collective agreements. Added to that are various traditions of state regulation, differing in form and extent, for example, in relation to minimum wages and working time.

It is precisely this that makes it difficult at European level for the trade unions to develop a clear strategy. Their visions of Europe are too unclear and nebulous, and there is too little unity in respect of whether and how the central labor relations are to be regulated at European level.

This particular problem is reflected in the action taken in respect of the Working Time Directive. For example, the British trade unions have promised to achieve minimum standards via Europe on the basis of which some scope would be provided them for their own wage policies. The German trade unions, in contrast, have little interest in rapid implementation in view of the close weave of regulations achieved by way of collective bargaining. Accordingly, they are applying little pressure at national level, but in turn those trade unions unable to assert themselves at national level are having a hard time of it embedding regulations nationally. It is then scarcely surprising that neither the German nor the British Labor Minister need expect particular resistance from the trade unions on this issue. The German trade unions cannot intensify their own successful working time policy by means of a European directive, but it is very important to them that the codetermination regulations remain untouched. The British trade unions were too weak to demand this from their government.

Other Aspects of Trade Union European Policy

The trade unions are among those powers in Europe that are clearly calling for a Social Europe and at the same time are contributing to this nationally to a considerable extent by means of their core competence, collective bargaining policy. In this sense, the trade unions have undertaken to harmonize their national collective bargaining policies (Marginson/Sisson 2004: 105ff). This undertaking has so far proven fairly unsuccessful (this is the clear judgment expressed in Gollbach 2005). For example, the participating trade unions have not achieved their own aims in collective bargaining policy since they are acting within the framework of the nation-state and have thought too little about a really European policy.

The Working Time Directive also demonstrates how difficult it is to push through social-policy regulations via European legislation within the structures available to European actors. The Social Dialogue is an alternative means available to the trade unions, but this mechanism presupposes a willingness on the part of the employers' organizations. It is difficult to persuade the latter to engage in dialogue or to agree to any regulations at all (Marginson/Sisson 2004: 88; see also Röpke 2006: 119), since the common market already sufficiently favors employers. Simplifying somewhat, under the conditions of the Single Market employers can

choose the social regulatory model that best suits their needs or even with good effect threaten to transfer production and services to another country (Pierson/Leibfried 1998: 409f). This has left clear traces in the policy of member states, for example, in respect of how corporate governance has developed over the last 10 years. Such traces may be found in a continuing competition to cut taxes, with far-reaching consequences for states' ability to act (Randzio-Plath 2006: 466), particularly since, against the background of the stability criteria of the Monetary Union, an expansionary financial policy is out of the question. Precisely because some states have high hopes of competitive advantages from a rejection of common social standards the open method of coordination is unsuitable for implementing the trade union agenda.

With the bringing into being of the Single Market and Monetary Union therefore the state sphere and, with it, the welfare state lost some of its financial basis. At the same time, the debate concerning favorable business locations created at least an ideological legitimization for increasing pressure on the trade unions. The trade unions can avoid this only if they therefore find ways of implementing European standards that are more effective than the Social Dialogue or regulatory procedures hitherto. For this purpose the trade unions have two mechanisms at their disposal. They can either establish a generally binding framework by means of horizontal cooperation that they will implement within national member organizations, or promote a binding legal framework at EU level.

The reaction to the Green Book on labor law (European Commission 2006) produced by Social Commissioner Spidla ought to be fascinating. The Green Book itself is a renewed attempt to create a framework for the formation of labor law in the European Union. It is questionable whether and in what way initiatives will emerge from this that lead to a standardization of labor relations. The main obstacle is the Council, however. So far, the Council has been unable to reach a unanimous decision on any of the subjects cited in Article 137 of the European Treaty (protection against wrongful dismissal, codetermination, and the conditions of employment of non-EU nationals) to go over to the majority principle (Treib 2006: 10). The veto powers of individual states will therefore remain in place if only because individual states will see an opportunity in the rejection of uniform regulations to attain competitive advantages by maintaining lower standards (Magnusson/Stråth 2004: 16).

Accordingly, Deppe (Deppe 2005: 91) sees the future of trade union strategies in a targeted exertion of influence on national regulations.

However, arrangements at national level are always characterized by the specific form of interaction between the trade unions or the social partners in general with the government of the day.

Such a strategy would entail an immense coordination process in the first instance between the more than 27 trade union federations that would then lead to consultations between the respective national trade unions and governments. Complex negotiations of this kind are both time-consuming and bound up with enormous dangers. In the course of individual national negotiations trade union positions can to some extent be weakened, reduced, or even withdrawn by political »deals.« In addition, the means of legally influencing governments are many and various, in particular as regards the admissibility of political strikes. The agreement of the trade unions on a certain procedure on the part of the government in the Council would in turn bring with it renewed negotiations within the trade union federations. That is why there are two negotiating possibilities available to the trade unions at European level. The one mechanism is direct negotiation with the Commission. This path is formally powerful because only the Commission has the right to propose directives (Pierson/Leibfried 1998: 393) and would be in a position to put subjects on the political agenda that are not unambiguously matters of European authority. To be sure, this in turn presupposes the political will of the Commission. The existence of this is – in contrast to the period of the Delors Commission – at present not readily discernible. Equally, it is not apparent how the Commission wishes to implement the inconsistent aims and models arising from the Lisbon Process. No coherence is discernible between the policy areas connected with it, nor does the European Union possess all the powers that would be required in order to achieve this. In contrast to the Single European Act neither the Commission nor the member states are ready at present to take the corresponding steps or to undertake the transfers of power that would be needed. Europe finds itself subject to a blockade of its own making on account of the referenda and mood in the member states. The consequence of this is that the number of papers and drafts is increasing, while the number of directives remains markedly low and criticisms of Europe are manifest in referenda and elections.

In the case of purely horizontal cooperation the trade unions run the risk of obtaining no European regulation at all. In the past the coordination of trade union priorities at European level was characterized by a wide range of emphases and interests (Marginson/Sisson 2004: 111). Even

if it proved possible to reach agreement concerning a common social-policy framework for Europe and to wish to implement this by means of European legislation the three stumbling blocks of (i) the unwillingness on the part of the employers to make concessions in the Social Dialogue, (ii) the Council's obstructive powers, and (iii) the Commission's unwillingness to take the initiative, would still stand. For this reason the Parliament could become the trade unions' decisive means of influence. Both the Service Directive and the Directive on port services made it very clear that as a single political actor the trade unions are able to generate Europe-wide publicity (on the Service Directive see Kowalsky 2006: 246). First, political pressure moved the Parliament to act against these individual plans. In a situation in which the Commission acts cautiously and the member states are skeptical as a result of referenda, Parliament appears to be the sole actor capable without restriction of taking further steps at European level. The officials of trade unions and social movements even have a certain pride in having been able to overturn liberalization projects together with the Parliament by means of civil society action (see, for example, Kowalsky 2006: 241, 248). In this respect they are in agreement with a large part of the electorate. In a subsequent step the trade unions must be able to persuade the Parliament that this for its part would put the Council and the Commission under pressure to grant it a right of initiative that would actually go beyond the planned possibilities for proceeding against the Commission provided for in the draft Constitution. One way of doing this would be to link different policy areas, just as Blair and Schröder did in the Council in the case of working time. For this purpose the Parliament must threaten to block important legislative plans in order to realize its own plans. Hitherto, however, no pronounced interest to this effect has been visible in the Parliament, particularly given the tenuousness and fragility of the trade-union-friendly majority. But the trade unions could make efforts in that direction. The gap between the MEPs in Brussels and Strasbourg and their electorate is enormous. It is up to the trade unions to organize the necessary civil society processes to bring together Parliament and the people of Europe. And the trade unions have resources in terms of membership which can be mobilized across Europe.

As long as the trade unions are able to obtain sufficient influence over national governments in the Council a coordinated European strategy is unnecessary. As a rule, the exertion of influence is effected through the social democratic parties in the member states. If the latter are in power,

there is generally close contact between the trade unions and the government. If conservative parties are in power and the social democratic parties in opposition the trade unions exert their influence over the legislative process through the Parliament, predominantly via the Socialist Group. In this way the trade unions are continuing their traditional relations with social democracy not merely without restriction, but are even intensifying them, although within the nation-states in the meantime considerable differences have arisen between the trade unions and the social democratic parties, as examples from Germany, the UK, France, Austria, and even Sweden show. The diminished influence over Social Democrats but also over Christian Democrats has led, for example in Germany, to essential contacts in social ministries becoming disjointed (Trampusch 2006: 348), while at European level more or less traditional relations of cooperation exist between the trade unions and social-policy professionals.

However, cooperation with European Social Democracy is something new since the trade unions have been able in relation to the Service Directive to generate European publicity and have built up real pressure by means of joint European actions. This was necessary, however, because in the European Parliament the Conservatives, Liberals, and Nationalists have a clear majority. But since the requirement to vote on factional lines is weaker in the European Parliament than in national parliaments trade-union-friendly majorities are achievable. However, this requires the building up of the necessary pressure. A connection between the economic basis, civil society, and parliamentary representation (and in the Council as in the Parliament) could serve as point of departure for a common European Social Model. The most important partner in European committees is the Social Democrats, but also to some extent the Liberals, the Greens, and the Christian Democrats. Contacts with left-wing parties in Europe suggest themselves too, but are not particularly useful. The parties gathered together in the Party of the European Left are in power only in Italy and so have little influence in the Council. And in the Parliament due to the election results in 2004 it is largely a matter of making compromises with Liberals and people's parties.

Trade unions and social democratic parties, as well as the workers' wing of Christian democracy have to rely on one another more in the European context than at present is conceivable at national level. The trade unions therefore face a rather difficult situation. On the one hand, they find themselves in a kind of Babylonian captivity in respect of which the forces in principle favorably disposed towards them in the member

states could legitimate their reform plans with reference to the trade unions' European needs, which in turn could run counter to the trade unions' national interests. On the other hand, the European level could represent a point of departure by means of which trade union influence over national party systems could be resuscitated. The outcome would depend on the extent to which the trade unions themselves were able to reach agreement on a common European policy.

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