

A stylized world map composed of a grid of grey dots, with several dots highlighted in red. The map is centered behind the title text.

Giving Teeth to the EU's Social Dimension

Dismal Failure and Promising Potential

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- The social dimension of the European Union was fundamentally weakened in two stages: at the end of the 1990s, binding legislation lost considerable ground in favour of non-binding coordination of national labour market policies by means of the *open method of coordination*. In the wake of the euro crisis this coordination was transferred in broad areas to ministers of finance and the economy. Today, the programmes and instruments of the social dimension are being hollowed out and play only a secondary role in EU policymaking.
- The major losers from this development are employees and trade unions in the member states. Since the end of the 1990s European labour law has been rolled back. The social dialogue at European level, once a beacon of hope for a Social Europe, no longer gives rise to binding agreements. Not only can there be close interference in collective bargaining through the European Semester, but systematic participation by trade unions in the coordination process has been and continues to be prevented.
- Within the framework of the current treaties further development of the social dimension is difficult, but – within limitations – possible: the parity between economic and social policy actors in the European Semester, the use of the enhanced co-operation procedure and the strengthening of employees and trade unions by means of codetermination and social dialogue can be the cornerstones of a sustainable reorientation. There is a window of opportunity for this with progressive governments in key member states and the new political dependence of the European Commission.



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Introduction

Three views characterize the debate on the social dimension: first, there are those who seek to balance international economic policy-making with a fullfledged European welfare state. The second group regards European integration as an acute threat to national achievements and therefore proposes to build »firewalls« around national welfare states. Thirdly, there are the undecided who avoid talking about the social dimension or Social Europe by pointing out that the treaties do not permit any change to the status quo.

Good reasons can be marshalled for all these positions. From a democratic standpoint the first two positions are of key importance for the European policy debate. The present study, however, is oriented mainly towards those in the third group. We take a pragmatic approach demonstrating the prospects of further development of the EU's social dimension over the next five years, within the framework of the existing treaties.

The approach taken here comes at a politically auspicious time. After the harsh measures of fiscal coordination applied in the euro zone there is a pressing need for a social policy correction. On top of that there has been a shift in the political balance of power: in France, Italy and Sweden centre-left governments now hold sway. There may also be a change of government in Spain. The European Commission is unusually dependent on elected political actors at national and European level. The still ongoing euro crisis also means that this issue is of immediate concern. These circumstances will not lead automatically to progressive policy outcomes, but have to be used strategically within the framework of political alliances. The present study is intended to make a substantive contribution towards that end.

The term »social dimension« encompasses the European Union's labour market and social policy measures in a broad sense. The focus will be on the EU's three main areas of activity and the corresponding instruments: First, European employment policy and the open method of coordination; second, European labour law and the Community method; and third, European labour relations and the social dialogue. We will not take a comprehensive look at these areas, but select specific domains in order to outline and evaluate policy developments. Based on this approach we establish the framework for alternatives for the social dimension.

The study has four sections. Section 1 provides an overview of the arguments concerning the social dimension. In Section 2 we look at the fundamental and current weaknesses of the social dimension. The survey of the social dimension in Section 3 and the analysis of alternatives in Section 4 make up the core of the study.

1. Importance of the Social Dimension

Generally, three main arguments are made in favour of the social dimension. First, the social dimension is supposed to compensate for the effects of economic integration. Second, the social dimension is supposed to regulate freedom of movement and curb the dominance of Single Market legislation. Third, the social dimension is important for retaining the political backing of the general population.

Compensation for economic integration

Just as the common internal market and currency area can unleash a new economic dynamic in the member states, it can also lead to social upheaval. This is most clearly reflected in the »programme countries« under the Troika, in particular Greece, Portugal and also Spain, as well as, indirectly, Italy. In order to ramp up (external) flexibility employment protection was dismantled, atypical employment made easier, statutory minimum wages decreased, and collective bargaining diluted if not eliminated. Some of these measures are supposedly temporary, but most will have major long-term effects on the labour market.

The significance of national labour market and social policy – including wage policy – is reflected in the many agreements on deeper economic policy integration adopted in the wake of the euro crisis. On the one hand, the European criteria for national budgetary policy limit the scope of labour market and social policy. On the other hand, enhanced economic policy coordination constitutes an attempt to exert direct influence. Within the framework of the European Semester – an annual procedure for economic policy coordination – recommendations on national wage policy are regularly issued. By means of the strengthened deficit procedure and the macroeconomic imbalance procedure the EU is able to intervene in almost every area of national labour market and social policy.



Regulation of freedom of movement and political support

The EU's so-called »four freedoms«, especially free movement of persons and freedom to provide services, have direct effects on national labour markets and welfare states. In the domain of labour mobility the EU has proven competences, which can lead to far-reaching legal guidelines. In the case of the posting of employees abroad, the rulings of the ECJ have had far-reaching consequences for the right to engage in industrial disputes.¹

In the 1970s, the social dimension served to give European integration a »human face«. In the wake of the euro crisis, trust in the EU has fallen dramatically. Jacques Delors's quip that »it is difficult to fall in love with the single market« also applies to the common currency, the euro. Whether the social dimension can really win support for European integration remains questionable. More recent studies, however, indicate that in some areas there is still broad support among the European population (Forschbach et al. 2014).

2. Fundamental and current weakness

Since the Treaties of Rome (1958), European integration has largely been driven by economic integration. The biggest integration impetus came from the creation of the European internal market with the Single European Act (1986) and the Economic and Monetary Union with the Maastricht Treaty (1992).

In the European policy context the social dimension has a fundamentally subordinate position. There is a »constitutional asymmetry« between economic and social policy instruments: the internal market and monetary union restrict the member states' national labour market and social policymaking, while at the same time the heterogeneity of the various welfare states, due to differences in levels of economic development, hinders integration in the social policy realm (Scharpf 2002).

The development of the social dimension depends decisively on trade unions. However, differences in national production systems and welfare states

substantially impede effective interest representation of employees in Europe (Busemeyer et al. 2008). Although the European trade union movement has managed to identify common positions on fundamental questions, consensus on concrete issues is difficult to achieve. This can be traced back to a long series of institutional differences, which manifest themselves in the internal organisation of trade unions and their role in wage determination, as well as in legislative procedures and codetermination. Not least redistributive issues between rich and poor member states make it persistently difficult to reach common positions.

Current weaknesses

The social dimension, however, also depends on the prevailing political situation. Completion of the internal market in 1986 was followed some years later by the Community Charter of the Fundamental Social Rights of Workers, on which a European Commission »social policy action programme« was based, which brought about far-reaching changes. With the Economic and Monetary Union in 1992 a Social Protocol was annexed to the Maastricht Treaty that considerably extended the primary law basis of the social dimension. And with the Stability and Growth Pact a specific chapter on employment policy was included in the Treaty of Amsterdam in 1997.

Since then, there has been no notable progress at the level of primary law, apart from the Charter of Fundamental Rights, included in the Lisbon Treaty (2007). Although the social dimension has always been readjusted in relation to integration policy, in the wake of the euro crisis this imbalance has been exacerbated considerably. The far-reaching legal novelties of stronger coordination of economic policy have thus far not been matched by any substantial social policy instrument.

In fact, at the level of programmes and instruments we can discern a rolling back of the achievements of the late 1980s and early 1990s. At the programme level important decision-makers, in particular the European Commission, have subordinated social policy goals to the economic policy guidelines of Economic and Monetary Union and have abandoned a distinct social policy agenda. This is also due to a sustained change in ideas (Schellinger 2016). At the instrumental level this trend can be observed in the growing importance of non-

1. On the ECJ rulings in the cases of Viking and Laval see Jörges/Rödl 2009.

binding policy recommendations within the framework of employment policy, while at the same time regulation by means of the Community method and social dialogue is neglected.

3. Policy areas and instruments of the social dimension

The policy areas, instruments and methods of the social dimension are multifaceted. In this study we analyse the European Employment Strategy (EES) and its non-binding recommendations within the framework of the open method of coordination (OMC), as well as the binding recommendations within the framework of the European Semester. The EES and the OMC are based on the employment chapter in the Treaty on the Functioning of the EU (TFEU); economic policy coordination is based on, among other things, the Fiscal Pact and the so-called »six-pack«. That is followed by the field of labour law, which is based on directives and regulations by means of the ordinary legislative procedure (the Community method). In Section 3, we look at European labour relations, which derive from company codetermination and binding agreements arising from social dialogue at European level. The legal basis of labour law and labour relations is the social policy chapter of TFEU.²

3.1 European employment strategy and the open method of coordination

In the mid-1990s unemployment in the EU rose to unprecedented heights of above 10 per cent. A supply-oriented employment policy seemed finally to have become impossible with the agreements on the

Economic and Monetary Union (EMU) in the Maastricht Treaty (1992) and the Stability and Growth Pact (1997).

Besides economic challenges and legal constraints the increasing displacement of the »Keynesian« paradigm in favour of neoclassical assumptions was of key importance for the development of the social dimension. After all, EMU, designed in accordance with the German model, did not necessarily require deregulated labour markets on the US model.

With the anchoring of the European Employment Strategy in the Treaty of Amsterdam and the employment policy guidelines EU actors have been pursuing a decidedly market liberal approach since the second half of the 1990s. This finds expression, on the one hand, in the dominance of employment policy and its instruments against other policy areas and instruments at EU level (such as labour law/the Community method and labour relations/social dialogue); and on the other hand, in the basic programmatic orientation of employment policy.

Supply-side orientation

The subject headings of the first employment guidelines (part of the EES) in 1998 leave no doubt about its supply-side approach: 19 individual recommendations deal with employability and adaptability, entrepreneurship and equality of employees. Calls are made for cuts in social benefits, expansion of the low-wage sector and dilution of employment protection – often against the intellectual background of the service economy. Fritz Scharpf has described this as a neoliberal programme, which, by the way, was driven forward by a left-wing majority in the European Council (Scharpf 2002).

Table 1: Policy areas and instruments of the social dimension

Policy area	Instrument	Method	Legal basis
Employment and labour market policy	Non-binding and binding recommendations	Open method of coordination/ European Semester	Art. 145–150 (TFEU)/ Fiscal Pact; Six-pack
Labour law	Directives and regulations	Community method	Art. 151–161, (TFEU); Charter of Fundamental Rights
Labour relations	Non-binding and binding agreements	Social dialogue	Art. 151–161, (TFEU); Charter of Fundamental Rights

2. The European structural funds represent another regulatory mechanism, which we shall not examine here because its orientation is fixed by the multiannual financial framework of the EU.

The employment policy guidelines are still updated regularly, although their basic orientation remains unaltered, as in the case of the current guidelines (Council of the European Union 2010/707/EU). Nothing essential has changed in this respect also within the framework of the Lisbon Strategy and the current Europe 2020 Strategy, in which the guidelines are integrated.

Effects of the euro crisis

In the wake of the euro crisis the employment and social policy guidelines were even more strongly subordinated to the economic and fiscal policy provisions of the Stability and Growth Pact. The first country-specific recommendations within the framework of the European Semester in 2011 aimed, among other things, at financial reform of pension and health care systems and at the tightening up of access rules with regard to social benefits and services; the European Commission issued recommendations on combating poverty only to three member states in eastern Europe (Zeitlin/Vanhercke 2014: 27).

Analyses of the country-specific recommendations in recent years point out that the social dimension has regained some ground in the areas of active labour market policy, combating youth unemployment and poverty (Bekker 2015). The basic supply-side orientation, the rejection of statutory labour market regulation as »economically inefficient« and the narrow interpretation of social investment as »investment in human capital« remain in place, however.

Employment policy instruments

On the level of instruments, employment policy was built on the open method of coordination. Since the introduction of the Six-pack in 2011 the OMC has been formally integrated into the European Semester. In the European Semester, the European Council, the Council of Ministers and the European Commission coordinate national policy areas by means of the annual growth survey, national reform programmes and country-specific recommendations.

There were initially no binding incentive or sanction mechanisms for coordination within the framework of

the open method of coordination. The cooperation of the member states was de facto voluntary. Some analysts saw added value in the »name and shame« logic or in the deliberative mode of the Employment Committee.

Politically it has to be conceded that the OMC achieved a delicate balancing act between national competences and the European need for coordination. There are, however, two serious disadvantages that are increasingly evident:

First, with the ascent of the EES/OMC other areas of the social dimension have lost ground at EU level (on this see Sections 2 and 3). The reason for this may be that the OMC diverts capacities and attention from other areas and it is also in the interests of those who regard stricter regulation of the labour market as an economic burden.

Second, even more important for the social dimension of the EU, however, is the growing dominance of economic policy. At the programmatic level this can be seen in the priority given to economic policy guidelines against labour market and social policy measures.

Dominance of economic policy actors in the European Semester

With regard to the country-specific recommendations it is significant that around half of all labour market and social policy recommendations for the member states in 2013 were based on legal provisions of the Stability and Growth Pact or the macroeconomic imbalance procedure; in particular, the latter can cover »practically any social and employment topic«, for example, in the area of combating poverty, active labour market policy and the education, pension and health care systems (Bekker 2015: 12, 16). The fact that sanction mechanisms can be tied to them lends the recommendations more weight, but it significantly restricts social policy actors' room to manoeuvre.

In the case of recommendations that are part of macroeconomic coordination the Council working groups of the ECOFIN Council, in particular the Economic and Finance Committee and the Economic Policy Committee, are not on an equal footing with the Council working groups of the EPSCO Council, especially the Employment Committee and the Social Protection Committee (Zeitlin/

Vanhercke 2014: 46–51). The result is that, for example in the area of pension systems the Finance Ministers and not the Social Ministers have the last word.

3.2 European labour law and the Community method

The treaty basis for EU labour market and social policy measures is, in comparison with economic and monetary policy, severely restricted. Compared with the modest beginnings of the Treaty of Rome (the Treaty Establishing the European Economic Community, 1958), however, they have been considerably expanded. The most important advance came with the Protocol on Social Policy, annexed to the Maastricht Treaty (Treaty on European Union, 1992). In 2007, these provisions were gathered in the chapter on »Social Policy« in the Treaty on the Functioning of the European Union and thus became unequivocally part of EU primary law. According to Art. 153 the Community can agree measures for the following areas:

- protection of employees' health and safety;
- working conditions;
- information and consultation of employees;
- equal opportunities for men and women;
- integration of people excluded from the labour market;
- combating social exclusion; and
- modernising social protection systems.

In the following domains unanimity between the member states is required:

- social security and social protection;
- protection when an employment contract ends; and
- collective defence of the interests of employees and employers, including codetermination.

Explicitly excluded are wage policy and the right to organise and to strike (Art. 153, 5). On top of that EU measures shall be without prejudice to national fundamental principles of social security and their financial equilibrium (Art. 153, 4).

The second main pillar for legislative measures is Title IV »Solidarity« of the Charter of Fundamental Rights, which attained primary law status with the signing of the Lisbon Treaty in 2007. Art. 27–38 lay down fundamental

rights for, among other things, collective measures, redundancies, working conditions, social security, family and working life, as well as consumer protection. Also important here, however, is a basic restriction in accordance with which the competences laid down in the Treaties cannot be extended by means of the Charter of Fundamental Rights (Bercusson 2009: 91).

Past Development

Successful legislation depends on the treaties as well as on political support, especially from the member states and the European Commission. Taking a historical view, one can cite two particularly pertinent examples.

An important part of European labour law derives from the three directives on collective redundancies, protection of rights in the event of a transfer of company seat and when employers are unable to pay their employees. Although there was no specific basis for it in the treaties these acts were adopted on general legal basis (for example, Article 114, TFEU). All three date from the 1970s. The social dimension gained ground under the rubric of a »Community with a human face«, as well as with the support of then German Chancellor Willy Brandt and others (Kenner 2003: 23–70).

The social dimension gained even more momentum in 1989 with the European Commission's Social Action Programme, under Jacques Delors, which was based politically on the Community Charter of Fundamental Social Rights of Workers – from the same year – and legally on the Single European Act of 1986. The action programme encompassed 47 measures, ranging from combating atypical employment to the inclusion of minimum standards on working conditions and social security. It is considered a success in several important areas and resulted in seven directives, for example, on the protection of young people at work, the health and safety of atypical employees and working time (Falkner 1998: 204).

Change of direction in the 1990s

Since the 1990s, however, legislation by way of the Community method in the domain of the social dimension has continuously fallen by the wayside.

Activities have increasingly been restricted to updating existing measures. The European Commission all of a sudden found EU legislation that had long been criticised as inadequate to be a »solid basis«; new legislative proposals were regarded as unnecessary (European Commission 1994: 5; 2006). There is a certain irony in the fact that, despite the increase in competences under the Treaties, measures within the framework of the social dimension diminished rather than grew.

That has less to do with the fact that the European Commission's approach was unsuccessful than with the new significance attributed to the EES/OMC and the accompanying ideological shift. The European Commission – in particular DG Employment – took its bearings from the OECD Jobs Study of 1994, which, through a neoclassical prism, viewed labour market regulation as »economically inefficient«. Security of employment was to be achieved less by legal regulation than by »investment in human capital«.

This reorientation can be traced in a whole series of policy areas. For example, take the flexicurity debate, which the European Commission has deployed repeatedly since 2006, through the country-specific recommendations, to promote a reduction in statutory employment protection in the member states (Keune 2008: 92–98). The approach is also strongly evident with regard to atypical employment: while the European Commission previously regarded it as necessary but to be strictly regulated, since the mid-1990s atypical employment has been expressly promoted in the context of growing service sectors (Barnard 2012: 428).

3.3 European labour relations and social dialogue

At least formally, the social partners are much more closely integrated in the EU political system than is often assumed. In fact, they have far-reaching legislative competences, which make the social dialogue at EU level an effective instrument.

The recognition of the social partners in EU primary law goes back to the Single European Act (1986). Potent legislative competences were introduced with the – already mentioned – Maastricht Social Protocol (1992 – Art. 155 TFEU). In addition, the social partners have a right of consultation in relation to almost all labour market

and social policy measures of the European Commission (Art. 154, TFEU). Finally, the Lisbon Treaty (2007) ushered in the Tripartite Social Summit, which is supposed to improve coordination between the social partners, the Council and the Commission (Art. 152, TFEU).

On the basis of these Treaty provisions three cross-branch agreements emerged at the EU level between the social partners, which became mandatory by means of three directives. They include the framework agreements on parental leave (1995), part-time working (1997) and fixed-term employment contracts (1999). In addition, the social partners reached agreement on teleworking (2002), stress in the workplace (2004), harassment and violence in the workplace (2007) and inclusive labour markets (2010), although they remained non-binding. The most dynamic development was in sectoral dialogue, with over 500 agreements, which are binding to different degrees. Furthermore, the number of committees has increased sharply, from 19 in 1999 to 43 in 2015.

The Directive on European Works Councils in 1994 overcame an important hurdle with regard to company codetermination. A revised version followed in 2009. European (company) codetermination is only partly comparable with the German system because it is largely limited to information and consultation rights (Streck 1997). However, European works councils – which now number 1,214 – play a decisive role in the transnational interest representation of employees (Eurofound 2015; Hyman 2014).

Weakening of the social dialogue

Since the 1990s and in particular during the euro crisis it has become clear that the social dialogue increasingly serves the purpose of legitimisation; at the same time, the social partners have come to have less of a real say in decision-making. The social dialogue has been markedly diluted due to the lack of support from the European Commission and economic crisis policies at national and European levels.

The systematic inclusion of the social partners goes back to a political initiative of the 1980s on the part of then Commission President Jacques Delors, in an effort to circumvent the logjam in the European Council with regard to the social dimension. In the 1990s the social



dialogue was used to introduce legal regulations in areas in which the legislative procedure was blocked within the framework of the Community method.

Accordingly, the agreements reached by the social partners during this period – for example, on parental leave, part-time working and fixed-term employment contracts – were transposed into statutory provisions by directives of the European Commission and the Council. The social partners – especially the employers – were nudged to reach agreement by the European Commission under threat of the ordinary legislative procedure (Smismans 2008).

With the increasing importance of *soft coordination* by means of the EES/OMC, however, the European Commission has given priority to voluntary cooperation between the social partners also within the framework of social dialogue. Agreements since 2000 have largely not been transposed into statutory provisions. This makes effective implementation in the member states incomparably more difficult.

The second crucial weakening of social dialogue at national level started with EU crisis management policies. With the decentralisation of wage determination systems by means of company agreements, opening clauses and

so on, trade unions in southern European countries have been dealt a heavy blow (Matthes 2015). The implementation of non-statutory European agreements and the effective organisation of the social partners at the EU level have been made considerably more difficult.

The European Semester – similar to the OMC of the European Employment Strategy – is fundamentally oriented towards national government bodies. The social partners play subordinate marginal role in this system.

4. Alternatives for the social dimension

In this section we propose alternatives for the social dimension, based on the structure of the preceding analysis. Table 2 provides an overview.

4.1 European labour market policy

European labour market strategy

A large part of EU labour market and social policy is currently governed through the economic policy guidelines, which are able to deploy the new instruments of economic governance. The guidelines on

Table 2: Overview: Alternatives for the social dimension

<p>4.1 Employment and labour market policy/OMC, European Semester</p> <ul style="list-style-type: none"> – »European labour market strategy«: Thematic extension of the employment policy guidelines to include those areas that form part of the deficit and imbalance procedures. – »Eurogroup of Social and Labor Market Ministers«: Equal participation of social and economic policy actors (Council and Council working groups; DG Employment; social partners) in the draft of country-specific recommendations. – Parity of social and economic policy indicators in the European Semester.
<p>4.2 Labour law/Community method</p> <ul style="list-style-type: none"> – European minimum standards for national systems of minimum social security. – Use of the enhanced cooperation procedure, extension of employees' rights in the event of company relocations and a financing instrument for labour market reforms. – Legislation in the competence area of working conditions, inclusion of the long-term unemployed and labour migration, especially in the area of personal services.
<p>4.3 Labour relations/social dialogue</p> <ul style="list-style-type: none"> – Coordination of national social partners, in particular the trade unions (»European Semester of the trade unions«). – Extension of codetermination by means of European works councils and extension of codetermination on company boards. – Systematic inclusion of the social partners in Council working groups, in particular those of the ECOFIN and EPSCO Councils. – Strengthening of bargaining autonomy as a social policy aim in the European Semester.

»sustainability of public finances« and on the »elimination of macroeconomic imbalances« include provisions on social benefit and collective bargaining systems, as well as on wage development – including minimum wages – and on retirement age (Council of the European Union 2010/410/EU).

The guidelines concluded by the labour and social affairs ministers, by contrast, are limited largely to the employment policy domain, with measures to boost labour market participation, training and social inclusion (Council of the European Union 2010/707/EU).

In accordance with the distribution of competences in the national system labour market and social policy recommendations should be agreed by labour and social affairs ministers and not, as presently, by ministers of the economy or of finance. This requires a thematic expansion of the »employment policy guidelines« into »labour market and social policy guidelines«.

Recommendations that invoke the Stability and Growth Pact or the macroeconomic imbalance procedure should also be adopted by labour and social affairs ministers. From a legal standpoint implementation would be easier if the labour and social affairs ministers were to shape »their« guidelines directly on the model of economic policy actors with regard to wage policy and social security systems.

Actual EU labour market and social policy measures have long constituted a comprehensive EU labour market strategy; acknowledging this reality would be a first step towards stronger involvement of social policy actors.

of the EPSCO Council in the European Semester can thus be used to boost the position of the trade unions in the decision-making process.

In some cases, this will lead to a convergence of the positions of national trade unions; in other instances, fundamental differences will remain. However, even the rejection of further EU competences requires the effective organisation of trade unions at European level. To that end they must be part of the decision-making process (see 4.3).

With regard to the institutional order of the European Semester this entails stronger participation of social policy actors at all levels (on this see Council of the European Union 2013). Joint meetings of the ECOFIN and EPSCO Councils should take place more regularly. The Council working groups of the EPSCO Council should be on at least an equal footing when it comes to recommendations on national labour market and social policy, in accordance with a formal agreement with the social partners, and not, as hitherto, have only very weak consultation rights. Within the European Commission, too, DG Employment in particular must be on an equal footing in the preparation of country-specific recommendations.

Finally, economic policy actors have long met in the Euro-group – and both in the Council as well as in the Council working groups. In order to strengthen the social dimension as against the economic policy guidelines it will be necessary that the EPSCO Council and its working groups reach agreement in this group as well.

Social indicators in the European Semester

Only by means of this new institutional framework can attempts at strengthening the social dimension in the European Semester through the social scoreboard with key social indicators (European Council 2013), the goals of the Europe 2020 Strategy and the European Commission's social impact assessment be successful.

Economic policy coordination within the framework of the European Semester by means of the Stability and Growth Pact and the Six-pack is legally on an incomparably stronger foundation than coordination in the domain of labour market and social policy. Just as

Strengthening social policy actors in the European Semester

All this poses major challenges to the trade unions because the deficit and imbalance procedure impinges on policy areas that were hitherto off limits to EU competences. In particular on wage policy issues – for example, the minimum wage and wage coordination – the European trade union movement has not reached consensus.

Trade union influence has been curtailed even further by the new powers of the ECOFIN Council; trade unions are involved, if at all, only in the decision-making processes of the labour and social affairs ministers. The strengthening

at the height of the euro-crisis the labour market and social policy recommendations bore the signature of ECOFIN actors, agreements within the framework of the EES/OMC are likely to yield to economic policy priorities under the pressure of future crises.

4.2 Legislation, enhanced cooperation and minimum standards

Legally binding measures are key to the further development of the social dimension. Most of all, European labour law has to be strengthened on the basis of the current Treaties. The Community can play an active role in particular with regard to individual labour law. At present, competences under the Treaties have not yet been fully exercised. This applies in particular to working conditions (Eurofound 2013), the inclusion of the long-term unemployed and the challenges of labour migration with regard to personal services (Barnard/De Baere 2014: 29–33).

Enhanced cooperation procedure

For those areas in which unanimity is still required the enhanced cooperation procedure can be used, which was also introduced with respect to the social dimension. By means of this procedure a group of at least nine member states can introduce joint regulation without any need for the other member states to get involved.

In this way far-reaching measures could be concluded in those areas that require unanimity:³ social security, protection when an employment contract is terminated and collective defence of the interests of employees and employers, including codetermination.

Barnard and De Baere mention three areas in which the procedure can be applied. First, on the basis of Art. 153, 1 (TFEU) minimum standards for national unemployment insurance can be defined; second, employees' rights in the directive on company relocation can be extended; third, a financing instrument can be established for national labour market reforms (Barnard/De Baere 2014: 41–42). In particular European minimum standards with regard to

unemployment insurance and reforms of national labour markets coordinated by means of financial incentives could be an important contribution to the functioning of the Economic and Monetary Union and, at the same time, ensure national social standards.

European minimum standards

European standards for national minimum wages and basic or minimum insurance face both major legal and political challenges. Article 153, 5 (TFEU) explicitly rules out measures on remuneration. However, the EU is to some extent interfering ever more closely in national wage policy (Schulten 2013: 299). A European standard for national minimum wages thus has support even on the political side from the new European Commission.⁴ The European Trade Union Confederation (ETUC), however, has not yet reached consensus on this. This is partly because trade unions fear a lowering of – in some instances – relatively high national minimum wages and a reduction of free collective bargaining.

In contrast to minimum wages the legal basis for European minimum standards for national minimum social security systems is evaluated positively (Van Lancker 2010). Standards for minimum social security can be laid down by means of a framework directive. Issues of the organisation and funding of social security remain within the competence of individual member states; the subsidiarity and proportionality principles are still safeguarded. Unlike in the case of the minimum wage the trade unions have come out unequivocally in favour of introducing European principles for minimum social security (ETUC 2013). An initiative would thus also receive their political support.

4.3 Social dialogue and the »European Semester of trade unions«

Even though social dialogue enjoys broad consensus in the trade union movement new advances are difficult. National trade unions that are in a strong position are not particularly enthusiastic about strengthening the European Commission and social dialogue at European level; by contrast, comparatively weak trade unions

3. For an assessment of current rulings of the ECJ, see Barnard/De Baere 2014.

4. For proposals on its design see: Schulten 2014; Eurofound 2014.

would like to use the European level to strengthen their position in the national context (Busemeyer et al. 2008: 447).

With regard to the legislative procedure more use must thus be made again of social dialogue to conclude legally binding measures. For this purpose the cross-branch agreements from the 1990s may serve as a good example. However, they can be concluded only if the European Commission takes a proactive approach and offers incentives, especially to employers.

Both employers and trade unions have already indicated their willingness to conclude more legally binding agreements. It has to be examined how far agreements from the 1990s (parental leave, part-time working and fixed-term employment contracts) need to be updated, as well as the legal implementation of voluntary agreements from the past ten years – for example, against harassment in the workplace. But areas such as training, as well as issues of labour mobility are also of concern to the social partners.

National trade unions have a comparatively unified position on the extension of codetermination (Busemeyer et al. 2008: 447–448). Codetermination by means of supervisory boards in companies throughout Europe experienced a major boost with a historic agreement within the European Trade Union Confederation (ETUC) in October 2014 (Bonse 2014). The ETUC is calling for the »introduction of a new directive on employee participation in the European company [SE]« with »minimum standards on company codetermination« (ETUC 2014: 2). In this way codetermination would also be strengthened in those member states that hitherto have not had a comparable system.

Involvement in the European Semester

With regard to the European Semester the involvement of the social partners can be improved by four measures: first, the social partners must be informed in good time and in full detail; second, they must be systematically included in the working processes of Council working groups, in particular those of the ECOFIN and EPSCO councils; third, their position in the European Semester in relation to NGOs must be clearly distinguished; and fourth, the significance of social dialogue in European

primary law at European and national level must be reflected in country-specific recommendations.

European Semester of trade unions

Wage policy has a prominent position in the Economic and Monetary Union. In the long-term the question arises whether European intervention in national wage policy will be tolerated and in what respect instruments for stronger coordination are necessary and feasible (Schulten 2014).

Within the European trade union movement, however, there is considerable disagreement about wage policy. Frequently, differences in national wage setting lead to opposing positions. Scandinavian trade unions fear that European wage coordination would tie their hands in collective bargaining at central level, while trade unions in Britain and Ireland are apprehensive about restrictions on the bargaining power of local trade unions (Busemeyer et al. 2008: 442–444).

In Germany, representatives of IG Metall are calling for a »European Semester of trade unions« with »specific wage policy goals« (Hofmann 2014: 311–313). Trade unions would aim at an autonomous system based on a wage coordination rule, including the target inflation rate, medium-term productivity development and a redistribution factor.

In the medium term a series of political measures should improve the conditions for coordination. The Council and the European Commission can promote exchanges between national social partners with the purpose of coordinating their involvement in the European Semester more closely. As far as the EU and the member states are concerned they need to help create an infrastructure for exchanging information.

There is consensus on the trade union side that collective agreement coverage and free collective bargaining must be reflected in the European Semester as a social policy goal, with regard to both the substantive inclusion of the social partners at European and national level and economic policy recommendations on wage policy (ETUC 2013: 5).

Conclusion

European integration is bolstering economic policy actors at the expense of employees. Currently, the undermining of trade unions is most evident in the southern European member states. However, on a structural level trade unions' bargaining power is also compromised by Single Market legislation and ECJ rulings.

Economic policy integration in the wake of the euro crisis has only exacerbated this subordination. With regard to the functioning of the Monetary Union wages and social benefits are attributed a key role for national competitiveness. This explains the new intervention options of the Council and the European Commission within the framework of the deficit and imbalance procedure. The bulk of labour market and social policy in the European Semester, however, is effectively in the hands of economic policy actors, the ECOFIN council and DG ECFIN. Trade union and labour ministers are struggling to be heard in the European Semester, even on issues original to their policy fields.

As the Treaties stand at the moment the social dimension can be put on a fundamentally new footing. Labour and social affairs ministers could, through the open method of coordination, take up issues that hitherto have only been dealt with by economic policy actors. It is incomprehensible why these actors regularly issue recommendations for national wage policy, while the EPSCO council and the social partners, with reference to Art. 153, 5 (TFEU), do not exercise non-binding coordination through *their* guidelines. The labour market and social policy measures taken by the EU have

long constituted a de facto comprehensive EU labour market strategy; acknowledgement of this reality would represent a first step towards a stronger role for social policy actors.

Social policy legislation at the EU level appears to be at an all-time low. Better use could be made of both old and new instruments here. It is not clear why the enhanced cooperation procedure, which was introduced to enable small groups of member states to reach agreement among themselves, has not yet been used in the area of social policy. Also necessary is the strengthening of minimum standards, for example, for national systems of minimum social security, as the ETUC has called for.

There is consensus in the European trade union movement above all on social dialogue and codetermination. The social dialogue at EU level must once again lead to legally binding measures – instead of toothless voluntary agreements. With their agreement on company codetermination the European trade unions have created the conditions for a decisive boost for codetermination at the European level.

The dynamic of European integration is essentially driven by economic developments. Social policy achievements at national level are under threat from the Single Market and monetary union. At the same time, the EU's social dimension has been almost completely marginalised. At practically every level – goals, programmes and instruments – and in every area (employment policy, labour law and labour relations) there has been a systematic weakening. Giving teeth to the EU's social dimension is Europe's best bet for a more Social Europe.



Bibliography

- Barnard, C.** (2012): *EC employment law*. Oxford: Oxford University Press.
- Barnard, C./De Baere, G.** (2014): *Towards a European Social Union: Achievements and possibilities under the current EU constitutional framework*. Leuven: Euroforum KU Leuven.
- Bekker, S.** (2015): *European socioeconomic governance in action: Coordinating social policies in the third European Semester*. Brussels: European Social Observatory.
- Bercusson, B.** (2009): The Lisbon Treaty and social Europe. *ERA-Forum*, 10(1), 87–105.
- Bernaciak, M. et al.** (2014): *European trade unionism: From crisis to renewal*. Report 133. Brussels: ETUI.
- Bonse, E.** (2014): *Mitbestimmung: Historischer Durchbruch*. <http://www.boeckler.de> (accessed on 5.3.2015).
- Busemeyer, M. et al.** (2008): Overstretching solidarity? Trade unions' national perspectives on the European economic and social model, in: *Transfer: The European Review of Labour and Research* 14(3), 435–452.
- ETUC** (2013): *ETUC position on the social dimension of the European Union*. Adopted at the Executive Committee Meeting of 23 April 2013.
- Eurofound** (2013): *Impact of the crisis on working conditions in Europe*. <http://www.eurofound.europa.eu/> (accessed on 2.3.2015).
- Eurofound** (2014): *Pay in Europe in the 21st century*. Luxembourg: Publications Office of the European Union.
- Eurofound** (2015): European industrial relations dictionary. <http://www.eurofound.europa.eu/> (accessed on 2.3.2015).
- European Commission** (1994): *White Paper: European social policy: A way forward for the Union*. COM(94) 333.
- European Commission** (2006): *Green paper: Modernising labor law to meet the challenges of the 21st century*. COM (2006) 708 final.
- European Council** (2013): *Conclusions of the meeting of 19/20 December 2013*. (EUCO 217/13).
- Falkner, G.** (1998): *EU social policy in the 1990s: Towards a corporatist policy community*. New York: Routledge.
- Forschbach, G. et al.** (2014): *A vision for the Social Dimension in the EU in 2030: What European Citizens Want*. Berlin: Stiftung Neue Verantwortung.
- Hofmann, J.** (2014): *Aktive Lohnpolitik in Europa*. WSI Mitteilungen 4.
- Joerges, C./Rödl, F.** (2009): Informal politics, formalized law and the 'social deficit' of European integration: Reflections after the judgments of the ECJ in Viking and Laval, in: *European Law Journal*, 15(1), 1–19.
- Kenner, J.** (2003): *EU employment law: From Rome to Amsterdam and beyond*. Oxford: Hart Publishing.
- Keune, M.** (2008): Flexicurity: A contested concept at the core of the European labour market debate, in: *Intereconomics/ Review of European Economic Policy*, 43(2), 92–98.
- Matthes, J.** (2015): Krisenländer: Relevanz von Strukturreformen für Wachstum und Währungsraum. *Wirtschaftsdienst* (2), 106–113.
- Council of the European Union** (2010a): *Council decision on guidelines for the employment policies of the member states*. (2010/707/EU).
- Council of the European Union** (2010b): *Recommendation on the broad guidelines of the economic policies of the member states and the Union*. (2010/410/EU).
- Council of the European Union** (2013): *The social dimension of the Economic and Monetary Union*. (12115/13).
- Scharpf, F.** (2002): The European social model, in: *Journal of Common Market Studies*, 40(4), 645–670.
- Schellinger, A.** (2016): *EU labor market policy: Ideas, thought communities and policy change*. Basingstoke: Palgrave Macmillan. [forthcoming]
- Schulzen, T./Müller, T.** (2013): Ein neuer europäischer Interventionismus? Die Auswirkungen des neuen Systems der europäischen Economic Governance auf Löhne und Tarifpolitik, in: *Wirtschaft und Gesellschaft*, 3, 291–322.
- Schulzen, T.** (2014): Europäische Lohnkoordinierung: solidarisch oder wettbewerbsorientiert? *WSI Mitteilungen* 4/2014, 314–316.
- Schulzen, T.** (2014): *Contours of a European minimum wage policy*. Berlin: Friedrich-Ebert- Stiftung.
- Smismans, S.** (2008): The European social dialogue in the shadow of hierarchy, in: *Journal of Public Policy*, 28(01), 161–180.
- Streeck, W.** (1997): Neither European nor works councils: A reply to Paul Knutsen, in: *Economic and Industrial Democracy*, 18(2), 325–337.
- Treaty on the Functioning of the European Union. Official Journal No. C 326 of 26.10.2012.
- Van Lancker, A.** (2010): *Working document on a Framework Directive on Minimum Income*. Brussels: European Anti-Poverty Network.
- Zeitlin, J./Vanhercke, B.** (2014): *Socializing the European Semester? Economic governance and social policy coordination in Europe 2020*. Stockholm: Swedish Institute for European Policy Studies.



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