



United Nations
University

CRIS

Comparative Regional Integration Studies

UNU-CRIS Occasional Papers

0-2006/14

**The European Union and social policy: an innovative
approach to regional integration?***

Monica Threlfall, Loughborough University

* Paper presented at the High-Level Symposium "Social Dimensions of Regional Integration", organised by UNESCO, MERCOSUR, GASPP and UNU-CRIS (Montevideo, 21-23 February 2006)

The European Union and social policy: an innovative approach to regional integration?

Monica Threlfall, Loughborough University

Introduction

The social dimension of European Union has sometimes mockingly been called the 'Cinderella' of integration as a way of signaling its lowly status and the lack of regard in which it is held in the European family. Strangely, the simile is not used to predict a dramatic reversal of fortunes for social policy, still less one involving going to a ball, losing a slipper or marrying a prince.

The way the Cinderella image can be used more aptly is to view European social policy as if it were a member of the cast - *dramatis personae* - whose resourcefulness has been underestimated by fellow actors. Far from content to play a humble minion in the drama of European integration, social policy is more like a difficult character - over whose role the playwright, the producer and the director cannot agree - who is sometimes hauled to the front of the stage to appease audiences who bay for their money's worth, at other times is confined to the wings, yet who always refuses to be written out of the story and regularly bids for a bigger part.

This is also to say that the story of European social policy has been somewhat misunderstood. Firstly there was the confusion over its name, since European health, education and welfare policies remained conspicuous by their absence, and the wording of the Treaty of Rome gave the Commission no powers in these fields. Instead the Social Policy Title talked about working conditions, equal pay for women and men, and youth exchanges, in what looked like identity confusion.

Nonetheless, over a period of forty years or so critics have come to recognize that there has been a fundamental expansion of the social agenda in European integration (see Hantrais 2000 and Geyer 2000), and that a small but significant set of powers have been transferred to the supra-national level (Leibfried and Pierson 1995), particularly with regard to the physical working environment of employees and the equal treatment at work of different categories of workers. The European Union itself

has extended the original minor corporatist arrangement of the Economic and Social Committee to involve business and labour actors in a 'corporatist policy community' (Falkner 1998). The EU's 'workerist' focus has become more 'welfarist' (Threlfall 2002). A new welfare space has been opened up containing a 'patchwork of interventions' (de Bùrca 2005:7). Integration has progressed through convergence of trends and policies, approximation of laws and harmonisation of practices, creating a series of single social areas (Threlfall 2003). Thus, the story of the social dimension of the European integration project is a complex and multilayered one, lacking both the political imperatives that have given the whole European project its historic impulse and the economic incentives that have spawned the single market and euro-zone. In contrast, social integration is commonly thought to be restrained by national governments, who are eager to retain control over welfare provision and social expenditure budgets.

Therefore it is all the more instructive to understand how a regional integration process like that of the EU has faced a series of dilemmas over social policy integration. In 1957 it was launched with what can at best be described as an ambivalent position, and has since moved in fits and starts, skepticism following bouts of enthusiasm. By the late 1990s a lasting consensus between Member-States (MS) had been achieved around a corpus of shared employment-focused regulation, and they are now engaged in an array of simultaneous and interlocking cooperation and mutual surveillance processes, which range from poverty reduction to education, training, pensions, and job creation. Through these the EU is building a 'still fragmented' but 'distinctive EU welfare dimension' (de Bùrca 2005:1).

This presentation reviews the historic milestones in collective decisions made by the member states that have cumulatively developed the social *acquis communautaire* - the body of laws that all applicant states must adopt to become full members - and the policy frameworks that shape new decisions. The presentation's approach aims to bridge the gap between the labourist and the welfarist understandings of social policy, and to foreground the various innovative methods that have been adopted in order to progress consensus-building and social policy making. It takes the parameters of social policy to include labour relations and working conditions, employment, social protection, equality and anti-discrimination and education policies, and also discusses free movement and fundamental rights policies to some extent, in so far as they affect certain categories of people resident in the EU.

1. Developments at Treaty level and procedural innovations

1.1. 1957-1989 period

Despite the original aim of building an *economic* community, Part 1 of the 1957 Treaty of Rome entitled 'Principles' manifested the nascent Community's commitments to maintaining a high level of social protection for workers, to increasing standards of living and the quality of life, as well as to improving living conditions. The commitments are usually found in labour-related contexts rather than constituting stand-alone objectives in themselves, especially in the early decades of European integration. In line with this, the Treaty of Rome's specific action-facilitating articles in 'Part 3, Title III on Social Policy' did not in fact provide a clear legal basis for any initiatives connected with *welfare* matters. The Title on Social Policy was short and Article 118 listed the fields for which the Commission was merely to 'promote collaboration' between member-states. Few if any directly referred to social policies in the strict sense. Indeed, the wording of Article 118 in the Treaty of Rome was

"The Commission shall have as its task the promotion of close collaboration between member states in the social field, particularly in matters relating to: -employment - labour law and working conditions; -vocational training; -social security; -prevention of occupational accidents and diseases; -occupational hygiene; -the right of association, and collective bargaining between employers and workers."

In contrast to the weakness of the Commission's mandate in Art.118, the historic Art.119 (later 141) on sex equality was to provide the green light for the Commission's subsequent equality actions. The fact is that the Commission did *not* move ahead until ten years later, and only once it had had its 'consciousness' raised by feminist advocates – a revealing story recounted by Catherine Hoskyns (1999).

For until the mid-seventies the Council of Ministers of the European Economic Community adopted virtually no 'legal instruments' (legally valid, though not necessarily binding decisions) to develop the potential role of the Commission in any of the above-mentioned areas of social policy, with the exception of measures to facilitate the free movement of workers. By the end of the seventies, directives had been adopted concerning the procedures to be followed by companies wishing to make collective redundancies, and on the protection of workers' acquired rights where their employers transfer the undertaking to another owner, as well as the three historic sex equality directives on equal pay, equal treatment and social security [for a full list, see the appendix].

It was not until the launch in the mid-80s of Commission President Jacques Delors' new vision of a greater social dimension to the European integration project that the pace of social policy-making changed. This was marked by the first of what were to be several methodological innovations designed to kick-start new political processes of discussion between MS on social issues. Rather than propose new legislation directly, Delors' took the step of launching a debate about guiding social principles for the EEC. When these were embodied in a Community Charter of Fundamental Rights adopted by the MS in 1989 (excluding the UK), they revealed a new interest in social policies for the wellbeing of people in general -- the elderly, the young, the excluded - in addition to new rights for female and male workers already firmly in the labour market. Even in this new environment, women's rights *as a gender* rather than as workers were not recognised, despite the European Parliament women's committee's pioneering reports on inequalities in women's lives outside paid employment.

Thus it was through what one could call a 'deviant' mechanism of a declaration of principles that the EEC made its first move towards the public adoption of a set of social welfare policies for the population as a whole. However, the Community Charter of Fundamental Rights of Workers was destined to remain outside the *treaties and thus to appear to be ineffective* as a way forward, even though the Commission started to request that each member-state report periodically on progress towards the social goals set out in the Charter (e.g. Commission 1996). The accompanying Social Action Programme proposing 16 legal measures to implement the Charter ran into political difficulties spearheaded by the UK, the principles that the Charter enshrined have, arguably, been developed in a piecemeal fashion by later treaty amendments, as well as by a growing social philosophy which the Commission has generated through policy documents, comparative social research and the growth of communities of advocates and NGOs promoting social policy, such as the European Social Forum (1999). Yet in retrospect, it can be argued that in the absence of a clear mandate to proceed with legal measures *outside* of the workplace, the Commission's démarche of gaining a consensus among member-states around social principles proved to be an oddly-shaped, yet ultimately weight-bearing block in the long-term construction of a European social policy architecture.

1.2. 1992-97 Maastricht and citizenship of the EU

The Maastricht summit of December 1991 marked a new departure and therefore a milestone in the growing status of social policies. The new Treaty on European Union (TEU) contained new Titles which suggested a degree of europeanisation of new areas such as education and youth policy (in its Title VIII, Chapter 3: Education, Vocational Training and Youth) and public health (Title X Public Health). Yet in these new social policy areas the Commission's role was to be a limited one, as the wording of the new articles specified that no *harmonisation* laws should be undertaken. In

education the Commission's role was to be circumscribed to activities introducing a 'European dimension' to education, which would impinge neither on curricular issues, educational philosophies nor education systems. Its role in public health excluded individual health care and healthcare systems, limiting itself to major public health questions such as the frontier-less health scourges of smoking and drugs.

The UK approved the TEU as a whole, thereby refraining from blocking the expansion of some EU social competences in areas where they were limited in scope, having previously rejected a draft for a reinforced Title on Social Policy that would have incorporated much of the Community Charter. The rejected draft ended up as an appendix to the Maastricht Treaty called 'Agreement on Social Policy' approved by 11 of 12 member-states (excluding the UK) who were willing to allow the expansion of Commission and Council prerogatives in the social field. This constitutes a second example of methodological innovation in the social field, designed to bypass a block on further regulation. With the Agreement on Social Policy, eleven Member-states allowed the EU to advance further into social policy, particularly by taking on board a hitherto marginal area of concern, poverty ('social exclusion'). The Agreement also made it easier for law-making to proceed, by allowing qualified majority voting (QMV) in the Council of Ministers for equality between men and women in employment and for integration of persons excluded from the labour market, signifying an expansion of activity beyond the mainstream areas of working conditions and health and safety at work.

A further point of significance for social policy regarding the Maastricht Treaty accords was that they consolidated European citizenship rights, confirming in particular the expansion of free movement rights beyond 'workers' and their 'dependants' to virtually all categories of persons, including students and pensioners and those seeking jobs (for details, see Appendix). While the new wording in the Treaty did not explicitly accord citizens the right to access welfare provisions in other countries, nor provide for any EU social protection harmonisation, nevertheless the Maastricht breakthrough on citizenship was in time to lead the EU to take up numerous further social policy questions, such as: - the rights of 'free movers' (intra-community migrants) to social security *benefits* and to housing support schemes in other member-states; -the exportability of pensions and access to benefits *in kind* for the elderly (such as meals on wheels, reduced entry to museums, cheaper travel, etc); students' expanded choice to study at any EU university and their rights regarding fees, grants and scholarships; - the recognition of all kinds of higher education qualifications generally; - free movers' access to healthcare while temporarily or permanently settled in another member-state.

The point to note is that most of these issues came onto the agenda as questions of equal rights of *different EU nationals in any one country*, such as equal treatment and non-discrimination, rather than as measures designed to improve working and living conditions for all, as originally stated in the Treaty of Rome. In other words, the new

social policy decisions taken by the Council and the European Court of Justice (ECJ) were *not* fundamentally about member-states losing their prerogatives by transferring responsibility to the supra-national level. Instead, they involved interpreting agreed Community principles in such a way as to give social and welfare rights to *more categories* of citizens, migrants and free movers.

1.3. After Amsterdam (1997-2000)

The Treaty of Amsterdam adopted by the heads of state and government in 1997 marked another milestone in the status of social policies in general, which were joined by a set of civil and human rights to make the Treaty far more 'people-friendly' than before. The status of gender equality was raised to become a chief goal of the EU (Article 2.), and positive action to advance sex equality was allowed (Art.141). A new article (6A, consolidated as Art.13) widely banned discrimination on the grounds of a wide range of categories: sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation, and allowed the Community to take action to combat it (though as Vranken (1999:34) points out, only via unanimity in the Council of Ministers). A declaration on the death penalty was introduced stating that all member-states rejected it. The wording on European citizenship rights was strengthened, confirming more clearly that all have the right to reside in any member-state, not just workers. Title XI on 'Social Policy, Education, Vocational Training and Youth' confirmed the Union's commitment to promoting employment and improved living and working conditions (Art.136), but in addition, combating exclusion was recognised as a legitimate Community activity. Furthermore, the Commission was now to encourage cooperation between member-states and facilitate coordination of their action in *all social fields*, reporting annually on their progress in achieving the goals of Art.136. In the related field of consumer protection (Title XIV parag.1.) the Commission was given a freer hand in taking up the defense of consumers' *health, safety, and 'economic interests'*.

Amsterdam also introduced the third and fourth of the procedural innovations this presentation is highlighting. These were designed to support policy-making so as to enlarge the social and employment dimensions of integration in general. In Title XI, Ch.1 on Social Provisions stipulates not only that in that the Commission shall promote the dialogue between the social partners and consult directly with the representatives of management and labour (Art 138 - something it was already entitled to do by the Single European Act's amended 118b.). Title XI also stipulates that management and labour may reach Agreements (Art.139) that can be directly sent to the Council of Ministers for adoption as Directives.

The other, fourth procedural innovation in the search for effective ways of integration was a new type of member-state strict coordination over employment policy. A new Title VIII on Employment was introduced that dealt mainly with job creation and

'active' labour market policies. And significantly, these matters were to be advanced by the Council of Ministers and the Commission through a so-called Open Method of Coordination (OMC), with a view to contribute to a 'high level of employment'. The OMC is a policy-prescriptive method of operation in which the European Council (the summit of heads of State and government) approves the broad strategy and the more specific Guidelines drawn up by the Commission. Member-states respond with their own National Action Plans and then report to the Commission on their progress in implementing the Guidelines. Mutual scrutiny can take place through a form of independent peer review and joint reports are drawn up with the Commission and approved by the Council. Member-states' good practice is highlighted together with their shortcomings. In the latter case, they may receive specific recommendations as to desirable improvements in their performance for the next round, as this has been an iterative process since the first Employment Guidelines of 1998.

In 2005 the original OMC on Employment was revised to improve coordination between the MS and the European institutions on the one hand and, on the other hand, to better coordinate employment policies with macroeconomic and microeconomic policies of the EU', and was set to run over three years to 2008. The current components suggest reinforced external monitoring of MS and closer employment policy integration with the Broad Economic Policy Guidelines. They are: a) - Integrated Employment Guidelines in which, following a proposal from the Commission, the European Council agrees every year on guidelines setting out common priorities for Member States' employment policies; b) - National Reform Programmes where every Member State draws up a programme describing how these Guidelines are to be implemented nationally; c) - A Joint Employment Report, in which the Employment chapter of the MS's annual progress report is adopted by the Council to form the Joint Employment Report; d) - Recommendations: The Council may decide, by qualified majority, to issue country-specific Recommendations upon a proposal by the Commission; d) An EU annual progress report, where the Commission reviews progress made at both national and Community level, based on regular monitoring of the actions listed in the Community Lisbon Programme and on an evaluation of the implementation of the MS's national programmes. On the basis of this annual assessment, the Commission may, if necessary, identify further actions to revise the Community Lisbon Programme. (Commission website http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm)

The Commission's new coordination competences in the fields of education, healthcare and social protection, acquired through the Treaty revisions at Maastricht, were not strengthened in the Amsterdam treaty, but the Göteborg European Council in June 2001 did make the Commission's role more operational by extending the Open Method of Coordination to these fields, and even beyond. According to Chalmers & Lodge (2003:4) there were OMCs for education, vocational education and training, social exclusion, and immigration policy. Since then, other social OMCs

have been set up, such as on pensions and health care, as well as some in non-social fields.

Thus it has been shown that by revising the Treaty at Amsterdam, the EU as a whole definitively moved beyond the *declarative* phase of merely enunciating principles in social matters, to what could be called a *facilitative* phase for social policies. The Commission is charged with opening up new ways through which MS may reach agreement to act in a concerted way around policies or even to seek convergence over social trends. This has allowed the Commission to move beyond exhorting MS to action towards exerting a new kind of specific pressure on them in new fields.

1.4. Since Nice 2000-

Lastly in this section highlighting innovative methods and procedures, the Charter of Fundamental Rights and the draft Constitution will be considered. For even as the ink of the Amsterdam treaty was drying, the EU was engaged in yet another approach to establish social and civil and rights on a firmer footing. An Expert Group on Fundamental Rights was set up to decide how the Community could bring together its own established principles and rights with those enshrined in the member-states' own Constitutions and legislation (Expert Group 1999). This process culminated in the Charter of Fundamental Rights, adopted by the member-states at the Nice summit in December 2000. It was later incorporated unchanged into the 2004 draft Treaty establishing a Constitution for Europe. The Charter remains a blueprint for the relationship between EU states and their citizens. Twenty-five years after the 1989 Community Charter of Fundamental Rights of Workers, the EU has again turned to the method of forging agreement between member-states over grand principles of human rights, principles that require strong social policies for their effective implementation.

2. The significance of procedural innovation

Some of the widening and enrichment of the EU's social dimension can be put down to the Commission's entrepreneurship in policymaking procedures. As shown in the preceding paragraphs, the *méthode communautaire* leading to regulation has been complemented by a variety of new methods, forums, routes, and procedures. These ranging from the typical international instrument of the Charter (also used by the UN and the Council of Europe), right down to bargains struck by the European representatives of the organised social forces of business and labour, such as the social partners' procedure. Some of these routes lie outside of the EU's formal political institutions (such as the aforementioned), and others involve 'organised mutual

learning', which is what the OMCs do (Zeitlin 2005: 215). Finally, there is the route of judicialisation, which transforms of social policies into constitutional principles.

In Figure 1, the Community's initiatives regarding the forums, routes, and procedures for decision-making in social fields are presented as taxonomy, in such a way as to highlight the type of pressure exerted on the actors involved. Type A. refers to supranational law: binding legal routes; B. to exhortations by the Commission and surveillance by other member states; C. to already agreed actions that have been delegated for Community institutions to take; D. to institutionalised forums in which non-state actors can take decisions; E. to small-scale methodologies that are open for member-states to use to advance policymaking and implement adopted policies. The taxonomy is designed to show not only the diversity of routes for social policymaking, but also to differentiate between the levels of pressure put on member-states: it could be argued that these routes are either strong, medium, weak or merely facilitative (such as E.), but this would involve a discussion of the history of how each has evolved, which is beyond the scope of this paper. And while these are, procedurally-speaking, a series of 'flat', paper-based routes and forums that may, or may not, lead to decisions being taken, from a historical perspective, on being implemented and practiced, they arguably acquire the dynamism of a mode of governance.

Figure 1. EU social policy governance: legal instruments and routes for decision-making in social fields, by period.

I. The Community's 'legal instruments'

A. Binding Laws

-Directives

+ monitoring of compliance regarding their transposition and implementation (Commission Monitoring Reports)

-Regulations

B. Exhortation to comply

-Recommendations (quasi-legal)

C. Agreed Actions of Community Institutions

-Decisions

-Communications

D. Forum of non-state actors

-Economic & Social Committee Opinions

(Obligatory consultation of advisory body)

2. 1985-

B. Exhortation + low level surveillance

-Community Charter of Fundamental Rights of Workers

+ Reports on Implementation of the Charter

C. Agreed Actions of Community Institutions

- Protocol and Agreement on Social Policy

(Member-state opt out + Extension of majority voting: a majority of MS allowed to agree new directives in the social field both unanimously and by QMV)

D. Forum of non-state actors

-Social Partner Agreements

(Voluntary engagement leading to binding decisions as adopted in form of Directive by Council, e.g. Parental leave and leave for family reasons; Part-time work; Fixed-term work; Temporary workers; Teleworking;

3. 1997-

A. Non regulatory 'Binding' route

- Open Method of Coordination in employment**

(Treaty sets out route to be followed by MS re employment, but no legal sanctions)

-National Action Plans (?)

(MS obliged to submit (yearly) to implement Employment Guidelines)

B1. Exhortation + possible judicialisation

-Charter of Fundamental Rights of the EU

(incorporated into Constitution)

B2. Exhortation + high level of surveillance of compliance

-Guidelines for MS action drafted by Commission

-Council Joint Reports

C1. Agreed Actions of Community Institutions

- Broad Community Strategies adopted by European Councils

C2. Autonomous route of member-states (inter-governmental)

-OMC Education (Bologna Process)

Loose OMC 'owned' by MS: no benchmarks, Commission in only a member of process

D. Forum of non-state actors

- Social dialogue Framework Agreements: Sectoral + Cross-industry; Bipartite; Tripartite

Modification of previous: now implemented without Council approval

- Consultation of Lobbies e.g. European Anti-Poverty Network EAPN

- Expert Groups e.g. Health Services and Medical Care (advisory)

E. Procedural Toolkits (inter-governmental)

-Development of agreed Indicators & Benchmarks

Source: Monica Threlfall. On the Bologna Process, Anne Corbett's advice is acknowledged. Notes: The OMC employment procedure is in the Treaty so is treated here as quasi compulsory, but note that the Commission describes the OMC Inclusion as 'voluntary' on its website.

This classification exercise shows that by dividing the time line into periods, a pattern of recurrence of the different routes emerges, in which they reappear in amended, or intensified form. It reveals very clearly the multiplicity of the routes and forums created to advance decision-making in the social, working conditions and employment policy fields. This, in turn, leads to the question of whether this multiplicity of routes, which is effectively tantamount to procedural density for social policymaking as a whole, is perhaps higher than in other EU fields. For now, explanations for the procedural density in the social dimension that can be offered by way of hypotheses include: i) Social policy is a contested policy field characterised by member-state resistance, which leads the Commission to open up other routes for

lesser-level decisions, and to create momentum and precedents, or to build a case for the policy area; ii) Much of social policy cannot be subject to regulation as it is dependant on complex administrative systems that cannot easily be changed e.g. health care delivery, social security insurance, education; iii) Areas of employment and social policy are not under the direct control of governments, such as unemployment and poverty trends, and therefore cannot be directly governed by a supra-national decision; iv) Nonetheless, finding ways of influencing the direction of such social trends is of great interest to national governments, and EU decisions or coordinated member-state decisions can bolster national governments' domestic capabilities.

3. The EU's social acquis – a thematic overview

3.1. The legal acquis

The Consolidated Treaty now shows that the EU has a multifaceted concern for the welfare of citizens, and secondary legislation in the form of directives is extensive (see Appendix). Nonetheless, when citizens seek information about which of their specific cash benefits are endorsed by the EU, they can often be disappointed. The set of broadly social rights is skewed, for the largest number of directives adopted by the Council of Ministers, and, since co-decision, by the Parliament and Council together, is aimed at ensuring the health and safety of workers through the maintenance of a safe working environment. In the wake of the 1989 broad 'framework' directive setting out the parameters of industrial health & safety, a series of specific aspects of workplace safety have been bindingly regulated and the list of directives continues to grow. Therefore, a broadly harmonised, healthier working environment could be said to be the EU's major contribution towards the wellbeing of the workforce.

Another numerous set of directives were designed to help workers and their dependants move to, and work in, another country under the exact same conditions as for that country's nationals, whether those conditions were better or worse than in the mover's home state, under the 'equal treatment' principle (see <http://www.europa.eu.int/eur-lex/> legislation in force / free movement for the extensive list of measures). They ensure that the EU migrant workers receive the same treatment as others for social security arrangements, and have traditionally covered contributory benefits and those provided by national social insurance schemes.

The equal treatment principle clearly also applied to gender, ensuring that women enjoy the same entitlements, social security and equal pay for work of equal value to their male counterparts. In particular, the EU has managed to make dismissal on grounds of pregnancy and maternity extremely difficult. In addition, when women

are sacked or discriminated, the Burden of Proof directive seeks to make it easier for the employee to prove their case by shifting the onus of disclosure of evidence onto the employers, who may be obliged to show that they have not discriminated. Mothers have also benefited from the introduction of a minimum 14-week period of paid maternity leave with a minimum level of pay. Parents of both sexes have been given rights to an cumulative minimum of three months of leave from work to look after their pre-school children and for family emergencies. The equal treatment principle has also been applied successfully to benefit part-time workers by giving them entitlements on a pro-rata basis.

Since 2000, the principle of equal treatment is also widely applied to combat discrimination on the grounds of racial or ethnic origin [2000/43/EC]), and discrimination in employment on the grounds of a person's religion or belief, disability, age or sexual orientation [2000/78/EC]. Overall, the 'negative' right to freedom from discrimination is extensive, without encompassing a right to substantive equality in society.

Working conditions other than health and safety of the workplace, remain patchily regulated. Employees must have a written statement of their terms of employment; their working hours are subject to a limit of an average of no more than 48 hours a week and they are entitled to a minimum of one rest day a week and to paid holidays. But if their employer wanted to sack them, they could do so within the terms of a member-state's own law. The EU has only introduced mandatory consultation of workers' representatives in cases of collective redundancy, and protection of employees' acquired rights in cases of a transfer of the company to another owner and of employer insolvency, but nothing more. Even in the area of the social dialogue between management and employees, large companies with branches in at least two member-states must inform and consult with employee representatives on a series of issues through a joint committee known as European Works Council. By 2001, the requirement to have in place a consultation procedure had been extended to smaller companies without a 'European' presence [2001/86/EC, and 2003/72/EC]. Since 2000, nearly all the new directives have served to amend, improve, or extend the application of previous ones. Therefore, rights have been strengthened without any curtailment (not possible under EU law), but few new areas have come under supra-national jurisdiction. This has led many to believe that the regulatory pace of the EU has come to a standstill, and a look at a simple list of directives (Appendix 1) could support this view to some extent.

However, an important factor uncertainty has hung over and still clouds any assessment of the strength of supra-national social policy in the EU. This uncertainty is caused firstly by the adoption of a Charter of Fundamental Rights at the European Council meeting at Nice in 2000, which was left in a legal limbo; and secondly, by the incorporation of the Charter into the new draft Constitution agreed by the member-states in 2004, which also failed to come into force, in view of its rejection by the

French and Dutch electorates in 2005. It can be argued that the Charter does open up significant new avenues for regulatory measures to be adopted (Threlfall 2002), in particular in the areas of job protection from dismissal, trade union rights, and gender discrimination.

3.2. The 'soft' acquis: welfare-oriented policies and practice

Apart from the 'hard' legal acquis communautaire listed above, there is also an acquis, a series of decisions taken under the supra-national procedures of the EU which are not binding but still enjoy an official status, and have validity in the EU context. For instance, Recommendations and Decisions are called 'legal instruments' and are contained in the EU's official list of 'legislation' on its website. If they refer to policies, they are exhortative rather than binding, but they will often refer to other types of steps and initiatives. They are important to bear in mind because they may indicate an intention on the part of an EU institution or member-state, or an emerging right that is not (yet) justiciable and cannot (yet) be claimed in court of law.

It can be seen from the previous section that the welfare protection aspects of social policy are hardly regulated at EU level (see also Kleinman 2002a). In the absence of EU-protected welfare entitlements, EU citizens still have to rely mainly on their country of residence's statutory provision. Nonetheless, as consumers and increasingly as healthcare clients/patients, the EU has given citizens and free movers a new space in which to access their rights, which are of substantial personal benefit, such as safer goods and access to medical attention. Furthermore, poverty and social exclusion is a field that, despite lacking a legal base for regulation, has been of concern to European institutions ever since the 1969 Paris summit of heads of state. Commission's Action Programmes, known as Poverty I, Poverty II & Poverty III, supported innovative schemes to combat social exclusion, (see Room 1993, Commission 1989 for the early history of these initiatives).

A good example of a soft policy measure that has been effective are two 1992 Council Recommendations requiring member-states to ensure a guaranteed minimum income for all legal residents, at a level 'in keeping with human dignity' (Council of Ministers, 1992a). While this was not to be a universal entitlement to a social income, but a state-funded programme for 'insertion' into the labour market, the Recommendations. This Recommendation is a good example of the effectiveness of a non-binding 'legal instrument', for minimum income schemes have since been introduced in Spain, Italy, Ireland, and Portugal, though not in all of the EU 25.

In 1999 the Commission, invited by the European Parliament, published a concerted strategy for modernising social protection, asking the Council to approve four major objectives for the member-states' systems that would also bring them closer together through political debate and the exchange of experiences (European Commission,

1999). The strategy was approved by the Council (Council of Ministers, 1999), and a high-level Committee of Experts named the European Social Protection Committee was set up in 2000 (Council of Ministers, 2000). However, these were not initiatives aimed at introducing new rights or entitlements nor at harmonising the types of benefit available across Europe, but at modernising member-state systems with an emphasis on accessing employment and reducing any disincentives to work, accompanied by state aids and safety nets. Since then, the discussion has developed through the OMCs, homing in on social exclusion, the sustainability of pensions, and care of the elderly.

The Lisbon European Council of 2000 decided to take steps towards the eradication of poverty by setting targets. At Nice they agreed to use the Open Method of Coordination (OMC), similar to that used for employment, with the MS submitting two-year national action plans to promote social inclusion by 2001. The procedure took off and has developed into an active policy forum. It progressed from the initial task of finding or constructing robust statistical indicators that would be valid across member-states toward setting goal for the eradication of various types of exclusion. A clear picture of the impact on trends has not yet emerged, despite the eye-catching report of the Greek government for 2005 indicating that poverty, far from diminishing, was in fact on the increase (Hellenic Republic 2005).

A rather different set of developments can be seen in the field of health care, and in the main, these are not the result of the new intergovernmental arrangements or the Open Method of Coordination on Social inclusion. For the right of access of patients to health care was unexpectedly extended in 1997 and 1998 in landmark decisions which attracted little attention at the time but have rather suddenly had an impact on the UK and in effect heralded the arrival of 'patient mobility' (Wavell, 1998). A Council Regulation issued in 1997 stated that citizens have the possibility to travel to another member-state with the sole intention of receiving treatment, the cost of which will be reimbursed by their own health insurance institution, though only with prior authorisation. Such authorisation cannot be refused, even if the type of treatment needed is provided by the country in which the person is insured, if it is not available within a time limit compatible with their state of health (European Commission DG V, 1999: 2).

The following year, in the cases of Kohlli and of Decker, the ECJ ruled that citizens purchasing treatments in another member-state (in this case spectacles) did *not* have to seek *prior* authorisation from their insurance fund in order to get their medical expenses reimbursed on returning home. This prompted the Commission to talk of a 'Europe of patients' (E.C. DG V., 1999:1) and soon announced the replacement of the E111 card with a European Health Card, which was 'proof that you have the right to healthcare throughout the EU and will be reimbursed by your own member state' (European Commission 2002). Experts believed it necessary 'to undertake a revision of the whole legal framework regulating access to health care across the EU'

(Mossialos et al, 2001:4), and this has proceeded along with the launch of an OMC on Health and Long Term Care. The European Health Insurance Card entitles traveling and free-mover EU citizens to free or reduced cost healthcare operates in 28 countries (UK Government 2006).

To conclude this section of the 'soft' acquis, what is most striking is the proliferation of areas in which the Commission has a role to play. This does not mean that there has been any further harmonisation or law-making, but that a wide range of social protection issues are debated in a variety of European forums, both around the OMC procedure and in committees involving non-state actors, such as experts and service providers in the case of the Pensions Forum (European Commission 2006). In addition, to facilitate the discussion on the modernisation of social protection, the Commission has progressed in developing the tool kits for cross-country comparisons, conceptual understanding, technical measurement, and statistical indicators, and evaluation methodologies. Thus, it is possible to state, with reservations, that generally speaking, the 'soft' social acquis has expanded in this century at the expense of the legal acquis, as many have noted. But this is only strictly accurate if social policy is interpreted in a limited way, excluding legislation strengthening free movement rights, occupational health and safety, consumer health, and public health protection. These areas overlap with free market, consumer, and competition policy, as well as with environmental law, and are therefore easily overlooked when discussing social policy. But as they contribute towards a more harmonised and improved European living environment, an exhaustive study would have to research this broader aspect of social integration as well.

4. CONCLUSION

The developments explored historically and thematically in this text give an indication of a long-term shift in the European Union's social concerns from a vision of the European project as involving workers and the free movement of employable persons, mostly men, in a small area of six relatively homogenous states, to a much broader vision encompassing broad social categories of people in a vast area of great social and economic disparities. The contrast between the short list of specific articles in the Treaty of Rome to long list of social provisions in the draft Constitution (incorporating the Charter of Fundamental Rights) is palpable.

The conclusion is that, undeniably, its evolution has been more complex and multi-layered, even at the formal levels of treaties and laws reviewed here. While the general pace of development is clearly incremental, the accretion has taken place within quite strict boundaries, moving along the vectors of free movement and equal treatment -- deeply embedded Community principles -- and of workplace health and safety, the most consensual field of regulation.

The fact remains, as analysts have pointed out (e.g. Kleinman, 2002: 221), that major elements of social policy at national level have only a limited involvement with the European policymaking structures, and direct provision of services by the EU remains non-existent. Where there has been European involvement, the social transfers that the member-states are supposed to provide after EU-level agreement are mostly not benchmarked, suggesting that differential implementation continues. There are certain exceptions such as maternity pay (which must be no less than statutory sickness benefit) and social assistance (which must be an unspecified minimum 'in keeping with human dignity'), but the latter is not even enforceable. Therefore, one is bound to conclude that in no sense has the EU grown into a supra-national welfare state.

Yet, paradoxically, the focus of European Union policy is now definitively more oriented towards the general welfare of its citizens than it was even a decade ago. The EU has developed a more sophisticated multi-faceted role in social policy, that goes beyond the supra-national regulation of *working* conditions towards taking responsibility for setting up frameworks for adequate *living* conditions, and guiding member-states through inter-governmental coordination procedures. It is fair to say that the social protection and freedom from discrimination required to ensure a better quality of life for EU citizens and residents is now a fundamental concern of the Union, even when it does not always deliver clear improvements.

Member-state governments have been able to combine the autonomy they still enjoy over social policy with the advantages brought by burden-sharing, policy-learning and gradual convergence of policy outcomes, particularly in cases where the harmonisation of systems or approximation of laws are problematic. The EU is distinguished by its innovative methods, opening up new forums and routes to facilitate inter-state consensus-seeking and enhanced cooperation, with the added pressure of multilateral surveillance, to complement the established institutional bargaining procedures, or more precisely, to substitute them where they failed or could not take place. Thereby, the EU itself has proven to be a dynamic forum for advancing a *sui generis* form of social integration. In this regard, it is unique among regional integration bodies.

References and further reading

- Charter of Fundamental Rights, Official Journal of the European Communities C 364 18.12.2000. See http://europa.eu.int/comm/justice_home/unit/charte/index_en.html
- Chalmers, D. & Lodge, M. (2003) *The Open Method of Coordination and the European Welfare State*, ESRC Centre for Analysis of Risk and Regulation Paper No.11.
- Commission of the EC, *Medium-term Community action programme to foster the economic and social integration of the least privileged groups*, Bulletin of the EC, Supplement 4/89, 1989, 33p.
- Council Conclusions (24 May 2005) on new indicators in education and training (2005/C 141/04) 10.6.2005 C 141/7 *Official Journal of the European Union* E. http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/c_141
- Council of Ministers (1992a) *Council Recommendation of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems* (92/441/EEC).
- Council of Ministers (1992b) *Council Recommendation on the convergence of social protection objectives and policies of 27 July 1992* (92/442/EEC).
- Council of Ministers (2000a) *Conclusions of 17 December 1999 on the strengthening of cooperation for modernising and improving social protection* [O.J. C8, 12.01.2000].
- Council of Ministers (2000b) *Council Decision of 29 June 2000 setting up a Social Protection Committee* [COM (2000) 134 final, Official Journal L172, 12.07.2000]
- Council of Ministers (2000c) *Regulation on the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children*, (EC) No 1347/2000 of 29 May 2000, Official Journal L 160, 30/06/2000 pp 19–29.
- De Búrca, G. (2005) *EU Law and the Welfare State: in search of solidarity*, Oxford: OUP.
- European Commission (2006) *Social Protection in the EU* website, 'Pensions' http://ec.europa.eu/employment_social/social_protection/pensions_en.htm
- European Commission (2005) *Communication from the Commission on the Social Agenda*, COM (2005) 33 final Brussels, 9.2.2005. http://ec.europa.eu/employment_social/social_policy_agenda/social_pol_ag_en.html
- European Commission (2004), DG Education and Culture, *Implementation of "Education And Training 2010" Work Programme*, Working Group B "Key Competences", Analysis of the Mapping of Key Competency Frameworks, <http://europa.eu.int/comm/education/policies/2010/doc/basicnational2004.pdf>
- European Commission (2002) Press release 'Barcelona: 'Commission sets 2005 target to deliver EU worker mobility', DN: IP/02/235, 13.02.2002, <http://europa.eu.int/>
- European Commission (1999) *Communication of 14 July 1999: a concerted strategy for modernising social protection* COM (99) 347 final (not in O.J.).

- European Commission (1996) *4th Report on the Application of the Community Charter on the Fundamental Rights of Workers*, Luxembourg, OOPEC.
- European Commission (undated) *Social Policy and Social Protection, a concerted strategy for modernising social protection* (last visited 13.01.01) <http://europa.eu.int/scadplus/leg/en/cha/c10618.htm>
- European Commission DGV (1999) *Free movement and Social Security, Citizens' rights when moving within the EU*, Bulletin No.2.
- European Social Forum (1999) *Summary Report of the European Social Policy Forum 98*, Brussels, 24-6 June, ed. By Mark Carley, Luxembourg, OOPEC, 1999.
- Expert Group on Fundamental Rights (1999) *Affirming fundamental rights in the EU*, report, Luxembourg: OOPEC.
- Geyer, R. (2000) *Exploring European Social Policy*, Cambridge: Polity Press.
- Guerrina, R. (2005) *Mothering the Union: gender politics in the EU*, Manchester: Manchester University Press.
- Hantrais, L. (2000) *Social Policy in the European Union*, 2nd ed., Basingstoke: Macmillan Press.
- Hellenic Republic (2005) Ministry of Employment and Social Protection, *National Action Plan for Social Inclusion*, http://europa.eu.int/comm/employment_social/social_inclusion/docs/2005/el_en.pdf
- Ireland, Government of (2006) *Oasis: Information on Public Services* http://oasis.gov.ie/moving_country/moving_abroad/e111.html
- Kleinman (2002a) *A European welfare state?*, Basingstoke: Palgrave.
- Mossialos, E. et al (2001) *The influence of EU law on the social character of health care systems in the European Union*, Executive Summary, Report submitted to the Belgian Presidency of the EU (final version), Brussels 19 November, 7pp.
- Nice Treaty (2000) Consolidated text of the future Treaty of the EU including Nice amendments, http://euobserver.com/onm/media_upload/TreatieothEconsolidated.pdf
- Room, G. (1993) *Anti-poverty action research in Europe*, Bristol: The Policy Press.
- Threlfall, M. (2002) 'Social Integration in the European Union: Towards a Single Social Area?' in M.Farrell, S.Fella, M.Newman (eds.) *European Unity in Diversity - Challenges for the Twenty-first Century*, Sage, pp 135-157.
- United Kingdom (2005) *National Action Plan on Social Inclusion 2003-2005, Implementation Report*, http://europa.eu.int/comm/employment_social/social_inclusion/docs/2005/uk_en.pdf
- UK Department of Health (2006) 'The EHIC: free or reduced cost treatment', http://www.dh.gov.uk/PolicyAndGuidance/HealthAdviceForTravellers/GettingTreatmentAroundTheWorld/EEAAndSwitzerland/EEAAndSwitzerlandArticle/fs/en?CONTENT_ID=4114793&chk=KCVYDZ
- Wavell, S. (1998) 'Your very good health - in a foreign body', *The Sunday Times*, 31 May, p.11.

Zeitlin, J. (2005) 'Social Europe and experimentalist governance: towards a new constitutional compromise?' in De Búrca, G. (2005) *EU Law and the Welfare State: in search of solidarity*, Oxford: OUP.

Appendix: The acquis communautaire: main Directives in the social field*

(Chronological order)

- Equal Pay for women and men [75/117/EEC]
- Collective Redundancies (mandatory consultation of employee representatives) [75/129/EEC],
- Equal Treatment of women and men in access to employment, vocational training & promotion [76/207/EEC]
- Transfer of Undertakings (protection of acquired rights of employees) [77/187/EEC]
- Statutory Social Security schemes (equal treatment of women and men) [79/7/EEC]
- Insolvency of Employers (protection of employees) [80/987/EEC].
- Protection from Hazards (health & safety of employees) [80/1107/EEC].
- Mutual recognition of formal qualifications in pharmacy [85/433/EEC]
- Mutual recognition of formal qualifications in architecture [85/384/EEC]
- Acquired rights of doctors, nurses, dental practitioners and veterinary surgeons [81/1057/EEC] supplementing previous directives
- Mutual recognition of formal qualifications in veterinary medicine [78/1026/EEC]
- Education of the children of migrant workers [77/486/EEC]
- Occupational Social Security schemes (equal treatment of men and women) [86/378/EEC].
- Equal Treatment for the Self-Employed (86/613/EEC).
- Health & Safety at work (consolidated Framework Directive 89/391/EEC] + c.27 derived Directives on specific aspects of H & S.
- Mutual Recognition of diplomas, certificates and formal qualifications of doctors, nurses, dental practitioners, veterinary surgeons and midwives [89/594/EEC] (amending previous 75/362/EEC onwards)
- Residence rights for persons of independent means in other MS [90/364/EEC].
- Residence rights for pensioners, providing substantial new mobility rights [90/365/EEC].
- Residence rights for students engaged in vocational training [90/366/EEC replaced by 93/96/EEC].
- Health & Safety Protection for Temporary Workers [91/383/EEC].
- Proof of the Employment Relationship (contract of employment) [91/533/EEC].

SINCE 1992 MAASTRICHT TREATY ON EUROPEAN UNION:

- Health & Safety Protection of Pregnant Workers and workers who have recently given birth [92/85/EEC].
- Mutual recognition of professional education and training (General system) [92/51/EEC]
- Working Time (organisation of rest periods and holidays) [93/104/EEC]
- Recognition of diplomas, certificates and other formal qualifications to facilitate the free movement of doctors [93/16/EEC]

- Young People at Work (protection against abuses) [94/33/EC].
- Posting of Workers (local conditions of work should apply) [96/71/EC].
- European Works Councils for the purpose of informing and consulting employees [94/45/EC]. *Adopted under the Social Agreement [excluding UK].*
- Parental Leave [96/34/EC] *Adopted under the Social Agreement (excluding UK) and via the Social Partners procedure.*
- Part-Time Workers [1997/81/EC] *Adopted via the Social Partners procedure.*

SINCE 1997 TREATY OF AMSTERDAM

- Reversal of the Burden of Proof (employers to prove non-discrimination) [97/80/EC].
- Collective redundancies (approximation of the laws) [98/59/EC].
- Fixed-term Work – implementing the Framework Agreement of the Social partners [99/70/EC].
- Recognition of qualifications in respect of the professional activities [1999/42/EC] (liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications)
- Working time of seafarers [1999/63/EC]. *Social Partners' Agreement between European Community Shipowners' Association (ECSA) and Federation of Transport Workers' Unions (FST).*
- Working time to cover sectors and activities excluded from 1993 directive [2000/34/EC]
- Equal treatment between persons irrespective of racial or ethnic origin [2000/43/EC].
- Equal treatment in employment and occupation; combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation [2000/78/EC].
- Working Time of Mobile Workers in Civil Aviation [2000/79/EC]
- Information and involvement of employees (supplementing the Statute for a European company) [2001/86/EC].
- Minimum level of training of seafarers [2001/25/EC]
- Employees' rights in the event of transfers of undertakings ('TUPE'), [2001/23/EC] consolidates Directives 77/187/EC and 98/50/EC.
- Working time of persons performing mobile road transport activities [2002/15/EC]
- Equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [2002/73/EC] (strengthens Directive 76/207/EEC & includes sexual harassment at work)
- Informing and consulting employees [2002/14/EC] European framework
- Insolvency of employers (employee protection) [2002/74/EC] amending Directive 80/987/EEC
- Involvement of employees in Cooperative Society [2003/72/EC]
- Working time (certain aspects of the organisation of) [2003/88/EC]
- Occupational retirement provision (supervision of the institutions for) [2003/41/EC]
- Equal treatment between men and women in the access to and supply of goods and services [2004/113/EC]

- Mutual recognition of seafarers' certificates [2005/45/EC] – amendment.
- Working conditions of mobile workers engaged in interoperable cross-border services in the railway [2005/47/EC]. *Social partners Agreement* between ETWF and Community of European Railways (CER)
- Recognition of professional qualifications [2005/36/EC] – updates the previous Directives, strengthening the rules on free provision of services.

Source: Compiled by Monica Threlfall from Commission sources (Eur-Lex, Directory of Community Legislation, <http://eur-lex.europa.eu/en/repert/index.htm>).

**Note: 'Social policy' Directives only. Official titles have been abbreviated for easier recognition. Owing to their length, the list excludes many of the directives strengthening free movement of workers, those on consumer protection, public health protection and the full list of the health & safety at work directives for each sector.*

ⁱ Kohll case C-120/95 and Decker case C-158/96, of 28 May 1998 (not to be confused with the well-known Dekker case).