



An Chomhairle Náisiúnta Eacnamaíoch agus Shóisialta
National Economic & Social Council

BACKGROUND PAPER

4. Perspectives on the Evolution of European Social Policy

by Claire Finn and Barry Vaughan



An Chomhairle Náisiúnta Eacnamaíoch agus Shóisialta
National Economic & Social Council

BACKGROUND PAPER

4. Perspectives on the Evolution of European Social Policy

by Claire Finn and Barry Vaughan

Table of Contents

Background Paper 4

Perspectives on the Evolution of European Social Policy

4.1	Introduction	1
4.2	Overview of most important developments in EU social policy	2
4.3	Sovereignty and Social Policy	16
4.4	Globalisation and Social Policy in the EU	22
4.5	Striking a Balance?	26
4.6	Towards a Synthesis – Developing Welfare within the EU	36

List of Figures

4.1	EU15 Public Social Expenditure as a percentage of GDP 1980-2005	23
4.2	The Effect of EU Integration on Market Economies	30

Abbreviations

CFR

Charter for
Fundamental Rights

EC

European Community

ECJ

European Court of
Justice

EEC

European Economic
Community

EES

European
Employment Strategy

EME

European Market
Economy

ESF

European Social Fund

ETUC

European Trade
Union Confederation

EU

European Union

GDP

Gross National
Product

JIM

Joint Memoranda on
Social Inclusion

LME

Liberal Market
Economy

NAP

National Anti-Poverty
Strategy

NERA

National Employment
Rights Authority

NESC

National Economic
and Social Council

NGO

Non Governmental
Organisation

OECD

Organisation
for Economic
Cooperation and
Development

OMC

Open Method of
Coordination

QMV

Qualified Majority
Voting

SEA

Single European Act

SEGI

Services of General
Economic Interest

SGI

Services of General
Interest

SME

Small and Medium
Enterprises

SMEs

Social Market
Economies

UNICE

Union of Industrial
and Employer's
Confederation of
Europe

4

BACKGROUND PAPER

Perspectives on the Evolution of European Social Policy

4.1 Introduction

The role and scope of EU social policy is open to a variety of interpretations. This chapter concerns itself with three important positions in relation to this subject and reviews the evidence that would support one or other of them. It draws extensively on material that has already been prepared on the subject of the EU and social policy for the Council.

The first is the sovereignty position which holds that the influence of the EU is largely minimalist, as member-states dictate what happens in this policy field. EU Social policy of an 'activist' nature is rare and is usually grounded in the various Treaties of the European Union. Member-states are keen to retain control over their national welfare regimes and this leaves little opportunity for the EU to direct matters.

The second position adopts an antithetical position to the first, as it ascribes a powerful role to globalisation rather than nation-states. According to this view, aspirations for a European social model that combine relatively generous and inclusive systems of social protection with a dynamic economic performance are not compatible. Competitiveness in a global market-place requires that states pare back their social spending and embrace a relatively minimal role in the provision of public goods.

The third position holds that EU social policy is imbalanced in two fundamental respects. Unlike the first position, this 'imbalance' thesis contends that deepening European integration has meant that the EU has exerted an ever-greater influence upon national welfare systems. It shares some affinities with the second position as it assumes that the increased influence of the EU has led to a greater prioritisation of economic concerns over social ones. So this argument holds that EU social policy is imbalanced in two respects. First, that the influence of member-states upon social policy has been unduly diminished; second, that the ascendant influence of the EU has promoted an economic logic that has proven deleterious to national welfare systems.

In assessing the validity of these three positions, this chapter proceeds as follows. First, it presents a schematic overview of the development of EU social policy. Then the validity of the three positions sketched above will be assessed against this overview. The apparent prioritisation of national sovereignty is critically assessed and is somewhat discounted in section 4.3. Whilst this might seem to lead to affirming the recent prominence of globalisation and the fragility of social concerns in the face of this phenomenon, the evidence, as presented in section 4.4, is more complex. Data points not to a 'race to the bottom' in the form of outright retrenchment of social

expenditure but rather to a recalibration of aspirations and objectives. Many would argue that this kind of reform is attuned to the promotion of economic liberalisation and competitiveness but section 4.5 considers the matter is more balanced than this. Section 4.6 outlines a synthesis of the three positions by arguing that each contains some truth but it is only by linking them up that their validity is enhanced. This synthetic position affirms the relevance of national social policy which is being reformed in the light of global pressures and societal transformations within labour markets and families. In light of these changes a new model of developmental welfare is necessary. The EU provides a space in which these reforms that converge on this model of welfare, accomplished within a variety of member-states, can be compared and assessed.

4.2 Overview of most important developments in EU social policy

This section provides a thumbnail chronological sketch of the most significant developments in EU social policy. It does so first by providing a list of some of the key dates and events that have proven important in the development of EU social policy. An accompanying text is provided after the developments listed.

1950	The <i>Treaty of Paris</i> established the European Coal and Steel Community with the goal of promoting “improved working conditions and an improved standard of living for the workers.”
1957	The <i>Treaty of Rome</i> included a Chapter on Social Provisions, creating the European Social Fund.
1972	The <i>Paris Summit</i> emphasised the importance of “vigorous action in the social field as to the achievement of the economic and monetary union” and provided for a social action programme for the enlarged EEC.
1974	Adoption of the <i>Social Action Programme</i> , highlighting equality between men and women.
1975	Council Directive 75/117/EC on the approximation of the laws of Member States relating to the application of the principle of equal pay for men and women (“The Equal Pay Directive”).
1976	Council Directive 76/207/EEC addressed the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (The Equal Treatment Directive)
1986	Single European Act allowed for qualified majority voting in area of occupational health and safety.
1989	The <i>Charter of Fundamental Social Rights of Workers</i> was adopted at the Strasbourg European Council.
1992	The <i>Maastricht Treaty</i> included a Social Protocol permitting the UK to ‘opt out’ on a wide-ranging social agenda.

1993	Council Directive 93/104/EC concerning certain aspects of the organization of working time (Working Time Directive)
1997	The <i>Amsterdam Treaty</i> inserted a Social Protocol into the Treaty text following the New Labour election victory in the UK.
1998	ECJ issues rulings in <i>Kohll and Decker</i> cases which enables cross-border mobility of medical patients
2000	The <i>Lisbon Agenda</i> was adopted by the European Council, setting the strategic goal of making the EU “the most competitive and dynamic knowledge-based economy in the world, capable of sustained economic growth with more and better jobs and greater social cohesion.”
2000	The <i>Charter of Fundamental Rights</i> was adopted as a political declaration at the Nice European Council.
2002	The <i>Treaty of Nice</i> provided for the establishment of the Social Protection Committee “to promote co-operation between Member States ... on social protection policies.”
2003	The European Convention adopted a draft <i>Constitutional Treaty</i> , incorporating the Charter of Fundamental Rights.
2004	Proposal for Directive on Services in the Internal Market first made which endorses controversial ‘country of origin’ principle
2005	ECJ issues rulings in <i>Viking</i> and <i>Laval</i> cases which examine the balance to be struck between the EU’s free movement laws and trade union rights of collective action and bargaining.
2007	The text of the <i>Lisbon Treaty</i> was agreed, with the Charter of Fundamental Rights having the same legal status as other EU treaties. The EU and its member-states are required to respect the Charter although no new powers are invested in the EU
2009	Ratification of the Lisbon Treaty
2010	Publication of Successor to Lisbon Strategy, Europe 2020

The list provided above does not pretend to be exhaustive. Numerous directives that have proven to be significant have been omitted with only three of the most important listed, concerning equal pay (1975), equal treatment (1976), and working time (1993). Furthermore, as section 4.4 argues, there is a point of view that European Council directives have a limited significance in the development of national social policy; rather the decisions of the European Court of Justice are proving to be increasingly influential in the context of an enlarged European Union where there is more emphasis on freedom of movement of people and services. Some of these directives have been listed above but many more have proven to be influential.

4.2.1 Toward a Social Policy for the European Union

The Treaty of Rome (1957) provided the initial legal basis for social policy at EU level. Explicit legislative competence in areas such as free movement of workers (Art.48-51) and the right of establishment (Art. 52-58) established rights in respect of residence, social security and non-discrimination in employment. A Title (III) Social Policy, containing three key articles, provided for a commitment to promoting the improvement of working and living standards. Art.117 provided for closer cooperation on a range of labour issues, including employment, and Art.118 covered health and safety. Article.119 provided the basis for gender equality obligating member states to abide by the principle of equal pay for equal work. In addition, under the European Social Fund an explicit funding role was facilitated in the area of training, both to promote re-employment and occupational mobility (Art. 123-27) (NESC, 1997, p. 95). Many saw this as a fairly limited menu of social policy options as the then EEC was dedicated to the formation of a common market with social policies often playing a compensatory function in striving toward this goal.

EU social policy was largely dormant until the beginning of the 1970s when the various Heads of State asserted that member-states attached 'as much importance to vigorous action in the social field as to the achievement of economic union... (and considered) it essential to ensure the increasing involvement of labour and management in the economic and social decisions of the Community' (Communique issued by the Heads of States, Paris October 1972). Accordingly, the Commission was instructed to draw up a Social Action Programme. By a Resolution adopted on 21 January 1974, the Council of Ministers approved the Social Action Programme involving more than 30 measures over an initial period of three to four years. The three main objectives were: the attainment of full and better employment in the Community, the improvement of living and working conditions, and the increased involvement of management and labour in the economic and social decisions of the Community and of workers in companies.

In the area of full and better employment, no major legislation was passed. In the improvement of living and working conditions, a number of Directives established equality in pay (1975) and subsequently equality in treatment (1976) with respect to employment, training, promotion and dismissal as well as direct and indirect discrimination based on gender, marital status and family. In the area of involving works and managers, despite efforts to promote dialogue between the ETUC (European Trade Union Confederation) and UNICE (Union of Industrial and Employer's Confederation of Europe), policy developments were limited.

The effects in Ireland, particularly in relation to changes in working conditions, are well known. These included the removal of the marriage bar in employment, the disappearance of advertisements specifying the gender of applicant for a job and greater equality in the social welfare code. Maternity leave and protection from dismissal on pregnancy are attributed to EU membership but resulted from domestic policy. It is suggested however that EU developments contributed to a change in attitude (Mangan, 1993, p. 72)

In all areas of the Social Action programme, developments were limited by the internal dynamics of the European Community. Generally, progress was dependent upon the ability of the EC to reach unanimous agreement on social policy matters

and this became more difficult with a more numerous and diverse membership. Social policy underwent something of a revival with the passing of the Single European Act in 1986 as the Commission president, Jacques Delors argued for a social dimension of European Integration (Hix, 2005, p. 255).

The Single European Act of 1986 introduced some new clauses into the EC Treaty which have had implications for social policy. Article 118A authorised the Council acting by a qualified majority to take the minimum requirements with a view to “encouraging improvements, especially in the working environment, as regards the health and safety of workers”. Its significance lay in the fact that “for the first time in European social policy, it allowed member states to adopt Directives based on qualified majority voting in the Council” (Falkner et al. 2005: 43). Furthermore, the SEA resulted in funding initiatives to support cohesion such as the European Social Fund and the European Regional Development Fund, as well as attempts to foster social dialogue and the adoption of the Social Charter and Second Social Action Programme

The European Social Fund and the European Regional Development Fund have played an important role in supporting regional and social cohesion. The ESF aimed to support occupational and geographical mobility. The main objective of the fund was to promote economic development and job creation via supports to vocational training and employment programmes. On the social and employment areas, benefits have been realised in training and employment schemes, adult and community educational programmes, community and local development, childcare investment, social inclusion initiatives as well as infrastructural developments such as the construction of schools, public transport and supports and other social infrastructure projects. Attention is often focused on the quantitative and financial aspects of the larger funds and these were; indeed very substantial. In addition, at local level the Community Initiatives have made a real difference in the lives of disadvantaged people and communities. For example, programmes such as EQUAL, has seen the involvement of some of the most excluded groups and actions in some of the most disadvantaged areas; while the DAPHNE programme supports actions to combat violence against women and children; the LEONARDO programme has supported access to vocational training; and the NOW programme which looks at ways in which women can be more easily brought into, or back into the labour market. Important principles, such as partnership, inclusion, equality and anti-discrimination, underpin these programmes.

While early regulation of health and safety in the workplace resulted in the first Framework Directive on health and safety at work in 1980, it was in the aftermath of Single European Act (SEA) that most progress in this domain was made. Extensive EU regulation in health and safety resulted in the promotion of high standards. A 1989 Directive (Directive 89/391 EEC) introduced measures to encourage improvement in health and safety at work, laying down general objectives and obligations on employers, leaving its application to national level. It also produced “fourteen daughter directives and a series of action programmes” (Rhodes, 2005, p. 287).

In June 1988, at the Hanover Summit, the European Council affirmed the importance of the social aspects of the single market and later that year, at the Rhodes summit, the Council submitted that realisation of the single market should not be regarded as a goal in itself. Shortly afterward, the Economic and Social Committee submitted a framework of basic Community social rights, which it considered should be established

in conjunction with the completion of a single market. The Charter was adopted in December 1989 by eleven of the then twelve member-states — the UK was an exception — and referenced certain social rights relating primarily to the labour market, vocational training, equal opportunities and the working environment

A further impetus was given to the development of EU social policy with the move towards European Monetary Union contained in the Maastricht Treaty. As with the SEA, the Commission, led by President Delors, argued that the degree of possible disruption associated with the move toward EMU had to be compensated by increased social spending, principally through an increase in the Structural Funds. Additionally a *Protocol on Social Policy* appended to the Treaty on European Union of 1991 (the Treaty of Maastricht). Annexed to the Protocol was an *Agreement on Social Policy*. The Protocol was signed by all (then) 12 member states and noted the intention of eleven of their number to use the machinery of the Community to implement an Agreement on Social Policy that specifically excluded the United Kingdom. Specifically, QMV is permitted for measures dealing with (a) improvement in the working environment to protect workers health and safety, (2) working conditions, (3) the information and consultation rights of workers, (4) gender equality, and (5) the integration of workers excluded from the labor market. Unanimity was still required for measures concerning social security, dismissals protection, freedom of association, conditions of employment for third-country nationals resident in the Community, and financial contributions for the promotion of manpower instruments

After Maastricht, the focus of European policy making moved from employment protection to employment promotion. This is evident in the 1993 *White paper on Growth, Competitiveness and Employment*. Negotiation at the 1994 Essen European Council led to the introduction of the European Employment Strategy (EES) and eventually, the inclusion of employment objectives in 1997 Amsterdam Treaty. The Dutch Presidency of the European Union, held in the first half of 1997, was particularly influential in promoting the view that social policy provisions should be seen as ‘productive factors’ which can contribute to economic performance in an era of global competition and changes in households, labour markets and demographic structures.

The Amsterdam Treaty (1997) evolved from this desire to formulate the capacity, both political and institutional, to address a multiple of challenges in a changing international and economic environment. It heralded a number of noteworthy achievements in the social sphere. This included the reversal of the UK opt-out on social agreements, marking a significant achievement for the development, cohesion and strengthening of employment and social policy at EU level as well as the confirmation of existing social rights, as set out in the 1961 European Social Charter and 1989 Social Charter.

The Treaty of Amsterdam extended the EU’s two mandates in the field of social policy by broadening gender equality from the issues of pay to all labour force issues; and extending health and safety in the working environment to all working conditions, with the former placed under QMV (Liebfried 2005). Two additional policy areas were placed under QMV: worker information and consultation; and integration of persons excluded from the labour market. Unanimous decision-making was extended to

five new areas: social security and worker protection; protection of workers when an employment contract is terminated; collective interest representation; employment of third-country nationals; and financing measures to integrate the excluded. In realising these accomplishments, the EU was extending the 1992 social protocol.

Some original social policy measures were introduced. Thanks to a Swedish initiative, the aims and functioning of the *European Employment Strategy* were outlined in the 1997 Treaty of Amsterdam under Title VIII on employment (Art.125-130). The central aim was to foster a high level of employment via the promotion of a skilled, trained and adaptable workforce and a flexible labour market. Article 126 (TEC) stipulated that the Union could contribute to that aim by fostering 'cooperation between member states and by supporting, and if necessary complementing, their action' (Rhodes, 2005, p. 292). Article 128 EC provides for the Council and Commission to draw up annual guidelines, which the Member States 'shall take into account in their employment policies', on the basis of which they are to make an annual report. The Council and Commission may make (non-binding) recommendations to Member States concerning their employment policies.

Following the identification of objectives (qualitative and quantitative) at EU level, member states bear the responsibility for achieving set guidelines at national level. National governments prepare National Action Plans (NAPs) outlining the measures they will take to reach such objectives. An employment report, prepared at EU level, subsequently evaluates member state progress and, on foot of this, individual recommendations may be made by the Commission (also endorsed by the Council).

It has been argued that such a policy framework also applies to the EU's new anti-discrimination regime which is anchored in Art 13. of the Amsterdam Treaty. It permits the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Two influential anti-discrimination directives were passed in 2000. The Racial Equality Directive prohibits discrimination on grounds of racial or ethnic origin in a wide range of areas, including employment, housing and the provision of goods and services. The Employment Equality Directive prohibits discrimination on a longer list of grounds (religion or belief, disability, age and sexual orientation), but across a more limited material scope (employment and vocational training). This legislation has been described as resembling the kind of experimentalist governance, we described in Background Paper 1. This is because the approach to discrimination is open ended and relies on various social actors to report back to the Commission on progress, and it includes a commitment to review and revise legislation in light of these periodic reports (De Burca 2010). This process was extended and broadened through the adoption of the Lisbon Strategy in 2000.

4.2.2 The Lisbon Strategy: Instruments and Effects

Launched in 2000 at European Council in Lisbon, the Lisbon Strategy initiated a policy framework reaffirming the mutually-reinforcing nature of economic and social policy. The strategy, consisting of three pillars - economic, social and environmental - aimed to make the EU 'the most competitive and knowledge based economy in the world capable of more and better jobs and greater social cohesion' (Kvist & Saari, 2007). The social pillar focused on investment in education and training, as well as active policy for employment. The Lisbon strategy set out an ambitious economic and social programme, which in the social field included:

- ◆ The development of the knowledge economy and society: it called on Member States to meet a range of targets in these areas including halving the number of 18 to 24 year olds with only lower secondary education who are not in further education and training by 2010 and a substantial increase in per-capita investment in human resources.
- ◆ Developing an active employment policy to secure more and better jobs: a core target set in the Lisbon strategy was to increase the employment rate to at least 70 per cent of the population in each member state by 2010, along with additional targets for female employment (60 per cent by 2010) and older workers (50 per cent by 2010);
- ◆ Social Inclusion: The Lisbon Strategy called for the setting of targets on social inclusion, mainstreaming of social inclusion in national and European policies and developing priority actions addressed to specific target groups;
- ◆ Modernising Social Protection: social protection systems should be adapted to ensure their long term sustainability.

A distinctive feature of the Lisbon strategy is the means proposed for its delivery. While some aspects of the Lisbon agenda lay directly within the competence of the EU, most notably the completion of the single market, many aspects were mainly the responsibility of the Member States: among these were education, training and labour market policy. The European Council of 2000 at Lisbon confirmed support for the EES method of policymaking. It named this emerging process the open method of coordination (OMC) and proposed its use as an implementation tool for the wide-ranging Lisbon strategy. It authorised its extension to a host of new areas and gave greater formality to it as one of several methods of co-operation and co-ordination in the EU. It supported the extension of the emerging policy mode, the open method of co-ordination, to other areas of policy making, particularly in the social sphere. Hemerijck noted that 'while Member states were in charge of efforts to modernise their welfare state and labour markets...the more closely the problems facing European welfare states resembled each other, the more policymakers realised they could to learn from the experience of others' (Hemerijck, 2007, p. 29)

The OMC involves the following four steps-

- ◆ fixing guidelines for the Union combined with specific timetables for achieving the goals which are set in the short, medium and long terms;
- ◆ establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice;

- ◆ translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;
- ◆ periodic monitoring, evaluation and peer review organised as mutual learning processes (Presidency Conclusions, Lisbon European Council 23-24th March 2000)

OMC thus uses benchmarking, best-practice and mutual learning in the development of national policy¹, it also emphasises subsidiarity. It is described as a process which is both supportive of Member States in their reform efforts and respectful of their legal competences. This flexible method involves²:

- ◆ Agreeing to common objectives which set out high-level shared goals to underpin the entire process;
- ◆ Agreeing to a set of common indicators which demonstrate how progress towards these goals can be measured;
- ◆ Preparing national strategic report where Member States outline a plan through which to achieve those objectives;
- ◆ Evaluating national strategies, a joint undertaking between the Commission and member states.

Despite these core elements, OMC processes as they have evolved vary considerably from one policy field to another (Zeitlin & Pochet, 2005). Citi and Rhodes view OMC as a template. They note that the empirical reality reveals great variation: ‘there are in fact many new modes of governance as there are policy areas, each with their different histories, formats, procedures and rationales’ (Citi & Rhodes, 2006, p. 468). The specific nature of the policy area in question, the Treaty basis of EU competence and Member States’ willingness to take joint action are all key determinants in this respect. Commitments based on OMC-type processes were extended from employment under the EES to social inclusion (Nice Council, 2000), pensions (Stockholm, 2001) and healthcare (Göteborg, 2001). Additional OMC-like processes exist for research and innovation (Spring European Council 2003), information society, enterprise and e-business and education (Citi & Rhodes, 2006, p. 467). Nonetheless, employment policy under EES and Broad Economic Policy Guidelines in macro-economic policy are treaty-based, unlike the other OMC’s which emerged post-Lisbon. As a result, these OMC-type processes are viewed to have a more ambiguous legal and institutional status (Citi & Rhodes, 2006, p. 467)

National Action Plans and Strategy Reports

Initially the OMC was used in the development of National Action Plans on social inclusion. The first plan, covering the 2001-2003 period, were submitted in 2001 by then 15 Member states. This was followed by a second in the 2003-2005 period. The aim was to present the strategy, objectives and targets to combat poverty

¹ Unlike the EES there is no recommendation tool under OMC generally.

² <http://ec.europa.eu>.

and social exclusion, as well as to identify actions through which to achieve them. Open coordination for the field of pensions was agreed in the Laeken European Council. The first strategy reports by each member states were submitted in 2001. A subsequent examination and peer review was undertaken in a 2003 Joint Report. The Common objectives for pensions included safeguarding the capacity of the system to meet their social objectives, the maintenance of financial sustainability and meeting changing societal needs. A 2004 Commission Communication³ proposed the extension of OMC process to healthcare, which followed by a second Communication⁴ would result in the inclusion of health in a new Framework for the social protection and social inclusion process adopted by the European Council in March 2006. This centred on cooperation in the field of health and long term care, the focus of which was access, quality and affordability. This OMC process and the High Level Group of Health services and medical care⁵ were viewed by the Commission as key to cooperation between member states on common values and principles in EU health systems (Sauter, 2008, p. 31).

In their review of the Irish experience of OMC, O'Donnell and Moss (2005) underline the fact that Ireland's system of social partnership—and, indeed, NAPS—pre-dated the EU-level OMC. These national policy processes involved greater levels of engagement around issues of social policy than the formal OMC processes required. Like others, they report that both participants and policy evaluators argued that the two processes should be more closely aligned. They observed that

While closer alignment of the European employment and social inclusion strategies with existing partnership mechanisms is probably desirable in principle, its advantages are clearly dependent on the effectiveness of these domestic policy mechanisms. If these mechanisms were to be ineffective, over-centralised, characterised by bargaining more than problem solving, insufficiently outcome-orientated or captured, then aligning the OMC with them would be unlikely to invigorate either the national or the European process (O'Donnell and Moss, 2005:341).

Despite the down-beat assessment of the OMC by many Irish observers, they argue that the employment and social inclusion OMCs did, in fact pose a 'double challenge' to Ireland policy and partnership system.

First, these processes 'asked that Ireland look beyond total employment growth and unemployment reduction, in order to re-examine the effectiveness of its many activation measures, the adequacy of its training and life-long learning, its achievement of flexible working arrangements, whether it was achieving equal opportunities in the labour market, and the effectiveness of its social inclusion and anti-poverty policies' (O'Donnell and Moss, 2005:337).

³ Modernising social protection for the development of high quality accessible and sustainable healthcare and long term care: support for the national strategies using the "open method of coordination, Commission Communication, COM (2004) 304 Final of 20th April 2004.

⁴ Working better, Working together, COM (2005) 706 of 22 December 2005.

⁵ See Section 4.5.4 on patient mobility.

Second, ‘the answers to these specific questions about Irish labour market and social policy’ increasingly ‘prompt Irish actors to ask even deeper questions about the country’s economic and social trajectory’. This is because:

Many of the well-criticised weaknesses of Ireland’s labour market policies actually arise from the limits of Ireland’s employment miracle and the fact that it does not yet have a welfare, education and training system capable of supporting its aspiration of high-participation, high-skilled, high-performance economy. The OMC in employment and social inclusion are prompting Irish actors to look critically at the Irish “model” of economy, society and policy’ (*ibid.*).

NESC’s account of the developmental welfare state was one response to the kinds of questions raised by the OMC process. NESC (2005: 9) queried the widely-held view that advances in social protection should be seen as some sort of ‘societal dividend which democratic political processes extracted after the event from successful economic performance’. Instead NESC argued that economic success and improved social protection could combine in a mutually supportive way. A high-performing economy is functionally dependent upon wide-spread participation in employment which in turn is contingent upon effective supporting services such as childcare; income support that encourage entry into the labour-market; and high-quality employment services to support smooth and frequent transitions between jobs.

If NESC believed that the full potential of the OMC had not been mined, a mid-term review of the Lisbon strategy – the Kok report (2004) - was even more critical. The Kok report claimed that OMC had fallen far short of expectations because member-states had not entered into the spirit of mutual benchmarking. A reformulated Lisbon strategy was launched in 2005 with a sharper focus on growth and jobs through a single national action plan. The Commission promised to clear away the ‘jungle of existing reporting obligations’ and shift the focus from multi-lateral discussion between 25 member-states and the Commission on individual policy themes to a bilateral dialogue between Commission and member-states on progress toward objectives as set down within national action plans (European Commission 2005: 33). The Commission shared the Kok’s ambition to simplify the process of OMC by reducing the number of indicators but was less clear whether it supported his goals of ‘praising good performance and castigating bad performance – naming, shaming and faming’, as the report put it (Kok 2004: 43).

As part of the renewed Lisbon Strategy, from 2006, a new framework for the social protection and social inclusion process was established. This new framework required member states, using OMC type processes, to produce National Plans in three areas: Social Protection, Pensions and Health and Long-Term care⁶. These plans form part of a ‘National Report on Strategies for Social Protection and Social Inclusion’ to be submitted to the Commission every two years. Key features of this OMC process include⁷:

⁶ Commission Communication “Working together, working better: A new framework for the open coordination of social protection and inclusion policies in the European Union”, the European Council adopted by the European Council in March 2006.

⁷ NAPs inclusion Briefing, EAPN, July 2007.

- ◆ Agreed common objectives at EU level;
- ◆ National Action Plans to implement objectives;
- ◆ Joint Report on Social Protection and Social Inclusion providing analysis and peer review of the member state plans (previously Joint Inclusion Reports, the accession states were subject to a similar exercise under Joint Memoranda on Social Inclusion (JIM));
- ◆ Development of Common indicators to measure progress.

The 2007 Joint Report was the first to examine national strategic reports integrating policies dealing with social inclusion, pensions and long-term care⁸. The key challenges for social inclusion included intergenerational poverty transmission, and the promotion of inclusion through activation. Under health and long-term care, the Report stressed the national disparity in outcomes and, to address this, focused on a number of key areas; inequality in access to healthcare, the need to develop long-term care systems to meet rising demand, improvements in quality through standards, evidence-based medicine and integrated care, financial and long-term sustainability, as well as the promotion of preventative strategies. On pensions, securing adequate and sustainable pensions was stated to require a lifecycle approach strengthening the link between contributions and benefits, reductions in early retirement schemes, and incentives to work longer (given increased levels of longevity).

4.2.3 The internal market and social protection

Alongside the deliberations of the Commission and Council, another fundamental feature of the EU, namely the single market, has become increasingly influential upon the development of social policy. Historically, it had been thought that there was a balance with member-states enjoying competency in social protection and the EU competency limited to issues involving the four freedoms and ensuring competition. Even when the EU did make advances in the area of social policy, it was dependent upon securing consensus amongst member-states as with the Amsterdam Treaty. However, developments from the late 1990s have queried assumptions about the stability of this demarcation.

The implications of the single market for national systems of social protection have become profound thanks to both the emerging jurisprudence of the European Court of Justice and the ongoing efforts by the Commission to expand the free movement of services. With regard to the first development, the implications of ECJ decisions upon national social policy have become more pronounced since rulings in two cases in 1998, *Decker* (C-120/95) and *Kohll* (CC158/96), were produced. These cases turned on the issue of whether individuals could be reimbursed in their own country for medical products and services purchased abroad as the litigants in both cases had been refused such authorisation. The ECJ ruled that the EU's guarantees of the free movement of goods and services required that the plaintiffs' requests for compensation be granted. In both cases, the ECJ considered that even though, in the absence of an EU competence, it was a matter for the legislature of each member state to determine the conditions for insurance and entitlement to benefits, member States were nevertheless required to comply with Community law when exercising those powers. More recently, the ECJ has

⁸ Joint Report on Social Protection and Social Inclusion 2007.

extended this line of reasoning to affirm a jurisdictional competence in the areas of health-care and labour-market regulation and have required some member-states to make adjustments in how these policy fields are organised.

The latter case of labour-market regulation is particularly important as it was a very contentious issue in the adoption of the Directive on services in the internal market (commonly referred to as the Bolkestein Directive after the former Commissioner leading the responsible directorate). The initial draft of this directive aimed to abolish unnecessary barriers to cross-border trade, principally by doing away with the service industry regulations of individual member-states, unless these regulations could be proven to be non-discriminatory and necessary for the public interest. Particularly contentious was the 'country of origin principle' whereby a company or individual may provide services to consumers in another Member State on the basis of the laws of its country of establishment/ origin and without registering with the regulators in the host Member State. In debates in France, the issue was animated through references to the alleged problem of the *plombier polonais* (polish plumber), who supposedly would work in France under polish labour laws. Trade unions from across the EU organized protests against the directive and in March 2005, various heads of state agreed to revise the proposal to 'respect social rights and public services' (BBC News, 23rd March 2005). The fate of the referendum on Constitutional Treaty in France was, in the eyes of many, coloured by a perception that the EU was following an economic agenda that paid insufficient heed to social concerns, typified by the draft services directive (Pelkmans 2007).

Cognisant of these concerns, the Council agreed, in May 2006, a revised version of the directive which omitted the country of origin principle and excluded several sectors such as healthcare and private security which was passed into law in December 2006. Critics pointed out that omitting the country of origin principle would leave matters in the hands of the ECJ to decide which country's labour laws would apply. Sections 4.4 and 4.5 examine if this is the case.

4.2.4 Towards the Lisbon Treaty and beyond the Lisbon Strategy

Many people perceived the Constitutional Treaty to be part of an agenda that gave too much precedence to economic freedoms. In the opinion of some, the Constitutional Treaty was a vehicle for 'the promotion of Anglo-Saxon and neo-liberal economics, exposing it to rampant forces of globalisation and therefore undermining the "European social order" (Church and Phinnemore 2007: 54). However, the Treaty also stimulated the contrary view that it gave too much emphasis to social rights as it enabled the EU's accession to the Charter of Fundamental Rights (CFR) which would place greater burdens on business and economic growth. (ibid: 55). After the Constitutional Treaty was revised, the CFR was appended to its successor, the Lisbon Treaty, which refers to it having the same legal status as the Treaty of the European Union and Treaty on the Functioning of the European Union. This means that the fundamental rights set out in the Charter have exactly the same legal status as other rights enshrined in the Treaties, in particular economic freedoms. A protocol added to the treaty, however, concedes that the Charter does not create

enforceable rights applicable to Poland or the United Kingdom. In October 2009 EU leaders agreed to amend the protocol at the time of the next accession treaty so as to include the Czech Republic

The Lisbon Treaty delineates the respective competences of both member-states and the EU. For those social policy aspects as defined in Treaties, the EU has a shared competence with member-states, which means that the EU and the member-states may legislate and adopt legally binding acts in that area. Member-states shall exercise their competence to the extent that the Union has not exercised or has ceased exercising its competence. In addition, the EU has a supporting competence to complement the activities of member-states in a number of fields such as the conditions of employment for third-country nationals legally residing in Union territory and the combating of social exclusion.

In three specific areas — protection of workers where their employment contract is terminated; representation and collective defence of the interests of workers and employers, including codetermination; and conditions of employment for third-country nationals legally residing in Union territory — qualified majority voting may be used to avoid a possible stalemate brought about by the need for unanimity. In this instance, member-states are permitted to make use of an ‘emergency brake’ clause, where it is believed that a draft legislative act would affect important aspects of its social security system. The matter would then be referred to the European Council for a period of four months, after which time the ordinary legislative procedure would apply or the Commission would be requested to submit a new proposal.

Shortly after the ratification of the Lisbon Treaty, the Commission published its assessment of the Lisbon Strategy as part of devising its successor. The main findings, according to the Commission were as follows:

- ◆ The original strategy gradually developed into an overly complex structure with multiple goals and actions and an unclear division of responsibilities and tasks, particularly between the EU and national levels. However, the renewal of the strategy in 2005 helped clarify its scope and aims. In particular, the definition of four priority areas (research and innovation, investing in people/ modernizing labour markets, unlocking business potential, particularly of SMEs, and energy/ climate change) was an important step forward in providing greater focus. This demonstrated the Lisbon Strategy’s ability to set the agenda for reform.
- ◆ Reforms agreed in the context of Lisbon have delivered tangible benefits, including increased employment but employment increases have not sufficiently reached those furthest away from the labour market, and jobs have not always succeeded in lifting people out of poverty.
- ◆ Although the Lisbon Strategy focused on the right structural reforms, the Strategy was not sufficiently equipped to address some of the causes of the crisis from the outset. With the benefit of hindsight, it is clear that the strategy should have been organised better to focus more on critical elements which played a key role in the origin of the crisis, such as robust supervision and systemic risk in financial markets, speculative bubbles (e.g. in housing markets),

and credit-driven consumerism which in some Member States, combined with wage increases outpacing productivity gains, fuelled high current account deficits.

- ◆ The delivery gap between commitments and actions has not been closed. Well performing Member States pressed ahead with more ambitious reforms, whilst others gradually built up a (sizeable) delivery gap. This meant that important benefits and synergies were missed. The same can be said of the individual policies which make up the Lisbon Strategy, with progress in some policy areas more pronounced than in others.
- ◆ Links between the Lisbon Strategy and other EU instruments and/or strategies, such as the Stability and Growth Pact, the Sustainable Development Strategy or the Social Agenda, have not been sufficiently strong, so that rather than being mutually reinforcing some of the strategies have been operating in isolation. Other major policy priorities, such as financial market integration, were conspicuous by their absence from Lisbon.
- ◆ Implementation has suffered from variable ownership and weak governance structures as the role of the European Council in driving forward reform was not clearly defined. In terms of instruments, the Integrated Guidelines have helped set the direction for national economic and employment policies but their “catch-all” nature and lack of internal prioritisation limited the impact of the instrument on national policy-making.
- ◆ Since 2005, there has been an intensification of policy learning and exchanges of good practices. While the OMC can be used as a source of peer pressure and a forum for sharing good practice, evidence suggests that in fact most Member States have used OMCs as a reporting device rather than one of policy development.

The successor to the Lisbon Strategy, Europe 2020 seems to reaffirm the importance of the EU’s social dimension as it aims to transform the EU into a smart, sustainable and inclusive economy with high levels of employment, productivity and social cohesion. Its governance strategy is largely in line with that of the Lisbon Strategy and is considered more fully in Chapter 11 of the main report.

4.2.5 Implications of the Overview of EU Social Policy

As can be seen even from this brief overview of EU social policy, it is a complex field capable of being interpreted in a number of different ways. The Amsterdam Treaty seems to have been a high water-mark in terms of the development of a common EU position in terms of social policy. After that, it became more difficult to secure agreement especially with a more numerous and diverse membership of the EU. But for many, the priority of member-states over social policy seemed to be undercut by the need to conform to the economic logic of globalisation. This seemed to introduce an imbalance within the EU whereby economic freedoms across the EU held sway over issues concerning social protection within member-states. Each of these positions is examined in the sections to follow.

4.3 Sovereignty and Social Policy

Despite the advances in the account of EU social policy developments documented above, it might still seem that the EU has a fairly minimalist and restricted role in the development of social policy. According to this view, the EU has been concerned with the construction of the single market, monetary union and other related issues; whatever social policy it is concerned with has largely been concerned with employment and workplace issues. Social issues more generally have been the prerogative of member-states. Liebfried (2005: 244) gives a pithy summary of this position

On the face of it, the European welfare state does indeed look national. There is no European welfare law granting individual entitlements vis-à-vis Brussels; there are no direct taxes or contributions, and no funding of a 'social budget' to back such entitlements; and there is no Brussels welfare bureaucracy to speak of. 'Territorial sovereignty' in social policy, so conventional wisdom holds, is alive and well.

The review offered in the first section above seems to support such propositions, notwithstanding what Liebfried terms the 'plenitude of cheap talk' about Social Europe. Up until the early 1990s, legislative reform in the area of social policy was restricted to those areas where the Treaty of Rome, or the single market project, allowed some latitude. The gender-equality provisions are the most significant example of this. Perhaps the second area of great significance is the area of occupational health and safety, where EU input was facilitated by the extension of qualified majority voting through the SEA for fear that national rules could be used as non-tariff barriers to trade.

After this, there were significant struggles to decide the range of social issues that could be determined by QMV, either under Art. 95 TEC (encompassing harmonization of legislation so as to avoid distortions of competition) or under the SEA's exceptions for issues pertaining to health and safety in the workplace. The latter was used to progress wider employment rights such as the Directives on pregnant workers, working time and young workers but the first of these directives was opposed by the UK and Italy. Even though the introduction of QMV would seem to lessen the possibility of vetoes, Liebfried considers that the watershed and highpoint in the development of social policy mandates by the EU was reached in the mid-1990s. After this, according to Liebfried, the 'Commission was involved in intensive soul-searching concerning its proper social policy role and this continued all the way through to Eastern enlargement' (2005: 255). The Amsterdam Treaty's emphasis on employment combined with member-states' determination to maintain their primacy in this area seemed to confirm that the immediate prospect was for consolidation with few new initiatives (ibid). This seems to support the 'sovereignty' view that the relationship between European integration and national social policy was quite minimal and they were destined to walk along separate paths.

However, some important features of EU social policy militate against this view. Concentrating on 'high' political disputes at the European Council over the propriety of EU intervention in the social policy field neglects the impact of ECJ decisions that have overlain a regime of mobility-friendly and competition-friendly principles and protocols upon European welfare states. This aspect of the EU's social dimension does not seem to have proceeded from market-correcting efforts but seems to have operated as part of a spill-over process emanating from the ongoing formation of the internal market.

4.3.1 Implications of Freedom of Movement for Welfare Provision

Many of the ECJ decisions have resulted from the regulations governing the mobility of labour between different member-states of the EU. Although intra-European migration operates only on a relatively small scale and the number of migrant EU citizens is outnumbered by third-country nationals, it has still reached a sufficient level of critical mass to generate ongoing litigation before the ECJ.

Initially, Member states relied on ‘nationality’ as grounds for restricting the entitlement of certain benefits to migrating EU nationals. In a number of early Court cases, where individuals challenged such restrictions under free movement, member states referred to the concept of ‘national solidarity’; the intention was to differentiate between nationals and non-nationals as a means to restrict entitlements (in particular to social benefits).⁹ However, the Court seemed unwilling to countenance such unequal treatment based on member state nationality, as evidenced in a number of early cases (O’ Leary, 2005, p. 58). In *1983 Gravier*,¹⁰ the Court held that there was inequality in the treatment of Belgian nationals versus other member state nationals in respect of the cost of fees for vocational training. This held despite the fact that community competence for educational policy did not exist or that the result had repercussions for the cost and organisation of vocational training (O’ Leary, 2005, p. 59). In the *1987 Cowan* case¹¹, a British national challenged an attempt by France to restrict compensation for victims of assault to French nationals and residents. France moved to justify the restriction with reference to national solidarity; this was rejected by the Court on the basis of a right to free movement. Arising out of such Court-driven developments it became evident that (O’ Leary, 2005, p. 63):

1. national measures designed to restrict entitlements based on nationality, residence conditions or conditions related to minimum periods of employment etc could not be imposed exclusively on non-nationals;
2. in vindicating the rights of individuals under freedom of movement, the Court ruled in areas of social policy not formally in Community competence but in that of member states (in education policy, for example).¹² This meant that although member states retained competence in social policy, they were required to be compliant with European law in those areas;
3. in relation to regulations extending certain employment and social rights to migrating EU nationals, the Court interpreted widely the range of benefit entitlements to those exercising their ‘right to free movement’.¹³

This suggested, as early as the 1980’s, some reduction of member state sovereignty in the social welfare field. Over the past two decades the sovereignty of member states was further qualified in a number of seminal court cases pertaining to social

⁹ See O’ Leary 2005 p58 and the Commission V Belgium Case 149/79 referencing reciprocity of rights and duties which form the foundation of the bond of nationality.

¹⁰ Case 293/83.

¹¹ Case 186/87.

¹² Examples include 1975 Casagrande (case 9/74), 1982 Reina (case 65/81) and more recently in a Finnish tax-related case 2002 Pusa (case C-224/02).

¹³ These entitlements apply in the host member state; the state in which the person exercising their free move rights now resides.

assistance eligibility and residence. These developments served to significantly impede, if not remove, the manipulation of residence requirements for EU nationals from the authority of member states (Ferrera, 2005, p. 138). For example, arising out of *Grzelczyk* (2001), it was further determined that 1) the treaties provided grounds for prohibiting member states from denying social assistance benefit to lawfully resident EC nationals and that 2) the 1990 Directives (extending residence rights to students, the retired and the non-economically active) could be interpreted as establishing a 'degree of financial solidarity' between nationals of host member state and nationals of other member states, particularly if difficulties are temporary (Ferrera, 2005 (a)). Overall, the message from *Grzelczyk* and others was that:

The stronger the links between individuals seeking residence and/or welfare benefits and the desired host member state, the more likely the Court will find any interference (such as, refusing benefit or residence) with the individuals right of residence to be disproportionate (O' Leary, 2005, p. 72).

4.3.2 Freedom of Services and the EU Competition Regime

Originally, there was thought to be no connection between the EU's mandate to prohibit restrictions on the free movement of goods and the freedom to provide services and the national provision of public services. These 'two freedoms' were thought to apply to commercial services within a marketplace from which public services were excluded thanks to their non-profit making nature. However developments since the 1980s have shown that these fundamental principles of EU law guarantee consumers of social services a degree of freedom in 'shopping where they want' and assist providers in delivering their services in countries other than their own. Thus the demarcation line between the market and welfare states is being redrawn.

The *Kohll* case illustrates this tendency. It emanated from Luxembourg and involved orthodontic work carried out in Germany for which Kohll was denied reimbursement by his national sick fund. The justification by the national authorities was that it was not seen as an emergency case received in the event of illness or accident abroad. In the case of *Kohll*, the ECJ applied the principle of freedom of services and held that Art 59 of the EEC Treaty precludes the application of rules which have the effect of making the provision of services between member-states more difficult than within member-states. This judgment is echoed in a number of other cases on patient mobility throughout the 1990's. As a consequence of ECJ decisions, in certain circumstances, patients may seek health care in another member state and be reimbursed for that care by their (home country) national health insurance systems.¹⁴ These developments, further extended in a number of other cases since 2000,¹⁵ implied some loss of national control over elements of national health (insurance) systems (Hervey, 2007).

¹⁴ Decker case 120/95, Kohll 158/96, Watts 372/04.

¹⁵ The Smits-Peerbooms and Vanbrakel cases of 2001 and the 2003 Mueller-Faure and Van Reit case (See Ferrera, The Boundaries of Welfare, 2005 (a) p129, 130).

It is recognised that the services sector makes a significant contribution to the European economy, accounting for 56% of GDP and 70% of employment; the removal of barriers to the free movement of services would, thus, provide a major boost to the European economy.¹⁶ Service providers experience obstacles to trade arising from national regulation for service firms or products, as well as information barriers relating to setting up in or providing services in another member state. It is only since the 1990's that the EU legislature and judiciary have begun seriously to focus on the internal market for services. Attention had previously been focused on establishing an internal market for goods and dismantling associated barriers. Similar progress in establishing a similarly free market for services had not been achieved.

This is the purpose of the above-mentioned 2006 Services Directive which purports to remove legal and administrative barriers to trade in the services sector. It attempted to distinguish between those services that are provided out of an economic interest and those services which are elicited to answer a more general interest. With regard to the latter concept, the directive makes a distinction between Services of General Interest and Services of General Economic Interest (SGEI). The former refer to services, both market and non-market, which public authorities class as being necessary for the satisfaction of certain fundamental needs and therefore has certain requirements conducive to the common good imposed on it; the latter refers to services of an economic nature which member-states subject to specific public service obligations by virtue of their general interest criterion. The concept of services of general economic interest thus covers in particular certain services provided by the big network industries such as transport, postal services, energy and communications (Commission White Paper on Services of General Interest 2004).

The Services Directive provided that

- ◆ The Directive does not apply to non-economic services of general interest (SGI).
- ◆ Certain Services of General Economic Interest were excluded from the directive.¹⁷ This includes healthcare¹⁸ and other social services.
- ◆ Those SGEI that do come under the scope of the Directive are exempted from *freedom to provide services* provisions (but have their own regulatory regimes). These include postal services, electricity sector, gas sector, water supply and waste treatment.

However, public services are potentially affected if it is decided that they serve a general economic interest. In essence, where a public service activity or undertaking is 'economic',

¹⁶ <http://www.etuc.org>.

¹⁷ Article 2, Service Directive.

¹⁸ "The original Commission proposal for a Services Directive contained provisions clarifying the conditions under which patients are entitled to reimbursement for medical care obtained in another Member State aimed at ensuring that patients could benefit from a better choice of high quality treatment. The European Parliament voted to remove all health services from the scope of the Directive. The Commission has accepted this. However, the exclusion of health services from the scope of the Directive does not take away from the necessity of addressing the increasing case law of the European Court of Justice in regard to patient mobility. A separate proposal from the Commission addressing this issue may therefore be necessary. In parallel with the Services Directive, the Commission will draw up a Communication setting out the proposed action that needs to be taken in this area" (<http://europa.eu>). This has led to the proposed patient mobility directive.

it is subject to competition rules, where it is not economic but solidarity-based, it is excluded (Baquero Cruz, 2005). These developments have prompted an attempt to delineate ‘non-economic’ and ‘economic’ activities, separating non-market services — for example justice, defence, some education, health — from market services, such as energy, communications, transportation etc.¹⁹ However there remains a lack of precision and as to what differentiates SGI and SGEI.²⁰ Central to this is the question of what constitutes an *economic* activity. Over the last two decades, the Court has played a prominent role in drawing the dividing line. Rulings have found certain social security schemes, although social in character, not to be exempt from Treaty rules.

Although the Court has held that ‘Community law does not detract from the powers of Member states to organise their social security systems’²¹, it has qualified this statement in a number of judgements relating to social security and healthcare, drawing a ‘dividing line’ between funds and entities that operate within the market and those which are non-market and solidarity based’ (Hatzopoulos, 2008, p. 144). This dividing line is the subject of debate and contestation.

The 1999 *Albany* case (Case 67/96) was also significant in this respect. The case involved the management of a textile business that refused to contribute to a mandatory supplementary pension fund system set up under collective agreement for workers in the textile sector in the Netherlands. Affiliation was made compulsory by public authorities and Albany used the competition rules in article 81(1) of the EC Treaty as a basis for claiming that mandatory affiliation to the pension scheme compromised their competitiveness. The Court in its ruling emphasised the social policy objectives of the Treaty which are given equal weight to those on competition and noted the provisions of the Agreement on Social Policy which stipulated the objective of social dialogue and collective bargaining between employers and workers. As a result the Court ruled that negotiations, by virtue of their nature and purpose, must be regarded as ‘falling outside the scope’ of the competition provisions of the EC Treaty.

In the ruling of the *AOK Bundesverband* case²² in the early 2000’s, relating to German sickness funds, it was found that despite their limited ability to compete, they were not undertaking an economic activity. Here the judgement takes account of the basic legal framework to which it is subject; thus economic activity is deemed to be ruled out if the legislator decides to exclude competition or impose anti-competitive conduct in the general interest. Baquero Cruz cites this judgement to support the conclusion that, “where member states have rejected the economic character of an activity in the general interest and where there is no room left for the market”, it is only in extreme cases that the Court ‘holds that an activity is economic in spite of a national decision to exclude it from the market’ (Baquero Cruz, 2005, p. 185).

¹⁹ Offering a precise definition of SGI and SGEI was avoided, taking account of the fact that at Member state level the concept of ‘public service’ is bound up with national tradition, special situations and divergence (Gromnicka, 2007). Indeed the concept of SGEI is also described as a dynamic one in which the perception of what comprises such services varies over time and place (Sauter, Services of General Interest and Universal Service in EU law, 2008, p. 4). While the provision of a list of such services helps by way of example, it is only that - an example.

²⁰ Contributing to the confusion, it is also the case that Service of General Interest has, at times, been used as a blanket-term to describe all former public services, both service of general interest and service of general economic interest (Clifton & Diaz-Fuentes, 2008, p. 13).

²¹ For example, in *Poucet and Pistre* (1993), case c159/91 and 160/91, where it was found that freedom of service and competition could not be used to justify an exemption from French national insurance schemes.

²² Cases c264/01, c306/1, c354/01 and c355/01.

The sovereignty of national welfare systems is challenged by contested application of competition rules to certain public services which contest both the principles of compulsory membership of national public insurance schemes and of public insurance monopoly (Ferrera, 2005). This can impact on a significant sector of public service provision like healthcare which is often delivered through a framework of multi-pillar social protection, consisting of both public and private provision and financing (Ferrera, 2005). For example, insurance coverage for healthcare is provided under three separate pillars of insurance protection:

- ◆ First pillar schemes are compulsory, reflecting national statutory insurance schemes.
- ◆ Second pillar schemes are supplementary, complementary (covering gaps, providing extras) or substitutive (providing an alternative channel to compulsory)
- ◆ Third pillar scheme are market-driven, for example voluntary private health insurance.

For the most part, national compulsory social insurance schemes have remained exempt from the application of competition rules. Indeed Ferrera notes that ‘the ECJ has in some critical instances defended the essential prerequisites for national solidarity’ (Ferrera, 2005, p. 164). Following from this, it seems the extent to which member states rely on the second (supplementary) and third pillars (commercial or market based) schemes through which to fund health services will determine the extent to which EU competition law impacts on its national health system

4.3.3 Implications of EU Integration for the Sovereignty Position

Developments under free movement have resulted in some dilution of member state sovereignty, as member states experienced:

1. *The loss of national control over beneficiaries:* Member states can no longer restrict most social benefits to its own citizens. Benefits must be granted to all or withheld from all.
2. *Exportability of benefits:* Some benefits paid by member states have become portable across the EU.
3. *The loss of control over the right to administrative adjudication:* Member states can be required to accept the determination of benefit status (sick, disabled) of another member state.

Liebfried (2005) underlines three further restrictions to member-state autonomy in the field of social policy:

4. The effects of the EU Treaties seem to move the welfare state over the borderline into the sphere of economic action, at least in part when redistribution is not involved, thus slowly submerging its activity into a single ‘social security’ market.
5. Consumer and provider rights have come to the fore since the mid 1980s which has had implications in relation to questioning welfare state ‘closed shops’. Member governments can no longer exclusively decide who provides social services or benefits.

6. The health area is a first and crucial Europe-wide testing ground for the turf battle between national welfare states and the EU plus the market as represented by private insurance, producers etc.

Liebfried (2005: 272-75) claims that these developments are testament to the emergence of a unique multi-tiered system of social policy, with three distinctive characteristics. First there is a paucity of positive action given the limited capacity of the EU, the density of existing national commitments and the desire of governments to preserve these. However member-states are also constrained by the EU's legal rulings which constitute the second important development. In adjudicating on matters of EU law, the ECJ cannot help but take policy decisions. What may make matters difficult for member-states relates to the third pertinent development, namely that social policies have often been seen as some sort of buffer or protection against the market, whereas the logic of EU social policy seems to be part of a process of market construction. The upshot of these various developments is that some commentators have been prompted to ask to what extent such developments represent a move from sovereign to semi-sovereign welfare states (Ferrera, 2005, p. 119). The question is with what is the sovereignty of national social policy being shared. Whilst the obvious answer might be the EU, the fact that the agenda of the EU seems to be tied so closely to market-construction and economic matters might lead some to suspect that national social policy is being suborned to a process of economic globalisation, facilitated by the EU.

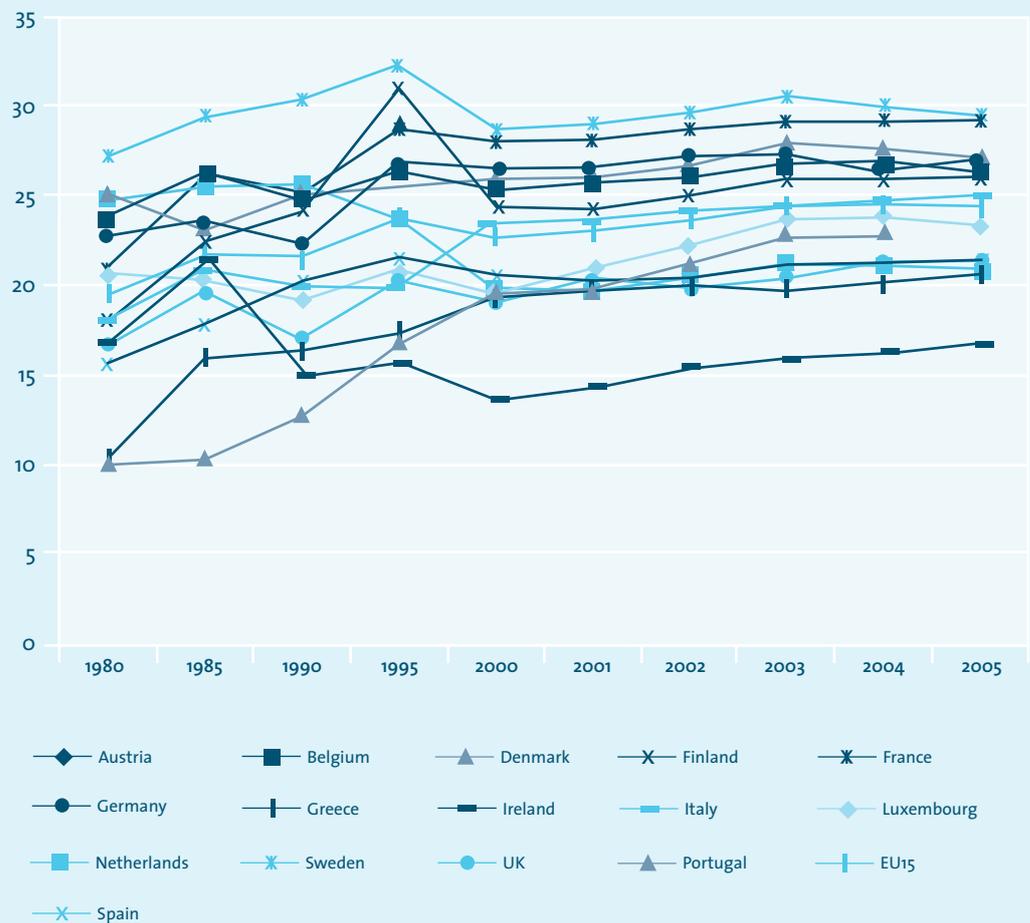
4.4 Globalisation and Social Policy in the EU

What is globalisation and what are its implications for national social policy? Although it is a contested term, it is 'perhaps most often used to denote profound transformations to capitalism over the past several decades, including the opening up of non-capitalist countries and markets to capitalist values, institutions, and social relations' (Yeates 2007). The last point is particularly important as globalization is thought to signify the imposition of an economic logic upon matters which would previously not have been exposed to this logic. Two considerations in particular are important. These are the extent to which globalization triggers a 'race to the bottom', in which nation states continue to reduce welfare and regulatory costs in a competition with other states to attract foreign investors; and the extent to which comprehensive public provision is eschewed in favour of reliance on private provision, be it commercial, voluntary or informal, in meeting social needs (social dumping). Both entail a more minimalist role for the state in the provision of public goods. These issues are assessed in the next section.

4.4.1 Trends in Social Expenditure

Overall, social expenditure statistics point to the maintenance of high levels of social spending.²³ Since 1980, average public social expenditure across the EU15 has increased from 19.5% to 24.4% of GDP in 2005. In most EU15 countries the percentage of expenditure to GDP in 2005 was well above 1980's level. Ireland, on account of its exceptional growth rates, and the Netherlands, due to factors such as the privatisation of sick-pay and a tightening of generosity and inflow to disability benefits, are two exceptions (Taylor-Gooby, 2002, p. 599; Adema & Ladaique, 2009, p. 22).

Figure 4.1 EU15 Public Social Expenditure as a percentage of GDP 1980-2005²⁴



²³ Statistics do not account for the taxation of welfare benefits in some high spending countries.

²⁴ http://stats.oecd.org/Index.aspx?datasetcode=SOEX_AGG.

Across (Adema & Ladaique) countries, the two key elements of social spending increases over the last 25 years have been elevated support for increasing numbers of retired persons and health expenditure. Different countries have distinctive experiences: for example, spending on old age accounts for more than 10% of GDP in Austria, France, Italy and Greece in 2005, in Ireland it is less than 3%. Spending growth on family benefits are also noted; average OECD spending has increased by 0.5% since 1990 (and the same holds for the EU-15) Average unemployment compensation, sensitive to the economic cycle, was highest in 1993 at 1.7%; in 2005 it was 1%, similar to the early 1980's. Incapacity related supports remained at approximately 2.4% of GDP since the 1980's (OECD, 2009).

Examining trends in social protection expenditure in the first half of the 1990's, Bertola *et al.*, (2000) conclude that the generosity of EU welfare systems has been largely maintained with social expenditure increasing as a percentage of GDP, except for Ireland where it remained static and the Netherlands where it fell by approximately 1.5%. Taylor-Gooby (2002, p. 600), considering social spending between 1984 and 1997 across welfare states, points to a rise in social spending almost everywhere, while also noting that broad differences on spending across welfare models were maintained²⁵. Wolf (2002), analysing social expenditure trends across the EU notes rising levels of social spending, on average, in the European Union, but suggests a general convergence toward an 'intermediate' social expenditure share. Similarly Hemerijk (2007) finds some convergence towards the mean, implying some reductions in spending from the better performing welfare states. Overall, quantitative evidence on social expenditures and associated empirical analysis suggests that high spending welfare states have prevailed. This tends to point to welfare state resilience in the face of competing downward pressures.

4.4.2 Welfare states: retrenchment or reform?

Social expenditure statistics generally support the view that European welfare states have not undergone significant retrenchment or 'rollback'. This persistence of welfare states is attributed to a number of factors. For example, 'social costs' are only one factor in the investment decisions taken by industry when choosing to locate, other considerations are also important, for example, productivity, education and training, capacity for innovation, infrastructure, business climate and labour relations stability (Hemerijk, 2007, p. 23). In addition, to retain political support among the national population, governments must act to cushion the 'social costs of modernisation', thus the pressure for retrenchment would be balanced by the need to maintain national social, and political, stability (Alber & Standing, 2000; Taylor-Gooby, 2002; Wilding, 2002). It is also the case that social legislation acts as a productive factor which fosters greater political acquiescence to changing trade and investment structures (Alber & Standing, 2000).

Nevertheless, reliance on evaluating through quantitative studies estimating the amount of expenditure may overemphasise stability and resilience (Taylor-Gooby, 2002). Hemerijk (2008) suggests that linking aggregate levels of (public) social spending (relative to GDP) to the stability of a particular welfare regime may lead

²⁵ Liberal, Nordic, Corporatist, Mediterranean

to a neglect of significant shifts in policy redirection which may have significant consequences for the performance of the economic and labour market. Rather than a picture of relative stasis within distinctive welfare regimes, he detects a profound shift across national welfare systems which cannot be understood either in terms of a race to the bottom or social dumping. Instead he claims that many European welfare states have - with varying degrees of success - taken measures in order to redirect economic and social restructuring by pushing through adjustments in macro-economic policy, industrial relations, taxation, social security, labor market policy, employment protection legislation, pensions and social services, and welfare financing. The result has been a highly dynamic process of “self-transformation of the European social model(s)” (Hemerijck 2002), marked not by half-hearted retrenchment efforts but by more comprehensive trajectories of “recalibration”, ranging from redesigning welfare programs to the elaboration of new principles of social justice.

If there is little evidence for stasis with national welfare system, equally there is not much data to support the thesis of abrupt departures from regime-specific practices. Hemerijck noted some of the following important changes:

- ◆ Active service-oriented welfare states were in a stronger position than the passive, transfer-oriented systems to make adaptations to the challenge of the feminization of the labor market.
- ◆ In labour market policy, the new objective became maximizing employment rather than inducing labour market exit, and this implied new links between employment policy and social security.
- ◆ With respect to labour market regulation, evidence from Denmark and the Netherlands suggested that acceptance of flexible labour markets is enhanced if it is matched by strong social guarantees.
- ◆ In the sphere of social security, there has been a shift from passive policy priorities aimed at income maintenance towards a greater emphasis on activation and re-integration of vulnerable groups.
- ◆ In the area of old-age pensions, the most important trend is the growth of compulsory occupational and private pensions and the development of multi-pillar systems with a tighter actuarial link between benefits and contributions.
- ◆ There has been a renewed emphasis on social services. This has been necessitated by enhanced female participation in the labour market and by changes in aging and longevity. Both require ‘care-giving’ that cannot be met purely by families.
- ◆ With respect to financing, we observe an increase in user financing in the areas of child care, old age care, and medical care. At the same time, fiscal incentives have been introduced to encourage people to take out private services and insurance, especially in the areas of health and pensions.

Hemerijck considers that these developments amount to a process of “contingent convergence” of employment and social policies with the adoption of increasingly similar initiatives across Western Europe. The overall trend is a gradual transition

from a reactive, corrective, compensating and passive welfare edifice to a more proactive social investment strategy, with much greater attention to prevention, activation, and capacity building

Throughout this process of convergence, Hemerijck maintains that the European Union has played an increasingly influential role in sustaining a form of ‘double engagement’ between member-states in terms of setting a cross-national agenda on vital social matters and creating a space for sharing the experiences of domestic policy reform. This increasingly important role for the EU meant that it is no longer possible for the national welfare state and the European Union to be regarded as diametrically opposed, to be positioned along clear demarcation lines. What this entails is not whether the EU should play a role in the formulation of national social and employment policy, since it is already doing this, but how the EU can make an effective and legitimate contribution to current processes of recalibration and reform in the national welfare states of the EU. The central question is not ‘how much’ or ‘how little’ Europe we wish to have, but rather ‘what kind of’ social Europe the member states are willing and able to build’. Formulating the matter thus suggest that it is possible to strike a balance not only between the EU and member-states that respects the capacities and competences of both but also that can mediate between economic and social concerns.

4.5 Striking a Balance?

It is not unusual to hear criticisms that there is an imbalance at the heart of the process of European Integration. Much of this criticism centres around the idea that the ideals underlying the notion of ‘social Europe’ have never been accorded equal weight as the emphasis on the four economic freedoms. Debates over the services directive in the European Parliament were couched in terms of the directive undermining national welfare regimes. Among labour unions there is anxiety over the implications of many recent ECJ cases concerning the free movement of workers. And the rejection of the Constitutional Treaty in France in 2005 has been attributed to a suspicion that the EU was devoted to a ‘neo-liberal’ economic agenda that disregarded or eroded the social dimension of the EU (Pelkmans 2007; Ferrara 2009).

Other commentators offer a more precise diagnosis of the alleged problem. Fritz Scharpf (2009) argues that there is a ‘double asymmetry’ or imbalance in relation to the formation of national social policy within the EU. The first relates to how the axis of decision-making has tilted toward non-political actors such as the ECJ and away from national governments who find it increasingly difficult to strike a consensus. The second asymmetry or imbalance relates to how the increasingly non-political process favours negative integration — the removal of impediments to the operation of the four freedoms — over policies of positive integration that involved the formation of common policies to realise necessary goods. Arising from this ‘double asymmetry’ or imbalance is a process that undermines social market economies at the national level and impedes efforts to recreate similar institutions at the European level. This section first reviews how the gradually increasing size and diversity of the European Union made it increasingly difficult to forge a common political consensus; the ECJ then assumed a much greater role in forwarding European integration — the first

asymmetry. Section 4.5.2 analyses how this led to the emphasis of negative over positive integration, which has been accentuated by the stream of jurisprudence documented in section 4.3.1. An assessment of imbalance position is offered in 4.5.3.

4.5.1 The First Imbalance: Law dislodges Politics

Scharpf believes that there was a time when EU integration was conditioned primarily by politics. It was to be achieved either by intergovernmental agreement on amendments to the Treaties or by European legislation initiated by the Commission and adopted by the Council of Ministers (Scharpf 2009: 7). After tariff barriers had been removed, future progress was to be achieved through legislative harmonization of national rules, allowing governments to decide the pace of liberalization pertaining to the four freedoms. In retaining the ‘whip-hand’ over liberalization, the original six member-states were able to control the interaction effects between economic liberalization and the processes and systems associated with national welfare regimes. Thanks to this form of control, member-states were, according to Scharpf, able to maintain the regimes of ‘embedded liberalism’ typical of postwar Western economies in which markets were maintained within politically defined limits that did not perturb the conditions of social cohesion and stability with national societies.

This model of ‘embedded liberalism’ was also able to operate within the then EEC because all six original members were fairly homogenous in terms of their political economy. All had fairly large Bismarckian-type pension and health care systems that were primarily financed by wage-based contributions; they enjoyed highly regulated labor markets and industrial-relations systems, and all had a large sector of public services and infrastructure functions that were either provided directly by the state or in other ways exempted from market competition (Scharpf 2009: 8).

This equilibrium was disturbed by the first enlargement of the EU which brought countries with different systems of political economy: liberal in the case of the Ireland and the UK, and social democratic in the case of Denmark. Harmonization of national rules through European legislation became more difficult and some feared that the EEC would not be able to proceed beyond the custom union built in the first decade of its existence.

It was then, according to Scharpf, that the European Court of Justice assumed a much greater role in the process of European integration. Although it had already established the principles of supremacy (EU law took precedence of the law of member-states), and ‘direct effect’ (EU law constituted a legal order which bestowed enforceable rights for individuals of member-states), the ECJ still had a limited reach. In the 1960s, it had only intervened against national violations of unambiguous prohibitions in the Treaty and against protectionist measures that were clearly designed to prevent the market access of foreign suppliers. In 1974, the Court adjudicated on the *Dassonville* case (8/74) which concerned Art. 28 of the EC Treaty which prohibited ‘quantitative restrictions on imports and all measures having equivalent effect’. The ECJ interpreted this provision as entailing that all trading rules which are capable of hindering intra-community trade are to be considered as measures having an effect equivalent to quantitative restrictions.

Did this mean that measures that constituted a potential impediment to trade should be swept away? In the famous *Cassis* case (120/78), the ECJ considered what might constitute an acceptable obstacle to free movement. It responded that “obstacles to movement within the Community ... must be accepted insofar as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions, and the defense of the consumer’. Where obstacles to movement could not be justified, the Court announced that the principle of mutual recognition should prevail, stipulating that products “lawfully produced and marketed in one of the member states” must be allowed into the national market of another.

Scharpf claims that the *Dassonville* and *Cassis* doctrines maximize the Court’s quasi-discretionary control over the substance of member-state policies. Implications from these cases were extended from free trade to free service delivery, free establishment, free capital movement, and the free mobility of workers. By the end of the 1970s, European integration had reached a highly asymmetric institutional configuration. National barriers to trade were almost impossible to remove through legislative harmonization where ECJ-derived doctrines were able to extend the Treaty based rights of individuals and firms. It is on this basis that Scharpf claims that integration through law is a ‘negative’ process, concerned with the removal of barriers to the four freedoms, rather than a positive process involving the reconstruction of systems that would facilitate these freedoms.

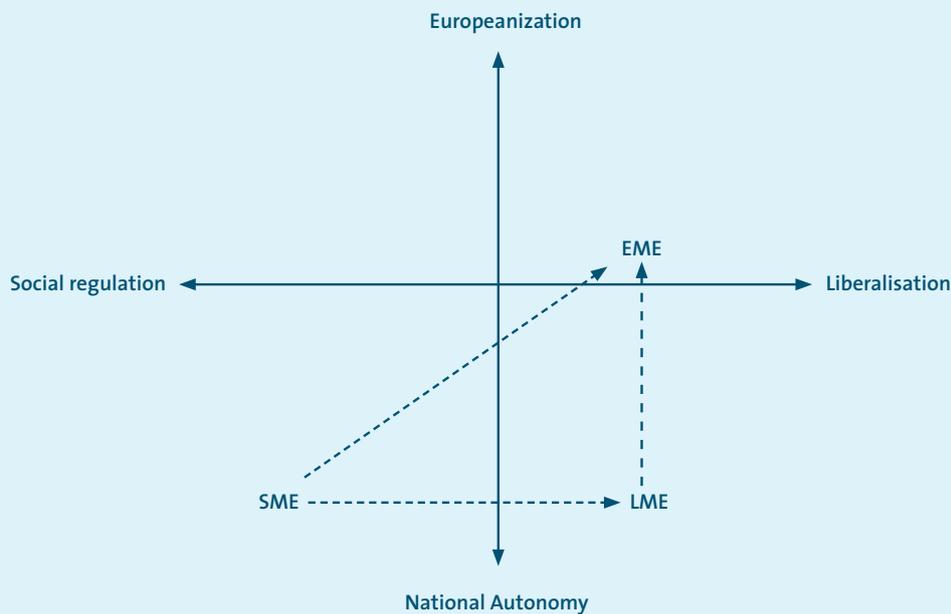
4.5.2 The Second Imbalance: Negative over Positive Integration

Although the decisions of the ECJ are mainly responsible for this process of ‘negative integration’, Scharpf concedes that the liberalization it introduces should not be interpreted in a purely ‘market-liberal or neoliberal sense’. He admits that from early on the Court has protected the social rights of migrant workers against discrimination on grounds of nationality, and it has expanded the guarantee of equal pay for men and women (Art. 141 ECT) into a workplace-oriented regime of gender equality. Furthermore, freedom-of-service provisions have been used to require that patients seeking ambulatory and stationary health care abroad should be reimbursed by their national system. And the combination of EU citizenship, freedom of movement and nondiscrimination on grounds of nationality is used to minimize national residency requirements that would limit migrants’ access to national welfare systems (2009: 14-15). All of these scenarios are indicative of the fact that the rights-based case law of the ECJ is expanding into new areas where its evolution is not, or not primarily, driven by the economic interests of big firms and capital owners. For this reason, liberalization is used by Scharpf as a ‘generic term describing mobility-enhancing policies that may serve economic as well as noneconomic interests’ (ibid).

However, this broad sense of liberalisation does not entail that an 'embedded economy' is appearing at the level of the EU which entails the political tempering of market forces. What EU citizenship, underpinned by decisions of the ECJ, guarantees is individual rights of exit from, and entry into, democratically shaped and collectively financed systems of national solidarity. Therefore, for Scharpf, integration through law maximizes negative integration at the expense of democratic self-determination within national settings. It produces what one commentator has termed an 'anti-political polity' (Walker 2010) both at the level of the EU and member-states, wherein the resources to commit to collective projects are being depowered by negative integration that favours individual mobility. Even if the ECJ were to demonstrate an awareness of the national consequences of its decisions, it cannot establish a common EU regime that would remedy some of these deficiencies; it can only deregulate existing national regimes. And positive integration is unlikely to be secured through political agreement given the difficulties of consensus within an enlarged EU.

The net result, Scharpf believes, is to introduce a tendency that forces social market economies to conform to liberal market economies. The former is one in which the state is heavily involved both in the provision of public goods and enlisting the cooperation of various parties to help produce these goods; the latter is one in which the state plays a minimal role both in the provision of public goods and in the creation of such a framework for these goods to be produced as it prefers to let these be created and allocated through private transactions. This latter category of society, in which Scharpf places Ireland along with the UK and Eastern European countries, is least discomfited by the decisions of the ECJ and may have reason to welcome the removal of non-tariff barriers in other member states and the creation of competitive markets in sectors that other countries had reserved for the public sector or otherwise shielded from competition (Scharpf 2009: 26). By contrast, the social market economies are extremely vulnerable to the sort of 'legal compulsion' exercised by the ECJ which may even undermine the basis of their comparative advantage created by domestic institutions and practices that both complemented and displaced the mechanism of pure market interactions (*ibid*). Figure 1 encapsulates Scharpf's belief that the emergent model for the European market economy (EME) is the liberal one (LME) in which there is little social regulation over economic affairs. Thus this emerging topology of market economies involves the greatest disruption to social market economies (SME) which are inexorably pulled into the orbit of the liberal model.

Figure 4.2 The Effect of EU Integration on Market Economies



4.5.3 Assessment of the Imbalance Thesis

Scharpf's account of this double imbalance is thoroughly grounded in an exhaustive analysis of ECJ case-law and resonates with the beliefs of many members of the public as well as those of commentators. However, the argument still contains some questionable assumptions.

The 'imbalance' thesis is prone to determinism, namely that it over-estimates the determinative power of ECJ judgements and underestimates the opportunities for a national response that preserves but yet transforms, in some fashion, the original preferences and interests that were called into question by the ECJ. For instance, Scharpf admits that his analysis may seem to involve a high degree of 'structural determinism' that leaves no room for the potential of creative agency. His response is that his purpose is to raise awareness of the structural obstacles that would have to be overcome if an attempt was made to create a 'European social market economy' (Scharpf 2009: n. 1)

This response rests on the assumption that efforts to alleviate the effects of negative integration, i.e. some form of positive integration, can only be conducted at supra-national level. This seems to confirm the issue of determinism, i.e. there is little room for manoeuvre at the national level. However this account may rest upon a vision of negative and positive integration that may be more suited to an earlier stage of European integration which differs from the current period. The first stage was characterized by the fact that the EU had few legal or budgetary instruments to effect changes in national social policy. The second stage underlined how ECJ decisions drove negative integration, forcing national welfare systems to

conform to the internal market; in this stage, positive integration of social policy was limited, not making up for losses nationally (Kvist and Saari 2007: 230). Since then, there has been a 'third wave' of integration which has involved the further realization of the internal market, EMU, the fifth enlargement and the creation of new policy processes, not all of which are captured in the 'imbalance thesis'.

In particular, the implications of new policy processes and the fifth enlargement tend to be overlooked. The importance of new policy processes like the Lisbon Strategy and the OMC, lies in the fact that they exemplify a new form of 'positive integration'. Unlike old positive integration that leads to more policy making at the EU level, this new form of positive integration mainly provides input to policy making at the national level where decisions on social protection occur (Kvist and Saari 2007). This new kind of positive integration fits with the interactive perspective articulated by NESC in background paper on governance and policy-making. It is also in keeping with emerging scholarship on the European Court of Justice which maintains that there is a degree of conditionality attached to the supremacy of EU law and this is not a temporary aberration but a permanent feature of the EU constitutional order. Accordingly, the relationship between national and EU legal orders should be construed as 'interactive rather than hierarchical' (Hunt and Shaw 2009). If this is the case, then the ECJ does not impose solutions of a particular ideological hue but invites national systems to moderate between rights, the importance of which is agreed by all.

Enlargement is another issue that tends to receive partial attention from the imbalance thesis. The fifth enlargement may have created incentives for employers and individual workers to have greater recourse to previously existing channels of indirect wage competition need to be acknowledged. The scale of subcontracting by companies in the EU-15 of companies from the EU-10, the numbers of workers being 'posted', the scale and reach of agency workforces, the increasing number of mobile self-employed and the extent to which some of them may – in effect – be working as employees, etc., are just some of the channels which need to be monitored.

These pressures and anxieties did, in turn, prompt policy and institutional developments in Ireland. Indeed, in Irish policy and partnership there was intense focus on labour standards and consideration of how standards could be protected in a fairly international labour market in the context of a voluntarist regime of industrial relations. In its analysis of migration policy, NESC argued that it is more feasible and desirable to protect labour standards within the country, rather than rely on controlling entry to the country. The undoubted challenge of protecting labour standards was placed in the wider context of achieving integration of migrants and avoiding labour market, social and linguistic segmentation. This resulted from Ireland's reflection on the difficulties faced by other EU member states that experienced immigration in the 1960s and 1970s (NESC, 2006). These perspectives highlighted the need not only for strengthened law and institutions to protect labour standards, such as NERA, but also for the wide involvement of the social partners and NGOs in both labour standards and integration.

In portraying enlargement as providing an impetus to ‘liberalisation’ that damages national systems of solidarity, this account overlooks how it offers opportunities to EU citizens in a number of ways. As recounted already in this chapter, Ireland’s experience of EU membership has proven beneficial in a number of social policy areas, such as gender equality and safety in relation to employment. Not only have successive enlargements elevated social standards in member-states but they have also offered workers an opportunity to avail of employment opportunities elsewhere in the EU. This has been most vividly demonstrated in the case of Ireland after the fifth enlargement, as documented in background paper 6 when it was one of only three countries not to adopt transitional arrangements that limited the movement of workers from new member-states. And even though this freedom of movement has led to some significant changes for national systems of social protection, it should not be forgotten that these national systems are embedded in a wider system of solidarity whereby EU citizens can avail of benefits and social services in EU countries other than their own. What looks like a restriction of national solidarity could equally well be construed as both an expansion of individual liberties and an extension of trans-national affiliations.

In summary, while the imbalance thesis captures some of the dynamics of EU integration and their effects upon national social policy, the reality may be more complex than it allows. The next section attempts to demonstrate that this is the case by examining some of the most contentious cases to emanate from the ECJ in recent years, the Laval and Viking cases, which are often thought to exemplify the EU’s convergence toward a neo-liberal model. Rather than endorse an interpretation that construes the ECJ jurisprudence as skewed toward ‘neo-liberal’ values, the next section argues that the ECJ required national administrations to balance the EU’s fundamental freedoms against the right of trade unions to strike, rather than impose an ‘imbalanced’ solution itself. The fall-out from the Laval case is examined in more detail as it shows how Sweden responded creatively to the ECJ’s decision in a manner that balanced its heritage of its own industrial relations system with the rights of foreign employers.

4.5.4 The Question of Balance in the Laval and Viking Cases

The Laval case (C 341/05) has its origin in a Latvian company, Laval un Partneri, being awarded a public tender in Sweden to renovate a school near Stockholm. The Riga-based company posted workers from Latvia to work on the building site in Sweden. The workers were employed to work through a subsidiary of Laval and negotiations began between it and the Swedish building and public works trade union. However, these negotiations broke down and Laval subsequently signed collective agreements with the Latvian building sector trade union, to which 65 per cent of the posted workers were affiliated. The Swedish trade union then took collective action by means of a blockade of all Laval sites in Sweden and this action was supported by other Swedish trade unions. Laval brought proceedings in the Swedish courts for a declaration that the trade union action was unlawful in that it conflicted with rights established under Art 49.

The Viking case (Case C-438/05) concerns a worker's right to take collective industrial action, specifically if the effect of that action would be to impede the employer's right to freedom of establishment. The case has its origin in the circumstances surrounding the initiation of collective action by the Finnish Seamen's Union, supported by the International Transport Federation, against shipping company Viking Line ABP and OÜ Viking Line Eestia. The dispute arose in 2003 over the company's decision to reflag one of its ships, the Rosella, to an Estonian flag, to enable it to acquire cheaper Estonian labour to work on the ship. The Finnish Seamen's Union, while accepting that the company had the right to employ the workers, insisted that these workers must be employed under the terms of the existing Finnish collective agreement. When the company refused to accept this position, the union commenced its collective action and called on trade unions internationally to support it. The company consequently brought a legal claim against the trade unions, on the basis that industrial action would infringe its right to freedom of establishment under TEC art. 43.

In both cases, the ECJ attempted to strike a balance between the right to take collective action, including the right to strike, and the freedom to provide services. The court articulated that the EU has not only an economic but also a social purpose, the rights under the provisions of the EC Treaty on the free movement of goods, persons, services and capital must be balanced against the objectives pursued by social policy, which include... improved living and working conditions, so as to make possible their harmonisation (Laval, para. 105)

Whilst the Court recognised that the right to take collective action constituted a 'fundamental right' and could be undertaken 'for the protection of the workers of the host state against possible social dumping' (Laval, para. 103), the exercise of that right was 'subject to certain restrictions' (ibid, para. 91), namely that it be justified according to the principle of proportionality. In the case of Laval, the Court found that the blockade was not proportionate since it would have required the contracting company to adopt provisions which were not sufficiently precise and accessible to allow the company to determine the obligations with which it would have been required to comply.

In the Viking Case, the Court also insisted that the right to take collective action must be balanced against the rights protected under the EU Treaty. According to the ECJ, the trade unions had considered that it is inherent in the very exercise of their rights, including the 'right to take collective action that those fundamental freedoms [as set out in the Treaty of the Functioning of the European Union] will be prejudiced to a certain degree' (para. 52). The Court also considered that the freedom to provide services would be compromised if the abolition of State barriers could be neutralised by private associations presenting obstacles to this freedom. The Court was in no doubt that the purpose of collective action was to render Viking's exercise of its right of freedom of establishment 'less attractive, or even pointless' (Viking, para. 72). Again the Court maintained that this restriction could be justified by overriding reasons of public interest. But if it was discovered that the jobs or conditions of employment were not 'jeopardised or under serious threat', then collective action could not be justified since it would be disproportionate to the ends to be achieved. The ECJ determined that it was for the national courts to assess if this was the case or not and it (the ECJ) would provide guidance.

Sabel and Gerstenberg (2010: 31) argue that the Court is not ‘imposing’ a solution of a particular bent, be it ‘neo-liberal’ or otherwise, but requiring the relevant parties within member-states to resolve matters through a mutually acceptable solution.

The outcome in each of the above cases depends not on a general—quasi-legislative—statement by the Court as to how the multipolar conflict between freedom of services; protection of posted workers against social dumping; protection of host state workers against competition from home state workers; should be resolved. Rather, the Court offers a proceduralizing and contextualizing approach to the underlying fundamental conflict within the enlarged EU between the commitment to a liberal market economy and social policy commitments: the Court obligates the parties to the conflict, via the referring court, to do the balancing that is necessary here, thereby shifting the burdens of providing mutually acceptable justifications to the parties themselves.

When one examines the domestic fall-out from the *Laval* case, it reinforces this point. Davesne (2009) argues that, for Sweden, the decision of the ECJ changed the ‘opportunity structure’ for labour market reforms at the domestic level and does not prevent domestic institutions or actors from making creative use of these changes. *Contra Scharpf*, this line of argument would contend that Europeanization represents a possible ‘double movement’ of de-regulation and re-regulation at the domestic level rather than perceiving re-regulation to be only possible at a supra-national level.

One reason why some actors sought change in the Swedish model of industrial relations is that ‘it is now unanimously acknowledged that the Swedish collective convention system is lacking transparency, especially for foreign companies. As an example, the local agreement that *Laval* refused to sign was a 170 pages long document’ (ibid: 15). At the time of the *Laval* decision, the Swedish Minister for Labour stated that the ‘social partners will have to take into account the Court’s decision and take initiatives in order to adapt the Swedish model’ (ibid, quoted on pg. 15). Towards this end, a Committee was established in 2008 to examine how Swedish labour relations law could be adapted to the requirements of EU law. Several options were canvassed including the introduction of a legal minimum wage or establishing a system for declaring collective agreements to be universally applicable. The *Laval* Committee discarded both of these options arguing that they would represent a ‘major intrusion into the Swedish labour market model. (...) these solutions should be avoided if it is possible according to Community law to implement a less extensive solution as regards the autonomy of the parties in the labour market’ (ibid: 16).

A third option, the Committee argued, was to reinforce the responsibility of social partners in the regulation of social relations. It proposed to accomplish this in several ways:

1. The unions were to compromise by withdrawing the items that are not included in the “hard core” of the Posting of Workers Directive (e.g. night shifts, working hours, breaks...) from the collective agreements applicable to foreign companies (and thus could not lead to a collective action in case of non compliance). However, social partners would continue to be set up and enforce minimum

rates of pay and other minimum conditions within the ‘hard core’ that are to be applied for a particular category of posted workers according to the central and nationwide collective agreement applicable to the sector.

2. Foreign employers would thus be asked to comply with the Swedish collective agreements, while Swedish Trade Unions would have to set more predictable and transparent rules on wage-setting.
3. In order to help them in this task, the Committee proposed to reinforce the role of the “liaison office”, the Swedish Work Environment Authority, which “aims to simplify matters, both for foreign employers and workers, regarding the obtaining of information about the conditions and requirements applicable upon a posting to Sweden

One commentator suggests that the difficulties uncovered by the Laval case stemmed not from the actions of the social partners but from an inadequate ‘europeanisation’ of the industrial relations system by the Swedish government (Zahn 2008). Therefore government had to play a larger role in reforming the system.

Davesne (2009) comments that if these proposals are accepted, it would not constitute ‘a system shift either towards the continental or the Anglo-Saxon models’, which is in contrast to the predictions of Scharpf. Kilpatrick (2009) contends that if solutions in this area are to be found, then it is through national collective standard-setting taking sufficient account of the interests of out-of-state service providers and posted workers. Kilpatrick expands that the position that national welfare traditions could and should be kept entirely insulated from requirements, including those of EC trade law, to take account of traders and workers from other states, is simply not sustainable. Indeed, the free movement of persons has already required huge and often beneficial changes to national welfare traditions so that, to take one very obvious example, very few jobs can be reserved for Member State nationals. It is not inappropriate therefore for EU law to require those making collective bargains to demonstrate that adequate account has been taken in their agreements of the rights and needs of posted workers and posting undertakings in host states.

Of course, this is easier said than done but Kilpatrick’s analysis is clear that many national systems of solidarity may be insufficiently open to ‘outsiders’. According to Kilpatrick, these systems take insufficient notice of the changed European context of industrial relations and therefore need to be amended. Similarly, Ferrera and Sacchi (2009) notes that there is a balance to be struck between on the one hand, breaking down accreted national privileges that do not give appropriate recognition to concerns of other EU citizens, and on the other hand maintaining distinctive national forms of organization; or as they put it, “dismantling local immunities and privileges” and that of preserving legitimate national diversities’. The important point to note that this balance is still to be struck — it is always in the balance as it were — and it will be member-states who achieve this harmony. The ECJ does not necessarily impose ‘solutions’ or determinative decisions that lead inevitably and inexorably toward further integration (Hunt and Shaw 2009) but leave open an opportunity space for member-states to respect both EU law but refract it through their own

legal and social traditions. Of course, this is a delicate balancing act and member-states frequently fail to honour this balance; however, this is not the same as stating that there is a permanent ‘imbalance’ in the influence of the EU upon national welfare regimes.

4.5.5 Conclusions on the ‘Imbalance’ Thesis

This section has attempted to demonstrate that the effects of ongoing EU integration upon national social policy may be more complex than the ‘imbalance’ thesis allows. The influence of non-elected bodies like the ECJ cannot be denied. And there is little likelihood of a unanimous political consensus at the European Council about the requirements of social Europe. But this does not mean that negative integration will inevitably drive down social standards. It may be equally likely that a new form of positive integration will emerge as member-states pool their experience about common problems and learn from each other. The final section outlines what such a process might involve by drawing out the strengths of each position examined in this chapter. This fourth position emphasizes the importance of national government’s power of initiative (as contained in the sovereignty view); the readiness of member-states to reform social welfare in light of global challenges and societal changes (as elaborated in reviewing the globalization thesis); and the capacity of individual member-states to learn from each other’s experience of devising solutions to similar social problems, notwithstanding the very different configuration of the welfare architecture within each country.

4.6 Towards a Synthesis – Developing Welfare within the EU

None of the positions examined hitherto — the sovereignty, globalisation and imbalance theses — is entirely wrong and in fact each of them contains some important truths about the effects of the European Union upon national social policy. However, their veracity can only really be gauged by considering each in the light of the other for this allows their strengths to shine through. This section extracts one key proposition from each of them in establishing a fourth position congruent with the developmental welfare state endorsed by NESC. These are as follows:

1. From the national sovereignty thesis – Domestic governance matters even more in a social policy setting characterised by multi-level governance
2. From the globalization view thesis – Social spending of an activist kind is a necessary investment to secure both successful economic performance and viable fiscal position (developmental welfare)
3. From the imbalance thesis – The European Union offers an opportunity for positive integration of a new kind rather than making it impossible. For countries to make a success of developmental welfare, they need to avail of possibilities for learning from each other as they attempt to resolve complex social issues such as participation in the labour market or social inclusion.

Taking the national sovereignty position first, it seems clear that a position which maintains that the social protection systems of member-states are autonomous of developments at the European Union level is untenable. This is not just because of the slow accretion of recognised competences in gender equality and occupational health and safety at EU level or the enhanced individual rights that are operative across borders. The sovereignty position is diminished both by the implications of ECJ jurisprudence, promoting some of the core economic freedoms of the EU, and the determination of the Commission to promote cross-border trade and competition. In its emphasis on the importance of the agency of national governments, the sovereignty position neglects how important the context of the EU has become for the development of national social policy. However in insisting on the significance of a nation's capacity to act, the position retains an important truth.

In some respects, the strengths and weaknesses of globalization thesis are the converse of the first. If the sovereignty position puts too great an emphasis on agency and neglects the context of structure of decision-making, then the globalization thesis has an excessive regard for the causal strength of general economic forces. As section 4.4 demonstrates, it is clear that member-states have not experienced a process of retrenchment of social spending although the recent economic crisis may change this. Concentrating on levels of expenditure may understate the change that has been going on. There is some evidence to suggest that social protection within member-states has been undergoing significant change even if this cannot be attributed to globalization forcing a 'race to the bottom'. Instead, successive Presidencies of the European Council have pressed the issue of how the EU can maintain its 'normative commitments to social justice while aspiring to be a truly competitive force in the evolving knowledge economy' (Esping-Andersen *et al.* 2001). And the answer from many member-states has been to articulate a fairly coherent new narrative about how vital a role social policy has to play in the new era of economic internationalization and postindustrial social change. In order to connect social policy more fully with a more dynamic economy and society, EU citizens have to be endowed with capabilities, through active policies that intervene early in the life cycle rather than later with more expensive passive and reactive policies. At the heart of the new narrative lies a re-orientation in social citizenship, away from *freedom from want* towards *freedom to act*, prioritizing high levels of employment for both men and women as the key policy objective, while combining elements of flexibility and security, under the proviso of accommodating work and family life and a guaranteed *rich social minimum* serving citizens to pursue fuller and more satisfying lives (Hemerijck 2008: 44).

Member-states have been stimulated in this common-question by various presidencies of the EU but they have also been sustained by the EU providing a space in which common problems could be assessed and solutions evaluated.

The imbalance thesis ascribes a more negative effect to the influence of the European Union upon national social policy. Rather than seeing it as playing a constructive role in assisting member-states to formulate answers to similar socio-economic challenges, it views the EU as promoting unrestrained liberalisation that has had a destructive effect upon national systems of social protection. Prompted by non-political actors such as the Commission and European Court of Justice, this

process of liberalisation cannot be halted because of the low probability of securing political consensus between all 27 member-states. Thus negative integration aimed at eliminating distortions to competition triumphs over a project of positive integration or harmonization of national social policies around agreed norms. The net result is to transform all market-economies into liberal models in which the state plays a relatively minimal role.

Connecting the imbalance view with both the national sovereignty view and the globalisation view makes some of its problems apparent. As the example of the Swedish government's response to Laval demonstrated, member-states still retain a capacity to respond in a manner that is in keeping with their own traditions of social protection. If the ECJ does find that some features of national law are not compliant with EU law — negative integration — this does not preclude a positive response being formulated at the national level which takes into account the concerns of non-national persons and companies.

If the imbalance view is connected with the globalization thesis, then one can see that the dynamic for change within the EU has some external causes. In the words of one of the officials closely connected with the Lisbon Strategy, its overall purpose was to 'prepare Europe for globalisation' (Rodrigues 2009: 23). It concerned itself with raising employment levels, improving adaptability and managing industrial restructuring (ibid: 26), all of which required a more 'activist' social policy that enables people to enhance their skills to raise their chances of participation in the labour market.

National welfare systems also face what Ferrara and Sacchi (2009) terms *similar* challenges that originate from largely endogenous dynamics (e.g. demographic ageing or changing family and gender relations) and can be met through different, path dependent, national responses. As the citation of Hemerijck's evaluation of social policy developments across the EU demonstrated, most member-states have been engaged in responding to these kinds of challenges through a process of what he labels contingent convergence toward a new paradigm of welfare that views social protection as both a social and economic investment.

If the imbalance thesis overlooks the external and internal changes that require a more activist social policy as well as being somewhat inattentive to the need for change within an enlarged Europe, there may still be a degree of truth within it. Specifically, the degree of political attention devoted to the priorities of the Lisbon Strategy such as active welfare policies has been less than fulsome. As this chapter has recounted, many member-states', including Ireland's, engagement with the OMC has been tentative. Taking the case of Ireland, the kinds of question it has asked about the basis of its record of employment growth — whether it has a welfare, education and training system capable of supporting its aspiration of a high participation, high-skilled and high-performance economy — have not elicited a detailed response. If the new form of positive integration offered by ongoing European integration (see sec. 4.5.3) has been to provide inputs for the reconfiguration of policy at national level, then in some respects, Ireland has failed to take advantage through its relative lack of engagement with the OMC. It is at the national level that integration could yet be more positive and where there may be an ongoing deficit that needs to be corrected.

Member-states realise that they are facing similar challenges such as a transition to post-industrial economies that necessitates more extensive education. And member-states are increasingly embarking on a path of what Hemerijck termed 'contingent convergence' which involves a more proactive social investment strategy, with much greater attention to prevention, activation, and capacity building. Increased emphasis on activation has led to a greater emphasis on policy learning as the major challenge of activation lies in identifying the best way to enter and remain in gainful employment and achieve some upward mobility. The ways in which people can be inaugurated into the labour market and sustained within it will depend on their capacity and prior experience and will not be amenable to uniform solutions. Success of activation policies will be underpinned by their capacity to learn from previous policies and a redefinition of target groups and instruments (Eichhorst and Konle-Seidl 2008). And this necessity for learning can only be enhanced by fuller participation in an EU wide system of monitoring and assessment. If many member-states have embarked on a stage of 'developmental welfare', the necessary cross-pollination of experience and learning has yet to flower fully.

References

- Adema, W. and Ladaique, M. (2009), *How Expensive is the Welfare State? Gross and Net Indicators in the OECD Social Expenditure Database (SOCX)*, OECD Social, Employment and Migration Working Papers No 92. Brussels: OECD Publishing.
- Alber, J. and Standing, G. (2000), 'Social Dumping, Catch-up or Convergence? Europe in a Comparative Global Context', *Journal of European Social Policy*, 10 (2), 99-109.
- Baquero Cruz, J. (2005), 'Beyond Competition: Services of General Interest and European Community Law' in De Búrca, G. (Ed.) *EU Law and the Welfare State: In Search of Solidarity*, Oxford: Oxford University Press.
- Bertola, G., Marimon, R., Pissarides, C. (2000), 'Welfare Systems and Labour Markets in Europe: What Convergence Before and After EMU?' in Bertola, G., Boeri, T. and Nicoletti, G. (Ed.) *Welfare and Employment in a United Europe*, Massachusetts: Massachusetts Institute of Technology.
- Church, C. and Phinnemore, A. (2007), 'The Rise and Fall of the Constitutional Treaty' in Cini, M. (Ed.) *European Union Politics, Second Edition*, Oxford: Oxford University Press. 46-65
- Citi, M. and Rhodes, M. (2006), 'New Modes of Governance in the European Union: A Critical Survey and Analysis' in Jorgensen, K.E., Pollack, M.A. and Rosamond, B. (Ed.) *Handbook of European Union Politics*, London: Sage Publications. 463-482
- Davesne, A. (2009), *The Laval Case and the Future of Labour Relations in Sweden*, Centre d'Etudes Européennes, Paris: SciencesPo.
- De Búrca, G. (2010), 'Stumbling into Experimentalism: The EU anti-Discrimination Regime' in Sabel, C.F. and Zeitlin, J. (Ed.) *Experimentalist Governance in the European Union*, Oxford: Oxford University Press.
- Eichhorst, W. and Konle-Seidl, R. (2008), *Contingent Convergence: A Comparative Analysis of Activation Policies*, IZA Discussion Paper 3905. Bonn: Institute for the Study of Labor (IZA).
- Esping-Andersen, G., Gallie, D., Hemerijck, A. and Myles, J. (2001), *A Welfare Architecture for Europe?*, Report Submitted to the Belgian Presidency of the European Union. Brussels: European Union.
- European Commission (2004), *White Paper on Services of General Interest*, Com 374. Brussels: European Commission.
- European Commission (2005), *Working Together for Growth and Jobs: A New Start for the Lisbon Strategy*, Com 24 2 February, Brussels: European Commission.
- Falkner, G., Treib, O., Hartlapp, M. and Leiber, S. (2005), *Complying with Europe: EU Harmonization and Soft Law in the Member States*, Cambridge: Cambridge University Press
- Ferrera, M. (2005), *The Boundaries of Welfare*, Oxford: Oxford University Press,
- Ferrera, M. (2009), 'National Welfare States and European Integration: In Search of a "Virtuous Nesting"', *Journal of Common Market Studies*, 47 (2), 219-233.
- Ferrara, M. and Sacchi, S. (2009), 'A More Social EU? Issues of where and how' in Micossi, S. and Tosato, G. (Ed.) *Europe in the 21st Century: Perspectives from the Lisbon Treaty*, Brussels: Centre for European Policy Studies.
- Hatzopoulos, V. (2008), 'Legal Aspect of the Internal Market for Services' in Pelkmans, J., Hanf, D. and Chang, M. (Ed.) *The EU Internal Market in a Comparative Perspective*, College of European Studies. Brussels: PIE Peter Lang.
- Hemerijck, A. (2002), 'The Self-Transformation of the European Social Model' in Esping-Andersen, G. (Ed.) *Why we need a new Welfare State*, Oxford: Oxford University Press.
- Hemerijck, A.C. (2007), 'Trodden and Untrodden Paths in 'Social Europe'. On the Institutional Relationship Between the National Welfare State and the Process of European Integration', Presentation Unpublished Inaugural Lecture,
- Hemerijck, A. (2008), 'Welfare Recalibration as Social Learning', Presentation to ESPAnet Doctoral Researcher Workshop, University of Bologna, 5-7 June.
- Hervey, T. (2007), 'EU Law and National Health Policies: Problem or Opportunity', *Health Economics, Policy and Law*, 2 (1), 1-6.
- Hix, S. (2005), *The Political System of the European Union*, London: Palgrave Macmillan.
- Hunt, J. and Shaw, J. (2009), 'Fairy Tale of Luxembourg? Reflections on Law and Legal Scholarship in European Integration' in Phinnemore, D. and Warleigh-Lack, A. (Ed.) *Reflections on European Integration: 50 years of the Treaty of Rome*, Hampshire: Palgrave MacMillan.
- Kilpatrick, C. (2009), 'Laval's Regulatory Conundrum: Collective Standard-Setting and the Court's New Approach to Posted Workers', *European Law Review*, 34 (6), 844-865.
- Kok, W. (2004), *Facing the Challenge: The Lisbon Strategy for Growth and Employment*, Report from the High Level Group Chaired by Wim Kok. Brussels: European Commission.
- Kvist, J. and Saari, J. (2007), *The Europeanisation of Social Protection*, Bristol: Policy Press.

- Leibfried, S. (2005), 'Social Policy: Left to the Judges and the Markets?' in Wallace, H., Wallace, W. and Pollack, M.A. (Ed.) *Policy-Making in the European Union Fifth Edition*, Oxford: Oxford University Press. 243-278
- Mangan, I. (1993), 'The Influence of EC Membership on Irish Social Policy and Social Services' in O'Conneide, S. (Ed.) *Social Europe: EC Social Policy and Ireland*, Dublin: Institute of European Affairs.
- NESC (2005a), *The Developmental Welfare State*, Dublin National Economic and Social Council.
- NESC (2005b), *NESC Strategy 2006: People, Productivity and Purpose*, Dublin National Economic and Social Council.
- NESC (2006), *Migration Policy*, Dublin: National Economic and Social Council.
- O'Donnell, R. and Moss, B. (2005), 'Ireland: The Very Idea of an Open Method of Coordination' in Zeitlin, J., Pochet, P. and Magnusson, L (Ed.) *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies*, Brussels: PIE Peter Lang.
- O'Leary, S. (2005), 'Solidarity and Citizenship Rights' in De Búrca, G. (Ed.) *EU Law and the Welfare State: in Search of Solidarity*, Oxford: Oxford University Press.
- Pelkmans, J. (2007), *How Social is European Integration*, Bruges European Economic Policy Briefing No 18. Bruges: College of Europe.
- Rhodes, M. (2005), 'Employment Policy - Between Efficiency and Experimentation' in Wallace, H., Wallace, W. and Pollack, M.A. (Ed.) *Policy-Making in the European Union*, Fifth Edition. Oxford: Oxford University Press. 279-304
- Rodrigues, M. (2009), 'On the European Innovation Policy: Key Issues for Policy-Making' in Rodrigues, M. (Ed.) *Europe, Globalisation and the Lisbon Agenda*, Cheltenham: Edward Elgar.
- Sabel, C.F. and Gerstenberg, O. (2010), 'Constitutionalising an Overlapping Consensus: The ECJ and the Emergence of a Coordinate Constitutional Order', *European Law Journal*, 16 (5), 511-550.
- Sauter, W. (2008), *The Proposed Patient Mobility Directive and the Reform of Cross Border Healthcare in the EU*, TILEC Discussion Paper DP 2008-034. Tilburg: Tilburg University.
- Taylor-Gooby, P. (2002), 'The Silver age of the Welfare State: Perspectives on Resilience', *Journal of Social Policy*, 31 (4), 597-621.
- Walker, N. (2010), 'The Anti-Political Polity', *Modern Law Review*, 73 (), 141-154.
- Wilding, P. (2002), 'Review: Welfare States Under Pressure', *Journal of Social Policy*, 31 (4), 753-778.
- Wolf, H. (2002), *Globalization and the Convergence of Social Expenditure in the European Union*, Occasional Series Paper. Washington: George Washington Center for the Study of Globalization.
- Yeates, N. (2007), 'Globalisation and Social Policy' in Boaldock, A., Manning, N. and Vickerstaff, S. (Ed.) *Social Policy*, Oxford: Oxford University Press.
- Zahn, R. (2008), *The Viking and Laval Cases in the Context of European Enlargement*, Web Journal of Current Legal Issues. 10 Nov 2010, <http://webjcli.ncl.ac.uk/2008/issue3/pdf/zahn3.pdf>
- Zeitlin, J. (2005), 'The Open Method of Co-ordination in Question' in Zeitlin, J. and Pochet, P. with Magnusson, L. (Ed.) *The Open Method of Co-ordination in Action*, Brussels: P.I.E.-Peter Lang.
- Zeitlin, J. and Pochet, P. with Magnusson, L. (Ed.) (2005), *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies*, Brussels: P.I.E.-Peter Lang.

