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The European Union's Social Dimension

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Reader's Guide

This chapter looks at how European social policy has evolved since the late 1950s. It begins by reflecting on the **intergovernmental** character of the policy in the early days, and on how the gradual introduction of **qualified majority voting (QMV)** and the **widening** scope of the policy allowed the European institutions and **interest groups** a greater say in the EU's social dimension. The chapter also looks at the fight against regional disparities and (youth) unemployment in EU cohesion policy, including the **European Social Fund (ESF)**. Focusing on newer developments, later sections chart the arrival of the **open method of coordination (OMC)**, a non-regulatory approach to European policy-making in this field, and the **social partnership**—that is, the involvement of interest groups representing employers and labour in making European-level social policy. The chapter concludes by arguing that social **regulation** has become more difficult since the **accession** of a large number of Central and East European (CEE) states, and because of the effects of the financial and economic crisis.

Introduction

What is social policy? In a famous definition, T. H. Marshall (1975) talked of the use of political **power** to supersede, supplement, or modify operations of the economic system in order to achieve results that it would not achieve on its own. Such a wide definition would include, for example, **redistributive** European Union (EU) actions, which provide funding through the Union's **Structural Funds**—that is, the social, agricultural, **cohesion**, and regional funds. This would go far beyond what is usually understood as European social policy and would introduce too vast an array of topics to be covered in this brief chapter. It seems, therefore, more useful to apply a pragmatic understanding of social policy. This involves actions that fall under the so-called 'social dimension of **European integration**' (that is, any acts carried out under the social policy chapter of the Treaty), policies targeted at facilitating the freedom of movement of workers in the social realm, and, last but not least, action to **harmonize** the quite diverse social or labour law standards of the member states, whatever the **treaty base**.

This chapter will first outline the division of social policy **competences** between the EU and its member states, the interpretation of these treaty provisions in the day-to-day policy process over time, and the latest formal reforms at Amsterdam, Nice, and in the **Lisbon Treaty**. It will then analyse the incremental development of European Community or later Union social regulation and activities, including the European Social Fund (ESF) and the so-called open method of coordination (OMC). Since patterns of decision-making are quite distinctive in the social, as opposed to other, fields of EU politics, this chapter will also outline how EU-level interest groups participate therein (see also Chapter 14). The conclusion not only summarizes the results of the chapter, but also discusses the performance of European **integration** within its 'social dimension'.

The early years of EU social policy

According to the **Treaty of Rome** (1957), social policy competences were to remain a largely national affair. The Treaty did not provide for the **Europeanization** of social policies, because too many delegations had opposed this during the negotiations. Some governments (especially Germany) pleaded for a neoliberal,

free market approach to social affairs, even in the realm of labour and social security; others opted for a limited process of harmonization. The French delegation, notably, argued that France's comparatively high social charges, and its constitutional principle of equal pay for men and women, might constitute a competitive disadvantage within the newly formed European market, while Italy feared that the opening up of Community borders might prove costly for the southern part of the country, which was already economically disadvantaged. In the end, a compromise was found, but this did not include explicit **European Economic Community (EEC)** competences for active social policy harmonization at the European level. The dominant philosophy of the 1957 Treaty was that improvements in welfare would be provided by the economic growth that arose as a consequence of the liberalization of the European market, and not by the regulatory and distributive form of public policy (see Leibfried and Pierson, 1995).

The Treaty contained a small number of concessions for the more **interventionist** delegations. These included the provisions on equal pay for both sexes (Article 119 EEC, now Article 157 TFEU) and the establishment of a European Social Fund (Articles 123–8 EEC, now Articles 162–4 TFEU). Equal pay and the ESF increased in their importance as the European integration process progressed. While other provisions of the Treaty's Title III on social policy included some solemn social policy declarations, they failed to empower the EEC to act.

Paradoxically, the sole explicit Community competence for social policy regulation under the original EEC Treaty was not in the part of the Treaty that dealt explicitly with social policy; rather it belonged to Part II, on the foundations of the Community, which contained provisions on the free movement of goods, labour, services, and capital. Articles 48–51 EEC (now Articles 45–8 TFEU) thus provided for the establishment of the freedom of movement for workers as part of the Treaty's market-making activities. This implied the abolition of all discrimination based on the nationality of workers in the member states in the areas of employment, remuneration, and other conditions of work and employment (Article 48 EEC, now Article 45 TFEU). In order to 'adopt such measures in the field of social security as are necessary to provide freedom of movement for workers' (Article 51 EEC, now Article 48 TFEU), the Council was mandated to establish Community-wide rights to benefits, and a way of

calculating the amount of those benefits for migrant workers and their dependants.

Yet although there were almost no explicit social policy competences in the Treaty of Rome, an extensive interpretation of the Treaty basis provided, in practice, some room for manoeuvre. This was possible because, where necessary or useful for **market integration**, intervention in the social policy field was *implicitly* allowed through the so-called 'subsidiary competence' provisions. In other words, laws in the member states that 'directly affect the establishment or functioning of the **common market**' could be approximated by unanimous Council decision on the basis of a Commission proposal (Article 100 EEC, now Article 26 TFEU). Moreover, if action by the Community should prove necessary to attain (in the course of the operation of the common market) one of the objectives of the Community and if the Treaty had not provided the necessary powers, the Council was mandated to take the appropriate measures, acting unanimously on a proposal from the Commission and after consulting the European Parliament (Article 235 EEC, now Article 352 TFEU).

From the 1970s onwards, these provisions provided a loophole for social policy harmonization. However, the unanimous Council vote necessary for this to happen constituted a high threshold for **joint action**. Each government could veto social measures and, as a result, the EC found itself in what Scharpf (1988) has called a '**joint-decision trap**' (see Chapter 5).

KEY POINTS

- The 1957 EEC Treaty meant that social policy remained largely a national affair.
- However, the coordination of social security systems for migrant workers was an exception to this rule.
- Some concessions to the more interventionist delegations provided stepping stones for EU social policy integration in the longer run.

Treaty reform: minor turns major

In 1987, the **Single European Act (SEA)** came into force as the first major Community treaty revision (see Chapter 2). As in the 1950s, an economic enterprise was at the heart of this fresh impetus in favour of European integration. But parallel to the member

states' commitment to a **Single Market** programme, the Europeanization of social policy remained controversial. In various policy areas touched by market liberalization, notably environmental and research policy, Community competence was formally extended (see Chapter 25), but not for social policy.

However, one important exception was made. Article 118a EEC (this article has now been repealed) on minimum harmonization concerning health and safety of workers provided an escape route out of the **unanimity** requirement. For the first time in European social policy, it allowed **directives** to be agreed on the basis of a qualified majority of the Council members (see Chapter 16). The standards adopted following this Article were minimum regulations only. Nevertheless, under this provision, reluctant member states could be forced to align their social legislation with the (large) majority of member states, even against their will. It should be stressed that agreement on this Article was possible only because occupational health and safety issues were closely connected to the Single Market.

Governments did not expect this 'technical' matter to facilitate social policy integration in the significant way that it would in the decade to follow. An extensive use of this provision was possible mainly because the wording and the definition of key terms in Article 118a were somewhat vague:

'Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made. In order to help achieve the objective laid down in the first paragraph, the Council, acting by a qualified majority on a proposal from the Commission . . . shall adopt, by means of directives, minimum requirements for gradual implementation . . .'

This formulation made it easy to play the '**treaty base game**' (Rhodes: 1995). It allowed governments to adopt not only measures improving the working environment (for example, a directive on the maximum concentration of airborne pollutants), but also measures that ensured the health and safety of workers by improving working conditions in a more general sense (for example, limiting working time). It was clear that the reason why this treaty basis was frequently chosen was the fact that only this Article allowed for majority voting at the time.

KEY POINTS

- The Single European Act introduced qualified majority voting to a limited area of social policy.
- At the time, member state governments did not realize its (significant) implications for further policy integration.

From Maastricht to the Lisbon Treaty

The 1991 **Intergovernmental Conference (IGC)** preceding the **Maastricht Treaty** negotiated the next reform of the social policy provisions. However, under the requirement of unanimous approval by all (then) 12 member states, the social provisions could not be significantly altered because of the strong opposition from the UK government. At the end of extremely difficult negotiations that threatened all other compromises achieved within the IGC, the UK was granted an **opt-out** from the social policy measures agreed by the rest of the member states. In the Protocol on Social Policy annexed to the EC Treaty, all members except the UK were authorized to use the institutions, procedures, and mechanisms of the Treaty for the purpose of implementing their 'Agreement on Social Policy' (sometimes called the '**Social Chapter**', now incorporated into Articles 151–61 TFEU).

Because of the UK's opt-out, the innovative social policy provisions of the Social Agreement comprised what had been perceived during the IGC as an amendment to the social provisions of the Treaty. These constituted an extension of Community competence into a wide range of social policy issues, including working conditions, the information and consultation of workers, equality between men and women with regard to labour market opportunities and treatment at work (as opposed to formerly only equal pay), and the integration of persons excluded from the labour market. Some issues were, however, explicitly excluded from the scope of minimum harmonization—namely, pay, the **right of association**, the right to strike, and the right to impose **lock-outs**.

Additionally, QMV was extended to many more issue areas than before, including the informing and consultation of workers. Unanimous decisions remained, however, for: social security matters and the social protection of workers; the protection of those whose employment contract is terminated; the **representation** and collective defence of interests of workers and employers, including **co-determination**;

conditions of employment for **third-country nationals (TCNs)**—that is, non-EU nationals, legally residing in Community territory; and financial contributions for promotion of employment and job creation.

In contrast to the Maastricht negotiations, in the 1996–7 IGC preceding the **Amsterdam Treaty**, social policy reform was not a major issue. Because of the fierce resistance to social policy reforms by the UK's Conservative government (in office until May 1997), the IGC decided to postpone discussion of the topic until the very end of the negotiation period, awaiting the result of the 1997 general election. Under the new Labour government, which came into office at this point, the UK's opt-out from the Social Agreement came to an end. Another significant innovation in the Amsterdam Treaty was the new employment policy chapter (now in Articles 145–50 TFEU). While excluding any harmonization of domestic laws, it provides for the coordination of national employment policies on the basis of annual guidelines and national follow-up reports. Furthermore, a new Article 13 EC (now Article 19 TFEU) on Community action against discrimination was inserted. On this **legal basis**, a couple of important new directives on fighting discrimination based on grounds of sex, race, ethnic origin, belief, disability, age, and sexual orientation have been adopted.

The Nice Treaty of 2001 was not particularly innovative in terms of social policy matters. In some fields, the Council is allowed to decide unanimously upon the use of the then **co-decision** procedure, now known as the **ordinary legislative procedure (OLP)**, which allows for QMV (see Chapter 16). This applies to worker protection where employment contracts have been terminated, to the representation and collective defence of collective interests, and to the interests of TCNs (see Article 153 TFEU). Furthermore, 'measures' (not legislation) to improve transnational **cooperation** can now be adopted on all social issues, not only those concerning social exclusion and equal opportunities, as was the case after Amsterdam.

Under the **Lisbon Treaty** of 2008, finally, social security provisions for migrant workers are the only new issue to fall within QMV in the EU Council, to the great disappointment of the European Trade Union Congress (ETUC). Furthermore, the 2000 **Charter of Fundamental Rights** of the Union formally came under the Treaty framework and hence finally acquired a higher legal status (see Box 21.1). At the same time, new safeguard procedures were introduced to strengthen member state control over their social

BOX 21.1 THE CHARTER OF FUNDAMENTAL RIGHTS

The **Charter of Fundamental Rights of the European Union** is the first single document that brings together all of the rights previously found in a variety of legislative instruments, such as national laws and international conventions. At the request of the European Parliament, the 1999 Cologne **European Council** decided to have the rights of European citizens codified, since the 'protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her **legitimacy**' (European Council, 1999). The Charter was drawn up by a convention consisting of the representatives of the heads of state or government of the member states, one representative of the President of the European Commission, members of the European Parliament (MEPs), and members of national parliaments. The Charter was formally adopted in Nice in December 2000. The Lisbon Treaty gives the Charter binding effect, conferring on it the same legal value as the treaties have. Poland and the UK negotiated an opt-out.

The Charter contains a Preamble and 54 Articles, grouped in seven chapters. The Preamble to the Charter states that the Union is founded on the indivisible universal values of human dignity, freedom, equality, and solidarity, and on the principles of democracy and the rule of law. The Preamble in its third paragraph specifies that the EU contributes to the preservation

and development of these common values, 'while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States'. The rights enshrined in the Charter are enumerated in six chapters on 'Dignity', 'Freedom', 'Equality', 'Solidarity', 'Citizens' Rights', and 'Justice', and a final seventh chapter on 'General Provisions'.

The final provisions stipulate that 'the provisions of this Charter are addressed to the institutions and bodies of the Union with due regard to the principle of **subsidiarity** and to the Member States only when they are implementing Union law'. They are to apply these provisions 'in accordance with their respective powers' (Charter of Fundamental Rights of the European Union, Article 54).

Unfortunately, much of the initial hope in the Charter has evaporated since most parts are (not fully justiciable) 'principles' rather than actual 'rights', and crucial recent policies like those under the bailout programmes happened outside the EU Treaties and hence the Charter's applicability (Kornezov, 2017).

Sources: European Council (1999), *Cologne European Council, Conclusions of the Presidency, Annex IV—European Council Decision on the Drawing Up of a Charter of Fundamental Rights of the European Union*, 3–9 June and *Charter of Fundamental Rights of the European Union* (2010/C 83/02).

security systems. Finally, there is now a horizontal 'social clause' stating that any EU policy must take into account 'requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9 TFEU).

KEY POINTS

- The Agreement on Social Policy in the Maastricht Treaty gave the Union more competences and allowed for more majority voting.
- On the basis of the Maastricht Social Protocol (the 'Social Chapter'), the UK had an opt-out that ended after the Labour government took office in 1997.
- The Amsterdam Treaty transferred the Social Agreement's innovations into the main treaty, which is now binding for all.
- Although the Nice and Lisbon Treaties changed only a few aspects of EU social policy, it is clear that formal competences have been extended over time to a very significant extent.

The development and scope of EU policy

There are a number of important subfields of social legislation, the most important of which are labour law, occupational health and safety, and anti-discrimination policy. The following sections outline when and how they were developed. During the early years of European integration, social policy consisted almost exclusively of efforts to secure the free movement of workers and in that sense was rather non-controversial. In a number of regulations, national social security systems were coordinated with a view to improving the status of internationally mobile workers and their families.

During the late 1960s, however, the political climate gradually became more favourable to a wider range of European social policy measures. At their 1972 Paris Summit, the Community heads of state and government declared that economic expansion should not be an end in itself, but should lead to improvements in more general living and working conditions. With relevant Community action in mind, they agreed upon a

catalogue of social policy measures that were to be elaborated by the Commission. In the resulting Social Action Programme (that is, a list of intended legislative initiatives, covering a number of years) of 1974, the Council expressed its intention to adopt a series of social policy measures within two years.

The Council's statement that Community social policy should furthermore be conducted under Article 235 EEC (now Article 352 TFEU), which went beyond purely economic considerations, was a major development. This was confirmation that governments perceived social policy intervention as an integral part of European integration. As a consequence, the Treaty's subsidiary competence provisions were increasingly interpreted in a regulation-friendly manner in day-to-day policy-making. Originally, only issues that directly restricted the Single Market had qualified for harmonization (or 'approximation') under Article 100 EEC (now Article 26 TFEU). During the 1970s, a shift occurred. Henceforth, regulation was considered legitimate if it facilitated the practice of the free movement of production factors—that is, goods, services, labour, or capital. Several of the legislative measures proposed in the 1974 Social Action Programme were adopted by the Council in the years thereafter, and further such programmes followed the first one.

There are three main fields of EU social regulation in the narrow sense (i.e., excluding the more technical issues of free movement of workers and cross-border provision of services with related regulatory activities): occupational health and safety; other working conditions; and equality at the workplace and beyond.

- With regard to *occupational health and safety*, the regulation is based on a number of specific action programmes. Directives include the protection of workers exposed to emissions (or pollutants) and responsible for heavy loads, as well as protection against risks of chemical, physical, and biological agents at work (such as lead or asbestos).
- In the field of *working conditions*, a number of directives were adopted during the late 1970s, for example, on the protection of workers in cases of collective redundancy, the transfer of undertakings, and employer insolvency. Many more directives followed during the 1990s and thereafter, including those on worker information, on conditions of work contracts, on the equal treatment of atypical (such as shift, temporary agency, or part-time) workers, and on parental leave.

- With regard to *equality*, the Court of Justice of the EU (CJEU) has traditionally been a major actor ever since it provided a broad interpretation of Article 119 EEC on domestic measures to ensure equal pay for both sexes, opening the way for action on the basis of the subsidiary competence provisions. Matters such as equal pay for work of equal value, the equal treatment of men and women regarding working conditions and social security, and even the issue of burden of proof in discrimination lawsuits are regulated at EU level. Since the Treaty of Amsterdam, a more general equality policy has been developed (Article 13 TFEU), targeting discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

By the end of 2018, more than 80 binding norms (regulations and directives) exist, with more than 90 related amendments and geographical extensions. The slow, but rather steady, growth of binding rules has not immediately been stopped by the emergence of the 'softer' modes of **governance** since the 1980s. In recent years, however, significant projects for new social regulation in the narrow sense (e.g., extending non-discrimination rules to goods and services provision; introducing a 40% quota for women on major company boards) have ended in stalemate and the multiple crises of the EU (Falkner, 2016) have largely crowded social issues out of the EU's top agenda.

In 2017, EU social policy debates focused on the 'European Pillar of Social Rights' proclaimed at a summit in Gothenburg (Sweden). It sets out 20 principles ranging from the right to fair wages, the right to health care, to a better work-life balance, gender equality, or a minimum income as a policy compass for assuring fair and dynamic labour markets. However, to have a real impact, binding decisions would need to be taken on that basis to lead the EU away from austerity and towards an integrated economic, monetary, and social policy response to the problems besetting European economies (Deakin, 2017: 208). Whether this is feasible depends on what many social policy and economics scholars nowadays consider a much-needed complement to Economic and Monetary Union: a euro area stabilization capacity to promote both social convergence and solidarity, such as a genuinely European unemployment insurance (Vandenbroucke, Barnard, and De Baere, 2017). Although the expected UK departure from the EU can

BOX 21.2 WILL EU SOCIAL POLICY ABOUND AFTER BREXIT?

Indeed, the UK has in the past often blocked further development of the EU's 'social dimension' (for a famous example, see the UK's opt-out from the Maastricht Social Agreement in 'From Maastricht to the Lisbon Treaty' earlier) and Brexit would take one usually difficult partner out of the game. However, forging consensus on social policies between the EU 27 will stay tremendously difficult since truly innovative solutions still often need unanimity in the Council and, even without the UK, grave default lines exist between more/less 'interventionist' member states, net payers/contributors, etc.

Countries such as the CEECs possess competitive advantages in lower wage and social costs that others may (at least, when they spill over into their territory; e.g., in transport or via posted workers) consider as undue downward pressure ('social dumping'). Moreover, populist right-wing parties have been gaining weight and at times even offices in recent years, with their approach usually being nationalist and anti-EU—which does not bode well for EU social policy development. Debates such as those on social benefits for mobile EU workers and their families demonstrate profound divisions between governments.

be regarded as an opportunity to strengthen the EU's social dimension since it takes one reluctant government out of the relevant equation, this will hardly be a game changer (see Box 21.2). At the same time, **Brexit** can be seen as a symptom of the often-limited consensus on social policies amongst EU member states.

KEY POINTS

- The development of social legislation has increased since the late 1950s, with the 1990s being the most active decade.
- In addition to the issue of free movement of workers and equal treatment in national social security systems, the main areas of regulative European social policy are working conditions, anti-discrimination policy, and occupational health and safety.
- The introduction of soft modes of governance has not immediately stopped the adoption of binding rules in this policy area but recently, ambitious legislative projects have typically ended in political controversies among the governments and blockage in the EU Council.
- Despite Brexit, a significant strengthening of the EU's social dimension would come as a surprise due to deep divisions in that area also among remaining members.

EU funds: fighting social and regional disparities

EU policy is largely regulatory, and this is particularly the case in the social field. However, as this and the following section will outline, the relative importance of regulation has declined in recent years, and both funding opportunities and 'soft' forms of

governance have increased. In the case of funding, the Treaty of Rome provided for a 'European Social Fund' (ESF). Its goal was to simplify the employment of workers, to increase their geographical and occupational mobility within the Community, and to facilitate their adaptation to change, particularly through vocational training and retraining. After a number of reforms, the ESF now co-finances projects for young people seeking employment, for the long-term unemployed, for disadvantaged groups, and for promoting gender equality in the labour market. The aim is to improve people's 'employability' through strategic long-term programmes (particularly in regions lagging behind), to upgrade and modernize workforce skills, and to foster entrepreneurial initiative. Over the period 2014–20, the ESF will provide €80 bn in funding.

In addition to the ESF, other EU funds also seek to combat regional and social disparities, including: the **European Globalization Adjustment Fund (EGF)** (see case study in Box 21.3); the **European Regional Development Fund (ERDF)**; the **European Agricultural Guidance and Guarantee Fund (EAGGF, Guidance Section)**; and the **Financial Instrument for Fisheries Guidance (FIFG)**. Additionally, the **Cohesion Fund** finances environmental projects and trans-European infrastructure networks in member states with a **gross domestic product (GDP)** that is less than 90% of the EU average.

In sum, these instruments form the EU's 'cohesion policy' and dispose of approximately one-third of the overall EU budget (Dudek, 2018: 83). This policy has been designed to counter negative effects of EU membership in the economically less competitive regions and, more recently, also the harsh economic and social consequences of Europe's multiple crises. According

BOX 21.3 THE EUROPEAN GLOBALIZATION ADJUSTMENT FUND (EGF)

The EU's most recent innovation on the level of funds is the European Globalization Adjustment Fund (EGF). It aims to help workers made redundant as a result of changing global trade patterns to find another job as quickly as possible. The Fund became operational in 2007, with €500 m a year at its disposal. However, there were significantly fewer funds distributed than originally expected, despite the fact that

almost all projects ever submitted actually received financial support. In 2013, the overall ceiling was cut to slightly above the highest annual amount ever used: €150 m. The co-funding rate was lifted to 60%, and assistance can also be temporarily provided to young people who are out of work or in training (in areas eligible under the youth employment initiative).

to the 'partnership principle', sub-national governments have increasingly been involved over time in multilevel politics within the EU.

Therefore, the EU's social dimension at large is probably somewhat less regulatory than is often assumed. The steering effect of the EU's labour market and social policies—including the EGF—is much stronger than any of the figures indicate, because they display only the EU's share of the overall project budgets. But the impact of the EU's criteria for project selection is greater than this, since national authorities also apply them with the prospect of European co-funding in mind. Moreover, the relative importance of EU funding has increased at a time of national spending cuts.

KEY POINTS

- The Treaty of Rome established a European Social Fund (ESF). Its aims are narrower than its name suggests, concerning only labour market policy and mostly targeting specific regions.
- The ESF co-funds projects and programmes in the member states. It has had, since 1971, its own priorities for funding, with a certain steering effect on national policies, because national governments want a share of the EU Budget to flow back into their countries.
- The EGF co-funds national support programmes for workers who have suffered redundancy as a result of globalization.

The open method of coordination

The legislative or regulatory track of EU social policy has comparatively less importance by now, due to (among other reasons) a new (often called 'softer')

style of intervention known as the open method of coordination (OMC) (see also Chapters 7 and 16). Using this approach, the European Union has a novel role as a motor and, at the same time, as a constraint on national, social, and structural reform.

The main features of the OMC were developed (initially without treaty basis) in the field of employment policy, as a follow-up to the Essen European Council of 1994. The Amsterdam Treaty's employment chapter later formalized it. Every year since, the EU has adopted employment policy guidelines. Their specification and implementation are left, however, to the national level, so that the domestic situation and party-political preferences can be taken into consideration. All the same, member states must present regular reports on how they have dealt with the guidelines and why they have chosen particular strategies in their 'national action plans' (NAPs). They also have to defend their decisions at the European level in regular debates on the national employment policy, now in the European Semester Process. Thus, peer pressure comes into play and has, at least potentially, a harmonizing effect on employment and social policies in Europe. As Box 21.4 shows, employment policy coordination at the EU level has been affected by the crisis in the eurozone and its impact on employment prospects in some member states.

The OMC has been extended to many fields, including pension reform, social inclusion, and education, and it has lately been integrated in a complex, single annual cycle of economic and social governance coordination and control—the '**European Semester**' (Laffan, 2014). The member states, particularly those under a bailout programme or with excessive macroeconomic imbalances or deficits, are no longer fully autonomous in their spending policies, including for social and health issues, and the

BOX 21.4 YOUTH EMPLOYMENT POLICY IN TIMES OF CRISIS

The member states need to take the EU's guidelines for employment policies into account when setting their national targets and policies. Together with the broad guidelines for economic policies, the employment policy guidelines form part of the Europe 2020 strategy and the European Semester Process. To reach the EU's ambitious target of increasing the employment rate for women and men aged 20–64 to 75% by 2020, member states agreed to:

- establish forward-looking measures to integrate young people and vulnerable groups into the labour market;
- make employment more attractive, particularly for the low-skilled, while ensuring that labour costs are consistent with price stability and productivity trends; and
- promote self-employment and entrepreneurship.

However, the policy went in a very different direction. As a result of the financial crisis, unemployment rates have ratcheted up from an EU average of 7.1% (before the last quarter of

2008) to 11.2% in January 2015 (Eurostat, 2015). For those under 25, the situation was even worse and in Spain, youth unemployment even reached 51.4% in 2014. Consequently, a Youth Employment Initiative was set up by the European Council with a budget of €6 bn for the period 2014–20 (half of that via the European Social Fund with national co-funding). Unfortunately, this will not be enough to ensure that all young people under 24 receive a good-quality, concrete job offer or traineeship within only four months of them leaving formal education or becoming unemployed. The EU Council debated that the 2020 social goals seem unattainable but 'must not be changed' (Agence Europe, 11 October 2014). By early 2018, the EP has called for improvements at least after 2020 to ensure that EU means are not used as substitutes for national funding (Agence Europe, 19 January 2018).

Sources: Eurostat, Unemployment statistics, data up to January 2015 (available online at http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics); Agence Europe, 11 October 2014.

Commission can ultimately even impose fines on non-compliant countries (see Chapter 26). The *de facto* subordination of social objectives to goals of financial governance has been criticized as much as the relevant process (see overview in Zeitlin and Vanhercke, 2018) and 'EU-driven austerity policies blamed for their consequences on economies and people's lives' (Vanhercke, Sabato, and Bouget, 2017). Faced with contracting economies and in the context of a European **sovereign debt** and worldwide economic crisis, many countries have cut social welfare policies in the frame of their austerity programmes. The International Labour Organization (ILO) has warned that such fiscal consolidation measures have contributed 'to increases in poverty and social exclusion in several high-income countries, adding to the effects of persistent unemployment, lower wages and higher taxes . . . In the EU 28, cuts in welfare protection have increased poverty levels to 24% of the population, many of them children, women, the disabled and the elderly' (Agence Europe, 4 June 2014). It seems that, at least during the crisis years, economic and monetary policies have impacted more on social policy within the EU than explicit EU social policy. Consequently, recent debates focus on how to bring about a more stable and socially viable EMU (Crespy and Schmidt, 2017; Vandenbroucke, Barnard, and De Baere (eds), 2017).

KEY POINTS

- The open method of coordination is a new EU-level approach that has been developed as an alternative to regulation in several policies, including employment and social issues.
- It is based on European guidelines and national action plans (national reports using common indicators), and uses EU-level evaluations that feed into new policy guidelines.
- The financial crisis has affected EU action in the field of employment.
- The European Semester process places a tight corset of EU supervision and control over member states' spending policies.

Social partnership at European level

EU social policy-making has for a while been characterized by a style that some have called 'Euro-corporatism' (Gorges, 1996). Corporatism is a way of making policy that includes not only public actors, but also interest groups as decisive co-actors (Streeck and Schmitter, 1991; see also Chapter 14). EU social policy-making, in particular after the Maastricht Treaty, has been characterized by the entanglement of governmental negotiations in the EU Council and **collective bargaining**

Table 21.1 EU-level social partner agreements (cross-sectoral)

Year	Agreements implemented by Council decision; monitored by the Commission	Autonomous agreements; implemented by the procedures and practices specific to management and labour and the member states; implementation and monitoring by the social partners
2013		Framework of action: youth employment
2010	Revision: parental leave	Inclusive labour markets
2007		Harassment and violence at work
2004		Work-related stress
2002		Telework
1999	Fixed-term work	
1997	Part-time work	
1995	Parental leave	

between the major economic interest group **federations**. As a consequence, the rather particular, closed, and stable **policy network** in EU social policy represents a 'corporatist policy community' where a few privileged groups co-decide public policies with or under the control of public actors (Falkner, 1998).

Under the legislative procedure in EU social policy, the Commission consults on any planned social policy measure. The social partners, representing the interests of workers and European employers are able to negotiate collective agreements and play a key role in the **European Social Dialogue** (see Chapter 14). They represent their members during consultations with the Commission and the negotiation of **collective agreements**. Thus European-level employer and labour groups may inform the Commission of their wish to initiate negotiations on the matter under discussion in order to reach a collective agreement. This process brings decision-making to a standstill for up to nine months. If a collective agreement is signed, it can, at the joint request of the signatories, be incorporated in a Council decision on the basis of a prior Commission proposal.

Yet it is important to underline the point that the **social partner** negotiations on social policy issues are by no means entirely independent of the intergovernmental arena. There is intense contact and a large degree of **interdependence** among all relevant actors in social policy at the EU level—that is, among the EU Council, the social partners, the Commission, and, to a lesser extent, the European Parliament. To date, three legally binding, cross-sectoral collective agreements on labour law issues have been signed (see Table 21.1) and were implemented in directives on parental leave (December

1995, revised in 2010 and 2013); on part-time work (June 1997); and on fixed-term work (March 1999).

A number of other negotiations failed to reach agreement—for example, on the issue of temporary agency work—or were not initiated, such as on fighting sexual harassment, and on the informing and consultation of employees in national enterprises. Further agreements were concluded (on, e.g., telework, stress, and harassment at work) that the social partners (above all, industry) designed to be non-binding and/or implemented in accordance with the procedures and practices specific to individual countries, rather than by a directive. Unfortunately, the effect was no implementation in any way in some countries (Degryse, 2017: 118).

This can be interpreted as a move away from social partner agreements on effective minimum standards that are applicable throughout the EU. At the sectoral level, at least, there are a couple of recent agreements with subsequent binding directives; for example, on working time in various industries (see Degryse, 2017). In any case, by 2015 even the Commission was arguing that the Social Dialogue could do with a new start (European Commission, 2015a). By 2017, the situation at the cross-industry level deteriorated so much that the ETUC warned a negotiating period for the social partners as provided for in the Treaty would be used by the employers just to 'delay any decision-making' (Agence Europe, 8 November 2017) regarding the Directive reforming the written statement of working conditions. The EU can therefore hardly outsource to the 'social partners' the design on their own effective responses to the social aspects of the current crisis or a globalized, digital future.

KEY POINTS

- After Maastricht, EU social policy has involved a 'corporatist policy community'.
- The organized interests of labour and industry are free to agree social standards collectively, which are later made binding in Council directives.
- On the cross-sectoral level, they have done so in three cases, but have failed or have settled for less binding recommendations in others.

Conclusion

This chapter has indicated that European social policy has considerably grown and diversified. Treaty bases have been revised several times to extend the range of competences. The European Social Fund has increased its resources and has had a practical impact on national employment promotion. The number of social directives has also increased over time, with the 1990s being the most active decade so far. The CJEU has been influential on a number of social policy issues and, at times, has significantly increased the practical impact of EU social law. The equal treatment of women in the workplace and the protection of worker interests when enterprises change hands are two important examples (Leibfried and Pierson, 2000). In recent years, however, controversial cases such as Case C-438/05 *International Transport Workers' Federation v. Viking Line ABP* [2008] IRLR 143 and Case C-341/05 *Laval* [2007] ECR I-11767, have touched the borderlines between the market freedoms and basic social rights, such as union action (see Chapter 13).

When judging social policy developments at the EU level, at least four different evaluation criteria are worth considering. First, the closing of a number of gaps in labour law, introduced or widened by the Single Market programme, was a major task for EU social policy. Surprisingly, the EU performed better than most experts expected during the early 1990s and the major gaps were closed. However, the details remain controversial. For example, it is unclear when a national minimum wage should apply to workers from abroad, a controversial issue in road transport services (e.g., *Agence Europe*, 19 February 2015).

Second, a somewhat more far-reaching criterion for judging EU social law is the differential between Commission proposals (which can be seen to be knowledge-based and common-goods-oriented approaches to the relevant problems) and Council legislation (sometimes seen as the lowest common denominator

of self-interested country representatives). There was a huge gap during the late 1980s and early 1990s, which was later almost completely filled. Even some of the most controversial projects, on sexual harassment in the workplace and on employee consultation in the **European Company Statute**, have been adopted. However, more recently, several further reforms were unsuccessful even after years of protracted negotiations as in the cases of the non-discrimination in goods and services provision and quotas for women on company boards. It also needs mentioning here that social Directives by no means always get properly implemented in the member states (Falkner et al., 2005, 2008).

A third indicator of the scope of the EU's social dimension is action taken to prevent reductions in national social standards, potentially induced by the increased competitive pressures of the Single Market and **economic and monetary union** (sometimes called '**social dumping**'). One possibility to prevent this from happening would have been to agree on fluctuation margins, which would have stopped any individual country from gaining competitive advantages through lowering social standards. However, such proposals were thought realistic in only a small number of member states, notably Belgium, France, and Germany (Busch, 1988; Dispersyn et al., 1990) but at the level of the Social Affairs Council, there was little support. The crisis years since 2008 have furthermore put social standards under strain with fiscal consolidation and bailout programmes getting prioritized.

Finally, a fourth evaluation criterion might be the rather small extent to which the EU has forged a truly **supranational** social order. This becomes ever more obvious in times of crisis as national systems crumble. So far, calls even by former Commissioner for Social Affairs László Andor for an EU-level unemployment insurance system to counterbalance the differential

effect of the economic crisis, have proven unsuccessful. Nevertheless, leading social policy experts hold that more solidarity will be indispensable to countersteer future shocks in the EMU (Vandenbroucke, Barnard, and De Baere (eds), 2017).

The EU has for many years claimed to possess a 'social dimension', and it has regularly adopted ambitious programmes (**Lisbon Agenda**, **Europe 2020**, **European Semester**, and Youth Employment Initiative) to coordinate efforts to make the EU the most competitive knowledge-based economy in the world while (ideally) improving social cohesion

and maintaining environmental **sustainability**. However, it is doubtful whether these efforts stand a chance of keeping up with the effects of major imbalances on the world's financial markets, stress on national budgets, and hence stress on social welfare. What Kevin Featherstone argued for the failed troika-induced public administration reform in Greece holds as a general warning for the EU: if ambitious programmes cannot stand up to political realities, the 'EU risks a political backlash, a loss of legitimacy and a threat to its own credibility' (Featherstone, 2015: 310).



QUESTIONS

1. Why did the evolution of an EU social dimension lag behind the market integration aspects of European integration?
2. Why is the treaty base so important for European Union social law?
3. What are the main areas of EU social law?
4. To what extent is EU social policy a regulatory policy?
5. How does the European Social Fund influence national policy?
6. How do the 'open method of coordination' and the 'European Semester' impact in the field of social policy?
7. To what extent is EU social policy corporatist?
8. Which criteria are best used for evaluating the development of the EU's social dimension?



GUIDE TO FURTHER READING

- de Búrca, G., de Witte, B., and Ogertschnig, L. (eds) (2005) *Social Rights in Europe* (Oxford: Oxford University Press) A classic collection of essays on EU social policy.
- de la Porte, C. and Heins, E. Elke (eds) (2015) *The Sovereign Debt Crisis, the EU and Welfare State Reform*, Special issue of *Comparative European Politics*, 13/1 In-depth information regarding the crisis impact on social policies in Europe.
- Vandenbroucke, F. Barnard, C., and De Baere, G. (eds) (2017) *A European Social Union after the Crisis* (Cambridge: Cambridge University Press) The most up-to-date scholarly collection of essays on (the future of) social Europe.
- Vanhercke, B., Sabato, S., and Bouget, D. (eds) (2017) *Social policy in the European Union: state of play 2017*. Eighteenth annual report. Brussels: ETUI A topical, trade union-inspired publication on Social Europe.



WEBLINKS

- http://ec.europa.eu/employment_social/social_dialogue/index_en.htm The European Commission's Social Dialogue website.
- <http://ec.europa.eu/social/main.jsp?catId=325&langId=en> The website of the European Social Fund (ESF).

<http://ec.europa.eu/social/main.jsp?langId=en&catId=656> The website of the European Commission's Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) provides up-to-date information on all fields of European social law and policy.

<http://ec.europa.eu/social/main.jsp?catId=326&langId=en> The website of the European Globalization Adjustment Fund (EGF).

<http://eurofound.europa.eu/observatories/eurwork> The 'European Observatory of Working Life' is an important source of information on all issues regarding working conditions and the social dialogue, whether at national or EU level.