

Notre Europe

ETUDES & RECHERCHES

Studies & Research N°43

For a new European social contract

Marjorie Jouen and Catherine Palpant

Marjorie Jouen

Graduated in political sciences (1979), former student of the ENA (french national school of administration). From 1993 to 1998 : member of the Forward Studies Unit of the European Commission (Brussels) in charge of the territorial and social issues. From 1998 to 2002: Adviser at Notre Europe in charge of social economy, rural development, enlargement of the EU and regional policy.

Supervisor with Bénédicte Caremier of *L'avenir du travail, un débat européen*, Rennes, OPOCE - Editor Apogée (1999) and *The future of work*, London, Kogan Page (2000). She wrote *European diversity, how to manage it*, Paris, Descartes et Cie - Editions Charles Leopold Mayer (2000).

She is external consultant for Notre Europe.

Catherine Palpant

Graduated in political sciences, economics and public management, Catherine Palpant was a research fellow at Notre Europe. In addition, she is a PhD student at Sciences Po (CERI) and focuses her research on the construction of employment policies in the EU, and more particularly in Central Europe.

This study is the result of numerous consultations of experts; it is based on reflections exchanged at two meetings in April and July 2005, with the participation of Claude Didry, Ana Guillen, Pascal Lamy, Bruno Palier, Philippe Pochet, Gaétane Ricard-Nihoul, Robert Salais, Michiel Van Huiltten, Daniel Vaughan-Whitehead and Daniel Wincott.

Notre Europe

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Notre Europe participates in public debate in two ways. First, publishing internal research papers and second, collaborating with outside researchers and academics to contribute to the debate on European issues. These documents are made available to a limited number of decision-makers, politicians, socio-economists, academics and diplomats in the various EU Member States, but are systematically put on our website.

The association also organises meetings, conferences and seminars in association with other institutions or partners. Proceedings are written in order to disseminate the main arguments raised during the event.

Foreword

Let there be no doubt about it – Tony Blair is blessed with a finely tuned political brain. The fact that the British Prime Minister has deemed it necessary to arrange a ‘summit’ at the end of October specially dedicated to the European social model should therefore be seen as highly significant. This initiative forms part of a reaction to the French and Dutch ‘no’ votes on the draft Constitutional Treaty. The French rejection was seen by many analysts as the expression of a fear shared by many throughout the Union; the fear that social rights in Europe – bludgeoned by globalisation – are being systematically scaled back.

Yet what exactly does the debate consist of? When talks are held at the highest levels regarding the European social model and its future, the debate must be placed precisely in its historical and political context. This is what this study, drawn up by Marjorie Jouen and Catherine Palpant, succeeds in doing with great clarity. Yes, there is a social reality in the European project; yes, it has been trampled underfoot for a number of years by the combined effects of neo-liberal rhetoric and the enlargements; and yes, it is struggling to address the new needs of Europe’s citizens. Yet there is more to the story than that, because if solidarity, and by extension cohesion, is weakened in the Union, then the very European project itself is ultimately under threat. We are therefore charged with redrawing the outlines of the contract that binds the Member States on social issues. The most positive aspect of this study is, without doubt, not only the fact that it states this point forcefully, but that it also suggests ways of building it.

Notre Europe

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The eruption of the social question in the referendum debate on the future Constitutional Treaty surprised the majority of French leaders. Destabilisation has spread to the whole of Europe since an insufficient response to the people's questions was considered as one of the reasons for the victory of the 'no' camp. Conversely, the Dutch 'no' appears to have been motivated by a rejection of excessive intrusion by the EU in certain areas, in particular the social area. This development led Tony Blair, on taking up the Presidency of the Council last July, to announce the scheduling of an informal European Council at the end of October 2005, dedicated to the renewal of the European model.

This is not exactly a new issue, having been the subject of European debate for some years now, but it has acquired another dimension within the context of the institutional reform, the accession of ten new members and the increasing pressure of globalisation. It is increasingly becoming an area of friction amongst the governments that have carried out significant reforms, in particular the Nordic countries, the new Members bound to social modernisation as a result of their economic transition and certain continental Member States suffering from unemployment and a loss of competitiveness. Nevertheless, as a result of a discourse which has been at times doctrinaire and at times fatalistic, the social dimension of the EU remains opaque to the majority of Europeans ...

There is, therefore, ample information available to recognise the true value of the strength of Social Europe, its achievements and progress. As a protean construction, Social Europe has come about through a long process in which each enlargement has played a part. It has gradually developed and has now been established for around twenty years, in a context in which economic and monetary integration and continuously increasing unemployment made it vital to have a Europe that was more in touch with its citizens and their well-being. The difficulty in understanding it in its entirety is in part due to the vagueness conveyed by people voicing an opinion on its achievements, whether in terms of criticising its constraints or denouncing its inadequacies, by describing it as the 'poor relation of European integration'. Furthermore, European social policy does not have the same nature or the same objectives as social policies determined at national level. Today, enlargement towards the countries of Central and Eastern Europe is a huge challenge and emphasises an intrinsic difficulty in constructing Social Europe, which has to contend, in particular, with the heterogeneity of systems reflecting different national histories.

In order to better understand these challenges, in a context of intense questioning on the future of Social Europe, we must first specify its boundaries and its content by means of an analysis of the European social model. This analysis will firstly take a political, sociological and historical approach, then will follow a legal route, by emphasising the evolving character of the body of European legislation. In this way, we will be able to analyse the causes of the current 'crisis' better, its causes and its manifestations. This inventory should make it possible to take the discussion a few steps forward, with a view to finding ways and means for renewing the social dimension of a 21st Century Europe of 27 Members. The immediate task is to define an agenda for negotiation of a new European social contract.

I - WHAT IS SOCIAL EUROPE?

SOCIAL EUROPE BEYOND THE EUROPEAN SOCIAL MODEL

The expression “European social model”, of French origin, appeared quite late in the history of European integration. Although it is used frequently today, and, in particular, since the Lisbon and Nice Summits in 2000, it still does not have an official definition. However, it was described in the conclusions of the European Council of Barcelona in 2002¹ where it was stated that “*based on good economic performance, a high level of social protection and education and social dialogue*”, the European social model is a balance between economic prosperity and social justice, and guarantees proper recognition of the social partners. A two-fold approach, in terms of its differences as well as its similarities, allows us to define the scope better.

Indeed, by choosing the term ‘model’, the European Union confirms a ‘requirement’² that distinguishes it from the rest of the world, whether in its link to solidarity, work, or, more generally, in the place set aside for social issues as compared to economic issues.

There are many other ‘democratic’ social models in the world that differ from the European one, due to the fact that the organisation of the protection of the weakest and of solidarity is historically very closely linked to the manner in which democracy was constructed. Thus, in the United States, the middle classes brought in democracy and it has since remained liberal and centred on civil and individual rights. In Europe, on the other hand, democracy was established by the workers, who provided it with a strong dimension of solidarity³. This history lays down clear links to solidarity: the choices of health care system are first and foremost made by individuals in the United States, and on a collective basis in Europe.

In other less developed regions of the world, the link to solidarity is very different and is most often not institutionalised. It is generally based on the clan or on the family, in which the principle of intergenerational mutual aid applies, whereas in Europe, solidarity applies to the whole of society.

In industrial relations, Europe also stands out from the rest of the world, mainly through the interplay of its religious heritages. Yet there are often divergent trends in Europe and in the United States, despite work being considered as a means of subsistence for both. It is often understood exclusively as that in the United States, whereas in Europe, it is also seen as a method of emancipation and personal development.

Finally, the importance attributed to social issues differs considerably in the European social model from that in other models. In Japan, as in the United States, economic considerations

¹European Council of Barcelona of 15 and 16 March 2002, Presidency Conclusions (2002) http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/71026.pdf

² Vignon J., “Les acquis de l’Europe sociale”, Note (not published), March 2005

³ Idem

come first, the idea being that social policies stem from growth in economic performances and from that alone. In Europe, social policies are first and foremost considered as an autonomous element of progress, then as a potential source for improving economic performances. Therefore, slightly in the manner of a caricature, it is to the European model that numerous governments, particularly Asian governments, spontaneously refer when they plan to introduce a new law in the social field: beyond its internal perceptions of individuality, the European social model is an external reference.

Although the term “European social model” only appeared in Community debates around 40 years after the signing of the Treaty of Rome, the concept precedes this and continues to develop independently. In fact, it is born out of the similarities between the Member States, which form a base to be interpreted according to multiple variables. In addition, common behaviours and values on a continental scale enable us to mention the – somewhat ill-defined – existence of a true European model of *society*.

Among these commonalities, the importance given to industrial relations is fundamental. It is illustrated by a strong tradition of social dialogue, in spite of national differences or more widely by zone⁴. In this way we distinguish three ‘models’: in the North there is unified trade union movement and primacy of negotiation marked by a strong worker involvement; in the South, trade unionism is divided according to ideologies and on differences regarding the type of trade union movement to develop and industrial relations characterised by a rigid legislative and regulatory framework; finally, in the United Kingdom, there is a corporatist tradition of trade unionism, within a framework of minimal State intervention and a tradition of negotiation at enterprise level.

In the same way, the bases of the social protection systems are closely related, regardless of the systemic differences in the three Esping-Andersen models of social protection⁵ and the

⁴ These differences are, in particular, linked to the manner three principal elements having a direct influence on the role and the behaviour of the actors in industrial relations developed over the course of history: *workers’ representation* – establishing a place where negotiations can take place, *employment and wages legislation* – laying down the rules to be complied with in industrial relations, *employment policy and management of unemployment* – creating the frameworks and content of collective action. (v. General Plan Commission Report, 1999)

⁵ Esping-Andersen distinguishes: - the *conservative-corporatist model* called Bismarckian, applied continentally which has the objective of guaranteeing workers’ income. This system functions on the principle of “contributions” and is mainly based on social security contributions; the *social democratic model*, inspired by Beveridge, applied in Scandinavian Europe, aiming to provide an income to all inhabitants, founded on the concept of universality and financed by income tax; and lastly the *liberal model*, anglo-saxon also from Beveridge, whose aim is to fight against poverty and unemployment by applying the principle of selectivity, also all financed by income tax. (Esping-Andersen, G., “The Three Worlds of Welfare Capitalism”, Princeton University Press, New Jersey, 1990)

modifications brought by entry of the new Member States into the Union⁶. This proximity is demonstrated, for example, by a distribution of the various budgetary spending items that differs considerably from that of the United States⁷: according to the OECD, public spending on old age stands at an average of 9% of national GDP in Europe and at 5% in the United States, and spending on employment (unemployment benefits and active employment policies) stand at 2% and 0.5% respectively⁸.

More generally, and in spite of accidents of history and recent reforms, it is striking to note how close the levels of social public expenditure in the respective national budgets in relation to GDP are to one another, even if those of the new Members are still slightly below the European average. Even in the United Kingdom, under Margaret Thatcher's Government, there was no significant lowering of the level of spending in the social domain to the extent that it differed considerably from the rest of Europe.

In addition to these comparable levels of spending, there is a Europe-wide tradition of the public authority organising collective services, even if a large number of variants between the North and South of Europe can be observed once again.

In this way, these similarities in industrial relations, social budgets, social protection systems and the organisation of general interest services, have sculpted a typically European way of conceptualising and promoting social protection. This similarity extends to the differences apparent in the organisation of links between State and family and those that separate the European countries into four 'institutional families', namely the European liberal model, the Scandinavian social democratic model, the continental Christian Democrat model and the southern model⁹. France is itself at the crossroads of the four families: it is close to the liberal model in its pay negotiations, which are largely decentralised at enterprise level and/or sector level, as in the United Kingdom, to the Scandinavian model by its policies for the family, to the continental model by its system for health insurance, retirement and unemployment, and lastly to the southern system by its weak trade union movement, or indeed the disunion of trade unions.¹⁰

It is therefore through all of these aspects that separate the European social model from other models, or that allow it to encompass all the European countries, that it is established. It is from the basis of this model and beyond it, that Social Europe is constructed.

⁶ The limitations of this classification has been emphasised frequently but it has the merit of clearly defining the labour market and social protection systems (See in particular the analysis of Brunot Th  ret, *"M  thodologie des comparaisons internationales, approches de l'effet soci  tal et de la r  gulation : fondements pour une lecture structuraliste des syst  mes nationaux de protection sociale"*, L'Ann  e de la R  gulation, Vol.1, 1997)

⁷ Spidla V. Speech at Club Grande Europe, 11 April 2005, Paris

⁸ OECD, Social Expenditure Database (SOCX) 2004

⁹ General Plan Commission, *Emploi, n  gociations collectives, protection sociale, vers quelle Europe sociale*, Report of the "Europe sociale" group chaired by Jo  l Maurice, 2000.

¹⁰ Idem

SOCIAL EUROPE, A PROTEAN CONSTRUCTION

The outcome of a long historic process, Social Europe is both a classical legal construction and the product of collective bargaining.

During the course of establishing different treaties and case-law of the Court of Justice of the European Communities, social order regulations have been improved. Right from the start, the Treaty of Rome stated in its preamble the social objectives and laid down binding measures. Those measures essentially concerned the free movement of workers, social security of migrants and equal pay for male and female workers. The measures also related to the creation of the European Social Fund, intended to accompany the restructuring of industry. However, 15 years had to pass and the rise of the social movements to take place in order for a programme of social action, founded on the priority objectives referred to in the preamble, and linked to employment and the improvement of lifestyle and working conditions, to be adopted in 1974.

The 1980s were then marked by a concomitant acceleration of economic and social integration, with the aim of establishing a large internal market and amending the Treaty of Rome by the Single European Act. The latter gave decisive impetus to social policy, by providing a framework for the labour market (in particular Article 118a laying down the gradual harmonisation of the minimum requirements in working conditions), by promoting the acknowledgement of trans-national actors and by emphasising the need for economic and social cohesion (Article 130). It also promoted dialogue with the social partners (Article 118b), the role of which will be strengthened by the Maastricht Treaty.

This momentum was continued in 1989 with the drafting of the Charter of Fundamental Social Rights, which, although never having entered into force, laid down a whole series of basic principles for Social Europe. In it there is in particular the idea of balance between economic and social development and that of social consensus as an essential condition of competitiveness. These principles were later largely taken into account by the Treaty of Maastricht and by the Protocol, to which the Agreement on the social policy is annexed, and which laid down the voting procedures within the Council for different areas of that policy.

Several years later, in a context of massive rises in unemployment, and certainly also due to changes in direction brought about by the change of parliamentary majority of the United Kingdom, the Amsterdam Treaty confirmed the birth of a 'more social' Europe, responding to the concerns of its citizens. The Treaty emphasised employment and gave added weight to certain provisions of the Protocol on equal opportunities, equal treatment and the fight against social exclusion. It was also involved in strengthening the fundamental rights consolidated in

the draft Constitutional Treaty, by including the Charter of Fundamental Rights of 2001 as a legal base¹¹.

Parallel to the social provisions laid down in the various Treaties, and whilst largely strengthened by the latter, social dialogue organised at European level has, since the beginning, always been the source of the body of EU law (*acquis communautaire*) (see Annex 1).

Right from the start, in fact, the social partners have benefited from special attention since they were consulted on proposals and on the implementation of Community social policies. The will to associate organised civil society with the European decision process in a wider sense was marked by the creation of the European Economic and Social Committee in 1958. Following this, and by a process of diffusion, similar national consultative bodies with an economic and social aim were created, in particular during the 1990s, in countries whose dialogue with civil society was lagging behind.

From 1986, in the framework laid down by the Single European Act and in particular in Article 118b thereof, a real process of social dialogue at European level was developed, by means of the model of social negotiation in force in the large continental countries. With the Agreement on social policy, this role was further confirmed, by making prior consultation with them obligatory for the European Commission for any action in that area, on the one hand, and by allowing the framework agreements concluded between the three large inter-professional organisations, UNICE (Union of Industrial and Employers' Confederations of Europe), CEEP (European Centre of Enterprises with Public Participation) and ETUC (European Trade Union Confederation) to be included as they stand in directives, on the other. Such was the case, for example, of Directive 1996 on parental leave.

During the last 15 years, European social dialogue has not stopped reinventing itself. It has also started entering into dialogue with organised civil society, in the same manner as the development of the NGOs and solidarity associations within the Member States and at European level.

Whilst these social developments seem to make use of wider channels than other European policies, and whilst subsidiarity plays a major role therein, it would be wrong to deduce that Social Europe is just a loose and optional framework. The opposite is indeed true, it is based on a solid legal foundation, and, in certain areas such as the mobility of workers, the continuity of their social rights, and the European labour market regulations, it has developed a 'hard' *acquis*. To be precise, in reference to the freedom of movement, European legislation defines a base of common laws to which each Member State can add more favourable measures for its workers, but can take nothing away.

¹¹ Speech by Jérôme Vignon given at the association Solidarités Nouvelles face au Chômage (www.snc.asso.fr), on 20 May 2005.

At each accession negotiation, the candidate countries implement these practical requirements and their binding nature. Thus in 2001, Hungary, which had started dismantling social dialogue at national level, had to backtrack, under the threat of a freeze in negotiations. This rule is also valid for States that are already members, since the Netherlands recently had to go back on their desire to liberalise the health system. Likewise, the French administration has been taken to task over its improper use of fixed-term contracts.

EUROPEAN SOCIAL POLICY COMPLEMENTARY TO NATIONAL SOCIAL POLICIES

The social dimension of European integration is often somewhat ambiguous, which stems from the fact that the social policy of the European Union is not a – larger sized – carbon copy of the social policy of one or another Member State. It is not founded on the same principles; the scope of its activities and instruments are more limited.

The definition of social policy has remained rather general for a long time. In 1993, the Commission proposed a definition in its Green Paper on European Social Policy¹²: *“The term social policy has many different meanings that vary from one Member State to another. In the context of this document, it shall have the sense of all of the policies in the social area, including labour market policies”*. It therefore concerns issues linked to employment, health, social protection, exclusion and the fight against discrimination. In addition, a basic distinction was made from the beginning between what was dealt with at national level and at Community level, based on the idea that European social policy was not intending to replace national social policy. In this way, unlike policies known as common policies, such as competition policy, agricultural policy or external trade policy, which implies a complete transfer of competences from the Member States to the Union, European social policy supplements, and sometimes acts as a framework for, national social policies, in accordance with the application of the principle of subsidiarity.

Since the drafting of the action plans in 1974, in fact, it has become necessary to define a principle that guides the work of harmonising standards and removing duplication, by determining at each stage the most relevant level of decision-making. That is the spirit of the principle of subsidiarity, which would be introduced in the European texts in 1992.

Its definition is, in particular, drawn from the Padoa-Schioppa report of 1987¹³, which stated that the basic criteria to determine the most appropriate level of government for a given public good was the impact of the economic and financial costs and benefits of the planned action. The appropriate level of government was defined as the lowest level at which the operation in question could be performed effectively and higher levels of government should only intervene in the event of ineffectiveness of the lower levels. That concept has been refined over the

¹² European Commission, Green Paper on European Social Policy, COM(93)511 final, 1993 <http://europa.eu.int/scadplus/leg/en/cha/c10111.htm>

¹³ Padoa-Schioppa R., Efficiency stability and equity – A strategy for the evolution of the economic system of the European Community, Oxford University Press, 1987.

years. The definition adopted in the draft Constitutional Treaty is the following: *“In areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”*. There is also a clarification with the notion of area of shared competences and a declaration according to which, *“Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States”*¹⁴.

It is commonly agreed and noted that, in social protection matters, too much Community intervention would be counterproductive in view of the diversity of national collective preferences. Effectively, most social laws are still adopted at national level and any Union action abides by a two-fold subsidiarity¹⁵: one subsidiarity is horizontal and signifies that the European legislator only intervenes after they have invited the European social partners, who are mandatorily consulted, to negotiate collective bargaining agreements, and in the event of the breakdown of the social dialogue; the other is vertical and means that European employment legislation does not standardise the social conditions but lays down the minimum standards for all of the Union, which the national governments are responsible for applying. An additional precaution is to prevent countries whose standards are stricter to use the pretext of European law to lower the level of protection that they have achieved.

Therefore, outside of the strict framework for matters relating to the completion of the single market and freedoms, there is a ‘subsidiary approach’ of European support in social areas. However, during the 1980s and 1990s, experience showed that, in certain areas, excessively large differences were the source of unproductive strained relations between the Member States, and were detrimental to their economic performances as a whole. From that moment on, the governments accepted harmonisation via multiple directives. Amongst these, one can mention the Directive of 1980 relating to the protection of employees in the event of the insolvency of their employer or that of 2000 establishing a general framework for equal treatment in employment and occupation. In other cases, instruments or procedures were created to strengthen coordination. One can thus mention the open method of coordination, applied to employment and social protection, which calls on the States to take part in a joint effort to approximate their policies on the basis of peer review. The European Social Fund has also contributed, in the areas of professional training or the fight against exclusion, to the convergence of nation systems by means of co-funding national policies.

¹⁴ Title III of Part I of the Draft Constitutional Treaty in addition defines in detail the exclusive competences of the Union (commercial policy and monetary policy for the eurozone, customs union, conservation of marine biological resources); the areas of shared competences (internal market, area of freedom and justice, agriculture and fisheries, transport, energy, economic and social cohesion, environment, consumer protection, common safety concerns in public health matters); and the areas of supporting action (industry, health, education, culture, civil protection).

¹⁵ Quintin O., and Favarel B., *L'Europe sociale, enjeux et réalités*, la Documentation française, Paris, 1999

Therefore, the principle of subsidiarity explains that Europe has left the Member States to deal with the bulk of redistribution, which is associated with the social area, unlike regulation in economic areas. It is therefore not surprising that European citizens find it more difficult to tell what comes from Social Europe and what comes from the national welfare state. Whilst being the key to the democratic process in a grouping as varied as the European Union, subsidiarity thus plays a nasty trick on European Social policy, by giving the nation state the role of filter between the citizen and Europe.

As a common framework of reference for the world of employment, a collection of regulations, where their non-compliance can be penalised, and an expression of the European social model, Social Europe is in no way fixed, since it has undergone regular transformations for nearly 50 years.

II – A CONSTANTLY EVOLVING CONSTRUCTION SINCE ITS INCEPTION

DEEPENING THE LARGE INTERNAL MARKET

The social dimension of European integration has progressed hand in hand with the deepening of the single market. At first, it acted to ensure the smooth operation of the market; the original measures were therefore primarily aimed at the mobility of workers and guaranteeing that their health and safety was protected. Subsequently, multiple directives based on Articles 118a and 118b were drafted, at a rate that has not slowed down. In addition, the completion of the internal market, by giving rise to new social challenges and making the Community level relevant, when this dealt with issues that originated at national level, has given substance to the concept of Social Europe.

The harmonisation of the conditions of competition, and the obligation of convergence and integration have also led to the evolution of the model. The Lisbon strategy in 2000 and the emphasis paid to competitiveness have also contributed greatly.

Over the decades, the Union's objective has changed little. From the declarations made during the 1980s according to which it was necessary to give social aspects the same importance as that accorded to economic aspects, there then followed, in the 1990s, an analysis based on the effects of globalisation and the growth of international competition. Certain Member States questioned the characteristics of the European social model, accusing legislation of curbing competitiveness and considering that the welfare state conceived after the war had reached its limits. Other States and the European Commission responded by showing that social policy was actually involved in economic performance. With a view to completing the internal market, a more dynamic concept, making the social factor a separate element of the whole of European competitiveness, was gradually brought in to replace a social policy that repaired and redistributed.

THE PRESSURE OF SUCCESSIVE ENLARGEMENTS

Successive enlargements have made efforts to develop Social Europe and have, moreover, further extended it, without transforming it, even if adjustments have sometimes had to be made.

Such was the case at the first enlargement, with the accession of the United Kingdom, Ireland and Denmark. The introduction of a new concept of social protection, initiated by Beveridge and based on the principle of universality and not the principle of contributions that is in force on the continent, has markedly changed the situation. It was first perceived as an obstacle to any harmonisation of social protection in the Union. The fear of 'social tourism' among the new members, linked to the possibility of access to certain rights, which were no longer conditional on prior contributions based on employment revenues, but linked to criteria of residence, then

spread¹⁶. In order to avoid this risk, free movement was not extended to all European citizens initially, but only applied to employees and their dependents. Nevertheless, during the 1980s, when the Single European Act was being drafted, it was accepted that the free movement of workers (and of goods) within the single market could coexist with the preservation of each Member State's choice of social protection system.

With the enlargements of the Union to Greece and then to Portugal and Spain, the context was very different: the three countries were then fledgling democracies, unfamiliar with social dialogue and lagging behind in development as a consequence. The response came with the economic and social cohesion policy, based on the principle of European structural solidarity, the budget of which was doubled within the framework of the Delors I Package in 1988. At the same time, there was the idea that economic catching-up should not be achieved through social dumping, but by complying with the *acquis communautaire* and the regional development programmes to which the social partners were associated.

The subsequent enlargement of 1995 to Austria, Finland and Sweden brought symmetrical changes by means of the accession of rich countries with advanced social systems. New concepts or different sensibilities quite quickly changed a Social Europe of 12, for example with equality of the sexes, predominance of the role of the State, social inclusion or even active employment policies based on a concept of work as a right but also as a duty. The importance of social matters as a factor of competitiveness was also put to the forefront by these countries, when they succeeded in carrying out in-depth reforms of their social protection systems.

THE PRESSURE OF MODERNISATION

Social Europe also evolves to adapt itself to the new demands of citizens and businesses, which can be grouped together under the general term of 'modernisation'. Its influence is felt in very different ways.

As far as restrictions are concerned, these are first and foremost large reforms of public administrations based on the arguments of New Public Management, recommending "*less and better State*"¹⁷. Most often carried out at national level, certain of them permitted or emphasised the liberalisation of public services and large networks. Sometimes for an ideological purpose, but often based on the demands of users and citizens to receive a cheaper, more effective and more personalised collective service, the reforms could conflict with the social European harmonisation projects. In fact, for some decades, the values of the Europeans have been moving towards increasing individualism¹⁸, which is manifested in ways

¹⁶ General Plan Commission, *Emploi, négociations collectives, protection sociale, vers quelle Europe sociale*, Report of the "Europe sociale" group chaired by Joël Maurice, 2000.

¹⁷ Bouckaert G., Pollitt Ch., *Public management reform : a comparative analysis*, Oxford University Press, 1999

¹⁸ Brechon P. et Tchernia JF., *Survey on the values of the Europeans*, Futuribles n°277, July-August 2002

of life, family organisation and attitudes towards the institutions. Another form of this modernisation is represented by the general movement of de-centralisation and the demand for greater subsidiarity. It has led to the adoption of infinitely varied measures from 'à la carte' measures to those more often at sub-national level. The European social model of the 1970s and 1980s was affected and it has only been possible to plan to re-launch integration by means of the recent use of the open method of coordination, which, whilst not a panacea, has given a positive boost to the areas of employment and social protection, at least.

In fact, whilst the European level was under threat of being disqualified by those national and regional reforms, another aspect of liberalisation gave it a helping hand. Globalisation of the economy, by strengthening the role of competition, has led to a vast movement of industrial restructuring and change with important social consequences affecting the employees of different countries and bringing many regions face to face with comparable structural crises. It is for that reason that the large series of relocations and mass redundancies increased, giving rise to strong feelings, as was the case at the time of the Hoover affair in 1993 or the Vilvoorde affair in 1997¹⁹. The demand for a coordinated response at European level was immediate, both in a regulatory way with the adoption of the Directive on a European works council and in a more flexible means of strengthened social dialogue.

These methods of developing Social Europe fall within the compass of the integration envisaged by the Treaty of Rome. However, the legislative momentum of recent years at Community level relates more to the rights of individuals than to collective rights. It is a genuine 'new social ideology' that is being formed. It is in this way that we have seen, starting from the demand for equality of rights between the sexes in areas beyond the professional sphere, the development of a movement requesting mobilisation of the European legal apparatus to fight against any form of discrimination, in the name of rights associated with the individual and not only to their membership of a social group. The approach adopted for disabled people is a good illustration: the basis premise is that disabled people are human beings 'like everyone else' and that this equality should be guaranteed by the right to work and by access to various services²⁰. This approach, by means of individual rights, tends to remove the context in which these individuals develop, individuals who nevertheless need their circle of family and friends and a certain form of collective solidarity. The change of direction occurred surreptitiously. It is not clear that this new direction and its implications are clearly understood by Europeans, or that they are in perfect harmony with the concept of solidarity at the foundation of the European social model. Certain tensions could arise as a result.

¹⁹ Didry C., 'Europe tested through its products: the Renault-Vilvoorde affair and its implication for industrial and employment policies', in Salais R. and Villeneuve R.(ed.), *Europe and the politics of capabilities*, Cambridge University Press, 2005

²⁰ Vignon J., "Les acquis de l'Europe sociale", Note (not published), March 2005

III – SOCIAL EUROPE, A MODEL IN CRISIS

THE EXHAUSTION OF THE INTEGRATION MODEL

The strength of the European model until now is linked, on the one hand, to the complementarity between local, national and European levels that is expressed by means of the principle of subsidiarity, and, on the other, by the existence of a large number of instruments, such as the structural funds, the Charter of Fundamental Rights, or, further still, by the open method of coordination, which allows the Union to play 'different keys' depending on the circumstances.

However, in a Europe of 25, or soon to be of 27, diversity and number threaten a structure that we have seen was protean and complex, or, failing that, they threaten to block it completely. As a minimum, there is an urgent need for a reformulation of the principle of subsidiarity, in the direction of precision and adjustment. However, the positions of the different Member States are currently too divergent for the response to the question *Is the European Union best placed or is the national level more appropriate?* not to be problematic. Recently, by ideological choice or by obligation, given the transition towards the market economy, countries have created their own responses to the changes in the economic and social environment. Faced with the costs involved in carrying out such reforms, European added value may appear to them to be questionable. Account must also be taken of the existence of divergent interests and sensibilities amongst the countries, and the Union can only play the role of promoting and coordinating actions that fall almost exclusively to the national governments.

Furthermore, there is no choice but to realise that the passion aroused by the creation of the new coordination instruments at the end of the 1990s has cooled. They have been accused of complicating things and adding extra layers of bureaucracy, without actually delivering positive results. Therefore, after five years of operation, it can be said that the open method of coordination is not suitable for all areas²¹, and that a return to legislation and to social dialogue, in a new form, would be worth looking at²².

There is also the problem of the effectiveness of decision-making in the social area in such an enlarged Europe. This issue, after all, will not be settled with the draft Constitutional Treaty, which could have strengthened the legislative capacity in the 'basic' area but which continues, on the contrary, to subject certain topics - such as that of social minima - to voting on the basis of unanimity, and others - Regulation 1408 on the implementation of social security

²¹ Stefan Collignon, Renaud Dehousse, Jean Gabolde, Marjorie Jouen, Philippe Pochet, Robert Salais, Rolf-Ulrich Sprenger and Hugo Zsolt de Sousa, The Lisbon strategy and the open method of co-ordination: 12 recommendations for an effective multi-level strategy, Policy paper n°12, Notre Europe, 2005. <http://www.notre-europe.asso.fr/IMG/pdf/Policypaper12-fr.pdf>

²² Wincott D., Beyond social regulation ? New instruments and/or a new social agenda for social policy at Lisbon? In Public Administration Vol.81 Issue 3, 2003

systems for the workers - to the co-decision process. If a desire for greater European integration had been driving the Convention's members and the governments, these subjects should have become a matter for qualified majority and majority voting²³.

The exhaustion of the integration model is also demonstrated by an increasingly miserly attitude on the part of the governments and the Europeans with regard to the advantages and disadvantages of European construction. The upsurge of the intergovernmental approach and the increased sensitivity to 'national interests' in fact demonstrates a profound change of heart on the part of the Member States. In the social field, this is illustrated by a systematic reconsideration of the financial and regulatory obligations agreed with benefits withdrawn. It has been a long time since European integration was considered, first and foremost, to be an asset that warranted certain short-term sacrifices, and pleasure was taken in its being translated more into economies of scale. Within the private sector, which had been extremely supportive of the dynamic of the Single Market, we are also seeing a change in behaviour: companies develop world strategies or, otherwise, pan-European strategies and count on competition amongst countries, rather than cooperation amongst them and harmonisation of the rules within a great internal market. Hence the quid pro quo approach prevails, at the expense of the quest for the common good.

In a lifeless climate, dominated by a circumspect attitude on the part of the governments, the Commission no longer intends to play the role of driving force that had been crucial to the progress of the social dialogue and the strengthening of the Community acquis in the social field. Rather it has stated its intention to reduce the amount of legislation it produces, to contribute to 'de-bureaucratisation'²⁴ and does not hesitate to leave it to the social partners to deal with sensitive issues amongst themselves. Furthermore, European social dialogue is struggling to make progress, because the social partners have neither the means to reinvigorate the European social dimension in the absence of support from the Council, nor the feeling that they are able to promote a renewal of the European social dialogue, in the absence of a mobilising agenda (see Annex 1).

This loss of influence must furthermore be analysed in the light of what Robert Salais calls the policy of granting: public decision is now determined by strategic challenges, *each partner recognised as competent in a domain calling upon others not to see themselves as responsible* leading actors to *conduct their relations in accordance with competition, each inevitably wishing to encroach on the domain of the other, while seeking to prohibit others from entering theirs*²⁵.

²³ Vignon J., "Les acquis de l'Europe sociale", Note (not published), March 2005

²⁴ Verheugen G. Press conference 'Better legislation' 16 March 05

²⁵ Salais R., The capabilities approach and the European project, Dossier "About Sen", in *Revue Economie politique*, forthcoming

ENLARGEMENT TO CENTRAL AND EASTERN EUROPEAN COUNTRIES

The enlargement of 1 May 2004 and those that were to follow soon after were not, in any case, comparable to the political, economic and social terms of the previous enlargements²⁶. With the 10 new Member States, the population of the European Union grew by 28%, whilst the Community GDP increased by slightly less than 5%. The gap between the incomes of the new Members and the other Member States is considerable. Average disparities should not, however, lead us to believe that the new Members or the candidate countries are largely homogeneous. In reality, they are as different from each others as the Fifteen are. Sometimes, we can attempt to establish more similarities or cooperation between them and the old members, than with some of their neighbours. With accession to the Union and the obligation to adopt the *acquis communautaire*, one can observe that that a large grouping of countries, the Mediterranean islands and the countries of the former Austro-Hungarian empire – except for Slovakia – have rediscovered the social base that existed at the beginning of the 20th century. For the others, the lack of reference to such a past makes them more or less unfamiliar with the solidarity of the European social model. This obliges them to construct something completely new and they find a more attractive model in the British evolution currently taking place. Use of social or fiscal dumping is also a strong temptation to accelerate economic catching-up²⁷, all the more since it is not surrounded by the same taboos as in the other countries.

In this way, the fifth enlargement sets four challenges that are completely new and very important in relation to 'adoption/integration' of the social model shaped by the Fifteen: the first is linked to the significant gap in development, involving a substantial increase of the sums allocated to the structural funds, which are insufficient at the moment. The second is connected to the consolidation of democracy and the institutional capacity in the 10 new Member States, the objective to be met not being 'less State' but 'more and better State'. This implies the mobilisation of new pedagogical instruments, in order to facilitate the organisation of civil society, which is currently very weak, and improved responsiveness of local politics. The third challenge is the one referred to above, of liberalisation presented as an ideology. It is problematic in the sense that its assertion tends to become a 'national' expression making the Council of Ministers a true debating platform. It is also because of the fact that neo-liberalism is often presented as an *obligation* or a *necessity* linked to poverty of the State and to the lack of institutional capacities.

The fourth challenge concerns the risk of social dumping. It is not a question of waging war against wage gaps or working conditions that often reflect differences in living standards, productivity or more specific historical situations, but to protect ourselves against deviating

²⁶ Vaughan-Whitehead D., *EU enlargement versus Social Europe, the uncertain future of the European social model*, E.Elgar, Cheltenham, 2003

²⁷ Vaughan-Whitehead D., *L'Europe à 25. Un défi social*, La Documentation française, 2005

situations or behaviours made possible by the application of the single market rules. In this regard, it is extremely difficult to distinguish between myth and reality. This may perhaps be because of the lack of a definition of social dumping, both at national and Community level²⁸. But it is also sometimes difficult to ascertain whether unfair competition is the result of a deliberate strategy of fraud on the part of a company (the establishment of working conditions not respecting the national or international rules in force) or simply of a legal use of the weaknesses of an intrinsically non-harmonised system (because certain national governments have kept the lowest level of national social legislation)²⁹. These fears relating to social dumping can be linked to two other types of situation, more involving migrants than companies, but posing great risk to the national social protection systems of host countries, namely social tourism (where the citizens of the least generous Members States, including retired people, migrate to other countries in order to obtain greater social advantages while contributing as little as possible) and social raids (where foreign workers and their families use employment as a means to gain entry to the national social protection system as a whole)³⁰. The first risk may lead to a deterioration at national level of the social benefits for the groups for which they have been designed as well as a deterioration of the financial foundations of the most attractive national systems; the second shows the fragility of national systems threatened with explosion if this practice becomes systematic. In fact, we cannot rule out that certain individuals may be tempted to 'shop' with a view to benefiting from the best combination of social benefits, salaries and taxes.

Faced with such challenges, it is necessary to separate what is physically possible and what is merely exaggeration, whilst endeavouring to preserve a strong demand, at the same levels that prevailed at the accession negotiations, about what constitutes Social Europe, particularly in terms of guaranteeing rights. However, the new Member States do not share, or do not yet share, the conviction of the Fifteen that seeking economic convergence alone will not be enough and must be accompanied by a gradual convergence in the social area.

AN IDEOLOGICAL CLASH

In addition to the challenges raised by the increasing size of the Union and by enlargement, there are now major ideological tensions that in fact serve to emphasise the difficulties in adapting the current social model.

²⁸ D. Vaughan-Whitehead points out that the term was borrowed from economic science and adapted, with difficulty, to the social field, where it lacks precision. He therefore proposes the following definition: 'any practice pursued by a company in order to gain comparative advantage, particularly in terms of competitiveness, which deliberately violates or evade social legislation or which takes advantage of differences in practice or legislation in the social field, the State also being able to play a decisive role in this process' (Vaughan-Whitehead D., *The Europe of 25. A social challenge*, French Documentation, 2005, p.29.)

²⁹ Vaughan-Whitehead D., *The Europe of 25. A social challenge*, French Documentation, 2005

³⁰ Kvist J., Does the EU enlargement start a race to the bottom? Strategic interaction among EU member states in social policy, in *Journal of European Social Policy*, 2004

The first thing to note is the recurrent opposition of two 'schools' in terms of their view of relations between the social and economic, and which has become particularly accentuated since the beginning of the 1990s. The first school of thought believes that the social stems from the economic and that excessive rigidity may jeopardise growth within a context of relative economic stagnation; the second school of thought argues for a degree of autonomy for the social from the economic sphere and hence focuses on the preservation of rights within a context of social insecurity. This ideological confrontation could be overcome at the end of the 1980s, with the impetus provided by Jacques Delors³¹ as a result of a favourable economic situation, with a synergy being established between increased economic competition and an improvement in social welfare. However, the current situation of relative stagnation for most of the old Member States is leading to a hardening of this opposition, as demonstrated by the proliferation of exaggerated arguments about the different opposing models (Annex 3).

Social Europe must come to terms with the transformations of a number of the large European political models, namely the Bismarckian continental model at stand-still, opposed to the social-democrat model and the liberal model³², within which reforms are designed according to the principles of 'making work pay' and of individual responsibility. A 'win-win' model of social protection was therefore gradually constructed at that time, stimulating the search for a job considered as evidence of the will to participate in society³³. Whilst that model offers positive points in a context in which the labour force volume is not very high, the hardline approach taken in applying it can, however, be dangerous, in the sense that, whilst it is all well and good to insist on a certain form of making people responsible, it can be dangerous to reinforce the strong tensions that already exist and that are, in particular, linked to a clash of values.

A SOCIAL SHIFT

To these ideological tensions we can add the social tensions which lead to general disenchantment and contribute to the crisis being experienced by the European social model.

They are demonstrated by the existence of new social demands which are not properly taken into account by national or European solidarity systems, as demonstrated by the referendum debates on the draft Constitutional Treaty which ended with a victory for the 'no' vote. They are linked to the appearance of new social risks associated with the transfer to a post-

³¹ Didry C et Mias A., *The Delors moment, The unions at the heart of the social Europe*, PIE-Peter Lang, Bruxelles, 2005

³² These transformations in addition lay down the outline of the issue of political leadership in Europe, about which France feels very uneasy. If it carries out or initiates reforms, the fact remains that it has developed a model the complexity of which, in particular its system of mutual insurance contributions, seems put a brake on large-scale adaptation. See Guillén A., Palier B., *Does Europe matter? Accession and social policy developments in recent and new member states*, in *EU Enlargement, Europeanization and social policy*, Journal of European Social Policy, Vol.14, No 3, August 2004.

³³ Barbier J., *Welfare to work policies in Europe, the current challenges of activation policies*, Centre d'Etudes de l'Emploi [French Centre for Employment Studies], Document de travail [Working document], November 2001 <http://www.cee-recherche.fr/uk/publicationspdf/01doc11.pdf#search='jeanclaude%20barbier%20make%20work%20pay>

industrial society (rapid obsolescence of qualifications, poor social cover as a result of precarious employment, the lack of continuity of professional careers, externalisation of services with low added value, relocations of industrial activities ...), the evolution in behaviours (demographic ageing, single-parent families, women's work, difficulties reconciling working and family lives, a huge demand for security ...) and ways of life (urbanisation, geographical mobility, weakening of local solidarity and over-dependence on services of general interest on the part of vulnerable people, ...).

Initially, the needs have been managed differently according to country, leading to a clear 'bifurcation' compared to the homogeneity seen amongst the industrial welfare states of the thirty glorious years³⁴. Today, however, the responses do not appear to be satisfactory, nor sufficient, because the problems often transcend the strict framework of national intervention. This is the case with the management of the social consequences of globalisation or the adaptation of retirement and social protection systems to the mobility of the Europeans and the flexibility of the labour market. However, at the moment, recourse to Europe is more the result of incantation than of the construction of a genuine collective and coordinated solution. In fact, this often comes into conflict, once the obstacle of subsidiarity is overcome, with demands essentially geared towards the development of individual rights, which could come to negate solidarity action or at least to relegate it to second place, as has been mentioned above.

Faced with these fundamental disruptions, certain theoretical and philosophical reflections have developed which today serve as world references in the organisation of social systems, with regard to how individuals are viewed³⁵. The first can be found in the thinking of John Rawls, who considers that individuals must be given their fair share of 'primary social assets'³⁶, integrating rights and freedoms, while the second, developed by Amartya Sen³⁷, stresses the importance of emphasising the 'capabilities' of individuals to mobilise these assets³⁸. Their confrontation gives rise to a new divide described by Jean-Baptiste de Foucauld with, on the one hand, *'a relatively individualist approach, consisting of providing the individual with the means for their autonomy, having confidence in their ability to develop a society in a manner that demonstrates creativity and solidarity, and freeing it as far as possible from existing constraints, placing the emphasis more on the means than on the results, taking a relatively optimistic view'* and on the other, *'a view that shows more solidarity, based upon the need to*

³⁴ On this point see the current work of Guiliano Bonoli.

³⁵ Salais R., In search of the conventional foundations of the institutions, in R.Salais, E.Chatel, D.Rivaud-Danset (dir.) in *Institutions and conventions*, EHESS Edition.

³⁶ For the introduction to this concept see: Rawls J., *Theory of Justice*, Paris, Seuil, 1987. For the categorisation of primary assets, see: Rawls J., *Justice and Democracy*, Paris, Seuil, 1993

³⁷ Sen A., *Inequality reexamined*, Oxford University Press, 1992

³⁸ An interesting analysis of these two ideas can be found in: Maric M., *Egalité et équité : enjeux de la liberté. Amartya Sen face à John Rawls et à l'économie normative*, in *Revue Française d'Economie*, vol.XI, n°3, 1996, pp.95-125. http://matisse.univ_paris1.fr/doc2/maric96.pdf#search='biens%20premiers%20sociaux%20john%20rawls'

*re-establish a social tie that is in crisis, to combat exclusion and to renew the concept of full employment, to preserve the natural tie that is under threat by mobilising society around new challenges, turning not only to the institutions and to redistribution, but to new capacities for engagement and personal transformation*³⁹.

To date, none of these theoretical responses have been subject to deliberate implementation⁴⁰, apart from certain 'bungling' reforms. Far from disqualifying them, we can take the view that this situation results from the fact that the concrete and complete rejection of these two philosophical theses would oblige us to revise the dominant views of public action: *'a policy relating to the realisation of fundamental rights [should] be achieved within a constant public debate, [...] that [being] the only thing able to clarify it'*⁴¹.

³⁹ Jean-Baptiste de Foucauld, Introduction to the session « *Quelles visions de l'Homme, quelle anthropologie pour un socialisme démocratique ?* », Université d'été Interclubs, September 2004 (quoted in the works of the « Democracy and et Humanism » group of Convictions, 27 June 2005, http://www.convictions.org/activites/documents/A98_Texte_Democratie-et-Humanisme_27-06-2005.pdf)

⁴⁰ Frank Vandebroucke has nevertheless tried to apply John Rawls's idea in Belgium, seeking a broad approach in the implementation of so-called 'active' policies, encouraging individuals to participate not just in the labour market, but in anything that may be socially or individually useful, and preventing any debate on workfare.

⁴¹ Salais R., The capabilities approach and the European project, Dossier "About Sen", in *Revue Economie politique*, forthcoming

IV – TO REBUILD A EUROPEAN SOCIAL CONTRACT

TO CONSOLIDATE THE EU'S SOCIAL DIMENSION, WHILE THERE IS STILL TIME: 4 POSSIBLE SCENARIOS

The Social Europe of 2005 does not have much left in common with that of 1985— before the re-launch of the single market - and still less in common with that of 1958. In a context heavily marked by unemployment and the fear of suffering the pernicious effects of globalisation, and in a society that has transformed itself from its core since the introduction of the welfare state models in the wake of the Second World War, the threats facing it must not be under-estimated, or over-estimated. Without wishing to paint a bleak picture, the risks faced in the medium term should be analysed with a view to taking the initiative, where necessary, and while there is still time.

Very much in outline and rather placing greater emphasis on certain aspects, four possible scenarios for development appear to be possible in the short and medium term:

- The first of them, and also the most probable, is the Laisser-faire scenario', which would consist of a slow but inevitable erosion of the Community acquis, either by the European Court of Justice by means of its judgements, as we have seen in the past in the case of services of general interest, or by the Council through revisions of directives. The social agenda regularly offers new opportunities for the updating of texts, which could end up either taking us forward or taking us backwards in the field of the social acquis at European level. The problem with this process is that it leaves the fields affected at the mercy of bargaining and circumstances, with no overall coherence and, by means of contagion, it would weaken the edifice to the detriment of everybody.
- The second, which could be called the Revolution scenario', would lead to a new great ambitious social project. Though it has often been mentioned by the 'no' camp in the French referendum on the draft Constitutional Treaty, such a project would not appear to be very possible within the current European context. The social, economic and political conditions for such a reform quite simply do not exist today, as quickly demonstrated by the reactions of incomprehension and disapproval to the French 'no' in the other Member States. From a structural point of view, the balance of power between the trade unions and employers is hardly favourable to the former. Furthermore, recently renewed, the sensitivities of the European Parliament and the Commission are rather to the right. Furthermore, a return to the welfare state of the 1960s is no longer an option, for certain Member States.
- The third scenario, amounting to an Agreed strategy of social disarmament', would be aimed at satisfying the demands of the sovereignists. Following an immense process of redistributing competences between the national level and European level, it would lead to returning almost complete autonomy in the field to each Member State. This scenario, or some of its variants, has some chance of seeing the light under the

increased political pressure from certain countries and the economic world⁴². It would however be legally very complicated to carry out and economically suicidal for the continent. In fact, re-nationalisation is not a sustainable option since, by recreating divisive frictions for workers and students, it is the source of economic and social decline for the whole of Europe.

- Finally, the last scenario is that of the New European social contract⁴³. This would be aimed at renewing the social dimension of European construction so that it is better geared towards the needs and aspirations of our populations at the beginning of this 21st Century. Starting with preliminary joint reflection on the attributes of the social Europe and taking account of the current institutional, political and economic context, it would lead to a new agreement amongst the 27. Of the four scenarios, this is the one that is most likely to reconcile the two current opposing schools of thought on the relationship between the social and the economic, and to recreate the conditions for a harmonious development of the European model. This scenario seems possible but it would require method and courage.

TAKING ADVANTAGE OF A SHORT 'WINDOW OF OPPORTUNITY' IN ORDER TO MAKE A SUCCESS OF ENLARGEMENT

Faced with these four scenarios, the time to choose has arrived. While the debates on the ratification of the draft constitutional Treaty have made this issue abundantly clear and increased the feeling that it is urgent to take action, the 'window of opportunity' has opened up with the entry of the ten new Member States, more than a year ago already. There is the danger that it will close as the months go by, either because of a lack of decision, which would mean that we would stumble into a *'Laisser faire'* scenario, or following an intergovernmental or inter-institutional conflict leading to the 'Agreed strategy of social disarmament'.

The reformulation of the social Europe must take advantage of the destabilisation created by the enlargement and see it is an opportunity. In fact, the rise in the level of social welfare in the acceding countries in itself represents a sufficiently attractive objective not to be disqualified or relegated to second place. The populations of the old and the new Member States expect the same things from the EU in this regard⁴³. Furthermore, following an accelerated transition towards a market economy, the new Member States are still in a situation of 'positive instability' with regard to social issues. This is because the timescale for societies is considerably longer than that for the economy; the heritage of the past does not evaporate in the space of a few years. Furthermore, their diversity suggests that the countries of Central and Eastern Europe will not all take the same path and that they may change their positions towards the different models, or even combine them. They must move on from the

⁴² Believing that there is no need to unify national social systems, Commissioner Günter Verheugen even considers that the European social model does not exist, in an interview in *Le Monde* on 3 September 2005.

⁴³ All the surveys of the Eurobarometer in all countries regularly indicate that employment and the fight against poverty and social exclusion should be the EU's top priority. The demand is increasing as time passes. (http://europa.eu.int/comm/public_opinion/archives/eb/eb63/eb63.4_en_first.pdf)

status of 'new Members' and the widespread impression in those countries that the sacrifices made in order to adopt the Community *acquis* have been agreed to without receiving any real rewards must be reversed. Social Europe can only progress on the basis of their desire to bring on board the others and, in parallel, on an acceptance by the Fifteen of their differences. In this respect, we must put an end to the mistaken idea that the latest enlargement is a source of problems rather than an accomplishment for Europe. Making a success of enlargement must be seen as 'our' common horizon.

To this end, it may be useful to draw up an inventory of the instruments available to the European Union and which are still under-used or under-valued. First of all, there are the Structural Funds, whose contribution to the development of the most backward regions is widely acknowledged. They are very much appreciated in the countryside and in towns by populations and politicians, since they have led to the launch of new economic projects and the revitalisation of areas in crisis. On the other hand, in the social field, perhaps because of the combination of European funds with national funding, they are less visible. As regards access to health and education services, however, they have allowed substantial progress to be made since the beginning of the 1990s, particularly in the 'cohesion countries' (Ireland, Greece, Spain, Portugal). There is nothing to prevent these instruments from being highly flexible, since they are used within the framework of development programmes, managed at regional level and revised at least every four years, and are therefore more geared towards meeting the new social needs. Furthermore, the public management methods, associated with the European cohesion policy, have allowed the most backward countries to modernise their provision of services and protection to the population. The capacity of these tools to provide a harmonious relationship between social and economic progress remains considerable and deserves to be better appreciated.

The Commission's recommendations constitute a further vehicle for European cohesion, which is too often neglected. In fact, beyond directives, regulations and jurisprudence, flexible rules are laid down by the Commission by means of its recommendations or communications, which are not of a binding nature. Nevertheless, mainly with regard to new subjects, they serve as a common reference for national governments as well as for social and economic actors. In fact, they often lead to debates and sometimes exchanges of experiences, which together can improve the understanding of a problem and the formulation of a solution, even if the level of competence is national, or even sub-national. Past experience has shown that, for the new Members, these texts had a not inconsiderable influence over internal political decisions.

European social dialogue also presents development perspectives which should not be ignored, provided that we cease holding excessively generalised formal meetings and better promote its sectoral or transnational dimensions. By means of this double approach, it may be able to deal with more concrete and often extremely topical issues (industrial restructuring, precarious employment ...). These must however be provided with a legislative element. There is no question that, while there is a strong desire for a renewal of the European methods of governance and increased involvement of civil society, the tool of social dialogue deserves to be fully used.

More generally, the Union has every interest in further developing flexible coordination methods, without falling into the trap of extreme bureaucratisation, by encouraging certain experimentations to deal with certain new problems (ethnic minorities, social exclusion, immigration, industrial change ...). Nevertheless, where they turn out to be inoperative or incapable of achieving the objectives set, it may become desirable to return to more binding procedures and traditional legislative methods. There is therefore good reason to renew the methods of European intervention by making better use of the potential of the existing instruments and adapting them, in order to create satisfactory responses to the new social risks (see Annex 2).

Finally, while the questioning of the European social model and the legitimacy of European intervention appears to have been progressing for some years, attachment to the Union's social dimension remains strong in certain Member States, such as Germany, Luxembourg, Spain, Portugal, France, Belgium and also in the Nordic countries. These countries are prepared faithfully to defend the idea that democracy depends on the social. We must also bear in mind that the populations of the new Member States look more to the EU than to the national level to improve their economic and social situation⁴⁴. But in that case as well, the balance of power is liable to evolve quickly and deteriorate.

Within this context, it would seem a good idea to accept the British Presidency's 'offer' to open up a great debate in the autumn, at an informal European Council, with a view to rebuilding a strong European social model,⁴⁵ suited to today's world⁴⁶.

DRAWING UP AN AGENDA FOR A NEW EUROPEAN SOCIAL CONTRACT

This task is far from being a sinecure. On the one hand, it must prevent falling into the trap of getting bogged down because of the inertia of the European 'machinery', fed by the opposition of those who do not appreciate the urgent need for change and therefore prefer to maintain a short-term conservative position and, on the other, the risk of explosion, caused by the exaggerations of those who want to take advantage of the lack of debate to undo the social acquis on the grounds of its obsolescence, while doing all they can to prevent any further coordination. We must therefore find a method to prevent a static confrontation between old and new Members, Northern and Southern countries, liberals and social-democrats, in order to create dynamic alliances.

Two paths, not mutually exclusive, seem possible with regard to the way things currently stand.

⁴⁴ Questioned about the different aspects of the Lisbon Strategy and on the level at which they believe it most appropriate to move forward, the populations of the new Member States differ from those of the old Member States in that they have greater faith in the European level than in the national level, (http://europa.eu.int/comm/public_opinion/archives/ebs/ebs_215_en.pdf)

⁴⁵ Blunkett D., Speech at the meeting of employment and social policy ministers in Belfast, 7 and 8 July 2005

⁴⁶ Blair T., Britain's leader capitalises on knack for turning crisis into an opportunity, Interview, Financial Times, 7 June 2005

The first follows up acknowledgement of the crisis in which Social Europe finds itself. However, it is not by thinking in terms of the 'costs of non-Europe', as was done to complete the Single Market, that we will convince all the Member States to make a greater commitment in the social area. The protean character of European intervention, the large number of actors and the almost uniform character of the consensus on which this construction is based, rules out the approach according to strata used in economics. To emerge from the impasse, the foundations of today's Social Europe need to be updated and the bases that some consider a minimum in order to live together in a society of 27 need to be verified. For certain new Member States, this assumes that they fully understand that joining the European social model does not only consist of applying the *acquis communautaire*, but also reviewing again, after their transition, the relationship between economic progress and social progress. For a few old Member States, this reorganisation will take the form of a critical revision of what is maintaining their cohesion and on the developments in their society. Such an examination of shared consciousness is the prerequisite for redefining the *affectio societatis* binding the Member States together and to revitalise the drive for a Social Europe of 27.

The second route, more operational in nature, consists of using the methods of 'packages' formerly used during the enlargements of 1986 and 1995: the work demanded by poorer countries in employment and fiscal legislation could be funded by greater general solidarity or, for the eight new Member States of central Europe, by the prospect of their workers having easy access to their neighbours' labour markets; the priority given to full employment being able to be compensated by minimal social insurance against the risks of unemployment; a coordinated response to relocations counterbalanced by increased support for investments in research and development, or by the pure and simple scrapping of State aid in the richest countries, etc.

Furthermore, we must not underestimate the scale of the task facing us and the time required to achieve a good compromise, which would take the form of a 'new European social contract'. This is why, rather than seeking to set the terms of this final compromise from the outset, we should create an agenda for discussion, a genuine 'menu' of issues in which each Member State will express its interest in European intervention and which will then serve as a starting point for a negotiation of a renewal of the components of the social Europe. Within the current European institutional framework, this method does not constitute a pointless detour but rather a necessary prerequisite; it has already been successfully tried by the Delors Commission at the end of the 1980s with the Charter of fundamental social rights and the social action programme. The advantage of such an approach is that it will also allow us to escape the impasse of the 'subsidiarity test' into which any discussion amongst the 27 in the social field would inevitably fall. It could begin with a short preliminary phase for clarifying the terms for each country and each kind of partner.

To take this a little further, but without definitively dictating the content, it is possible to reflect on the composition of this menu. It could consist of four kinds of element: the different 'blocs' of the Community *acquis*, the fields corresponding to new social needs, the European instruments used and to be modernised, and the old and new actors to be mobilised.

With regard to the Community acquis, we can briefly identify the following broad blocs:

- the mobility of workers (retirement, portability of rights, posting of workers,...)
- health and safety in the workplace (working times, atypical contracts, protection against accidents ...)
- workers' rights (union representation, information-consultation ...)
- non-discrimination (gender equality, disability, nationality and race ...).

With regard to the issues that require action from Europe, the fundamental rights and objectives laid out in headings I and II of the draft Constitutional Treaty may provide a useful basis for producing the list. Six groups can be identified:

- globalisation (anticipation of changes, management of restructurings, social minima, combating social dumping and unfair practices ...)
- social inclusion (combating poverty, primary education and combating illiteracy, the quality of jobs, subsistence incomes and social coverage ...)
- transformations of the family structure and ways of life (single-parent families, child poverty, gender equality outside of work, social services ...)
- demographic ageing (social protection systems, social services, increase in rates of life-long activity, ...)
- services of general interest (protection of the law of the market wherever it is not functioning, territorial cohesion, guaranteed access for all to education and health services, ...)
- migrations (assistance, inclusion, quotas, ...)

The critical examination of the instruments, with a view to their possible modernisation, should involve:

- European social dialogue,
- binding legal tools (directives, regulations)
- non-binding legal tools (recommendations, communications)
- the open method of coordination
- the Structural Funds

The mobilisation of new actors could involve:

- NGOs,
- local authorities, in particular the regions.

In that way we will have a sufficiently long menu for discussion so that we can try to draw up a new social agenda which could create a consensus amongst the different national governments, suited to current economic constraints and social expectations.

Conclusion

The fact that we should recognise the importance of the Community acquis and recognise the progress made during the accession of the new Member States does not mean that we should accept the current stagnation of the social Europe and the tussling caused by the latest enlargement. Conversely, it would appear dangerous to have too much faith in the Community acquis' capacity for resistance, ignoring the dynamics at play, which either attack it head on in the name of an essentially neo-liberal ideology or undermine its foundations quietly by means of social changes.

The time has therefore come to collectively reconsider this issue with a view to providing solid foundations – solid because they are shared and in line with contemporary social needs – for the social Europe of 27. The method consisting of defining an agenda for discussion, a broad 'menu' of issues, in which each Member State can express its interest in European intervention and which then provides a starting point for a negotiation, would appear to be the best option. It would allow us to deal both with the different 'blocs' of the Community acquis, fields corresponding to new social needs, and with the European instruments and actors to be mobilised.

The gamble, consisting of re-assessing the current social acquis in order to consolidate it, renew it and perhaps extend it to new fields, may appear risky. The analysis of the forces at play demonstrate however that there is a 'window of opportunity' to be taken advantage of and considerable potential within the Member States to create a dynamic on the basis of a gradual and unhurried reflection, but with the will to succeed. Furthermore, on an internal level, the renewal of the social dimension of European construction represents much more than the reform of a European policy; the harmony and prosperity of a Europe of 27 depends upon it.

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Annex 1

AT THE ROOTS OF A COMMUNITY LABOUR LAW: EUROPEAN SOCIAL DIALOGUE

CLAUDE DIDRY AND ARNAUD MIAS

(INSTITUTIONS ET DYNAMIQUES HISTORIQUES DE L'ÉCONOMIE IDHE

– ÉCOLE NORMALE SUPÉRIEURE CACHAN)

European social dialogue is a mechanism for debate that involves the social partners in the Commission's initiatives in drafting Union-level proposals. It is not therefore directly linked to a social policy perspective aimed at minimising the effects of economic change, but it is, rather, aimed at developing a range of new guarantees at Union level regarding both workers' and employers' rights. It therefore helps to define a kind of 'European working condition', which guarantees the worker's rights and thus his capability⁴⁷ to participate in the dynamic of innovation that is an essential prerequisite if we are to ensure the future growth of the European economy. European social dialogue therefore, in this context, forms part of a dynamic of the 'Europeanisation' of national societies, which is intended to strengthen the emergence of a European society, running in tandem with the Union's initiatives in areas such as education, research, justice and security. It has slipped down the pecking order of Community action, in light of fresh progress in the European employment strategy and of the implementation of an open method for the coordination of national policies in this area. In what sense can the crisis facing social dialogue be seen as part of a deeper malaise in European ambition? Before we attempt to analyse the crisis, we should like to touch upon some of the mechanisms involved in European social dialogue, and upon the progress that has been achieved. We shall ultimately look into ways in which the dialogue might be relaunched.

THE INSTITUTIONAL ORGANISATION OF EUROPEAN SOCIAL DIALOGUE

European social dialogue refers to both a theatre of operations for the Commission⁴⁸ and a mechanism whereby the social partners are involved in drawing up 'community activities' alongside the Commission (an expression used in Article 138 of the Treaty establishing the European Community). In this process of Community debate, the social partners are consulted firstly regarding the possibilities of a Community measure and then on the content of such a measure. At this second stage, they deliver an opinion, or 'where applicable a recommendation' to the Commission. They may also give notice of their wish to hold negotiations on the question in hand, with a view to reaching an agreement, within the meaning of Article 139(1): 'The dialogue management and labour at Community level may lead, if they so desire, to contractual relations, including agreements'.

Social dialogue thus appears, under the terms of the Treaty itself, to be a mechanism that goes beyond the negotiation of agreements and that involves consulting the social partners on the scope and the

⁴⁷. In the sense of 'capability', a concept developed by A. Sen and further developed by R. Salais to envisage the social advances made under the European project. From Robert Salais, 'Incorporating the capability approach into social and employment policies', in Robert Salais and Robert Villeneuve (ed.), *Europe and the Politics of Capabilities*, Cambridge, New York, Cambridge University Press, 2004.

⁴⁸. 'It is the Commission's task to promote consultation of the social partners at Community level and take any relevant measures to facilitate their dialogue by ensuring balanced support for the parties' (Article 138(1)).

content of community activities. It takes over the reins from the Val Duchesse dialogue process, which, between 1985 and 1992, represented a key staging post on the road to bringing the social partners closer together⁴⁹.

Since its inception, when the Maastricht Treaty was adopted in 1992, social dialogue has played a part in the adoption of a large number of objectives. The social partners are consulted and then their opinions enrich directives, such as the European Works Councils Directive in 1994. After negotiations have been held, agreements have formed the basis of directives, thus ensuring their transposition into national law. Examples of this include the parental leave directive of 1996, the part-time work directives of 1997 and the fixed-term contract directive of 1999.

PROGRESS ACHIEVED IN EUROPEAN SOCIAL DIALOGUE

The early examples of social dialogue, as established by the social protocol annexed to the Maastricht Treaty and Articles 138 and 139 of the Treaty establishing the Community, gave rise to a particular form of dialogue that is not simply an exchange between equal partners. The Commission had played a major role throughout the previous decade, starting with the Social Action Programme of 1990. The European Trade Union Confederation (ETUC) took part in that initiative and played a supporting rôle in the Commission's proposals. The employers' association, UNICE (Union of Industrial and Employers' Confederations of Europe), was tempted to keep the status quo and to maintain heterogeneity between national legislations, which firms wanted to be in a position to use in order to put pressure on the cost of work (in the sense of social dumping), although there were those in their midst who were wary of consolidating a European project built on social foundations.

Social dialogue has enabled the social partners to assume their autonomy with regard to the Commission and the European political institutions, with agreements that the national social partners are entrusted with implementing (as in the case of teleworking in 2002) and with an autonomous work programme that the social partners adopted in 2002. What gives it all of its meaning, however, is the purpose of drafting a labour law that reinforces the rights of the parties and in particular those of the workers. The Val Duchesse dialogue process in the 1980s demonstrated that merely thinking about the economy was insufficient to maintain the interest of the social partners⁵⁰ and culminated in the incorporation of the consultation process into the Maastricht Treaty.

European union organisations were involved to varying degrees in the adoption of 20 directives between 1993 and 2003, whereas the Community institutions had adopted 15 in the preceding 20 years⁵¹, and that in a context of an overall slow-down in the institutions' legislative activities. The number of new Commission initiatives under all areas was in freefall during that period: 185 proposals in 1990, 51 in 1994, 16 in 1997⁵². Even though these figures should be treated with caution, as they are very much a broad sweep, they are indicative of a certain dynamism in the production of legislation in the 1990s, which

⁴⁹. For more on social dialogue in European history and the crucial rôle played by Jacques Delors in institutional recognition of social dialogue, please see Claude Didry and Arnaud Mias, *Le moment Delors, les syndicats au cœur de l'Europe sociale*, Bruxelles, Bern, New York, Berlin, PIE-Peter Lang, 2005.

⁵⁰. As stated by the secretary-general of the ETUC, Jean Lapeyre, in 1988, with regard to institutional prospects of joint opinions achieved since 1985 (cf. Didry and Mias, *Le moment Delors*).

⁵¹. Several directives adopted in the fields of labour law, outside health and safety and outside the issue of free movement (mutual recognition mechanism for qualifications and degrees; measures to ensure the freedom of establishment and the free provision of services; coordination of legal, regulatory and administrative provisions regarding specific professional activities).

⁵². Source: *Commission report on the functioning of the Treaty on European Union*, of 1998, Annex 9, p87. quoted by: R. Dehousse (2002), 'The subsidiarity principle in European constitutional debate', in P. Magnette (ed), *La constitution de l'Europe*, Bruxelles, Éditions de l'Université de Bruxelles (Institut d'études européennes), pp. 159.

one would not know from simply reading the Protocol. Almost all of the 17 proposals on Community instruments (regulations, directives or decisions) put forward in the Programme, were adopted in the proposed form⁵³. The other ten proposals on health and safety in the workplace were all the subject of a directive in the following years. These figures again call into question a negative assessment of the Protocol – Maastricht was very much a part of the move towards jointly setting up a European public authority and Community labour law.

European social dialogue helped to support the Commission's move to achieve legislation of which the centre of gravity is nowadays the question of informing and consulting workers. The directives on collective redundancy (1975), business transfer (1977) and insolvency of the employer (1980), were followed by the European Works Councils Directive in 1994⁵⁴, then, in 2001, the directive on information, consulting and involving workers in European society and in 2002, the directive establish the workers' right to information – consultation in businesses with more than 50 employees.

In addition to these directives came the impressive range of directives on health and safety, including those on safety and health of workers with a fixed duration employment relationship or a temporary employment relationship (1991), on the health and safety of pregnant women (1992) and on the protection of young people at work (1994)⁵⁵. Further directives supplement the legislation already arising from freedom of movement (two on the right of residence in 1990, and one on safeguarding supplementary pension rights in 1998). In the area of equal treatment between men and women, two directives characterised the decade: the directive on occupational social security schemes in 1996 and the directive on burden of proof in cases of discrimination based on sex in 1997. In 2000, a directive established a general framework for equal treatment in employment and occupation, which reproduces previous provisions and gives them structure. There were three other important directives: a directive on the employer's obligation to inform employees of the conditions applicable to the employment contract in 1991, a directive concerning certain aspects of the organisation of working time in 1993, and in 1996 a directive concerning the posting of workers in the framework of the provision of services.

In other words, the act of negotiation by the social partners has led to agreements that have provided the raw material for important directives. Accordingly, a 1999 directive established a legally binding agreement between the social partners aimed at providing a framework for recourse to fixed-term contracts. The agreement is based on the observation that 'open-ended contracts are and shall remain the general form of employment between employers and workers'. It puts forward the principle of non-discrimination between workers employed by companies on open-ended contracts (OCs) and on fixed-term contracts (FTCs). It imposes legislation on Member States regarding the grounds for renewing FTCs and/or regarding the maximum number of consecutive FTCs. The significance of this agreement is that it establishes common rules for work contracts, OCs, and provides a structure for the use of FTCs. The underlying purpose is to establish a *Community labour market*, in which the right to work exists free of its national idiosyncrasies.

The legislative activity of the 1990s, whether the result of consultation or negotiation, has now led to a legal structure outlining what could become a Community labour code.

⁵³. Only one proposal was unsuccessful, namely a review of Regulation 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that State.

⁵⁴. Regarding the various forms of the councils and the European Business Forums, please see Élodie Béthoux, 'Les comités d'entreprise européens en quête de légitimité', *Travail et emploi* n°98, p. 21-35.

⁵⁵. According to Jean Degimbe (*La politique sociale européenne, du Traité de Rome au Traité d'Amsterdam*, Bruxelles, Institut syndical européen, 1999, pp. 258-259), there were a further 14 health and safety directives between the adoption of the framework-directive of 1989 and the entry into force of the Maastricht Treaty in 1993.

THE CRISIS FACING EUROPEAN SOCIAL DIALOGUE

The roots of the crisis facing social dialogue lie first and foremost due to the poor visibility of the *acquis communautaire*, and even the incorporation of some of its elements into measures that undermine workers' rights.

The poor visibility of the *acquis communautaire* on social issues arises from the fact that it is made up largely of directives without any horizontal effect between private actors. These directives must be transposed in such a way that they enter into force ahead of national-level legislation; they disappear somewhat behind national laws.

Apart from the question of visibility, certain directives pave the way for the balkanisation of legal references, encouraging the development of untypical forms of work with no safety net. The part-time work directive of 1997 encourages this form of work, taking little account of its nature of the work and its impact on the income and the timetables of the workers concerned. The working time directive of 1993, which was discussed again with dreadful consequences during the referendum campaign, restricts the working week to 48 hours, albeit with an opt-out clause that affords individuals the option not to keep to that limit.

This explains the difficulty in gauging objectively the weight of the *acquis communautaire*, given for example the low levels of interest in France, aside from certain action in the European Works Councils such as Renault Vilvoorde⁵⁶ and Alstom in response to the group's financial difficulties.

In addition to the negative perception of the *acquis communautaire*, the crisis in European social dialogue is also the result of the growing desire to promote professional activity among populations to combat unemployment and to address the demographic changes affecting Europe. Against this backdrop, Europe's employment strategy has been built on the foundations of the open method of coordination, enabling national employment policies to compete. It represents a cognitive climbdown on national labour market perspectives, abandoning the global vision of a 'great internal market' which was at the heart of Jacques Delors' initiatives when he was President of the Commission. It also reflects the idea that the labour market depends exclusively on mechanisms governing labour relations, whereas the Lisbon Strategy is aimed precisely at placing research and innovation at the heart of future growth in the Union, thereby undermining the research of a comparative advantage based on the deterioration in working conditions.

THE RELAUNCH OF EUROPEAN SOCIAL DIALOGUE ENTAILS A RELAUNCH OF EUROPEAN AMBITION

The very existence of the European project is currently under threat. Presented as an area of competition and business by Europe's eminent representatives, European integration has tended to be seen as a distant and even hostile reality for the general public in the EU.

The Lisbon Strategy, which is aimed at promoting a knowledge-based European economy, might prove a valuable tool in counteracting that negative view of Europe, as it fosters a Europe comprising an educated population that is capable of using the most advanced technology to develop research and innovations to power tomorrow's growth. This strategy is viewed at the moment, however, as a justification for national employment policies aimed at encouraging flexibility by means of a plethora of precarious and illegible

⁵⁶. For more on the mobilisation of the Renault Council in this affair and its impact on the company's social and industrial strategy in Belgium and in the automobile sector, please see Claude Didry, 'Europe tested through its products: the Renault-Vilvoorde affair and its implications for industrial and employment policies' in Robert Salais and Robert Villeneuve (ed.), *Europe and the Politics of Capabilities*, Cambridge, Cambridge University Press, p. 21-37.

statutes for workers and businesses. National labour markets are seen as areas of competition, from the point of view of social dumping. The result is that work is devalued, and this is scarcely compatible with the ambition to match the motivation and the freedom of the workers presupposed by economic activities based on research and innovation. Furthermore, this vision of the Lisbon Strategy entails a sharp increase in national introspection among the population.

The relaunch of social dialogue entails a relaunch of European ambition, if Europe is to meet the challenges that it faces in research and innovation. This involves strong initiatives from the Commission, and a break from the current perspective of 'independent' social dialogue on the part of the political authorities. Without the driving force of the Commission's initiatives, European social dialogue is reduced to a study and discussion, in which the lack of interest will quickly dissuade people from taking part.

This relaunch may in turn see a return to the spirit of Val Duchesse, for example by inviting the social partners to reflect on development and the implications of a *European* knowledge-based economy.

We believe that it should culminate in more adventurous institutional activity, such as the reinforcement and unification of the prerogatives of the European Works Councils by means of a regulation that would represent a break from the vicissitudes of transposition in heterogeneous national legislations.

At the same time, the existing social *acquis communautaire* is an important, if little known, foundation, which is the foundation for, *inter alia*, a representative structure for workers from the new Member States. This implies follow-up work at Commission level, following the example of the activities already carried out by the services of the Employment and Social Affairs DG, giving the ETUC a prominent role in the process of offering support to the unions already present.

CONCLUSION

If it is to continue to exist in the context of national democratic choices, Europe must today prove itself as a society that is capable of providing its members with the instruments that they need in order to develop their activities freely. The obsession of Community and national authorities with the mechanisms of an abstract market and in particular with issues such as competition and flexibility leads to the opposite trend of the demonisation of the market, which proved highly effective, as was seen in the referendum campaign on the draft Constitutional Treaty. That focus on the abstract market closes the door to European ambition, which had been at the heart of the ten years of the Delors Presidency. It overlooks the European reality of an educated population that is 'capable' of developing the necessary research and innovation activities for high-level growth, and confines national employment to the race to find the lowest social standards. The relaunch of social dialogue, in the context of a crisis of this nature, requires a relaunch of European ambition, in order to be able to find the questions covering the European labour market, beyond economic competition between the Member States. This involves turning our backs on ideological liberalism, so as to grasp the European dimension of the market and to establish a society in which the national groupings will be established in future⁵⁷.

⁵⁷. For more on the role of social policy and the right to work, within the unification process of national groupings such as France and Germany at the beginning of the 20th century, please see Bénédicte Zimmermann, Claude Didry and Peter Wagner, *Le travail et la nation, histoire croisée de la France et de l'Allemagne*, Paris, Éditions de la Maison des Sciences de l'Homme, 1999. One century later, an analogue process is, in our view, underway at Community level.

Annex 2

THE AMARTYA SEN APPROACH AND SOCIAL NEEDS IN EUROPE

ROBERT SALAIS

ÉCOLE NORMALE SUPÉRIEURE – CACHAN

Contemporary social problems (exclusion, poverty, employment, new aspirations to more freedoms and possibilities) far outweigh traditional internal political issues in European Member States. Both in terms of facing up fully to these challenges and in terms of deploying the resources and lines of action needed to deal with globalisation, Europe is the appropriate level. The problem is that the future of the European Project remains largely in the hands of governments and politicians mired in strategies to control their national political markets. The important thing for them is to show, in the short-term, quantitatively favourable performances in employment rates and the number of unemployed, thus hoping to remain in or come to power. Such strategies preclude dealing with social problems in a genuine, long-term way that meets needs. Economic and social stagnation is a threat; inequalities grow larger, in terms of access to quality employment and, in particular, to a full life. The European Project therefore must – and this is an essential condition for its survival – assert itself as such. This means adopting a political direction which, in social terms, frees itself from these strategic tendencies and has real support among the people of Europe. We would like to suggest in this short note that the international and rapidly expanding scope of research developed following and around the work of Amartya Sen, Nobel prize for economics laureate in 1998, offers robust and fertile ideas for moving forward on these issues.

The basic idea is simple. Public action, in all its components and at all levels, must make combating capability inequalities an objective. By that Amartya Sen means that what is truly fair and effective is to allow everyone to have more choice possibilities and, therefore, to advance towards a more certain, fuller life that is more in line with their aspirations. This idea is not at all utopian; it should be a fundamental rule for public action. And everyone experiences it every day. For example, let's think about what takes place between a employment consultant and a job seeker in a local agency. The consultant, who intends, as is his job, to act in the interests of the job seeker's integration and employment needs, must pick his way between two contradictory approaches. On the one hand he combines, as best he can, the range of resources available to him (training, placements, research assistance, convincing local employers etc.) to increase the job seeker's possibilities of sustainable inclusion (with all the limits inherent to the standardisation of these resources). While on the other hand, obeying orders from head office, he is happy to rake it in and hasten the job seeker's exit from "stock", which, for accounting purposes and in the short-term, improves performance, (but what about the job seeker's future?). Even though it has clearly not been designated as such, the first approach is, in practice, a start to implementing Sen's idea: to increase the job seeker's possibilities of sustainable inclusion. The second approach is that favoured by a political power conscious of the results it can show in the short term. The first approach – the capabilities approach – is censorious of the second, and is at the same time an alternative.

Developing a public action according to a policy of capabilities is simply a question of decision makers in charge of public affairs, wherever they are and at all levels, when faced with choosing an instrument, a reform, a change to the rules or a practice, constantly asking themselves whether this choice is an improvement or, on the contrary, is detrimental to the capabilities of the people concerned. The potential impact of such a considered effort increases with the level of action at which it is undertaken, but this

effort is no more difficult to undertake. This criterion can be introduced at all levels. This introduction would be fairer and more effective if coordinated. For example, in the definition of instruments, in the choice of policy and agency management indicators, in agents' assessment practices at local level or at the more fundamental level of policy guidance. Must pensions reform, which is another example, favour overall financial balance with the consequence that it is known to increase inequalities in access to a proper pension, in addition to precarity and low revenues? Or must it favour, under the constraint of a sufficient pension, real freedom for all to choose their retirement age and an adequate balance between work and inactivity? Measures such as allowing workers in hard jobs (or who started work very young) to retire earlier are already a step in this direction. However, owing to a lack of a concerted policy guidance toward capabilities equality, it is the financial constraint (and the concealed desire to open this sector to the market) which takes precedence.

Let us now discard any ambiguity to which a superficial comparison with the Third Way, advocated by Tony Blair's entourage, could lead. Attention to capabilities is precisely what is missing from that approach. Placing the risk on individuals in the name of the primacy of individual responsibility leads to what we are seeing in Great Britain, and which is unacceptable, a brutal combination of difficulties (poverty, precarious jobs, exclusion, violence) affecting a quarter of the population at the bottom of the scale. You can only call on everyone to exercise responsibility if you give them the capabilities and the means to do so. This requires a significant long-term effort on behalf of the community. This effort involves the development of public services and quality collective infrastructures that are decentralised, democratic and suited to requirements (teaching, health, transport, child care, etc.). This is a priority to be met for the economic development of the new Member States. That means that any search for political compromise with the Third Way should imperatively integrate the requirement of progressing capabilities combined with development of public services (which is based on a revised concept of services). Given the financial constraint imposed on public spending, the process requires strong collective commitment and redistributive solidarity.

These considerations bring us to the second decisive point of Sen's approach, democracy in collective choices, particularly social choices, and the implementation of deliberative structures at all levels: to express needs in a public and responsible manner, to make choices and to implement them. You will have realised from the above that the agenda of capabilities is as much a public action agenda of method as an agenda of searching for adequate social "content". The issue raised by this method agenda is how to form the new European social contract, called Our Europe, so that it translates into a genuine commitment by the Member States towards advancing the European political project. We have known since the start that national governments have a great deal of difficulty, considering the evolution of national forms of political debate, suspending their thirst for immediate results (although without repercussions) in favour of irreversible commitments and sustainable investments. It is not that they are opposed *a priori* to such commitments, but they can only adhere to them by tying themselves, like Ulysses in the face of the sirens, to the mast of the European ship. That supposes that this European ship truly is united, that it has a future course and that it knows how to hold it (in other words, for Europe, that it has won political legitimacy amongst its citizens).

Political legitimacy will be gained by demonstrating in practice that the construction of the European Project is positive in social terms for everyone, compared to what national social models can offer. Certainly, we are not there in certain areas where, on the contrary, we take the opposite course. There again, however, the idea is not at all utopian and is in the first stages of realisation. Similarly, if we look objectively, where social Europe works is where it is committed to a policy of combating capability inequalities: for example, equality of treatment for men/women; rights to participation, information and consultation (which allow the workers' voice to be heard to a small extent in economical decisions); wider social dialogue to prepare European legislation. We must be clear on the following point. Every country has

its own tradition with regard to a social model. The European political project certainly loses out if it intends to replace national models with at least one unique model (seeking to place them in competition with each other). The project advances when it encourages, as it does in the examples we have just mentioned, every Member State to improve step by step, to supplement, where possible, its social model in the direction of progressing capabilities, both individual and collective. This is what Europe is in the process of doing in Great Britain by introducing works councils and information and consultation rights. Similarly, it actively contributes to genuine progress in sexual equality in many countries, among them Germany, France or Great Britain. Is not the challenge to continue in this direction, but in a conscious and concerted manner, in other words to combine, in the social domain, advancement of the European Project with development, at that level, of a policy of capabilities?

Although they remain somewhat fragile, European efforts have only been possible with the support of civil and social forces in favour of effective implementation of the corresponding fundamental rights. Linking the programme of action to the Charter of Fundamental Social Rights showed its effectiveness under the Delors presidency. These notes recognise the essential teaching of Sen's works, on which we will conclude: the need for a policy of capabilities to have public arenas at various levels, which are structured by rules that can guarantee that everyone, from citizens to intermediate, local, national and European bodies, can make their voice heard in an equal and responsible way. The constitutional Treaty contains encouraging elements with regard to all these points.

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Annex 3

ANGLO-SAXON OR ANGLO-SOCIAL? THE POLITICAL ECONOMY OF NEW LABOUR

DANIEL WINCOTT

UNIVERSITY OF BIRMINGHAM

Britain is widely seen as the most neo-liberal country in western Europe. Despite the early hope that the election of the Labour government in 1997 would prove to be a turning-point in British European policy, to many, particularly on the European left, Tony Blair's main concern is to limit the 'European' constraints on Britain's market-oriented approach to the economy. And there is, of course, considerable truth in this argument. But the reality of British domestic policy is more complex than this vision of Anglo-Saxon market-liberalism suggests. Indeed, in Blair's third consecutive term as Prime Minister, the thoughts of many on the British left are turning to the question of what, if anything, might be the social democratic legacy of the Blairite or New Labour period in government. How might that legacy be influenced by decisions that are now being made?

Some critical friends of New Labour have sought to characterise this legacy as a shift in the dominant form of the British socio-economic model, from 'Anglo-Saxon' to 'Anglo-Social'.⁵⁸ Its advocates argue that the emerging 'Anglo-Social' model 'seeks to combine the economic dynamism of the USA with the social equity of Scandinavian social democracies'.⁵⁹ There is a whiff of hubris in this objective – particularly as in recent years the performance of the Nordic countries themselves has hardly sacrificed economic dynamism on the altar of social equity. Arguably these countries already combine the two more effectively than the UK might aspire to achieve in the next five or ten years. Nonetheless, it is worth emphasising that 'Anglo-Social' partisans argue explicitly for raising British taxes, something Labour governments have shied away since 1997.⁶⁰ The 'Anglo-Social' notion is best seen as an attempt to create an attractive yet achievable image of what the future might hold.

Before dismissing the 'Anglo-Social' model as an obfuscation of underlying British liberal realities, it is worth taking a brief historical and conceptual detour. Analysis of social models has been profoundly influenced by Esping-Andersen's magisterial analysis of *The Three Worlds of Welfare Capitalism*.⁶¹ Yet this book may be more often cited than read. Subjected to a closer reading, *The Three Worlds* provides no foundation for either the widespread tendency to identify particular states as essentially liberal, conservative-Bismarckian or social democratic, or the commonplace identification of the UK as falling into the liberal category. Instead, Esping-Andersen depicts individual states as showing the characteristics of multiple abstract ideal types of the welfare state, combining them into unique national configurations. Viewed in this way, a greater space is opened up for political will: rather than following policy trajectories that are pre-determined by the essential, unitary character of a nation, political actors can recombine

⁵⁸ Particularly the influential centre-left think tank the institute for public policy research, see their landmark publication Nick Pearce and Will Paxton eds *Social Justice: Building a Fairer Britain* London: Politicos 2005

⁵⁹ *Idem*

⁶⁰ *Idem*. This suggestion is particularly important in the context of the move towards flat-rate taxes in many of the new member states of the EU.

⁶¹ Cambridge: Polity 1990

different elements of an historical legacy into new (progressive or reactionary) combinations. This is precisely what I see the proponents of the 'Anglo-Social' model trying to achieve in the UK.

The next fact is perhaps more surprising – particularly to a French audience. In *The Three Worlds* Esping-Andersen's data and analysis actually identify France as showing a higher degree of liberalism than the UK.⁶² Of course, the data he used for this analysis date back from 1980, and a good deal has changed since then. Under the onslaught of Thatcherism, Britain became considerably more liberal, more 'Anglo-Saxon'.⁶³ But if Thatcherism could shift Britain towards liberalism, perhaps Labour could reverse this trend? Given the level of conceptual confusion and historical misunderstanding that I have just identified, rather than working from conventional images of Britain, we need instead to turn to empirical evidence.

On the positive side, Labour has introduced Britain's first ever minimum wage. It has also re-legitimised public services and dramatically increased levels of public spending. The difference between the proportion of GDP allocated to health in 1950 and 1997 was only 2 per cent (rising from 4 to 6 per cent). An equivalent increase, to 8 per cent of GDP was achieved in the eight years from 1997 to 2005, with a further increase to 9 per cent planned by 2008. At £41 billion per annum in 1997, spending on health today has reached £92 billion, with plans for it to rise to £106 by 2008. If not quite as dazzling, education has also registered unprecedented increases in public spending: at £36 billion in 1997 it is set to rise to £69 billion by 2008.⁶⁴ Can increases on this scale be found in any other western country since 1997?

Labour has also changed the tax-benefit system in a dual attempt to 'make work pay' and to tackle the legacy of child poverty inherited from the 1980s. Here Labour has set itself very ambitious targets – particularly halving child poverty by 2010 and wholly eliminating it by 2020. But it has also taken substantial steps towards achieving this objective. Treasury calculations suggest that by 2003-2004, each family with children was £1200 per annum better off as a result of changes to the tax-benefit system (in other words, better off than they would have been, had the 1996-1997 rules been adjusted for price inflation). Families in the poorest fifth of the population enjoyed twice that gain. In overall spending terms, this amounts to some £9 billion per annum (or nearly 1 per cent of GDP) according to the Treasury (although independent analysis places the amount directly linked to children at £7.5 billion).⁶⁵

These redistributive measures have been accompanied by a about-turn in Early Childhood Education and Care (ECEC) Provision. Before 1997, Britain was a notorious laggard in ECEC – arguably propping up the OECD league tables in this area, which is vital for gender equality, child development and equal opportunity as well as enhancing insertion into labour markets. Major changes have already been introduced in this area, especially through the Sure Start programme for families with children between the ages 0-3, and the developing programme of Children's Centres, but also in the provision of care for young children of school-age. Labour's 2005 manifesto committed the current government to achieving 'universalism' in childcare.⁶⁶ Proponents of the 'Anglo-Social' model place childcare at the heart of their vision for their new 'model':

⁶² Idem. It is remarkable how many people attribute the argument that Britain is a liberal welfare state regime to the book, despite the fact that this argument is never made in it.

⁶³ As Esping-Andersen himself has noted subsequently in *The social foundations of post-industrial economies* Oxford: Oxford University Press 1999, p 77, 87

⁶⁴ Figures from Andrew Gamble 'New Directions in the British Welfare State' Paper present to the 2004 Annual Meeting of the American Political Science Association, Chicago, 2-4 September 2004.

⁶⁵ Data from John Hills 'The Blair Government and Child Poverty: An Extra One Percent for Children in the United Kingdom' in Isabel Sawhill ed *One percent for the Kids* Washington DC: Brookings p. 157

⁶⁶ Although, as ever with 'universalism' the devil is in the detail.

'Embedding entitlements to childcare and early years education in a high-quality, publicly regulated and comprehensive service should form the centre-piece of a progressive institution-building in the early 21st century, just as the NHS did in the immediate post-war period.'⁶⁷

There are, of course, important counter-tendencies in Labour policy, some of which may represent particular constraints on its European strategy. The government does appear strongly opposed to restoring employment protections that were stripped away during the 1980s. And it has not sought to restore the link between earnings and pensions, thus allowing state pensions to rise only with prices (and hence decline relative to general earnings). It has also embraced the Private Finance Initiative, through which the private sector has become involved in important public institutions, which some see as paving the way towards their privatisation. Finally, the government has not sought to increase direct taxation, although this is precisely the step that advocates of the 'Anglo-Social' vision are now proposing.

More generally, while Labour has claimed considerable credit for its record in economic management, there are signs that the economic foundation for any social progress that has been made may be weakening. Two interconnected aspects are particularly significant here. First, the political and economic geography of Britain remains highly uneven, with London and the South-East dominating both the economy and the imagination of policy-makers. While London suffers from the problems of congestion and overcrowding, de-industrialisation and under-investment plague other areas. Moreover, several strands of government policy, from the concentration of funding in elite universities in the South-East, to the decision to rebuild the national football stadium in Wembley, rather than more accessible Midlands locations appear to exacerbate this imbalance. If and as the economy slows down, Labour's ability to manage this division is likely to be undermined. Secondly, Labour's economic management strategy has been heavily based on consumer spending and confidence. In turn, this confidence is rooted in rapidly rising house values (particularly in London and the South-East). Hay, Smith and Watson have recently documented the scale of this contribution to the British economy:

'Average house prices in Britain have risen by more than 5,000 per cent since 1965, with an average annual increase of just over 10 per cent. Since May 1997 house prices have risen, on average, at 12 per cent per annum. If we consider that the average house price in Britain in 2004 was around £175,000, whilst average annual earnings were around £28,000, the wealth effect originating from the housing market in that year was of quite staggering proportions - three-quarters of the average person's annual earnings.'⁶⁸

But if this represents a major contribution to sustained economic growth since 1997, it is also fragile. Widely regarded as unsustainable, property prices have certainly peaked, and may fall sharply. If this happens, Gordon Brown's economic management skills will be sorely tested, and the planned public spending increases may prove impossible to implement. When all is said and done, the 'Anglo-Social' model remains an aspiration for Labour, not a consolidated achievement.

One important question remains: if Labour does have major progressive achievements to its name, why is it so widely regarded across Europe as essentially neo-liberal? Part of the answer has to do with domestic politics in other European countries and with EU politics. It may be easier to blame 'Anglo-Saxon' reluctance towards lack of political or policy progress than to face up to important reform challenges at home or in Brussels. However, I believe that two aspects of British domestic politics play a more

⁶⁷ Nick Pearce and Will Paxton 'Introduction' in Nick Pearce and Will Paxton eds *Social Justice: Building a Fairer Britain* London: Politicos 2005, p. xxi

⁶⁸ Colin Hay, Nicola J. Smith and Matthew Watson 'Beyond Prospective Accountancy: Reassessing the Case for British Membership of the Single European Currency Comparatively' *British Journal of Politics and International Relations* forthcoming 2006

important role. First, I believe that Blair himself is an ambivalent political figure. This political chameleon can appear in neo-liberal and social democratic colours.

Second, I think that New Labour made an important political miscalculation immediately after its election in 1997. Geoff Mulgan, a close advisor to the Prime Minister during his first two terms in office, recently made the following argument. He said that the Labour leadership judged 'over a number of years' that they should not be 'talking too much about redistribution'. The tactical justification for this silence is also revealing. Mulgan argued that emphasizing redistribution draws it to the attention of middle class swing voters and 'you therefore undermine your support'. Equally, New Labour assumed that those who benefited from the redistribution would credit the government for the improvement in their situation. Mulgan now accepts that this assumption has proven misplaced.⁶⁹ As the government decided not to claim political credit for these policies, it has not reaped the expected electoral reward from those who have benefited from them. But there is a deeper flaw in this tactical logic. The logic of this redistribution policy is distinctive and potentially morally engaging. Particularly when cast in terms of supporting children, it is one to which many, though not all, people would subscribe. But Labour ambivalence about making these arguments undercuts their ability to construct this potential constituency. If Labour is not making these arguments domestically, it is hardly surprising that they are not heard elsewhere in Europe.

Despite these problems, there is enough evidence of progressive intent and achievement in the history of New Labour to warrant a re-assessment of the widely held vision of Britain as a stronghold of anti-social Anglo-Saxon liberalism. If political actors across Europe appreciated Labour's domestic achievements, then perhaps the mutual suspicion and misunderstanding that sometimes seems to envelope discussions and negotiations at EU level might dissipate a little. Moreover, if and when Blair strikes liberal poses in European debates, other Europeans could use his own domestic record – positive and negative – to hold him to account. If he does have chameleon tendencies, then constructing political debate as a fight between 'Social Europe' and Anglo-Saxon liberalism will bring him out in liberal colours. While we can hardly expect EU politics to be easy in these difficult times, they would be improved by a better understanding across Europe of the Labour government's character, including its more 'social' aspects.

⁶⁹ Geoff Mulgan, Responses to questions at the conference Que reste-t-il de Cool Britannia ? Le Royaume-Uni après huit ans de gouvernement Blair, mercredi 4 mai 2005 www.cerium.umontreal.ca/video/coolbrit_mulgan_questions.wmv

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