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Social Europe in the throes of enlargement

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Introduction

Social Europe has become a major issue in the debate on the referendum on the draft Constitutional Treaty in France. Such awareness of public opinion surprised most of the specialists in the area, who are accustomed to thinking of it as only being a specialised subject, whether relating to legal studies, actions before the European Court of Justice or negotiations in the Council. On the contrary, it could be said that the questioning and impatient reactions are entirely justified in view of the impenetrable nature of this issue for most French and Europeans, who are faced, on the one hand, with a mediocre management of the social consequences of globalisation, and, on the other, with a debate spouting doctrines and pronouncing fatalism in equal measure, which seems to ignore the social dimension of the EU.

There is, therefore, ample information available to recognise the true value of the strength of Social Europe, its achievements and progress. Nevertheless, this information will probably not suffice for the most ambitious, who are aware of the current frictions and impasses. We will therefore have to give more thought to the means of renewing the social dimension for a 21st century Europe of 27 members.

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, by establishing the reasons and outlining some roads to reorganisation.

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 2002[1] 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 solidarity[3]. 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.

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[1] European 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*

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 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 zone[4]. 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 protection[5] and the

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[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 Bismarkian, 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 Union[6]. This proximity is evidenced, for example, by different budgetary spending items being distributed quite similarly: health spending, depending on the country, represents 7% to 10% of national GDPs, pensions spending represents 7% to 12%, and employment 19% to 33%[7].

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 model[8]. 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.[9]

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.

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[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 Théret, "*Méthodologie des comparaisons internationales, approches de l'effet sociétal et de la régulation : fondements pour une lecture structuraliste des systèmes nationaux de protection sociale*", L'Année de la Régulation, Vol.1, 1997)

[7] Speech of Vladimir Špidla given at the Club Grande Europe, 11 April 2005, Paris

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

[9] *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 transnational 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 base[10].

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

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 (*aquis communautaire*).

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 interprofessional 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.

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.

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 Policy[11]: 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 1987[12], 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 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

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11 European Commission, Green Paper on European Social Policy, COM(93)511 final, 1993
http://europa.eu.int/scadplus/leg/en/cha/c10111.htm
12 Padoa-Schioppa R., Efficiency stability and equity – A strategy for the evolution of the economic system of the European Community, Oxford University Press, 1987.

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"[13].

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 subsidiarity[14]: 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 cofunding national policies.

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

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[13] 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).

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

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 spread[15]. 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"[16]. 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. Another form of this modernisation is

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

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

represented by the general movement of decentralisation 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 infranational level. The European social model of the 1970s and 1980s was affected and it has only been possible to plan to relaunch integration by means of the recent use of the open coordination method, 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 1997[17]. 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 services[18]. 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.

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[17] 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

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

III – SOCIAL EUROPE, A MODEL IN CRISIS?

THE PROBLEM POSED BY THE SIZE OF THE UNION

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. The minimum that is required is a rewording of the principle of subsidiarity, in terms of adjusting it and making it more precise.

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 method of open coordination is not suitable for all areas[19], and that a return to legislation and to social dialogue, in a new form, would be worth looking at.

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 - to the codecision process. If a desire for greater European integration had been driving the Collective Agreements and the Governments, these subjects should have become a matter for qualified majority and majority voting[20].

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[19] 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

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

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 enlargements[21]. 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; we can attempt to classify them in four groups on the basis of their history and the level of development of these countries: the first would include Cyprus and Malta; the second the countries of the former Austro-Hungarian empire; the third the Baltic countries that were former republics of the USSR, and finally, the fourth, and more disparate, group of Poland, Romania and Bulgaria.

This classification, however rough and arbitrary it may be, reflects the differences separating the new members in their social relations, and the similarities or cooperation that they can establish with the old members, rather well. With accession to the Union and the obligation to adopt the *acquis communautaire*, two main tendencies can be observed: the first concerns a large grouping of countries, the Mediterranean islands and the countries of the former Austro-Hungarian empire – except for Slovakia – which 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-up[22], all the more since it is not surrounded by the same taboos as in the other countries.

In this way, the fifth enlargement sets three 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

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

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

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.

Faced with such challenges, it is necessary to separate what is physically possible and what is merely wishful thinking, 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.

IDEOLOGICAL CLASH AND SHIFT IN SOCIETY

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

Social Europe must come to terms with the transformations of a number of the large European political models, namely the social-democrat model and the liberal model[23], 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 society[24]. 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.

We must indeed also take account of the existence of a real shift in society that contributes to the crisis that the European social model is experiencing. This is illustrated, in particular, by more claims directed towards developing individual rights, which can go so far as to negate solidarity, or at least to relegate it to second place, as was referred to earlier. It is also evident by the increasing opposition of two philosophical concepts, which serve today as global

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[23] 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.

[24] 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

references in the organisation of social systems and in the manner of considering individuals[25]. The first is found in the ideas of John Rawls, who considers that individuals should be endowed with "primary social goods" fairly[26], integrating their rights and freedoms, whilst the second, developed by Amartya Sen[27], stresses the importance of emphasising "capacities" that the individuals have to mobilise these goods[28].

[25] Salais R., A la recherche des fondements conventionnels des institutions, in R.Salais, E.Chatel, D.Rivaud-Danset (ed.) in *Institutions et conventions*, Ed. de l'EHESS.

[26] For an introduction to this concept see: Rawls J., *Théorie de la Justice*, Paris, Seuil, 1987. For the categorisation of primary goods see: Rawls J., *Justice et Démocratie*, Paris, Seuil, 1993

[27] Sen A., *Inequality reexamined*, Oxford University Press, 1992

[28] An interesting analysis of these two concepts can be found by reading: Maric M., Egalité et équité : enjeux de la liberté. Amartaya Sen face à John Rawls et à l'économie normative, in Revue Française d'Economie, vol.XI, No 3, 1996, pp.95-125.http://matisse.univ-paris1.fr/doc2/maric96.pdf#search='biens%20premiers%20sociaux%20john%20rawls'

IV – A REORGANISED SOCIAL EUROPE, WHAT FOR AND HOW?

RECONSIDERING THE CONTRIBUTION OF SOCIAL EUROPE

The Social Europe of 2005 does not have much left in common with that of 1985– before the relaunch of the single market - and still less in common with that of 1958. Taking the *acquis communautaire* as non-negotiable, and recognising the progress made as new Members joined, does not mean putting up with the current lack of progress of Social Europe and the friction that the last enlargement created. To restore impetus and make a fresh start, the question 'what for?' still needs to be answered, and a better sense of the expectations of the European citizens regarding the social field needs to be obtained. The question could therefore be posed as to whether the European level is the correct one at which to work and to thus identify new and relevant work for the next 10 years of Social Europe.

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, consideration given to society's objectives that Social Europe must work, or continue to work, towards is crucial. The concerns raised from the referendum debate on the draft Constitutional Treaty in France or in other Member States such as the Netherlands, from the basis of precious information on what is viewed as necessary for the common and individual well-being.

The demands can be regrouped into four main themes.

- The first concerns the area of <u>employment</u>: the Union's efforts should be concentrated on combating unemployment and on the quality of jobs. The objective of full employment should be promoted to the same level of priority as monetary stability and economic growth.

- The second relates to <u>social cohesion</u>: the Union should offer all of its citizens a dynamic economic model to relaunch social mobility that is running out of steam and a protective social model to meet new social risks, such as exclusion. It should be a base of social rights similar to that established for employees, but which applies to all of society.

- The third theme concerns <u>general interest services</u>: the Union should, on the one hand, preserve them from market forces where they are not operating, and, on the other, promote access for all to the most fundamental services such as education and health.

- The fourth deals with globalisation: the Union should bring effective responses to the negative social consequences of globalisation, by building better defences against relocations, by fighting against social dumping and inter-State competition, and by protecting employees against the socially unfair practices of businesses.

In the face of all of these unfulfilled demands, the test of subsidiarity - is the European Union in the best position to meet them or is national level more appropriate? – runs into difficulties. In the area of employment and social cohesion, in fact, certain Member States have already succeeded in reaching these objectives, often at the price of large reforms. That is the case, in particular, for the Nordic counties. The European value-added can therefore seem debatable for them. Furthermore, the Lisbon Strategy is not concerned with anything else: it has up to now stumbled over a lack of mobilisation of national governments and on a lack of ownership from the social partners, and local and regional authorities. Progress on a continental scale assumes therefore that it is a prerequisite for the countries that have not done so to commit to these reforms.

Regarding general interest services, the draft Constitutional Treaty proposes a much more favourable framework than the previous Treaties, as it recognises them and their contribution to regional cohesion in a positive manner. Semantic ambiguities have, however, not been removed as they refer to quite diverse national concepts with regard to the division between the private and the public domain, and between collective preferences and individual choices.

In the face of globalisation, a European action would not have any meaning or chance of succeeding unless all of the national governments agreed to work in a coordinated manner or if they accepted that they would need to forgo some of their prerogatives. In addition, the diversity of national social systems and the differences in wealth would presumably strengthen the level of solidarity between the 25 or 27 Member States considerably. The differing interests and sensibilities between the countries must also be taken into account. In the current state of affairs, it is the responsibility of the Union to only give impetus to, and coordinate, actions for which the national governments are almost exclusively responsible.

CONSTRUCTING THE PATH OF ALLIANCES WITHIN THE UNION

By concluding that there is no course of action immediately suited to renewing the drive of Social Europe, does that mean refraining from giving Europe any social ambitions? No, for at least two reasons. First of all, because renationalisation is not a sustainable option as, by restimulating internal frictions for workers and students, it is a source of economic and social decline for the whole of Europe. Secondly, because the return to the Welfare state is no longer a plan for certain Member States.

Of course, a brutal attack that aims to impose a single and uniform social model for all of Europe appears neither possible nor desirable. However progress is altogether feasible if we emerge from a stand-off between the old and new Members, the northern and southern countries, and the liberals and the social-democrats, in order to build dynamic alliances.

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

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 enlargement 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.

In all of those cases, it is important that the states of central and eastern Europe emerge from their 'new member' status and that the impression, commonplace in these countries, that the sacrifices made to adopt the *acquis communautaire* were agreed on without obtaining any real compensations be erased. Social Europe will only be able to progress by relying on their desire to catch up with the others and, at the same time, by the Fifteen accepting their difference.

Conclusion: Towards a Social Europe of 27 that all Europeans agree on

As a common and gradual construction, Social Europe owes a lot to each of the countries of which it is composed and bears the marks of the economic and political developments of 50 years of history. Strengthened by 10, and soon 12, new Member States, faced with new demands from the citizens in a tense economic situation, it must adapt again, in order to express the ambitions and values of all Europeans.

Relaunching Social Europe must begin by a collective exercise of reviewing it from scratch. It should be clarified, to a greater extent than at the negotiation stage, what the new Member States have to offer and what they expect from Social Europe. The rules of subsidiarity applied to the social area must be redefined, by taking account of the increased diversity of national situations, developments in manufacturing methods, progress in decentralisation and individuals' ambitions. More generally, a project common to the Twenty-Seven, and the conditions required to fulfil it, must be agreed upon, whilst of course taking account of what already exists.

This initial setting in motion could occur at a large reorganisation event, a kind of Messina Conference II. It could also occur through more gradual work, initiated by some Member States that feel that they are the most affected. We can certainly imagine an initial gathering of Belgium, France, Germany, Luxembourg, Spain or Sweden countries that all believe the idea that democracy is brought about through social progress. This group could begin to construct a real social European option and then attract the others.

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