

# European Union Social Policy – facing deepening economic integration and demand for a more social Europe with continuity and cautiousness

Miriam Hartlapp ([miriam.hartlapp@fu-berlin.de](mailto:miriam.hartlapp@fu-berlin.de))

Forthcoming in: S. Blum, J. Kuhlmann and K. Schubert (eds), Routledge Handbook of European Welfare Systems.

## 1 Introduction

The founding treaties of the European Union (EU) considered economic integration to be the key to greater wealth and better living conditions for everyone. Genuine social policy, in turn, should be reserved to the member states. Consequently, member states limited EU social policy competences and policies unfolded only slowly.

Until the mid-1970s EU social policy was limited to few instruments. They all were closely linked to the rationale of market integration. Regulation sought coordination of social security systems to support the free circulation of workers or it sought equal pay for male and female workers to avoid a competitive disadvantage for countries that already followed this principle, like France. Spending under the European Social Fund focused on labour market shortages through qualification (Schmid 2018: 177f). In this early phase, EU social policy was limited in the priorities covered, remained largely unnoticed outside the realm of expert circles and showed little effect for a broader share of the EU population.

This slowly changed when in 1973 the EU Commission proposed a first Social Action Program (SAP) that marked the beginning of more dynamic developments. In line with the aim to establish more visible EU social policies Commission president Jacques Delors is reported to have said “that one *cannot* fall in *love* with a single *market*”. And when in 1986 the Single European Act created the internal market, social policy supporting the free movement in this market was paralleled by instruments pushing for genuine social goals. Little later the Community Charter of Fundamental Social Rights of Workers was adopted (1989) and the Maastricht Treaty (1992) included a Social Protocol signed by all Member States but the UK (who later joined after a change from Tories to Labour government). The Amsterdam Treaty (1997) added an employment title and a new anti-discrimination article. These changes are important as they led to a broadening of priorities and in many areas an easing of decision making via qualified majority voting. On this basis a minimum floor of labor standards was established, e.g. on working time,

European Works Councils or information and consultation. And, the EU level attracted new actors actively pushing for and shaping EU social policy, such as EU level social partners (Falkner 1998) and a number of social NGOs (Evans Case & Givens 2010). Consequently EU social policy became more visible at the national level, particularly for groups that benefitted from new rights derived from the integration process, such as women (Kantola 2010).

This chapter will assess changes that have occurred since, particularly in the last two decades. More specifically, and following the rationale of the book, four sequences will be distinguished. These are shaped by political developments as well as socio-economic factors which in turn impact on the interests and ideas that shape EU social policy.

- The first period is 1998-2002. The single currency was introduced and in many member states budget constraints emanating from the convergence criteria affected social spending. A social democratic majority in the Council agreed that EU social action was necessary for convergence to support the Monetary Union. Yet, facing different national contexts and welfare state models, they did not agree on binding measures, but opted for coordination as a new governance mode. The Open Method of Coordination (OMC) was born. Little later, in 2000 member states launched the Lisbon Agenda to make Europe "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion".
- The second period 2003-2008 was marked by improving labour market performance in many member states, but also by increasingly heterogeneous national social policy institutions and interests. And with the integration of Eastern European countries the party political centre of gravity shifted towards the right (Manow et al. 2007). Adoption of common EU social policy got more difficult while competition and downward pressure on social standards in the common market increased. CJEU case law in Viking (C-438/05), Laval (C-341/05) and Ruffert (C-346/06) virulently raised the question of the relationship between market freedoms and fundamental social rights.
- The financial and economic crisis marks the beginning of a third period in 2008. In the course of the crisis social hardship increased and unemployment rocketed in many member states, particularly among the young. For debtor states financial support was conditioned on restoring financial balance by cutting wages and social benefits. Even so, austerity continued to be a characteristic of EU public policy (Blyth 2013) and the social dimension of the EU – in terms of strategies and resources – virtually disappeared from the political agenda (Daly 2012). Citizens increasingly considered the EU to be a cause of the growing inequality in and between its member states (Kriesi 2017).

- These developments overlap with the last period that started as off 2012. Demand for a different, more social Europe further increased with the strongly perceived crisis of the EU regarding the inflow of refugees, the Brexit vote and increasing public support of Eurosceptic parties in many member states. Even Commission President Barroso - not known for being an advocate of Social Europe - stressed in his 2012 State of the Union speech that there was a “social emergency”. It remains an open question whether the stated demand can be answered by recent social policy initiatives such as the Employment and Youth Employment Package (2012), Social Investment Package and Youth Guarantee (2013) as well as the Pillar of Social Rights (2017) or whether the minimal advancement made has been “conditional and contingent” only (Copeland & Daly 2018: 1016).

Throughout all four sequences, a close link to the economic rationale of European market integration remains characteristic of EU social policy. Depending on other factors, this rationale shapes policies more or less strongly. And despite deepening economic integration that challenges national social policy and therefore creates demand for a more social Europe, European policy-makers continue to opt for cautious, incremental changes.

To develop this argument in more detail this chapter is organized as follows. Next, the general structure of the EU social policy with spending, regulation and coordinating instruments will be described (section 2) before I substantiate the four periods empirically and discuss their potential drivers (section 3). I then zoom into four particularly relevant sectors of EU social policy: freedom of movement, unemployment, old age and health (section 4). Finally, the outlook concludes with possible future developments of a common EU social policy (section 5).

## **2 General structure: priorities and the specific instrument mix in EU social policy**

The general structure of EU social policy does not lend itself easily to comparison with the European welfare systems as it differs in both instrument mix and substantial priorities. Therefore, the following paragraphs provide an overview on spending, regulative and coordinating EU social policy and their main substantial priorities.

First, compared to national welfare states, spending instruments play a minor role in EU social policy. For one, the EU budget is limited to only a fraction of national budgets. Far-reaching direct financial transfers are not an option for the EU. Next, within this budget social policy makes up for a small proportion only – and agricultural for a much larger one. Spending policies date back to the first decades of integration. Historically and quantitatively most important is the European Social Fund (ESF, Art. 164). The annual ESF volume of ca. 14 billion € goes into employment measures, better education and

social inclusion via programs that are co-funded at a minimum of 50% by member states (Schmid 2018: 177–181). The ESF reaches almost three million participants annually, not including citizens that benefit from the other spending instruments.<sup>1</sup> Typically, these target more specific groups as the Fund for European Aid to the Most Deprived (FEAD) and the Youth Guarantee (YEG) or follow more visibly the idea of Social Investment such as the EU Programme for Employment and Social Innovation (EaSI). Largely they require lower levels of co-financing and frequently allow individuals to benefit directly from the EU program – potentially creating greater attachment to the EU. Critiques argue that due to the overall limited financial volume of EU spending only a very small share of those in need are reached. What is more, the functioning of the instruments is criticized for being complex and administratively heavy (e.g. Zimmermann 2016). In addition, spending EU money demands co-funding, which poses a challenge for member states – in particular in times of budget constraints. In sum, while the priorities of spending instruments have broadened, the volume of funding remains negligible compared to national social spending.

Secondly, regulatory instruments have historically formed the core of social policy at the EU level (Majone 1993). And they continue to constitute an important and (still) growing section of EU social policy. Typically, they lay down general policy principles. In terms of substantial priorities, these regulations mostly address the free movement and mobility of workers as one of the four fundamental EU freedoms (goods, services, capital and labour). They developed on ground of Title IV of the treaties, that allows to regulate for non-discrimination on ground of nationality and administrative practices (Art. 45 and 46), social protection necessary for worker mobility (Art. 48) as well as provisions assuring mobility for self-employed (Art. 53). Despite being directly applicable, their substantial impact is often limited. Directives, in turn, are generally considered the most important form of regulative policy making at EU level. In terms of priorities, directives more frequently address genuine social rights and goals. They impose common minimum standards but leave some room to member states to decide on how to reach these goals when transposing them into national law. Most EU social policy directives are based on Title X of the treaties and generally have more demanding decision-making rules. Articles protect workers against health or social risks and assure good working conditions (Art. 153), empower the weaker part in the relationship of management and labor (Art. 154 and 155) or transfer rights for equal pay between women and men (Art. 157) and promote cooperation to assure individual protection in social matters (Art. 160). The Maastricht and Amsterdam Treaties additionally took public health (Article 168) and anti-discrimination into consideration (Art. 19 and Art. 21-24). This should not dub the fact that core areas of national social policy continue to be untouched at EU

---

<sup>1</sup> EU regional and cohesion policies and the European Structural Funds (Art. 175) partly function as equivalents to social policy.

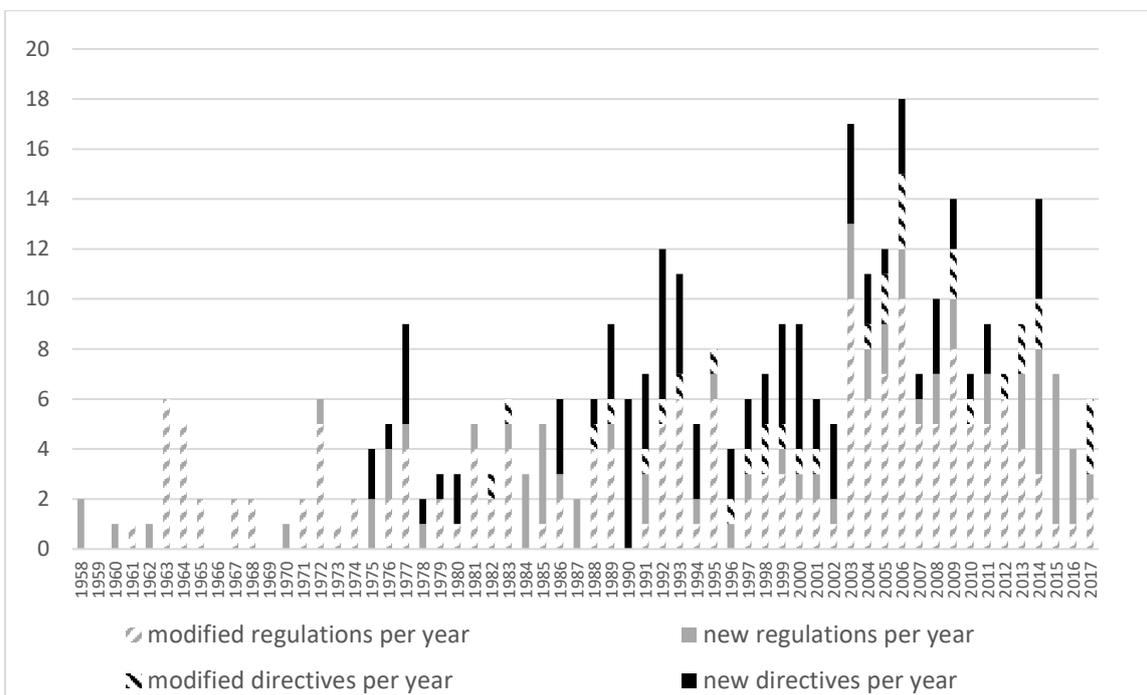
level. No competences for EU regulation exists on wages, collective bargaining or freedom of association. And, studies have shown that a great part of these EU social standards is implemented late or incorrect at the national level – pointing at a substantial implementation deficit (Falkner et al. 2005; Falkner & Treib 2008).

Thirdly, coordination characterizes EU social policy in areas such as social protection, employment, health and poverty reduction. Rather than hierarchically implementing standards, the so-called Open Method of Coordination (OMC) steers softly through common goals and benchmarks, e.g. a 75% employment rate of people aged 20-64 or reduction of school drop outs below 10%. By reporting about national performance member states hope to learn from each other's success and failure (Mosher & Trubek 2003) and aim at triggering reforms at the national level (Daly 2006). When adopted in the early 2000s the OMC seemed to be the only way out of the decision-making trap which was created by member state resistance to give away social sovereignty while at the same time European Monetary Union called for greater social convergence (Tholoniati 2010). Coordinating social policy can set new impulses and support reforms at the national level. Impact, however, depends chiefly on whether recommendations given at EU level fit the specific national situation, as well as on economic interests and (partly contradictory) EU economic policies (Hartlapp 2009; Kröger 2009). Substantial impact of the OMC at the national level "generally speaking, has been limited" (Mailand 2008).

### **3 Overview of social policy change over time**

Over the past two decades (1998-2018) EU social policy has broadened its priorities to more fully embrace areas of welfare state policies that hitherto remained the competence of member states, e.g. employment or health policy. Moreover, it has widened the range of instruments used in policy making from spending and regulation to prominently include coordination via the OMC. However, compared to both social policies at the national level and the demand for a more social EU, these changes have been very limited. What is more, where changes seem most extensive in terms of new instruments and priorities, there seems to be a trade-off with the impact these instruments have at the national level for either being strongly linked to economic policy or for being of soft nature. In fact, since their inception in the first phase outlined in the introduction, the social OMCs seem to be caught between a rock (the difficulty to agree among Member States) and a hard place (social goals being neglected to the detriment of economic considerations). Social concerns are either formulated very softly and dealt with encapsulated in separate circles of Social Ministers and other social policy actors (Zeitlin & Pochet 2005) or they become part of more visible and far reaching economic initiatives, but at the price of being subsumed. Copeland and Haar (2013) or Copeland

and Daly (2018) show how in the second and third phase outlined in the introduction, social policy goals were either deleted entirely or subsumed under economic and austerity policies in the European Semester. Others point at the increasing emphasis on labour market reforms relative to other social goals such as sustainable pensions as of the third phase outline in the introduction (Bekker 2014). Therefore, a decline of social Europe has been substantiated mostly with a view to changes in coordinating policies (e.g. Daly 2012; De La Porte, Caroline & Heins 2015). However, regulatory EU social policy is equally important to understand the overall course of developments. Figure 1 demonstrates this by displaying all EU regulative social policy instruments that have been adopted from the founding days of the EU to the end of 2018.



**Figure 1: EU Social Regulations and Directives over time (1958-2018)**

**Source:** own compilation based on *EurLex*, including modifications but excluding geographical extension/acts addressing one member state only and acts exclusively based on the *Euratom* treaty.

Today, the *social acquis* consists of 346 binding acts, 238 self-executing regulations and 108 directives. Developments were slow to take off and became more dynamic from the mid-1970s onwards and particularly so in the 1990s. The patterns in the last two decades roughly reflect the four periods outlined above. The first phase (1998-2002) is characterized by strikingly low numbers of adopted instruments as well as by an almost perfect balance of directives and regulations, new instruments and revisions. The regulatory momentum of the Delors Commission (1985-1995) and its legacy clearly

crepitated and policy-makers seem to have focussed almost exclusively on the OMCs. The second phase starting in 2003 marks a departure into a new period. A steep rise in the number of regulations follows changes in the decision rules. Most of these regulations are modifications of existing standards though – business as usual to support the common market. This differs from directives were fewer instruments have been adopted after 2003. Since the onset of the financial and economic crisis marking the beginning of the third phase, fewer regulations and directives have been adopted. The last phase, in particular since 2015, is marked by stagnation and virtually no new directives being adopted. Rhetoric of a more social Europe and a Pillar of Social Rights, do not seem to show effect on regulatory instruments. Rather one is tempted to speak of “the end of social Europe” (Graziano & Hartlapp forthcoming).

### **3.1 Potential drivers of change**

Existing scholarship provides a number of explanations for these patterns. I start by briefly discussing functional and institutional explanations for change, before I turn to interests and ideas to provide a more differentiated view on incremental advances, continuity and decline despite demand.

Functional expansion serves as baseline explanation for developments of EU social policy from the core of the single market to adjacent social policy. Coordination of social security (Ferrera 2009), production standards (Leibfried 2010) and equal pay to avoid unfair competition (Mazey 2012) are typical examples. Whether functional push leads to adoption of specific policy instruments and how these distribute in terms of policy priorities, is however closely linked to institutional rules. EU social policy is the outcome of complex decision making where the Commission sets the agenda, member states and – depending on time and topic – the European Parliament decide. Across distributive, coordinating and regulative instruments, policy output co-evolved with competence transfer to the supranational level. Qualified majority voting eased the adoption of directives, in particular after Maastricht (Falkner et al. 2005: chapter 3). Within this setting some authors advocate a quasi-automatic embedding of the common market in genuine social rights (Caporaso & Tarrow 2009). Yet, so far there is a lack of empirical evidence for the functional creation of a broad EU social policy beyond specific issue areas of anti-discrimination or citizenship (Wollenschläger 2010). More importantly, functional and institutional accounts cannot explain the lack of developments in the last 20 years.

In terms of factors allowing policy advances in EU social policy as well as hindering leaps forward, few scholars refute the importance of actors and interests. For some policy areas specific EU institutions or organised interests have been key. The CJEU is particularly relevant for social policy supporting worker mobility, anti-discrimination, the

provision of social and health services and (cross border) patient rights (Martinsen 2015; Schmidt 2018). For the minimum floor of labour rights established at the time of the Delors Commission social partners are important. They hold the right to independently negotiate and adopt social partner directives (Falkner 1998). This right has seldom been used in the last two decades and social dialogue has weakened substantially (Keune & Marginson 2013). Beyond topics dear to social partners, other organized interests have acted as agenda setters or policy entrepreneurs in anti-discrimination (Evans Case & Givens 2010; Hartlapp 2017), women rights (Mazey 2012) or poverty reduction (Bauer 2002). Nevertheless, the influence of organised interests depends strongly on the willingness of Commission, Parliament and Council to take up demand.

By far more important, are member state interests. Some scholars consider such interests to stem from structural factors. With the last enlargement round heterogeneity of member states, especially regarding productivity and welfare systems, has increased substantially. Consequently, agreeing on level and type of EU social policy is more challenging (Höpner & Schäfer 2010). Common social standards are eyed critically from two sides. Where they increase labour costs, particularly in the East, such standards are easily perceived as a hindrance to play of a competitive advantage. And where they constitute a common denominator they are frequently considered an inroad to destroy historically grown welfare state institutions, particularly in the West and Scandinavian countries (Vandenbroucke 2017: 39). These explanations seem to provide a good starting point, both to understand the choice of soft coordinating instruments over binding regulations and directives in areas with marked institutional differences (OMCs), as well as lower numbers of directives once enlargement increased welfare state heterogeneity in the EU with the beginning of the second phase. And where such structural differences are at the origin of national interests, there is little prospect for rapid change.

Other, more optimistic interest-based accounts see room for politics to make a difference. Welfare state research frequently considers partisan interests and the strength of left (or Christian-democratic) parties in government and parliament decisive for welfare state change, in particular welfare expansion. Along the same line, a social democratic majority among member state governments in the Council has been linked to expansion of EU social policy goals to employment, social protection and inclusion under the OMC (Schäfer 2005; Manow et al. 2007). A link was also made between the party political center of gravity in the College of Commissioners and policy-making of regulative instruments (Hartlapp 2015). Against the high numbers of liberal and conservative Commissioners in the Barroso Commissions (72,5% under Barroso I and 70,2% under Barroso II) a decline in newly adopted directives since the beginning of the third phase might thus be less surprising.

In terms of underlying ideas, liberal thinking and the idea to strengthen people's skills and capacities via social investments - rather than providing social protection independent of market participation - have been identified as factors curbing EU social

policy developments. Crespy and Menz (2015) argue that declining Commission entrepreneurship in favour of social policy is caused by an increasing liberal discourse in Brussel. They link such ideational change to the post-Lisbon era. As an effect, regulative instruments liberalise social policies and support the market, while coordinative instruments seek structural reforms rather than social goals (Crespy & Vanheuverzwijn 2017). The idea of social investment in turn gained momentum in the fourth phase, when the financial and economic crisis generated high unemployment. So far it has remained halfhearted (La Porte & Natali 2018). Overall, a liberal market orientation and supply-side economics dominate as ideas. How important these ideas are relative to functional, institutional and interest-based explanations remains an open empirical question and future policy output will be particularly interesting in this respect.

#### **4 Description and analysis of the main developments by policy sectors**

So far, section 2 highlighted the specific instrument mix and section 3 sketched broader changes over the last 20 years. The following paragraphs zoom into four policy sectors that proved particularly dynamic in the last two decades. They cover a wide range of EU policies: freedom of movement, unemployment, old age and health. The analysis shows that declining activity in some areas comes along with a change in the established instrument-mix in others - but without substantially altering underlying ideas. Across all policy sectors recent developments have strengthened rather than turned around market support and economic orientation of EU social policy.

##### **4.1 Freedom of movement**

The movement of tourists, mobile workers, jobseekers, retirees and other persons in the EU is one of the four freedoms enshrined in the Treaties. Coordination of social security systems was the first EU social policy to be regulated in 1958 and seeks to support the free circulation of persons by connecting national social protection systems. It manages interfaces between national systems to assure portability of benefits and entitlements across countries. The regulation has been frequently revised (today 883/2004/EC). Over time more and more obstacles to mobility were addressed, e.g. general rights to free movement or schooling of workers' children (77/486/EWG). Potential beneficiaries of these rules are distributed unequally across sectors and member states. Posting, for example, mostly takes place in (construction) industries and there are many women from eastern Europe working in health and care services across Europe.<sup>2</sup>

---

<sup>2</sup> In Poland, Slovakia or Slovenia cross-border movements account for up to 20% of national employment.

Important changes have been taking place since the late 1990s. The CJEU established in the landmark cases *Martinez Sala* (C-85/96), *Grzelczyk* (C-184/99), *Trojani* (C-456/02) and *Bidar* (C-209/03), that under certain conditions non-economic active EU citizens should be provided access to national social protection. These rulings were codified to grant e.g. a right of workers to remain in the territory of a member state after having been employed in that state (regulation No 635/2006). This affected fundamental principles of access to national social protection and replaced an understanding of individuals as workers and consumers with genuine citizen rights (Eigmüller 2013: 371). On the one hand, these developments have been praised as finally granting social rights independent of market participation and thus constituting a real added value to EU social policy (Wollenschläger 2010). On the other hand, the issue raises difficult questions on the right balance between fairness and solidarity (Menéndez 2009: 1; Ciornei & Recchi 2017; Vandenbroucke 2017: 28; Cappelen & Peters 2018: 1336). Impact will ultimately also depend on the direction of future CJEU rulings (cf. *Dano* C-333/13) and national political decisions. Yet, the potential for populist exploitation is strong. A key demand by Brexit advocates was to limit freedom of movement to prevent access to health and social care (cf. chapter by Deeming p. 15/16 manuscript). Heated debates over “social tourism” and “poverty migration” show the potential to create downward pressure in national social protection systems (Blauberger & Schmidt 2014). This is the case despite the fact that the challenge is limited to welfare systems that are fully or in parts tax financed (e.g. child allowances) and that so far demands for support have been much smaller than contributions paid (Martinsen & Werner 2018). Yet, these changes have certainly the potential to become a crucial juncture for EU social policy.

## **4.2 Unemployment**

At the EU level coordinative unemployment policies emerged since the 1990s but spending that predates is frequently overlooked. Many of the projects implemented under the ESF since the founding days of the EU were labour market programs. They addressed particular vulnerable groups of unemployed or supported training and quality of employment. More recent spending instruments follow the ideal of activation and labour market participation as a perceived best way to prevent social exclusion and to maintain social cohesion.

The widely perceived starting point for EU employment policy is the *European Employment Strategy* (EES) decided at the Essen Council (1994) and implemented in anticipation of a new employment title in the Amsterdam Treaty. At this time unemployment was high and growing in many EU member states and governments agreed to cooperate and share information and expertise to create more jobs – the OMC was born. Unemployment goals for labour market outcomes are agreed upon and member states report on their efforts to reach them via national reform programmes

(NRPs). On this basis the Commission publishes country reports and recommendations and benchmarks member state in a scoreboard. In terms of substance, the initial general goal to reduce unemployment was soon specified into concrete, quantified targets. The Lisbon Strategy set EU employment goals to be reached by 2010: an employment rate of 70%, female labour market participation of 60% and 50% for older workers (55-65). EU employment policy clearly aims at mobilising the workforce rather than seeking other (potential) goals of labour market policies such as full employment.

The EES was regularly modified and adjusted, e.g. following the Employment taskforce under the former Dutch Prime Minister Wim Kok (2003) or the mid-term review of the Lisbon Strategy (2005). Yet, employment rates continue to dominate over qualitative aspects of labour. Recommendations issued at member states emphasised pull factors and incentives from the tax and benefit systems. Workers, in particular women or older workers, are perceived as a resource to be mobilised to participate in the market by removing these barriers (Hartlapp & Schmid 2008). In sum, important change took place by putting employment for the first time on the community agenda and by introducing the OMCs. The instrument has seen some changes but the idea of more rather than better jobs continues to dominate. Sovereignty over employment policies remains at the national level and influence of supranational actors is limited to initiating learning or shaming processes. In the years since the height of the economic crisis, one can again see innovation in terms of new instruments to address unemployment.

With the economic and financial crisis, unemployment rocketed in many member states. EU employment policy reacted in two ways: hardening out of soft coordination and new spending instruments. In the third phase outlined in the introduction, the soft EES was linked more tightly to hard economic governance, e.g. to the Stability and Growth Pact. This means that the EES gained teeth by rendering social goals more obligatory (Bekker 2014). And supply side measures are further strengthened since it is unlikely that demand side aspects such as skills, competences and the functioning of labour markets are easily combined with austerity measures at the national level. In the fourth phase, the Youth Guarantee (YEI, 2014-2018 ca. 6.4 billion € plus ESF) moved to the center of debate, promising every unemployed under 25 a new job or further education. Yet, co-funding requirements at the national level have proven to be the main obstacle to implementation, in particular in member states that are hit severely by the crisis and troika policies (cf. chapter by Daly p. 5-6 manuscript, chapter by Papanastasiou/Papatheodorou p.12 manuscript and chapter by Pereirinha/ Murteira p.7 manuscript). The YEI could have been an important reform to move European integration beyond the market but so far the promise remains unfulfilled. In sum, these new instruments do not qualify as discontinuity as they can be regarded as adaptations without changing the underlying activation paradigm of EU employment policy.

However, Lazlor Andor, former Commissioner for Employment has suggested a new policy instrument that could develop into a major policy transformation: the creation of an unemployment insurance mechanism at EU level. He advocates for a genuine European Insurance Scheme that covers all EU citizens, is based on individual contributions and provides for moderate benefits in the first 3-12 months of unemployment. Short-term as well as long-term unemployment should remain the responsibility of national policies. The aim of this scheme would be economic stabilization as well as increased identification of citizens with 'their' EU through social policy that provides (partial) income support. Alternative set-ups that plead for a reinsurance logic or a cyclical shock insurance stress macroeconomic demands over social policy (Schmid 2018: 166ff). Inherently linked to questions of transfer is solidarity. The European Unemployment Scheme is strongly contested and a normative as well as empirical discussion of the conditions under which member states and individuals are willing to financially support others in the EU seems warranted (Vandenbroucke 2017: 9–10).

### **4.3 Old age**

In almost all member states the bulk of social spending is dedicated to old age. Pensions are institutionally deeply entrenched, historically linked to nation building through welfare states and highly salient (Hartlapp & Kemmerling 2008). The lack of financial resources at EU level renders distributive old age policy a closed path. For many years, there was no explicit pension policy. Yet, policies to regulate pensions as financial instruments as well as case law shaped old age policy through the backdoor, before the OMC pension moved onto the agenda in the 2000s.

Historically, the first visible effect of the EU on national old age policy was an equalization of pension age. Pension schemes used to provide for different normal retirement ages for men and women (65 and 60, respectively). Following CJEU case law, most importantly the Barber case (C-262/88), member states had to harmonize pension ages for men and women in occupational pension schemes from 1990s onwards. Employer based occupational pensions and voluntary private insurances have further gained in importance. EU policies addressed them by regulating supplementary pensions as financial services or as instruments to support worker mobility – this falls right in the second phase outlined above with its high time of regulation. As part of the *Financial Action Service Plan* (1999–2004) the directive on Institutions for Occupational Retirement Provisions (IORP, 2003/41/EC) increases transparency for consumers and reduces risks through prudential rules on operation and investment strategies of IORPs and harmonised requirements on supervision authorities (Haverland, 2007). Directives on 'supplementary pension rights of employed and self-employed persons moving within the Community' (98/49/EC and 2014/50/EU) assure that all EU nationals have to

be treated equally in these schemes and that benefits can be carried to other schemes when taking up a new job, even in the territory of other Member States. Adoption of broader standards e.g. on equal tax treatment for contributions from workers in home and host member states is contested. In its current form EU old age policy supports a strengthening of the second and third pillar while questioning systems with strong occupational differences.

In parallel, EU policies started to address public pensions. Driven by concerns about demographic change the Broad Economic Policy Guidelines (BEPG) formulated recommendations that aimed at effective retirement ages and a change of early retirement options. This purely economic perspective received strong resistance from social actors and little later an OMC pensions was set up (2001). Since then, coordination of pensions has moved back and forth between being consecrated to concerns of financial sustainability and raising employment on the one side and social adequacy on the other, e.g. when the Strategy for Jobs and Growth left out pensions (2005) and in reaction a new social OMC integrated the hitherto separat coordination processes on pensions, health, long term care and social inclusion (Natali 2009). Yet, member states could not agree on official policy targets – a central difference to coordination on employment policy. The financial and economic crisis marks a further strengthening of financial sustainability of pensions over more social goals such as adequacy (Maricut & Puetter 2017). Troika policies and the Europe 2020 strategy require striking retrenchment of national pension policies (Copeland & Daly 2018).

In sum, EU old age policies so far did not paradigmatically change national pension policies, mostly because of the softness of the social OMC. In parallel to these developments we can witness ‘old age policy’ through the backdoor of regulative instruments. And in many member states indirect effect takes place through cost containment induced by EU economic governance or retrenchment under austerity programs.

#### **4.4 Health**

EU health policy, much like EU old age policy, combines regulation and spending with more recent coordination. When the Maastricht Treaty (1993) created EU competence on health the goal was to assure a “high level of human health protection” (Article 168). Yet, this was not without stressing that responsibility for national health systems and medical care remained with member states. Shortly after, the Amsterdam Treaty (1999) defined health as a cross-cutting goal to be considered in all other policy fields. De facto, however, health had already been an issue in neighbouring policy areas before (Vollaard et al. 2015). EU health policy first spread via health and safety at work regulation as well as freedom of movement of people working in the health sector (see section 4.1).

Health and safety at work acts protect workers against exposure to hazardous situations and substances. They harmonize rules for protective equipment and safety of machinery, such as national laws on safety signs at the workplace (77/576 EEC) or occupational exposure limits to vinyl chloride monomers (77/576 EEC). The adoption of a “Framework directive on Safety and Health at Work” (89/391/EEC) was followed by daughter directives on specific hazards (chemical agents 98/24/EC, biological agents 2000/54/EC, electromagnetic fields 2004/40/EC or asbestos 83/477/EEC). These dynamic developments benefitted from Commission entrepreneurship and a race to the top supported by industry seeking a harmonized market for machinery and protective equipment (e.g. Eichener 1995; Scharpf 2009: XXX). More recently, however, revisions and incremental developments prevail in face of increasing member state heterogeneity.

Patient mobility has been more dynamic. Developments are strongly influenced by the link between market freedoms and social rights. On the one hand, CJEU case law had expanded citizen rights, e.g. when having teeth fixed in another country or crossing borders to receive hip surgery. On the other hand, the controversial Bolkestein directive on the liberalization of services had created legal uncertainty and debate whether health services are just another type of service or whether public policy in this area should be subject to specific normative considerations (Greer 2006). The EU patient mobility directive (2011/24/EC) addressed these concerns by regulating the conditions under which a patient may receive medical care and be reimbursed at home and creating common standards. Yet, policy making is closely linked to the East-West divide outlined in section 3.1.. And implementation remain contested for granting unequal rights to EU citizens (Greer & Sokol 2014) and for the potential that differences in treatment costs between countries as well as asymmetric demand across countries, might undermine national social protection systems (Martinsen 2011).

In the early 2000s, during the high time of setting up coordinative policies, the social OMC provided for the first time recommendations for the development and modernization of health system reform (2004). Much like the policies on unemployment and old age policy (cf. section 4.1 and 4.2) the OMC health has over time been modified to include more social or more economic considerations of health reforms. With Europe 2020 and particularly since the height of the financial and economic crisis in phase three outlined above, economic considerations seem (increasingly) important. We observe a push for privatization of health care and an opening to competition in the common market.

Finally, a broadening of health policies during the last 10 years seems noteworthy, notwithstanding the soft character of most of the new instruments. Today there are guidelines to prevent chronic illnesses (European Centre for Disease Prevention and Control founded in 2005) and to reduce obesity (COM(2007)279 final). There is

legislation on donation of organs and transplants (e.g. 2004/23/EC). Administrative cooperation such as the European Reference Networks (ERNs) for rare diseases, seeks to support exchange of patient data and establish treatment standards. And since 2003 three Health Programs (2003-7, 2008-13 and 2014-20 with a budget of €449.4 million) have been adopted to fund projects and co-finance public or private actions on knowledge generation such as improving diagnostic tests or supporting the development of action plans to improve patient care or cancer diagnosis.

## **5 Outlook**

EU social policy developed slowly and in a specific instrument mix that differs from national welfare state policies. Economic integration that puts pressure on national social policies, the hardship of the financial and economic crises and the austerity regime of the Troika create demand for more or different EU social policy. This chapter showed, however, that in the last two decades EU social policy is best characterized by continuity in form of dominance of economic over social integration, incremental developments and a focus on soft, non-binding rather than binding instruments. In the early 2000s OMCs for employment, old age and health have been set up. They have been frequently modified but overall remain tied to activation and cost-containment goals induced by economic integration. And while receiving much attention by researchers and practitioners, their impact remains limited. Less noticed is the influence of regulatory instruments in all areas of EU social policy, such as patient mobility, supplementary pensions or health and safety at work. Yet, these instruments have been developed incrementally and increasing heterogeneity of members states and their interests rendered policy developments more difficult. This is particularly relevant for social policies that do not simply support the market but seek other social goals. Thus, the heterogenous landscape of national welfare states can be regarded as both cause and effect of EU social policy. Given the specific instrument mix member states adjust to EU social policy if and where national institutions and interests fit (OMCs). Departures from national paths remain rather punctual and new ideas such as social investment trickle down slowly into national debates rather than creating far reaching institutional change. At the same time structural differences in welfare states and the politics of national social policy continue to be important factors to understand the slow and incremental development of EU social policy. This does not mean that there is no room for EU social policy in the future. Rather EU politics are important.

Much hope has been placed on Commission president Juncker's promise to build a European Pillar of Social Rights. The Social Pillar heralded to deliver new and more effective rights for citizens regarding equal opportunities and access to the labour

market, fair working conditions and social protection and inclusion. In procedural terms the suggestion to move forward via differentiated integration in the Eurozone and let other member states catch-up later on is promising to deal with increasing member state heterogeneity – not least it had proven successful in earlier phases of EU social policy developments (e.g. British opt-out from the Social Protocol, see above). Alas, concrete initiatives confirm patterns of EU social policy development in the last 20 years: incremental changes in revisions in regulations on health and safety at work and worker protection, and a Commission that backed away from a leave directive that would more widely recognize the need to combine work and family. Much hope was put on a strong instrument to provide access to social protection for all. Yet, again, soft coordination came to be preferred over legally binding standards - a recommendation was adopted and scoreboards on member states benchmark outcome performance. The most far reaching decision, to build a European Labour Authority, clearly seeks social policy to support the market. Yet, and underlining the room for politics, it might well be turned into more when institution building is used to advance social rights, e.g. on the quality of social security or improved enforcement of labour law.

## 6 References

- Bauer, M.W. (2002). Limitations to Agency Control in EU Policy-Making – the Commission and the Poverty Programmes. *Journal of Common Market Studies* 40(3): 381–400.
- Bekker, S. (2014). EU coordination of welfare states after the crisis: further interconnecting soft and hard law. *International Review of Public Administration* 19(3): 296–307.
- Blauberger, M. & Schmidt, S.K. (2014). Welfare migration?: Free movement of EU citizens and access to social benefits. *Research and Politics* 1(3): 1–7.
- Blyth, M. (2013). *Austerity: a history of a dangerous idea*. Oxford: Oxford University Press.
- Caporaso, J.A. & Tarrow, S. (2009). Polanyi in Brussels: Supranational Institutions and the Transnational Embedding of Markets. *International Organization* 63(04): 593–620.
- Cappelen, C. & Peters, Y. (2018). Diversity and welfare state legitimacy in Europe. The challenge of intra-EU migration. *Journal of European Public Policy* 25(9): 1336–1356.

- Ciornei, I. & Recchi, E. (2017). At the Source of European Solidarity: Assessing the Effects of Cross-border Practices and Political Attitudes. *Journal of Common Market Studies* 55(3): 468–485.
- Copeland, P. & Daly, M. (2018). The European Semester and EU Social Policy. *Journal of Common Market Studies* 56(5): 1001–1018.
- Copeland, P. & Haar, B.t. (2013). A toothless bite? The effectiveness of the European Employment Strategy as a governance tool. *Journal of European Social Policy* 23(1): 21–36.
- Crespy, A. & Menz, G. (2015). Commission Entrepreneurship and the Debasing of Social Europe Before and After the Eurocrisis. *Journal of Common Market Studies* 53(4): 753–768.
- Crespy, A. & Vanheuverzwijn, P. (2017). What “Brussels” means by structural reforms: empty signifier or constructive ambiguity? *Comparative European Politics* 20(2): 268.
- Daly, M. (2006). EU Social Policy after Lisbon. *Journal of Common Market Studies* 44(3): 461–481.
- Daly, M. (2012). Paradigms in EU social policy: a critical account of Europe 2020. *Transfer: European Review of Labour and Research* 18(3): 273–284.
- De La Porte, Caroline & Heins, E. (2015). A new era of European Integration? Governance of labour market and social policy since the sovereign debt crisis. *Comparative European Politics* 13(1): 8–28.
- Eichener, V. (1995). European Health and Safety Regulation. No 'Race to the Bottom'. In B. Unger & F. van Waarden (eds), *Convergence or Diversity? Internationalization and Economic Policy Response*, pp. 229–251. Aldershot: Avebury.
- Eigmüller, M. (2013). Europeanization from below: the influence of individual actors on the EU integration of social policies. *Journal of European Social Policy* 23(4): 363–375.
- Evans Case, R. & Givens, T.E. (2010). Re-engineering Legal Opportunity Structures in the European Union?: The Starting Line Group and the Politics of the Racial Equality Directive. *Journal of Common Market Studies* 48(2): 221–241.

- Falkner, G. (1998). *EU Social Policy in the 1990s: Towards a Corporatist Policy Community*. London/New York: Routledge.
- Falkner, G. et al. (2005). *Complying with Europe. EU Minimum Harmonisation and Soft Law in the Member States*. Cambridge: Cambridge University Press.
- Falkner, G. & Treib, O. (2008). Three Worlds of Compliance or Four?: The EU15 Compared to New Member States. *Journal of Common Market Studies* 46(2): 293–313.
- Ferrera, M. (2009). The JCMS Annual Lecture: National Welfare States and European Integration: In Search of a ‘Virtuous Nesting’\*. *JCMS: Journal of Common Market Studies* 47(2): 219–233.
- Graziano, P.R. & Hartlapp, M. (forthcoming). The End of Social Europe? Understanding EU Social Policy Change. *Journal of European Public Policy*.
- Greer, S.L. (2006). Uninvited Europeanization: neofunctionalism and the EU in health policy. *Journal of European Public Policy* 13(1): 134–152.
- Greer, S.L. & Sokol, T. (2014). Rules for Rights: European Law, Health Care and Social Citizenship. *European Law Journal* 20(1): 66–87.
- Hartlapp, M. (2009). Learning about Policy Learning. Reflections on the European Employment Strategy. *European Integration online Papers, special issue* 13(1).
- Hartlapp, M. (2015). Politicization of the European Commission. When, how and with what impact? In M.W. Bauer & J. Trondal (eds), *The Palgrave Handbook of the European Administrative System*, pp. 145–160. Basingstoke: Palgrave.
- Hartlapp, M. (2017). How time empowers agency: Combining the EU Commission’s political powers and its administration’s advantage of acting from a long-term perspective. *Journal of European Integration* 39(3): 303–317.
- Hartlapp, M. & Kemmerling, A. (2008). When a Solution becomes the Problem: The Causes for Policy Reversal on Early Exit from the Labour Force. *Journal of European Social Policy* 18(4): 381–394.

- Hartlapp, M. & Schmid, G. (2008). Labour Market Policy for 'Active Ageing' in Europe. Expanding the options for retirement transitions. *Journal of Social Policy* 37(3): 409–431.
- Höpner, M. & Schäfer, A. (2010). A New Phase of European Integration: Organised Capitalisms in Post-Ricardian Europe. *West European Politics* 33(2): 344–368.
- Kantola, J. (ed.) (2010). *Gender and the European Union*. Houndmills Basingstoke: Palgrave.
- Keune, M. & Marginson, P. (2013). Transnational Industrial Relations as Multi-Level Governance. Interdependencies in European Social Dialogue. *British Journal of Industrial Relations* 51(3): 473–497.
- Kriesi, H. (2017). The implications of the euro crisis for democracy. *Journal of European Public Policy*: 1–24.
- Kröger, S. (2009). What we have learnt: Advances, pitfalls and remaining questions of OMC research. *European Integration online Papers, special issue* 13(1).
- La Porte, C. de & Natali, D. (2018). Agents of institutional change in EU policy: the social investment moment. *Journal of European Public Policy* 25(6): 828–843.
- Leibfried, S. (2010). Social Policy. Left to the Judges and the Markets? In H. Wallace, M. Pollack & A.R. Young (eds), *Policy-Making in the European Union*, pp. 253–281. Oxford: Oxford University Press.
- Mailand, M. (2008). The uneven impact of the European Employment Strategy on member states' employment policies: a comparative analysis. *Journal of European Social Policy* 18(4): 353–365.
- Majone, G. (1993). The European Community Between Social Policy and Social Regulation. *Journal of Common Market Studies* 31(2): 153–170.
- Manow, P., Schäfer, A. & Zorn, H. (2007). Europe's Party-Political Center of Gravity, 1957-2003. *Journal of European Public Policy* 15(1): 20–39.
- Maricut, A. & Puetter, U. (2017). Deciding on the European Semester: the European Council, the Council and the enduring asymmetry between economic and social policy issues. *Journal of European Public Policy*: 1–19.

- Martinsen, D.S. (2011). Judicial policy-making and Europeanization: the proportionality of national control and administrative discretion. *Journal of European Public Policy* 18(7): 944–961.
- Martinsen, D.S. (2015). *An Ever More Powerful Court? : The Political Constraints of Legal Integration in the European Union*. Oxford: Oxford University Press.
- Martinsen, D.S. & Werner, B. (2018). No welfare magnets – free movement and cross-border welfare in Germany and Denmark compared. *Journal of European Public Policy*: 1–19.
- Mazey, S. (2012). Policy Entrepreneurship, Group Mobilization, and the Creation of a New Policy Domain. Women's Rights and the European Union. In J. Richardson (ed.), *Constructing a Policy-Making State? Policy Dynamics in the EU*, pp. 123–144. Oxford: Oxford University Press.
- Menéndez, A.J. (2009). European Citizenship after Martínez Sala and Baumbast. Has European law become more human but less social?: ARENA Working Paper Series No 11.
- Mosher, J.S. & Trubek, D.M. (2003). Alternative Approaches to Governance in the EU: EU Social Policy and the European Employment Strategy. *Journal of Common Market Studies* 41(1): 63–88.
- Natali, D. (2009). The Open Method of Coordination on Pensions: Does it De-politicise Pensions Policy? *West European Politics* 32(4): 810–828.
- Schäfer, A. (2005). *Die neue Unverbindlichkeit: Wirtschaftspolitische Koordinierung in Europa*. Frankfurt/M.: Campus.
- Scharpf, F.W. (2009). *Regieren in Europa: Effektiv und demokratisch?* Frankfurt a.M./New York: Campus.
- Schmid, G. (2018). *Europa in Arbeit. Plädoyer für eine neue Vollbeschäftigung durch inklusives Wachstum*. Frankfurt / New York: Campus.
- Schmidt, S.K. (2018). *The European Court of Justice & the Policy Process*. Oxford: Oxford University Press.
- Tholoniati, L. (2010). The Career of the Open Method of Coordination: Lessons from a 'Soft' EU Instrument. *West European Politics* 33(1): 93–117.

- Vandenbroucke, F. (2017). The Idea of a European Social Union: A Normative Introduction. In F. Vandenbroucke, C. Barnard & G. de Baere (eds), *A European Social Union after the Crisis*, pp. 3–46. Cambridge: Cambridge University Press.
- Vollaard, H., van de Bovenkamp, Hester & Martinsen, D.S. (2015). The making of a European healthcare union. A federalist perspective. *Journal of European Public Policy*: 1–20.
- Wollenschläger, F. (2010). A New Fundamental Freedom beyond Market Integration: Union Citizenship and its Dynamics for Shifting the Economic Paradigm of European Integration. *European Law Journal* 17(1): 1–34.
- Zeitlin, J. & Pochet, P. (eds) (2005). *The Open Method of Co-ordination in Action. The European Employment and Social Inclusion Strategies*. Brussels: Peter Lang.
- Zimmermann, K. (2016). Local Responses to the European Social Fund: A Cross-City Comparison of Usage and Change. *Journal of Common Market Studies* 54(6): 1465–1484.