

The European Union's Social Dimension

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Chapter Contents

- Introduction 270
- The early years of EU social policy 270
- From Maastricht to the Lisbon Treaty 272
- The development and scope of European social policy 274
- The European Social Fund and the European Globalization Adjustment Fund 275
- The open method of coordination 276
- Social partnership at European level 277
- Conclusion 278

Reader's Guide

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

Introduction

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

This chapter will first outline the division of social policy **competences** between the EU and its member states, the interpretation of these treaty provisions in the day-to-day policy process over time, and the latest formal reforms at Amsterdam, Nice, and in the **Lisbon Treaty**. It will then analyse the incremental development of European Community or later Union social regulation and activities, including the European Social Fund (ESF) and the so-called open method of coordination (OMC). Since patterns of decision-making are quite distinctive in the social, as opposed to other, fields of EU politics, this chapter will also outline how EU-level interest groups participate therein (see also Chapter 13). The conclusion not only summarizes the results of the chapter, but also discusses the performance of European **integration** within its 'social dimension'.

The early years of EU social policy

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

free market approach to social affairs, even in the realm of labour and social security; others opted for a limited process of harmonization. The French delegation, notably, argued that France's comparatively high social charges, and its constitutional principle of equal pay for men and women, might constitute a competitive disadvantage within the newly formed European market, while Italy feared that the opening up of Community borders might prove costly for the southern part of the country, which was already economically disadvantaged. In the end, a compromise was found, but this did not include explicit **European Economic Community (EEC)** competences for active social policy harmonization at the European level. The dominant philosophy of the 1957 Treaty was that improvements in welfare would be provided by the economic growth that arose as a consequence of the liberalization of the European market, and not by the regulatory and distributive form of public policy (see Liebfried and Pierson, 1995; Barnard, 2000).

Nevertheless, the Treaty contained a small number of concessions for the more **interventionist** delegations. These were the provisions on equal pay for both sexes (Article 119 EEC, now Article 157 TFEU), the maintenance of 'existing equivalence between paid holiday schemes' (Article 120 EEC, now Article 158 TFEU), and the establishment of a European Social Fund (Articles 123–8 EEC, now Articles 162–4 TFEU). Equal pay and the ESF increased in their importance as the European integration process progressed. While other provisions of the Treaty's Title III on social policy included some solemn social policy declarations, they failed to empower the EEC to act:

Underwriting this arrangement was the relative feasibility of nation state strategies for economic development in the first decades after World War II. The common market, as it was constructed, was designed to accommodate such national strategies, not transcend them. (Ross, 1995: 360)

Yet, in other areas of activity, the Commission was empowered to present legislative proposals to the Council. These proposals would ultimately become binding law. For social policy, however, the Commission was permitted to act only by undertaking studies, delivering opinions, and arranging **concerted actions**. In legal terms, then, Article 118 EEC (now Article 156 TFEU) reflected a confirmation of national (as opposed to European) responsibility for social policy.

Paradoxically, the competence for social policy was not explicitly dealt with in Part II, on the freedoms, but contained provisions on labour, services, and social security (Articles 45–8 TFEU). The freedom of movement of workers in the Treaty's main part (Articles 45–8 TFEU) dealt with the abolition of all restrictions on the freedom of workers in the field of employment, remuneration, and employment conditions (Article 45 TFEU). In order to ensure the effectiveness of social security arrangements (Article 48 TFEU), the Treaty established Community-wide rules on calculating the amount of social security benefits for workers and their dependants. Yet although the Treaty did not confer policy competences on the Commission, its interpretative role in practice, some might argue, was possible because, within the field of **market integration**, the Commission's secondary competences in the member states were of a maintenance or functional nature and could be approximated to the basis of a common market (now Article 110 TFEU). The Community should not be the course of the objective of the Treaty had not provided the Council was mandated to act, acting unanimously, in consultation with the Parliament (Article 110 TFEU). In the 1970s onwards, the Commission's role in social policy was limited to studies and opinions. The Council was permitted a high threshold for vetoing Commission proposals. The EC found itself in a **post-decision** trap.

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

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

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

In 1987, the **Single European Act (SEA)** came into
... force as the first major Community treaty revision (see
... Chapter 2). As in the 1950s, an economic enterprise
... was at the heart of this fresh impetus in favour of Eu-
... ropean integration. But parallel to the member states'
... commitment to a **single market** programme, the
... Europeanization of social policy remained controver-
... sial. In various policy areas touched by market liber-
... alization, notably environmental and research policy,
... Community competence was formally extended (see
... Chapter 23), but not for social policy.

However, one important exception was made. Ar-
... ticle 118a EEC (this article has now been repealed)
... on minimum harmonization concerning health and
... safety of workers provided an escape route out of the
... **unanimity** requirement. For the first time in Euro-
... pean social policy, it allowed **directives** to be agreed
... on the basis of a qualified majority of the Council
... members (see Chapter 14). The standards adopted fol-
... lowing this Article were minimum regulations only.
... Nevertheless, under this provision, reluctant mem-
... ber states could be forced to align their social legisla-
... tion with the (large) majority of member states, even
... against their will. It should be stressed that agreement
... on this Article was possible only because occupational
... health and safety issues were closely connected to the
... single market.

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

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

This formulation made it easy to play the '**treaty
... base game**' (Rhodes, 1995). It allowed governments to
... adopt not only measures improving the working en-
... vironment (for example, a directive on the maximum
... concentration of airborne pollutants), but also meas-
... ures that ensured the health and safety of workers by

improving working conditions in a more general sense (for example, limiting working time). It was clear that the reason why this treaty basis was frequently chosen was the fact that only this Article allowed for majority voting at the time.

KEY POINTS

- The 1957 EEC Treaty meant that social policy remained largely a national affair.
- However the coordination of social security systems for migrant workers was an exception to this rule. That, as well as some concessions to the more interventionist delegations, provided stepping stones for EU social policy integration in the longer run.
- The Single European Act introduced qualified majority voting to a limited area of social policy. At the time, member state governments did not realize its implications for further policy integration.

From Maastricht to the Lisbon Treaty

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

Because of the UK's opt-out, the innovative social policy provisions of the Social Agreement comprised what had been perceived during the IGC as an amendment to the social provisions of the Treaty. These constituted an extension of Community competence into a wide range of social policy issues, including working

conditions, the information and consultation of workers, equality between men and women with regard to labour market opportunities and treatment at work (as opposed to formerly only equal pay), and the integration of persons excluded from the labour market. Some issues were, however, explicitly excluded from the scope of minimum harmonization under the Maastricht social policy provisions—namely, pay, the **right of association**, the right to strike, and the right to impose **lock-outs**.

Additionally, QMV was extended to many more issue areas than before, including the informing and consultation of workers. Unanimous decisions remained, however, for: social security matters and the social protection of workers; the protection of those whose employment contract is terminated; the **representation** and collective defence of interests of workers and employers, including **co-determination**; conditions of employment for **third-country nationals (TCNs)**—that is, non-EU nationals, legally residing in Community territory; and financial contributions for promotion of employment and job creation.

In contrast to the Maastricht negotiations, in the 1996–97 IGC preceding the **Amsterdam Treaty**, social policy reform was not a major issue. Because of the fierce resistance to social policy reforms by the UK's Conservative government (in office until May 1997), the IGC decided to postpone discussion of the topic until the very end of the negotiation period, awaiting the result of the 1997 general election. Under the new Labour government, which came into office at this point, the UK's opt-out from the Social Agreement came to an end. Another significant innovation in the Amsterdam Treaty was the new employment policy chapter (now in Articles 145–50 TFEU). While excluding any harmonization of domestic laws, it provides for the coordination of national employment policies on the basis of annual guidelines and national follow-up reports. Furthermore, a new Article 13 EC (now Article 19 TFEU) on Community action against discrimination was inserted. On this **legal basis**, a number of important new directives on fighting discrimination based on grounds of sex, race, ethnic origin, belief, disability, age, and sexual orientation have been adopted in recent years.

The Nice Treaty of 2001 was not particularly innovative in terms of social policy matters. In some fields, the Council is allowed to decide unanimously

BOX 19.1

The **Charter of Fundamental Rights** is the first single document of European law previously found in a number of national laws and international treaties. In 2000, the European Parliament decided to have the 'protection of fundamental rights' be the Union and an independent institution (European Council, 1999) a convention consisting of representatives of each state or government of the EU, the President of the European Parliament, and the members of the European Parliament. The Charter was adopted on 7 December 2000. The Charter has legal effect, conferring on it the same legal value as the Treaty. Poland and the UK negotiated an opt-out from the Charter. The Charter contains 54 provisions in seven chapters. The Charter is founded on the principles of dignity, freedom, equality

upon the use of the Treaty. It is known as the **ordinance** (see Chapter 14). The Charter provides for the representation of the interests, and to the Treaty (TFEU). Furthermore, the Charter aims to improve transnational cooperation on all social issues, including social exclusion and employment after Amsterdam. Under the **Lisbon Treaty**, the Charter is now a part of the primary law for migrant workers within QMV in the Treaty framework and the legal status (see Box 19.1). The Charter also provides for the safeguard procedures of the Treaty framework and the member state control procedures. Finally, there is no doubt that any EU po-

BOX 19.1 THE CHARTER OF FUNDAMENTAL RIGHTS

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

The Charter contains a Preamble and 54 Articles, grouped in seven chapters. The Preamble to the Charter states that the Union is founded on the indivisible universal values of human dignity, freedom, equality, and solidarity, and on the principles of

democracy and the rule of law. The Preamble in its third paragraph specifies that the EU contributes to the preservation and development of these common values, 'while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States'. The rights enshrined in the Charter are enumerated in six chapters on 'Dignity', 'Freedom', 'Equality', 'Solidarity', 'Citizens' Rights', and 'Justice', and a final seventh chapter on 'General Provisions'.

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

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

upon the use of the then **co-decision** procedure, now known as the **ordinary legislative procedure (OLP)** (see Chapter 14). This applies to worker protection where employment contracts have been terminated, to the representation and collective defence of collective interests, and to the interests of TCNs (see Article 153 TFEU). Furthermore, 'measures' (not legislation) to improve transnational **cooperation** can now be adopted on all social issues, not only those concerning social exclusion and equal opportunities, as was the case after Amsterdam.

Under the **Lisbon Treaty**, social security provisions for migrant workers are the only new issue to fall within QMV in the EU Council, to the great disappointment of the European Trade Union Congress (ETUC). Furthermore, the 2000 **Charter of Fundamental Rights** of the Union formally came under the Treaty framework and hence finally acquired a higher legal status (see Box 19.1). At the same time, new safeguard procedures could, in the future, strengthen member state control over their social security systems. Finally, there is now a horizontal 'social clause' stating that any EU policy must take into account

'requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9 TFEU).

KEY POINTS

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

The development and scope of European social policy

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

During the late 1960s, however, the political climate gradually became more favourable to a wider range of European social policy measures. At their 1972 Paris Summit, the Community heads of state and government declared that economic expansion should not be an end in itself, but should lead to improvements in more general living and working conditions. With relevant Community action in mind, they agreed a catalogue of social policy measures that were to be elaborated by the Commission. In the resulting Social Action Programme (that is, a list of intended legislative initiatives, covering a number of years) of 1974, the Council expressed its intention to adopt a series of social policy measures within two years.

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

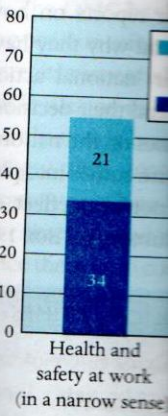
thereafter, and further such programmes followed the first one.

By the end of 2014, there were more than 80 binding norms (regulations and directives), with more than 90 related amendments and geographical extensions. The slow, but rather steady, growth of binding rules has not immediately been stopped by the emergence of the 'softer' modes of **governance**. The latter were particularly fashionable from the second half on the 1980s to 2003 (for detailed data until 2006, see Treib et al., 2009). Post-2010 data, however, shows a particularly large number of acts adapting or refining existing social standards, rather than setting fully innovative EU policies. By 2015, the most significant projects for new regulation (for example, improving parental leave standards; extending non-discrimination rules to goods and services provision; introducing a 40 per cent quota for women on major company boards) have ended in stalemate and may be withdrawn, while the new employment and social affairs Commissioner Marianne Thyssen did not announce any fresh legislative initiatives on taking office (*Agence Europe*, 2 October 2014).

There are three main fields of EU social regulation: health and safety; other working conditions; and equality at the workplace and beyond.

- With regard to *health and safety at work*, the regulation is based on a number of specific action programmes. Directives include the protection of workers exposed to emissions (or pollutants) and responsible for heavy loads, as well as protection against risks of chemical, physical, and biological agents at work (such as lead or asbestos).
- In the field of *working conditions*, a number of directives were adopted during the late 1970s, for example, on the protection of workers in cases of collective redundancy, the transfer of undertakings, and employer insolvency. Many more directives followed during the 1990s and thereafter, including those on worker information, on conditions of work contracts, on the equal treatment of atypical (such as shift, temporary agency, or part-time) workers, and on parental leave.
- With regard to *equality*, the Court of Justice of the EU (CJEU) has traditionally been a major actor ever since it provided a broad interpretation of Article 119 EEC on domestic measures to ensure equal pay for both sexes, opening the way for action on the basis of the subsidiary competence

Figure 19.1 Social legislation (until end of 2014)



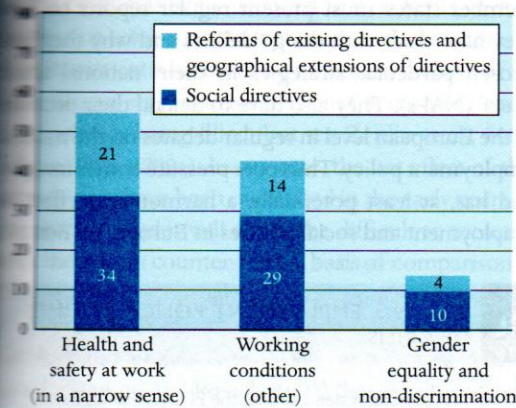
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KEY POINTS

- The development of the late 1950s, with the decade.
- In addition to the issue of equal treatment, the main areas of regulation working conditions, and safety in the work
- The introduction of social immediately stopped the policy area but re typically ended in governments and bloc

Figure 19.1 Social directives in three sub-fields (until end of 2014)



Note: Thanks to Veronika Pollak for help with these data.

Source: Celex/EurLex, 'Social policy' (adjusted for numerous misclassifications).

provisions. Matters such as equal pay for work of equal value, the equal treatment of men and women regarding working conditions and social security, and even the issue of burden of proof in discrimination law suits are regulated at EU level (Hoskyns, 1996; Mazey, 1998). Since the Treaty of Amsterdam, a more general equality policy has been developed (Article 13 TFEU), targeting discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation. Figure 19.1 indicates the number of directives in these three subfields.

KEY POINTS

- The development of social legislation has increased since the late 1950s, with the 1990s being the most active decade.
- In addition to the issue of free movement of workers and equal treatment in national social security systems, the main areas of regulative European social policy are working conditions, anti-discrimination policy, and health and safety in the workplace.
- The introduction of soft modes of governance has not immediately stopped the adoption of binding rules in this policy area but recently, ambitious legislative projects have typically ended in political controversies among the governments and blockage in the EU Council.

The European Social Fund and the European Globalization Adjustment Fund

EU policy is largely regulatory and this is particularly the case in the social field. However, as this and the following section will outline, the relative importance of regulation has declined in recent years, and both funding opportunities and 'soft' forms of governance have increased. In the case of funding, the Treaty of Rome provided for a 'European Social Fund' (ESF). Its goal was to simplify the employment of workers, to increase their geographical and occupational mobility within the Community, and to facilitate their adaptation to change, particularly through vocational training and retraining. After a number of reforms, the ESF now co-finances projects for young people seeking employment, for the long-term unemployed, for disadvantaged groups, and for promoting gender equality in the labour market. The aim is to improve people's 'employability' through strategic long-term programmes (particularly in regions lagging behind), to upgrade and modernize workforce skills, and to foster entrepreneurial initiative. Over the period 2014–20, the ESF will provide €80 billion in funding.

In addition to the ESF, other EU funds also seek to combat regional and social disparities, including: the **European Globalization Adjustment Fund (EGF)** (see Box 19.2), the **European Regional Development Fund (ERDF)**; the European Agricultural Guidance and Guarantee Fund (EAGGF, Guidance Section); and the **Financial Instrument for Fisheries Guidance (FIFG)**. Additionally, the **Cohesion Fund** finances environmental projects and trans-European infrastructure networks in member states with a **gross domestic product (GDP)** that is less than 90 per cent of the EU average.

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

BOX 19.2 THE EUROPEAN GLOBALIZATION ADJUSTMENT FUND (EGF)

The EU's most recent innovation on the level of funds is the European Globalization Adjustment Fund (EGF). It aims to help workers made redundant as a result of changing global trade patterns to find another job as quickly as possible. The Fund became operational in 2007, with €500 million a year at its disposal. However, there were significantly fewer funds distributed than originally expected, despite the fact that almost all projects ever submitted actually received financial support. In 2013, the co-funding rate was lifted to 60 per cent, and assistance can also be temporarily provided to young people who are out of work or in training (in areas eligible under the youth employment initiative). However, the overall ceiling was cut to slightly above the highest annual amount ever used, €150 million.

KEY POINTS

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

The open method of coordination

The legislative or regulatory track of EU social policy has comparatively less importance by now, due to (among other reasons) a new (often called 'softer') style of intervention known as the open method of coordination (OMC) (see also Chapters 7 and 14). Using this approach the European Union has a novel role as a motor and, at the same time, as a constraint on national, social, and structural reform.

The main features of the OMC were developed (initially without treaty basis) in the field of employment policy, as a follow-up to the Essen European Council of 1994. The Amsterdam Treaty's employment chapter later formalized it. Every year since, the EU has adopted employment policy guidelines. Their specification and

implementation is left, however, to the national level, so that the domestic situation and party-political preferences can be taken into consideration. All the same, member states must present regular reports on how they have dealt with the guidelines and why they have chosen particular strategies in their 'national action plans' (NAPs). They also have to defend their decisions at the European level in regular debates on the national employment policy. Thus peer pressure comes into play and has, at least potentially, a harmonizing effect on employment and social policies in Europe. As Box 19.3

BOX 19.3 EMPLOYMENT POLICY IN TIMES OF CRISIS

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

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

However, the policy went in a very different direction. As a result of the financial crisis, unemployment rates have ratcheted up from an EU average of 7.1 per cent (before the last quarter of 2008) to 11.2 per cent in January 2015 (Eurostat, 2015). For those under 25, the situation was even worse, with youth unemployment rising in the EU from 15.3 per cent in 2008 to 21.4 per cent in 2011 and 23.1 per cent in 2013. In Spain, youth unemployment reached 51.4 per cent in 2014. In February 2013, a Youth Employment Initiative was set up by the European Council with a budget of €6 billion for the period 2014–20 (half of that via the European Social Fund with national co-funding). Unfortunately, this will not be enough to ensure that all young people under 24 receive a good-quality, concrete job offer or traineeship within only four months of them leaving formal education or becoming unemployed. Debates held in the EU Council in autumn 2014 suggest that the 2020 social goals seem unattainable but 'must not be changed' (Agence Europe, 11 October 2014).

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

shows, employment has been affected by the impact on employment

The OMC has been used in the pension reform. Its success is questionable due to the lack of reliable data on its progress, which is only slowly being gathered (Kröger, 2008, 2009). The strategy may have been successful in its existence, and it is likely that since there is no common framework the researcher's discretion is limited. It is plausible to expect that the OMC (Sabatier and Jenkins-Smith, 2000) approach will have a limited EU-level obligation on governments to justify their policies, which might otherwise result in electoral losses. We need to be ready for policy changes that are more than either reform or perform a symbolic gesture. The OMC has a system of budgetary rules, particularly the European Semester, which is not with excessive national deficits, are no longer in line with the guidelines, including the Commission can use the OMC to pressure non-compliant countries.

KEY POINTS

- The open method of coordination (OMC) is an approach that has been used in several areas of EU policy.
- It is based on European Council guidelines, national reports, and EU-level evaluation.
- The financial crisis has led to a re-evaluation of the OMC.
- The European Semester is a key element of the OMC.

employment policy coordination at the EU level has been affected by the crisis in the eurozone and its impact on employment prospects in some member states.

The OMC has been extended to new fields, including pension reform, social inclusion, and education. To date, its success is hard to judge, because the lack of reliable data on its practical effects in the member states is slowly being filled (but see Zeitlin et al., 2005; Wigger, 2008, 2009a). In any case, the net effect of this strategy may have been overstated in the early years of its existence, and it will always be difficult to measure since there is no counter-factual basis of comparison at the researcher's disposal (de la Porte and Pochet, 2004). It is plausible to expect that the joint policy learning (Sabatier and Jenkins-Smith, 1993) and mutual adaptation (DiMaggio and Powell, 1991) that result from this approach will have some beneficial effects, and that EU-level obligations, however loosely defined, will help governments to justify reforms domestically that they might otherwise not have dared to enforce for fear of electoral losses. Where national governments are not ready for policy change, however, the NAPs can do no more than either restate pre-existing domestic policies or perform a symbolic function (Scharpf, 2002). However, the OMC has lately been integrated in a complex system of budgetary coordination and control, the 'European Semester' (Laffan, 2014). The member states, particularly those under a bailout programme or with excessive macroeconomic imbalances or deficits, are no longer fully autonomous in their spending policies, including for social and health issues, and the Commission can ultimately even impose fines on non-compliant countries (see Chapter 26).

KEY POINTS

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

Social partnership at European level

EU social policy-making has for a while been characterized by a style that some have called 'Euro-corporatism' (Gorges, 1996). Corporatism is a way of making policy that includes not only public actors, but also interest groups as decisive co-actors (Streeck and Schmitter, 1991; see also Chapter 13). EU social policy-making, in particular after the Maastricht Treaty, has been characterized by the entanglement of governmental negotiations in the EU Council and **collective bargaining** between the major economic interest group **federations**. As a consequence, the rather particular, closed, and stable **policy network** in EU social policy represents a 'corporatist policy community' where a few privileged groups co-decide public policies with or under the control of public actors (Falkner, 1998).

Under the legislative procedure in EU social policy, the Commission consults on any planned social policy measure. The social partners, representing the interests of workers and European employers are able to negotiate collective agreements and play a key role in the **European Social Dialogue** (see Chapter 13). They represent their members during consultations with the Commission and the negotiation of **collective agreements**. Thus European-level employer and labour groups may inform the Commission of their wish to initiate negotiations on the matter under discussion in order to reach a collective agreement. This process brings decision-making to a standstill for nine months. If a collective agreement is signed, it can, at the joint request of the signatories, be incorporated in a Council decision on the basis of a prior Commission proposal.

Yet it is important to underline the point that the **social partner** negotiations on social policy issues are by no means entirely independent of the intergovernmental arena. There is intense contact and a large degree of **interdependence** among all relevant actors in social policy at the EU level—that is, among the EU Council, the social partners, the Commission, and, to a lesser extent, the European Parliament. To date, three legally binding, cross-sectoral collective agreements on labour law issues have been signed (see Table 19.1) and were implemented in directives (Falkner, 2000a): on parental leave (December 1995, revised in 2010 and 2013); on part-time work (June 1997); and on fixed-term work (March 1999).

A number of other negotiations failed to reach agreement, for example, on the issue of temporary

Table 19.1 EU-level social partner agreements (cross-sectoral)

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

agency work, or were not initiated, such as on fighting sexual harassment, and on the informing and consultation of employees in national enterprises. Recently, further agreements were concluded or are being negotiated that the social partners (above all, industry) want to be non-binding and/or implemented in accordance with the procedures and practices specific to individual countries, rather than by a directive.

This can be interpreted as a move away from social partner agreements on effective minimum standards that are applicable throughout the EU. At the sectoral level, however, there are a couple of recent agreements with subsequent binding directives, for example, on working time in various industries (see Marginson and Keune, 2012). In any case, by 2015

even the Commission was arguing that the Social Dialogue could do with a new start (European Commission, 2015a).

KEY POINTS

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

Conclusion

This chapter has indicated that European social policy has been considerably extended and differentiated over time. Treaty bases have been revised several times to extend the range of competences. The European Social Fund has increased its resources and has had a practical impact on national employment promotion projects. The number of social directives has also increased over time, with the 1990s being the most active decade so far. The CJEU has been influential on a number of social policy issues and, at times, has significantly increased the practical impact of EU social law. The equal treatment of women in the workplace and the protection of worker interests when enterprises

change hands are two important examples (Lichtblau and Pierson, 2000). In recent years, however, controversial cases such as Case C-438/05 *International Transport Workers' Federation v. Viking Line ABP* [2008] ECR I-143 and Case C-341/05 *Laval* [2007] ECR I-11767, have touched the borderlines between the market freedoms and basic social rights, such as union action (see Chapter 12).

When judging social policy developments at the EU level, at least four different evaluation criteria are worth considering (Falkner, 2000b). First, the closing of a number of gaps in labour law, introduced or widened by the single market programme, was a major

task for EU social policy. In fact, and surprisingly, the EU policy objectives expected during the negotiations were not closed. However, in some cases, for example, it is unclear whether the principle should apply to vertical or horizontal issues in the workplace. On 19 February 2015,

Second, a social dialogue approach to judging EU social policy. The Commission proposal for a social dialogue-based and case-by-case approach to the relevant areas (sometimes seen as a form of self-interested protectionism) was a huge gap during the negotiations. It was later almost completely closed in most controversial areas of the workplace and

European Commission However, more recent developments have been unsuccessful even in some areas as in the case of non-discrimination and quotas for women.

A third indicator of the dimension is action on national social standards. Increased competitive economic and market integration ('social dumping').

What is happening would have a negative impact on margins, which would prevent a country from gaining a competitive edge by lowering social standards. These were thought realistic

in member states, notably in Germany (Bauch, 1988; Dispersy, 2000). The Social Affairs Council

Finally, a fourth evaluation criterion is the extent to which the EU has been able to address 'international' social policy issues in times of crisis.

Nonetheless, even in the case of the former Commissioner for Employment and Inclusion) for an alternative system to counter the economic crisis.

In any case, a full evaluation of the European social policy framework requires a deeper knowledge about its pro-

EU social policy (Barnard, 2000: 62). Surprisingly, the EU performed better than most experts expected during the early 1990s and the major gaps were closed. However, the details remain controversial. For example, it is unclear when a national minimum wage should apply to workers from abroad, a recent controversial issue in road transport services (*Agence Europe*, 19 February 2015).

Second, a somewhat more far-reaching criterion for judging EU social law is the differential between Commission proposals (which can be seen to be knowledge-based and common-goods-oriented approaches to the relevant problems) and Council legislation (sometimes seen as the lowest common denominator of self-interested country representatives). There was a large gap during the late 1980s and early 1990s, which was later almost completely filled. Even some of the most controversial projects, on sexual harassment in the workplace and on employee consultation in the **European Company Statute**, have been adopted. However, more recently, several further reforms were unsuccessful even after years of protracted negotiations as in the cases of the parental leave directive, non-discrimination in goods and services provision, and quotas for women on company boards.

A third indicator of the scope of the EU's social dimension is action taken to prevent reductions in national social standards, potentially induced by the increased competitive pressures of the single market and **economic and monetary union** (sometimes called 'social dumping'). One possibility to prevent this from happening would have been to agree on fluctuation margins, which would have stopped any individual country from gaining competitive advantages through lowering social standards. However, such proposals were thought realistic in only a small number of member states, notably Belgium, France, and Germany (Busch, 1988; Dispersyn et al., 1990). At the level of the Social Affairs Council, there was little support.

Finally, a fourth evaluation criterion might be the rather small extent to which the EU has forged a truly **supranational** social order. This becomes ever more obvious in times of crisis as national systems crumble. Nonetheless, even recent calls by László Andor (a former Commissioner for Employment, Social Affairs and Inclusion) for an EU-level unemployment insurance system to counterbalance the differential effect of the economic crisis, have proven an unrealistic goal.

In any case, a full evaluation of the success of existing European social law is restricted by the lack of knowledge about its practical effects in the member

states. One comparative study of 90 cases of domestic adaptation performance across a range of EU social directives (see Falkner et al., 2005) revealed that there are major implementation failures. While all countries are occasional non-compliers, some usually take their EU-related duties seriously. Others frequently privilege their domestic political concerns over the requirements of EU law. A further group of countries neglects these EU obligations almost as a matter of course. Extending this kind of analysis to newer member states from Central and Eastern Europe shows that EU standards all too often remain a 'dead letter' (Falkner et al., 2008).

Finally, the **enlargement** of the European Union makes the adoption of joint regulation more difficult, because social policies and preferences differ even more widely in the enlarged EU than they did before. Clearly, a great disparity in social policy still persists between the member states, and the cleavage may grow further as a result of the unequal state of crisis in individual countries and the centrifugal forces of EMU (Kudrna, 2015).

Faced with contracting economies and in the context of a European **sovereign debt** and worldwide economic crisis, many countries have cut social standards in the frame of their austerity programmes. The International Labour Organization (ILO) warns that such fiscal consolidation measures contributed 'to increases in poverty and social exclusion in several high-income countries, adding to the effects of persistent unemployment, lower wages and higher taxes . . . In the EU 28, cuts in welfare protection have increased poverty levels to 24 per cent of the population, many of them children, women, the disabled and the elderly' (*Agence Europe*, 4 June 2014).

The EU has regularly adopted ambitious programmes (**Lisbon Agenda**, **Europe 2020**, **European Semester**, and Youth Employment Initiative) to coordinate efforts to make the EU the most competitive knowledge-based economy in the world while (ideally) improving social cohesion and maintaining environmental **sustainability**. However, it is doubtful whether these efforts will be effective, and whether they stand a chance of keeping up with the effects of major imbalances on the world's financial markets, on national budgets, and on social policies. What Kevin Featherstone argued for the failed troika-induced public administration reform in Greece holds as a general warning for the EU: if ambitious programmes cannot stand up to political realities, the 'EU risks a political backlash, a loss of legitimacy and a threat to its own credibility' (Featherstone, 2015: 310).