The Social Dimension in EU and UK Policy Development: Shaping the Post-Brexit Legacy

Professor Linda Hantrais FAcSS
Visiting Professor, Centre for International Studies
L.Hantrais@lse.ac.uk

The Social Dimension in EU and UK Policy Development: Shaping the Post-Brexit Legacy

Linda Hantrais

Abstract

This paper examines the place of the social dimension in past and on-going debates about the United Kingdom's membership of the European Union, and considers the implications of Brexit for future UK and EU social policy.

The Founding Treaties of the European Economic Community (EEC) in 1957 were primarily market driven; social development was a later by-product. When the UK joined the EEC, by approving the European Communities Act 1972, the UK Parliament agreed to give EEC law supremacy over national law, including any social legislation previously enacted. EEC membership enabled the UK to participate in the decision-making process as the social dimension became a more significant component of European integration. By the late 1980s, proposals for developing social policy brought the UK into conflict with member states seeking deeper social integration. Despite the introduction of qualified majority voting in many areas of policy, social security legislation remained subject to national jurisdiction and the subsidiarity principle. By the turn of the century, in the context of an ageing labour force, and as the EU prepared for enlargement to the East on an unprecedented scale, employment law and the regulation of working conditions were high on the European social agenda. The open method of coordination, first introduced as a form of soft law in the 1998 Employment Guidelines, was extended to other areas of social policy, providing a mechanism for a more cooperative approach to social integration. The 2007–8 financial and economic crises heralded a return to hard law in an attempt to assist failing and less advanced economies in Eurozone countries. As the economic recovery began to take effect, the immigration and refugee crises created further challenges for member states and their welfare systems contributing, in no small measure, to the decision of a significant proportion of the British electorate to vote to leave the EU on 23 June 2016.

An historical analysis of the development of the European social dimension over 60 years shows that the UK was not alone in seeking to protect its sovereignty from the encroachment of European law and in resisting political, economic and social integration. As in other member states, the personalities and personal ambitions of national leaders, under pressures from domestic politics and interstate coalition building, played a critical role in determining negotiating positions and outcomes. The complexities and divisiveness of the legislative process within and between member states make it difficult to predict how the UK Government will reclaim sovereignty in such a contentious policy area, or to forecast whether the remaining EU member states will seek to promote closer social union.

Introduction

This paper considers the place of the social dimension in past and on-going multifarious debates about the United Kingdom's membership of the European Union (EU) from its origins to the 2016 referendum. It examines the gains, losses and dilemmas in the social field over 60 years of negotiations, before seeking to unravel the possible implications of the UK's exit from the EU for future social policy development.

The UK was not one of the six founder member states – Belgium, France, Italy, Luxembourg, the Netherlands and West Germany – of the European Coal and Steel Community (ECSC) in 1951, or of the European Economic Community (EEC) when it was established in 1957. Instead, with Austria, Denmark, Finland, Norway, Portugal, Sweden and Switzerland, in 1960 the UK formed the European Free Trade Association (EFTA), thereby demonstrating a commitment to European cooperation but not to European integration as laid down in the EEC Treaty. EFTA soon proved to be an unsatisfactory alternative owing to the marginal trading opportunities it afforded, whereas the EEC seemed to offer the pragmatic benefits of its liberal free trade rules within a much larger community (Cockfield, 1994: 8; Wall, 2013: 48, 58; Fontana and Parsons, 2015: 92). Accordingly, the UK first applied to join the EEC in 1961.

The UK has often been portrayed as being closely aligned to the American free market model rather than what has been described as the more legalistic 'European social-democratic economic model' (Jones, 2007: 5). Britain's special relationship with the United States, combined with its Commonwealth commitments, helps explain its initial reluctance to join either the ECSC or EEC. This was also a central argument used by the French President Charles de Gaulle to veto the UK's attempts to join the EEC, both in 1963 under a Conservative Government and in 1967 under a Labour Government (Cockfield, 1994: 10; Guyomarch, Machin and Ritchie, 1998: 24; Moravcsik, 2012; Wall, 2013: 10, 24; Campbell, 2014: 187; Ludlow, 2016; Sked, 2016).

By 1972, when the UK, together with Denmark and Ireland, again applied for membership of the EEC,[1] Georges Pompidou had replaced General de Gaulle as President of France. Edward Heath was Prime Minister, and Harold Wilson was leader of the opposition. After ten years of protracted negotiations between the UK and the six founding member states, the UK was eventually welcomed into the EEC with the other two applicant countries.

Whenever new members join the EEC, they are obliged to adopt the accumulated body of Community legislation (the *acquis communautaire*) that they have had no hand in formulating. By approving the 1972 European Communities Act, the UK Parliament agreed to give EU law supremacy over UK national law, including any legislation previously enacted by the founding member states. From 1973, as insiders, successive UK governments were in a position to influence the development of European social policy during the four decades, which, it has been argued, 'witnessed a gradual expansion of EU-generated regulations … and court decisions that have seriously eroded the sovereignties of the national welfare states and overlaid it with a new mobility- and competition-friendly regime' (Leibfried, 2015: 274).

Prior to the UK referendum of 2016, two major events impacted on social policy development at EU level in the 21st century (Pollack, Wallace and Young, 2015: 478–82, 485–7): firstly, the enlargement of the EU to eight Central and Eastern European (CEE) countries, Cyprus and Malta in 2004, to Bulgaria and Romania in 2007, and to Croatia in 2013 (accession negotiations were underway with Serbia in

---

[1] The Merger Treaty, signed in 1965 and brought into force in 1967, established a Single Council and a Single Commission of the European Communities by merging the EEC, ECSC and European Atomic Energy Community (Euratom). The Merger Treaty was abrogated by the Amsterdam Treaty in 1997, the ECSC expired in 2002, and the European Community was dissolved into the European Union by the Treaty of Lisbon in 2009, with the EU becoming the legal successor to the Community. For ease of presentation, only EEC and EU are used in this paper, although technically, in 1973, the UK joined what was by then referred to as the European Communities (EC). In January 2017, the UK confirmed its intention to withdraw from Euratom.

2017); secondly, the global economic and financial crisis of 2007–8, which has been portrayed as 'the deepest recession since the 1930s', presenting major policy challenges for the EU (European Commission, 2009: iii, 82).

As with Greece, Portugal and Spain in the 1970s and 1980s, whose applications had raised fears of 'social dumping', the new waves of EU expansion in the 2000s exacerbated the dilemma that had long preoccupied the existing EU member states, namely how to reconcile widening and deepening of the Union. Governments intent on achieving deeper European integration were concerned not only that enlargement would dilute the processes of economic and political integration, but also that participation of countries with less developed economies and social protection systems would impose a heavy burden on the EU's Structural Funds and its Common Agricultural Policy (CAP), while inciting economic immigrants to flood to the West in search of employment.

UK governments have generally supported widening in preference to deepening political union. Tony Blair (2000), the then Labour Prime Minister, argued strongly in favour of enlargement to the East, proclaiming that Europe should be 'a superpower', but not 'a superstate', a concept that, as Prime Minister, Margaret Thatcher (1988) had resolutely rejected in her Bruges speech. In 2004, the UK was one of only three (with Ireland and Sweden) of the fourteen then member states agreeing to welcome migrant workers from CEE countries without submitting to a transitional period, purportedly to bolster the labour supply (HMG, 2014c: 27). The issues of freedom of movement of persons – one of the central tenets of the CEE Treaty – and of the perceived burden of EU migration on its welfare system, compounded by the refugee crisis, were to figure high on the list of topics in the debate leading up to the UK referendum in 2016 (HMG, 2014a: 77; Husain, 2016).

In addition, the global financial crisis resulted in widespread welfare retrenchment, throwing into question the very premises on which the European Social Model was constructed (Hantrais, 2007, 44–6), and generating a 'profound and even existential state of crisis in the EU' (Pollack, Wallace and Young, 2015: 485). At the same time, it justified enhanced 'EU-level coordination to avoid competitive distortions in the internal market… [and to] ease social hardship stemming from recession' (European Commission, 2009: 75, 82).

Despite its hesitation about whether to join the EEC, its reputation for contesting Council decisions and blocking EU legislation (Hix, Hagemann and Frantescu, 2016: 4), and the persistent divisiveness over Europe between, within and across its institutions over time (Armstrong and Bulmer, 1996, 285–6; Campbell, 2014: 374), the UK is generally considered to be one of the four larger member states – the other three being France, Germany and Italy – most likely to comply with EU social regulations and directives once determined, on grounds that 'laws are made to be put into practice' (Armstrong and Bulmer, 1996: 276; see also HMG, 2014d: 43, 53–4).[2] Relatively few member states have in place institutions such as the House of Commons Select Committee on European Scrutiny and the House of Lords European Union Committee (Armstrong and Bulmer, 1996: 257). These institutions are tasked with scrutinising and monitoring EU legislation, and enabling the UK to guard against 'over-implementation' (Jones, 2007: 84), an excess for which the UK has, it is claimed, been wrongly credited (Davidson, 2006: 4). Moreover, the UK has often been recognised at EU level for its 'best practices' as, for example, in 2009, when it was cited by the European Commission (2009: 76) for its adoption of a comprehensive strategy on employment as a social protection crisis measure.

The following substantive sections of the paper analyse in more detail the development of the EU's social dimension with a view to gaining a deeper understanding of the reciprocal influence of EU and UK institutions on the social policy field, the Brexit negotiations and the future of the European social integration process.

---

[2] The Commission reports annually on its monitoring of the application of EU law. The 2015 report, for example, shows that the UK was consistently less often implicated in infringement procedures than France, Germany or Italy: http://ec.europa.eu/atwork/applying-eu-law/docs/annual_report_33/com_2016_463_en.pdf

The EU's social dimension before UK membership

Although, from the outset, the EEC Treaty[3] had a 'social dimension' (Hantrais, 2007: 1–24), social policy was, and has largely remained, subordinated to economic objectives, in practice if not in political discourse. Social policy has regularly been presented as a means of supporting the achievement of a European single market rather than as an end in itself (Kleinman and Piachaud, 1993: 10). Even in the negotiations leading up to the signing of the original treaty, different approaches and priorities had to be reconciled (Collins, 1975: 3–12): for example, the French argued that the high social charges the state imposed on employers and employees in France in the best interests of the workforce, combined with the principle of equal pay for men and women, which was written into the French constitution, would put France at a competitive disadvantage in relation to the other founder member states. The French negotiators advocated a 'level playing field' of competition, implying that everybody should be playing by the same rules and with equal chances of success in the market place. They maintained that a higher level of social spending should be sought across member states to prevent those national governments wanting to introduce more generous provisions from being at a competitive disadvantage. In later years, in the British context, the Federation of Small Businesses argued that 'employment and social policy agreed at EU-level can be helpful for businesses as it levels the playing field within the Single Market' (HMG, 2014d: 43). The Germans countered the French case by contending that social charges were a result of the operation of market forces and should not be subject to regulation under EEC law, which was also argued subsequently in the UK, among others by Prime Minister Thatcher (1988) in her Bruges speech. A compromise solution was eventually reached whereby the EEC Treaty (1957: Part Three Title III, articles 117–128) included a section on social policy without stipulating how most of the provisions should be implemented.

In many respects, the ECSC was more purposefully concerned with social policy than the EEC Treaty, since it had to deal with the social impact of structural change in two major industries, coal and steel. The ECSC was, for instance, endowed with funds to cover the resettlement of displaced workers, and to promote improved living and working conditions of miners and steel workers. Basic standards were laid down for the health and protection of workers and the general public, as well as procedures for monitoring and checking their implementation.

The EEC Treaty had a more limited, albeit specific, social remit, for example in its commitment to raise standards of living while also promoting 'closer relations' between member states, and in the creation of a European Social Fund to support unemployed workers through grants for vocational training and resettlement (Part One Principles, articles 2, 3i). Obstacles to freedom of movement of persons, services and capital were to be removed (article 3c), although measures to facilitate the free movement of workers, which was being actively sought by the Italians, deliberately excluded employment in the public service, thereby limiting their scope (Part Two Chapter 1, article 48 §4). In line with the social security systems in the original member states, article 51 (Part Two Chapter 2) provided for measures to be adopted in the field of social security for workers and their dependants resident in other member states to enable them to acquire and retain the right to payment of benefits, the adoption of any such measures being subject to a unanimous vote by the Council of Ministers. Related provisions included the 'issue of directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications' (article 57), again with the aim of facilitating mobility (Corbett, 2005: 114).

In the section of the 1957 EEC Treaty devoted explicitly to Social Policy (Part Three, Title III Chapter 1), the meaning of social provisions as 'improved working conditions and an improved standard of living for workers' was expanded by reiterating the belief that such development would result not only from the functioning of the common market, as advocated by the Germans, thus favouring the harmonisation of social systems, but also 'from the approximation of legislative and administrative

---

[3] Treaty establishing the European Economic Community (EEC Treaty) signed in Rome on 25 March 1957. http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_3_antlasmalar/1_3_1_kurucu_antlasmalar/1957_treaty_establishing_eec.pdf

provisions' (article 117), as sought by the French, thereby opening the way for further development through legislation. Under the same chapter, the European Commission was tasked with a broad remit for promoting 'close cooperation between Members States in the social field', particularly with reference to employment, labour law and working conditions, basic and advanced vocational training, social security, prevention of occupational accidents and diseases, occupational hygiene and the right of association, and collective bargaining between employers and workers (article 118). The principle of equal pay without discrimination by sex was to be founded on work of equal value (article 119).

The Commission's role was to monitor and report on the progress made in these areas in consultation with the European Economic and Social Committee (EESC) (articles 193–8). The EEC Treaty established the EESC, championed by the French, to represent workers' and employers' organisations and other interest groups as an advisory body, in line with the practice in most founder member states, and also in the UK when it joined the Community.[4] Serving as a bridge between Europe and organised civil society in member states: the Committee plays a dual role as a 'facilitator' and 'institutional mentor', 'seeking to improve democratic expression in the European integration process and to bring the European Union closer to its citizens' (Westlake, 2016: 3, 94, 151, 159, 163). EESC members are required to work for the EU independently of their governments on a variety of subjects while also being able to issue opinions on their own initiative. Like other consultative committees, members of the EESC have access to decision-making arenas, but no formal voting power. They can make recommendations or offer opinions to the Commission, the Council of Ministers and the European Parliament on how to adapt legislative proposals, reflecting a 'dynamic consensus' in a 'continual quest for compromise' (Westlake, 2016: 1), aptly summarised as 'consensus-driven constantly seeking dynamic compromise' (Hönnige and Panka, 2013: 454).

Positioning the UK for EU social policy development

When the UK joined the EEC in 1973, and its leaders took their seat at the table of the European Council and Council of Ministers, the legal parameters of the social dimension were already firmly laid down. The clear intention of member states was to adopt a cooperative approach for developing social policy in support of the common market, thereby guaranteeing freedom of movement of goods, people, services and capital. Over 40 volumes of pre-existing secondary legislation had to be accepted by the three new member states (Butler and Kitzinger, 1976: 23). Membership of the EEC put the UK in a position to influence future social policy development from the inside. Each time the UK held the rotating presidency of the European Council – in 1977, 1981, 1986, 1992, 1998 and 2005 – it could set the agenda for the Council of Ministers.[5] With France, Germany and Italy, the UK was one of the member states with the largest number of votes in the Council of Ministers. It could also veto any decisions requiring unanimity. This 'obstructive' role was previously attributed to the French, designated as 'the recalcitrant of the Community' (Butler and Kitzinger, 1976: 281). For six months in 1965, President de Gaulle had refused to attend any EEC meetings. By provoking 'the empty chair crisis', he forced the other five member states to abandon plans to introduce qualified majority voting (QMV), thereby providing an early demonstration of how national governments could block European initiatives for tactical gains (Moravcsik, 2012). When the UK joined the EEC, the British and French Governments were at one over the need to preserve unanimity (Wall: 2013: 406).

In 1973, the UK also took its seat at the Committee of Permanent Representatives (COREPER I), where professional diplomats, in their capacity as Deputy Heads of Mission, assume responsibility for preparing the Council agenda for their national ministers in areas concerning mainly social and economic policy, while political, financial and foreign policy issues fall within the remit of the Heads of Mission in COREPER II. The COREPERs play a critical role in linking Brussels with national governments, in ensuring consistency of the EU's policies and working out agreements and

---

[4] The National Economic Development Council was established in the UK in 1964 and was abolished in 1992.
[5] Following the 2016 referendum, the UK surrendered its presidency due in the second half of 2017 and was replaced by Estonia.

compromises before they are submitted for adoption by the European Council (see Corbett, 2005: 102, 135–6, for examples in the area of education policy).

Under the terms of the EEC and subsequent Treaties, the European Commission has the sole right of initiative in bringing forward legislation. It represents the Community's interest and is responsible for ensuring that the provisions of EU law are enforced. Commissioners and their Directorates therefore play a primary role in policy development. The UK has had the same number of Commissioners as France, Germany and Italy (two until 2004), with one Commissioner being appointed from each of the two main political parties. Although Commissioners are nominated by member states, importantly, according to the EEC Treaty:

> 2. The members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties. ...they shall neither seek nor take instructions from any government or from any other body. … Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks. (EEC Treaty 1957: article 157)

In later years, particularly since the 1987 Single European Act (SEA),[6] researchers have found that, in line with the principal–agent relation between the Council and the Commission, 'governments sharing national and partisan ties with the Commissioner responsible for a legislative proposal are less likely to cast a negative vote'. They are also less likely to contest a proposal from their Commissioner. Nationality is found to take precedence over partisanship: 'European Commissioners seem to use the discretion the EU's legislative system grants them to promote the preferences of their home country and also – to a lesser extent – their party family.' (Killermann, 2016: 1367–8)

From the outset, British appointees have held prominent positions in the Commission in the area of social policy, both as Commissioners and as European civil servants. Although they have often brought with them experience and competence in the social field to which they have been assigned,[7] they have not generally used their appointments to promote the interests of the British Government. Noteworthy examples can, by contrast, be cited where their work in the Commission and their commitment to European values have brought them into conflict with UK politicians.

In 1973, George Thomson became one of the first two Commissioners appointed by the UK. From a position in Harold Wilson's Cabinet, he went to Brussels as Commissioner for Regional Policy, but he moved away from politics during his time at the Commission. The UK, under both Labour and Conservative Governments, had insisted on the need to implement an EEC regional policy as a *quid pro quo* for the CAP to assist regions of high unemployment and industrial decline, which was also a concern of the Germans (Wall, 2013: 448, 473), but regional policy had yet to be developed.

Roy Jenkins, the pro-marketeer and advocate of political union, was appointed as the only UK President of the Commission from 1977–81 at a time when social policy was low of the agenda. He had served as Deputy Leader of the Labour Government but resigned in 1972 when he found himself at odds with his party over Europe. He subsequently accepted the Presidency of the Commission when he failed to become Prime Minister. Jenkins went to Brussels, in his own words, as a 'politician', with the intention of being 'a more active President than his recent predecessors', but without a clear agenda. He was hoping to be able to help his country by what he could do while in Brussels as much as by anything he could do in the UK, only to find himself, to his dismay, acting as broker in Margaret Thatcher's

---

[6] Single European Act (SEA), signed in Luxembourg on 17 February 1986 and at The Hague on 28 February 1986, *OJ* L169. http://www.avrupa.info.tr/fileadmin/Content/EU/bir_bakis/SingleEuropeanAct-TekSenet.pdf

[7] Shan Morgan represented the UK on COREPER I from 2012 to 2016. She was well qualified for such as a position. Her early career focused on employment and social affairs policy in the UK Department of Employment, followed, among others, by a secondment to the European Commission from 1984–7 to work on long-term unemployment policy and local economic development. She was appointed to the UK Representation in Brussels as the Counsellor responsible for social, environmental and regional affairs, prior to taking up a position in the Diplomatic Service in 2006 as Director European Union in the Foreign Office, with responsibility for negotiations on the Lisbon Treaty and management of the UK parliamentary process of ratification.

budget negotiations, and 'for the first time seeming to play a British hand', to the extent that he was portrayed in the French press as a 'British agent' (Campbell, 2014: 479, 531).

Prime Minister Thatcher appointed the British Labour politician and lawyer, Ivor Richard, as Commissioner for Employment, Social Affairs, Education and Training from 1981–5. He had voted in favour of joining the EEC in 1971 when the Labour Party was anti-European. His appointment at a time when the European Council was concerned about high levels of unemployment provided him with an opportunity to shape the direction of the EC's social and employment policy by giving a new impetus to social affairs (Drake, 2000: 57), an area which the British Government did not consider as a rightful European competence.

Equally, if not more, importantly for social affairs in this period, albeit indirectly, was the appointment by Prime Minister Thatcher, in 1984, of Lord Cockfield as Senior UK Commissioner and Vice-President of the Commission. At the time, he was a member of the Conservative Government. His appointment was welcomed by other member states as an opportunity for the UK to make 'a positive contribution to the Community'. However, his achievement as the architect of the SEA brought him into conflict with the Prime Minister, for he firmly believed that Commissioners should base their proposals on what they thought was 'right' and not on what they thought 'member states would accept'. By pursuing this conviction, he was to demonstrate that, for British Commissioners, unlike their continental counterparts, 'a ticket to Brussels tends to be a one way ticket', especially if they respect the principles laid down in article 157 (Cockfield, 1994: 24, 44, 111).

European civil servants are not political appointees; they work independently of their national governments. The European Commission has drawn a number of prominent permanent officials from the UK in the social policy area. The Welshman Hywel Ceri Jones, described as a 'policy entrepreneur' in the field of education (Corbett, 2005: 17), spent 25 years in Brussels. He began as Head of Division for Education and Youth Policies within the Directorate General for Research, Science and Education (DGXII) working to the Director for Education and Youth Policy (1973–80). In 1980, before leaving the Commission, Jenkins gave approval for Jones's Directorate to be transferred to the Directorate General for Social Affairs (DGV), where he worked with the newly appointed UK Commissioner, Ivor Richard, a fellow Welshman. This was an environment affording greater opportunities to link education to treaty-based activities after what for Jones had been a frustrating period in the years 1977–80. The Danish and British Governments had blocked efforts to get EC action on education, on grounds that the Commission was exceeding its mandate. Once in DGV, Jones played a key role in advancing EU education policy and supporting the successful drive for the Erasmus Decision 1987 (Corbett, 2005: 108–11, 154–6). As a result, education became independent of the Social Affairs Directorate in 1988 when Jones became Director of the Task Force Human Resources, Education, Training and Youth. Education was given its own DG in 1995, but by that point Jones had moved on to become Deputy and then Acting Director-General for Employment, Social Policy and Industrial Relations (1993–8),[8] where he was put in charge of the European Social Fund (Personal communication, 2017).

During his 25 years at the Commission, Hywel Ceri Jones succeeded in ensuring that education and training should become a component in social action in a context where education was seen as a matter for national governments, and the Commissioner, Ralf Dahrendorf, considered it neither realistic nor necessary to seek to promote harmonisation. Jones was, however, unable to avoid being suspected of adopting a 'semi-clandestine' or 'devious approach', which brought the Commission into conflict with both the Danish and British Governments (Corbett, 2005: 80–1, 97–8, 110).

---

[8] In response to Commissioner Prodi's request during his term in office (1999–2004) for more readily understandable acronyms for the Directorates-General to replace the previous system based on Roman numerals, DGV, the DG for Employment, Industrial Relations and Social Affairs became DG EMPL. Over the years, often with an Irish Commissioner in charge, the title of the DG has evolved. Industrial Relations was dropped in 1999, and was replaced in 2004 by Equal Opportunities, which in turn changed to Inclusion in 2010, reflecting the shifting priorities of Commissioners from the mainstreaming of gender to that of social inclusion (Hantrais, 2007: 135, 191).

The UK acquired another, potentially independent, means of influencing social policy through its membership of the EESC. The UK had the same number of EESC members as France, Germany and Italy, appointed by the organisations and sectors they represent (employers, workers, various interest groups, including the social economy sector). When the UK, Ireland and Denmark joined the Community, the membership of the EESC rose to 144, and eventually achieved its maximum of 350 when the EU reached 28 member states (Westlake, 2016: ix, xii, 49). Although the UK's trade unions originally boycotted the EESC (Butler and Kitzinger, 1976: 22; Jenkins, 2010), after the 1975 referendum on whether to remain in the EEC, the UK's EESC members began participating actively and, in the 1980s, they supported Jacques Delors's objectives by bringing forward proposals for social legislation that were being blocked through other channels (Jenkins, 2010; Drake, 2000: 115).

The shaping of EU social policy during UK membership

In opposition the Labour Party had turned against the EEC. On their return to office in 1974, in an attempt to hold the party together and remain in office, Harold Wilson sought to renegotiate the terms of the accession deal obtained by the Conservative Government prior to holding a referendum on continued EEC membership (Cockfield, 1994: 13; Wall, 2013: 50, 414. 511). Despite relatively strong support from the electorate in the 1975 referendum, when, with a 66.5 per cent turnout, 67.2 per cent of those who voted opted to remain in the EEC, both major political parties continued to be internally divided over 'Europe' (Fontana and Parsons, 2015: 90–3). Eurosceptics in each of the parties agreed that the UK, which was, with Germany, the only net contributor to the Community budget, was paying more than its fair share. A further concern for both political parties was the disproportionate cost of the CAP, which accounted for 90 per cent of the EEC's budget when the UK joined in 1973 and had been driven primarily by French national interests, in line with its protectionist policies, resulting in the UK contributing relatively large amounts to support agriculture in other member states (*Economist*, 2005; Wall, 2013, 40, 425; Roederer-Rynning, 2015: 197; Packer, 2017: 1).

Like Conservative opponents to the EEC, Prime Minister Wilson feared the loss of economic sovereignty, but he also wanted to protect the freedom of governments to engage in socialist industrial policies. The risk of losing national sovereignty was to be one of the issues most hotly debated, then and in later years, by Labour and Conservative leaders (Cockfield, 1994: 9; Wall, 2013: 440; Stephens, 2015). Under the accession rules, the British Parliament had voted in 1972 to abandon sovereignty in cases where British and European law conflict, an issue that proved highly relevant for social policy. The protection of national sovereignty and of the national interest was closely associated with the refusal to be bound to the commitment in the EEC Treaty to move towards greater European integration in the social field, albeit under the guise of closer cooperation, as argued in this section.

Relative acquiescence in the social field during the 1970s

By 1973, when Denmark, Ireland and the UK, with their different approaches to the funding and organisation of social protection systems (Hantrais 2007: 42), joined the EEC, social policy and the role of the social partners in promoting closer cooperation in the social field through the legislative process had yet to be developed. Adopting a cautious approach, in 1974 the Council of Ministers reiterated that economic expansion was not to be seen as an end in itself but should result in an improvement of the quality of life, which might be achieved with support from social policy. Moving on from the text of the EEC Treaty, the Council Resolution concerning a social action programme provided for action in three areas, primarily concerned with the working environment. As laid down in the Preamble (European Council, 1974), the objective was 'to achieve full and better employment, the improvement of living and working conditions and increased involvement of management and labour in the economic and social decisions of the Community, and of workers in the life of undertakings'.

Since the EEC Treaty did not require a social programme, and the Community did not have direct powers of intervention in the social field, its responsibility being confined to promoting cooperation between member states, action had to be justified on political rather than legal grounds. In keeping with

the priorities of the EEC Treaty, the principles of free movement of labour and equalisation of competitive conditions between enterprises were stressed, and the importance of the European Social Fund was reiterated as a means of palliating the uneven effects of economic growth on weaker sectors of the population.

During a period of economic crises, the 1970s saw a spate of actions in the areas of education and training (Corbett, 2005: 11), health and safety at work, workers' and women's rights, ageing and poverty, leading to the establishment of a number of European networks, observatories and agencies designed to stimulate action and monitor progress in the social field, most notably the European Foundation for the Improvement of Living and Working Conditions, founded in 1975 in Dublin as a tripartite agency. In taking forward the action programme, and in subsequent years, the Commission was to rely heavily on British social policy experts to coordinate the monitoring work of many of the European networks and observatories, particularly in the areas of family policy, parental leave, poverty and social exclusion, ageing and older people (Hantrais, 2007: 77, 104, 129, 158, 187).

During Roy Jenkins's term as President of the European Commission, these developments in social policy did not raise serious concerns for British governments, except when the Commission was believed to be venturing into areas where it did not have a treaty mandate (Corbett, 2005: 103). In his final months as Commissioner in 1980, in an attempt to counterbalance the burden of the CAP, Jenkins proposed to extend Community activity into new areas, including social and regional policy, in which the UK could expect a more equitable return, but he left the Commission before initiating any effective action in these policy domains (Campbell, 2014: 535).

Resistance as social policy moves up the European agenda in the 1980s

By 1981, with Ivor Richard as Commissioner for Social Affairs, François Mitterrand as President in France, and Margaret Thatcher as Prime Minister in the UK, pressure was mounting, particularly from the French, for a more deliberative social policy as the means of strengthening social cohesion, on the same basis as economic, monetary and industrial policy. François Mitterrand's approach to Europe, like that of previous French Presidents, was ambivalent: 'he wanted a strong Europe without giving too much power to the European institutions', for which he found a valuable ally in Jacques Delors and a friendly partner in Germany's Chancellor Helmut Kohl (Guyomarch, Machin. and Ritchie, 1998: 28). As the member states recovered from a period of economic recession, employment moved to the heart of proposals for European social policy. The dialogue between management and labour intensified the role of the social partners,[9] as the Commission strongly advocated cooperation and consultation on the social protection of workers. In a Memorandum, the European Commission (1982) prepared the ground for consultation with the social partners over greater flexibility in the use of manpower and the issuing of directives on part-time and temporary work, a shorter working life and flexible retirement. It fell to Ivor Richard (1983) to present a carefully balanced and consensual case for the reduction and reorganisation of working time as an instrument of employment policy, counter to the UK's position.

Lord Cockfield (1994: 24), with his ambition of 'making a positive contribution to the development of the Community', took up his appointment in Brussels at the stage in 1985 when Prime Minister Thatcher was celebrating her 'victory' at the Fontainebleau Summit, at which she finally obtained the UK's budget rebate (Moore, 2015: 381, 407). Jacques Delors entrusted Lord Cockfield with the design, drafting and execution of the SEA, which was signed in 1986, with support from Margaret Thatcher's Conservative Government. The heads of government set a timetable for completion of a fully

---

[9] The importance of the social partners and social dialogue was affirmed in the Agreement on Social Policy, and later appeared as article 152 in the Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (*OJ* C 83/01 30.3.2010), which stated: 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.'
http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:C2010/083/01&from=EN

operational internal market by 31 December 1992. Action in the regional and social field was to be taken 'in parallel with progress on the Internal market', and in 1988, Council agreed to double the Structural Funds (Cockfield, 1994: 46, 48), as counselled in an opinion from the EESC (1987: 2.4.2).

The SEA required revisions to the existing treaties, the introduction of new powers in the area of social policy, improvement of the decision-making capacity of the Council of Ministers, and the strengthening of the powers of the European Parliament, which had been elected for the first time in 1979 (Novak, 2016). The SEA extended the EESC's field of consultation in respect of employment, labour law and working conditions, vocational training, social security, occupational accidents and diseases, the right of association, and collective bargaining, providing a basis for social dialogue at EU level (Westlake, 2016: x). The SEA introduced QMV, previously opposed by General de Gaulle in his 'principled opposition to supranationalism' (Guyomarch, Machin. and Ritchie, 1998: 26; Wall, 2013: 87), and reluctantly accepted by Margaret Thatcher, to replace many unanimous decision-making processes. In the negotiations leading up to the signing of the SEA, Thatcher was concerned that, if QMV was allowed for health and safety issues, not only would it impose a heavy burden on small businesses, but it could, subsequently, also be extended to other policy areas, thereby further infringing national sovereignty (Moore, 2015: 406). Member states agreed not to extend the competence to make legislation by QMV to the social field (SEA, 1986, article 18). By common accord, social security and social protection rights and interests of employed persons were to remain the preserve of national governments and subject to unanimity at EU level. In the event, however, QMV for health and safety was to facilitate the adoption of a raft of EU social legislation that had stalled during the 1980s, in no small part as a result of opposition from within the UK, including from the trade unions (Johnson, 2016: 113).

When the changes in the SEA were incorporated into the Treaty on European Union (TEU),[10] signed in Maastricht in 1992, in what could be seen as a balancing factor and concession to recalcitrant governments, the Committee of the Regions was formally added to the panoply of EU institutions. The Committee's role is more explicitly political than that of the EESC, although as a consultative body, its influence is limited (Hönnige and Panka, 2013: 452). Like France, Germany and Italy, the UK had 24 elected members representing local tiers of government, where much of policy is implemented. The Committee of the Regions must be consulted on any policy proposals concerning local or regional affairs, including economic and social cohesion, education, employment, health, social policy, vocational training and youth policy, and can intervene directly in the legislative process through the adoption of legislative amendments within its opinions (Westlake, 2016: 99). The UK was, therefore, technically in a strong position to contribute to the decision-making process in these areas.

UK opposition to Jacques Delors's conception of 'social Europe'

When Jacques Delors began the first of his three terms as President of the Commission in 1986, the stage was set for hardening attitudes to play out in the social field as he launched his concepts of 'social Europe' and the 'social dialogue', with support from the EESC, the British trade unions and Labour party, while the UK's Conservative Government sought to stay his hand. An address by Delors to the British Trades Union Congress (TUC, 1988), which had previously been bound by a 1981 Resolution calling on the UK to withdraw from the EEC, was deemed instrumental in encouraging a much more pro-European outlook on the British left, even described as 'epoch-changing' (Jenkins, 2010). This action provoked Prime Minister Thatcher into making her Bruges speech, in which, according to Delors, 'she had unravelled the marriage contract' of the SEA (Drake, 2000: 116). By the early 1990s, however, due in no small part to the pressures exerted by the Commission under Delors's leadership, the social dimension had moved irrevocably up the European agenda (Hantrais, 2007: 5–7).

In 1988, Delors and the Commissioner in charge of Social Affairs, Manuel Marín, asked the EESC to

---

[10] Treaty on European Union, signed in Maastricht on 7 February 1992 (version prepared by the General Secretariat of the Commission and Council in 1992).
https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf

engage in a general discussion on the possible content of a 'Community Charter of Fundamental Social Rights', offering the EESC an opportunity to provide 'a clear message on the future of the Community and on the fundamental values that it intends to promote'. Its opinion 'defined the foundations of a social Europe, insisting on the effective assurance of social rights in the Community legal order, a social dimension to the internal market, and a Community-level social dialogue' (Westlake, 2016: 151).

Much of the debate at that time focused on whether the Community and its member states were aiming for a maximum or minimum level of social provision. States intent on defending what they considered a higher level of social protection feared that the internal market would result in a downward alignment of social security allowances and benefits towards the lowest common denominator in a race to the bottom, a fear expressed at the outset by the French, as noted above, and in later years by both UK businesses and British trade unions (HMG, 2014d: 42, 53).

While the new provisions in the SEA were being negotiated, at a meeting in Strasbourg in December 1989, the heads of all member states, with the exception of the UK, adopted the Community Charter of the Fundamental Social Rights of Workers' (hereafter referred to as the Community Charter),[11] heralded as the social dimension of the SEA.[12] Margaret Thatcher refused to sign up to the Community Charter on grounds that it would lead to over-regulation of the labour market and discourage the creation of new jobs, arguing that national governments should control employment legislation. Echoing the terms of the 1974 Council Resolution (European Council, 1974), the preamble to the Community Charter stated resolutely that 'the same importance must be attached to the social aspects as to the economic aspects and ..., therefore, they must be developed in a balanced manner'. As in the Social Action Programme, most clauses in the Community Charter referred implicitly or explicitly to workers rather than citizens, reflecting the original emphasis on employment as an integral component of social policy in line with the 'continental' welfare model, based on corporatist rights and income-related insurance contributions (Hantrais, 2007: 37–44; Booth, Persson and Scarpetta 2011: 13).

The principles set out in the Community Charter, with strong support from the TUC (Jenkins, 2010), were reiterated in the negotiations leading up to the signing of the TEU in 1992. As Thatcher's successor when she was forced out of office in 1990, and in an attempt to reach a compromise within the Conservative party, the then Prime Minister, John Major, negotiated an opt-out for the UK from what was referred to as the 'Social Chapter', and which, on the UK's insistence, was removed from the body of the Treaty. The renamed 'Agreement on Social Policy' was therefore annexed to the TEU. The Community Charter later acquired official binding force for those who had signed up to it through the Protocol on Social Policy appended to the TEU. Whereas Charles de Gaulle's empty chair tactics had prevented the EEC from moving forward, by including a separate Protocol on Social Policy in the TEU, the other eleven member states could proceed with the Community Charter and make decisions without taking account of the UK's views. Arguably, the content of the TEU thereby 'exacerbated differences within political parties and governing majorities over the principles and methods of European integration' (Drake, 2000: 122).

The EESC had requested that the Community Charter should be accompanied by a new social action programme of directives and other instruments mainly based on QMV, and applicable in all twelve member states. In March 1992, a month after the signing of the TEU, an information report from the EESC was adopted setting out its far-reaching concept of 'the citizens' Europe', comprising:

> a 'civic Europe'; a wider and deeper Europe; a social Europe; a Europe of higher standards, achievement and protection; a Europe of free thought, free movement, freedom of information and the right to privacy; a Europe of economic and social cohesion; a 'young Europe'; a Europe of solidarity between generations and citizens; and a Europe of solidarity with the rest of the world. (Westlake, 2016: 151)

---

[11] Community Charter of the Fundamental Social Rights of Workers, adopted in Strasbourg on 9 December 1989 by the member states, with the exception of the United Kingdom, *OJ* C 013 12.02.1974. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31974Y0212(01)

[12] The Community Charter is not to be confused with the Charter of Fundamental Rights of the European Union, which had a much wider remit and did not come into effect until 2009 (HMG, 2014a).

Decisions on implementation procedures were, in any case, left to individual member states, with action in the social area constrained by the principles of subsidiarity and proportionality, which apply to all Treaty provisions (HMG, 2014e). A new article 3b in the TEU (transposed into the Treaty of Lisbon in 2007), stated that:

> … in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (Treaty of Lisbon, 2007, article 5 §3)[13]

In addition, in accordance with the principle of proportionality, 'any action by the Community shall not go beyond what is necessary to achieve the objectives of [the] Treaty'. The centrality of the subsidiarity principle both for the UK and the EU was demonstrated when, at a joint press conference with Jacques Delors, John Major (1992) declared that, together, they were looking for ways of enshrining the principle of subsidiarity 'as a natural part of the Community's instincts … [and] as a way of life within the Community'.

Blocking and unblocking of EU social measures

An important aim in the Community Charter was to bring about improvements in the duration and organisation of working time. Since Directives concerning social security and social protection required unanimous voting by the Council of Ministers, they could be blocked by the UK, whereas legislation concerning health and safety at work could henceforth be adopted using QMV, as anticipated by Prime Minister Thatcher. A raft of proposals concerning working time and working arrangement, which had stalled since the early 1980s, were tabled between 1989 and 1997 as health and safety measures under QMV.[14] Since it was no longer able to prevent acceptance of such measures when the Council of Ministers adopted Directive 93/104/EC on Working Time (WTD) by QMV, the UK Conservative Government instituted proceedings before the Court of Justice of the European Union (CJEU) to challenge the WTD's validity on grounds that the wrong legal base had been used. The UK argued that the WTD went beyond the concept of the working environment and, thereby, constituted a misuse of the Council's powers (Burrows and Mair, 1996: 279–83).

The CJEU rejected the UK's challenge, but the UK Conservative Government refused to accept the CJEU's ruling, and did not proceed to comply with the WTD, which should have been implemented by November 1996. In his election manifesto, Tony Blair (1997), as its leader, committed the Labour Party to signing the Social Chapter, if elected, stating that 'the Social Chapter cannot be used to force the harmonisation of social security or tax legislation'; participation would be used rather to 'promote employability and flexibility, not high social costs'. The change of government in 1997 brought the ideological shift needed for the WTD to be implemented, and it was transposed into British law in 1998

---

[13] Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community *OJ* 2007 C 306/01 17.12.2007, Common Provisions. http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/9-article-5.html

[14] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, *OJ* L 183/1 29.06.1989.
Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, *OJ* L 206/19 29.07.1991.
Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, *OJ* L 288/32 18.10.1991.
Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348/1 28.11.1992.
Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, *OJ* L 307/18 13.12.1993.
Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Councils procedure in Community-scale undertakings for the purposes of informing and consulting employees, *OJ* L254/64 30.09.1994.

when the Community Charter was also adopted. Paradoxically, although the Labour Government implemented the WTD within less than eighteen months, as a result of the Conservative Government's delaying tactics, the implementation deadline was exceeded by almost two years, thereby triggering the initiation of infringement proceedings against the UK (Falkner *et al.*, 2004: 6–7).

The social partners took advantage of the temporary absence of the UK Government from the negotiating table and of their own new found powers to bring forward framework agreements, requesting that the Commission should propose, and Council should adopt, measures on part-time and fixed-term work, and parental leave.[15] True to its manifesto commitment, the Labour Government opted into the Social Chapter in 1997. The Agreement on Social Policy was duly incorporated into the main body of the Treaty of Amsterdam, amending the TEU[16] and the consolidated version of the EEC Treaty, thereby legally endorsing the commitment of all member states, including the UK, to develop the social dimension as an important component in the process of European integration.

Accordingly, an amended version of the 1997 directive on part-time work was adopted in 1998, extending provisions to the UK. By the deadline of June 1998, few member states had met the formal requirement for transposition of the directive on parental leave, but all except Greece, Ireland, Luxembourg and the UK already offered statutory parental leave at the end of 1997. The Labour Government implemented the directive in 1998 by setting a baseline of rights, leaving employees and management to negotiate their own more generous arrangements (Bagilhole and Byrne, 2000).

In his capacity as Deputy Director-General of DGV, in a speech to the Whitehall & Industry Group, Hywel Ceri Jones (1997: 2–3) countered the claims that EU law was 'choking employers and businesses to death', and imposing rigid 'harmonisation', as argued by the British Government. He cited the parental leave directive as one of only two pieces of legislation actually adopted under the Social Protocol. He maintained that the Commission had got the balance right in the Social Action Programme by pursuing legislation when it was 'appropriate, necessary and useful, while not seeing legislation as the only or even invariably the most important instrument of policy'.

Soft EU law and social mission creep

The absence of the UK from the negotiating table for social affairs between 1989 and 1997 did not prevent the Single European Market from moving forward in other respects with strong support from the Conservative leadership, who saw the free movement of goods, services, persons and capital as key components of the EEC, while continuing to oppose political and social integration (Moore, 2015: 402). During the 1990s, the Commission added what was intended to be a less controversial instrument – the open method of coordination (OMC) – to the EU's arsenal in the social field, indicating that it was seeking to circumvent confrontation with member states. The 2001 European Governance White Paper argued that the OMC added value at EU level when little scope existed for legislative solutions

---

[15] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, *OJ* L 14/9 20.01.1998; Council Directive 98/23/EC of 7 April 1998 on the extension of Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland, *OJ* L 131/10, 05.05.1998.
Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, *OJ* L175/43 10.07.1999.
Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, *OJ* L 145/4 19.06.1996; Council Directive 97/75/EC of 15 December 1997, amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, *OJ* L 10/24 16.01.1998.
[16] Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, European Communities, 1997.
http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf

(European Commission, 2001: 18). The method was based on the principles of subsidiarity, convergence through concerted action, mutual learning, an integrated approach and management by objectives (Adnett and Hardy, 2005: 28). National governments were required to cooperate in agreeing guidelines, setting common targets based on indicators and benchmarks, developing national action plans and exchanging best practice. Regular monitoring of progress was instituted to ensure targets were met, allowing member states to compare their efforts and learn from the experience of others, without incurring formal sanctions for non-compliance; naming and shaming were expected to be a sufficient incentive.

The OMC was first applied in the Employment Guidelines in 1998 (*OJ* C30/01 28.01.1998) as a means of strengthening social inclusion through employment.[17] By 2006, a streamlined version of the OMC had been extended to social protection systems, social ex/inclusion, education, research, immigration, pensions, health and long-term care. This new instrument for tackling social concerns, described as 'third way' social policy (Roberts and Springer, 2001: 3), was to serve as both a supplement to hard law and a substitute for it (Trubek and Trubek, 2005: 363), capable of supporting 'system adaptation' (Ferrera, 2005: 247).

Much of the debate about the OMC in the first decade of the 2000s focused on an analysis of its capacity to influence national policies by disseminating ideas and 'legitimatory discourses', justifying policy reform and providing policy frames, but shaped and restrained by internal and external pressures on welfare states (Büchs, 2009: 2). At EU level, OMC was credited with the capacity to strengthen social Europe by diverting attention from economic to social policy (Büchs, 2009: 12). By contrast, in the context of the failure of the European Constitution (see below), some observers described OMC as 'inadequate or insufficient', stating that the time had come for a reform of 'soft coordination' if social Europe was to move forward (Ferrera, 2006: 274). When, in 2010, the European Parliament carried out an analysis and evaluation of the methods used and the results achieved in the Lisbon Strategy for 2000–10, the opinions of different policy actors about OMC processes ranged from 'support to scepticism'. The OMC was praised for having brought about 'stable and organised processes of mutual understanding and exchange of experiences', but criticised for the 'lack of strategic focus and its multiplication of objectives, targets and coordination processes' (European Parliament, 2010: 16, 22, 49). Although, in the UK, the OMC was broadly welcomed by the UK Government and industry as an alternative to hard law in the social policy field, since it left detailed policy implementation to member states, the TUC criticised non-binding measures such as the OMC and recommendations on minimum standards as insufficiently 'robust' (Jenkins, 2010) and 'inadequate' (HMG, 2014d: 65).

By 2012, social OMC appeared to have been 'left in abeyance', leading to the conclusion that 'the Lisbon Treaty (see below) had done little to bolster the EU's social policy toolkit' and that 'Europe 2020's social dimension will lose out in the competition for political time and attention' (Armstrong, 2012: 296, 298). A later analysis (Bekker, 2015) of the impact on the social domain of stricter economic governance in the coordination of soft and hard law mechanisms, made necessary by the economic and financial crises of 2007–8, showed how Eurozone member states had come under greater pressure to comply with EU hard law targets, which entailed financial sanctions for non-compliance. The country-specific recommendations for national policy reform also affected non-Eurozone countries, including the UK. From being confined to soft law, the Commission's recommendations progressively took on mixed hard and soft legal bases, as for example in the area of pensions, potentially resulting in rivalry and the subordination of softer to harder sanctions (Bekker, 2015: 5, 6–7).

---

[17] According to the 2003 Annex to the Employment Guidelines 'In synergy with the open method of coordination in the field of social inclusion, employment policies should facilitate participation in employment through promoting access to quality employment for all women and men who are capable of working; combating discrimination on the labour market and preventing the exclusion of people from the world of work.' (European Council, 2003: 17)

Social policy consolidation through treaty reform

During the late 1990s and early 2000s with a seemingly more acquiescent government in power in the UK, the Treaty of Nice was adopted at the European Council meeting in December 2000, ratified in 2002 and brought into force in 2003.[18] The new Treaty introduced revisions to the EU's decision-making procedures that would have implications for social policy development in the UK. In paving the way for enlargement, the Nice Treaty proposed a re-weighting of votes to ensure that the influence of the smaller countries would not become disproportionate to their size. The Treaty extended QMV and applied the codecision procedure with the European Parliament, which the Thatcher Government had also opposed, to anti-discrimination measures, mobility and specific actions for economic and social cohesion. The Commission's role in social affairs was reinforced by establishing a Social Protection Committee, with two members for each country, to monitor the social situation, promote exchange of information and prepare reports and opinions. In a section on the European Social Agenda, the Nice Presidency Conclusions stressed the 'indissoluble link between economic performance and social progress', seen as 'a major step towards the reinforcement and modernisation of the European social model' (European Parliament, 2000: IV A.13).

In preparation for enlargement to the East, a Convention had been set up at the Laeken European Council meeting in 2001 to draft a Constitutional Treaty for Europe. The intention was to incorporate the Charter of Fundamental Rights (hereafter the Charter) of the European Union,[19] which had been finalised during the Nice summit, thereby providing a clear statement of the rights of all Europeans, not only workers, in line with the EESC proposal for a 'citizens' Europe'. With due regard to the principles of subsidiarity and proportionality and, in the case of social security and social assistance (article 34), 'in accordance with Community law and national laws and practices', the Charter extended the boundaries of EU social policy beyond the workplace to the reconciliation of family and professional life, the protection and care of children and older people, social and housing assistance, preventive health care, and religious belief and practice (Hantrais, 2007: 248).[20]

The aim was to consolidate the Union's commitment to the values of human dignity, freedom, equality and solidarity, while continuing to respect the diversity of national cultures and traditions (HMG, 2014b). Like the 1989 Community Charter, the 2000 Charter again took the form of a solemn proclamation, which meant that, initially at least, it was not legally binding. The UK had opposed proposals to give the new Charter legal force on grounds that it might create additional economic and social rights in EU law (Black, 2003). UK businesses strongly criticised the draft Treaty for being so heavily influenced by the 'anti-competitive European Social Market model', which was considered alien to the 'Anglo-Saxon entrepreneurial model' (Lea, 2003).

The draft Constitutional Treaty was submitted at the European Council meeting in Rome in 2003, and signed on 29 October 2004 by the 25 member states and three candidate countries,[21] but was blocked when the French and the Dutch electorates failed to ratify it in national referenda held in May and June 2005. Although the UK was ready to accept a legally binding rights charter during the negotiations, the

---

[18] Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2001/C 80/01 10.03.2001. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12001C/TXT&from=EN

[19] Charter of Fundamental Rights of the European Union, *OJ* C 364/1 18.12.2000. http://www.europarl.europa.eu/charter/pdf/text_en.pdf

[20] In 2016, the 'social' vulnerabilities identified as requiring action in the Council's OMC Recommendation for the UK were confined to the imbalance between housing supply and demand, and the availability of affordable, high-quality, full-time childcare (European Council, 2016b), two issues that the UK had long been seeking to address irrespective of the advice from the Commission.

[21] Treaty establishing a draft Constitution for Europe, signed in Rome on 29 October 2004, *OJ* C310 16.12.2004. https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_establishing_a_constitution_for_europe_en.pdf

failure of France and the Netherlands to ratify the Treaty meant that the UK did not, in effect, need to hold a referendum on the subject.

The failed Constitutional Treaty and the TFEU were replaced by the Lisbon Treaty (initially known as the Reform Treaty),[22] which was signed in 2007 and entered into force in 2010. Relatively few amendments were made to the Constitutional Treaty, and the 2000 Charter of Fundamental Rights was not removed from the Lisbon Treaty, thereby enabling it to become legally binding. Poland and the UK, however, secured a protocol to the Treaty relating to its application in their respective countries. The intention of Protocol 30 (TFEU 2010/C 83/01, article 1) was to prevent the CJEU or any court of Poland or the UK from being able to find 'that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms'. Unlike the Agreement on Social Policy in the TEU, the Protocol to the Lisbon Treaty did not constitute an 'opt-out' from the application of the Charter (HMG, 2014d: 26).

Ever closer cooperation in the areas of social security and social protection

Although the OMC had been extended to social protection systems in 2006, the area of social protection and social security remained subject to unanimous voting and to the subsidiarity principle. Gradual progress was being made, after more than 50 years, in developing, amending and implementing what were the EEC's earliest regulations, and the most binding form of secondary legislation available to member states, on social security arrangements for migrant workers. The EEC Treaty affirmed that:

> The Council, acting by means of a unanimous vote on a proposal of the Commission, shall, in the field of social security, adopt the measures necessary to effect the free movement of workers, in particular, by introducing a system which permits an assurance to be given to migrant workers and their beneficiaries. (EEC Treaty, 1957: article 51)

The following year, Regulations Nos 3/58, 4/58 (*OJ* 561/58 16.12.1958) addressed the question of social security for migrants seen as a key to freedom of movement within the EEC (Hantrais, 2007: 212–4, 234–5). By 1973 when the UK joined the EC, five regulations had already been adopted on social security provisions. Unrelenting efforts have since been pursued to 'coordinate' existing national rules, but with the caveat that 'This regulation on the coordination of social security systems does not replace national systems by a single European system' (Eur-lex, 2004, referring in this instance to Council Regulation (EC) No 883/2004 on the coordination of social security systems).[23] In 2016, yet further amendments were being proposed to the already extraordinarily detailed and complex regulations on social security coordination, by updating EU rules in the areas of unemployment benefits, long-term care benefits, access of economically inactive citizens to social benefits and the social security coordination of posted workers (FreSsco, 2016).

Referring to the proposals in the Community Charter of 1989 and reiterating the wording of article 136 of the 1997 consolidated version of the TEU, article 153 in the post-Lisbon consolidated version of the TFEU[24] stated that:

> the European Parliament and the Council may adopt measures designed to *encourage cooperation* between Member States through initiatives aimed at improving knowledge, developing exchanges of information and

---

best practices, promoting innovative approaches and evaluating experiences, *excluding any harmonisation* of the laws and regulations of the Member States [our emphasis]. (TFEU, 2012: article 153 §2a)

Article 153 §2b confirmed that unanimity is required in the field of social security and social protection, and article 153 §4 made clear that the provisions 'shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof'. The term 'harmonisation' had been used with reference to the social systems in the original EEC Treaty (1957: article 117), which was in force when the UK joined the EEC. As noted above, at that time harmonisation was expected to be favoured by the functioning of the common market, whereas the Commission was to promote 'close cooperation' (article 118) in the field of social security. The deliberate exclusion of 'harmonisation' from the TFEU could be interpreted as confirmation that binding legislation requiring member states to cede national sovereignty over social security was no longer on the table, intimating that the UK was far from being the only country to resort to its blocking powers over the years to protect national interests in this area of policy.

Further endorsement of the UK's position can be found at the Council meeting of 18–19 February 2016 when, as part of a package of changes to EU rules, Prime Minister Cameron's proposal to operate an 'emergency brake' (officially an 'alert and safeguard mechanism') received a favourable hearing. The aim was to limit access to non-contributory in-work benefits for new EU migrants for countries experiencing an inflow of workers of 'exceptional magnitude'. Other member states were sympathetic to the UK's concerns and ready to agree to restrict rights to social protection for mobile workers and their families across member states in specific circumstances (European Council, 2016a: 23).

EU social policy as an area of contested competence

This paper has relied heavily on examples of the relationship between the development of an EU social dimension and the UK's membership of the EU from the perspective of targeted social policy measures to illustrate how national governments have sought to resist the loss of policy authority, and resorted to trade-offs and compromise solutions to limit the EU's competences. Among the areas in the social field where both the EU and the member states may act together (shared competence), and where action by the EU does not prevent member states from acting of their own accord (supporting competence), social and employment policy has proven to be one of the most controversial, not least within the UK (HMG, 2014d: 9–10, 39).

Reference has been made in this paper to the CJEU, but without commenting fully on the role it has played in building social Europe. Analysts (for example Leibfried, 2015: 274) have estimated that, since the 1960s, the CJEU has delivered almost 1,400 decisions on social policy topics, with free movement for persons and their social security systems accounting for about two-thirds of the total; social policy is second only to agriculture for the number of cases brought before the courts for treaty violations. The UK arrives in fourth place after Germany, Belgium and the Netherlands for the number of preliminary CJEU rulings in social policy between 1954 and 2012, mainly due to its particularly heavy caseload on workers' protection and equal treatment. The UK falls to eighth place, with the Netherlands, for the number of referrals to the CJEU by the European Commission. Scores are highest in Belgium and Italy for breaching rules on the freedom of movement of workers; in France and Belgium for social security for migrant workers; and in Italy for workers' protection and equal treatment (20 referrals for Italy, compared to 9 for Luxembourg, and 7 each for France and the UK) (Leibfried, 2015: Table 11.5). Arguably, by setting precedents for all member states and their national courts, CJEU rulings can be said to have played a major role in creating 'an incremental, rights-based homogenization of social policy' (Leibfried, 2015: 281, 283).

Even if the UK is not the member state most likely to be referred to the CJEU for its infringements of social policy rules, it has gained a reputation for contesting Council decisions. VoteWatch Europe (Hix, Hagemann and Frantescu, 2016: 4–7) reported that, between 2004–9 and 2009–15, the UK was increasingly on the minority side in Council votes, although, here too, it was not the member state most frequently in the minority for employment and social affairs, and it did support 97 per cent of the EU

laws voted during that period. The UK's main allies in the Council were Denmark, the Netherlands and Sweden, whereas the German government was least likely to vote the same way as the UK. During the period under study, the UK government voted more frequently with the French than the Irish government. The UK was also more often on the 'losing' side in votes in the European Parliament and saw its influence diminish as its party delegations distanced themselves from the EU's mainstream political families.

For national politicians, the EU policy process provides an opportunity to implement policies that might otherwise be rejected. They can claim credit for popular EU policies and blame Brussels for unpopular legislation (Pollack, Wallace and Young, 2015: 474). The UK case study in a report by the European Parliament (2010) on the progress of the Lisbon Strategy quotes statements by Labour politicians affirming that the priorities in the Strategy were those of the Labour Government, which could therefore present itself as an initiator of the project (Pond, 2010, 255–63). Prime Minister Blair conceded that the '[Nice] Council marks a sea change in European economic thinking – away from heavy-handed intervention and regulation, towards a new approach [that of the UK] based on enterprise, innovation and competition' (Pond, 2010: 255). Gordon Brown, when he was Prime Minister, took the view that the UK was ahead of the field and was 'particularly critical of the slow pace of reform in other Member States and the disparity between the collective position agreed by the EU's Member States and the pace and enthusiasm with which reforms are implemented'; while Keith Vaz, as Minister for Europe, underlined 'the role played by the UK government in getting the economic reforms plan adopted'; and, in 2005, Jack Straw, as Foreign Secretary, stated that: 'The Labour model extends the idea of social responsibility across the UK, and is now seen as a beacon in the rest of Europe. Yes, progress on the Lisbon agenda has been very disappointing elsewhere in Europe, but the UK has met its targets under that agenda' (Pond, 2010: 256–7). Even the Confederation of British Industry announced that the Lisbon Strategy is 'good news for business and shows that the UK's agenda of economic and social reform is increasingly becoming common currency amongst its European partners' (Pond, 2010: 261).

Whereas most national governments have openly advertised their commitment to national, if not EU, social policy by designating a government department with responsibility for social affairs, the UK has more often been characterised by a 'hands-off' or 'low-profile' approach to government intervention in social life, which may help explain why it has been especially averse to taking instructions from the CJEU. Unlike Margaret Thatcher, who saw the EU primarily as a threat to national sovereignty, not least in the social area, Tony Blair and Gordon Brown used Europe and the OMC during their mandates to legitimise their own social and employment policies by 'uploading' Labour's flexibility agenda and welfare-to-work programme to EU level, rather than evoking the European Employment Strategy to justify their own third-way reform agenda and strategy (Hopkin and van Wijnbergen, 2011: 275–6; cf. the strategy adopted in Poland, Zbyszewska, 2016: 226). The indirect approach to social policy in the UK mirrored the fact that the country does not have a designated 'social affairs' or 'social security' government department. Nor does the UK's House of Lords European Union Committee (2015) have a 'social' affairs subcommittee tasked with scrutinising EU documents in advance of decisions being taken in Brussels to influence the government's position and hold it to account.

National sovereignty over social policy by default

When, in 2014, the House of Lords European Community Committee undertook a review for the coalition government of the balance of competences between the UK and the EU, one of the reports was devoted to 'social and employment policy' (HMG, 2014d). In the absence of a UK Government Department for Social Affairs or Social Security, the review was led by the Department of Business, Innovation and Skills (BIS), rather than Work and Pensions. Reviews of several other core areas of social policy were led by a variety of government departments: health (Department of Health), free movement of persons (Home Office), education, vocational training and youth (Department for Education), and cohesion (BIS). The enlargement and the subsidiarity and proportionality reviews were led by the Foreign and Commonwealth Office.

The overall aim of the 32 reviews carried out at the behest of the Coalition Government was to 'deepen understanding in Britain of the nature of our relationship with the European Union and how it has evolved over time … [and to] inform policy and the public debate surrounding the UK's place in Europe' (House of Lords European Union Committee, 2015: 17, 18). The Coalition Agreement of 2010 had stated unambiguously that the Government would:

> ensure that there is no further transfer of sovereignty or powers over the course of the next Parliament. We will examine the balance of the EU's existing competences and will, in particular, work to limit the application of the Working Time Directive in the United Kingdom. (Quoted by House of Lords European Union Committee, 2015: 5)

The subsidiarity and proportionality review (HMG, 2014e) cited the WTD and the Posting of Workers Directive as two examples from the social and employment policy review, where the Committee questioned whether EU law provided only the minimum protection required (HMG, 2014d: 46). Reiterating the CBI's opinion, it cited the Agency Workers Directive as one of a number of EU laws 'whose prescriptive requirements undermined the principle of subsidiarity'; the Directive was considered 'unnecessary' (HMG, 2014d: 62). A number of organisations, including the Confederation of British Industry, Federation of Small Businesses, Engineering Employers' Federation, British Ceramic Federation, and the National Farmers' Union called for the EU to adopt a more proportionate approach to regulation of health and safety at work on grounds that the 'EU's inflexible hazard-based system' compared unfavourably with the 'UK's more flexible, risk-based approach' (HMG, 2014d: 48).

Although EU legislation had encroached into most areas of social policy, and despite the avowed intention in the original EEC Treaty to 'harmonise' social protection provisions,[25] by 2016 the EU could still not be categorised as a 'social superstate' in that it does not have a centralised regulatory authority and dedicated budget for social protection covering all risks for all EU citizens. The coordination of social security systems through EU regulations for mobile workers, to take one salient example, means, however, that member states can no longer limit most social benefits to their citizens. Nor can they decide exclusively who provides social services or benefits. While the EU has generated constraints on policy development as it has progressively become 'court-driven', EU social policymaking remains 'bottom heavy' insofar as member states retain administrative powers over their national welfare systems (Leibfried, 2015: 283, 288–9). On balance, it can justifiably be argued that 'under the pressures from integrated markets member governments have lost more control over national welfare policies than the EU has gained in transferred authority' (Leibfried, 2015: 263, 283). In what has been described as the 'multi-tiered' or 'hybrid' EU social policy system, clearly 'the regulatory mode has encountered limits …. The efficacy of … policy coordination…remains very much in doubt' and, as evidence has grown of the increasing controversy and contestation over the ways that the boundaries are drawn between different levels of governance, national governments have become much less accepting of social integration, particularly in the context of economic austerity (Pollack, Wallace and Young, 2015: 470, 472, 480, 486).

The implications of Brexit for EU and UK social policy

From the outset, the social dimension has been a disputed area of EU policy. Even the founding member states disagreed about the relationship between economic and social objectives, the means of achieving them and their relative importance. Arguably, the arrival in each wave of enlargement of member states with very different legal and social protection systems, and diverse conceptions of welfare and funding mechanisms, has acted as a brake on closer economic, political and, especially, social union. Even though, for example, the Swedish social protection system was close to that of the UK, Ireland and Denmark, when the Swedes joined the EU in 1995, they were concerned that legislation at EU level would undermine the autonomy of their collective bargaining system and lower social standards (Jones, 1997: 2). The Southern European and CEE countries brought with them different variants of welfare, and what have been described as more 'laggard preferences' (Pollack,

---

[25] During the negotiations over UK membership, President Pompidou developed a six-point plan for the EEC, in which he advocated 'harmonisation of policies and practices in the social sphere' (Wall, 2013: 344).

Wallace and Young, 2015: 479), making it ever more difficult to envisage harmonisation of welfare provisions (MISSOC, 1990–; Hantrais, 2007: 34–7; Bouget and Vanhercke, 2016: 102). Undeniably, as argued already in the mid-1990s, and as was even more relevant in 2016, the EU has become 'more politically and ideologically heterogeneous', not only due to enlargement but also because 'the broad Keynesian consensus on economic and social policy that had existed in most Western European countries until the mid-1970s has been called into question by high rates of inflation, high unemployment and low economic growth' (Nugent, 1994: 333).

For reasons such as these, it is impossible to assess the precise impact of the UK's resistance over the years to proposals for harmonising, reformulating and extending EU social integration, and hence the implications of Brexit for the future development of EU social policy. The task of extricating the UK from EU social law is all the more challenging not only because many legal texts have been passed under other titles, most notably health and safety, and/or have been 'imposed' as a result of CJEU rulings, but also because the number of exclusions and protocols annexed to the treaties by different member states reflects the lack of consensus about the boundaries of EU competence in the social domain. In addition, as recognised in the early 1990s elsewhere in the EU, and as argued here in the case of the UK, it is always difficult 'to unravel the impact of European level governance from that of domestic policy-making…. Policies stem from the confluence of domestic, European and international factors' (Guyomarch, Machin. and Ritchie, 1998: 241).

Positioning the UK in a multi-speed social Europe

This paper has shown that UK governments have not been alone in their hostility to a uniform concept of social Europe, or in deploying their negotiating skills and the various mechanisms at their disposal to protect national sovereignty, often as a means of avoiding or repairing domestic divisions, and retaining power, thereby justifying the description of a multi-speed (social) Europe.[26] As acknowledged in the Conclusions of the meeting of the 2016 European Council:

> Treaty provisions … allow for the non-participation of one or more Member States in actions intended to further the objectives of the Union, notably through the establishment of enhanced cooperation. Therefore, such processes make possible different paths of integration for different Member States, allowing those that want to deepen integration to move ahead, whilst respecting the rights of those which do not want to take such a course. (European Council, 2016a: 9)

As a member of the EU, the UK has long adhered to these provisions, not only in the social domain, and it has not been alone in doing so. The UK shared with Ireland the opt-out from the Schengen contract, and with Denmark and Sweden the decision not to join Economic and Monetary Union. Nor is the UK the first country to vote to leave the EU, as did 51.89 per cent of British voters on 23 June 2016, with a 72.2 per cent turnout. Despite voting against membership of the EEC in 1972, as part of Denmark, Greenland nonetheless joined the EEC in 1973. After the introduction of home rule in 1979, fearing the loss of their fishing rights under the Common Fisheries Policy, Greenlanders began the process of exiting from the EEC and, following three years of tough formal negotiations, voted to leave in a referendum in 1985. Today, Greenland has a partnership agreement with the EU (de la Baume, 2016). Having applied and been accepted twice, 53.5 per cent of Norwegians voted in a referendum not to join the EEC in 1972, and by 52.2 per cent in 1994. Nonetheless, unlike the UK, the Norwegian Government did sign up to the Schengen Convention in 2001, and it has remained a member of EFTA and the European Economic Area (EEA). Norway must therefore accept the free movement of persons, goods, services and capital within the European Single Market, and contribute to the EU budget pro rata for the programmes in which it participates without having a say in decisions taken at EU level, an option ruled out by the UK.[27] From inside the EC, the Danes voted 'no' to the Treaty on

---

[26] Eur-lex (2016) defines a multi-speed Europe as 'the idea of a method of differentiated integration whereby common objectives are pursued by a group of EU countries both able and willing to advance, it being implied that the others will follow later'.

[27] An analysis by Full Fact (2016b) suggested that, Norwegians currently contribute £140 per head for their 'relationship' with the EU, compared to £220 per head for the UK as a fully paid up member. Stephen Booth

European Union in 1992, as did the Irish to the Treaty of Nice in 2001 and, initially, to the Treaty of Lisbon before obtaining assurances that their objections would be respected. The Dutch and French voted not to ratify the Treaty establishing a Constitution for Europe in 2005, thereby preventing it from being endorsed.

Support for EU (social) policymaking has fluctuated within and between member states among governments and voters. When the Heath Government was negotiating UK membership in 1971, Cabinet agreed that the issues should be presented to the British public in a more positive light, particularly to the younger generation (Wall, 2013: 405). Public opinion in the UK was, however, only really favourable to the EU in the mid-1980s, when the economy was on the upturn, and the Conservative Government launched its single market publicity campaign, entitled 'Europe – Open for Business' (Armstrong and Bulmer, 1996: 285). Since the mid-1980s, it is argued, EU member states have become locked into a form of economic governance, which has side-lined socially oriented actors, coinciding with 'falling levels of public support for the EU' and amplifying the 'social deficit' (Copeland, 2015: 94, 100). The conclusion to the UK case study for the European Parliament in 2010 continued to resonate in subsequent years, namely that 'euro-skepticism among voters in the UK makes it less likely that politicians [particularly Labour] will announce economic or social policies and highlight the fact that they are part of a European process of reform' (Pond, 2010: 263). With hindsight, it can be argued that the euroscepticism of UK voters also made it more likely that, having long been in the slow lane, they would one day use it to exit the EU.

The level of contestation of European authority undoubtedly became more acute across EU member states in the wake of the financial crises, as did open expressions of euroscepticism and disaffection with the European project among European political parties and electorates, particularly in Denmark, France, the Netherlands and the UK (Pollack, Wallace and Young, 2015: 474–5). In an analysis of the state of play of social policy, published jointly by the European Social Observatory and European Trade union Institute, the editors described 2015 as a year characterised by 'some of the most severe crises that have marked the integration process' (Vanhercke et al., 2016: 9–10). Tensions in the EU were found to have reached an unprecedented level, threatening solidarity and making it increasingly difficult for the Commission to broker common solutions between national governments.

The recurrent reluctance of UK governments and their electorates to commit fully to EU goals, exacerbated by the way in which the Eurozone countries dealt with the 2007–8 financial crisis, is reflected in the relatively low level of public support reported in 2015 in the UK for a common EU approach to global crises, compared to most other member states. The findings in the 2015 Eurobarometer survey, carried out twelve months before the referendum, provided an early indication that the 'remain' outcome was far from being a foregone conclusion. Although UK respondents were generally positive about the protection given to citizens by the EU and its contribution to the quality of life, they expressed negative views about its capacity to create jobs and the notion that 'the EU is working for you' or 'makes the cost of living cheaper'. The survey reported that equal proportions (43 per cent) of UK respondents agreed and disagreed with the statement that their country could better face the future if it were outside the EU.[28] The UK was the country with the lowest proportion of respondents disagreeing with the proposition, and only in Cyprus and Slovenia did larger proportions agree with the statement. Followed by Cyprus and Greece, the UK was, with Austria, among the least optimistic countries about the future of the EU (Eurobarometer, 2015: QA1a.7, QA14.1, 7, 8, 10, Q21a.5, QA22). Six months after the referendum, the Eurobarometer (2016: QA219a) survey showed

---

(2016) argued convincingly in a posting after the referendum that EEA membership would not be a viable option for the UK.

[28] According to Stephen Wall (2013: 6): 'The British argument for, against, and about Europe that we have today is recognisably the one we were having forty years ago.' In 1962, when the UK was not yet a member of the EU, a Gallup Poll survey showed that opinion was 45/34 in favour among Conservative and 46/34 among labour respondents, with those in favour citing economic reasons and those against giving political or emotional reasons. Young people were overwhelmingly in favour (Wall, 2013, 36).

that a larger proportion of respondents in the UK, 48 per cent, agreed that their country could better face the future outside the EU (behind Cyprus and Slovenia), while 42 per cent disagreed.

The 2015 Eurobarometer survey indicated that the UK was not, however, the country most staunchly opposed to more decisions being taken at EU level: respondents in the Nordic States and Austria were the least likely to support more EU decision-making. The UK was the country least trusting of the European Parliament, and with Spain, Cyprus and Greece, UK respondents were least trustful of the European Commission and the European Central Bank. An analysis of the 2015 Eurobarometer results by socio-economic categories showed that the UK respondents were not alone in their socio-economic patterns of distrust of the EU: across member states, distrust of the EU was most prevalent among the oldest respondents and the most economically and socially disadvantaged categories. In the UK, levels of distrust were relatively high compared to most other EU member states for these categories, with 63 per cent for respondents aged 55 or over, 58 per cent for those who identify themselves as 'manual workers', 61 per cent for those who left school at the age of 15 or earlier, and 52 per cent for the unemployed, broadly foreshadowing the characteristics of the leave voters in the 2016 referendum (Eurobarometer, 2016: 109, QA8.8.1, QA16.1, 2, 3, QA21a.6).

The pressure constantly exerted to reaffirm the inviolability of national sovereignty over social security and social protection systems in EU legislation across member states bears further testimony to the reluctance of most national governments to show an unconditional commitment to closer social integration. The Conclusions of the European Council (European Council, 2016a: section D, 19–24) meeting, at which David Cameron sought a deal with the 27 other member states if the UK remained in the EU, signalled a willingness to adopt a collective approach to the challenges facing the EU only insofar as they recognised the need to safeguard the right of national governments

> … to define the fundamental principles of their social security systems and enjoy a broad margin of discretion to define and implement their social and employment policy, including setting the conditions for access to welfare benefits. (European Council, 2016a: 19)

National governments agreed that secondary legislation should be drawn up to limit 'flows of workers of such a scale that they have negative effects both for the Member States of origin and for the Member States of destination', thereby endorsing the option of a 'two-speed Europe' (Dempsey, 2016).

Brexit as a source of EU social (dis-)integration

While it is clear that social concerns played a role in determining the UK electorate's vote to leave the EU, particularly among the more disadvantaged socio-economic categories, it is not easy to assess the impact of their decision on the future of the EU's social dimension. As far as EU institutions are concerned, the departure of the UK would ostensibly remove one of the more powerful and obdurate member states, with its formidable negotiating and blocking powers. However, British politicians and pressure groups have also gained a reputation for seeking to simplify legislation and reduce red tape, for opposing harmonisation of taxation and social protection systems, and for voting against any increase in the EU budget (Hix, Hagemann and Frantescu, 2016: 12–13). They are, therefore, likely to be missed by their former allies in the European Council, Parliament and Commission, who shared this approach. Institutions such as the European Trade Union Institute, European Social Observatory and the EESC may also feel the loss of a tough negotiating partner in the social dialogue, in this case because UK participants have been forceful in promoting and defending the achievements of EU social law, often in conflict with their national government.

While it is difficult to gauge the strength of support in EU27 for developing a European social union after Brexit, in light of the evidence assembled in this paper, it seems doubtful that Brexit will result in a rush of new EU social legislation, since much law making in areas of social policy where consensus does exist can be accomplished through other less direct channels, and will, in any case, continue to be restrained by the widespread support for the principle of subsidiarity with respect to national social protection systems. Rather than resulting in social 'dis-integration' across the union, as predicted by some observers, Brexit could, paradoxically, stimulate a more flexible and less legalistic approach to

social and employment policy, building on the strengths of the OMC and the notion of mutual policy learning, which the Commission has been developing through its coordinating and monitoring activities (Bennett and Ruxton 2015: 43).

Acknowledging that Jacques Delors's conception of social Europe, developed during his presidency of the European Commission, had lost momentum across the EU following the 2007–8 recession, a report for the Jacques Delors Institute, published almost 60 years after the signing of the EEC Treaty and four months before the UK's referendum in 2016, stressed the need for *A New Start for Social Europe*; it called for the mainstreaming of the social dimension throughout all European initiatives, with the objective of creating a 'social union' (Rinaldi, 2016: 77). The term had also been used in 2013 in an online publication of *Progressive Economy*, when European social union was promoted as a 'political necessity and an urgent social programme'. The author (Vandenbroucke, 2013) invited 'progressive economists, sociologists and political scientists' to specify how a European social model could be operationalised in the context of Economic and Monetary Union, drawing on the EU's social investment strategy.

In the days preceding the UK's triggering of article 50, in his White Paper on *The Future of Europe: reflections and scenarios for the EU27 by 2025*, Jean-Claude Juncker, the President of the European Commission (2017c), was already signalling his intention to advocate a more pro-active approach to future EU social policy. He gave pride of place to social policy when he announced that the first in a series of reflection papers in April 2017 would be devoted to the 'social dimension of Europe' and that a Social Summit would be held in Gothenburg in November 2017. The aim was to look at 'how Europe can deliver a Union which *"promotes economic and social progress as well as cohesion and convergence"*' (European Commission, 2017b: 2, original emphasis), as called for in the Rome Declaration of 25 March 2017. According to diplomats involved in the negotiations, the Declaration was the result of a compromise between 'champions of the social dimension – principally center-left governments in Sweden, Italy and Malta – faced off against its critics, led by Hungary and Poland', with Brexit contributing to the momentum: 'Not only because it made the discussion easier, but also because it highlighted the need for the EU to show it can improve the lives of its citizens' (Cooper, 2017). For Juncker, the time had come to establish his 'European Pillar of Social Rights', structured around equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion (European Commission, 2017a), which he had long been advocating (European Commission, 2017b: 1). Conceding that not all member states would want to pursue his objectives at the same pace, two of his five scenarios referred to 'social' standards or policy, both in the context of Economic and Monetary Union, proposing that 'Those who want more do more … [by deepening] cooperation in areas such as taxation and social standards'. Others, he admitted, were 'Doing less more efficiently … [in] some parts of employment and social policy', thereby indicating a willingness to operate several degrees of social regulation in the absence of the UK (European Commission, 2017c: 26, 28–9).

The concept of a multi-speed or variable geometry Europe, implied in the Social Pillar, had resurfaced in February 2017, with reference not only to social policy (Reuters, 2017), as the Presidents of the European Commission, European Parliament and European Council sought to avoid the potential domino effect of Brexit.[29] Just as, faced with the complexities of national diversity in agriculture, 'flexibility' had become the hallmark of the reform of the CAP and resurrected internal borders (Roederer-Rynning, 2015: 214), the Commission's proposal was reminiscent of other stages in policy development described in this paper. With a larger and more heterogeneous body of member states and in a hostile politico-economic global environment, it signalled a return to the objective of creating 'a floor of minimum EU policy provisions [as in the EEC Treaty], rather than an extended upward harmonization of welfare states [as in Delors's vision]', where 'the free movement of goods, persons services, and capital should not undermine national systems of social protection' (Rhodes, 2015: 310).

---

[29] Marine Le Pen (Sky News, 2017) claimed that Brexit could 'bring down all of Europe', and Extreme Right politicians in Austria and the Netherlands were proposing to follow the UK's lead if they came to power in national elections.

UK social gains and losses from Brexit

One of the most compelling arguments in support of the case for the UK leaving the EU during the referendum campaign was, predictably, that UK businesses would no longer be bound by EU law, resulting, it was claimed, in substantial reductions in the costs to industry. When Open Europe addressed the issue of repatriation of EU social policy in 2011, without at that time considering a 'clean break' Brexit as a realistic option, it estimated that the annual cost of EU social (subsuming employment) policy for UK businesses and the public sector amounted to some £8.6 billion per annum, a figure which, it found, was mainly driven by 'a few very costly Directives' such as the WTD and Temporary Agency Workers Directive (Booth, Persson and Scarpetta, 2011: 10). The latter Directive was estimated to have 'cost the UK employers £1.9bn per year, largely in compliance cost and red tape' (HMG, 2014d: 62). The Open Europe figures were subsequently disputed and updated by Full Fact (2017) on grounds that they did not take account, among other factors, of benefits identified in impact assessments and indirect transfers (HMG, 2014d: 59), or of the value to the British economy of the funds received from the EU in direct support of social policy.

Although it is difficult to untangle awards made under the various funds, the regions in the UK are known to have bid successfully for EU Structural Funds. UK Treasury figures suggest that the European Regional Development Fund and Social Fund, the main channel for EU funding, would provide some €5.7 billion in public sector receipts to the UK in 2015 (Full Fact, 2016a).[30] The 'reformed' CAP, becoming a 'CAP à la carte' (Roederer-Rynning, 2015: 212), has also developed into a considerable source of funding for UK farmers, while the UK has remained a net contributor. On average, '60 per cent of farm incomes are said to come in the form of EU subsidies', which the UK government has promised to match until 2020 (Robertson, 2017). An area in which the UK has benefitted most, compared to other member states, from its membership of the EU is for Research and Innovation, where it received 12.8 per cent of all expenditure under this budget head, and was a net recipient for the period 2007–15 (Chomicz, 2017: 15), with a particularly noteworthy performance in the social sciences (Hantrais and Thomas Lenihan, 2016).

When interviewed in 2014, a number of business representatives countered that the UK's labour market success was in spite of EU action on social and employment policy (HMG, 2014d: 43, 57). On the eve of the referendum in support of the remain campaign, the TUC (2016: 3) issued a paper in which it enumerated the significant employment rights gains that have, in its opinion, accrued to UK workers as a result of EU membership, due largely to the alliances built across the EU. The TUC therefore strongly supported the moral case for EU intervention and warned that British workers would be particularly vulnerable if the UK left the EU. For its part, the European Parliament issued a reassuring message for the TUC in its Draft Motion for a Resolution in response to the UK's letter triggering article 50:

> 24. [The EP] Stresses that any future agreement between the European Union and the United Kingdom is conditional on the United Kingdom's continued adherence to the standards provided by the Union's legislation and policies, in among others the fields of environment, climate change, the fight against tax evasion and avoidance, fair competition, trade and social policy…. (European Parliament (2017: 7–8)

Irrespective of the financial gains and losses associated with different policy areas for the UK when it leaves the EU, the Government's 2017 White Paper on *The United Kingdom's Exit from and New Partnership with the European Union* (HMG, 2017) confirmed its intention to seek a 'clean break' in an attempt to give back to the UK control of its own statute book and bring an end to the jurisdiction of the CJEU. Article 1.1 of the White Paper asserts that the Great Repeal Bill will

> … remove the European Communities Act 1972 from the statute book and convert the "acquis" – the body of existing EU law – into domestic law. …mean[ing, though] that wherever practical and appropriate, the

---

[30] However, the regions do not receive a consistent level of funding from the EU. According to European Commission (2014: 1) sources, between 2014 and 2020, the UK was due to receive €11.8 billion under the EU's Cohesion Policy.

same rules and laws will apply on the day after we leave the EU as they did before. (HMG, 2017: 9)

More specifically:

> The Government's general approach to preserving EU law is to ensure that all EU laws which are directly applicable in the UK (such as EU regulations) and all laws which have been made in the UK, in order to implement our obligations as a member of the EU, remain part of domestic law on the day we leave the EU. (HMG, 2017: 10)

Among the small number of examples selected to illustrate the Government's intentions to repeal or amend legislation, it is relevant for an understanding of the impact for the social dimension to note that the 2017 White Paper identifies the protection of workers' rights as one of its twelve guiding principles 'in fulfilling the democratic will of the people of the UK', with the specific aim of protecting and enhancing 'existing workers' rights' (HMG, 2017: 5, 7). The White Paper cites the parental leave arrangements and holiday entitlement in the UK as specific examples of UK employment law exceeding EU legislation by applying higher standards to protect and enhance the rights of workers (HMG, 2017: 31). Only in the case of Free Movement (HMG, 2017: article 5.4) does the Government unambiguously state that the Directive will no longer apply from day one, and that the migration of EU nationals will henceforth be subject to UK law.[31]

The social status quo as a provisional or long-term option

In principle, after invoking article 50 the UK will continue to pay into the EU budget; it will be involved in EU legislative decisions and receive EU funds until it formally exits from the EU following a withdrawal agreement requiring a qualified majority vote from the remaining member states and the consent of the European Parliament. The UK Parliament will then need to repeal the European Communities Act 1972 (Lawyers for Britain, 2016). Until 2019, or earlier if an agreement is reached within 24 months, or later by a unanimous vote to extend the period, the contributions and payments will continue up to the date when the withdrawal agreement comes into force. Even if, under the agreement, the EU no longer has competence over UK social and employment issues, any EU legislation adopted by the UK government in the past will remain in place until such time as the government in power chooses to remove it (HMG, 2014d: 59). According to the White Paper:

> This approach will preserve the rights and obligations that already exist in the UK under EU law and provide a secure basis for future changes to our domestic law. This allows businesses to continue trading in the knowledge that the rules will not change significantly overnight and provides fairness to individuals whose rights and obligations will not be subject to sudden change. It will also be important for business in both the UK and the EU to have as much certainty as possible as early as possible. (HMG, 2017: article 1.2)

Even the British Chambers of Commerce were quick to endorse the decision not to make any immediate changes to the regulatory framework, stating that:

> Businesses value a stable regulatory framework over disruption and change at a time of transition and uncertainty. … All existing EU regulations, where businesses have already incurred the costs of adjustment and adaptation, should be maintained for a minimum period before major changes are suggested – even if the object of change is deregulation and lowering of costs. (British Chambers of Commerce, 2017: 13)

Despite the assurances in the White Paper, among the numerous amendments to the European Union (notification of withdrawal) Bill at 30 January 2017, the opposition insisted that 'the Prime Minister must set out a draft framework for the future relationship with the European Union which included

---

[31] The emphasis given to the negative impact of intra-EU migration in the referendum campaign and the White Paper contrasts with the findings from the 2015 Eurobarometer Survey, where slightly larger proportions of UK respondents than in 2014 viewed intra-European migration positively rather than negatively; a clear majority were in favour of the right of UK citizens to work in every EU member state, although the proportion expressing this view was smaller than in all other member states except Austria. These positions were reversed in answer to the question about the right to reside (Eurobarometer, 2015: QA10.1, QA13.1, 2). The Autumn Eurobarometer (2016: QB6.3, 4, QB4.1) survey showed that concerns over immigration were lower than previously, although socio-economic characteristics remained important factors in determining attitudes.

reference to the maintenance of Social Chapter rights' and 'to how this will give the UK control over its immigration' (House of Commons, 2017: NC32, NC33). Among the 'Workers Rights: EU Directives, etc' (NS1) to be protected, explicit reference was made to secondary legislation covering equal treatment, working time, pregnant workers, parental leave, part-time work, fixed-term work, collective redundancies and the posting of workers, many of which moved onto the agenda in the early 1980s and had been incorporated into UK legislation since the 1990s. Although none of these amendments was carried, critics of the 'clean break' approach had thereby signalled that any attempt to extract EU inspired social legislation from the statute book would be likely to meet with strong opposition.

In its Draft Motion for a Resolution, in reaction to the UK's letter triggering article 50, the European Parliament is, however, categorical:

> 26.[The EP] Notes that if the United Kingdom requests to participate in certain European Union programmes it will be as a third country including appropriate budgetary contributions and oversight by the existing jurisdiction; [the EP] would welcome in this context its continued participation in a number of programmes, such as Erasmus….

The European Parliament thus left open the possibility for the UK to participate selectively in certain programmes where it had been a particularly welcome partner, albeit under the same conditions as third countries, offering a trade-off which would not be consistent with the 'clean break' decision.

Conclusion

This paper has shown how the UK has sought to influence the development of the social dimension in EU law, while itself being affected by the growing body of EU legislation and other actions in the social field. The relationship between governments in member states and EU-level institutions is multi-layered and interactive, requiring constant adaptation, consensus and compromise, and varying according to the government in power, its internal dynamics, domestic politics and public opinion. As in any divorce settlement, each party will establish its red lines to maximise gains, reduce burdens and limit losses.

The many interviews across the socio-economic and political spectrum in the UK two years before the referendum (HMG, 2014a-e) and the innumerable debates, hearings and blogs during and following the referendum campaign demonstrated that opinions within the UK have remained deeply divided, both horizontally and vertically, concerning the most effective balance between EU and member state competencies, and between economic and social objectives. These divisions add to the difficulty of predicting to what extent social legislation implemented since the UK joined the EEC will be removed or amended once it has left the EU, and in what ways the remaining EU member states will develop binding social legislation or softer social and employment law.

As and when the UK subsequently seeks to negotiate trade deals with the EU, it will be required to continue to observe any relevant EU social standards adopted after Brexit by the remaining and any new member states. Notwithstanding the terms of a post-Brexit deal, future UK social policy is expected to develop independently from the EU legislative process. In this unprecedented situation, when negotiations are only beginning, national interests prevail, shaped in no small measure by individual politicians intent on consolidating their national power base, with their stances on Brexit determined by their own political provenance and ambitions, the coalitions that have been built within and between countries, or the alliances they will seek to build in the future.[32] As far as the UK is concerned, the negotiating position will focus primarily on international trade deals, while social policy is likely to be relegated to a secondary (domestic) role as in the original EEC Treaty and as in the 1970s when the UK joined the European (Economic) Community, and the British public voted to remain.

---

[32] After 35 years as a civil servant, Stephen Wall (2013: 2) observes that: 'A whole range of factors that go into the formulation of policy, starting with the view of the Party in power of where the national interest lies, but being constantly affected by the pressures of public and Parliamentary opinion, by events to which a response is required, by the advice Ministers receive, by the personality, beliefs judgements – and prejudices – of the Ministers themselves, especially the Prime Minister; and by historical memory.'

Acknowledgements

References [all URLs as at 26.05.2017]

Adnett, N. and Hardy, S. (2005) *The European Social Model: modernisation or evolution?* Cheltenham/ Northampton, MA: Edward Elgar.

Armstrong, K.A. (2012) 'EU social policy and the governance architecture of Europe 2020', *Transfer: European Review of Labour and Research*, 18, 3, 285–300. DOI: 10.1177/1024258912448600

Armstrong, K. and Bulmer, S. (1996) 'United Kingdom', in D. Rometsch and W. Wessel (eds), *The European Union and Member States: towards institutional fusion?*, Manchester/New York: Manchester University Press, 253–90.

Bagilhole, B. and Byrne, P. (2000) 'From had to soft law and from equality to reconciliation in the United Kingdom', in L. Hantrais (ed.), *Gendered Policies in Europe*, Basingstoke/New York: Macmillan/St Martin's Press, 124–42.

Baume, M. de la (2016) 'Greenland's exit warning to Britain', *Politico*, 22 June. http://www.politico.eu/article/greenland-exit-warning-to-britain-brexit-eu-referendum-europe-vote-news-denmark/

Bekker, S. (2015) *European Socio-economic Governance in Action: coordinating social policies in the third European Semester*, OSE Research Paper 19, January. http://www.ose.be/files/publication/OSEPaperSeries/Bekker_2015_OseResearchPaper19.pdf

Bennett, F. and Ruxton, S. (2015) *Common Social Values in the European Union: stocktaking, with a focus on social inclusion and social protection*, Report for the Luxembourg Presidency of the Council of the European Union, June. http://www.eu2015lu.eu/en/actualites/notes-fond/2015/07/info-epsco-documents/1_Common-social-values-in-the-European-Union---June-2015_EN.pdf

Black, I. (2003) 'New sticking points for Blair in draft text', *The Guardian* , 28 May. https://www.theguardian.com/uk/2003/may/28/politics.eu

Blair, T. (1997) Labour Party 1997 Election Manifesto. http://www.politicsresources.net/area/uk/man/lab97.htm

Blair, T. (2000) Speech to the Stock Exchange in Warsaw on 6 October. https://euobserver.com/news/2450

Booth, S. (2016) 'As the UK searches for a post-Brexit plan, is the EEA a viable option?', Open Europe Briefing, 4 August. http://openeurope.org.uk/intelligence/britain-and-the-eu/as-the-uk-searches-for-a-post-brexit-plan-is-the-eea-a-viable-option/

Booth, S., Persson, M. and Scarpetta, V. (2011) *Repatriating EU Social Policy: the best choice for jobs and growth?*, London: Open Europe, November. http://archive.openeurope.org.uk/Content/Documents/Pdfs/2011EUsocialpolicy.pdf

Bouget, D. and Vanhercke, B. (2016) 'Tackling long-term unemployment in Europe through a Council Recommendation?', in B. Vanhercke, D. Natali and D. Bouget (eds), *Social Policy in the European Union: state of play 2016*, OSE/ETUI 17th Annual Report, Brussels: ETUI, 91–130. http://www.etui.org/Publications2/Books/Social-policy-in-the-European-Union-state-of-play-2016

British Chambers of Commerce (2017) *Business Brexit Priorities*, February 2017 Edition. http://www.britishchambers.org.uk/J9259%20-%20Brexit%20Principles%20Doc_V6_WEB.pdf

Büchs, M. (2009) 'The Open Method of Coordination – effectively preventing welfare state retrenchment?', in S. Kröger (ed.), 'What we have learnt: advances pitfalls and remaining questions in OMC research, *European Integration Online Papers*, 13, Special Issue 1, Art. 11. http://eiop.or.at/eiop/texte/2009-011a.htm

Burrows, N. and Mair, J. (1996) *European Social Law*, Chichester: John Wiley & Sons.

Butler, D. and Kitzinger, U. (1976) *The 1975 Referendum*, London/Basingstoke: Macmillan.
http://www.eureferendum.com/documents/1975referendum1.pdf

Campbell, J. (2014) *Roy Jenkins: a well-rounded life*, London: Random House.

Chomicz, E. (2017) *EU Budget Post-Brexit: confronting reality, exploring viable solutions*, European Policy Centre Discussion Paper, 7 March.
http://www.epc.eu/documents/uploads/pub_7474_eubudgetpost-brexit.pdf

Cockfield, A. (1994) *The European Union: creating the Single Market*, 1994, London: John Wiley & Sons.

Collins, D. (1975) *The European Communities: the social policy of the first phase*, Vol. 2: *The European Economic Community 1958–72*, London: Martin Robertson.

Cooper, H. (2017) 'Juncker seeks to cement social pillar in Rome: diplomats tussle over summit declaration', *Politico*, 23 March. http://www.politico.eu/article/jean-claude-juncker-social-pillar-eu-identity-commission-welfare-policy/

Copeland, P. (2015) 'The European Union and the "Social Deficit"', *Representation*, 51, 1, 93–106. DOI: 10.1080/00344893.2015.1023104

Corbett, A. (2005) *Universities and the Europe of Knowledge: ideas, institutions and policy entrepreneurship in EU higher education policy 1915–2005*, Basingstoke: Palgrave.

Davidson, N. (2006) *Davidson Review: implementation of EU legislation*, Final report, November, Norwich: HMSO. http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/d/davidson_review281106.pdf

Dempsey, J. (2016) 'Britain propels a two-speed Europe', *Judy Dempsey's Strategic Europe*, Carnegie Europe, 22 February. http://carnegieeurope.eu/strategiceurope/?fa=62839

Drake, H. (2000) *Jacques Delors: perspectives on a European leader,* London: Routledge.

Economist (2005) 'French protectionism: fearful Fortress France', *The Economist*, 27 October.
http://www.economist.com/node/5090886

Eur-lex (2004) Coordination of social security systems. Summary of Regulation (EC) No 883/2004 – on the coordination of social security (last updated 2015).
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ac10521

Eur-lex (2016) Glossary of summaries: 'multi-speed' Europe. http://eur-lex.europa.eu/summary/glossary/multispeed_europe.html

Eurobarometer (2015) *Public Opinion in the European Union*, Standard Eurobarometer 83, Spring 2015 – TNS Opinion & Social, Brussels: European Commission DG COMM.
http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_publ_en.pdf

Eurobarometer (2016) *Public opinion in the European Union*, Standard Eurobarometer 86, National Report, United Kingdom, Autumn 2016, TNS Opinion & Social, Brussels: European Commission DG COMM.
http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2137

European Commission (1982) Memorandum on the Reduction and Reorganisation of Working Time, Commission of the European Communities to the Council, COM(82) 809 final of 10 December 1982. http://aei.pitt.edu/6296/1/6296.pdf

European Commission (2001) *European Governance – a White Paper*, COM(2001) 428 final, *OJ* C 287/1 12.10.2001. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0428&from=EN

European Commission (2009) *Economic Crisis in Europe: causes, consequences and responses*, European Economy, 7/2009, Luxembourg: OOPEC.
http://ec.europa.eu/economy_finance/publications/pages/publication15887_en.pdf

European Commission (2014) 'Cohesion policy and the United Kingdom', *FactSheet*, October.
http://ec.europa.eu/regional_policy/sources/information/cohesion-policy-achievement-and-future-investment/factsheet/united_kingdom_en.pdf

European Commission (2017a) Commission Recommendation on the European Pillar of Social Rights, Brussels, 26.4.2017 C(2017) 2600 final
https://ec.europa.eu/commission/publications/commission-recommendation-establishing-european-pillar-social-rights_en

European Commission (2017b) 'The Road from Rome: a social Europe', NA-20-17-325, doi: 10.2775/999175. https://ec.europa.eu/commission/sites/beta-political/files/04_social_europe_en_web.pdf

European Commission (2017c) *White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025*, COM(2017)2025 of 1 March 2017, Brussels: European Commission. doi: 10.2775/32364 https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf

European Council (1974) Council Resolution of 21 January 1974 concerning a social action programme, *OJ* C 13/1, 12.02.1974. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31974Y0212(01)&from=EN

European Council (2003) Council Decision of 22 July 2003 on guidelines for the employment policies of the Member States, 2003/578/EC, *OJ* L 197/13, 05.08.2003. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003D0578&from=EN

European Council (2016a) Conclusions of the European Council Meeting of 18–19 February, Brussels EUCO 1/16. http://docs.dpaq.de/10395-0216-euco-conclusions.pdf

European Council (2016b) Council Recommendation of 12 July on the 2016 National Reform Programme of the United Kingdom and delivering a Council opinion on the 2016 Convergence Programme of the United Kingdom, 2016/C 299/03) 18.08.2016. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016H0818(03)&from=EN

European Economic and Social Committee (1987) Opinion on the social aspects of the internal market, 19 November, *OJ* C 356/08, 31.12.1987. http://www.cvce.eu/content/publication/2001/12/5/ac104137-b25d-429a-a68d-9f4d75c26a0c/publishable_en.pdf

European Parliament (2000) Conclusions of the Presidency, European Council, Nice 7–10 December. http://www.europarl.europa.eu/summits/nice1_en.htm

European Parliament (2010) *The Lisbon Strategy 2000–2010: an analysis and evaluation of the methods used and results achieved*, Final Report IP/A/EMPL/ST/2008-07, Directorate General for Internal Policies. http://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24270/20110718ATT24270EN.pdf

European Parliament (2017) Draft Motion for a Resolution, Plenary Sitting B[8-0000/2017], 29 March. https://order-order.com/wp-content/uploads/2017/03/343381933-Draft-Resolution.pdf

Falkner, G., Hartlapp, M., Leiber, S. and Treib, O. (2004) 'Non-compliance with EU directives in the member states: opposition through the backdoor?', *West European Politics*, 27, 3, 452–73.

Ferrera, M. (2005) *The Boundaries of Welfare: European integration and the new spatial politics of social protection*, Oxford: Oxford University Press.

Ferrera, M. (2006) 'Friends, not foes: European integration and national welfare states', in A. Giddens, P. Diamond and R. Liddle (eds), *Global Europe, Social Europe*, Cambridge: Polity Press, 257–78.

Fontana, C. and Parsons, C. (2015) '"One woman's prejudice": did Margaret Thatcher cause Britain's anti-Europeanism?', *Journal of Common Market Studies*, 53, 1, 89–105. DOI: 10.1111/jcms.12205

Free Movement of Workers and Social Security Coordination (FreSsco) (2016) *Newsletter*, No 6, December. http://ec.europa.eu/social/main.jsp?langId=en&catId=1098

Full Fact (2016a) 'How much do the regions of the UK receive in EU funding?', 2 August. https://fullfact.org/europe/how-much-do-regions-uk-receive-eu-funding/

Full Fact (2016b) 'Norway's EU payments', 4 August. https://fullfact.org/europe/norway-eu-payments/

Fullfact (2017) 'The UK's EU membership fee', 28 March. https://fullfact.org/europe/our-eu-membership-fee-55-million/;

Guyomarch, A., Machin, H. and Ritchie, E. (1998) *France in the European Union*, London: Macmillan.

Hantrais, L. (2007) *Social Policy in the European Union*, 3rd edn, Basingstoke: Palgrave Macmillan.

Hantrais, L. and Thomas Lenihan, A. (2016) *The Implications of the EU Referendum for UK Social Science: post-referendum options for UK social scientists*, LSE Centre for International Studies Working Paper CIS/2016/03. http://www.lse.ac.uk/internationalRelations/centresandunits/CIS/documents/Hantrais-Working-Paper-CIS.pdf

Her Majesty's Government (HMG) (2014a) *Review of the Balance of Competences between the United Kingdom and the European Union: EU enlargement.* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388422/BoC_EUEnlargement_acc.pdf

Her Majesty's Government (HMG) (2014b) *Review of the Balance of Competences between the United Kingdom and the European Union: fundamental rights.* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/334999/review-of-boc-between-uk-eu-fundamental-rights.pdf

Her Majesty's Government (HMG) (2014c) *Review of the Balance of Competences between the United Kingdom and the European Union. Single Market: free movement of persons.* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335088/SingleMarketFree_MovementPersons.pdf

Her Majesty's Government (HMG) (2014d) *Review of the Balance of Competences between the United Kingdom and the European Union: social and employment policy.* rhttps://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332524/review-of-the-balance-of-competences-between-the-united-kingdom-and-the-european-union-social-and-employment-policy.pdf

Her Majesty's Government (HMG) (2014e) *Review of the Balance of Competences between the United Kingdom and the European Union: subsidiarity and proportionality.* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388852/BoCSubAndPro_acc.pdf

Her Majesty's Government (HMG) (2017) *'The United Kingdom's Exit from and New Partnership with the European Union'*, White Paper, Cm 9417, 2 February. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf

Hix, S., Hagemann, S. and Frantescu, D. (2016) *Would Brexit Matter? The UK's voting record in the Council and European Parliament*, VoteWatch Europe. http://60811b39eee4e42e277a-72b421883bb5b133f34e068afdd7cb11.r29.cf3.rackcdn.com/2016/04/VoteWatch-Report-2016_digital.pdf

Hönnige, C. and Panka, D. (2013) 'The Committee of the Regions and the European Economic and Social Committee: how influential are consultative committees in the European Union?', *Journal of Common Market Studies*, 51, 3, 452–71. DOI: 10.1111/j.1468-5965.2012.02313.x

Hopkin, J. and van Wijnbergen, C. (2011) 'Europeanization and welfare state change in the UK: another case of "fog over the Channel"', in P.R. Graziano, S. Jacquot and B. Palier (eds), *The EU and the Domestic Politics of Welfare State Reforms*, Basingstoke & New York: Macmillan & St Martin's Press, 254–79.

House of Commons (2017) Notices of Amendments given up to and including Thursday 26 January, European Union (Notification of Withdrawal) Bill. https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0132/amend/european_rm_cwh_2601.pdf

House of Lords European Union Committee (2015) *The Review of the Balance of Competences between the UK and the EU*, 12th Report of Session 2014–15, L140, London: Stationery Office. https://www.publications.parliament.uk/pa/ld201415/ldselect/ldeucom/140/140.pdf

Husain, M. (2016) 'EU referendum: the immigration question', BBC News Today Programme, 14 June. http://www.bbc.co.uk/news/uk-politics-eu-referendum-36479612

Jenkins, T. (2010) '1992 and all that (reprise)', unpublished paper communicated by the author.

Johnson, A. (2016) *The Long and Winding Road*, London: Bantam Press.

Jones, A. (2007) *Britain and the European Union*, Edinburgh: Edinburgh University Press.

Jones, H.C. (1997) 'European Social Legislation – friend or foe', Speech on the occasion of the Information Visit of the Whitehall and Industry Group, Brussels, 24 April.

Killermann, K. (2016) 'Loose ties or strong bonds? The effect of a Commissioner's nationality and partisanship on voting in the Council', *Journal of Common Market Studies*, 54, 6, 1367–83. DOI: 10.1111/jcms.12359

Kleinman, M. and Piachaud, D. (1993) 'European social policy: conceptions and choices', *Journal of European Social Policy*, 3, 1, 1–19.

Lawyers for Britain (2016) *Brexit – the Process*.
http://www.lawyersforbritain.org/brexit-proc-article-50.shtml

Lea, R. (2003) 'The EU Constitution and the UK's Role in Europe and the World', International Conference, The Bruges Group.
https://www.brugesgroup.com/events/10-events/894-the-eu-constitution-and-the-uk-s-role-in-europe-and-the-world-international-conference-2003

Leibfried, S. (2015) 'Social policy: left to judges and to the markets?', in H. Wallace, M.A. Pollack and A.R. Young (eds), *Policy-Making in the European Union*, 7th edn, Oxford: Oxford University Press, 263–92.

Ludlow, P. (2016) 'When Britain first applied to join the EU: what can Macmillan's predicament teach us', LSE Brexit blog
http://blogs.lse.ac.uk/brexit/2016/04/15/when-britain-first-applied-to-join-the-eu-what-can-macmillans-predicament-teach-us/

Major, J. (1992) Joint Press Conference with Jacques Delors, 1 July.
http://www.johnmajor.co.uk/page1415.html

Moore, C. (2015) *Margaret Thatcher: the authorized biography*, Vol. 2: *Everything She Wants*, London: Penguin Random House.

Moravscik, A. (2012) 'Charles de Gaulle and Europe: the new revisionism', *Journal of Cold War Studies*, 14, 1, 53–77. https://www.princeton.edu/~amoravcs/library/revisionism.pdf

Mutual Information System on Social Protection (MISSOC) (1990-) *Information Base*, Brussels: European Commission. http://www.missoc.org/INFORMATIONBASE/informationBase.jsp

Novak, P. (2016) 'Developments up to the Single European Act', *Fact Sheets on the European Union*, 12/2016, Brussels: European Parliament.
http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.1.2.html

Nugent, N. (1994) *The Government and Politics of the European Union*, 3rd edn, Basingstoke: Macmillan.

Packer, R. (2917) 'Brexit, agriculture and agricultural policy', Report for the Centre for Policy Studies, *Pointmaker*, January.
http://www.cps.org.uk/files/reports/original/170104093344-PostBrexitAgriculturalPolicy.pdf

Pollack, M.A., Wallace, H. and Young, A.R.(2015) 'Policy-making in a time of crisis', in H. Wallace, M.A. Pollack and A.R. Young (eds), *Policy-Making in the European Union*, 7th edn, Oxford: Oxford University Press, 467–88.

Pond, R. (2010) 'Implementation and impact of the Lisbon Strategy 2000–2010 on employment and social policies in the United Kingdom', in European Parliament (ed.), *The Lisbon Strategy 2000–2010: an analysis and evaluation of the methods used and results achieved*, Final Report, IP/A/EMPL/ST/2008-07, Directorate General for Internal Policies, 255–63.
http://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24270/20110718ATT24270EN.pdf

Reuters (2017) 'EU founders speak of possible "multispeed" future after Brexit', 3 February.
http://mobile.reuters.com/article/worldNews/idUSKBN15I2WX

Rhodes, M. (2015) 'Employment policy: between efficacy and experimentation', in H. Wallace, M.A. Pollack and A.R. Young (eds), *Policy-Making in the European Union*, 7th edn, Oxford: Oxford University Press, 293–318.

Richard, I. (1983) 'Reduction and reorganisation of working time', Speech to the Executive Committee of the European Metalworkers' Federation, Brussels 17 March, Archive of European Integration.
http://aei.pitt.edu/12186/

Rinaldi, D. (2016) *A New Start for Social Europe*, Studies & Reports, 108, February, Paris/Berlin: Jacques Delors Institute. http://www.institutdelors.eu/media/newstartsocialeurope-rinaldi-jdi-feb16.pdf?pdf=ok

Roberts, I. and Springer, B. (2001) *Social Policy in the European Union: between harmonization and national autonomy*, Boulder/London: Lynne Rienner.

Robertson, J. (2017), 'After Brexit: what happens next for the UK's farmers?', BBC News, 5 January.
http://www.bbc.co.uk/news/business-38510423

Roederer-Rynning, C. (2015) 'The Common Agricultural Policy: the fortress challenged', in H. Wallace, M.A. Pollack and A.R. Young (eds), *Policy-Making in the European Union*, 7th edn, Oxford: Oxford University Press, 196–219.

Sked, A. (2016) 'Why Britain really joined the EEC (and why it had nothing to do with helping our economy)', LSE Brexit blog. http://blogs.lse.ac.uk/brexit/2015/11/26/why-britain-really-joined-the-eec-and-why-it-had-nothing-to-do-with-helping-our-economy/

Sky News (2017) 'Le Pen: Brexit domino effect "will bring down Europe"', 22 February. http://news.sky.com/story/le-pen-brexit-domino-effect-will-bring-down-europe-10736791

Stephens, P. (2015) 'EU referendum: history repeated. A tale of two Brexit votes from the FT Archive', 22 September. http://ig.ft.com/sites/2015/eu-referendum-1975-archive/

Thatcher, M. (1988) 'The Bruges Speech', Speech to the College of Europe, 20 September. http://www.margaretthatcher.org/document/107332

Trubek, D.M. and Trubek, L.G. (2005) 'Hard and soft law in the construction of social Europe: the role of the open method of co-ordination', *European Law Journal*, 11, 3, 343–64.

TUC (2016) *UK Employment Rights and the EU: an assessment of the impact of membership of the European Union on employment rights in the UK*, London: TUC. https://www.tuc.org.uk/sites/default/files/UK%20employment%20rights%20and%20the%20EU.pdf

Vandenbroucke, F. (2013) 'European social union: a political necessity and an urgent research programme', *Progressive Economy*. http://www.progressiveeconomy.eu/content/european-social-union-political-necessity-and-en

Vanhercke, B., Natali, D. Bouget, D., Jepsen, M. and Pochet, P. (2016) 'Preface', in B. Vanhercke, D. Natali and D. Bouget (eds), *Social Policy in the European Union: state of play 2016*, OSE/ETUI 17th Annual Report, Brussels: ETUI, 9–11. http://www.etui.org/Publications2/Books/Social-policy-in-the-European-Union-state-of-play-2016

Wall, S. (2013) *The Official History of Britain and the European Community*, Vol. II: *From Rejection to Referendum, 1963–1975,* London & New York: Routledge.

Westlake, M. (2016) *The European Economic and Social Committee − the House of European Organised Civil Society*, London: John Harper Publishing.

Zbyszewska, A. (2016) *Gendering European Working Time Regimes: the Working Time Directive and the case of Poland*, Cambridge: Cambridge University Press.