

Social Policy in the EU and the Role of the EU

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This lecture: Introduction to ‘the EU and Social Policy’

- The EU as a system of multilevel governance
- Social aims, but few competences?
- Subsidiarity
- Governing social policy in the EU
- How to make sense of limited role for EU in field of social policy?
- The monitoring of the social situation & social policy in the EU (Rudi Van Dam)

The EU: a system of multi-level governance

- Similar to federal state
 - Political authority is shared between territorial units and central government
 - Division of labour between central government and other units in decision-making
 - Constitutional court settles legal disputes concerning the division of power
- Unlike a federal state:
 - No financial resources
 - More complex layers
- A system of multilevel governance

The EU: a system of multi-level governance

Institutional structure

- European Commission
 - DG for Employment, Social Affairs and Inclusion
 - DG for Health and Consumers
- Council of the EU (Council of Ministers, the Council) (<-> Council of Europe!)
 - Employment, Social Policy, Health and Consumer Affairs Council
- European Council (2 summits a year in Brussels)
- European Parliament
 - Directly elected since 1979
 - Co-decision, cooperation and consultation
- Court of Justice of the EU (JCEU) (incl. Court of First Instance, 1986)

The EU: a system of multilevel governance-

- Three sources of binding legal provisions:
 - Primary legislation: Treaties
 - secondary legislation: Directives and regulations + CJEU rulings
- Doctrines developed by CJEU in early 1960s:
 - Direct effect: EU law is directly enforceable in national courts
 - Supremacy: supremacy of EU law over national law

| <i>Name of treaty</i> | <i>Entry into force</i> | <i>Main provisions</i> |
|---|-------------------------|---|
| Treaty of Paris: Treaty establishing the European Coal and Steel Community (ECSC) | 1952 | <ul style="list-style-type: none"> Established the common administration of coal and steel |
| Treaty of Rome: Treaty establishing the European Economic Community (EEC) | 1958 | <ul style="list-style-type: none"> Introduced plans for a common market and a common agricultural policy |
| Treaty establishing the European Atomic Energy Community (EAEC/ Euratom) | 1958 | <ul style="list-style-type: none"> Common administration of nuclear energy |
| Single European Act (SEA) | 1987 | <ul style="list-style-type: none"> Introduced provisions for the completion of the internal market Extension of QVM |
| Maastricht Treaty: Treaty on European Union (TEU) | 1993 | <ul style="list-style-type: none"> Established the European Union with a three pillar structure: <ol style="list-style-type: none"> Justice and home affairs Common foreign and security policy European Community (EC) EEC is renamed the EC Plans for Economic and Monetary Union Introduction of co-decision |
| Treaty of Amsterdam | 1999 | <ul style="list-style-type: none"> Reform of EU institutions Extension of co-decision First major renumbering of treaty articles |
| Treaty of Nice | 2003 | <ul style="list-style-type: none"> Reform of EU institutions in anticipation of Eastern enlargement |
| Treaty of Lisbon | 2009 | <ul style="list-style-type: none"> Reform of EU institutions to enhance democracy and efficiency Second major renumbering of treaty articles |

Source: Anderson, 2015: 53

Social aims, but weak competences?

- Treaty of Lisbon amended two basic treaties of EU
- Now:
 - Treaty on European Union (TEU) (amendment of Maastricht Treaty)
 - Treaty on the Functioning of the European Union (TFEU) (amendment of Treaty of Rome)

Social aims, but weak competences?

- Clear, and important social aims in Treaties
- Some examples from TEU:

Article 2

The Union is founded on the values of respect for **human dignity**, freedom, democracy, **equality**, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, **justice, solidarity and equality** between women and men prevail.

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and **the well-being of its peoples**.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive **social market economy**, aiming at **full employment** and **social progress**, and a **high level of protection** and improvement of the quality of the environment. It shall promote scientific and technological advance.

Social aims, but weak competences?

- Clear, and important social aims in Treaties
- Some examples from TEU:

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

Social aims, but weak competences?

- And the ‘horizontal social clause’ in the TFEU:

Article 9

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Social aims, but weak competences?

- And Title X of TFEU is entirely dedicated to social policy
- The Union shall support and complement the activities of MS in, for instance, the following fields (Article 153 TFEU):
 - Working conditions & Workers' health and safety
 - Social security and social protection *of workers*
 - Protection of workers where contract has ended
 - Integration of persons excluded from the labour market
 - Equality between men and women
 - Combating of social exclusion
 - Modernisation of social protection systems
- And there are separate provisions for a European Social Fund, as well as 'social services' (new in Lisbon Treaty)

Social aims, but weak competences?

- Treaty of Lisbon also made the Charter of Fundamental Rights of the EU legally binding
- Especially Title IV relevant for social policy, e.g.:

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Social aims, but weak competences?

- At the same time, competences in the social field are limited
- No social topic as exclusive competence of the EU (art. 3 TFEU)
- Article 4 TFEU indicates a shared competence with MS for economic, social and territorial cohesion; and social policy “for the aspects defined in this Treaty”.

Social aims, but weak competences?

- TFEU, article 5:

Article 5

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

Specific provisions shall apply to those Member States whose currency is the euro.

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.

3. The Union may take initiatives to ensure coordination of Member States' social policies.

Social aims, but weak competences?

- Article 6 TFEU states that

“The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States.”

- (a) protection and improvement of human health;
- (e) education, vocational training, youth and sport

Social aims, but weak competences?

- While in the field of social policy, the facilitating role of the European Commission is stressed (Article 156 TFEU):

“the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields”

- employment,
- labour law and working conditions,
- basic and advanced vocational training,
- social security,
- prevention of occupational accidents and diseases,
- occupational hygiene,
- the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

Social aims, but weak competences?

- And also, the purview of ‘horizontal clause’ (Article 9 TFEU) is limited (Dawson and de Witte, 2012):
 - Is not accompanied with competences to act in the fields mentioned
 - Cannot be used as a legal base for a pro-active and comprehensive EU social policy

Social aims, but weak competences?

But (Dawson and de Witte, 2012):

- ‘mainstreams’ social concerns into all EU policy fields
- Affirms that social objectives are on equal footing with economic objectives within EU primary law
- It requires all EU actors to find a proper balance between economic, social and other aims (e.g. in case of competition law, the internal market law, and external trade law)

=> question of achieving a proper balance becomes subject of discussion within EU institutions, including Council, CJEU, ...)

=> aims listed in social clause should become part and parcel of the objectives of internal market and competition policies?

=> shall social concerns play a greater role than they have done so far in EU policies?

Social aims, but weak competences?

- While finally, as elsewhere, explicitly stressing principle of subsidiarity in the Charter of Fundamental Rights (cf. below):

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Subsidiarity

- Especially in the area of social policy, the principle of subsidiarity is often called upon
- Principle of subsidiarity is closely linked to principle of conferral and principle of proportionality

Subsidiarity – Treaty of Lisbon (TEU)

Article 5

(ex Article 5 TEC)

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, 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.
4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

Subsidiarity – Treaty of Lisbon

Article 5, Protocol on the application of the principles of subsidiarity and proportionality:

- “Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality.
- Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality.
- This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation.
- The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators.
- Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.”

Subsidiarity & proportionality

3 criteria aimed at establishing the desirability of intervention at EU level (EUR-Lex):

- Does the action have transnational aspects that cannot be resolved by EU countries?
- Would national action or an absence of action be contrary to the requirements of the Treaty?
- Does action at EU level have clear advantages?

Subsidiarity & proportionality

The EU can only act in a policy area if (EUR-Lex):

- the action forms part of the competences conferred upon the EU by the Treaties (principle of conferral);
- in the context of competences shared with EU countries, the EU level is most relevant in order to meet the objectives set by the Treaties (principle of subsidiarity);
- the content and form of the action does not exceed what is necessary to achieve the objectives set by the Treaties (principle of proportionality).

Subsidiarity

Not only legal principle, but also (Vandenbroucke et al., 2013):

- Traditional political cleavage between:
 - ‘subsidiarists’ (prefer to minimize direct interventions by the EU, esp. soc protection)
 - ‘federalists’ (who may, at least in principle, be open to more direct EU intervention in the social domain)
- Logic of subsidiarity at the national level, especially with regard to minimum income protection

=> subsidiarity and proportionality put strong constraints on EU action in the social domain

Governing social policy in the EU

- Anderson (2015:31): “the development of social policy in the EU is a story of regulatory politics mainly in the service of negative integration”
 - Small budget
 - (+/- 1% EU GDP) => regulation
 - regulatory <-> ‘fiscal policies’
 - EU is in business of market-making rather than redistributive policies for polity building
 - Setting rules and standards for governing liberalisation, with interactions with & impact upon social policies
 - Negative integration vs. positive integration

Governing social policy in the EU

- Positive integration
 - = EU initiatives aimed at establishing common standards or policies
- Negative integration
 - = removing barriers to economic activity in order to create a common market
- Four freedoms:
 - Capital
 - Goods
 - Services
 - Labour

Governing social policy in the EU

- In social field, focus mainly on negative integration (esp. for realising free movement of labour)
- Nature of treaties:
 - commitment to common market, with EC & CJEU as main actors
 - Limits to positive integration: extension of qualified majority voting (QMV) & co-decision; <-> social security subject to unanimity
 - Remember diversity between EU MS welfare states and social policies

Governing social policy in the EU

- In many fields, the focus is on second-order outcome governance? (Armstrong, 2010; Vandenbroucke et al., 2013)
- First-order governance: the EU substitutes its own governance structures and processes for national governance structures and processes
- Second-order governance: the EU does not substitute its own structures and processes of governing for another but rather seeks externally to influence an already constituted system of governance => the governance of governance
- Input governance: concerns policies (e.g. minimum standards for occupational health and safety)
- Outcome governance: concerns social outcomes (e.g. employment target, poverty reduction target)

| | First-order | Second-order |
|---------|-------------|--------------|
| Input | A | B |
| Outcome | C | D |

Governing social policy in the EU

- Moving from input to outcome governance and first to second-order way to overcome diversity and subsidiarity?
- Hard law
 - Requirements and principles set out in treaties
- Soft law
 - Non-binding policy instruments
 - Compromise between ‘doing nothing’ and undesirable binding provisions?
 - Example: Open method of coordination and monitoring of EU2020 poverty reduction target and social policies in European Semester

How to make sense of limited role for EU in social policy?

Two questions central in Anderson's (2015) analysis:

- Why is it difficult for Member States (MS) to agree on transferring considerable competences in social field to EU?
- How can we understand the expansion of the EU's social policy competences despite
 - a weak Treaty basis
 - MS' reluctance to transfer social policy competences?

How to make sense of limited role for EU in social policy?

- Assumption about upward convergence as a corollary of the common market at the start
- Status quo bias of EU institutions in field of social policy (unanimity requirement in many areas, subsidiarity)
- Diversity in social policy in MS (and result of democratic decision-making)
- Diversity in social situation in MS precludes one-size-fits-all policies? (but outcome governance...)
- Social policy is different from other European policies
 - Social programmes large share of public budgets & affect everyone
 - High political salience in national politics
 - Social policy provides much of the legitimization for modern democratic governments (social policy and state-building)

Some points to remember

- Social objectives have prominent place in Treaties
- Horizontal clause should / could put social objectives on equal footing with other objectives
- But, except for health and training, competences in social domain very limited, allowing mainly for 'soft law'
- Subsidiarity is important principle
- Several factors have contributed to the limited role of the EU in social policy

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