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Shortcomings of 'the European society': why national arrangements for social protection and labour markets have prevailed and will prevail

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1. Introduction

At a very abstract and notional level, a 'European society' certainly exists: its most conspicuous and stable elements are European law and the coordination of monetary policies – a main testimony of which is the common currency now shared by 16 countries. Just because EU-law has a supreme status in relationship to 27 systems of national law, 'Europeanization' has tremendously increased since the EU (European Union) Treaty of Rome (1957). However, from other points of view, contrary to what fans of Europe sometimes claim, 'Europeanization' has remained very weak, and in many areas, it amounts to 'surface homogenization'. The socialisation of people in Europe to 'European matters', to the cultures and practices of 'others' - whether they be individuals, social groups, and even élites – has remained limited (Barbier 2008). In this respect, contrary to what N. Fligstein (2008) claims, empirical data contradict even his views about 'European élites'. Perhaps the domain where this is most visible is social protection, as Streeck (2009) has aptly remarked.

Diversity, intrinsic to Europe, is linked to history and to complex institutions and social settlements with deep and value-laden roots: this diversity is typically exemplified by social protection, an institution which is essential for any consideration of labour market situations, including security and "precariousness" (Barbier 2004a). It is for instance striking that despite the trend to homogenise and coordinate social and employment policies very systematically over the last 15 years, Italy still has not created any national assistance programme, or, in the domain of pensions, it is significant that a group of EU member states have not complied with the idea and practice that their 'second-pillar' pension programmes should be funded and they stuck to the 'pay-as-you-go' principle, in spite of the promotion by the EU Commission of a standard system of 'three pillars'. In the social domain, despite rhetoric and enthusiastic praise of a 'European social model', such a model has largely remained unheard of in practical terms, when one looks for precise components of a "model", and not only for vague general features. We will stress that, far from achieving an actual 'social model', the progress of EU-level social policies has been limited. In the very midst of an unprecedented economic and financial crisis, the abilities and resources of the EU have remained marginal, when compared with the measures taken by nation-states ('member states' as the label goes). This empirical fact leads to a seldom stressed conclusion: the adequate level *to consider first and not exclusively* is the national one (and, more marginally, sub-national), when it comes to working conditions and labour market situations, to contractual employment arrangements and associated social rights, to what is vaguely referred to when one uses the political phrase of 'flexicurity'. This observation ehoes the contradiction often stressed by specialists of industrial relations systems (Hyman 2001a and b) who have noted that these remained national when issues and trends were increasingly international, and for that matter, Europeanized. When workers today are fired, they certainly will not claim help and support from the EU Council, or, for that matter, the EU Commission: in their especially dire circumstances, only national authorities are candidates to accounting for and responding to their distress.

This situation should not come as a surprise for a key domain where politics take place today, i.e., social protection (or in universalistic parlance, the welfare state). Systems of social protection not only require functional conditions, but they are grounded on some sort of solidarity and reciprocity, both elements linked to existing political communities, i.e. nation-states. As sociological nations, all nation-states of Europe have developed political cultures of

their own, across history. One sees that very clearly when one looks back with the hindsight of 50 years of European integration. From the point of view of citizens, this leads to a situation to-day where a great part of EU-level 'social' initiatives are either perceived as potentially destructing the "national social systems" (Scharpf 2009) or very limited and minimal. The labour market and social protection reforms of the last 20 years provide a clear illustration of this situation, in terms of 'employment precariousness' but also in terms of the policy answers that have been attempted with the so-called 'flexicurity' debates.

As many economists seem to doubt the feasibility of more federalism in the realm of economic as well as social policies, we are left with the credible assumption that a very long time is going to be required before any new extension of federalism or increased Europeanization in the social domain. Moreover, some preconditions should materialize before. In this respect, given the importance of political cultures, and the obvious absence of a European *demos,* one may assume normatively that a promotion of cultural policies at the EU level and also to some sort of mainstream multilingualism could be useful proposals to consider for actors who really want to see more 'social Europe' in European integration (Barbier 2008; Kraus 2008).

As our presentation takes place in the context of a session focussed on work, flexibility and risk, let us stress first that the structural context of (national) diversity, if associated with the empirical analysis of variegated forms of Europeanization provides one of the essential keys to the understanding of the evolution of work in Europe at the beginning of the 21st century.

2. A 'European society' with weak ties outside the economic sphere

An overarching common legal framework

Europeanization and the building of a 'European society' are perhaps the most visible in the area of law, and in economies of the nation-states. In this respect, three essential points should be stressed. European integration still bears the imprint of the origins of the initial treaty establishing the European Coal and Steel Community in 1951: it involved economic integration, and little else. While European integration was always a political process, the rationale of which originally was linked to establishing peace, economic transformation was the means chosen by its initiators. The original division of jurisdictions (*competences*) has remained basically the same: the 'social' (including education and culture) is a matter for the national (or sub-national) level, notwithstanding the limited introduction of qualified majority voting. At the same time, the hierarchy of legal norms has been radically altered through a series of particularly inventive decisions by the European Court of Justice (ECJ) imposing the Community legal system's supremacy over the domestic legal systems of all the member states, in spite of their initial resistance.

(1) The initial, *economic* logic of the founding act has continuously informed subsequent developments. The objective of promoting or increasing social rights was absent from the original treaty. Even if we admit that the social dimension has since been addressed more extensively[1], as the ECJ's evolving jurisprudence demonstrate (de Schutter 2004), economic and social rights are still not treated in an equivalent way in EU law, even after the formal

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[1] For instance: in the important domain of discrimination legislation.

adoption of texts establishing social rights.[2] While freedoms of circulation and the freedom of establishment constitute a hierarchically superior legal base for the Union, because they are supposed to permit better competition and improved functioning of the single market, social rights are only taken into consideration to the extent that they might be affected by the functioning of the market (or, conversely, affect the market's functioning). Their application 'for their own sake' does not, strictly speaking, constitute an explicit political task for the EU. To cite but one example: if the EU is concerned with languages, this is *primarily and legally justified* by the fact that language education may have consequences on individual mobility and freedom of circulation, and not because of the cultural value of languages *per se*.

(2) A second principle applied to social protection as a whole, and education and culture in particular, concerns the supremacy (if not the exclusivity) of national jurisdictions over Community ones. In the core areas of social protection, member states have resisted quite well until now (Ferrera 2005), even if highly important rules (notably those established by the ECJ) constrain national decisions. This resistance, moreover, has been greater in the field of education; the difficulties encountered for adopting the Erasmus programme in 1987 is probably a good example of this (Corbett 2003).[3]

(3) In the area of social protection as elsewhere, three principles prevail: the *direct effect* of Community law; the *supremacy* of EU law over domestic laws; and the principles concerning economic *freedoms* (freedom of establishment and free circulation of persons, goods, services and capital), associated with the principle of fair competition. These principles, which have gradually been consolidated, directly or indirectly 'command' the whole apparatus of member states' law in all areas. When an affair is submitted to the ECJ, they provide the basis for the latter's interpretations. Admittedly, these may be overturned, but this requires a decision of the Council of Ministers, which is not easy to arrive at, as is demonstrated by the lengthy battle, probably just getting under way, over the free circulation of services, which, to a great extent, should be seen as essential for the future of work in the EU.

Apart from that however, despite the existence of both powerful factors (EU law and the common currency), Europeanization has remained practically limited. The essential legal basis for labour market regulation and social protection remains *chiefly* defined at the national level. Despite the apparently strict constraints imposed by the euro, the greatest part of economic policies are still invented, chosen and implemented at this same level. Hence, Europeanization is often superficial. Many scholars fail to spot this superficiality because they use tools which are unable to grasp diversity, and some of them conclude that all countries converge towards a uniform and homogenous single type of social protection (see Gilbert, 2002, as a typical proponent of the convergence thesis). This dominant line of cross-national research enjoys powerful advantages and social support: from this comes its remarkable ability to influence the academic debate powerfully about social policies, and the fact that much more attention is given to common trends, the dissemination of common norms, the framing of policies through similar perspectives, the sharing of similar policy instruments and even language (provided it is English). Mainstream research gives unbalanced precedence to

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[2] E.g., the Community Charter of Fundamental Social Rights for Workers, adopted in 1989, and the European Charter of Fundamental Rights, which deals with social rights in Chapter IV (Solidarity), adopted at the Nice Summit in December 2000. The right to education and vocational and continuing training appears in article 14, in the chapter 'Freedoms', and the right to cultural, religious and linguistic diversity is found in the 'Equality' chapter, article 22.

[3] The success of Erasmus is often cited, but by its twentieth anniversary, if more than 1.5 million students had participated in it, they represented only about 1 percent of the potential flows. At the end of the 1980s, the Commission aimed at much higher figures, around 10 percent.

common trends and slips diversity under the carpet of universalistic interpretation (Barbier 2008). In parallel, according to the official political EU discourse, it would be easy to believe that EU member states not only already participate in a common 'social model' different from others in the world, but are more and more converging by the way of learning from each other and exchanging the best of their practices (Barbier 2007). Nevertheless, an immense gap exists between the claims of European political parlance to the existence of a common model, and the more prosaic reality. As a result of this gap, the fact that the process of coordination of employment and other social policies in the EU was stalled after 2005 should come as no surprise: coordination, common goals, open methods of coordination were always acting on the *surface* of things. In the meantime, as the latest ECJ case law decisions demonstrated in the late 2000s (e.g. Laval, Viking, among the most important) one could see member states fighting on their own to fend off legal "attacks" on their 'national model'.

3. Features of European societies: the relationship between nation[4] and social protection and its crucial bearing on the world of work

Contrary to common assumptions, the actual role of national institutions, national political cultures and social compacts is still essential and its empirical documentation certainly does not fall in the category that some tend to see as obsolete "methodological nationalism" (Beck, 2003) . As Giraud (2005: 113) remarked, nation-states have remained central with regard to authority, solidarity and democracy. The empirical fact is that, despite pervasive internationalisation of markets, despite all the obvious signs of globalisation, working conditions and the wage-labour nexus – to borrow the term from the *Régulation* school of economists (Boyer 2004) – are still nationally embedded. A purely "international" view of élites (Fligstein 2008) fails to understand that even when these are in a very different position vis-à-vis European integration from the position of other social groups, they are nevertheless part of national compacts[5].

The national "closure" of social protection systems (Ferrera 2005) is seldom extensively studied and it is most often taken for granted, as an *implicit fact*. Yet, a *relative* closure[6] of social protection has remained a clear characteristic of the building of solidarity since the beginnings of modern systems in the late 19th century and into the 1930's. The 'bounding' dimension is associated with the 'bonding' of citizens (and possibly, denizens, *immigrants* and perhaps *Mitbürger*) together, and the possibility of "sharing" something between them. Many characteristics that pertain to the nation, as a closed community, are relevant for social protection: territory, nationality (or nationhood) – in the sense of *nationalité*, or *Bürgerschaft* – residence, language, citizenship, identity – as the shared

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[4] The very category of 'nation' has remained tricky, difficult to handle and controversial. D. Schnapper (1991: 26) once rightly wrote that « *le national* » (what is national) has bad reputation, because it is intrinsically associated with empirical nationalisms and the wars they helped to foster. Social scientists often experience "surprise" when confronted to the reality of nationalism (Taguieff 1991: 47), a surprise that partly accounts for the discredit of the concept, often seen as a mere artificial construction by political interests for manipulative purposes. Some, as R. Brubaker (1996), seem to deny the possibility of a distinct analytical substance to the term. This author systematically added brackets when he wrote 'nation', a "putative" category, which for him can describe neither a substantive community nor an empirical entity. He suggested distinguishing between 'nationness', 'nationhood' and 'nation', three words that do not translate easily into French, or in German for that matter.

[5] Universalistic systems, as the Scandinavian, have adopted measures in the 2000s to counter the effect of free riders, for instance Danish pensioners leaving Denmark with their capital.

[6] Evidently, this closure has always been historically relative (Werner and Zimmermann 2004).

sentiment of belonging to a community, and identification as the process of identifying with such a 'collectivity' (*collectivité historique*, to use Schnapper's vocabulary). The propensity to share between its members is at the same time individual and collectively constructed (Rothstein 1998). Empirically, this obviously also applies to the rights of workers and the way their working conditions are more or less protected and regulated. While studying the Swedish welfare state, B. Rothstein (1998: 222) has rightly remarked that **"**the future of welfare policy lies in how it functions internally, rather than in surrounding factors. If it is true that the shape of welfare policy is decided by the social norms established among citizens, and if these norms in turn are determined by the type of political institutions we have analyzed, then the future of the welfare state or whatever type is something that lies in the hands of its political leaders and citizens, since they decide whether they want to change our political institutions or not".

In order to fully understand the implications of this situation, it is necessary to identify precisely the *relevant sociological characteristics* of nations that bear directly on the "social construction" of work, labour markets and social protection. For my discussion, I need only to stress that both (1) subjective (affective, normative, imaginary and cognitive, both individual and collective) and (2) objective, practical and institutional phenomena, are grouped under the term 'nation': First, because social protection links politics, economics and family in a structural way (Barbier and Théret 2009), it is based on social conditions of legitimacy; second, citizenship and the identification processes linked with it are essential in these processes ; and third, material, territorial and linguistic constraints bear crucially on the very possibility of implementing social protection programmes, but also in fact collective agreements.

Three main roles for nations in the construction of social justice

First, nations provide *practical frameworks for the daily legitimization of choices* and collective actions aimed at the collection (whether by tax or social contributions), the allocation and the redistribution of public money, linked to a complex process of identification of individuals. Despite the Europeanization of politics under many guises, as is empirically obvious, these choices are only distantly affected by what happens at the EU-level. As has been shown by many studies, support for redistribution ultimately lies in the possibility for individuals to appraise the 'moral' justification of their contribution, including the sentiment of reciprocity (Rothstein 1998). Individual assessments would be impossible were the existence of a (national) political community not granted, with *actual* institutions for a debate usually conducted *in one* language. Moreover, the building processes of solidarity in societies involve the role of *identifications* with the national political systems that provide an indispensable and pragmatic support – i. e. sentiments of belonging to a particular community, notwithstanding the multiple identifications individuals may have. For social protection decisions to be taken and legitimized, individual and collective (from parties, associations, from the unions, from the business associations) support is needed, be it implicit or explicit. A public sphere – to use Habermas's *Öffentlichkeit* concept – along with specific policy community forums and decisional arenas are necessary to debate about them. As J. Goul Andersen has shown in detail about the Danish case, support for welfare schemes is never straightforward, uniform and constant: there are also "macro-level factors" at stake ("perceived fairness", "reciprocity or trust in the fairness of the system") which can explain it (Goul Andersen 2008). Such mechanisms - so routinely basic in national cases, have no counterpart at the EU-level, in the absence of significant redistribution and of a proper common polity. Contrary to rational economic choice expectations perhaps, the importance of

groups who try not to share in some national solidarity by resorting to market de-territorialized social provision has remained small (Ferrera 2005).

Secondly, citizenship matters immensely for social justice. Access to social protection is (at least in theory) extended to permanent and regular residents (or denizens), among whom some are close to acquiring fully-fledged rights (and obligations) if they gain full citizenship. However, Van Oorschot (2006) has shown that in all countries, migrants are unfavourably considered in terms of "deservingness perceptions", especially in the 'new member states'. At the same time, a survey conducted in May 2007 showed that in the 5 bigger member states interviewees agreed with the assertion that there were too many legal immigrants in their countries, except in France[7]. Eurobarometer data do not publish regularly updated data on this question. However, in September 2007, only 4 interviewees out of 10 in Europe approved the statement according to which immigrants were "contributing much" to their country.

Thirdly, the *very possibility of solidarity and sharing* has remained national in another, trivial, sense, and from a triple perspective: the sharing of a national language (in exceptional federal cases inter-comprehensible languages); a firm anchorage into a national territory with formal institutions and organizations; a legal system, which – despite its subordination to a higher European legal order – remains national-specific and links citizenship, nationality, rights and obligations. A trivial aspect of social protection *in practice* is generally overlooked: there is no such thing as social protection without an administration, and every administration speaks one national language – or, exceptionally, a handful of official languages. Similarly trivial for social protection is the necessity of its territorial, physical, inscription. Social protection needs buildings, IT systems, official documents, application forms, leaflets, websites, social security identification documents, records of social contributions, etc.. This leads to the fact that people claim their rights and enjoy their share of social protection in places that are situated in their neighbourhood, where they may phone or visit the local agency at the counter. Migrants from other member states do that as well as citizens of the country they work in, and since the beginnings of the European Union, its various systems have been coordinated for migrants. Obviously the legal basis of social protection is directly linked to national definitions of citizenship. But law is not only a way of ascribing an identity to individuals. It provides the ultimate way of stating and confirming the legitimacy of the particular arrangements that decide that such and such a category is eligible to such and such protection or support. In many countries this involves an extensive discussion by the social partners (the Scandinavian countries, Germany). Even in countries where industrial relations systems are more recent or fragile (Spain, Italy) or where union density is low (France), the participation of unions in the eventual choices made in terms of benefits, rules for unemployment insurance, early retirement schemes, assistance in the local communities, etc.., has remained essential. National law is the ultimate legitimizing mechanism, despite the 'direct effect' or European law. *So far*, no equivalent procedures can be imagined at the EU-level, and this explains, at least partly, why voters rejected the documents they were asked to approve in successive referendums, in the Danish case in 1992, in the Dutch and French cases in 2005, and in the Irish case in 2008. Without national legal rules no definitions of a beneficiary, of a participant to a scheme, of a claimant to insurance are possible, and no claims on taxpayers are enforceable. In this respect, the fundamental asymmetry existing between the EU legal order and national legal orders has in no way been narrowed since the beginnings of the European Community. As the recent cases decided upon by the ECJ in the area of labour law showed (the so-called Viking, Laval, and Rüffert cases) this asymmetry is structural, and the influence

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[7] The Harris Poll, 46, May, 29, 2007.

of EU law has rightly been described in terms of "negative integration" (Scharpf 1999). In the near future, this situation will remain unchanged, and will provide a potent obstacle for the possible developments of any new 'layer of social protection' at the EU-level. Even in the case where the ECJ keeps increasing its power, legal rules governing social protection systems will remain in practice dependent on specific national choices and normative compromises over the role of nationality, residence, family, gender, occupational status, contributions and employment record. Indeed all this should not come as a surprise when one looks back to the length of time over which the closure of national systems of social protection and of industrial relations has been in force, since the end of the 19th century (Ferrera 2005: 37-52). All in all, there exists a basic rationale for systems to remain national, both *in terms of legitimacy* and *in terms of practical feasibility*.

At the EU-level, it would for instance be nonsensical to imagine legitimising a reform of the labour market via the introduction of uniform[8] special employment contracts: this can only happen within a polity, as was shown in France in 2005, when the Prime Minister de Villepin was eventually defeated because of the allied forces of students' organisations and the unions, as he had proposed to give young people second-rate contracts (CPE, *contrats premier emploi*). Similarly, when the parties in the *Große Koalition* in Germany finally accepted to reform the unemployment benefits again in 2007, they answered to the majority's sentiment in this country that the Hartz IV reform of the *Arbeitslosenhilfe* was a *Zumutung* (something unacceptable, injust[9]) imposed on people that had contributed normally with their *Beiträge* and should not be confused with the recipients of *Sozialhilfe*. No one has ever imagined what a 'Europeanized' *Zumutung* or a '*contrat premier emploi*' could be. For such measures (as other measures of social protection) to be discussed and to be accepted or defeated, a public sphere is indispensable, where sentiments and political choices are shared, in a process of communication and collective imagination that is linked to the common experience and communication described by B. Anderson. The *national* polity provides an indispensable base to discuss such matters more or less openly. B. Rothstein has shown this in detail about the Swedish case: "The design given to political institutions governs the notions of morality and justice prevailing in society" (1998: 217) and, this society is – implicitly, *national*. The rationality of this process is political: "political, because what is intended is an institutionalized and (in contrast to the market) public discursive process. Rationality, because it is a question of arriving, after deliberation and debate, at a sort of constitutional solution making it possible for groups and individuals to reach common solutions to collective problems, even while showing due consideration for each other's differences" (1998: 123).

4. A brief glance at Social Europe's achievements: a limited influence of Europe outside negative integration

With such powerful justification for the persistent role of the national level of social protection and of industrial relations systems, as well as labour law systems, it is not surprising that only modest progress has been accomplished so far in the domain that politicians and voters sometimes refer as 'Social Europe' (only in certain countries). This is not to say that the European Union level has no importance in the present governance of systems of social protection and their links with labour markets, industrial relations and

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[8] Uniform is different from universal, and from common. Because of its Eurospeak as a lingua franca, much of what is politically produced at the EU-level is uniform, and for that matter, superficial (Barbier 2008).

[9] „*die Agenda war ungerecht. Sie war, in seinen Worten, eine 'Zumutung'* », wrote *die Zeit*, quoting Kurt Beck, the SPD chief, on the 11th of October, 2007.

employment. Indeed this is only to attribute the 'federal' level its correct weight in the multilevel system of governance now prevailing in the EU.

True, when one looks at the amount of administrative and political activities organised by the Commission in the 'social domain' since the beginnings of the European Communities and the Treaty of Rome, they appear extensive. But, in fact, they can be easily summed up and presented in three stages. (1) A first long period stretches from 1957 to the early 1990's; (2) a real innovative period was then started and practically ended up in 2005; (3) the present situation will probably remain as the third stage for a very long time. When one leaves aside 'negative integration' and its sometimes damaging influence on social protection and social rights, a considerable gap exists during all periods between the existing demands for social policy and social protection and the limited intervention allowed to the European institutions. This gap is more and more visible recently, precisely at a time when issues and stakes dealt with at the EU level appear more and more politicized.

The first stage has been largely documented by Ferrera (2005) and Leibfried and Pierson (1995). The main characteristics of this period are the following. Firstly, the European Court of Justice (ECJ) gradually established the legal bases of its influence upon national social protection systems; this influence has grown as a consequence of the consistent implementation of the principles of free movement. Additionally, member states – sometimes with great reluctance – have gradually accepted that the EU's legal order prevailed over the national legal orders. Over the whole period, this form of homogenisation ('Europeanization') via the EU legal order was practically unheard of in national public debates; the obligations and constraints that result from it for national systems can be seen as pertaining to 'negative integration'. Secondly, the main domain where European influence was exerted consisted of the coordination of social security systems for migrant workers and employees – a very small group indeed. The main legal instrument used was Regulation 1408/71: in a nutshell, its objective was to open up national systems in such a way that workers (and their families) could be eligible to benefits even when they worked in another member state: for instance, family benefits were paid to the family of a Portuguese worker employed in France by way of a mechanism coordinating family funds in France and Portugal[10]. Thirdly, the 'hard-law' influence of the EU-level over national legislation was at its highest in the domain of health and safety at work on one hand and in the domain of equal opportunities for men and women (equality and anti-discrimination in general) on the other. However, apart from this variegated influence upon national systems, it can be argued that their essential substance and regulation, as well as the social justice and solidarity principles upon which they have rested were consistently left to the national competence during the period.

A second period – which in a way could be seen as the 'golden age' of Social Europe – started in the late 1980's. Yet, this golden age never meant more than coordinating ideas, cognitive frameworks and processes more closely. For our present concern, its main distinctive characteristic was the creation of the 'Open Methods of Coordination' (OMC) in social policy. The initial intellectual origin of these methods is not always sufficiently stressed: there was a convergence of efforts and initiatives between the Delors group (the publication of the White Paper on Growth, Competitiveness and Employment in 1993) and some Scandinavian politicians and experts (Johansson 1999; Barbier 2004b: 45-46) that fed the Intergovernmental Conference in 1995-96 with innovative ideas and proposals, with the

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[10] I refer here to the matter discussed in the Judgement of the Court "Pinna vs Caisse d'allocations familiales de la Savoie" in 1989 (March, 2, 1989), a judgement which started a controversy and an updating of the Regulation 1408.

help of Luxemburg's Prime Minister Juncker and the Party of European Socialists (PES). The Scandinavian « Joint Committee of the Nordic social democratic labour movement » (SAMAK) was very active, with Allan Larsson, the former Swedish Finance Minister and later Director of the Commission's DG Employment, as a key player. With other EU policies, OMCs share a characteristic stressed by many researchers (Muller 2000: 204-205): they contribute to the *de-coupling*[11] of the sphere of policies from the sphere of the compromises social systems are based upon. In this respect, OMCs can be easily seen – although of course falsely – as 'technical' or 'a-political'. Yet they are, to a certain extent, *de-politicized*. In the French case, for instance, the procedural success of the EES, among a very small group of elite actors, was linked to the fact that they adopted a *common de-politicized discourse* (Barbier 2004b). Radaelli (2003) has very adequately noted that a tension was present at the very core of the EES, (and we may add of the OMCs in general), because as "there is no attempt to forge a European vision of capitalism" (ibid.: 20), it is all the more necessary to "avoid politicization" (ibid.: 21). However, when used in national politics, the "de-politicized" discourse was swiftly *re-politicized*, and this process reveals how determining the national level of 'Social Europe' has been and will remain in the future. Indeed, the EES, for example, *did not mainly consist* of a complex web of political and administrative activities, and a discourse resulting from a controversial process between governments pushing forward their conflicting views, *it eventually relied upon the existence of national policies,* which were legitimated on the domestic scene, among a great variety of institutions and political cultures. With the hindsight of 10 years of existence of the OMCs in various social policy domains, this has not changed significantly. Not only in legal terms (the competencies conferred to the EU by the EC Treaty), but also in political terms (the political legitimising process of policies within national polities), national programmes and policies, however cognitively and normatively coordinated, have remained a determining variable. Many instances of the crucial and distinct processes of national building of the legitimacy of social reforms can be taken in the recent years: for instance, the labour market reform (1993-94) and the reform of the *efterløn* (voluntary retirement) in Denmark (2005); the 35-hour a week in France (1998) and the 2003 pension reform, keeping 'pay as you go' as a main instrument; the long and painful process of the Hartz reform in Germany (2001-2004); the continuous welfare reform in the UK, initiated by the New Labour government from 1997. These are only some examples that show that for each reform, in spite of the EU-level coordination, specific national features and institutions prevailed, in a context of domestic politicization and partisanship. Reforms will remain legitimised and contested within national polities, even if the OMCs provide national governments with power and cognitive resources. This explains why, despite reluctance from many member states to accept an increased role for the Commission, the EES has kept functioning rather successfully, in terms of the states' expectations, in its first period of existence till 2002. However, the fundamental limitation of the EES and other OMCs was to be attained rather rapidly, and they could hardly be seen as vehicles to building a future substantive and genuine 'Social Europe'. Conflicts of values and politicization were bound to happen, some way or another. Apart from insisting on the potential the OMCs have for the future, M. Ferrera (2005: 240-244) also rightly stressed the importance of the Charter of Fundamental Rights for future development of social policy in Europe. However, as was again demonstrated in 2007, at the Council of Head of States in June that adopted a new

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[11] 'De-coupling' is a general feature of the entire EU-level system, as Mény (2004) notes "*Dans la pratique, le découplage entre débats, programmes électoraux et politique européenne est presque total, à la fois en raison de la faiblesse – de l'inexistence diraient certains – d'une opinion publique européenne, de la faiblesse du Parlement et de sa médiocre influence sur une partie de l'exécutif européen, de l'absence de lien entre l'organe conseil des ministres et l'électorat* ».

'reform Treaty', the exact legal status of this document was still very fragile[12]. As Ferrera (2005: 249) rightly notes, it would be naïve to see both instruments as "unequivocal signs of the activation of an 'incremental social supranationalism' scenario".

2004-2005 opened a third period in which the EU is still engaged in 2009. This period is characterized by three events which all were obstacles to furthering the practice of OMCs as innovative (and alternative) ways of reinforcing the influence of the EU level in social policy. Indeed, the last period of our brief survey of the 'social dimension' in Europe started in 2004. Three changes must be mentioned here. The first was a clear shift of the balance between the 'economic' and the 'social' actors within the Commission, and within the policy arenas deciding over this balance. This was exemplified by the change of tune and substance that characterized both 'Kok reports'. The first one, "Jobs, Jobs, Jobs", published in 2003, was positioned in continuity with the 2003 reform of the EES. However, the second one "Facing the Challenge", published in autumn 2004 marked a shift towards the clear affirmation of the necessity of structural reforms in the context of orthodox economic supply-side policies. The second important change introduced in 2004 was the effective accession of ten (later, 12) new member states following the completion of the enlargement process. Unlike previous enlargements, countries significantly poorer and with very different social protection and legal institutions became full members, immediately making the existing coordination processes of the various OMCs more complicated and tricky. The deep divide between two groups of member states with regard to the 'social dimension' was illustrated by the publication by a group of countries (Belgium, France, Luxemburg, Hungary, Italy, Greece, Spain, Bulgaria and Cyprus) of a manifesto in favour of new social measures, published in February 2007, while the declaration was sharply opposed by countries like Poland and the Czech Republic. Last not but not least, of course, the third event prompting the near collapse of 'social Europe' was the havoc sparked off by the failure of referendums in the Netherlands and France, for the adoption of the project for a Constitutional Treaty in 2005. This latter event had to do, explicitly in France, and also in the Netherlands, although less directly, with the national boundaries of social protection systems and the fear of a negative influence of the supra-national level upon these systems. During the referendum in Ireland in 2008, the politicization of European social questions was demonstrated again (farmers' income; the public provision of services; workers' rights, etc[13].).

All in all, the painful building of the first two stages of the 'social dimension' in the EU finally has ended in a state of quasi-crisis. It is certainly not incidental that, for the first time in 2005, on a large and explicit scale, measures pertaining to this 'social dimension' were directly debated within the mainstream processes of politics and elections in the Netherlands and France. For instance, in France, the so-called 'Bolkestein' service directive was largely used as an argument for opponents of the project for a Constitutional Treaty to support their contention that the European integration was gradually destroying public services and social protection. One might consider that the evolution since the failure of the referendums is "gloomy" to use Ferrera's word (2005: 253). However, whatever the "gloomy" consequences that stemmed out of the refusals, albeit distorted and difficult, a new kind of national

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[12] The UK government successfully negotiated to exempt Britain from the application of the Charter, because it said it was incompatible with the common law tradition. Poland is also exempt of its application.

[13] In this regard, nothing is perhaps more telling than the list of reassurances the Council felt obliged to address to the Irish voters (see for instance the "solemn declaration" of the European Council in Brussels in June 2009, which made promises to the people of Ireland, not only on moral questions, but also on items as "social progress and the workers' rights", "services of general economic interest" and even "public services", a quite unusual move. See Presidency Conclusions, 18-19 June, 2009, p. 20).

democratic debate was indeed started, which focused on precise social issues. When it comes to really explaining these political transformations, we need more than just volatile results of Eurobarometer surveys. In the midst of prevailing indifference towards European issues in the European elections of 2009, the politicization of European debates was nevertheless again shown among certain groups of voters or on certain issues specific to certain areas of social policy (for instance the fate of services of general economic interest in the social domain, or the consequences of EU law on national labour law and collective agreements). Similar issues played an important role in the rejection of the 'Lisbon Treaty' in the June 2008 Irish referendum.

5. Basic weaknesses of social Europe illustrated

'Social Europe', in political parlance, should not distract the attention from what has been a superficial homogenisation and a persisting diversity in social policy, labour law, labour market policies and other related domains. We will take here only some recent empirical examples of the weak capacity of the EU level of governance to act as a significant actor in this area. True, a large part of 'social Europe' was built in the presence of J. Delors as president of the Commission. At that time, the various elements (social dialogue, regulations for working conditions, the expansion of structural funds, and, finally, in the late 1990's, the open methods of coordination (OMCs) in a number of fields) that the Commission introduced were seen as part of a political exchange (Ross, 1994), as the political construction of what was sometimes presented as a 'balance between the economic and the social'. However, these days are long past. Among many aspects three themes demonstrate the weakness of the entire intervention of the EU in the social questions. One captures this excellently: it's 'flexicurity'. It can be seen as a very clear example that more social integration at the EU-level is a "chimera unless popular commitment can be mobilized in its support" (Hyman 2001a: 175). Another example is the "quality of jobs" and their "precariousness". But the reaction of the EU in social matters in the very midst of the worse economic crisis since the 30's also illustrates vividly the piecemeal and marginal power resources it has, to weigh in the process.

The rise and marginalisation of 'flexicurity' at the EU level (2005-2009)

During the period immediately following the referendums, in 2005, officials in the Commission's DG Employment and Social Affairs were very pessimistic about their future role. When interviewed, some deplored the absence of a 'roadmap'. Yet activity rapidly went back to 'business as usual', as the DG was able to seize upon the question of 'flexicurity' in 2006, with the help of some governments such as Denmark's. Typically, the Commission's investment in the 'flexicurity' theme illustrated the nature of the OMCs and similar policies: they tend to coordinate ideas and words, but when it comes to real compromises and struggles, action will take place within national polities, and be fought in parties and national parliaments, according to rules long established, not to mention the streets for demonstrations or firms for strikes. For instance, the very special balance Danes have achieved over a long period of their history (perhaps since the September Compromise of 1899), has social roots in their particular coherence of institutions, values, political culture and their adaptation to economic changes. In any country, in France and the Netherlands for that matter, the balance between what is acceptable and desirable in terms of flexibility of labour and employment on one side, and what is seen as 'necessary' (normally expected) security on the other very much depends on social coherences (political cultures) built over years within polities: such preferences are obviously reinforced by institutions and their success in the regulation of

societies. Hence, 'flexicurity', in principle, is a *national* question. At the end of 2008, the already departing Commission was content with posting a slim (and probably final) report on "flexicurity" on its website, while political and industrial relations processes were progressing along national constraints and idiosyncrasies (Barbier *et al.*, 2009).

More generally, in the French case for instance, the 'No' vote to the 2005 referendum assembled many sub-groups of the electorate and increased already existing polarisation between social groups; at the same time, the "social question" ("*le modèle social français*") and its defence played a key role. Findings from French surveys were globally confirmed by Eurobarometer results: as many as 40% of voters rejected the constitutional project because they deemed it 'too liberal' and not 'social' enough. This happened although voters were not particularly hostile to French participation in the EU. In the Netherlands, the main reason for voting 'No' quoted in surveys was the fear of losing more of the country's sovereignty. But social protection (the 'social model') is at the heart of this sovereignty and "closure", also in the field of industrial relations. In other countries on the contrary (for instance Scandinavia), voters don't expect the EU to meddle into their social negotiations. Very often, as a result, "Europe" tends to appear as a danger to protections, especially among the sections of the working populations most exposed to the negative consequences of flexibility. Even in countries that, before the 2008 crisis, used to be presented as the best performers in terms of economic success and welfare, voters were still very reluctant, in the UK for instance and in the Scandinavian countries. Hence, arguments for a continuing strong national character of the core pillars of social protection in Europe appear extremely powerful. It is not by chance that systems have remained national and that the European area of *substantive* social protection has remained extremely limited, whereas *negative* integration has kept extending its reach. The consequence is that we at the same time experience globalization and the Europeanization of general rules, general ideas or 'paradigms' and consistent and resilient national 'embeddedness' of social protection and of industrial relations systems.

'Precariousness' and the quality of jobs: national norms prevail

Because cross-national comparison of 'job quality' is still in its infancy, despite various comparative endeavours (Barbier, 2004a; Davoine and Erhel, 2008) quick-fix comparisons, based on gross (or static) and inadequate statistical indicators, like 'temporary employment' or other proxies such as part-time jobs, are bound to display decisive shortcomings. Trying to compare 'employment precariousness' across countries, G. Rodgers and J. Rodgers (1989) came to this conclusion already 20 years ago. To progress further, it was necessary to understand in greater depth the nature and components of "flexibility / security / quality' regimes" prevalent in different countries (Barbier, 2002; Laparra Navarro, 2006). This went beyond the simple treatment of 'flexicurity' as it was later often envisaged, as a form of 'trade-off' between labour flexibility for employers and security of employment for employees. In some regimes, labour market flexibility is low and employment security is very heterogeneous across the workforce; in other regimes labour market flexibility is generally high and employment insecurity hidden within particular categories, while hardly any public attention is devoted to the issue of 'job quality'. These regimes are based on common if varying societal components: a system of social protection; an industrial relations system; and a particular distribution of employment and activity across the population (resulting into rather stable labour market participation rates by age, class and gender). Interactions between these elements shape the conditions for the adoption of a particular conception of what is standard (or regular) employment, what is a 'quality job' as opposed to a 'bad' or a 'poor' job. The elements above are thus closely linked to a fourth one, i.e. *normative frameworks* based

upon common sets of values and norms, valid for a given period, and institutionalised in regulations, collective agreements and social actors' and firms' practices. These are embedded into *different national political cultures* (Barbier, 2008). Indeed, legal regulations and informal or conventional agreements shape the conditions under which 'equivalent' conceptions of 'bad jobs' can emerge in specific national contexts. A crucial component of the normative systems, which extensively varies across nations, is the notion of a 'suitable job', and the ascription of the quality features which make a job offer acceptable for the workless jobseeker. These normative systems are legitimated (or de-legitimated) across time. They set the conditions and terms under which a job is (or is not) acceptable or suitable – *zumutbar*, *convenable*, *adecuado*. These norms also determine the characteristics of jobs in terms of their (in)stability, their working conditions, labour standards and wages and the level of employment (in)security they offer. Compromises are made over what is globally 'acceptable' and how norms evolve over time, possibly due to influences from abroad. Relevant social actors agree on such compromises, the traces of which can be observed in the very wording of political discourses used in each particular polity.

The minimum wage provides an interesting case in point. In the UK, partly because of European standards, the Labour government introduced a national minimum wage in 1997. However, a lower rate was applied for the 18 to 21 year old, and no minimum rate existed for those under 18 until 2004. In France, on the other hand, 'acceptable' rules have been very different for a long time. When, in 1993, Prime Minister Balladur attempted to introduce a minimum wage for the young, demonstrations forced him to withdraw his proposal. Ever since, no government has tried to dispense with the norm that the minimum wage is independent of the age. The 'de Villepin' government suffered a similar defeat when it tried to introduce a different contract for the young that was seen as 'discriminatory'. Of course, in the UK as well as in France, a dominant norm also allows for exceptions to the general rule. However, what is important is to really take into account the fact that 'dominant norms' remain very different across countries, with diverse political cultures. Often, within a country, a large part of the *normative framework* remains implicit; but, seen in a comparative context, it tends to become explicit. Understanding the notion of 'employment precariousness' in a cross-national perspective, or constructing a more adequate and ambitious notion of employment quality thus entails an in-depth analysis of the standards of acceptability, which diverge significantly across Europe. More generally, in the context of the discussion about 'flexicurity'' arrangements and strategies - following-up on the Dutch and Danish experience – it is essential to keep in mind that norms and values always play a crucial role. It is certainly not by accident that the fostering of a consensual culture in Denmark (but also in the Netherlands) – albeit often based on "conflictual" compromise, as Jørgensen (2002) so aptly demonstrated – has been accompanied by a collective search for more quality in jobs.

'Social Europe' in the midst of the economic crisis

There are certainly few opportunities to really test the capacity of the EU-level of governance in shaping the substance of social policies. The present economic crisis is one of them. The strict constraints that the EU, and its executive, the EU Commission, are confronted with was amply illustrated during the French Presidency in 2008 and again shown during the Czech Presidency in 2009. The amount of funds the EU was able to add to national recovery plans was marginal, because of its budgetary rules and the smallness of the EU budget. Perhaps the case of the "European adjustment globalisation fund" (EGF) is the best illustration of the EU's powerlessness in this regard. This fund was decided by the Council in December 2006, with the aim of enabling "the EU to show solidarity with and provide support to workers

made redundant as a result of major structural changes in world trade patterns" [EFG Regulation, SEC (2008, 16.12.2008), p. 2]. When the economic crisis started, one learnt that in 2007 and 2008, the number of such workers to be supported by the EU was less than 2000 people. The European Commission presented an updating of the EFG regulation as a major contribution to the fight against the economic crisis. The sheer number of the persons concerned and the tiny amount of budget earmarked for their support (500 million euros) very easily illustrate what is the true balance between the national level and the EU level of governance when it comes to social policy in times of economic crisis. In other domains, the difficulty of the EU to really make significant advance on important social questions was also illustrated in 2009 by the dismal failure of the Commission to put a consistent compromise proposal to the European Parliament for a rewording of the 1993 Working Time directive. After 16 years of the necessary updating of a key legal instrument, this failure provides a dismal sign for employees across Europe.

4. Conclusion: the considerable distance to a European society

All in all, with regard to social protection, labour law and industrial relations, it is no exaggeration to state somewhat schematically that today it is up to the EU-level to set out 'reasonable generalities', apparently de-politicized. In the area of labour, for example, élites are convinced that it is advisable to seek a balance between flexibility and security, but *on the national terrain*, the different trade unions are engaged in a harsh battle to decide how they should defend their constituents in face of the contradictory (and sometimes directly antagonistic) interests of public- and private-sector employers. In the area of competition between services, the basic 'rational' view is that the opening up to competition will inevitably favour ultimate consumers, but questions about the preservation of public and social services, like those concerning competition in the labour market through working conditions and wages, alternately generate co-operation or antagonisms between national players. And in the area of education, it is 'reasonable' to think that the economy is now a 'knowledge economy' but the persistent inequalities in access to vocational training and higher education are still debated and combated at national level.

Real, *i.e. positive* decisions, struggles, negotiations and compromises take place at the national level. This situation has many explanatory factors of which we mentioned some in more detail. The well-known argument by W. Streeck (1998), according to whom there exists an asymmetry between the capacity of business interests and workers' organisations has certainly retained much of its significance. More generally, the reluctance of national governments to abandon sovereignty over themes which are essential to the defending of their power positions is also to be considered. But both these empirically grounded arguments cannot ignore the fact that social protection and industrial relations systems have been preserved through continuous and conflicting negotiations at the national level, *because they were made possible at this particular level* because voters and negotiators spoke the same national language and felt part of a polity that had the duty to discuss social justice within its borders. No equivalents of a national language or of a European polity in a full-fledged sense have existed so far. Although the assumption might be seen as far-fetched, I tend to contend that little progress in the process of more federalisation and pooling of social rights and obligations will be possible unless national political cultures and national boundaries of political communities are challenged by cultural policies. In this sense, any future extension of social Europe, *because it is a political cross-national question*, has first to be considered in a political culture perspective. Indeed, if we consider social protection not as a simple and

functional accumulation of programmes but as a system of social, political and economic relations with an explicitly cultural dimension, and a "moral and political logic" (Rothstein 1998), there are cultural and linguistic preconditions for the future of any federal programmes in the area. As linguists demonstrate, there exists close links between politics, language and solidarity at the level of national political cultures today. If language offers the basis for all political activity, logically, an idiom should also provide the foundation for a European political activity which was not limited to the strategic functioning of the 'oligarchic' inter-state control that has been exercised for the past fifty years by essentially English-speaking administrative and political élites. The language of democratic politics permitting the participation of all citizens cannot be unique[14]. Rather, it must be a plural idiom (i.e. with a multiplicity of languages varying according to situations), and this rules out the instrumental facility of the sole use of international English as anything other than a code of functional communication. But this is another subject to explore (Barbier 2008; Kraus 2008).

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[14] Especially when it unilaterally and constantly benefits two member states of the EU (the UK and Ireland) in significant financial terms.

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