2009 began amidst one of the worst economic crises experienced in Europe for 80 years. The credit crunch of autumn 2008 sent the real economy into freefall in most of the European Union Member States and led to restructuring measures, bankruptcies, redundancies and unemployment. Recovery plans, both national and European, were in place throughout the year in an effort to limit the damage. But this sequence of events will weigh heavily on the public finances of EU countries for years to come, having already resulted in fiscal restraint.

This 2009 edition of *Social developments in the European Union* examines the ways in which the 'European social model' has cushioned the blow – more so in some instances than others. This model is compared with that of the United States; the EU's role in multilateral financial governance (in particular at the G20) and within international organisations (such as the ILO) is also assessed. In addition, this volume analyses the specific impact of the crisis on the Union's social policies: employment strategy, pensions funding, social dialogue, social inclusion, etc.
Social developments in the European Union 2009
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Preface

In the wake of the financial crisis that erupted in autumn 2008, 2009 began with one of the worst economic crises experienced by Europe since 1929-1930. As the financial system collapsed, it brought down with it the real economy in most of the EU Member States, provoking bankruptcies, redundancies, restructuring schemes and unemployment. The national recovery plans and their European equivalent strove throughout the year to limit the economic and social damage. But this disastrous sequence of events will weigh heavily on the public finances of EU countries for years to come: it has already resulted in fiscal restraint, and such measures will be with us for a long time to come. The fact that the finance industry had already returned to its casino-like practices and excessive bonuses by the end of 2009 is utterly outrageous.

The only ‘positive’ outcome is that the extreme nature of this situation and the severity of the crisis have prompted many policy-makers to engage in debates which had seemed closed, or at least confined to radical left-wing circles: a global tax on financial transactions and a ‘supertax’ on bonuses, but also action against tax havens and a tightening of prudential rules, etc. New scope has arisen for discussion of taxation and supervision, unthinkable just a few years ago, and there is ample potential for change. Yet the European Union as such seems to be playing in the second division here: it has barely shown any leadership at all in managing the crisis. And now, at the start of 2010, one has no choice but to acknowledge that the rules of the game for this neoliberal brand of financial capitalism have not changed significantly.

This state of affairs, combined with the global fight against climate change, calls for a fundamental rethink of the model of ‘growth’ pursued in developed countries over the past few decades. Social groups and trade unions have long been seeking an expansion and reinforcement of the European social model (trade union rights, social protection, social dialogue and public services). These issues are now compounded by a new challenge on an altogether different scale: to define a new model of development which will, at one and the same
time, put an end to the madcap accumulation and concentration of capital, re-establish social cohesion and justice, and bring about a society based on ‘zero-carbon prosperity’. That would mean adopting a wholly new approach to economic prosperity compared with what we understand the term to mean today.

Public authorities, first and foremost the European institutions, have a key role to play in these endeavours. But so have social groups and trade unions at both national, European and international level. It is with this in mind that the European Trade Union Institute has once again teamed up with the Observatoire social européen to produce this 2009 edition of Social Developments in the EU. We hope that the analyses it sets out will assist a wide readership in reflecting on the future of the European model.

Christophe Degryse, Maria Jepsen and Philippe Pochet
Foreword

Christophe Degryse

Just ten years ago, in March 2000, the Heads of State and Government decided at the European Council meeting in Lisbon (Portugal) to set the strategic goal of making the European Union (EU) ‘the most dynamic and competitive knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion’ by 2010. The Lisbon Strategy has in actual fact had two lives during this ten-year period. The first, from 2000 to 2005, enjoyed relatively broad – albeit critical – support from Europe’s social groups and trade unions. Built on three pillars – economic, social and environmental –, Lisbon seemed capable of rallying the stakeholders and achieving a consensus.

The second life, in the wake of the 2004 Kok Report, ran from 2005 to 2010. It broke with the equilibrium of the early days, in that the economic objective of competitiveness became the sole priority. Everything else was expected to flow ‘naturally’ from economic growth: the Kok Report maintained that ‘improved economic growth and increased employment provide the means to sustain social cohesion and environmental sustainability’. On 2 February 2005, the European Commission put forward proposals for a relaunch of the Lisbon Strategy based on the recommendations of the Kok report: ‘We need a dynamic economy to fuel our wider social and environmental ambitions’.

Ten years on, instead of being the most dynamic and competitive knowledge-based economy in the world, the EU and its Member States are struggling to get over the worst financial, economic, social and

budgetary crisis they have ever experienced. The Lisbon ‘dream’ – whose practical achievements were already looking rather meagre prior to 2009 (see chapter by Ramón Peña-Casas in this volume) – was shattered by the crisis unleashed by a financial sector which cared little about the need (spelled out by the Heads of State and Government in 2000) to ensure sustainability, or about improving employment, or indeed about social cohesion.

Although the Lisbon Strategy is not responsible for the financial crisis, it has spared no efforts, in the name of growth at all costs, in adhering to the same logic as that which triggered and so vastly inflated the crisis, namely a logic of deregulation (the ‘better – i.e. less – regulation’ mantra)\(^3\) and flexibility. Indeed, one lever of the Strategy was integration of financial markets, in which some members of the Commission had blind faith: ‘Financial integration will lead to social benefits: better pensions, higher returns for individual investors, more venture capital available for innovation. These are vital to making the economic gains we want from the Lisbon agenda sustainable’, declared former European Commissioner Frits Bolkestein in 2002\(^4\). The financial strand of the Lisbon Strategy – via the Financial Services Action Plan, and in particular its aim of improving the rules on prudential supervision – utterly failed to avert systemic risk. Moreover, the Commission points out in a staff working document that ‘with the benefit of hindsight, it is clear that the strategy should have been organised better to focus more on critical elements which played a key role in the origin of the crisis, such as robust supervision and systemic risk in financial markets, speculative bubbles (e.g. in housing markets), and credit-driven consumerism (...)'\(^5\). The desire to create a single market in financial services met with the refusal to introduce a European regulatory and supervisory system: such a system could, or should, have monitored the major banks’ exposure to risk. The result is

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3. See on this point Éric Van den Abeele, ‘L’agenda Mieux légiférer de l’Union européenne’, CRISP, Courrier hebdomadaire N. 2028-2029/2009. According to the author, ‘even though it cannot be held responsible, the Better Regulation agenda failed to anticipate the eruption of the economic and financial crisis. This is due, in part, to a lack of regulation of financial services’ (p. 76).


that, rather than being a year of competitiveness, full employment and ‘better pensions’, 2010 is one of recession, bankruptcies, burgeoning unemployment, public deficits and debt, while a dark shadow looms over the future funding of old-age pensions.

The lessons to be learned from the ten-year lifespan of the Lisbon Strategy therefore seem clear: firstly, the ideology according to which economic growth should be boosted at any cost through deregulation and flexibility, in order to fuel social and environmental ambitions, is pure eyewash. Secondly, those countries with the best labour relations and social protection systems were the ones best able to withstand the crisis. The contribution by Sherle R. Schwenninger to this edition of Social Developments in the EU is enlightening in this respect. Social regulation, social protection and public services, widely regarded as outmoded or even as obstacles to wealth creation, were what saved Europe from depression and social unrest in 2009. Does the European Union’s new political agenda learn these lessons (see chapter by Pierre Jonckheer)? Has the crisis helped to ‘overhaul’ capitalism? Has it set the economy on a sustainable course?

An overhaul of capitalism?

The reason why it is so important to bear in mind the European context surrounding this crisis is that we cannot afford to waste it. And yet… Just as the first half of 2009 aroused hopes of seeing the rules of this casino capitalism game rewritten, so the second half plunged us back into business as usual. This relapse had several causes, ranging from the formidable pressure and blackmail tactics used by the major players in the banking and finance industry – with every proposal for regulation of the sector leading to (threats of) business being transferred to New York, Geneva or Singapore – to the immense difficulty that the Member

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7. To paraphrase Rahm Emanuel, White House Chief of Staff: ‘You never want a serious crisis to go to waste’ (February 2009).
8. At least until US President Barack Obama himself threatened in January 2010 to impose new levies on the banks, on account of the plans announced by the biggest among them to distribute ‘obscene bonuses’.
States’ governments seemingly had in agreeing common rules on taxation, in particular, but also on the supervision and tightening of prudential rules.

Despite all of this pressure and these deep political divisions, the EU did adopt certain measures in 2009. They consist of a new financial supervision mechanism (based on the de Larosière Report), amendments to the Capital Adequacy Directive and the Deposit Guarantee Schemes Directive, and (non-binding) recommendations on remuneration policies in the financial services sector so as to prevent excessive risk-taking. Some Member States were preparing to take selective national measures – apparently very easy to circumvent – imposing a ‘supertax’ on bonuses (the UK, France) or capping them (Germany). The European Council of December 2009 made a somewhat unprecedented appeal to the IMF asking it to investigate the possibility of introducing a global tax on financial transactions. Is this the overhaul of capitalism that French President Nicolas Sarkozy called for in late 2008?

In actual fact, as Financial Times columnist Martin Wolf puts it, ‘policymakers have made a Faustian bargain’ with the financial sector. He states: ‘Policymakers hardly want to declare that, thanks to their efforts, the surviving bankers will be buying palaces, while humbler folk worry about their jobs and homes, and face decades of fiscal austerity. Watching financiers – beneficiaries of the most generous public rescue in history – returning to their old ways is the cause not so much of envy as sullen resentment. Why, many wonder, should the rigours of the market apply most brutally to those innocent of causing the catastrophe?’

Yet countless economists spent the entire year discussing possible safeguards: creating separate retail banks and investment banks, radically tightening up capital requirements, reducing traders’ scale of operations, averting systemic risk by drawing up plans to dismantle banks considered ‘too big to fail’, making it plain to these large banks that financial risk-taking will result in bankruptcy and not in government bail-outs, taxing speculation, introducing a malus system, taxing profits, and so the list goes on. But immense pressure has been exerted against the adoption of such measures. The economist Charles

Wyplosz fired off the following lines in late 2009: ‘Not surprisingly, then, the banks began lobbying hard: they busied themselves everywhere, in New York, London, Paris and Berlin. They used their technical know-how to intimidate governments, beginning with the regulatory and supervisory authorities that did not see anything coming in 2006-2007. They subjected governments and members of parliament to a heavyweight charm offensive, skilfully handling the carrot of deficit financing (and even substantial loans) and the stick of a credit freeze. They are poised to succeed’\textsuperscript{10}. The fact that financial institutions can hold elected governments and parliaments to ransom in this way surely represents a huge threat to democracy.

All hopes of seeing capitalism become a moral, well-regulated, disciplined and civilised force appeared at the end of 2009 to have vanished, therefore, and a new risk arose: namely the onset of further crises, both more numerous and more serious. What was emerging from the crisis was not a more responsible financial sector, but one which was more concentrated and benefited from explicit public guarantees. As Martin Wolf says euphemistically, ‘this is not progress’\textsuperscript{11}. In his contribution to this edition of Social Developments in the EU, Pierre Defraigne describes in detail the principles which ought to underpin proper prudential and fiscal regulation in Europe. But if this is to happen, policy-makers must now ‘think the unthinkable’; the stakes are high indeed.

Plans for a ‘green’ recovery?

Politicians and economists were asserting throughout 2009 that the financial and economic crisis would boost ‘green growth’, clean technologies and renewable energy for a low-carbon economy. For instance, in July 2009 the Swedish Minister of Enterprise and Energy, Maud Olofsson, described the crisis as ‘a golden opportunity to redirect our economy towards eco-efficiency’.

\textsuperscript{10} Le Monde, 6 November 2009.
\textsuperscript{11} Financial Times, 29 September 2009.
Has this happened? A cynical response might be yes: in 2009 global CO₂ emissions were expected to fall by 2.8%, worldwide electricity and gas consumption looked likely to decline for the first time since the Second World War (down by 3.5% and 3% respectively), air traffic shrank by 8.3% between May 2008 and May 2009, new car sales in Europe dropped by 12.3% in April 2009 which was thus the twelfth successive month of the downward trend, and so the list goes on. But these figures are indicative not so much of a low-carbon economy as of a recession that caused intolerable job losses.

Once Europe went into recession, all the major EU economies adopted recovery plans. These plans, put in place between November 2008 and January 2009, were estimated by HSBC in late February to be worth a global sum of $325.5 billion (compared with almost $1,000 billion in North America, and more than $1,150 billion in the Asia-Pacific region)\(^1\). The recovery plans provided for several types of measures on both the revenue and expenditure sides: reductions in corporate taxation (temporarily lowering rates or deferring the collection of taxes) and cuts in social security contributions; adjustments in VAT rates in certain sectors or for certain types of product, etc. This kind of temporary support for employers was aimed at limiting bankruptcies and redundancies – even though the effectiveness of such measures may be doubtful in some cases\(^1\).

On the expenditure side, the principal decision taken by most governments was to boost public investment (on energy efficiency, research and development, railway infrastructure, etc.). This increase in infrastructure investment has been coupled with support for certain types of businesses (especially SMEs), specific sectoral measures and direct aid to households, particularly the most vulnerable ones (additional social benefits, etc.).

Each of the national plans had its own characteristics, responding to that country’s specific circumstances and reflecting the room for

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manoeuvre available to its public authorities. In an effort to bring these national plans together and lend a European dimension to some of their initiatives, the EU likewise adopted a ‘European’ economic recovery plan. This plan was put forward by the Commission on 26 November 2008. It provides for a range of national and European measures costing a total of €200 billion (1.5% of EU GDP), although of that amount only 30 billion (0.3% of GDP) can be regarded as a direct contribution from the EU budget and the European Investment Bank (EIB). Officially, the aim was to preserve jobs during the recession and prepare for the transition to a ‘low-carbon’ economy.

As far as employment is concerned, the recovery measures were mainly targeted at the automotive industry and the construction sector. These have been the hardest-hit sectors and are the most important ones in terms of the structure of the economy, as well as being major providers of both direct and indirect jobs. The main goals were to keep the number of job losses to a minimum, encourage employers to retain their workers, and help redundant workers to rejoin the labour market as rapidly as possible. To this end, the Commission also redirected European Social Fund expenditure towards a number of anti-crisis measures, while the rules of the European Globalisation Adjustment Fund were altered so as to improve and accelerate its procedures. These measures, over and above all of those taken by national governments (temporary lay-offs, reduced working time and other arrangements geared to cushioning the blow), enabled the Commission in late November 2009 to speak of ‘European labour markets deeply hit by crisis, but more resilient than expected’. And, as pointed out above, the countries with the best social regulations are the ones that have held up best.

Be that as it may, approximately five million jobs were lost in the space of one year. And the profound unfairness of the price paid by workers cannot be repeated often enough. The state of affairs before the crisis, when there was already criticism of growing inequality and the decline in wages as a share of added value (see in particular ‘Social Developments in the EU’ 2008), is now being exacerbated by millions of workers losing their jobs; these are the very same people who one way or another, as taxpayers, will have to help refill the government coffers emptied by the crisis.
In terms of combating climate change, the recovery plans appear to have had very mixed results. Officially, whether it be at European or national level, these plans were linked to the fight against climate change according to the following logic: speeding up investment in energy efficiency and green technologies, creating long-term green jobs, and promoting economic growth that is more sustainable from an energy and environmental perspective.

From a methodological point of view, however, it has proved very difficult to establish a strict definition of what constitutes ‘green’ investment. For instance, do the car scrappage schemes introduced in France, Germany, the UK, Austria, Italy and Luxembourg really represent a green investment? One might of course consider that these schemes lead to the oldest (and most polluting) part of the vehicle fleet being replaced by cleaner cars. But surely we must bear in mind at the same time that future strategy should not be about creating ‘green traffic jams’ but about shifting to other modes of transport and, above all, reducing transport needs. France saw higher vehicle sales in 2009 than in any other year since 1990 owing to the scrappage discount: such measures can be counterproductive in both environmental and an economic terms.

The analysis made by governments of the ‘green’ part of their recovery plans should therefore be viewed with considerable circumspection, even though there is a fairly broad consensus around certain criteria: measures to boost energy efficiency, infrastructure improvements (e.g. public transport, railways, etc.), support for clean technologies and renewable energy. From this perspective, the most positive aspects of the European recovery plans have been the energy efficiency measures, which quite rightly focus on energy and climate change. Yet other environmental issues have been overlooked, such as waste treatment, water management, ‘green cohesion’, eco-industry, etc. We are thus a long way from a real European Green New Deal laying the foundations of a low-carbon economy. Europe’s public authorities do nonetheless

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have some significant, under-exploited levers at their disposal. Let us take the example of public procurement, which accounts for 16% of EU GDP. Making all tendering procedures environmentally and socially friendly would help develop the potential of eco-industries and high-quality green jobs.

This mixed assessment on two counts – jobs and sustainable development – confirms that we now need to think through, construct and implement the concept of a ‘fair transition’. In the view of the European trade union movement, this concept ‘means that the costs and advantages of the decisions taken in the public interest – including the decisions necessary to protect the climate and the planet – must be shared fairly. (...) More than the process of job creation or destruction, the transition towards a low carbon economy will transform existing jobs. This is the reason why the path towards a sustainable world economy and the transition to industrial jobs that are more respectful of the environment are closely tied to an effective social and employment policy (...).’

In conclusion

In 2009, so we were told, the economic crisis and the national and European recovery plans would provide an opportunity to overhaul capitalism and lay the foundations for a sustainable economy. Has that happened? Even though we lack the benefit of hindsight, our answer to this question at the start of 2010 would have to be highly ambivalent, if not downright negative (on the clean-up of the finance industry).

In the short term, the consequence of prioritising economic revival in 2009 was substantial state intervention in support of the economy and employment (automotive sector, construction, industry, energy), but sometimes in the heat of the moment it has been tempting to return to the previous state of play: there has been an inadequate reappraisal – or none at all – of our modes of transport, mobility needs, wastage of resources and energy, while the external costs of a whole range of

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16. ETUC, Resolution of the Executive Committee of the European Trade Union Confederation (ETUC) on ‘The climate change, the new industrial policies and the ways out of the crisis’, 21 October 2009.
industrial, service and other activities have not been taken into account. Vested interests continue to stand in the way of adjusting to the new requirements of ‘development’ in a world whose ecosystem is under threat. For this reason, what we seem to be witnessing is not so much a fully-fledged transition as a slow, unambitious adjustment.

Be that as it may, some new debates and promising ideas came to the fore in 2009. These include the ‘Stiglitz Report’, which advocates a new gauge of wealth other than GDP; the Commission’s Communication on ‘GDP and beyond: Measuring progress in a changing world’, which proposes supplementing GDP with other indicators; and the ‘Prosperity without growth’ Report published by an official UK government agency, which reflects on a decoupling of well-being from economic growth (and asserts that the latter must be ended). In addition, the chairman of the UK Financial Services Authority (FSA) spoke out in late August 2009 about the introduction of a ‘Tobin’ tax to cut the banking sector down to size and discourage speculation on the exchange markets; meanwhile on 26 June 2009 the World Trade Organisation (WTO) and the United Nations Environment Programme (UNEP) published a joint report on the links between trade and climate change (including in particular the idea of a carbon tax).

This random list of examples demonstrates that the political debate has moved on. It would seem that some of the injunctions of standard economic thinking are now being called into question: namely GDP as the ultimate policy objective, unfettered international free trade, financial self-regulation as a guarantee of efficiency, stability and equity, and so on and so forth. This broadening of the debate goes hand-in-hand with other issues, in the view of Europe’s trade unions: an increase in wages as a share of added value, shareholder restraint, improved quality of work, a fair transition, etc. Such elements could contribute to a paradigm shift. And to those factors we should add a review of manufacturing and distribution methods, a change in consumer behaviour, a scaling-back of mobility needs, a wholesale change in modes of transport, etc. After all, as the economist Daniel Cohen points out: ‘We must imagine a world that has not found the means of fleeing headlong, as a planet, into perpetual growth’ 17. But

17. Interview in Le Monde, 8 December 2009.
that calls for a vast amount of intellectual, political and strategic effort to examine models, alliances and power relations.

This eleventh edition of Social Developments in the European Union has been devised in two major sections. The first explores the role and place of the EU on the international scene in the midst of these new economic, social and environmental debates. To do so, and given the election of Barack Obama as President of the United States, we asked Sherle R. Schwenninger of the New American Foundation to investigate relations between the United States and the European Union, particularly the way in which these two major regions of the world are facing up to the economic and social crisis. We asked Pierre Defraigne to examine multilateral financial governance and the role that the EU could or should play in it. Lastly, we asked Rudy Delarue to describe the way in which the International Labour Organization views its responsibilities amidst the global employment crisis.

The second part of this edition is devoted more specifically to the European Union’s internal affairs. Pierre Jonckheer introduces this section with an analysis of the main social and environmental policy issues which, in 2009-2014, will confront the new European Commission, the new Parliament resulting from the June 2009 elections and also, more generally, the European institutions as redesigned by the Treaty of Lisbon following its entry into force on 1 December 2009. The remaining contributions are devoted specifically to European social dialogue (Stefan Clauwaert); the OMC on employment and social inclusion (Ramón Peña-Casas); pensions funding and the future of the multi-pillar model (David Natali); healthcare, and in particular the social implications of the ‘pharmaceutical package’ (Rita Baeten); and finally the case law of the European Court of Justice (Dalila Ghailani). Readers will of course note that ‘the crisis’ serves as a backdrop to almost all of these chapters, thus demonstrating – as if it were necessary to do so – the gravity of the havoc wreaked by the finance industry on all aspects of social affairs.

January 2010
US/Europe: shaping a new model of economic development

Sherle R. Schwenninger

The Great Recession of 2008-2009 has put enormous strain on the social contracts of Western economies. This paper provides an American perspective on how well the social welfare systems of the United States and the European Union countries have performed in cushioning their populations against the economic dislocations associated with the Great Recession and how effective US and European policy has been in softening the severity of the recession and in creating the conditions for future socio-economic progress.

In many respects, the responses of the United States and the European Union to the onset of the Great Recession have followed very predictable patterns. With a tradition of an activist and Keynesian oriented macroeconomic policy but with a relatively weak social safety net, US authorities responded with a large $787 economic recovery program and with swift Federal Reserve action to stabilize the financial markets, including measures to buy mortgage-backed securities. By contrast, the core European economies were generally more conservative in their fiscal response, relying on the automatic stabilizers in their social welfare systems to soften the blow to the economy.

Thus, it is not surprising that while the US economy show signs of a more vigorous recovery than does the European Union as a whole, the core European economies can claim to have weathered the Great Recession with less social and economic dislocation than the United States. But the Great Recession has also revealed wide variations in the experience of countries within the European Union showing that the Union is far from offering a shared European standard of social security. While the Germans, Dutch, and French weathered the crisis comfortably in spite a serious fall-off in economic growth, those in the economies on the so-called periphery are experiencing double digit
unemployment and facing prolonged economic slumps and fiscal crises that will erode living standards for years to come.

The Great Recession has also exposed serious structural weaknesses in the capacity of the European Union to respond to serious economic downturns and to generate ongoing socio-economic progress among all its member countries. Not only does the Europe’s Stability and Growth Pact inhibit robust macroeconomic responses to economic downturns, the very structure of Eurozone membership eliminates many of the standard tools of adjustment, such as exchange rate depreciation, to such crises, and places the burden of adjustment on the weaker members. Indeed, the Great Recession has more than ever cemented the reality of a two-tier Europe and puts into question the very model of economic growth that the European Union has pursued over the past decade. In that sense, the experience of the European Union is very similar to that of the United States, where the Great Recession has also reinforced America’s growing two-tier society and put into question its model of economic growth. The question for the future is whether the United States and Europe can find a common agenda to expand their social welfare systems or whether they are forced to become greater competitors in a demand-constrained world dominated by Asian mercantilism and producerism.

1. Comparing the American and European safety nets

The Great Recession may have revealed the advantages the United States has with its tradition of expansionary macroeconomic policy. But it also clearly exposed the many holes in America’s rather porous social safety net. Ironically, it was the much touted modernization of the safety net for the new economy that has caused the greatest gaps in America’s economic security. In the late 1990s, reforms in America’s social welfare system made many benefits contingent upon work not anticipating that unemployment might climb to double digits. Other so-called modernization measures embraced the notion of the ownership society, ignoring that housing and equity prices can go down as well as up.

Since the Great Recession began, the inadequacies of America’s social and economic security system have quickly showed up in the data. To
begin with, the ranks of America’s poor have swollen by at least an additional 2.5 million; child poverty has climbed to 19% from 17.8% a few years earlier. One in eight Americans, including one in four children, is now on the food stamps because they are not eligible for unemployment compensation or any other social welfare program. Nearly 50 million Americans lack health insurance, and over 17% of households report that they have postponed or delaying seeking healthcare over the past year for financial reason.

As to the ownership society, for a period of time rising home prices and access to credit helped mask the effects of stagnating wages. But now the debt left in the wake of the housing crash, is dragging down millions of American families. As of October 2009, nearly one in four mortgages was underwater, meaning the mortgage holder owes more on the mortgage than the underlying home is worth; that number is expected to increase to 48% by 2011. Overall, American households have suffered a $12.6 trillion loss in household wealth, a significant portion in their homes and retirement accounts, and as a result, one in four Americans over 62 are putting off retirement because they cannot make ends meet.

By contrast to this American picture, there has been little increase in poverty in the core EU countries, no precipitous drop in household wealth or income, little or no evidence of people having to forego health care for financial reasons, and little or no increase in the number of people who are putting off retirement for financial reasons. If one were not rich and one could choose where to experience an economic downturn as serious as the Great Recession, one would clearly choose Germany, the Netherlands, France, Belgium, Italy, or the Nordic members of the European Union, not the United States. The experience of working and middle class in other European economies of course has been more difficult but these economies do not have the same level of social welfare protections as do the richer core economies.

There are three reasons why the United States has done so much more poorly in cushioning the impact of the Great Recession on its working and middle class than has these core European Union economies. First, the American system of social and economic security revolves much more closely around employment – having a job – than does Europe's. As is well known, health insurance in the United States is still largely employer based; if you lose your job, you most likely lose your health
insurance as well. But so are other features of America’s social welfare system. As a result of the welfare reforms passed under the Clinton Administration, America’s principal welfare program – Temporary Assistance for Needy Families – is now linked to work requirements. Not surprisingly, the number of people accessing the program has scarcely expanded during the recession because employment itself has declined even as the number of poor has increased alarmingly.

Likewise, America’s main program for helping the working poor – the earned income tax credit – is dependent on being in work or having earned income. Individuals who can show they have earned income up to a certain level are eligible for a refundable tax credit to supplement their income; those who have not been employed and have no earned income are not. And what is true for America’s working poor is as true for America’s middle class.

Many of America’s most important social welfare state benefits relating to education, child care, home ownership, and retirement are delivered through the tax codes as deductions against income. This has created a social welfare state that heavily favors upper and middle income groups; indeed the majority of benefits now go to the top 20% not to those who need them most, creating in effect a two-tier welfare state. But that also means that as unemployment and underemployment rise and the incomes of those in the middle decline, so do their social benefits for education, child care and retirement. As a result, they can quickly find themselves pushed into the bottom tier of America’s social welfare system fighting for limited resources.

Yet even as the economic security of Americans has become ever more linked to employment, America’s job machine has broken down. Since 2000, the economy has created very few new private sector jobs, and the number of the effectively unemployed (a wider measure of unemployment has steadily increased. As of December 2009, the official rate of unemployment was 10%, but that number rises to 17.3% when people who have given up looking for work and those working part-time of necessity are included. That means the one in six working Americans are effectively unemployed, and because they are unemployed, many of them have lost their access to health care and other social insurance benefits.
Second, US labor markets are characterized by less unemployment protection than those in Europe where it is more difficult to fire or let workers go. Thus job losses occur more quickly than they do in Europe. It is therefore doubly tragic that the unemployment insurance programs available to workers in the United States are a lot less robust than they are in the core European Union countries. Since the beginning of the recession, the official US unemployment rate increased by 5%, while the unemployment rate in the Euro areas during the same period increased by just 2.5%. But unlike in Europe, many of those experiencing unemployment have not been able to have the protection of unemployment insurance. In most European countries, unemployment benefits are available to nearly all workers, cover well over half of an employee's earlier salary, and extend for more than a year.

By contrast, in most states in the United States, unemployment benefits are restricted to a narrow group of workers, often compensate workers for less than half of their previous wages, and generally last less than one year. Less than half of unemployed workers in the United States are eligible for and receive unemployment insurance benefits. That is because many states in the United States have very rigorous eligibility requirements that exclude low-income or part-time workers and that limit any compensation to a very short period of unemployment. As a result, while 15 million workers in the United States are officially unemployed, less than 10 million are receiving unemployment insurance benefits, either because they did not qualify initially or because they have already exhausted their benefits. In sum, America’s system of economic security works reasonably well during periods of full employment but quickly collapses during periods of rising unemployment.

Another reason why workers in the core EU economies have faced less hardship than their American counterparts has to do with these economies’ successful experience with what are called short-time work programs, which have limited the number of jobs losses. Although the details of the programs vary country to country, the purpose is consistent – to subsidize employers to keep people in their work by reducing the number of hours they work. These programs have enabled European companies to keep much of their work force in tact but at the same time cut costs. They have also helped hold down unemployment and to avoid the loss of human capital associated with long periods of joblessness.
To be sure, there are reports of a few interesting experiments in job sharing among US employers. But for the most part, American companies have resisted these measures and have continued to rely heavily on layoffs to control labor costs. And despite a few advocates on the left, expert opinion continues to oppose the idea of short-time work programs. According to the critics, these programs end up protecting jobs that are not viable even when the economy recovers; they drag down labor productivity and make companies less competitive; and they will only lead to an artificial spike in unemployment later. Moreover, as the critics contend, these programs work best if at all in short downturns, as the name short-time work implies, and are not well suited for a prolonged period of negative or weak job growth such as we are now experiencing.

This American resistance to short-time work programs reflects a major difference in the US and European approach to the Great Recession. In the United States, there is still a prevailing view that economic downturns should lead to market-enforced restructuring and downsizing (banking being an exception), while in Europe there is the view that governments must take care if possible to preserve their industrial capacity. This difference in philosophy was evident in the different approach Washington and European capitals have taken to their ailing auto industries.

In the United States, Chrysler and GM were forced into bankruptcy and were downsized and reorganized. As part of the restructuring plan, nearly two dozen North American plants were shut down and thousands of car dealerships were closed. By contrast, in most of Eurozone Europe, with the government’s blessing and help, automakers have resisted shutting down plans, and have chosen instead to temporarily idle capacity or put workers on partial pay. The contrast between how the United States and core European economies have responded is all the more striking given that the left-of-center Obama administration took a tough-love approach while Mr. Sarkozy’s and Ms. Merkel’s center-right governments took pains to soften the blow on French and German auto workers.

Finally, the United States has embraced much more readily the idea of ownership society than has Europe, and thus the American social contract has come to rely much more heavily on home ownership and
private pension plans than has the European counterpart. This embrace obviously has advantages when asset prices are rising but it wreaks havoc in a bubble-prone economy when the bubble burst. For the past decade, rising home values compensated American workers for stagnant wages, allowing them to maintain and even improve their standard of living by tapping home equity. In addition, easy access to credit allowed families to weather economic downturns or medical emergencies but at the expense of rising household indebtedness. With the bursting of the housing and credit bubble, this essential feature of the Clinton-Bush era imploded, leaving many households with a large debt hangover. As a result, the Great Recession has dealt a double blow to many Americans; not only have they lost their job but they have lost their home and their life savings as well. Worse, there is little in the way of programs available to help them pick up the pieces.

By contrast, most Europeans in the core Eurozone economies have been relatively unaffected from housing price declines and from the tightening of consumer and household credit, because home ownership and credit have never played the same role in core European countries as they have in the United States. Europeans have also been largely protected from the collapse of the value of private retirement programs, which have hit many Americans hard. Over the past two decades, American companies have steadily shrunk their private pension contributions and have put more of the risk onto employees. They have done so in two ways: either by eliminating company retirement plans altogether or by shifting from a defined benefit to a defined contribution pension program. In a defined benefit system, a retired worker knows exactly how much he or she will receive each month; in a defined contribution system, the employee makes a contribution into his or her retirement account – most likely a 401k – that is then invested in the bond and equity markets with attendant risks (see David Natali’s contribution to this volume).

The experience of the past decade shows that this shift in the nature of US retirement system has worked to the disadvantage of American workers while creating more vulnerability and uncertainty. Seniors who retired in the late 1990s before the collapse of the stock market in 2000-01 may be able to enjoy a comfortable retirement but those who were planning to retire this decade face a much bleaker retirement future having seen much of their retirement savings lost during the past two market crashes.
That is why for nearly 70% of seniors, social security is the main source of retirement income but social security is less generous than most European pension programs. To be sure, Europe’s state-supported or state-run pension systems face their own solvency questions but they have not experienced the kinds of shocks America’s private retirement accounts have in the decade culminating in the Great Recession.

2. **A two-tier America, and a two-tier Europe**

Unlike other economic downturns, which are largely transitory events that have little lasting impact on American society, the Great Recession is likely to be a multi-year society-shaping force that leaves deep and ugly scars. The most significant effect is likely to be the further collapse of the American middle class, particularly that part of the middle class that has withstood three decades of stagnant wages only by enjoying the benefits of rising home prices and easier credit. The greatest concentration of housing foreclosures to-date has occurred among sub-prime and Alt A mortgages, mortgages that carried greater risk because the owners had more limited means and incomes. This means that the housing bust is having its most concentrated effect on people on the lower and middle rungs of middle class life, hitting particularly hard those who have bought a home in the last three years. Many of these were first-time home buyers that had achieved a tentative hold on middle class status but now are being pushed back into poverty with the loss of their home and their job. Others were upwardly mobile middle class families who got caught up in the optimism of the housing bubble and moved from a starter home to a more expensive (and overpriced) house during the same time, and these families now are confronted with a staggering mortgage debt that they will never be able to work off.

The overall effect of the housing bubble bursting, then, has been to make the United States even more of a two-tier society than it was before the crisis, with large number of the middle class falling to a more precarious position in the American economy. The uneven jobless economic recovery from the Great Recession that is beginning to take shape will only further accentuate this move. From all indications, employment and wages will lag behind GDP and profit growth, resulting in a top-heavy recovery in income and consumption. While the top 10 or 20% are currently enjoying a recovery in equity prices and benefitting
from the trickle-around growth of the return of Wall Street bonuses, much of the rest of the population struggles with high unemployment, stagnant wages, soft housing prices, and a huge debt burden.

Because housing and credit play a much less central role in the European social contract, the core countries of the Euro-zone will largely avoid the harmful societal effects of the Great Recession that the United States is now experiencing. But the Great Recession will affect European Union in other equally profound ways, creating or more accurately reinforcing a two-tier Europe. While the impact of the Great Recession in the United States falls principally along class lines (although some geographic areas have been hit much harder than others), the main effect in Europe is seen between countries, between the core economies of the Eurozone, which have stronger safety nets, most of which avoided the worst of the housing and the credit bubbles, and the so-called periphery economies, which experienced credit and property bubbles even larger than those in the United States and which have weaker economic bases and social safety nets.

Viewed in this way, there are more parallels between the United States and Europe than either Europeans or Americans may care to acknowledge. In the United States, the bursting of the housing and credit bubble has hit disproportionately the subprime and the Alt A mortgage space (although it has not spared the prime mortgages entirely), and with it the lower and middle rungs of the middle class. In Europe, it has struck the European bubble economies – Ireland and the United Kingdom and the peripheral economies of Greece, Portugal and Spain within the Euro-zone and the Baltic states in the larger European Union. In many respects, the national economies of Britain, Greece, Ireland, Portugal, and Spain and the Baltic states were part of the larger bubble economy with the United States. Like the United States, these economies ran massive current account deficits, and experienced large credit-fuelled property bubbles and private spending surges. And like the US household sector, the private sectors of these countries were spending far more than income, accumulating unsustainable debts that were backed by inflated property values.

And now like parts of the US economy, these European bubble countries are experiencing many of the same wrenching economic and social consequences. Among the Eurozone economies, the bubbles were
biggest in Ireland and Spain. Not surprisingly, the bursting of the credit and property bubbles has sunk the Spanish and Irish economies into deep recessions and sent unemployment soaring into the double digits. As of December 2009, the jobless rate in Spain was 18.8%, with youth unemployment at more than 40%. The bursting of the bubble has also wreaked havoc with these countries’ public finances, with budget deficits as a percentage of GDP climbing into the double digits. Greece and Portugal have similar problems, with Greece being the first to experience a full-fledged market-driven debt crisis.

Among the Baltic States, the consequences have been even more severe. The Estonian, Latvian, and Lithuanian economies have all contracted by nearly 20%, and their public deficits have ballooned to unsustainable levels as tax revenues have dried up. And what is worse, these economies lack the robust automatic stabilizers that core European economies have to soften the impact of economic downturns on their populations and the economy. A recent study by economists Mathias Dolls, Clemens Fuest, and Andreas Peich found that while in Germany automatic stabilizers absorb approximately 48% of an income shock, they absorb just 25% in Estonia, 28% in Spain, and 29% in Greece, even less than in the United States, where automatic stabilizers absorb 32% of an income shock.

Moreover, while the core Eurozone economies show at least some signs of a tentative recovery, with France leading the way, the Baltic State economies face even more difficult choices in the months ahead. Indeed, these economies find themselves in something of an economic straight-jacket created by their fixed currency pegs to the euro and by the huge euro-denominated debts they have incurred. If they attempt to correct their budget deficits while maintaining their fixed currency arrangements, then they will most certainly deepen their economic depressions and heighten social tensions. But if they decide to abandon the peg to the euro, they will set off a series of debt defaults that could provoke a larger banking crisis.

The peripheral economies of the Eurozone face similarly tough choices as they cope what looks like several more years of stagnant economies, high unemployment, and gaping budget deficits. Their task is made more difficult by their membership in the European monetary union. Their initial entry into the union provided a big boost to their economies
by lowering interest rates (which in part contributed to their credit and real estate bubbles), but now it threatens to put their economies in a straight-jacket almost as restrictive as that of the Baltic States. As economist Desmond Lachman points out, these economies ‘have the unenviable task of trying to restore fiscal sustainability in the midst of deep recessions, and at a time when their countries’ international competitive positions have been greatly eroded’. And they must do so within the constraints imposed by their Eurozone membership, which denies these countries the use of an independent exchange rate to restore competitiveness or interest rate policy to mitigate the contractionary effects of their fiscal policy tightening.

That means that we should expect prolonged downward pressure on wages, chronic recessions, and reduced national spending in most of the peripheral economies of Europe, creating a further divergence with the stronger core economies of the European Union. To the extent European Union aspires to be more than a collection of nation-states, to the extent that it seeks to promote a common experience of a being a European citizen, with a common set of standards and roughly a comparable degree of economic and social security, then the Great Recession has struck a huge blow to that ideal.

The only hope these peripheral economies have of avoiding a prolonged Great Recession would for the core Euro-zone economies to mount a major financial rescue or for Germany, France, and the Netherlands to lead a major Keynesian-inspired economic recovery. But the European Union lacks the political institutional arrangements for such a rescue and the political leadership of France, Germany, and the Netherlands are not inclined for full-throated Keynesian spending or ad hoc financial arrangements. Indeed, they may face their own struggles to sustain an economic recovery given their previous reliance on demand from the previously fast-growing peripheral economies.

3. **The challenge of finding a new model of economic growth**

Future socio-economic progress in both Europe and the United States depends upon finding a new economic growth path. Over the past decade, US economic growth was driven by a housing bubble and by a
consumer spending surge made possible by an unsustainable increase in household debt. Economists rightly worry that the United States faces a decade of Japan-style stagnation as the private sector is forced to de-lever and consumption is constrained. The problems with the pattern of American economic growth and its overreliance on debt-financed consumption are well known.

But what is less known is that Europe also faces a similar problem. US commentators often mischaracterize the problems Europe must overcome. The main obstacle to European growth is not Europe’s inflexible labor market or its lack of entrepreneurship, as many conservatives argue. It is the structural weaknesses of the European monetary system combined with an antipathy to demand-led growth and a commitment to export-led growth in the core economies of the European Union, above all in Germany. Over the past five years, economic growth in the Eurozone has been driven by growing demand in the peripheral economies of the European Union fueled by credit and property bubbles and rising debt. This in turn has provided the demand that has allowed Germany and a few other core European economies to enjoy an export boom.

This pattern of economic growth is reflected in Europe’s own internal imbalances, with Germany and the Netherlands running large current account surpluses and the peripheral economies running large current deficits. Germany’s current account surplus, for example, rose from 2% of GDP in 2002 to 7.5% in 2007, while the current account deficits of Greece, Ireland, Portugal, and Spain all increased proportionately – Greece’s expanded from 6.5% of GDP to 14.2%, Ireland from 1% to 5.3%, Portugal from 8% to 9.4%, and Spain from 3.3% to 10%. Germany’s trade surplus with other EU economies increased from 94.6 billion euros in 2002 to 174 billion euros in 2007, reflecting the fact that trade within Europe accounted for the growth of most of Germany’s current account surplus.

The development of these imbalances was in part the product of the European monetary union of the past decade that brought into being the euro. The entry of Greece, Ireland, Portugal, and Spain into the Eurozone had the benefit of dramatically reducing the cost of credit in these economies, as interest rates converged across the Eurozone. But these lower interest rates in turn contributed to the property and credit
bubbles of the past decade, fueling the rapid expansion of debt-financed demand in those economies. It also led to huge loss of competitiveness because of the rise these economies’ relative unit labor costs, relative to the core countries of the European Union. At the same time, core countries like Germany and the Netherlands committed themselves to tight fiscal policy, which slowed wage growth and with it domestic demand, while improving their labor competitiveness. Germany also pursued labor reforms which weakened the power of labor further restraining wage gains and domestic demand. As a result, their trade surpluses with peripheral economies surged, and their economies became even more export-oriented.

Now, as noted before, with the bursting of property and credit bubbles, domestic demand in the peripheral economies has collapsed, and they face a long period of slow growth and economic stagnation. But with the peripheral countries in such trouble, the question becomes what will drive demand and economic growth in the future, not just in the peripheral economies but the core countries as well? After all, the core Euro-zone economies have relied on the peripheral economies to supply demand for their excess capacity, and without that demand sustained economic growth is problematic. As FT economics columnist Martin Wolf notes, there can be only two answers: external demand, with the Eurozone moving into external surplus or private demand in core countries, particularly Germany.

From an American perspective, the latter option would clearly be preferred but is not considered very likely given the German political leadership resistance to the kind of changes that would be needed to make Germany a more demand-oriented economy and given the limited mandate of the European Central Bank focused on price stability. But the first option of expanding Europe’s external surplus would put Europe into direct competition with the United States, which must replace excess domestic demand with global demand in order to help offset the effects of private deleveraging. That is because it runs smack into the reality of the unmovable object of China and more generally Asian high-savings mercantilism, which both structurally and as a matter economic development policy is committed to running current account surpluses. As long as China and the other Asian economies are committed to mercantilist oriented development, it will
be very difficult for both the United States and the European Union to improve their external balances simultaneously.

If Asia is committed to continuing its decades-long practice of running current account surpluses, then either Europe or the United States will have to give in its effort to restore growth and improve employment conditions by tapping external demand. While the European Union is in a much better position to pursue an expansionary domestic demand oriented recovery given the strong fiscal positions of Germany, France and the Netherlands, the question of who gives is likely to be determined by who ends up having the strongest currency. A stronger currency will make export-led growth more difficult for both the United States and the core European economies as they compete for each other markets and for competitive advantage in Asia. Ironically, it is here that the fiscal crises of the peripheral economies may come to help Europe because these crises could provoke concern about the future of the euro resulting in a weaker euro vis-à-vis the dollar. But it is a sad day for both Europe and the United States and their long partnership that they are in a race to have the weakest currency. It is hardly the partnership that over the past 50 years helped create the world's largest middle class and the world's most advanced social welfare systems.

There is a third alternative, which unfortunately is not on the political agenda of either the American or European political class. That would be a common front against Asian mercantilism to defend their middle class way of life and a commitment to a major trans-Atlantic Keynesian project to expand public investment and social quality of life spending in both Europe and the United States and to develop the Rim of emerging economies along the European Union and North America. Such a program would clearly benefit the working and middle classes of Europe and the United States. It would also be in the interest of the aspiring middle class in China since China would need to rely more on domestic demand for future economic growth than it does now. But neither the political leadership of Europe nor the Obama administration in the United States is currently thinking along these lines. We must therefore brace for a difficult period in US-European relations and a bleaker future for Western style middle class societies.
It should be borne in mind first of all that capitalism, the driving-force of the global economic structure since the industrial revolution, inherently gives rise to internal conflicts, or even open warfare, unless its fundamental instability and powerful non-egalitarian excesses are curbed by politicians. Next we should highlight the fact that the Bretton Woods system and the European model, which together established this equilibrium between the market and the rules of the game, delivered the so-called ‘thirty glorious years’ following the Second World War, but these then buckled under the pressure of inflationary monetary and fiscal policies. The new globalisation which took over in the 1980s, in the context of a supply-based economy, was based on an unprecedented level of financial liberalisation. The booming financial industry was to provide the main lever for capital helping itself to an excessively large share of the added value generated by globalisation. However, as a result of the monetary policy pursued by the United States Federal Reserve (‘the Fed’) and the excessive levels of domestic and foreign debt which this facilitated in the United States, finance also gave rise to growing instability: this first seeped into the peripheral financial system before reaching Wall Street in September 2008. The challenge facing the world today is how to rebuild an international monetary and financial system – including the question of capital taxation – which gives priority to a balanced and equitable development of the real economy in Europe. The EU must regain its triple sovereignty – monetary, financial and fiscal – if it is to play a key role in this reform, and assert itself, together with the United States and China, as a mainstay of the G3, which will be the nucleus of a more representative system of multilateral governance than the G20.

Globalisation represents a response to a need: that of organising how the 9 billion inhabitants on our planet by 2050 will live side by side. This is the future challenge we shall have to prepare for, whilst at the
same time navigating our way around two perils: a world war or a degradation of the planet endangering the future of humanity. Whether we like it or not, the globalisation process now under way is the result of free-market capitalism which, over the two centuries it has been in existence, has two world wars to its credit, not to mention vast numbers of wars on its periphery. Nevertheless, it is by no means certain that we would by now have achieved the same degree of integration of the global economy via a more political route, without experiencing conflicts even more serious than the so-called ‘low-intensity’ conflicts which have plagued the southern hemisphere over the past thirty years.

On the other hand, it is abundantly clear that, following the crash of 15 September 2008, politics has to play a greater role in organising access to global markets and resources. Does the transition from the G7 to the G20 herald this change? Undoubtedly the answer is yes, but this is only one stage of a process of transition to a fairer and more sustainable international order. The latter calls for a system of multilateral governance which will be led by a G2 or a G3, depending on whether or not Europe manages to assert its own revitalised model vis-à-vis the United States and China.

1. The first incarnation of globalisation: fruitful, unfair and dangerous

Industrial capitalism transformed the life of humanity from the 19th century onwards, through a drastic and unprecedented increase in economic growth built on mechanisation, finance and bourgeois democracy, but in the process it created it new inequalities within our societies and formidable North-South divides on a worldwide scale. This was because from the moment it first appeared, free-market capitalism began to organise the way in which the world operates. On the one hand, with the help of States, which it quickly exploited for its own benefit, capitalism consolidated its hold over the known world and organised it into a very hierarchical structure, with Europe at its centre and the southern hemisphere on the periphery. On the other, its fearsome efficiency in terms of productivity and growth, achieved via innovation and investment, soon produced two consequences: firstly, a high degree of instability, erupting into crises at regular intervals, and secondly, a concentration of wealth created by accumulating profits in the hands of capital owners. In this battle over the share-out of added value between
wages and profits, the balance of power changed over the course of time: whereas the Dickensian capitalism of the early 19th century prospered through the birth of an impoverished proletariat, the period following the Second World war witnessed the introduction of a Keynesian welfare state in the context of the Fordist model based on large corporations and mass production; mass consumption led to the emergence of a large middle class in the 1960s. However, the new globalisation and the EU’s current lack of unity and slowness to react are now calling into question the progress made in western Europe.

Free-market capitalism was to experience several misadventures between the introduction of the liberal regime and the arrival of the regulated regime1. Between 1850 and 1914, it was governed by non-interventionist and laissez-faire precepts, with free trade and the gold standard. The latter provided an automatic adjustment mechanism for external imbalances: countries with a deficit would pay their creditors by exporting gold2; this reduced the amount of money circulating internally, depressed demand, and brought down prices and wages, thereby making exports more competitive and restoring the balance of trade. However, this adjustment mechanism proved to be socially intolerable in practice, as it produced unemployment and wage cuts. As employees began to organise themselves into trade unions, resistance to the adjustment process increased with each new crisis, in countries such as France, Belgium and Great Britain, and protectionist pressure grew, endangering the free trade which an emerging Germany needed for its industrial exports. The difficulty of reconciling free trade and a sharing of the social costs of adjustment via solidarity policies was in all likelihood the main cause of the First World War, whereby nationalism was used as a political weapon to stir up rivalry between countries with established and emerging models of capitalism, the latter being Germany, Japan and, to a marginal extent, Italy3. This precedent should give us food for

1. American authors often use the phrase ‘embedded liberalism’ to describe the Bretton Woods system.
2. The actual mechanism was that of the gold-standard, in which the pound sterling was viewed as a ‘currency as good as gold’; consequently, there were no imports and exports of gold as such. Instead, there were movements of currencies or credits at the Bank of England, which had the same effect.
3. The thesis of growing social resistance to adjustment contradicts that of the decline of the hegemonic economic power, in this case the United Kingdom, whose central bank gradually ceased to be able to act as lender of last resort for the countries belonging to the gold
thought today: the inability of a society to combine free trade with social solidarity gives rise to protectionism; this is intended to avoid internal tensions, but also causes conflict with third countries. Far from preventing war, a high degree of interdependence may actually provoke it, if social issues are poorly managed, especially since the economic cost of being deprived of supplies and outlets is felt more harshly.

After 1918, capitalism witnessed an attempt, clearly an anachronistic one, to return to the gold standard. However, the burden of the reparations imposed on Germany, the 1929 crash and the economic policy errors made by the United States, for want of a social welfare net to protect the unemployed during the Great Depression, set off a domino effect of trade protectionism and competitive devaluations, and spread the crisis to all countries. The gold standard had to be abandoned, and most importantly, was not replaced by an institutionalised system. Denied outlets for their exports, States were forced to seek growth and employment in the rearmament process, beginning with Nazi Germany. World War II, which was the logical outcome of this process, appeared, unlike World War I, to be a conflict waged not between countries but between three alternatives to bankrupt liberal capitalism: Communism, Fascist authoritarian capitalism and the regulated capitalism of the New Deal, which was dreamt up by Roosevelt to save capitalism from its own excesses. The Russo-American alliance was to prevail over Nazi Germany, and the Cold War between East and West could then commence. It was to last for nearly half a century. The EU would be the miraculous fruit of this confrontation and would provide the framework for the continent’s unity, following the collapse of the Soviet regime.

2. Bretton-Woods I or managed liberalism

Learning the lessons of history and building on the experience of the New Deal, with the Bretton Woods system (1944) the post-war period finally witnessed a successful attempt to control free-market capitalism in the industrialised countries of the West, which at that time still held standard regime. See Eric Helleiner’s exposition of both theses in the masterly work edited by John Ravenhill (2008), Global Political Economy, Oxford University Press, second edition, p. 217ff.
Sway over the countries of the South. Designed by an Anglo-American pairing formed of Keynes and White, and promoted by the United States, the hegemonic western power, the Bretton Woods system operated successfully during the ‘thirty glorious years’ era (1945-1973). It managed to combine the processes of opening up economies to trade and international investment, with national regulation policies which had been inspired by the New Deal but were taken further in Western Europe, embarking at that time on its unification process. In other words, Bretton Woods reconciled the concepts of the market and of solidarity. It succeeded in doing so by stabilising international monetary and financial relationships with the support of the International Monetary Fund (IMF), through fixed exchange rates and systematic control over the movement of capital, thus allowing macro-economic policies of full employment and income redistribution policies to be pursued in economies which were opening up, especially in Western Europe.

It should however be noted that this European ‘thirty glorious years’ model could never be applied universally, as it developed in a very specific context, characterised by three elements: the contribution of free American technology in the Cold War context; a dual colonial income in the form of cheap energy and raw materials, and captive markets; and the existence in the USSR, through to the successful launch of Sputnik, of a credible alternative to capitalism. However, all of these elements then disappeared.

So why did this model experience a crisis? Several factors contributed. First of all, within the advanced economies, the upsurge in wages at the expense of profits gradually dried up investment and thereby slowed down the rise in productivity and growth; the misuse of the Keynesian deficit in Europe fed public debt and inflation, leading to stagflation; and liberal thinking became radicalised in the United States, with the proclaimed desire to return to the accrued benefits of the New Deal. In the outside world, from the 1980s onwards, globalisation driven by trade liberalisation and investment, and by advances in information and transport technology, led multinational corporations to move their production off-shore, following the logic of the global production line, while large-scale imports of manufactured goods from Asia destroyed unskilled jobs in the United States and Europe. In particular, the bargaining power of labour vis-à-vis capital was substantially curtailed
by globalisation. This was to have two consequences: firstly the calling into question of the European model, which is now in jeopardy, and secondly the migration of the global economy to Asia, which is now enjoying growing influence in global economic governance. Finance was to play a key role in this development.

3. The role of finance in globalisation: innovation, income and instability

While the appearance of money provides the wherewithal for trade and allows the transition from a subsistence economy to a market economy, it is finance which forms the core of free-market capitalism. It transfers savings into investment: this may be private or public, and domestic or, increasingly often now, foreign. It acts as a vehicle for exchanging property rights and trading debts and receivables, either directly, from one individual to another or via stock markets, or indirectly via banks, institutional investors (pension funds, insurance companies and mutual funds) or investment funds (e.g. hedge funds, private equity funds). These operate privately and do not mobilise public savings – at least not directly. Savings, invested either directly or supplemented with bank loans, are either lent to investors, States or households in return for receivables, or are sold to companies in return for deeds of title, in order to finance the accumulation of capital and innovation. These two channels deliver productivity gains, which result in a widespread improvement in living standards, at least if these gains are equitably distributed.

Money markets and financial markets fulfil three functions: they facilitate growth by reallocating capital on an ongoing basis in line with the signals given out by the markets and with the authorities’ requirements; they affect the stability of the economy by provoking and managing crises which wipe out any bad debts and obsolete surplus capacity; and they influence the way in which income and wealth are distributed among the working population and people of private means, and among employees, the self-employed, SMEs and companies listed on the stock exchange.
Since the 1980s, finance has undergone a triple revolution, which has allowed it to cash in on globalisation and derive enormous profits from it, though increasingly at the expense of the rest of the economy. First of all, liberalisation of the international capital markets, which was supposed to improve the saver’s remuneration and reduce the cost of finance for the investor, has opened up a promising niche for the globalised financial industry. Secondly, the falling cost of communications and the amazing increase in their speed has enabled the financial markets to function continuously in real time on a global scale and allowed arbitrage operations to proceed in markets and pressures to be exerted on the financial policies of States. Lastly, the emergence of direct finance and securitisation has provided shareholders and the financial industry with new opportunities to carve out a growing share of global added value for themselves. Finance is the ultimate winning sector in the globalisation process.

We shall focus here on the liberalisation of capital flows and on the financial revolution.

3.1 Liberalisation of the movement of capital: Bretton Woods II

As far as liberalisation is concerned, the breakdown of the Bretton Woods I System occurred in 1971, when the United States announced that the dollar would no longer be convertible into gold. This marked the transition from fixed exchange rates to floating exchange rates and the abandonment of exchange controls. Full liberalisation of the movement of capital within the industrialised countries then rapidly followed, at the initiative of Ronald Reagan and Margaret Thatcher, under pressure from Wall Street and the City of London, but eventually with a Franco-German consensus too – the Kohl-Mitterrand pairing – within the EU. It was completed within the course of one decade, the 1980s, i.e. far more rapidly than trade liberalisation, which was undertaken via the dismantling of customs tariffs under the GATT over the course of half a century. It meant the withdrawal of the IMF, whose role in financing and imposing sanctions on countries experiencing difficulties with their foreign trade balance was taken over by the
financial markets. This is what I call Bretton Woods II, whose doctrine was embodied by the Washington Consensus, and was far removed from the ‘managed liberalism’ of the early days. The full liberalisation of capital flows, long advocated by neo-liberal economists as a panacea for global growth, had shown its limitations. In particular, thus far it has enabled the United States, whose dynamic economy and the safe environment it provides for private property have earned it the confidence of the international financial markets, to pursue an expansionist monetary policy generating a level of foreign debt which is formidable and fundamentally destabilising, though still denominated in dollars. Liberalisation now calls in turn for a re-evaluation in the wake of the current crisis. Can the global economy enjoy stable development by perpetuating the ‘privilege of the dollar’? Should it be based on the free movement of capital in all circumstances? Is full liberalisation an indisputable tenet of economic theory? Does it follow from imperative international obligations? Or is it a dogma of neo-liberal theory, and a practice which was unwisely allowed to spread? Last but not least, another question: given that we are where we are, can we really move backwards in time? As Alexandre Lamfalussy recently asked, using a neat image, ‘can we force the genie back into the bottle?’ Europe, for its part, can certainly subject the free movement of capital with third countries to regulatory and fiscal standards compatible with its own. This should be the nub of the European debate regarding the crisis.

3.2 How finance changed: from banking to the stock exchange and the market

Finance itself has undergone three radical changes: the main revolution in finance, which coincided with the international liberalisation of capital flows and the advent of the information economy, took place in the early 1980s and consisted of three ‘D’s – disintermediation, despecialisation

4. In the wake of the September 2008 crash, the Washington Consensus, which for twenty years had acted as a doctrine for the IMF, the World Bank, the OECD and the EU, became an orphan. There were numerous denials of paternity among Washington’s think tanks and lobbies, including by the IIF, long regarded as its putative father. It involved firstly recommending, or even imposing, prudent and flexible macro-economic policies, which was fair enough, and secondly structural reforms inspired by neo-liberal doctrine, which was improper and counterproductive.

5. Conference at UCL (Brussels) organised by Altercité, held on 20 October 2009.
and deregulation – on the basis of experiments conducted in the United States and Great Britain. The banks relinquished some of their traditional role as financial intermediaries between savers and investors, converting short-term deposits into long-term loans, in favour of a role in which they act as advisers, agents and operators in direct finance. Stock markets increasingly took the place of banks in providing finance to companies listed on the stock exchange. Institutional investors (pension funds and mutual funds) brought small shareholders together in order to secure a higher proportion of the company’s added value for them, by exerting constant pressure on companies. Capital investment funds too played an important role in restructuring companies and in mergers and acquisitions, with the sole aim of realising capital gains for the purchasers, despite the high price paid in terms of social costs. Managers, motivated by extravagant remuneration and by stock options offering the prospect of significant capital gains, structured the running of their companies so that they could maximise the short-term return on investment, and thereby meet the expectations of investment funds and banks acting both on behalf of shareholders and on their own account. The entire system of corporate governance was changed in the process. The company found itself reduced to the status of being just another profit-centre within the financial landscape. It was exploited by global finance and lost its own community dimension. Another significant feature of the European model was called into question.

The other revolution in finance relates to the securitisation of loans granted by banks, with a view to selling these loans on the secondary market, and passing on the specific risks attached to equity or debt instruments (interest rates, exchange rates, commodity prices, solvency) in the form of new and highly complex market vehicles. These derivatives provide further opportunities for making profits by differentiating the financial products which are a source of market power, via arbitrage and speculation feeding vast movements of capital on a global scale, the effect of which is sometimes stabilising and sometimes destabilising. Overall, sharing out individual risks admittedly

6. Dominique Plihon, referring to an estimate produced by the Bank for International Settlements (BIS), mentions a tripling in the size of the foreign exchange market between 1989 and 2007, to the sum of 2,000 billion dollars per day, i.e. the size of France’s GDP (in Les grandes questions économiques et sociales, edited by Pascal Combemale and published by La Découverte, Paris 2009, p. 280).
allows profits to be made, but above all it feeds systemic risk, especially when the indebtedness of operators, facilitated by low interest rates, weakens the economy in the face of a downturn in the markets.

Finally the financial landscape is diversifying and structuring itself: on the one hand, investment funds are multiplying by exploiting product differentiation, and on the other, banks are merging according to a logic of economies of scale and prudential standards, and finally, an important role is being played by financial conglomerates, which are building bridges between all of the various business lines.

4. A mixed assessment for deregulated finance: less growth, more instability and inequalities

An overall assessment of the financialisation of the global economy becomes problematic if we look at it from the viewpoint of the three traditional canons of economic analysis: efficiency, i.e. contribution to growth, stability and equity.

4.1 Innovations which are less about creating added value...

In terms of efficiency, the past three decades suggest that the function of financial innovation – which was the initial justification for giving carte blanche to finance in order to emancipate it from the supervision of States – has gradually lost some of its impact on growth. It cannot be denied that financial innovation – especially venture capital – played a key role in the information technology revolution which boosted the global economy for at least a decade. It undoubtedly facilitated foreign direct investments, which are an important vector for the development of international trade, especially in the emerging economies and the economies in transition. However, the abusive transposition of the stock options model from start-ups, for which they were justified, to companies well established in the market, did not stimulate the growth of the economy as a whole, and deregulated securitisation proved to favour speculation rather than investment. Overall, growth has not risen in Europe for twenty years now, and in the United States it has benefited just 1% of the population, whereas in China, growth was at its maximum level at a time when financial liberalisation remained strictly
limited to commercial transactions. So far, the contribution made by financial innovation to global growth is yet to be proven. The burden of proof lies with the financial industry, which has conspicuously failed to provide it.

4.2 ... and more about destabilising the economy

As far as stability is concerned, finance constantly exposes the real economy to four main sources of instability: firstly, the financial management of States themselves, which, by rapidly building up debt on a massive scale, can provoke an exchange-rate crisis and an increase in the cost of borrowing, thereby driving out productive private investment; secondly, the swings which the economy undergoes between deflation and inflation, an inherent feature of the operation of credit; thirdly, the risk of borrowers becoming insolvent is always likely to trigger a financial crisis where debt levels are high and the business cycle is turning round; and finally, in an interdependent global economy, the monetary policy pursued by the country anchoring down the whole system, which in the case in point is US policy, may prove to be a destabilising factor.

Once the dollar and gold were uncoupled in 1971, finance became an increasingly destabilising influence: since the 1980s, there has been an endless succession of exchange-rate crises, triggered by speculative pressures in a world of more or less floating exchange rates\(^7\), and financial crises – sometimes centred around stock market crashes, and sometimes around bank collapses – linked to over-indebtedness, culminating in the Wall Street collapse of 15 September 2008. The most remarkable thing here is that this time the instability is not attributable to the financial policy of States, but to excessive levels of debt run up by households and financial operators, feeding financial and property bubbles. These excessive debts were made possible by the lax monetary policy pursued by the Fed\(^8\), while the European Central Bank (ECB),

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7. The practices involved in speculation (a ‘one-way bet’) are based on linking one currency to another (pegging, crawling peg, target zones).
8. The favourable interest rates which allowed poor US households to take on too much debt were also exploited by financial institutions to boost their own debt, and thereby increase their leverage, and consequently their own returns on investment. This strategy allowed...
which took a rigorous – even rigid – approach to current inflation, ignored inflation on real-estate and financial assets. The crash invalidated once and for all the main axiom of neo-liberal thinking, i.e. the theorem of efficient markets, which first of all holds that assets markets, especially the market for financial assets, function like markets for goods, which is not true; that they take on board all available information, which rules out the existence of bubbles, and is not true either; and that they adjust of their own accord, without any political intervention, which might be true, but only at a staggering cost to the economy and to society. In point of fact information asymmetry and herd-mentality behaviour contradict the very presuppositions of the doctrine underpinning the self-regulation option. On the other hand, the theory of the fundamental instability of financial markets propounded by Minsky, based on a thesis by Keynes, is more convincing. This theory holds that as markets constantly create imbalances, monetary policy has to correct them. In particular, it must both ‘burst the bubbles’ as soon as they start to appear, even if this means provoking a small-scale recession, and prevent excessive levels of debt building up. After all, in the initial phase, this excessive indebtedness makes the economy more vulnerable to shocks, and later produces inflation to bring it under control.  

4.3  ... and generating income

However, the most serious objection which can be levelled at finance relates to its increasingly insidious role in the distribution of income and assets. After all, why should the debate be focused on the failure to regulate the financial markets in terms of stability, when, in the regulatory system designed by the financial sector itself, everything points towards a deliberate intention to allow financial profitability, and thus the exacerbation of inequalities, to take precedence over the stability of the real economy? Admittedly, the accumulation of capital and the concentration of wealth have always been the powerful driving-

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them to issue and purchase more lucrative financial products, because they carried higher levels of risk. Cheap borrowing therefore eased the perception of risk.
forces of free-market capitalism, but financial globalisation is now providing this with an unprecedented degree of irresistible force, and an inherent risk of destabilising our societies and bringing protectionism to the fore of the global economy once again. In fact a complex financial system has built up over a period of three decades, as a result of sedimentation at a global level, assisted by progress in technology and liberalisation. This system has a dual function: on the one hand, securing an ever more advantageous remuneration for capital, and on the other, carving out a growing share of the added value for the financial industry itself. Tax avoidance via fiscal engineering or tax fraud committed by channelling money into tax havens are the finishing touches of the maximum-profit strategy, which pushed the system to breaking-point. A public regulation vacuum has come into being, between national States constrained by their borders, and international institutions constrained by the sovereignty of States, including micro-States acting as tax havens. Here, we need to take a look at the mechanism used by finance to concentrate incomes and property.

Ever since stock markets took the place of banking intermediation in the 1980s, finance, just as much as technology, has affected the distribution of income, as it has been both the main lever for globalising production and the tool for creating shareholder value, which are the two factors giving rise to increased inequality. The growing influence of finance within the global economy has sanctioned the deterritorialisation of capital and its extreme fluidity, allowing it to escape the pressure of organised labour and the regulatory and fiscal supervision of States. Private economic networks are being superimposed on political territories. There is a growing disconnect between capital, which can be exported, and labour, which is anchored to its own territory and therefore exposed to the risks of unemployment and job insecurity and to the pressure applied to unskilled wage levels by the threat of imports and offshoring. Due to its relative scarcity in relation to the massive increase in the global labour supply, now that China and India form part of the global supply of manufacturing and services, and to its extreme mobility and fluidity, capital has actually strengthened its position vis-à-vis labour when it comes to negotiating its share of global added value. It also plays off different national regulatory and solidarity regimes against each other, and increasingly avoids paying tax, the burden of which is passed on to workers and consumers. Under the
influence of these mechanisms, the middle classes in our countries are now suffering from the syndrome of a drop in status, which is a troubling political fact.

However, in addition and most significantly of all, the financial industry itself has exploded. In twenty years, it has doubled its share of stock market capitalisation, employment and added value. The main tool of this expansion comes in the form of commissions deducted either from the margins obtained for shareholders and creditors\(^{10}\), or from the ever-growing and ever-faster circulation of financial flows, notably via speculation, or from concentration and market power. Finance has therefore played a key role in reducing the relative share enjoyed by wages in relation to profits; it has also been a factor in the growth of wage inequalities, whilst at the same time promoting large corporations at the expense of the vast majority of SMEs. Linked to financial instability, the exacerbation of inequality levels – assisted by the Fed’s lax monetary policy – has pushed poor American households into debt. This excessive amount of debt triggered the real-estate crisis and bankrupted Lehman Brothers. The circle was complete.

In reality, increasing levels of inequality thus became, if not the primary purpose, then at least the main function of global finance in the advanced countries. Highly dangerous and extremely spectacular it may be, but financial instability is only one consequence of this search for a larger share of added value. Contrary to the views upheld in the dominant discourse, the contribution to growth made by financial innovation has become an increasingly debatable justification for deregulation.

5. **A systemic crisis calls for radical reforms**

Any remediation of the crisis therefore has to be holistic: it cannot focus solely on the question of financial stability, as is currently the case. On the one hand, it must encompass the international monetary system,

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\(^{10}\). The return on investment has become so high, absurd even, that we have seen growing numbers of companies earmark dividends for buying their own shares, in the absence of any reinvestment plans. Needless to say, these capital gains are advantageous for shareholders, particularly since they often benefit from more favourable tax treatment.
and on the other hand, cover the broader field of equity by including the excessive profitability of finance, corporate governance and taxation of fluid capital. The regulation of financial markets needs first of all to be brought into line with the fundamental requirements of the European model, and only then to concern itself with its compatibility with the standards of other areas of financial jurisdiction. In other words, the model should come first and the liberalisation of capital second. Liberalisation should be subordinated to the European model. Europe should apply all of its leverage which, as far as finance is concerned, could be considerable, to bring financial governance standards into line with the high standards of protection and solidarity which the EU should strive for.

5.1 Behind the G20 screen

The main merit of the G20 is that it has existed since 1999 and provides an immediately available alternative to the G7/8, which has steadily been losing its legitimacy since China’s rise to power, and effectiveness too since it gradually abandoned governance of the economy to the markets and chose to overlook the privilege of the dollar. An emergency meeting of the G20 was convened in Washington on 14 November 2008, at the initiative of Nicolas Sarkozy, the then President of the European Council, Gordon Brown, conceptual architect of the political response to the breakdown of the markets, and George W. Bush, host of the Bretton Woods financial institutions (the IMF and the World Bank).

This meeting brought together firstly those countries in which the financial crisis had first erupted, i.e. mainly the United States and Europe, linked by a transatlantic agenda of cooperation on regulations and standards, and secondly those countries which were affected by the crisis but had significant foreign exchange reserves. The G20 offers a

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11. Composition of the G20 at the Pittsburgh Summit held on 24 September 2009: Argentina, Australia, Brazil, Canada, European Union (represented by the Prime Minister of Sweden, in his capacity as President of the European Council, and by José Manuel Barroso, President of the European Commission), France, Germany, India, Indonesia, Italy, Japan, Mexico, Netherlands (special permission to attend), People’s Republic of China, Republic of Korea, Russia, Saudi Arabia, South Africa, Spain (special permission to attend), Turkey, United Kingdom, United States of America, World Bank, International Monetary Fund, WTO and Forum for Financial Stability.
dual advantage: on the one hand, it organises solidarity between countries which hold international reserves and the dominant economies, with China now claiming its place in both camps; and on the other, it links these economies, which account for 85% of global GDP and two thirds of the world’s population, with the major international organisations like the IMF, the World Bank, the World Trade Organisation (WTO), etc. while the presence of the Secretary-General of the United Nations (UN) confers a semblance of legitimacy on the G20’s work.

However, the G20 has three weaknesses: first of all, its composition leaves something to be desired, as the poor countries, especially those in Africa, are not represented. Secondly, there is no in-depth community of views among its members: on the one hand, the West, discredited by its responsibility for the crisis, and its dependent partners (Saudi Arabia), and on the other China, buoyed up by its immunity to the financial crisis and championing a fearsomely efficient model combining free-market capitalism and one-party rule – a Communist party, moreover. In her wake she trails the major raw material producers (Russia, Brazil) and her challenger, India. Finally the G20, like the G7, makes decisions by consensus, which are not binding. Operating via a modest ad hoc secretariat, it refers the tasks of preparation and execution to specialised agencies and forums, notably the IMF, whose resources and powers were upgraded at the first G20 Summit in Washington, in November 2008. Among the forums, the Council for Financial Stability (CFS), which is the new incarnation of its predecessor the Forum for Financial Stability12, a body made up of the G10 central banks and regulators but now representing the G20, is implementing the actual programme to regulate the financial markets.

The G20’s initial agenda was focused on three priorities. First of all rescuing the banks and preventing a contraction in lending (or ‘credit crunch’) in the wake of liquidity problems in the interbank market were viewed as urgent priorities. Initially, this was solely a matter for the countries affected by the financial crisis, their central banks acting as lenders of last resort, and the governments of the countries of origin or

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12. On this occasion, the European Commission, which had hitherto been excluded, joined the CFS, together with the new members of the G20.
host countries, depending on the case, which guarantee deposits and protect the banks from bankruptcy. However, using their sovereign funds, the countries holding reserves (China, Russia, Brazil, Saudi Arabia, etc.), have the capacity to strengthen the western banks’ own resources and thus to consolidate destabilised financial markets.

Next, measures to stimulate the economy and prevent the recession turning into a deeper and longer-term depression called for a coordinated effort on the part of the large economies, including China, the United States and the EU, but including any country able to embark on budgetary expansion. The effort expected from China goes further, as it implies transferring the source of internal growth from exports to domestic consumption and environmental investment. Pressure from the G20 is pushing China in the direction desired by the OECD countries. The collective undertaking to control any protectionist impulses and to earmark the sum of 250 billion dollars for trade financing will also sustain the pump-priming effort. The IMF was also given substantial resources by the G20 as a whole, to help the least developed countries (LDCs), and by the EU to help the economies in transition.

Finally, there is the question of regulating financial markets. This process will obviously take time, in view of its complexity: it will require political agreement within the G20, negotiations in the new Council for Financial Stability and transposition into national legislations. Nevertheless, on the one hand, the momentum to take this step is there, especially in terms of controlling offshore financial markets and imposing limits on the salaries and bonuses paid by banks receiving State aid, and on the other, we shall not emerge from the financial crisis until all of the toxic assets owned by all of the banks are identified and neutralised.

There is also the question of the G20’s pertinence with regard to the task of regulation. Above all, the G20 provides a screen for this club of heavyweight unelected professionals who, in the highly discreet
context of the CFS, are negotiating the introduction of the new regulatory architecture. This, one suspects, will not be global. It will remain a matter for States, which will be free to implement the CFS’s conclusions at their own level, or even create yet more multiple and complex cooperation structures operating at bilateral or multilateral level. Needless to say, the Bretton Woods international financial institutions, the Bank for International Settlements and the Basel Committee are playing a key role in disseminating the CFS’s doctrines and resolutions, though without the force of coercion. However, if this networking process is not circumscribed at a political level, it is to be feared that in the absence of any political directives it will merely result in remedies which are more or less effective but are exclusively focused on financial stability. As we have seen, this is only one aspect of the global financial problems. The goal of any reforms cannot be to simply put a bloated finance industry (destined to witness all the excesses permitted by a complex field which is undergoing constant and rapid change) back on the rails, simply so that it can fight for market share using innovations based on high systemic risk.

In point of fact, countries which hold foreign exchange reserves but nonetheless maintain a system of exchange control, such as China, or have retained the option of re-introducing it, such as Russia, can organise their regulation of the financial markets according to their own standards, provided these are acceptable to foreign investors. The United States and the EU, for their part, are setting their sights on some degree of convergence of the principles laid down within the CFS, but working in different ways. The public regulators are actually reluctant to push the convergence of arrangements governing standardisation, financial supervision and compliance with fiscal legislation too far, because they themselves are stakeholders in the fierce global competition

agencies such as Standard & Poor’s and Moody’s, which are responsible for evaluating sovereign risk, and to the International Accounting Standards Board (IASB) in the case of accounting standards in use within the EU. On the other, the closeness of regulators and financiers poses a constant risk within the closed and highly incestuous world of regulation. The role played by Goldman Sachs in American financial policy, which is savagely dissected under the evocative title ‘The Great American Bubble Machine’ by the scientific journal Rolling Stones in its edition dated 9-23 June 2009, which was widely reported in the international press, further illustrates the collusion, both intellectual and also highly material, which can exist between power and finance in a totally opaque environment, in this case in the United States.
between financial markets. In reality, the attractiveness of a financial market is based only in part on the quality of the private supply of financial services: it is also based on its public environment. The flexibility of regulation, its robustness, the taxation arrangements applicable to investors, managers and traders, together with monetary policy, are all factors at work in the rivalry between London and New York, between these two markets and their counterparts in Asia (Tokyo, Singapore, Hong Kong, Shanghai) and, in the case of London, competition from Paris and Frankfurt. The less marked the advantages offered by the market, the more the race to attract high added-value financial services is based on environmental, legal and fiscal factors. Both offshore and onshore markets know something about this subject.

In reality the G20 constitutes a transitional structure which has yet to prove its effectiveness and will always lack legitimacy. It offers a convenient framework for testing two models of informal leadership in global economic governance: either the G2, with China and the United States, which is now emerging due to the very large number of European players and the absence of the EU as such, or the G3, which might assert itself if the EU can cross the threshold of collective sovereignty in the critical and indissociable fields of currency, finance and capital taxation.

5.2 … reforming the monetary system: towards Bretton Woods III

The 'exorbitant privilege' of the dollar, as French President Giscard d'Estaing described it thirty years ago, offers the United States the option of running up huge external debts in its own currency and, at any given moment, allowing the dollar to depreciate, so that the country only has to repay part of its initial debt in real terms. This source of cheap finance was being exploited in the USA even before the dollar was uncoupled from gold: for example, President Johnson had drawn on it to express the 'guns versus butter' dilemma when he was waging war in Vietnam and embarking on a vast programme to combat poverty, with the latter making the former tolerable to American voters. Reagan took advantage of it with his Star Wars programme and tax cuts for the rich, which were to lead to a twin deficit, both in the budget and foreign trade. However, over the past decade, the USA, embroiled in two wars,
introducing further tax cuts and enjoying a frenzy of household consumption, has accumulated a dollar debt equivalent to that of developing countries, largely financed by the trade surpluses of East Asia, especially China. The global economy has therefore been boosted by a mechanism which is fundamentally out of balance, as the excess consumption of the richest country in the world, which translates into excessive levels of household debt and into a global savings deficit, is being financed primarily by the world’s largest developing country after India.

US monetary policy provoked instability in the global system in two ways: by allowing cheap debt, it encouraged the emergence of a dual structural imbalance – the US deficit and the Chinese surplus – and by financing excessive leverage, it fed the financial and property bubbles. Henceforth, curbing the US deficit will mean transferring the burden of adjustment – especially in terms of unemployment – to Europe, via a depreciation of the dollar. Europe will agree to this without balking, because it is a way to pay tax in return for the strategic shield offered by the United States. On the other hand, China, which has pegged the renminbi to the dollar and is therefore watching its currency depreciate at the same rate as the dollar, is escaping the effects of this form of beggar-thy-neighbour policy (promoting the economy of one country at the expense of another). It is now also openly questioning ‘the privilege of the dollar’, while the EU’s protests are limited to the depreciation of the Chinese currency, which of course is not credible for Beijing. The days of a monetary system governed by a hegemonic power, as was formerly the case with the United Kingdom and more recently the USA,

14. Households on low or average incomes have been able to run up debt by using credit cards and mortgage loans to finance their day-to-day consumption. The Fed allowed this indebtedness to continue by keeping interest rates at a very low level thanks to two factors: firstly, bringing down inflation by importing cheap Chinese goods, and secondly, China’s wholesale purchases of US Treasury bonds. It is the interest rate on these which determines the base rate payable on mortgage loans in the United States.

15. According to the Financial Times (Jeffrey Garten, 29 November 2009), the USA’s net foreign debt tripled last year to $3.500 billion. With a budget deficit of 10% per annum, it is set to rise by $1 billion per annum.

16. However, we should not lose sight of the fact that it was the lack of supervision on the European side which allowed American subprime mortgages to be imported and our banks to incur excessive levels of exposure. A regime for controlling any destabilising movements of capital which did not meet strict quality standards could have prevented the US shock wave from spreading. After all, China and some OECD countries, such as Canada, were spared.
are now past, in a multipolar world in which maintaining peace and prosperity is becoming a collective responsibility.

Restoring order to global finance therefore involves reforming the international monetary system, the purpose of which is to guarantee the fluidity of international trade by ensuring the convertibility and stability of exchange rates, notably by providing the liquidity needed by developing countries for their growth, and by advanced countries experiencing temporary difficulties to finance their external deficits, whereas countries with a surplus would be encouraged to boost their imports.

The reform agenda of the international monetary system should comprise at least four pillars:

— providing effective supervision and a gradual correction of all structural imbalances, including the US deficit and the Chinese surplus;

— earmarking additional resources for the IMF, so that it can assist with the adjustment process in the poor economies and the economies in transition;

— changing the balance of power in the governance of the IMF and the World Bank, by giving a greater role on the Council to China and other emerging economies and replacing Eurozone Member States by the EU itself;

— very gradually and cautiously changing over from the dollar to a reserve currency consisting of a basket of currencies similar to the SDR, but including the renminbi. This will mean the latter moving to full convertibility, with the inherent risk of appreciation. It would help to control inflation and assist the changeover from an export-led growth model to a consumption-led model.

However, any reform of the international monetary system will be meaningful only if the EU perfects its own internal monetary unit, which means firstly extending it to encompass the United Kingdom, Denmark and Sweden, and subsequently deepening it by introducing economic governance for the Eurozone, which is still lacking. An
increase in the European budget will be another inescapable factor. Once its monetary sovereignty has been established, the EU will become one of the pillars holding up a credible new multilateral system. However, the link between monetary sovereignty and European defence needs to be elucidated, because it is the latter which will keep the former in working order.

5.3 .... and towards a European model based on triple sovereignty: monetary, financial and fiscal

At the present time, playing finance off against the real economy continues to be the prevailing temptation in Europe at the level of the Ecofin Council; this is less a matter of deliberate intent and more to do with the intellectual inertia characterising intergovernmental links in Europe, and also due to the formidable effectiveness of the financial lobby. The de Larosière report\(^{17}\), which inspired the Commission's legislative package\(^{18}\) currently under discussion in the European Council and the European Parliament, demonstrates the limitations of taking too pragmatic an approach. It shrinks from promoting the unity of prudential control at EU level; nor does it go so far as to design an EU crisis mechanism, which is the only way to achieve an effective outcome without compromising the unity of the European market. Yet we must think the unthinkable when we come to assess the full extent of the economic and social transformations which the financial crisis has both triggered and revealed. Its effects will last for a generation. They will join the issue of lowering carbon emissions, which will sustain growth at lower levels. This in turn will make the questions of distribution and social cohesion in our societies even more acute and expose them to the twin risks of protectionism and populism. First of all, it is important to check whether an agreement within the G20 or with the United States is a necessary precondition for the introduction of a European regime of prudential regulation, in other words, whether

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*17. The de Larosière report ordered by the European Commission was submitted on 25 February 2009 and approved by the European Council of 19 and 20 March 2009.*

*18. The European Commission, whose term of office had been characterised by a marked reluctance to introduce measures to regulate the financial markets, resolved to go down this road in the wake of the de Larosière report, by means of comprehensive proposals in May 2009 and autumn 2009.*
the free movement of capital takes precedence over the EU’s specific needs for regulation.

There is no economic law establishing the absolute superiority of complete freedom of movement of capital between countries over exchange controls, whereas experience has in many cases demonstrated the practical justification for restrictive measures. Free trade and free movement of capital are actually two quite different things, even in the opinion of a liberal but pragmatic economist such as Lord Keynes. Nor does any international treaty impose an obligation making these a legal imperative\textsuperscript{19}. Nevertheless, on the face of it, the EU has no room whatsoever for manoeuvre in this area, because oddly an article in the Treaty has imposed this\textsuperscript{20} ever since the Treaty on European Union (Maastricht, 1992). The TEU incorporated a central provision of the 1988 directive on the free movement of capital, adopted at the initiative of Germany, whose agreement to the first stage of Economic and Monetary Union was conditional upon this. Consequently, measures to restrict the movement of capital involving third countries can only be restored by the EU unanimously. This astonishing unilateral renunciation of a key tool of economic policy provides an indication of the hold established by neo-liberal ideology on some Member States in the 1980s. It would be difficult to imagine such an unwarranted abandonment of sovereignty taking place under US legislation, even during the Reagan and Bush eras. This provision, which is virtually constitutional in nature in view of the hierarchical structure of legal standards in Europe, is all the more absurd, especially since the creation of the Eurozone, in that the EU constitutes the world’s leading source of savings and foreign direct investment. The theory of a flight of capital unfolding if the EU imposed restrictive measures appears to overlook the requirement for this capital to be invested in profitable activities and safe countries. The EU, like the United States, will remain a key region for inward investment.

\textsuperscript{19} At the initiative of its Managing Director, Michel Camdessus, the IMF planned to amend its constitution in order to introduce such a provision. In the end, it abandoned this idea in the wake of its failure in handling the Asian financial crisis of 1997-1998. The OECD’s codes covering the movement of capital have no coercive value either.

\textsuperscript{20} Article 63 of the TFEU (TEU 58) provides that ‘(...) all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited’.
Nevertheless, regulation of financial markets and the European capital taxation regime need to allow for the possibility of restricting the free movement of capital to or from countries which are deemed to apply standards less rigorous than European internal legislation. This is the only premise compatible with the restoration of full financial and fiscal sovereignty in Europe. It is also the pre-condition for making the legislation in these areas subject to requirements governing financial stability, and fiscal efficiency and justice consistent with the European social model.

The key idea is to remove from the financial industry as a whole the implicit guarantee of systemic rescue by the authorities: in reality, this allows the sector to build its brazen prosperity on an implicit and vast moral hazard. Admittedly, the authorities must treat finance as a gigantic source of externalities and consequently guarantee its stability. However, this assurance must be rigorously defined and must ensure that those in charge – managers and shareholders – continue to be subject to sanctions imposed by the market and by law. The merits of financial innovation must also be carefully weighed and cannot be allowed to result in a situation in which regulators and supervisors constantly find themselves one step behind the operators, even though the errors made by the latter in their headlong rush for market shares and profits may have serious consequences for the economy. Inevitably, these restrictions will have an adverse effect on the financial industry’s profitability – which in any case is largely artificial. The sector therefore needs to be restructured, and calm restored to the finance industry.

Which principles should underpin regulation, prudential supervision and tax treatment in a fully integrated and thus centralised European financial area, including those guiding the design of the budgetary mechanism for rescuing clearing banks experiencing a solvency crisis? The aim should be to have the most robust and efficient financial industry in the world – and one which pays taxes – but also one which has been resized so that it can release capital and human resources to benefit the real economy, by encouraging young talent to make a career in a lab or a start-up company, rather than on a trading floor or in mergers and acquisitions. The impact on productivity will undoubtedly be greater on our economies which are yearning for growth.
This means:

— turning the EU into an integrated financial area and, in order to achieve this goal, organising a strictly unitary structure which is both centralised at European level (regulation and registration) and decentralised at national level, for the functions of regulation and macro and micro-prudential supervision;

— completely covering all market segments, so as to eliminate any distortions of competition between regulated and unregulated sectors, and avoid contagion of the markets; hedge funds and private-equity funds should be subject to controls; their operations should be channelled through public clearing houses (standardisation and transparency), as their products end up on regulated markets which they are therefore in a position to ‘pollute’;

— consolidating the capital base of financial institutions so as to achieve a better balance between shareholders’ equity, leverage and the level of risk posed by assets; if necessary, returning to a separation between clearing banks and investment banks (Glass-Steagall). Logically, these two measures will lead to a reduction in their actual profitability, which will raise the cost of credit for businesses, so inevitably, there is some trade-off between stability and efficiency;

— adapting accounting standards\textsuperscript{21} – especially to correct their procyclical nature (mark to market) – and preventing conflicts of interests with rating agencies;

— eliminating moral hazard by clearly defining the scope of State intervention in advance, subjecting managers and shareholders to the sanction of the market and by introducing the concept of an ‘economic offence’ – as a matter of public policy – in the case of bankruptcies attributable to management negligence and resulting in serious damage to the economy;

\textsuperscript{21} Here we should highlight the pioneering work carried out by Nicolas Véron, a Bruegel researcher and \textit{La Tribune} columnist. It forms part of a broader current of thinking, which is up to date and throws light on the whole question of regulating financial markets.
— redefining corporate governance in order to encourage long-term development benefiting all stakeholders, rather than simply seeking short-term remuneration for shareholders;

— creating a ‘transit chamber’ – if necessary by resorting to a Tobin-type tax to facilitate the process of tracing capital flows— so that the origin and destination of capital can be checked, and European prudential and fiscal standards can be applied to it, in order to prevent ‘prudential and fiscal dumping’, if necessary by resorting to mutual recognition agreements with countries whose standards are on a par with the EU’s. This measure would enable tax havens outside the EU to be brought to heel, and which turn would mean eliminating them within the EU.

This last point implies putting an end to tax competition which, far more effectively than social competition, is undermining the very existence of the European model. European-level taxation of fluid capital (financial assets and profits made by cross-border companies) would at minimum require harmonisation of national taxes (assessment bases, taxation rates) or at a later stage even a European tax. Part of the revenue raised by the latter could be channelled into a rescue fund for banks or systemic institutions, so as to prevent any discrimination between States based on their financial strength. On the face of it, such an aim appears out of reach today, particularly since unanimity in fiscal matters has been reinforced in the wake of the Irish referendum. Nevertheless, we should recognise that in a context of low growth and high public debt, and in view of the absolute need to rebalance the budgets without increasing the tax burden, the question of how this tax burden should be distributed between capital and labour, between large corporations and SMEs, between the working and non-working populations, and especially between young people suffering from financial insecurity and affluent pensioners, is destined to become a central

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22. With the exception of OTC flows (private trades between banks and customers), capital passes through clearing houses (Euroclear, Clearstream) which already deduct their margin from these transactions. OTC operations could be obliged by law to pass through a public clearing house.

23. According to Prof. Bernard Plagnet, moving tax payments offshore by means of transfer prices charged internally by multinationals costs France alone no less than 7 billion euros (Le Monde, 1 December 2009).
question in several countries of Europe. Currently viewed as technical and obscure by the layman, and therefore not within the sights of ordinary people and their representatives, capital taxation is set to establish itself as a key issue in political debate, in the same way as benefit fraud or the integration of young immigrants.

In the coming decade, whether the sovereignty hard-liners like it or not, the EU will increasingly have to take on board the entire logic of integration, encompassing the single market, governance of the Eurozone and the issues of financial and fiscal regulation. Too many externalities, policy spillovers and ignored economies of scale are now diluting the effectiveness of European economic policy. The political discourse must now also prepare public opinion 'to think the unthinkable', by making it realise that the cost of inaction, or action that is too slow, too late and too partial, will ultimately be harmful to all States and all categories of citizens.

5.4 Europe must project its values outwards, but must first of all live by them internally

The migration of the global economy towards Asia and the differential in the rates of demographic ageing herald the EU’s relative economic decline. Its influence will continue to decline if it fails to offset this decline via stronger unity. This unity can only be achieved through internal efforts. One cannot project power if it is not accompanied by a coherent, tried-and-tested vision of one’s values and interests. Besides, the financial crisis, with all the chaos it expresses and entails, has seriously eroded the reputation of the West, whose discourse, which tends to be condescending, will now be heard less in the rest of the world. Yet Europe, if it is to remain faithful to its long history, still has a great deal to say to the world, and above all it has a duty to say it. After all, given that Europe was the first continent to enter the modern era via free-market capitalism, it should also be the one to embark on its radical reform. This is exactly the point we have reached now. It is not a matter of putting forward an overall design, but experimenting with new forms of human relationships, taking into account factors such as ageing, scarcity of resources (in a world still committed to growth over the long term), climate change, social cohesion and culture. Europe has a capacity both for doubt and for invention, which marks it out as a
candidate to explore new avenues and present them to the rest of the world, so as to disseminate, through tried-and-tested social practices, the universal values of dignity, freedom and justice which we have learned, often through tragedy, over the course of our history. The world no longer needs to relive these tragic experiences, especially given that, in view of nuclear proliferation and the collapse of the state apparatus in some countries, the risk of a nuclear winter has returned.

The best tangible contribution the EU can make to world peace today is to keep its markets open and thereby impose discipline on its private finance, consolidate its public finance, and within this framework, implement solidarity and environmental policies. However, the EU must also take responsibility for and assume its full share of the burden of its own defence. There is no such things as civil sovereignty alone. Sovereignty is indivisible. The EU’s admission to a G3 to oversee the multilateral system in association with a more representative nucleus of countries than the G20 will come at the price of the EU’s access to full sovereignty.
The ILO and its role in responding to the financial, economic and social crisis, promoting decent work and strengthening the social dimension of globalisation

Rudi Delarue

The International Labour Organization (ILO) is the specialised UN agency that brings together governments, employers and workers of 183 countries with the aim of promoting decent work for all. The ILO was founded back in 1919. It is the only tripartite organisation in the international system. The ILO’s key objective of fostering social justice remains very relevant in times of globalisation and financial, economic and social crisis. At the same time, the ILO has been able to adapt its role and operations to remain pertinent in the context of a changing world, including the immediate aftermath of the Second World War, the cold war and its end, the intensification of globalisation, the growing role of emerging economies such as Brazil, China, India and South Africa and of regional actors such as the EU. The ILO also responded to the visible manifestation of the financial and economic crisis in September 2008 that quickly turned into a social and employment crisis.

The ILO celebrated its 90th anniversary in 2009 amidst the most serious financial, economic and social crisis since 1929. Fortunately, world leaders did not make the same mistakes in 2009 as in 1929. They have developed concerted action to support the stabilisation of the financial, economic, employment and social situation. The ILO, fully supported by its constituents, was able to influence some of these steps, for instance through the 2009 Global Jobs Pact and preceding initiatives taken by the ILO Governing Body in November 2008 and March 2009. The ILO was also involved in the September G20 Summit in Pittsburgh.

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However, the jobs crisis is far from over yet. Analysis has revealed that the recovery in terms of jobs may take five years or more after the end of the crisis signalled by financial and economic indicators.

1. Jobs and social policy: from a marginal to a central policy objective

The ILO Office is the secretariat of the ILO (Organization) and is based in Geneva. The ILO also has offices in over 50 countries. In countries without an ILO office, the ILO operates through a variety of approaches such as through national contact points (mainly in the wider European region), technical cooperation initiatives, One UN^2 and the ILO constituents (employers, workers, governments).

The ILO is relevant for both industrialised and developing countries. Its supervision system for the application of conventions and recommendations and the specialised Freedom of Association Committee cover all ILO Member States. The decent work agenda has been agreed on by all 183 ILO Member States through their tripartite delegations, and also by regional integration organisations such as the EU through the EU coordination and common position within the International Labour Conference and the ILO Governing Body. Decent work is a shared objective in both North and South. Unlike many UN funds and programmes, the ILO is not a development organisation. However, its mandate and activities are very relevant to development. The difficulty is that because of the zero growth in ILO budgets, for too many years now, the vast bulk of technical cooperation has to come from voluntary contributions and donations. The regular budget has to be used primarily for covering constitutional obligations such as standard setting and supervision, institutional meetings and key support work under the different pillars of the decent work agenda. The management of donations and voluntary contributions is complex and time consuming as all donors, including the European Commission, set their own priorities,

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2. One UN relates to the UN reform whereby different UN agencies, funds and programmes deliver as one coordinated group based on the complementary role of their respective mandates. A key part in this is played by the UN resident coordinator active in the respective countries where the UN has a presence. The ILO is recognised as the lead agency when it comes to the world of work.
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Timelines and procedures. At the same time, the number of requests for ILO advice and support has increased dramatically during the last fifteen years, in particular because of globalisation. Therefore the ILO is trying to streamline and facilitate the management of voluntary contributions by requesting, for instance, less earmarking of funds and by agreeing longer-term commitments such as through strategic partnerships.

The implementation of employment and social policy standards and frameworks requires a good deal of technical assistance, in particular in developing countries and countries in transition. Interest in development policy and action for decent work has been growing since 2005. The European Consensus on Development of 20 December 2005 also includes decent work and related issues. This is the key EU text on development policy and it is relevant for development policy implemented by the European Commission and the EU Member States. The recognition of employment and decent work as an explicit MDG objective (Millennium Development Goals, Target 1.B) since 2008 is also a breakthrough. However, employment and decent work are not yet very present in mainstream development programmes and projects.

The adaptation of the role and operations of the ILO since 1919 has not been a smooth, gradual process. The ILO has gone through times of both intensive activity and stagnation. In recent years it has enjoyed a remarkable period of intensive action, such as the successful work of the World Commission on the Social Dimension of Globalisation (established by the ILO, with a final report issued in 2004), the adoption by global consensus of both the June 2008 ILO Declaration on Social Justice for a Fair Globalization and the June 2009 ILO Global Jobs Pact. The key operational priority for the ILO now is the implementation of these two key frameworks adopted in 2008 and 2009 at country, regional and global level. This also entails an update of the ILO’s internal functioning so as to contribute to strengthening the global policy coherence necessary to realise the decent work agenda and contribute to the mutually reinforcing economic, employment, social and environmental policy objectives.

3. The ILO has introduced the Regular Budget Supplementary Account (RBSA). This is based on voluntary contributions but with no, or only minimal, earmarking. Belgium, the Netherlands, Spain and others are contributing to this account.
A period of relative stagnation occurred in the context of the structural adjustments of the 1980s. It was followed by the fall of the iron curtain, which led to a period dominated by an economic ideology, driven by a rhetoric based on economic free markets and often ignoring the different complex national and regional positions. There was a scaling-back of the role of authorities in economic and social policy in many parts of the world. This also resulted in a financial globalisation with heightened inequalities, an increasing deficit of decent work, declining sustainable investment in the real economy and a larger share of the informal economy, in particular in developing countries. The ILO was no longer at the centre of socio-economic reform and governance.

The World Social Summit of 1995, followed by the adoption of the ILO Declaration on Fundamental Rights and Principles at Work in 1998, constituted a first turning point. It resulted in the classification of eight ILO conventions and related rights and principles as core labour standards (CLS). The CLS are enabling standards, as they establish the basic framework and principles for national stakeholders to elaborate a national social policy taking into account the local context and socio-economic possibilities. The Declaration was accompanied by a worldwide campaign for the ratification and application of the eight CLS conventions. By 2009 over 85% of all countries had ratified the eight CLS conventions, including all 27 EU Member States. In addition, the principles set out in these conventions must also be respected by countries that have only ratified some of the eight conventions, including the US, China, India and Brazil. Additional efforts on ratification and application are therefore required as these are very large countries, representing the majority of workers in the world.

One encouraging sign is that a number of large emerging economies, as well as other developing countries, have launched renewed efforts to ratify and apply the CLS conventions, along with other up-to-date ILO conventions. Brazil for instance ratified in 2009 the important social security convention (No.102); India ratified in 2009 the skills develop-

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4. The ratification by the EU-27 is important as it enhances EU credibility when it comes to promoting CLS, such as through the GSP and GSP plus system and FTAs. The ratification by all 27 Member States strengthens the status of an international treaty; this is based on the final articles of the EU Charter of Fundamental Rights that has become EU law under the EU Lisbon Treaty.
ment convention. China has in recent years ratified a number of conventions on health and safety at work and on working conditions; its new labour code is inspired by international labour standards on a large number of issues (with the exception of freedom of association). Several developing countries, ones with large maritime registers, were also quick to ratify the ILO Consolidated Maritime Convention of 2006. Maritime transport is the most globalised sector in the world.

The renewed global efforts towards ratification and application of the eight core labour standards conventions, as well as other up-to-date conventions, is also reflected in the June 2008 ILO Declaration on Social Justice for a Fair Globalization and in the June 2009 ILO Global Jobs Pact (GJP). The GJP highlights the fact that international labour standards are important in times of crisis and that the undermining of labour rights is not a viable option for a sustainable way out of the crisis. This approach is also implicitly reflected in the EU Crisis Recovery Plan, as presented by the European Commission and endorsed by the European Council in December 2008, in declarations of the Employment and Social Affairs Council and in the support for decent work expressed in Mr Barroso’s proposals to the European Parliament in September 2009 for his re-election.

2. ILO-EU relations

Relations and cooperation between the ILO and the EU have intensified considerably in recent years and cover both internal and external EU policies and actions. This is related to a number of institutional and political developments, such as the progressive evolution of the EU from a common market to a political and global actor, the emergence of EU social dialogue and of EU employment and social protection strategies, the intensification of globalisation and the inclusion of decent work in EU external action, in trade policies and development cooperation.

ILO-EU relations are multidimensional and have been evolving constantly since 1958. All 27 EU Member States are members of the ILO and operate more and more as a group within ILO institutional meetings, owing to EU coordination at the ILO, involving the European Commission, the presidency of the Council and the Member States. The EU also holds consultations with social partners in a variety of informal and sometimes more formal settings. The EU presents its agreed positions or amendments at ILO institutional and other meetings and engages in discussions with other countries, regions and groups. The EU positions are often presented by the presidency of the EU Council. However, the presidency may also request another EU Member State or the European Commission to present the EU stance. The Lisbon Treaty will also have an impact here as it has made changes to the external representation of the EU. But the precise repercussions of the Lisbon Treaty on EU external representation at the UN, including the ILO, are not yet crystal clear. The growing presence of the EU in the ILO has also enabled the EU to project its values, policies and its social and economic model of integration, as well as to engage in dialogue with third countries and regions. However, before 2003 the EU’s visibility at the ILO was much more limited as many EU Member States preferred to coordinate through the Western group (IMEC), chaired since the 1970s by Canada and also involving the US, Australia, New Zealand, South Korea, Norway and Switzerland\(^6\). IMEC still exists but this no longer prevents the EU from playing its role, in both the ILO Governing Body and the International Labour Conference.

The European Commission and the ILO have signed a succession of cooperation agreements since 1958. The renewed cooperation agreement was formalised through an Exchange of Letters of 14 May 2001 and covered cooperation both inside and outside of the EU\(^7\). This was followed by the signature in 2004 of a strategic partnership in the field of development cooperation and the accession of the ILO to the EC-UN Financial and Administrative Framework Agreement (FAFA) in 2004. The European Commission obtained observer status in the ILO

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6. The origin of IMEC goes back to the efforts made by Western countries to convince the US to return to the ILO. The US had left the ILO under Reagan. However, the role of IMEC has been affected by the end of the cold war, the appearance of the emerging economies, EU enlargement and the growing relevance of EU standards and policies in the ILO context.

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Governing Body (GB) and the International Labour Conference (ILC) and is invited to other tripartite meetings. The standing orders of the ILO GB and the ILC provide the European Commission with opportunities to intervene in debates. The ILO is invited to relevant EC meetings. The ILO Office and the European Commission services hold an annual high-level meeting in order to review and steer the cooperation involving both internal and external EU policies.

The 2010 annual high-level meeting that took place on 2 February focused strongly on ILO-European Commission cooperation in relation to responding to the crisis in the EU and beyond, preparing for the G20 Labour Ministerial in April 2010 and strengthening social dialogue, labour administration and the application of labour law within and outside of the EU. The ILO also has a cooperation agreement with the European Economic and Social Committee. It is furthermore invited on a regular basis by the European Parliament for hearings or expert contributions.

The European Parliament (EP) adopted by an overwhelming majority in November 2009 a resolution calling on the EU Member States to make additional efforts on ratification and implementation of ILO conventions classified by the ILO as up-to-date. The EP referred explicitly to the GJP and decent work, and stated that the initiative must be seen in the context of setting an example to the rest of the world and in the light of the crisis. The EP rightly expressed concerns in spring 2009 on the relationship between the posting of workers and free movement of services in the EU on the one hand and, on the other, respect for fundamental rights as included in ILO Conventions Nos. 87 and 98 on freedom of association and collective bargaining, following rulings of the European Court of Justice (Laval, Viking, Rüffert, Commission v Luxembourg). These rulings concentrated principally on the logic of the EU internal market but did not take into account possible global implications. All EU Member States have ratified Conventions Nos. 87 and 98, which are classified as fundamental.

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8. The 2010 high-level meeting also discussed ways to facilitate further concrete cooperation between the EC and the ILO in developing countries and to ensure better involvement of social partners and social dialogue in EU programmes in third countries. It also discussed the strengthening of the interplay between EU trade policies and labour.
conventions, and these conventions are part of EU trade regulations such as GSP and GSP plus and recent EU free trade agreements.

The entry into force of the Lisbon Treaty has major potential for strengthening the fundamental rights dimension in EU internal market policies and in European Court of Justice rulings, as the Charter of Fundamental Rights has become primary EU law. The EU will also accede to the European Convention on Human Rights of the Council of Europe. This is a very positive move towards improving the social dimension of the internal market.

ILO-related issues, such as decent work, the Global Jobs Pact, the social dimension of globalisation and international labour standards, are also discussed by the Council of Ministers and the European Council. Decent work is included in the EU globalisation declaration adopted by the European Council in December 2007 as well as in more and more Council and European Council conclusions. This is providing a strong basis for EU cooperation with third countries and regions, and for EU positions in the ILO, the G20, the World Bank and IMF and the wider UN multilateral system.

3. The decent work agenda and the 2008 ILO Declaration

The decent work concept was launched by the ILO Director General J. Somavia as soon as he took up office in 1999. It is part of efforts to strengthen the social dimension of globalisation in a coherent and inclusive way, mobilising all relevant socio-economic policies including development, trade and finance. Decent work gradually received the support of the UN General Assembly (September 2005), the UN ECOSOC (July 2006) and at regional level, both through ILO regional meetings and through support from regional political meetings (EU, America, Africa, Asia).

The World Commission on the Social Dimension of Globalization indicated in 2004 that the ILO, both the Office and the Organization, should strengthen and update its capacities, role and operations in the context of globalisation. This required the consent of all its constituents and resulted in the adoption by consensus in June 2008 of the ILO
Declaration on Social Justice for a Fair Globalization. Unlike those of 1919 (ILO Constitution) and 1944 (Declaration of Philadelphia on the ILO’s objectives), the 2008 Declaration was a truly universal text as it was endorsed by 183 Member States, with full involvement of relevant regional groupings such as the EU. The 1919 and 1944 texts were agreed by 42 and 44 countries respectively.

Decent work is based on employment (job creation, skills, sustainable enterprises), social protection (social security, wages and minimum wages, labour protection, protection of vulnerable groups e.g. migrant workers), social dialogue and respect for international labour standards. These four pillars are inseparable, interrelated and mutually supportive. Gender equality and non-discrimination are cross-cutting themes. Over 76 up-to-date ILO conventions underpin the decent work agenda. It encompasses renewed commitments to the ratification of the ILO CLS as well as other conventions, with priority for key social governance instruments such as those on labour inspection, employment policy and tripartite consultations. The Declaration extensively reformulates the wording on the relationship between labour standards and trade. It states not only that labour standards should not be used for protectionist trade purposes (already contained in the 1998 ILO Declaration) but also that the violation of CLS may not be invoked or otherwise used to gain legitimate comparative advantage.

The objectives of decent work go much further than the core labour standards. It encompasses a model of sustainable development, based on universal values and principles of good governance, whereby economic efficiency, environmental objectives and social justice go hand in hand. In fact, such an approach is closely related to the EU social and economic model. The EU model of integration and EU standards cannot be exported as such to other countries and regions but can be very relevant as a source of inspiration. On the other hand, the
global consensus on decent work and social justice also offers prospects for facilitating the adoption of EU common positions and for fostering dialogue and cooperation between the EU and other regions and countries. In other words, the multilateral framework and norms such as labour standards, as agreed in the context of the ILO and the UN more widely, can facilitate common understandings. This is also relevant in the context of Art. 21 of the Lisbon Treaty, which strongly links EU external policy and action to the UN framework, to human rights and to social, economic and environmental goals.

The 2008 Declaration includes a substantive section on methods of implementation. This covers’ action at national and regional level such as decent work agendas and also, for countries in need of technical cooperation, decent work country programmes, to be signed by the tripartite constituents with a view to mobilising technical cooperation efforts based on national priorities and needs. These should be related to wider national development strategies and the UN development frameworks. The Declaration also provides a basis for ILO assistance to Member States in the framework of bilateral trade and other cooperation agreements, insofar as both parties to such an agreement concur on requesting ILO assistance. Recent EU free trade agreements or wider economic partnership agreements include provisions on promoting sustainable development, including both a decent work/labour chapter, with a role for the ILO, and an environmental chapter (e.g. the EU-South Korea FTA initialled in October 2009 and the EPA with Cariforum of October 2008). The Declaration also provides a mandate for the ILO to work on the interplay between trade and employment.

The ILO Office has in recent years further strengthened its cooperation with the WTO secretariat on analysing and assessing the relationship between trade and decent work issues. The Declaration also highlights cooperation with the IFIs (World Bank, IMF, regional development banks). It also backs up ILO work on Corporate Social Responsibility and lays the basis for ILO work on measuring decent work.

The 2008 Declaration also reflects a sustainable approach to the world of work and enterprises. Green jobs and greening of the economy are part and parcel of decent work. The climate change discussions cannot and must not ignore the employment and social dimension of adaptation
and mitigation related to climate change, in both industrialised and developing countries.


The ILO Global Jobs Pact is an internationally agreed set of policy measures for the multilateral system, governments, workers and employers. It was adopted by global consensus on 19 June 2009 at the International Labour Conference (ILC) by 183 tripartite delegations (governments, workers and employers) with active involvement of the EU (EU coordination at ILC) and of developing countries\(^\text{11}\). It received input from the Global Jobs Summit on 15-17 June 2009. The G20 April Summit requested the ILO, working with other relevant organisations, to assess the crisis recovery measures taken and those required for the future. The GJP does not limit itself to employment creation but puts forward action on all four pillars of decent work.

The GJP was welcomed by the informal European Council (EU position for the September G20), the G20 and the wider UN (ECOSOC). It is a call for action, both in the short and the longer term. The GJP constitutes the decent work response to the financial and economic crisis and is part of the nine concrete initiatives of the UN System Chief Executives Board for Coordination to address the crisis. A related CEB initiative\(^\text{12}\) is the social protection floor, with the ILO and the WHO in the lead and supported by the other UN agencies, funds and programmes and the World Bank, IMF and regional development banks. This is part of the ‘Deliver as One UN’ approach. The UN ECOSOC called on the international community to support the GJP, including through development cooperation and external assistance.

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\(^\text{12}\) The Chief Executives Board (CEB) brings together the directors general of all the UN agencies, funds and programmes and those of the WB, IMF and WTO.
The GJP includes eleven principles for promoting recovery and development, including in the informal economy and rural sectors:

— Devoting priority attention to protecting and growing employment through sustainable enterprises, quality public services and building adequate social protection for all as part of ongoing international and national action to aid recovery and development. The measures should be implemented quickly in a coordinated manner;

— Enhancing support to vulnerable women and men hit hard by the crisis including youth at risk, low-wage, low-skilled, informal economy and migrant workers;

— Focusing on measures to maintain employment and facilitate transitions from one job to another as well as to support access to the labour market for those without a job;

— Establishing or strengthening effective public employment services and other labour market institutions;

— Increasing equal access and opportunities for skills development, quality training and education to prepare for recovery;

— Avoiding protectionist solutions as well as the damaging consequences of deflationary wage spirals and worsening working conditions;

— Promoting core labour standards and other international labour standards that support the economic and jobs recovery and reduce gender inequality;

— Engaging in social dialogue, such as tripartism and collective bargaining between employers and workers as constructive processes to maximize the impact of crisis responses to the needs of the real economy;

— Ensuring that short-term actions are coherent with economic, social and environmental sustainability;
Ensuring synergies between the State and the market and effective and efficient regulation of market economies including a legal and regulatory environment which enables enterprise creation, sustainable enterprises and promotes employment generation across sectors; and

The ILO, engaging with other international agencies, international financial institutions and developed countries to strengthen policy coherence and to deepen development assistance and support for least developed, developing and transition countries with restricted fiscal and policy space to respond to the crisis. These are in other words a series of actions for shaping a fair and sustainable globalization.

The GJP puts forward a portfolio of around 25 policy options based on the decent work approach in four areas:

- Accelerating employment creation, jobs recovery and sustaining enterprises
- Building social protection systems and protecting people (social security, labour protection, income and minimum wages, vulnerable groups e.g. migrant workers)
- Strengthening respect for international labour standards (core labour standards conventions, other up to date conventions and the CSR tripartite declaration)
- Social dialogue: bargaining collectively, identifying priorities, stimulating action.

The ILO Office and its tripartite constituents are actively promoting the implementation of the GJP in all countries. The impact of the crisis and the transmission channels through which it affects workers and households vary widely. Therefore the ILO Office published in 2009 a guide on ‘Country Level Rapid Impact Assessment of the crisis on Employment’ in order to help its Member States and social partners assess the impact of the crisis and determine options for policy responses. The ILO is also promoting the establishment of social
protection systems, their strengthening where they exist and a broadening of their coverage, including in the informal sector.

As requested by the G2O Summit in April 2009, the ILO presented to the September 2009 G20 an assessment of the measures taken by 54 countries in the field of employment and social policy by way of a response to the crisis. The September G20 requested that the ILO continue its work on responding to the employment and social crisis and prepare a training strategy. The ILO will also be closely involved in the preparation of the first G20 labour ministerial in April 2010.

The 2009 ILO World of Work report concentrated on the analysis of the employment and social crisis, on the effect of the measures taken and on the need for the initiatives for jobs and protecting people to continue for as long as the private sector has not taken up the economic demand. An early exit strategy will be more expensive than keeping people in the job market. Analysis has shown that reintegrating unemployed into jobs is more expensive than keeping workers in the labour market.

The ILO World of Work reports, published by the ILO International Institute for Labour Studies, as well as other initiatives such as the Global Employment Trends reports, the range of publications on social protection and on measuring decent work, contribute to better informing the global, regional and national debates. It is part of the ILO’s investment in strengthening its analytical and assessment capacity.

5. What next?

The ILO (both the Office and the Organization) has proved able to adjust its role and operations to a changing world. The implementation of the decent work response to the financial, economic and social crisis, the employment and social dimension of the transition to a low carbon economy, the need to protect informal sector workers and the process of international development cooperation have all influenced the ILO’s agenda.

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The ILO and its role in responding to the financial, economic and social crisis

economy and the reform of global governance will remain key challenges for the ILO.

Many stakeholders have welcomed recent ILO responses to the crisis and to globalisation. However, the ILO cannot cope with this alone. It is an organisation with limited resources. Therefore the ILO needs strong partnerships with other institutions and actors. The positions adopted by governments (and workers and employers) at the ILO should also be pursued at home, at regional level and in other fora such as the World Bank, IMF, WTO, OECD and the entire UN system.

The EU has an important role to play in this partnership. The ILO GJP and the decent work agenda are relevant for the European social agenda, the new European Lisbon Strategy (‘EU 2020’) and EU initiatives towards assisting developing countries in responding to the crisis, such as the communication of 8 April 2009 and the Council conclusions of May 2009 on the same issue. The EC consultation document on EU 2020 refers to the importance of jobs, social protection, combating social exclusion, new skills for new jobs, greening the economy and green jobs. It also supports fostering more stringent labour, environmental and safety standards in the world and the promotion of international cooperation and multilateral governance. The EU 2020 strategy would benefit from explicit references to decent work, to the Global Jobs Pact, to international labour standards and to cooperation with the ILO and the wider UN system. This would significantly improve consistency between internal and external EU policies and would be in line with the principles and objectives enshrined in the new Lisbon Treaty.

At global level, both the GJP and decent work can be further used for strengthening policy coherence to underpin sustained economic activity. The G20 is working on a framework for strong, sustained and balanced growth. This has implications for the world of work and should therefore involve ministers of labour, social partners and the ILO. The 2009 G20 Summits also referred to discussions on a Global Charter for Sustainable Economic Activity. This should guide the
interventions and actions of social and economic international organisations such as the WB, IMF, WTO, OECD and ILO. The European Council, in its spring 2009 position ahead of the April G20, supported the adoption of this Charter. The G20 discussions, however, are still ongoing.
What should be the European Union's priorities in 2009-2014?

Pierre Jonckheer

European elections in June 2009; the Barroso II Commission as from February 2010; a new round of European elections in June 2014. What will be the hallmark of this new five-year period in Europe's institutional and political life? What will be the aspirations, the priorities, of those newly elected to office? In this brief paper written by an observer, we shall explore the environment within which the European Union (EU) institutions and stakeholders are operating, before suggesting a few ways forward in two particular fields: the political system of the EU and its economic policy.

1. Results of the 2009 elections: the right tightens its grip on power in Europe

The financial crisis undoubtedly peaked between September 2008 and June 2009. Although there was no certainty whatsoever that the financial and banking system would be successfully stabilised, and although the economic and social cost of this first 'great depression' of the 21st century was plain for all to see, the European Parliament election campaigns were astonishingly lacklustre and insubstantial in almost all countries; the turnout (42.9% on average) was the lowest since the first direct elections in 1979. The fact that no candidate stood against José Manuel Barroso for the post of European Commission president made it impossible to hold a Europe-wide media debate and deflected the ballot from its true purpose, reducing it as in the past to national politics.

The results of these elections were broadly in step with the national voting trends observed in recent years, and the new composition of the European Parliament gives a good indication of the political balance of power in Europe. The social-democratic Left has very much become a
minority group (25%); the right-wing Eurosceptics have made
gains (12%), as have the Greens (7.5%); the communist Left stands
at 5%. Overall, with the European People’s Party (EPP) on 36% and the
Liberals on 12%, the European Parliament is now further to the right
and more Eurosceptic than during the previous legislative period. Quite
logically, this state of affairs is reflected in the composition of the
Barroso II Commission, which has 21 EPP and Liberal Commissioners,
and just six Socialists. What is more, the Council of Ministers is largely
dominated by centre-right governments, and if the Labour Party loses
the 2010 election in the United Kingdom Euroscepticism will gain
further momentum.

So, in spite of the crisis – or perhaps because of it – the existing political
line-up has been reinforced. By its own admission, the socialist Left
remains divided over the EU, and its attempt to pursue the ‘third way’
social reforms advocated by Tony Blair and Gerhard Schröder has driven
away a proportion of its electorate. Faced with what they perceived as
the lack of an alternative to the (neo-)liberal politics now prevailing, a
majority of the voters (or at least of those who cast their ballot!) preferred to play safe. The successful stabilisation of the financial and
banking system by the governments of the day no doubt contributed,
despite the enormous cost, to the electoral victory of the political forces
already in power. The limited headway made by the Greens (+2%) is in
fact disappointing, given the intense media attention directed in the
past few years at environmental degradation and the risks associated
with climate change, which one might have hoped would lead to better
results in more countries. The spectacular success of Europe Écologie in
France was an exception, as were the gains enjoyed by Green parties in
Belgium and Luxembourg.

2. Was 2009 a tipping point?

Whereas Europe’s governments have strengthened their hand, as we
have seen, the international scenario is changing rapidly and casting
doubt on the EU’s ability to influence events. With the western model
of production and consumption in crisis, with globalisation inadequately
regulated and resources in short supply, worldwide geopolitical and
geo-economic relations are shifting – as is evident from meetings of the
G20 and the G2 (China-USA). Even though we may still have hopes of
avoiding a ‘war of civilisations’, there can be no doubt that an economic world war is under way. Meanwhile, international regulations in the social and environmental spheres are woefully inadequate and the rules governing finance and trade are inappropriate. We are facing multiple challenges and enormous risks. Are we capable of tackling them?

3. **A weakened European Union**

During the crisis several leading players expressed concern about the state of the Union, from both an internal and an external perspective. We share their analysis, which is at odds with the standard discourse of President Barroso. These misgivings about the state of the EU fall into four categories.

First of all there is Lisbon. Many of us are delighted that the new treaties entered into force on 1 December 2009 after the laborious ten-year process of negotiation and ratification. The Treaty of Lisbon is useful and represents the only possible unanimous political compromise among the 27 countries; it is nevertheless inadequate. The 2009-2014 legislative period will be characterised by implementation of the new provisions contained in these treaties and by the adjustments that they necessitate between the various institutions and players vested with authority by the treaties. This will apply in particular to external policy matters, with the new office of High Representative and the creation of a common diplomatic service. On the other hand, we should not forget that the governments of the 27 Member States were unable to reach a consensus on bolstering the Union’s powers in respect of socio-economic affairs.

Despite the real progress achieved, the EU’s legal and political system remains one of shared responsibilities and powers conferred by the Member States. Any legislative action taken by the Union is subject to a prior test of ‘subsidiarity’ and ‘proportionality'; the bar has moreover been raised by several articles of the new European treaties. This could be seen as a welcome consolidation of democracy, especially via the new role of national parliaments, but it is also true to say that these provisions reflect suspicion about the excessive powers which the Union, and in particular the Commission, might surreptitiously appropriate for itself, to the detriment of the Member States and regions.
The debate about reform of financial market supervision, and its outcomes so far, signal a desire to avoid having European regulators. The maintenance of unanimous voting in the Council regarding taxation, including environmental taxation, places major constraints on EU action.

The second subject of acute concern, a source of weakness for the Union, is the definition of its borders and the pace of its planned enlargement to take in six Balkan countries and Turkey – without counting Iceland, an unexpected spin-off of the crisis. One might wish to add Switzerland and other non-EU banking centres such as Liechtenstein to the list, but unfortunately they have not applied for accession! The European institutions appear to take it for granted that sooner or later the EU will incorporate the countries of the former Yugoslavia, beginning – after Slovenia – with Croatia. The parliamentary ratification processes could prove more difficult but are likely to succeed eventually. Thus the 2009-2014 legislative period could see two additional Member States. That leaves us with the case of Turkey, which still divides the EU and, consequently, weakens its geopolitical position particularly vis-à-vis the Middle East. We think it undesirable to remain in a constant state of indecision, which is damaging for both parties. There are many political and economic arguments in favour of admitting Turkey into the EU. Conversely, it is doubtful that this future grouping of 35 countries will go much further in terms of its unity and the transfer of new powers, especially in the economic and social spheres. Hence the idea, not really new but so very necessary, of ‘enhanced cooperation’ among certain Member States revolving around the inescapable duo of France and Germany. Regrettably, the overriding tendency in German political circles is to shy away from these issues.

The third subject on today’s agenda is the financial and economic crisis. Clearly, this new legislative period is beginning in the wake of a credit crunch which, on the one hand, has put paid to compliance with the budgetary stability pact and, on the other, is jeopardising the competition rules, particularly as concerns state aid. This crisis is likewise revealing the inadequacy of national measures to regulate and supervise financiers in their transnational banking transactions and other financial dealings; the shortcomings of the Commission’s plans for financial markets, presented from 1999 onwards and endorsed by the Council and Parliament, are now equally apparent. By contrast, the
existence of the euro has protected the Eurozone countries from even
greater monetary upheaval, and the reactions of national public
authorities (central banks and governments) in Europe have so far
made it possible to avoid a slump, unlike what happened in the 1930s:
this has been achieved by applying the well-known strategy of
socialising losses by printing money, and hence through a breathtaking
rise in public deficits. Nevertheless, the rescue of the banking and
financial system has not prevented a sharp downturn in economic
activity and a significant rise in unemployment, thereby exacerbating
insecurity and inequality to varying degrees from country to country, at
the risk of serious political consequences in the future.

In addition, the crisis has once again revealed not only the dominant
mindset of competition which exists between national economies in
Europe – especially between financial centres – but also the fragility of
national growth strategies in some countries, such as Ireland and the
Baltic and central European states. To this extent, the crisis and its
after-effects are weakening Community integration by undermining
trust between governments and, more broadly, in society right across
Europe. The scenarios for ‘convergence’ within the EU by integrating
the different national markets and by gradually bringing the central and
eastern European countries (the CEECs) closer to ‘the west’ are under
severe threat. The crisis is forcing politicians to reflect on the extent and
quality of solidarity among Member States.

Fourthly and finally, public opinion and governments are beginning to
show a degree of ‘fatigue’ with regard to European political integration,
as Mario Monti aptly puts it. This can be seen in particular, as
mentioned above, in the mixed achievements of the Treaty of Lisbon
and in the forward march of several Euro sceptic groups within the
Parliament. Nor are Europe’s various prime ministers especially
conspicuous for their strong commitment to the European Union.

As has no doubt become clear by now, we are not optimistic about the
current political state of affairs in the EU. This new 2009-2014
legislative period does not appear to be full of promise.
4. **Ways forward**

Consolidating and strengthening representative, participatory political democracy in the EU

We have to realise that, with 27 or even 30 Member States, it will be a long time before we see a major institutional reform leading to a ‘United States of Europe’. The preservation of unanimous voting for treaty revisions is one of the biggest shortcomings of first the draft European Constitution and now the Treaty of Lisbon. This appears even more damaging if one is in favour of further enlarging the Union. Can the obstacle be at least partially circumvented?

Policy initiatives to establish ‘enhanced cooperation’ among certain governments on specific projects may well be taken over the next few years. If such action occurs within the framework of the Treaty of Lisbon, a minimum of nine Member States are required, but the prerequisites are so restrictive that policy initiatives are more likely to arise outside of the treaties. The Schengen Agreement and the Prüm Convention constitute precedents in specific areas: freedom of movement and judicial cooperation. By analogy with these precedents, why could we not, 60 years after the ECSC, envisage an agreement on a European Community for 100% renewable energy? Quite apart from being a response to environmental imperatives, such an initiative – along with others – could re-energise businesses as well as preserving and furthering technological progress: this is one dimension of the ‘Green New Deal’.

If there is one other priority connected with the entry into force of the Treaty of Lisbon during this new legislative period, it is to firmly establish the role of the new President of the European Council. The sidelining of the EU during the final phase of the UN climate change conference in Copenhagen in December 2009 illustrates once again how far our leaders have yet to go before Europe can speak with a single voice at international negotiations of this type. Lisbon does not facilitate things here, because in actual fact the European executive now has three heads, each with different responsibilities. For those wishing to strengthen EU unity, therefore, it should be a priority to ensure that these three leaders work in close harmony.
The third and last priority concerns the citizens’ initiative established by the new treaties, which is a tool of participatory democracy. Its application in practice depends on a law which is to be submitted under the codecision procedure during this legislative period. The law is obviously important, since it will determine the precise conditions under which this new European right will be exercised. Its limited legal scope should be emphasised: the European Commission is invited to propose a legal act falling within the responsibilities and decision-making procedures set out in the treaties. It is up to the Commission to decide whether or not to take matters any further, which makes sense because the citizens’ initiative is not without risk given the outspokenly populist movements now existing in many countries. But the exercise of the citizens’ initiative could contribute towards the emergence and development of transnational European debate, which the European public arena – still largely virtual – so desperately needs.

5. Economic policy

Ever since the establishment of monetary union, Europe's economic policy mechanisms have shown themselves to be weak, providing for only minimal coordination of national budgetary policies and market reforms, especially labour market reforms. We have likewise witnessed a refusal to increase the Community budget and an absence of European initiatives for international talks on exchange rates and taxation of capital flows. The Lisbon Strategy, centred on the theme of the 'knowledge society', has for the past ten years served as a leitmotif for the revival of European economies immersed in global competition and the international division of labour. Originally the Strategy was the embodiment of the Blair/Schröder 'third way', an attempt to find a new social-democratic settlement, but it gradually turned into a traditional supply-side policy. The results were mediocre, falling well short of the initial intentions, and European concertation by means of the Open Method of Coordination has been unconvincing. Working conditions and wages have deteriorated, factual evidence of which can be found in studies carried out by the European Trade Union Confederation and the OECD.

Will the credit crunch alter the balance of power and force governments to make adjustments? The height of the crisis between autumn 2008
and summer 2009 illustrated the vital role of public expenditure in bailing out the financial system. By extension, the role of governments and public authorities in the conduct of economic policy has gained renewed legitimacy. Furthermore, the raising of awareness about the scarcity of the world’s non-renewable resources and the economic cost of environmental degradation and climate change should ideally lead to a re-focusing of economic policy. Studies on other indicators of activity are part and parcel of these much-needed developments.

There are no signs, however, that the Barroso II Commission and the political majorities in the Council and Parliament have really learned this lesson. Since last autumn the ‘return to growth’ has primarily been pursued by seeking to boost exports, which has in turn required ‘wage restraint’ within the EU and flexibility on its labour markets. Public deficits are to be reduced by means of spending cuts. The public loans and guarantees extended to banks are not subject to any binding requirements to ensure that more money will be lent to businesses and individuals.

Let us set out three priorities which, if adopted, would contribute towards an alternative strategy.

Following the failure of the UN conference in Copenhagen, the main topic of debate within the EU is what strategy to pursue. In sum, there are two possible attitudes depending on the respective weight of different lobbying groups and on the convictions of politicians. Either the EU scales down its efforts to match the limited ambitions announced by the United States and China, or else the EU continues to forge ahead, setting itself the target of reducing CO2 emissions by 30% by 2020 and at least 80% by 2050, intended as a major incentive towards safeguarding its technological edge and securing an advantageous position on future markets. We support the latter approach. The promotion of a Green New Deal in Europe is founded on the notion that the crisis should be seized upon as an opportunity to step up public and private investment, especially on energy saving measures, public transport, buildings improvements and technologies to minimise greenhouse gas emissions. The national recovery plans of 2008-2009 constituted an initial, partial step in the right direction, but their results remain to be seen. If the EU budget is not to be increased, it should at the very least be consistently redirected towards these goals, and future
decisions on the post-2013 budgetary prospects should consolidate this approach.

At the same time, and this is the second priority, it is essential to set convergence targets for Europe’s economies, aimed at putting an end to labour competition based on worsening working conditions. Freedom to provide cross-border services must not result in a race to the bottom. Several studies have covered this subject: social convergence should ideally be a major issue during this legislative period. Once again, given the majority forces on the political scene at present, we cannot count on this being the case.

The third and final priority, at an international level, is for there to be new rules governing the money markets, taxation, trade and the environment. It is unimaginable that we should refrain from re-establishing a system of stable exchange rates penalising competitive devaluation. Taxes on major international currency transactions, at rates which would become prohibitive once commonly agreed variations were exceeded, would help to cancel out trade imbalances. By the same token, a connection should be made between international trade and environmental standards. Such reforms could be linked to the financial transfers quite rightly demanded by the weakest countries in the climate change negotiations. The EU must understand that, until such time as the international rules of the game are altered, there is little likelihood of going beyond the economic policies of today.

We would point out by way of conclusion that most of the above-mentioned priorities call for a greater degree of European unity and more solidarity within the EU. We say this not as a profession of faith, but rather as a condition for better, more effective action.

4 January 2010
Europe's employment and social inclusion policies amidst the crisis: an opportunity for the future?

Ramón Peña-Casas

Antonio Gramsci (1891-1937) defined ‘crisis’ many years ago as a particular, dramatic moment when ‘the old’ is not yet quite dead and ‘the new’ not quite born, but when the origins of the crisis need to be examined in order to bring forth an alternative ‘counter-hegemonic’ vision (Gramsci, 1971).

From an economic and social point of view, 2009 will come to be seen above all as the year that bore the brunt of the harshest economic crisis experienced in Europe since 1929. The recession is a brutal one and is having profound repercussions on Europe’s economy and labour markets and on its citizens’ living conditions. This social downturn could be long-lasting if no adequate response is found, especially as the prospect of an economic revival appears faint. Furthermore, the fact that the crisis increasingly seems to be systemic is shaking the foundations of a neo-liberal model of economic development which for the most part is the model governing European integration today.

This period also coincides with what ought to be a special moment in the building of Europe, a moment when various aspects of a debate fundamental to the EU and its citizens are coming together in the definition of European meta-strategies for the medium term (EU2020) and the long term (a low-carbon economy and the Sustainable Development Strategy – SDS). These strategies are intended to establish a sustainable overall framework for European people’s lives in the years ahead. Now is also the time when Europe is supposed to be carrying out an in-depth democratic assessment of, firstly, the overall impact of the Growth and Employment Strategy (GES) at the end of its ten-year term and, secondly, the specific impact of its various economic, social and employment components as concerns the attainment of their individual objectives. It is also necessary to jointly assess the complex interplay between these aspects and their combined or separate effects within an
area as specific as the EU within a now globalised world. Such an objective and consensual assessment is a key element of the debate. But, as a corollary, questions also arise as to whether the intellectual capacity and the true political resolve to conduct this fundamental assessment really exist. Such an assessment is all the more vital in that the various stakeholders interpret the available results in a wide variety of ways.

It is advisable in this unusual climate to take a fresh look at the development of the EU-level Open Methods of Coordination (OMC) on the issues of employment and social inclusion. The first part of this chapter is devoted to reviewing the genesis of European political cooperation on employment and poverty: we examine the extent to which the successive economic crises of the past twenty years have served as defining moments or acted as tipping-points leading to substantial alterations or major revisions of policy direction. The second part, beginning with a consideration of the dire consequences of the crisis on jobs and poverty, seeks to highlight the main factors to be revisited when it comes to redefining medium- and long-term European strategies, i.e. strategies for redistributing wealth and combating social and economic inequality.

1. Crisis of the early 1990s and inception of the employment and poverty OMCs

The early 1990s were overshadowed by a severe economic and financial crisis caused in particular by the repeated attacks of speculators on certain national currencies and on the European monetary system. In addition, however, a collapse in demand was already making itself felt even then. That economic crisis followed on from a succession of others during the 1970s (the oil shocks of 1971 and 1979) and 1980s (the 1982 debt crisis in poor countries; the stock market crash of 1987), all of which had significant repercussions on European markets. As well as leading to the persistence of, or even a rise in, the relatively high 'structural' unemployment figures in some countries, this succession of crises helped to forge a consensus among European countries around the fact that they would be better protected if they were to coordinate their economic policies more closely. It was in this state of crisis that the Member States signed the Treaty of Maastricht in 1992 and paved
the way for the establishment of Economic and Monetary Union (EMU) as a complement to the single market. EMU was rolled out in three phases during the 1990s, culminating in 1997 with the introduction of the Stability and Growth Pact (SGP) and, in 2002, the launch of the single currency.

The economic crisis of the early 1990s thus occasioned not the onset but certainly the consolidation and expansion of the neoliberal policy model that had been present ever since the Union first began to assert itself as a single market. The establishment of EMU, after that of the single market, constituted a key turning-point since it marked the start of an era – still ongoing today – when the preconditions for the functioning of the single economic and monetary market were laid down as the dominant paradigm of European integration. The inception and further development of economic and social policies at both European and national level came to be placed under severe constraints by an economic framework whose imperatives (freedom of movement, free competition, budgetary stability and control, and an exclusively anti-inflationary monetary policy) were transferred to the European level in an overriding framework which then became a priority for European and national policy-makers. The workings of this entire mechanism were interpreted largely according to an axiomatic system based on the paradigms of the neoliberal approach to market functioning, drawn from the writings of Milton Friedman and the Chicago school. This initial framework still plays a major role in shaping not only the Union’s medium-term (EU2020) and long-term (SDS) strategic approaches, but also the development of social and employment policies at European and, increasingly, national level.

The genesis of European employment policy is intimately connected with the implementation of EMU as an economic framework; indeed, it followed the evolution of EMU during the 1990s. The crisis at the start of that decade also helped to weaken the resistance of certain Member States to pursuing closer European policy cooperation in fields traditionally falling exclusively under national competence, all the more so since those countries were now subject to mandatory coordination under EMU. In order to combat the high unemployment then prevailing in some Member States, and spurred on by the fear that it might become a structural feature of European labour markets, the EU-15 agreed on principles for cooperation, first in Essen in 1994 and then in
Luxembourg in 2007, by launching the European Employment Strategy (EES). The Treaty of Amsterdam, concluded in 1997, added the promotion of a high level of employment to the list of EU objectives; it also gave the European Community responsibility for supporting and supplementing the actions of Member States, encouraging cooperation among them and developing a ‘coordinated strategy’ in certain fields, including employment and social affairs.

From a procedural point of view, the EES is generally regarded as the precursor of the Open Method of Coordination (OMC), which later came to be used in other social policy fields as part of the Lisbon Strategy (LS). As one of the new departures facilitated by the Treaty of Amsterdam, the OMC was deployed and presented as an ideal means of achieving coordination and convergence in fields which fell exclusively within the competence of Member States, but a mechanism giving them scope to react in a concerted fashion to what were now – in view of globalisation – common challenges. The OMC has of course made positive contributions on employment and combating poverty which should be neither minimised nor overlooked, even though these policies appear less and less to be Europe’s real priority (de la Porte et al., 2009). But, in that it promotes coordination and gradual convergence of national policies, the OMC is also tool at the service of the EU’s economic goals. In areas such as employment and social affairs, where policy-making remains a national prerogative, flexible coordination makes it possible to optimise national responses by steering them in a given direction, and the convergence grid is calibrated in such a way as to respond above all else to the imperatives of EMU and the single market (Salais, 2004).

Development of the EES, hampered by the economic climate, was to move almost exclusively towards boosting supply in the labour market by means of employability and activation, as well as making labour more flexible both internally and externally. This was the only remaining course of action, now that the other traditional means of influencing labour demand – monetary and budgetary policies – had been ruled out by EMU and the SGP. The main political levers still available for achieving a high level of employment were, on the one hand, activation and the promotion of individual employability through human capital and, on the other, making labour more flexible both internally and externally. In order to avoid inflation and improve
competitiveness, it was also necessary to cut labour costs by halting productivity-related wage growth. As a result, even though unemployment was central to the crisis in Europe and had been a natural target of national employment policies for many years, measures to combat it were now pushed down the agenda within the single-track vision of maximising the employment rate, a vision more in line with the goals of EMU and its ideological construct. Youth unemployment alone remained a clearly stated common concern, especially because it legitimised the EES approach in terms of employability and activation (Raveaud, 2007; Salais, 2004).

The OMC on combating poverty and social exclusion, for its part, was launched immediately after the turn of the millennium as part of the Lisbon meta-strategy. The poverty OMC was originally based on a set of fairly broad objectives: promoting labour force participation and access for all to resources, rights, goods and services; preventing the risks associated with exclusion; taking action in favour of the most vulnerable; and mobilising all stakeholders. The idea was to take into account the multi-dimensional nature of poverty and social exclusion as well as the variety of forms they can take. This multi-dimensionality implied that a wide range of policies needed to be implemented in order to achieve the goals of the strategy, whilst acknowledging the predominance of employment and social protection within these policies. Individual Member States were given leeway to prioritise different aspects depending on their national circumstances, as was also the case with the EES at that time.

The poverty OMC did not however escape the constraints of EMU and the single market. The obsession with budgetary stability meant that the very principle of redistribution, which lies at the heart of social protection, was called into question. Public expenditure, especially on social protection, was perceived as a threat to budgetary stability. It was of course still regarded as vital in terms of social cohesion and as a final safety net in the fight against poverty. But in the context of EMU and the single market, social policies were now expected to be ‘modernised’ and their expenditure – as well as individuals – to be ‘activated’, while at the same time wrestling with the conflicting aim of ensuring their long-term budgetary sustainability and tackling the structural changes confronting them (population ageing and healthcare in particular). Social protection was regarded under the EES as a necessary evil whose
disincentive effects must be rooted out because they interfered with the need to ‘make work pay’; it was to be used above all to raise the employment rate by activating expenditure. Moreover, increasing emphasis came to be placed on the issue of activation in the poverty OMC, culminating today in the all-encompassing concept of ‘active social inclusion’.

The links between the two strategies were relatively vague at that time, and were discussed mainly in the context of the LS. The common goals of the LS and the poverty OMC do of course include the issue of access for all to employment and to the resources needed for a decent life. There is naturally a certain degree of convergence between the fight against poverty and social exclusion, and employment. The underlying vision of employment as the ‘one-size-fits-all’ solution to poverty and exclusion was of course already present from the outset, but not in any formal sense, and it was far less subject to the activation-driven approach then than it is now. The issue of the working poor was common to both strategies from 2002 onwards, but was framed differently. Under the poverty OMC, the working poor were viewed primarily as a counter-argument, putting into perspective the representation of employment as an absolute solution to poverty. But they also served as an argument in the discourse on the need to modernise social security systems so as to enhance their ‘incentive effects’. Under the EES, the working poor were primarily referred to as part of the normative discourse on the need to make work pay, but also to highlight the impact of part-time or fixed-term work. Thus the two strategies converge on these aims of modernising social protection, albeit according to subtly different interpretations. They likewise converge on aspects such as the multi-dimensional context of quality of work, the working poor, cross-cutting elements concerning equal opportunities and non-discrimination, as well as the role of the social economy. But these relative commonalities are more cognitive than political: analytical concepts and elements are shared, whereas policy aspects remain specific to each process.

Quality of work, but also of services (activation, social work, childcare etc.), is an important potential point of convergence between the poverty OMC and the EES. The addition of an across-the-board qualitative policy dimension had quite rightly been regarded as one of the important social policy innovations of the LS. This qualitative
approach was first of all applied to employment, in keeping with the Lisbon slogan of ‘more and better jobs’. It came into its own in 2002, with the introduction of a cross-cutting objective on quality of work and the adoption of a set of common indicators to measure it. But the initial aspiration of Lisbon had been to mainstream this qualitative approach across the entire range of social and employment policies, as evidenced by the title of the 2001 Communication on quality, which refers to employment and social policies as a framework for investing in quality (CEC, 2001). The quality-based approach was unfortunately largely jettisoned thereafter, although quality of work was still mentioned as a pillar of the revised EES, and although the common indicators do still exist, albeit now divided up between the various objectives (Peña-Casas, 2009; Raveaud, 2007). With hindsight, the abandonment of the cross-cutting qualitative dimension was without doubt a major failure of the Lisbon Strategy. The LS was thereby deprived of a means of discussing and better assessing the balance between – and respective importance of – each of the four pillars of well-managed sustainable development, while at the same time counterbalancing the quantitative norms laid down in the economic context of EMU. And a new crisis was now looming which would, in its turn, serve as the backdrop for far-reaching reform of the LS and of the employment and poverty OMCs.

2. Crisis of the early 2000s and a refocusing of the employment and poverty OMCs

Another financial crisis hit the developed countries’ economies at the turn of the millennium, following on from the Asian crisis of the previous years and caused above all by the bursting of the speculative IT bubble. It would appear with hindsight that, in the case of Europe, this was not so much a full-blown crisis as a sharp economic slowdown after the exceptional growth rates achieved from the mid-1990s onwards. The crisis peaked in 2002 with growth of +1.2% for the EU-27. (By way of comparison, 2009 saw a major recession of over 4% for the EU.) Several elements conspired to prompt a large-scale reversal of the thrust and operation of both the employment and poverty processes and the LS itself. Management of the economic and social consequences of the crisis came to be used at both European and national levels as justification of the need for reforms and for ‘rationalisation’.
The political landscape in the EU was undergoing significant change at that time. The economic slowdown was accompanied by political developments which ended the predominance of social-democrat Heads of State/Government in the European Council. This changing of the guard has further gathered pace since then, to the extent that centre-right governments can currently be said to wield almost absolute power within the EU. In the absence of high growth rates, the Member States were less inclined to back ambitious social goals. The supremacy of the intergovernmental method was likewise reinforced by a gradual erosion of the European Commission’s role as initiator of policy and its increasing tendency to act merely as a secretariat for the Council. The prospect of EU enlargement to take in a sizeable group of countries with a lower level of economic development was another factor influencing Council decision-making at the time, as did the budgetary constraints arising out of compliance with the SGP. In addition, there were real or imagined fears for the future financial viability of social security systems: these fears were sparked by the start of a debate about the future of pensions systems (Pochet, 2004; Zeitlin, 2007).

It was in this tense atmosphere that momentum began to build in the direction subsequently taken by the LS and towards its conversion into the Growth and Employment Strategy. Indirectly, too, there was an impact on the relationship between – and respective roles now attributed to – the employment and poverty strategies within the LS. The crisis served once again as a pretext to justify the predominance attached to the economic paradigm within the LS and the employment and poverty OMCs. Certain analogies can in fact be drawn between the process which followed on from this overhaul and the present-day state of affairs.

First of all, that period too was a time of strategic reappraisal at a time of crisis. One of the triggers was the first appraisal of the EES in 2002 after five years of operation. This was an in-depth appraisal but it lacked clarity on the real or imagined effects of the EES (CEC, 2002a and 2002b). What is more, in its Communication on the EES review, the Commission gave a subtle analysis of the effects of the EES, pointing out in particular its positive role in promoting convergence of national employment strategies and the development of a new, more active, labour market policy aimed at implementing preventive measures (CEC, 2002a). Thus the Commission emphasised the
contribution of the EES to the economic pillar. In a sense, the EES was a victim of its own comprehensive approach: its desire to incorporate an all-round, socially oriented approach despite remaining confined to the issue of labour market supply was most welcome. Yet the fact that a multi-dimensional view of Europe's labour markets was coupled with a consideration of across-the-board targets in respect of gender equality and quality of work contributed to making the employment guidelines somewhat complex and difficult to assess in a clear-cut fashion over such a short time-span, ending in two years of recession. The results would therefore appeared to be mixed, even though it is difficult to clearly assess the effect of the reforms, especially their positive and negative interactions (Watt, 2004). This major problem was however rapidly set aside in favour of a drastic ideological refocusing on the economic pillar.

Another analogy with the present day might lie in the hijacking of the debate and the undemocratic, non-participatory turn that it was to take. No real attempts were made at the time to undertake a thorough multi-disciplinary, consensual assessment of the effects of the reforms, even though – depending on one’s perspective – those effects were by no means obvious or positive. The Council and the Commission preferred to call in a group of experts whose provenance was uncertain and whose leader was the controversial Wim Kok. Kok’s group was initially tasked with a policy review of the EES, and he was put in charge of another group thereafter, this time responsible for nothing more and nothing less than assessing the specific direction to be taken by the LS as a whole (Kok et al., 2004a and 2004b). These reports, which were very clear-cut and by no means subtle, refocused the priorities of the EES and the LS exclusively on growth and the Broad Economic Policy Guidelines (BEPG). The EES, they found, must attach priority to boosting employment at all costs by making labour markets more flexible, while the LS should basically be geared to the paradigms of innovation, the internal market and administrative deregulation in order to promote economic growth and employment. The issue of poverty was totally conflated with that of social cohesion, which had to be ensured through inclusive labour markets so as to maximise employment (Begg, 2006). If structural reforms were not working, that was mainly because the Member States were fighting shy of implementing them. A system of sanctions should be established, and implementation of the reforms should be centralised at Council level.
These reports were to be submitted to the first Commission headed up by José Manuel Barroso in November 2004 and would profoundly influence the genesis of what became the Growth and Employment Strategy in 2005. The Commission did however refrain from taking the sensitive step of making these measures mandatory on Member States in the final draft of the new revised Strategy (CEC, 2005a). The economic agenda was emphatically given priority and placed at the heart of the Strategy, while the other aspects were legitimate only to the extent that they contributed quantitatively to the economic pillar. Over and above this new ideological focus, the OMC process also had to be streamlined so as to maximise the convergence of national reforms towards economic objectives. The LS, in its new guise as the GES, was now placed within a multiannual, simplified framework (Zeitlin, 2007).

In 2005, therefore, the employment and poverty OMCs were radically altered in both substance and form. The employment guidelines (EGs) were merged with the BEPGs into a single unit – the integrated guidelines for growth and employment (IGs) – which became the backbone of the GES. Henceforth the EGs constituted only a minor subset (a third of the IGs) of the micro-and macro-economic guidelines. They were established for a three-year period (2005-2008) and have recently been renewed without amendment until 2010. The EES was refocused on three main objectives: achieving full employment; improving the quality of work and labour productivity; and strengthening social and territorial cohesion. Its scope was clearly circumscribed through the setting of overarching priorities: activation; modernisation of social security systems; administrative simplification; adaptability of workers and enterprises; and investment in human capital to improve employability. Although the key issue of quality of work still formally constituted a pillar of the EES, it was replaced by a new and more simplistic paradigm that was more in keeping with the economic guidelines, whereby 'flexicurity' became the cornerstone of European labour market reforms. Flexicurity is understood as a balance between the increased need of companies for flexibility in a globalised economy and the need of workers for security in terms of employability and occupational advancement (Raveaud, 2007). It does of course open a new door to supporters of the social dimension by creating scope for action on the security side of the equation, but only within a very narrowly circumscribed framework, given the economic perspective of the IGs.
As for the poverty OMC, renamed in passing the ‘social inclusion’ OMC, it barely escaped total assimilation. It became one of the components of a broader ‘super-OMC’ covering social protection as a whole (along with the pensions and healthcare OMCs). Thus the issue of combating poverty was formally dissociated from the reforms connected with pensions and healthcare, two of the main strands in the process of reforming/modernising social protection in line with the economic agenda, where what matters most is to keep budgetary risk under control and to prioritise the financial viability of social protection. The new procedures created a hierarchy of priorities, organised in accordance with the economic framework which dominated the GES in its entirety. For instance, the ‘overarching’ objectives of the streamlined social protection OMC emphasised the need to improve governance and to integrate/subordinate the OMC to the growth and employment objectives of the GES. The promotion of social cohesion and equal opportunities was devolved to national social security systems which, as well as being ‘adequate’ and ‘accessible’, must also be ‘financially viable’, ‘adaptable’ and ‘efficient’. The specific goals of the social inclusion OMC emphasised above all activation and labour market participation as the principal means of combating poverty (CEC, 2005b). This ‘active social inclusion’ approach currently has the upper hand, although it has been toned down by the attachment of conditions on the adequacy of social protection (decent minimum standards) and access to high-quality social services for people ‘furthest from’ the labour market (CEC, 2007).

The years following on from the economic crisis of the early 2000s therefore constituted another period of intense strategic reappraisal. Policies were not rethought from scratch but were refocused in normative terms on the true priority of both Council and Commission, namely economic growth as the one and only solution for all evils. And this still remains the prevailing mindset today. Of course, the crisis was not the only factor explaining this shift, but it served as a major argument in the discourse used to legitimise the return to neoliberal orthodoxy. Thus the GES totally swept aside the most innovative aspects of the Lisbon Strategy and its initial potential for building an approach truly based on sustainable development, prioritising the effective contribution of social and environmental policies to sustainable growth, along with the importance of a qualitative – and not purely quantitative – appraisal of these policies.
This raises the question as to whether, given the systemic nature and unprecedented scale of today’s severe economic crisis, it too might play a part in creating similar opportunities for challenging the established mindset and embarking on a change of course. After all, the crisis is seriously shaking the ideological foundations of our economic and political leaders’ beliefs with respect to the internal coherence and sustainability of the globalised neoliberal model. This question is all the more pertinent in that the crisis is occurring at a socially and politically appropriate moment, one when Europe is having to redefine its medium- and long-term priorities. A major paradigm shift is absolutely essential (Degryse and Pochet, 2009).

Finally, a far from negligible spin-off of the crisis could also be a rise in social tension within European countries and between social groups. Such tension will only be heightened if budgetary control and austerity, dictated by compliance with the rules of the SGP, are to be the only responses to the crisis. It will in any event be worth keeping a close eye on what happens, and the current and future circumstances of countries such as Greece will be particularly revealing in this respect. The greater the social impact of the crisis on Europe’s population, the more pronounced this social tension will be.

3. The current crisis and its consequences for employment and poverty in Europe

If there is one widely acknowledged fact at the present time, it is that the crisis has struck Europe’s economies with a force unparalleled since the Wall Street Crash of 1929. The economic slowdown was already evident in 2008 but accelerated significantly during the course of 2009. For the EU as a whole, the downturn in 2009 looks likely to have been in the region of -4.1% (as an annual change in GDP) compared with 2008, when growth remained narrowly positive (+0.8%), albeit well down on 2007 (+2.9%). The European economy has suffered a severe and unprecedented shock. Nor are the forecasts for 2010 at all encouraging, with weak positive growth expected for the EU-27 (+0.7%). This situation is all the more worrying in that, as ever, the European average masks a variety of circumstances across the Union. For example, most European countries experienced a sharp downturn in 2009, ranging from -2.2% in France and Malta to -8% in Romania,
where the recession is likely to be followed by (very) weak positive growth in 2010. But in 2009 the crisis is likely to have had the strongest impact of all on the Baltic ‘tigers’ (Lithuania, Latvia and Estonia) and the Celtic ‘tiger’ (Ireland): between -13.3% in Estonia and -18% in the other two Baltic states; -7.5% in Ireland. The downturn had in fact already made itself felt in these countries in 2008 (apart from Lithuania). And the outlook for 2010 is scarcely any brighter, with the recession set to last for quite some considerable time. Other European countries are also likely to see the recession last into 2010, but to a lesser degree (Hungary, Bulgaria, Spain and Greece). It is interesting to note that Poland stands out as an exception in this disaster-stricken European landscape, with its growth rate remaining positive between 2008 and 2010 (CEC, 2009a).

The impact of the crisis on labour markets was particularly severe in 2009. The European employment rate fell sharply by comparison with 2008 (down 1.9%, or approximately 4.5 million jobs); this state of affairs seems set to continue for at least the next two years. At the same time, the demand for labour has shrunk by 30%. This marked contraction in employment is not only a consequence of the crisis but also results from the strategy of making European labour markets more flexible, as advocated by the EES and the GES. Workers in atypical jobs have been among the first to become unemployed: between the second quarter of 2008 and the second quarter of 2009, 1.7 million temporary workers – a million of them in Spain – lost their jobs (CEC, 2009b). Unemployment has surged throughout the EU, up from 6.2% to 9%, which constitutes an increase of almost 50%, and it will probably exceed 10% in 2010 and 2011, representing the loss of more than 7 million jobs over that period. Certain countries have experienced nothing less than an explosion of unemployment, with the rates for 2009 having almost doubled (Spain, Romania, Denmark, Ireland) or even tripled (the Baltic states). For the first time in history, the unemployment rate for men is similar to that for women, but this is not necessarily good news for equal opportunities. The reason is that the crisis has hit hard in typically male sectors of the economy, such as construction, heavy industry and transport (CEC, 2009b). And it has to be acknowledged that the scale of the damage would have been even larger without the set of measures put in place fairly rapidly by the European countries in order to keep workers in their jobs as far as possible: measures such as short-time working and reductions in working time offset by supplementary
temporary unemployment benefit. But some people have only been able to keep their jobs during this period of crisis at the cost of a drop in their monthly income. As pointed out by the International Labour Office, there was a very pronounced slowdown in wage growth in 2008, and wages actually appear to have fallen in 2009 (ILO, 2009).

These effects on jobs and unemployment will be substantial and long-lasting. Analysis of the previous crises reveals that, even when the economy begins to turn round, there is a time-lag of several years between the economic upturn, the reversal of the unemployment rate and the pick-up in the employment rate (Carmen et al., 2009). Unemployment therefore looks set to remain on the national and European policy agenda for some time to come, even though it is not a priority of the EES or the GES. Thus many European countries will be forced to operate a trade-off between their national social and economic situation and European economic constraints. This constitutes a major source of tension for the EU, since it is in the social arena that the effects of the crisis are most keenly felt and, importantly, most likely to persist. The crisis has first and foremost wiped out the (weak) progress made in the space of a decade under the LS and then the GES, but it has in addition propelled into poverty and insecurity many individuals and households who had so far managed to keep afloat. And that situation could be long-lived, given that the recovery policies currently under discussion seem above all to hinge on budget austerity.

Apart from these facts about the labour market situation, however, there are currently no comparable empirical data available to confirm the extent to which the crisis has impacted on the living conditions of European citizens – which is moreover a political problem in itself. It is nonetheless altogether reasonable to posit that a deterioration in social conditions and an increase in poverty in the aftermath of the crisis will need to be taken into account by the EU and the rest of the world in the years to come. Two extremely interesting reports from the European Social Protection Committee (SPC) do however give us an idea of both the potential decline in social conditions within the EU and the contribution that social policies can make to alleviating the effects of the crisis (SPC and CEC, 2009; SPC, 2009). These reports, which are substantive documents drawn up for the political players involved in the OMC and the GES, demonstrate that, although the protagonists in the process (the SPC and also the Commission) take a hard, critical look
at the excesses of the model when they examine it from a social perspective, their points of view are unfortunately hardly reflected at all in the dominant strategic discourse. The analysis of the social impact of the crisis set out in these documents does nevertheless highlight a number of factors which should be given priority consideration by policy-makers in the years ahead. What is more, the International Labour Organization produces very similar findings in a worldwide survey (ILO, 2009).

The SPC begins by noting the grave deterioration in labour markets following the crisis, inasmuch as employment is still regarded as the most effective bulwark against poverty. Unemployment has struck particularly hard at population groups which were already especially vulnerable beforehand: young people, migrants, the low-skilled, the long-term unemployed, single-parent families and workers on atypical (fixed-term, part-time or temporary) contracts. Within these various categories, women are more exposed than before. Alongside the contraction in the demand for labour, there is an acknowledged risk of a rise in the number of working poor and people with no job security. This phenomenon is reflected, in most European countries, in an observed swelling of the ranks of both unemployment benefit claimants and welfare claimants, consisting primarily of workers in insecure occupations.

Opportunities for the most vulnerable workers to join the labour market have shrunk significantly owing to the contraction in the demand for labour, but also as a result of heightened competition with better-qualified jobseekers who have become unemployed in the wake of the crisis. This affects not only welfare claimants but also people who are in poor health or disabled. The SPC also points out that, by observing the effects of previous crises, one can detect an undoubted risk that many people will be propelled into long-term unemployment or even inactivity, given the difficulty of finding work in a crisis-hit labour market, but also owing to the loss of purchasing power which prevents women in particular from using childcare facilities if they are not easily affordable.

The SPC therefore spells out a fundamental message which has been somewhat sidelined during the lifetime of the LS: only through high-quality jobs and social protection can poor people be permanently lifted
out of poverty while preventing those who are not poor from becoming so. Hence it is necessary to be especially vigilant when jointly implementing the three principles of active social inclusion defined in the Commission's recommendation: namely that social security systems must ensure an adequate income enabling people to lead a decent life, while ensuring that everyone has access to high-quality employment on an inclusive labour market, as well as having access to high-quality social services (CEC, 2008). And the fact that people's circumstances have stagnated or even worsened over time becomes perfectly plain if one closely monitors developments relating to the quality of work in all of its many dimensions (Peña-Casas and Pochet, 2009).

Other factors detrimental to European people’s incomes have been exacerbated by the crisis and serve to increase job insecurity. Excessive debt levels, which already affected a large number of households, have risen still further since the onset of the crisis, as has the number of households losing their home by defaulting on their payments, be those rental or mortgage payments. The SPC likewise points out that, despite relative price stability since the mid-1990s, certain consumer products have come to account for a growing share of household budgets, especially among the poorest households: energy, education, healthcare, transport and rental costs. Market liberalisation has been of little benefit to Europeans in this respect. The financial crisis has likewise harmed many private pension funds: this could lead in future to an increased risk of poverty among pensioners in countries where 2nd and 3rd pillar pensions represent a substantial proportion of pensioners' income security. What is more, these same pension funds played a not insignificant role in the onset of the financial crisis, as well as in the deterioration of the real economy, given the pressure placed on financial systems to produce yields which are now, somewhat belatedly, agreed to have been unrealistic (see contribution by David Natali in this volume).

4. **Back to basics: combating inequality while ensuring a fair redistribution**

These reports quite rightly insist on the vital contribution of social protection to cushioning the effects of the crisis. Because, far from being a handicap, Europe's high degree of social protection has instead
served to protect its economy. The crisis has however heightened a key source of tension in the economic model of the GES, namely the tension between essential social investment and the European-level constraints imposed on social security systems to make them financially viable and to curb public expenditure.

One of the first lessons learned from the crisis is that the countries with the highest levels of social investment have been those best able to cushion the impact of the crisis, thereby enabling them to recover most rapidly. Let us recall in this regard what we said above about the greatly impaired social and economic circumstances of the ‘economic tigers’, which were the ‘good guys’ according to the GES economic model. Those countries had previously been praised to the skies for their sustained economic growth and high employment rates but were also known for the considerable flexibility and insecurity on their labour markets and in their social investments, as well as for their extremely limited welfare cover. They fell to pieces as soon as the crisis began and will suffer for longer than other countries. Meanwhile, the countries that have withstood the crisis best are not necessarily on the list of GES good guys.

By playing this important role of automatic stabiliser in the face of external shocks, social protection is demonstrating the useful contribution it makes to the economy: a major contribution worthy of serious reconsideration in the balance to be struck between Europe's economic and social development pillars. Expenditure on social protection would therefore appear to be counter-cyclical, both at times of crisis and at other times, depending on the operational rules (eligibility conditions, duration etc.). Such expenditure makes it possible to maintain the productive capability of the economy by granting room for manoeuvre at times of crisis, and this room for manoeuvre is vital to recovering from a crisis. Increased spending on social protection should therefore be regarded as an integral part of recovery measures, rather than as a permanent fixture, in that it can be adjusted once the crisis is over (SPC, 2009).

Over and above its input at times of crisis, however, social protection also plays a fundamental role in that, along with taxation, it is an ideal means of redistributing wealth and reducing inequality. Here, it plays a role in preventing crises which is every bit as important as its curative
role. Redistribution is a way of combating poverty and of preserving workers' incomes in the face of social risk. Fair redistribution, more broadly, mainly plays a key role in social cohesion by minimising economic and social inequality, or at least keeping it within socially accepted limits. In economic terms it upholds the capacity for market demand, in other words the disposable income of individuals and households. Taxation facilitates income redistribution too, of course, and does so even more effectively than social protection according to some authors (Fuest et al., 2009; Immervol and Pearson, 2009). But (para-) taxation, by means of social security contributions, has long been associated with labour rather than wealth. A better redistribution of wealth through taxation therefore means shifting the burden of social security funding from earned income to unearned income, or at least trying to strike a fairer balance between these two sources of wealth. This is an important issue and a major challenge for the long-term viability of social security systems, but it is also relevant to sustaining household demand, which is equally important for the long-term viability of Europe from an economic point of view.

Nonetheless, if there is one policy area where most of the industrialised countries have failed lamentably over the past thirty years, it is that of reducing inequality. This is an unavoidable conclusion to draw at both worldwide and European level. Researchers concur that Europe's economies have been incapable of reducing economic inequality, i.e. the ratio between the highest and the lowest incomes within a given society. Inequality has risen in most European countries since the mid-1980s, the sharpest rise having occurred between the mid-1980s and the mid-1990s. Since then, inequality has more or less stabilised, with the exception of a few countries where it is still growing (the Scandinavian countries, Germany, Austria, Portugal, the United States and Canada) or has declined somewhat (Ireland, the United Kingdom, the Netherlands and Greece) (OECD, 2008). In most countries we are seeing a more rapid net growth in the highest incomes than in average or lower incomes (Alvaredo and Piketty, 2009). Even worse, underlying this growing income disparity is a substantial increase in wage inequality among full-time workers. This trend is reinforced by the proliferation of atypical employment, since part-time workers and temporary contract staff not only work fewer hours but are also less well paid than full-time workers (OECD, 2008).
The above observation is important in that it fundamentally contradicts the dogma of the EES and the GES, which gives pride of place to labour flexibility and the reduction of wage costs. Indeed, many economists believe that this ‘wage deflation’, to use the term coined by Jacques Sapir, is a fundamental cause of the current systemic crisis. This growing inequality has reduced consumption among lower-income groups, which has ultimately depressed global demand (Sapir, 2008; Fitoussi and Stiglitz, 2009). In the United States, the compression of low incomes has led to a decline in household savings and a rise in debt which has enabled demand to hold up over time. Owing to the limited welfare cover available, the US government has had to implement sustained macro-economic policies in order to limit unemployment, which has resulted in a sizeable public debt. Growth in the US has therefore held up at the cost of mounting public and private debt. Europe has charted a different course with EMU. The more rapid redistribution towards higher earnings has boosted national savings at the cost of weaker economic growth. The effect of the budgetary constraints deriving from the Maastricht criteria and the SGP over the past fifteen years has been to combine fairly unresponsive budgetary policies with a restrictive monetary policy geared mainly to combating inflation and wage rises. This, coupled with a less innovative financial sector, has curbed borrowing capacity and hence public and private debt (Fitoussi and Stiglitz, 2009). The growth in inequality and the compression of the lower and middle income brackets have therefore led to a collapse in demand and growing indebtedness.

Thus at European level, too, there would seem to be a negative correlation between economic and political integration, and rising economic and social inequality. By curtailing the ability of national governments to pursue independent budgetary policies and reinforce income redistribution mechanisms, EMU has generated a slight but significant rise in income inequality which has had to be offset by social policy measures that are themselves less generous than in the past (Bertola, 2009). This certainly gives pause for thought about the merits of European integration, at least if one believes that its prime objective should be to improve the well-being of all European citizens.

Economic growth can of course be important in reducing inequality, especially because it allows for the funding of social protection through the taxes generated by employment. Yet the jobs concerned need to be
of good quality and, if the system is to work in the long term, they must generate sufficient income at a given moment (i.e. at the time of employment) but also over the course of time, thanks to effective social protection which provides security in the event of labour market transitions during working life, but also thereafter, once the age of retirement is reached. This is the idealised vision of flexicurity promoted by the GES. The only problem is that, in promoting greater flexibility of labour and more deregulation of labour markets, the qualitative dimension of work has been forgotten along the way; at the same time the security side of the equation has been damaged by the straitjacket increasingly being imposed on public spending. After all, workers’ ‘security’, increasingly offloaded by companies on to the public authorities, is expensive and presupposes above all that those authorities are strong and fully capable of action. The same applies to active labour market policies, which are very onerous, especially when they seek to assist those furthest from the job market to return to work by means of active social inclusion. Here we have another fundamental contradiction with the precepts of the SGP, which advocates at the very least a rethink of the role of public spending within the overall strategy. This contradiction likewise calls for the reintroduction of a cross-cutting qualitative perspective, to contribute to a more objective assessment of the durability of the aims of the EU2020 strategy as compared with the longer-term aims of the SDS.

The above point is all the more relevant in that the ultimate paradigm of market doctrine, whereby growth is the solution to all ills, appears extremely shaky once one takes a closer look from an inequality perspective. According to the liberal model, there is an automatic and inevitably positive causal link between economic growth on the one hand and, on the other, the reduction of inequality and poverty. Yet there is very little empirical evidence that this causal link, so often portrayed as self-evident, really exists. Some economists have demonstrated that too much equality can reduce growth, but that too much inequality is equally detrimental to growth (Cornia and Court, 2001). Most economic and econometric studies have reached inconclusive and contradictory results on this so-called self-evident link which may be due to the strongly reflexive nature of the relationship between growth and inequality: inequality diminishes growth and growth enhances inequality (Pagano, 2004). Others regard this highly uncertain relationship as the combined effect of two distinct types of
income inequality: inequality of opportunity (caused by discrimination) and inequality resulting from individuals’ responsible decisions. The former, they maintain, is negatively correlated with growth, whereas the latter is positively correlated with it (Marrero and Rodriguez, 2010). We would recall in similar vein that a report produced for the Swedish presidency of the EU suggests that plugging the gap in the employment rates for women and men would in itself lead to a rise of between 15 and 45% in European GDP (Löfström, 2008). So it would appear that social inequality has a negative influence on income inequality which, in turn, results in lower economic growth. In other words, if we wish to have ‘smart’ growth, to paraphrase the European discourse, we should perhaps strive harder to reduce economic and social inequality.

The group of experts formed by Jean-Paul Fitoussi and Joseph Stiglitz (Shadow Gn) to provide input into the G20 summit on ways out of the crisis makes a number of recommendations aimed at reducing income inequality and hence boosting demand in the medium and long term. Their proposals for recovering from the crisis and combating inequality are set out below, since they strike us as avenues worth pursuing when drawing up what will be the EU’s medium-term strategy (EU2020). Their recommendations are as follows:

— fight against tax havens and tax evasion;

— introduce cooperation among countries to avoid tax competition, social dumping and a downward wage spiral;

— return to a more important role for automatic stabilizers, and more generally to an enhanced social protection role for the government to help maintain sustained growth and high levels of employment;

— implement a general redesign of the welfare system, aimed at redistribution and human capital formation. This would imply in particular: the generalization of universal health care and education provision; the reversal of the trend from defined benefit to defined contribution pension schemes, that in the past greatly reduced the redistributive role of social security.

Implementing such fundamental changes in the EU as it stands today will naturally be a slow process, but they should nevertheless feature
prominently among the range of measures implemented under the EU2020 strategy if that strategy is to promote a sustainable recovery from the crisis and equally sustainable development thereafter. By the same token, reducing economic and social inequality should be Europe’s top priority. This also means that all players must agree to a complete rethink of the priorities established as part of a developmental model which is now so manifestly malfunctioning.

Conclusions

Each of the economic crises of the past twenty years has served as the backdrop for a strategic review of the European model of integration. Thus the crises of the 1990s saw the EU become increasingly subject to the imposition of an essentially economic model of integration, based on EMU and the single market. The Lisbon Strategy, in its original incarnation, was an exception here in that it took shape during a period of sustained growth. As such, it represented a particular moment in the definition of the European model, which would appear with hindsight to have been untypical. Of course, the LS remained bound by the constraints of the EMU economic framework, which was influential in shaping it from the outset. But the original LS also paved the way for a more ambitious strategic approach: an integrated and more well-balanced strategy based on a ‘virtuous’ equilibrium between economic, social, employment and environmental considerations, thereby acting as a precursor to a sustainable development approach. It likewise proved innovative by attempting to introduce equality and quality into the model as new cross-cutting paradigms. These innovations are worthy of further consideration now that Europe finds itself at another crossroads. Nevertheless, the crisis of the early 2000s rapidly stifled these aspirations and led, after 2005, to a clear refocusing of the European model of integration on its economic goals.

That prompts the question as to whether the severe crisis of today might, in similar vein, contribute to creating another such moment of opportunity to move from ‘the old’ to ‘the new’ – harking back to our opening Gramscian analogy – by pulling together to build an ‘anti-hegemonic’ discourse. The current climate would appear favourable to a redefinition of the European integration strategy. Yet the content of the
debate at present offers little scope for a radical change in the essentially economic thrust of European strategy.

The systemic nature and unprecedented intensity of the current crisis lead us to consider a thorough rethink of the founding paradigms of the economic development model promoted by the GES and EMU, a model which seems highly likely to be renewed as it stands in the EU2020 strategy. Growing economic and social inequality lies at the root of the crisis and, by staking everything on growth and employment at all costs to the detriment of the fight against inequality, Europe’s integration policy has merely exacerbated this destructive trend. The straitjacket imposed on public finances by compliance with the SGP has contributed to this growth in inequality by diminishing the redistributive capacity of social security and taxation systems. But one lesson the crisis has taught us is that, far from being just a burden, social expenditure has on the contrary made it possible not merely to cushion the initial impact of the crisis but also partially to prevent it and to contribute effectively to the recovery by preserving jobs and workers’ incomes. Social expenditure would appear all the more vital in that the social and economic effects of the crisis are profound and will be long-lasting. The fight against economic and social inequality should be a central paradigm of the European model of development, and in this capacity it should feature prominently among the objectives of the EU2020 strategy – which was not the case at the time of writing these lines.

This unparalleled crisis is furthermore occurring at an appropriate moment, in social and political terms, for there to be renewed discussion of the basic paradigms of European integration. Europe must, over the coming year, prove its ability to carry out an objective, in-depth assessment of its (non-)achievements, so as to learn from them in order to better define new meta-strategies for the medium and long term; it is absolutely crucial from a longer-term perspective for there to be a paradigm shift in the direction of sustainable economic and social development. This assessment must be objective but also legitimate: it must reflect a shared analysis on the part of all stakeholders, in order to reach a broad consensus and ensure real ownership of the goals by the players in the process but also, and above all, by European citizens.
What certainly must not happen is for the crisis to be used as a pretext for ignoring another, much more distressing fact: namely that the GES was a manifest failure even before the crisis struck. Hardly a single one of the quantified targets set was attained in the ten years of Lisbon, and generally speaking there are still wide disparities between European countries. As for the progress made on employment, it has been attributable mainly to a growth in atypical jobs among women and, to a lesser extent, older workers. These groups have been the first to lose their jobs as a result of the crisis. By the same token, the minimalist aim – announced without a specific target – of ‘significantly reducing’ poverty by 2010 still remains a long way off, with poverty having at best stagnated since the turn of the millennium. Although the risk of poverty has lessened for older people, it has grown among the young and the working population. And this serious shortcoming cannot be blamed solely on a lack of coordination or resolve on the part of European countries.

The fact that this failure was downplayed in the draft assessment recently submitted to the European Council by the Commission scarcely testifies to an ability and a determination to properly examine all the (non-) effects of the GES. Equally, the biased interpretation of the initial findings of the consultation on the EU2020 strategy provided by the Commission on that same occasion does little to indicate a desire for transparency and participation in the debate (CEC, 2010a and b). At the time of the no-votes on the Treaty of Lisbon, Europe declared its awareness of the need to communicate better with its citizens so that they would endorse the European project. More than ever before, it would do well to remember that now: this debate is fundamental to the future of the EU and its citizens, and we would be well advised to take the time to reflect in the round on all of its complexities and practical implications. It would undoubtedly be more appropriate to make the most of 2010 to conduct an unbiased and consensual review of the Lisbon Strategy since its inception, and to build on that to establish the best possible synergy between medium-and long-term strategies: it is vital that these strategies mutually reinforce one another. The medium-term strategy must contribute to implementation of the long-term strategy, rather than the two evolving in parallel with different, not to say conflicting, aims and targets. But will the EU be able and sufficiently willing to venture beyond its current paradigm?
References


Pensions in turmoil owing to the crisis: key messages from the EU

David Natali

The global financial and economic crisis declared in 2008 has affected social protection schemes in Europe in three major ways. Firstly, they have been used as ‘automatic stabilisers’ to mitigate the potential social consequences of the negative economic situation, which is expected to significantly increase social spending in many EU countries. Secondly, the economic downturn has coincided with new challenges to the financial sustainability of social protection: growing unemployment and negative Gross domestic product (GDP) growth represent a loss of revenue for welfare programmes and thus may lead to a deterioration in public budgets. Thirdly, the financial shock has had a huge impact on private fully-funded schemes such as pension funds. And public reserve funds risk being hit too.

All these challenges are affecting pension systems too. While it is still too early to predict the precise consequences of the crisis for pensions, some initial impacts can be assessed. As for first pillar pension schemes, short-term effects have been limited. PAYGO (pay-as-you-go) schemes are largely immune from short-term financial crises. But the long-term effects may be considerable and lead to further adjustments to secure their financial viability. As for second and third pillar schemes, fully-funded schemes have seen more direct effects. Investment losses and negative rates of return have been massive, and pension funds are bound to suffer from this trend. The latter dimension of the crisis is the most evident.

1. In pay-as-you-go (PAYGO) schemes, current contributions paid by both employers and employees (or revenue coming from current taxation) are not accumulated but rather immediately used for financing current benefits.
What is more, the crisis has influenced the EU debate on pension reforms. The struggle between advocates of the development of private pension schemes and supporters of the ongoing role of public pension systems has been revived. Decision-makers, experts and stakeholders have intervened in the debate in line with different understandings of the economic recession and its impact on old-age risks.

As argued elsewhere (Pochet and Natali, 2005), the question of pensions has traditionally been approached at the European level from three perspectives, each related to a specific network of actors. The first is linked to the development of the internal market: it centres on promoting labour mobility and on the creation of an integrated financial market. The question of pensions is seen, from this point of view, as a factor related to completion of the single market and effective freedom of movement. The second approach stems from the adoption of Economic and Monetary Union (EMU). Here, the focus is on the limit imposed by the Stability and Growth Pact so as to maintain a balance or even a slight surplus in public finances. Since pensions are the costliest item of social expenditure, the pressures to stabilise or even reduce such costs have redoubled. Thirdly, social protection is the object of more sustained attention from the European Commission and from the Ministers for Social Affairs. Since the Lisbon summit in 2000, the Open Method of Coordination (OMC) has been applied first to poverty and social exclusion, then to pensions (Pochet, 2003). This approach focuses mainly on social perspectives, such as redistribution and the reduction of poverty among the elderly, and provides a broader interpretation on the problem of financial sustainability.

This chapter provides a summary of the most recent ‘messages’ from EU institutions and EU-level stakeholders on the economic crisis and its impact on pension policy. We look at official documents, reports and communications, and assesses the shift (if any) in the way key players have addressed the ‘pension challenge’ in this time of crisis.

Section 1 sheds light on some indicators of the impact of the financial crisis and economic recession on pension policy across Europe, as well as in the broader international context. Section 2 briefly summarises the different ways in which the European Union has intervened in the pension debate; while Section 3 underlines the most recent key messages from EU institutions – and stakeholders – on the present and
future impact of the recent financial and economic downturn. We refer more specifically to the debate linked with the completion of the single European market in supplementary pension schemes; the intervention of EU institutions in the mutual interaction between pensions policy and economic and monetary stability, and the sustainability of public pensions; and the debate on the social consequences of the economic crisis and the role of social protection in facing up to them. Section 4 draws some preliminary conclusions while showing how social and economic/financial issues have moved to the core of the EU debate on pensions. This has promoted a new set of interconnections between areas of debate which had previously tended to remain compartmentalised.

1. The financial and economic crisis and its impact on pensions

In the literature on pension policy, there is a large consensus on the fact that pension programmes, be they public or private, are not immune from the consequences of economic recession and financial crisis. International organisations and experts agree that the economic and financial context has a major effect on every component of a pension system. Yet, the impact differs markedly if we consider first, second and third pillar schemes.

Supplementary pension schemes with a fully-funded logic of financing are the ones worst affected by negative economic and financial trends. Recent data from the OECD (2009) clearly shows huge negative effects in 2008 and a limited recovery in 2009 (Figure 1).

In 2008, supplementary pension funds – both defined benefit (DB) and defined contribution (DC) plans – were hit hard by the crisis. The impact of the crisis on investment returns was greatest among pension funds in countries where equities represent over a third of total assets invested,

2. The terms ‘defined-benefit’ (DB) and ‘defined-contribution’ (DC) are used to describe the type of benefits and the logic of their calculation: in the former, the ‘resources/benefits’ balance is adjusted by modifying contribution rates while keeping benefits ‘defined’. In the latter, the balance operates in the opposite direction, by fixing contribution rates and letting benefits fluctuate according to individually accumulated resources or ‘rights’ to resources.
with Ireland the worst hit at -30% in nominal terms, followed by Belgium, Hungary and the United Kingdom. Irish pension funds were the most exposed to equities, at 66% of total assets on average (ibid., 3-5).

Figure 1  Pension funds’ nominal investment rate return in selected OECD countries

Source: OECD (2009)

Funding levels in DB plans were down by more than 10% on average. As the rate of company insolvency increases, benefits may be cut. Members of DC schemes have been those most at risk of losses, in that these pension schemes leave the investment risk entirely with the scheme member so the impact will be felt directly. Older workers close to
retirement are particularly affected by investment losses, and their overall pension income will mean that they face a less well paid or later retirement (CEC, 2009a: 2). Younger workers, on the other hand, could benefit in the long term as future pension contributions will be invested at much lower prices, hence raising the potential rate of return on investments and future benefits.

During the first half of 2009, pension funds regained a fraction of the investment losses made in 2008. In June 2009 pension fund assets were 14% below their December 2007 levels. The recovery in pension fund performance has continued through the whole year on the back of strong equity returns, but it will take some time before the 2008 losses are fully recouped.

Figure 2  Public pension reserve funds nominal returns in selected OECD countries in 2008

But the crisis has affected public schemes too. Through the most recent round of reforms, funding has become increasingly important within publicly managed pension systems. Many countries have established
public pension reserve funds (PPRFs) to provide financial support to what are otherwise pay-as-you-go systems. This is the case in Sweden, where buffer funds were set up in the second part of the 20th century, and more recently in Ireland, Poland and France. Even though to a much lesser extent than private pension schemes, public buffer funds have been hit by negative investment returns (Figure 2).

As argued above, the crisis has had another effect. Social protection schemes have been heavily used to confront the initial social consequences of the recession. EU countries have thus increased public social spending to limit the effects of the financial crisis on individuals and families. According to the Commission’s autumn economic forecast, as a result of automatic stabilisers and discretionary measures to enhance social benefits, social expenditure in the EU is expected to increase by 3.2 percentage points of GDP between 2007 and 2010 (Figure 3). The projected increase varies from less than 1% in Bulgaria, Hungary and Slovakia to 6% or more in Estonia, Ireland, Latvia and Lithuania.

![Figure 3 Expected increase in social expenditures between 2007 and 2010](image)

Source: EPC (2009).

Spending on unemployment benefits has increased the most. While it is too early to assess the trend as regards pensions, there is some evidence of an upward trend. In some countries like Poland and Greece the number of older workers taking early retirement has grown. In other Member States, the indexation of pension benefits has been revised in a more favourable manner (e.g. Portugal), and in others minimum pension benefits have been improved (e.g. Finland) (SPC, 2009).

To sum up, public pension benefits (first pillar) seem in the main to be isolated from the short-term impact of the crisis. And in some cases they have been increased to act as automatic stabilisers. Yet the long-
term prospects of PAYGO systems are more difficult to predict. Persistent economic stagnation if not recession, rising unemployment rates and the consequent reduction in revenues may lead to future financial tension. Lower investment returns for public reserve funds contribute to these more negative prospects. Private (second and third pillar) pensions have been hit much harder by the crisis. The short-term effects on funded schemes have been enormous. Despite the partial recovery of 2009, the decline in investment rates of return has put pension fund members – and especially older workers – at risk of huge income losses.

2. EU networks on pensions

In order to fully understand EU reactions to the crisis and its potential impact on pension policy, we shall now summarise the key networks of institutions and stakeholders traditionally involved in the pensions debate (see Pochet, 2003). Evolving EU competence has been characterised by an initial desire to promote the free movement of workers and services, and to boost competition between financial institutions. This was later combined with the goal of improving the European Union’s economic and monetary stability, and finally that of coordinating its social dimension. This ‘step by step’ process has been consistent with the co-existence of different sets of actors, each based on the mutual interaction of players and institutions. This section summarises the three main networks, represented by institutions, social partners, lobbies, and officials, activated in the last few years (for a more detailed analysis see Pochet and Natali, 2005). These groups are not mutually exclusive but tend to overlap partially. They interact with each other through different processes (legislation, soft coordination, etc.). Section 3 will focus on the most recent debate within the three networks.

2.1 The single market in supplementary pensions

EU regulation has led to direct, and negative, integration in order to grant freedom of movement for workers and provision of services through the market-building process. On the one hand, the aim of the EU has been to ease intra-European migration and thus reduce restrictions on labour mobility. On the other, completion of the single
market for private insurance has been the strategy consistent with indirect pressures that do not legally require, but nonetheless encourage, the adaptation of national pension programmes. Here again the legal and normative foundations have been based on a liberal understanding of economic integration: market liberalisation and promotion of competition. In both these areas, authority to act at the European level is substantial and has been validated by innumerable rulings of the European Court of Justice.

Various economic actors have traditionally advocated the development of supplementary pension funds and full implementation of European competition policy in this area. This has happened in several stages, during which the argument has become more focused (Pochet, 2003). In the 1990s, heated debate arose over freedom of cross-border investment management, cross-border investment and cross-border membership. The 1997 Green Paper on supplementary pensions and the 1998 Financial Services Action Plan converged on the supposed need for a genuine single market in wholesale financial transactions. The adoption of legislative provisions on investments by Institutions for Occupational Retirement Provision (IORPs) was presented in the Plan as a prerequisite for attaining this objective by removing the remaining barriers to investment in the field of pension funds. The Lamfalussy report of 15 February 2001 on the regulation of European securities markets went back to the usual arguments favouring the development of private pensions and pension funds.

A second line of argument was that of mobility. As argued by Pochet and Natali (2005), even though inter-state labour mobility is still very weak, supporters of pension policy development have reversed the argument. Movement of workers is low because a number of obstacles prevent workers from exercising their right to freedom of movement in full. In keeping with the recommendations of the Veil report on freedom of movement, the Commission set up the Pensions Forum which met for the first time in 2000. In May 2003, the Council of Ministers adopted Directive 2003/41/EC on institutions for occupational retirement provision (IORPs). The directive aimed to facilitate a pan-European market for occupational retirement provision and create a framework for the efficient operation of pension institutions and the defence of their members’ interests. But this has not led to full liberalisation. Member States with more restrictions on
investments largely succeeded in defending their domestic rules, especially in the case of solidarity-based occupational schemes.

As concerns the main institutions and actors in the debate on the completion of the single market for supplementary pensions, the European Parliament, the Commission (Directorate of Internal Market and Services), the Economic and Social Committee, and the financial services sector have been pressing for several years for the establishment of a European framework for IORPs. Whereas some Member States have been (very) reticent, others have, however, shown their support for the Commission’s initiatives. At the parliamentary level, the European Parliamentary Pension Forum (EPPF) was established in 2003, at the initiative of Dutch MEPs.

More recently, under the so-called Lamfalussy process, technical committees have been set up within the broad context of the financial services committees. On the basis of Directive 2005/01/EC, the European Insurance and Occupational Pensions Committee (EIOPC) has replaced the former Insurance Committee to assist the Commission in adopting and implementing measures for EU directives in the field³. And the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) is a committee representing the insurance and occupational pensions sectors⁴. CEIOPS is involved in both level 2 and 3 activities by providing advice to the European Commission on the drafting of implementation measures for framework directives and regulations on insurance and occupational pensions, and to facilitate cooperation between national supervisors.

The European Court of Justice (ECJ) has played an important role in this area. Basic public pensions, like other social security mechanisms, are not subject to competition policy. Third pillar provision, however, is bound by competition rules. For other supplementary retirement

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3. EIOPC members are appointed from the insurance supervisory and regulatory authorities of the 27 Member States. Each Member State may appoint up to two members to the committee. Representatives from Norway, Iceland and Liechtenstein have also been admitted into the EIOPC meetings as observers.

4. CEIOPS is composed of high level representatives from the insurance and occupational pension supervisory authorities of the European Union Member States. The authorities of the other Member States of the European Economic Area (Norway, Iceland and Liechtenstein) and the European Commission participate in CEIOPS' activities as observers.
income schemes (the second pillar), the situation is less clear. The ECJ is increasingly inclined to pronounce on this subject, and in the absence of clear-cut norms exempting complementary forms of social protection from European competition law, it tends to override the liberal economic logic which stems from the texts of the Rome Treaty (Pochet, 2003).

 Numerous private actors act as lobbies to obtain amendments and advance their interests. The CEA (European Insurance and Re-insurance Federation) brings together insurance companies from all Member States and non-EU countries. The European Federation of Retirement Provision (EFRP) represents pension funds that are responsible for occupational pension provision. BusinessEurope has pointed out clearly that "there is no single European model of pension system. A "one size fits all" solution is neither desirable, nor appropriate or feasible across the EU. The EU should, therefore, play a fairly modest role, and the only justification for the EU to pursue national pension reforms is to maintain the stability of the Eurozone (Arcq and Pochet, 2002).

 Not all participants share the same view: some of them (e.g. DG Internal Market, pension fund managers, and other economic interest groups) have pushed for a more integrated market in supplementary pensions facilitating the free movement of workers and the growth of capital markets, while others (trade unions and European civil society) have been more concerned about the defence of workers’ and citizens’ social rights. While the former group has a central role, orbiting around the Ecofin Council, the latter has more marginal access and resources. What is more, the network is highly permeable to a variety of interest groups.

 2.2 Economic and monetary stability through sustainable pensions

 The second strand of discussion stems from the Ministries of Finance and their advisory committees, particularly the Economic Policy

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5. Pochet and Natali (2005) clearly illustrate the active role of the representatives of insurance institutions: the European Federation of Fund Managers, FEFSI; the European Insurance and Reinsurance Federation, CEA; and the European Association of Paritarian Institutions of Social Protection, AEIP, as well as other groups such as the European Round Table of Industrialists.
Pensions in turmoil owing to the crisis: key messages from the EU Committee (EPC) and the Economic and Financial Committee (EFC). The issue is mainly about the stability of monetary union. The long-term viability of public non-funded pensions is the main preoccupation.

The European fiscal framework was designed in 1991 and subsequently included in the Maastricht Treaty, which entered into force two years later. It was then revised in 1997 with the creation of the Stability and Growth Pact (SGP), in force since 1999, and eventually reformed in 2005. While the Pact agreed on in Amsterdam did not concern pension policy, the Ecofin Council and related technical committees have specifically monitored the long-term sustainability of pension programmes (Pochet and Natali, 2005). The guiding philosophy here has been that pension reform needs to be adapted to the circumstances of an ageing population while at the same time ensuring durable fiscal consolidation and improving the condition of European labour markets. The principal recommendations have been to curb benefits, as the main instrument for guaranteeing the solvency of PAYGO schemes; to delay the age of retirement, to move towards pension system based on individual contributions, and to gradually increase the role of funded schemes (de la Porte and Pochet, 2002; Pochet, 2003). As argued by Pochet and Natali (2005), contrary to the ideologically inspired debates related to the internal market, the EPC studies did not, as an a priori position, support a greater role for private pensions. The Ageing Working Group (a technical body of the EPC) has been particularly active in stressing the need to postpone the retirement age, because, according to its calculations, this measure not only has a positive effect in terms of global cost, but – most importantly – does not cause a reduction in the relative level of pensions. The AWG is keen to provide evidence of the present and future impact of demographic trends, not only on pensions but also on other key policy sectors such as health care, long-term care and unemployment.

Together with the Council and its technical bodies, the Commission and the European Central Bank play a key role. The Lisbon Council (2000) mandated the Commission to prepare a study on ‘the contribution of public finances to growth and employment: improving quality and sustainability’ (for the most recent state of play see CEC, 2009a; 2009b). Several reports have dealt with the question of retirement pensions, emphasising the question of the ‘quality’ of public expenditure. Pensions have been put at the forefront of the category of
‘bad’ expenditure. The ECB has, in various documents, shown its concern for the budgetary stability of public (non-funded) pensions, and recommends lowering the ratios of public debt, the establishment of financial reserves, and pursuing social security reform with ‘even greater determination’. More specifically, the ECB is interested in the effects of ageing on decisions to consume or save, and, through this, on interest rates and the state of public finances.

As stated by Navarro (2004), the role of social partners in macro-economic policy-making is particularly limited, especially as concerns the Cologne Process aimed at introducing a permanent dialogue between social partners, governments, and the ECB.

The revision of the Stability and Growth Pact represents further intervention in the field of old-age programmes. The Ecofin Council report of March 2005, subsequently adopted by the European Council, dedicates two out of nineteen pages to structural reforms to be adopted in order to enhance the ‘growth oriented nature of the Pact’ (Natali, 2008). In the second paragraph of the report, respect for the budgetary targets is related to encouragement for reforms improving the long-term sustainability of public finances. Particular attention is thus paid to pension innovations introducing multi-pillar systems that include a mandatory fully-funded pillar. In line with a more flexible understanding of stability, and despite the potential for a short-term deterioration in public finances, such reforms are favoured because of the resulting improvement in the long-term equilibrium of the public budget. The third paragraph clarifies how to implement that general statement. The Council has agreed that an excessive deficit reflecting the adoption of pension reforms introducing the above-mentioned multi-pillar system ‘should be considered carefully’. In other words, the Commission and the Council will assess the development of budgetary policies while considering the net cost of the pension reform for the initial five years of its implementation, or after 2004 for the countries that already introduced such a system. The revised Pact is, on the one hand, consistent with the traditional point of view of the economic network centred on the Ecofin Council. Pension reforms are part of the efforts (structural reforms) directed at reducing the long-term impact of demographic ageing on budgetary policies. On the other hand, a new emphasis is put on a particular type of pension systems – the multi-
pillar model – that is favoured and judged to be a contribution to the long-term sustainability of public finances.

As argued by Pochet and Natali (2005), the ‘economically oriented’ network shows some specificities if compared to the ‘single market’ one. First, the number of participants is more restricted and coherent. The Ecofin Council (and its technical bodies, the Economic and Financial Committee – EFC – and the Economic Policy Committee – EPC) are its lynchpin, providing the overall network strategy in line with the ‘stability and growth’ argument. The other core actors are the Directorate General for Economic and Financial Affairs and the European Central Bank. They share the same values: the sustainability of public finances, which are jeopardised by ageing, and the need for more pronounced economic growth. As regards old-age programmes, the need for more diversified systems with some role for occupational and individual schemes is related to the above-mentioned aims and the need to reduce financial strains on (public) old-age protection.

2.3 The social dimension of pensions and the OMC

The creation of a network around the Social Affairs Ministers has been designed to analyse pension reform from a more social angle and thus to balance the economically oriented action. The first step by the Council of Ministers of Social Affairs was the creation of the Social Protection Committee (SPC). This was immediately given the task of producing a report setting out the evidence on the social aspects of pensions. Socially oriented actors thus began to use a new mode of governance: the Open Method of Coordination (OMC) (de la Porte and Pochet, 2002). In its first report, the SPC viewed the interlink age of different areas (social protection, employment and public finance) as crucial. The main message was that financial sustainability cannot be achieved at the expense of the ability of pension systems to meet their social goals. Only one paragraph was devoted to the reasons for dealing with the issue at European level. This meant that a positive definition of common social objectives was problematic and came about partly because some Social Affairs Ministers share the objective of reforming their national pension system with their Finance colleagues (see de la Porte and Pochet, 2002).
The Stockholm Council in 2001 officially launched the ‘soft’ governance on pensions on a three-year basis. The process involved defining some broad policy guidelines, then adopting a more precise set of policy objectives, adopting National Strategy Reports by the Member States, and the Joint Report on safe and sustainable pensions by the Commission and the Council. The formulation of common objectives aimed to achieve greater policy convergence between EU Member States in line with both economic and social goals. Eleven objectives for pension reform were agreed around three ‘pillars’: social adequacy, financial sustainability, and modernisation (e.g. responding to changing socio-economic needs). They offered a structure for future EU work in this area. That said, the tensions between the different approaches have not disappeared, but have but have been put into perspective by the document.

The need for a more effective strategy to confront these problems has led the European institutions to update the various OMCs (on pensions, social inclusion, and health and long-term care). In 2003, the Commission proposed to simplify the coordination between social protection and the existing processes established by the Treaty. The principal aim was to launch simultaneously, in 2006, the second three-year cycle of economic and employment policy coordination as well as the new streamlined objectives for the three pillars of social protection (Natali, 2005). At the end of 2004, the outline draft of the first Joint Report on Social Protection and Social Inclusion was put forward by the Commission for discussion by the SPC.

From the outset, the ‘social’ network has been more heterogeneous than its economic counterpart based on the EPC. The pivotal role is played by the Council of Ministers of Social Affairs, supported by the SPC. As stated above, the Social Protection Committee is to cooperate with more economic bodies, such as the EPC. The EPC and the SPC, in fact, have been asked to develop common approaches with regard to indicators in order to underpin the Open Method of Coordination relating to the future of pensions. This cooperation has covered the preparation of projections relating to the medium and long-term prospects and implications of pension policies. The SPC’s Indicators Sub-Group has published a series of interim reports dealing with this challenge. They have mainly centred on statistics on the adequacy and financial sustainability of public programmes (first pillar) and supplementary schemes (second and third pillars) (Natali, 2008 and 2009).
As to the social partners and their role in the OMC, it is particularly limited, especially if compared to the Social Inclusion OMC and the European Employment Strategy. Their influence operates mainly through consultation by the SPC. Hence, it is more a case of lobbying (informal consultation in non-formalised, open and fluid communities) than of networking (active promotion of interest groups). At the European level, transnational non-profit civil society organisations, such as the European Older People’s Platform (AGE), have proved to be active but still on the margins of the policy-making process. In the first stage of implementation of the process, meetings between the SPC and social partners have been few in number. They have concerned both specific problems, e.g. the functioning of privately managed pension schemes and the strategy to ‘make work pay’, and broader issues such as the streamlining of social OMC processes. As for the European Trade Union Confederation (ETUC), it created a working group on social protection and an ad hoc working group on pension funds. The European trade unions have also tried to strengthen their cooperation with social NGOs (Natali, 2005). As well as participating in the ‘single market’ network, AGE has been particularly active in lobbying European institutions for the defence of ‘social goals’ related to pension systems through the OMC. However, social NGOs have an even more marginal role than the social partners: they are not part of a formal consultation. They merely have informal contacts with members of the Social Protection Committee. A further means of improving the participation of interest groups in the OMC on pensions is to reduce tension between and within social actors.

To sum up, the ‘socially oriented’ network has a particularly restricted membership. National civil servants and political decision-makers from the Member States interact with the Commission’s Directorate General for Employment and Social Affairs through the SPC, with a particular role being played by the Indicators Sub-Group. That community shares some core values but with strategic differences.

3. Key messages from the EU on the crisis and its impact on pensions

After the recent financial and economic crisis, all three networks have been working hard to re-frame their understanding of the pensions issue. This section describes the key messages conveyed by each group, in terms of
their diagnosis of the crisis and possible solutions. As for the network for the completion of the single market in pensions, reference is made mainly to CEIOPS and to the reaction of the pension funds lobby (EFRP and BusinessEurope). For the group focused on economic and monetary stability, reports from the Ageing Working Group of the Economic Policy Committee will be analysed. Finally, the role of the Social Protection Committee and the action of the social partners (ETUC) and social NGOs (AGE) within the ‘socially oriented’ network is summarised.

3.1 European pension markets: demands for better regulation and governance

The network focused on the completion of the single market in supplementary pensions has interpreted the global financial crisis as the result of inefficient regulation of financial markets and ineffective governance. Two different arguments have been put forward. On the one hand, the Commission and its technical committees have proposed new measures to increase regulation and supervision. Here the issues debated have been whether solvency regulations so far provided for financial markets should be applied to private pension funds, and the scope for harmonisation of national legislation in the field. On the other hand, the EU institutions – and especially the supervisory bodies such as CEIOPS – have stressed that occupational pension funds are much more stable than other financial institutions, in that they are partly immune from investment risks. Quite paradoxically, the specific social aims of pension funds have been identified as the main source of their greater security. The key issue at stake here has consisted in the identification of more precise measures to improve pension fund governance.

In 2008, President of the European Commission Barroso set up the so-called Larosière Group to give advice on the future of European financial regulation. This high-level group has reported on its main goals for increasing financial market stability. The crisis is assumed to have been the result of a twin failure, namely regulation and excessive financial liquidity due to historically low interest rates. The report recommended tightening the prudential rules on capital and banks’ reserve funds, and
liquidity management, and reinforcing the control rules through some regulatory reforms: a fundamental review of Basel II, stricter supervision of credit rating agencies, hedge funds and investment funds\(^6\).

After the publication of the report, the Commission formulated its initial reaction in March 2009 in its Communication ‘Driving European Recovery’, which was a contribution to the Spring European Council. The Commission furthermore staged a wide consultation exercise in September 2008 which generated 60 reactions, including one from the ETUC. It summarised these reactions in March 2009, and then on 27 May held a public hearing attended by the ETUC among others (CEC, 2009b). The central underlying question in the debate was to establish whether these control rules apply to pension schemes. Most of the occupational funds’ representatives agreed on the fact that pension funds have particular characteristics and thus should not be concerned by solvency rules designed for other financial actors.

As far as stakeholders are concerned, many of them proved sceptical about the application of new regulations on financial services to pension funds. While the European Federation for Retirement Provision (EFRP) has recognised the need to restore trust in financial institutions, it has also stressed its concerns about the proposed changes to the structure of EU-wide ‘micro-prudential’ supervision proposed by the de Larosière report and endorsed by the Commission. Implementing the proposals could prove to be an inappropriate knee-jerk response to the current crisis (EFRP, 2009). In this context, the EFRP has consistently called for shifting capital into long-term investments overseen by institutions with clear fiduciary responsibilities to their members. Greater social partners’ involvement has been proposed to reduce volatility and increase trust in financial markets. The EFRP has also shown itself to be sceptical about the harmonisation of national rules. In recognition of national competence over these systems, the IORP Directive is restricted to the minimum standards.

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6. Basel II is an international business standard that requires financial institutions to maintain sufficient cash reserves to cover the risks incurred by their operations. The Basel Accords are a series of recommendations on banking laws and regulations issued by the Basel Committee on Banking Supervision (BCBS).
needed to permit a single market that protects members, rather than setting out detailed specifications of prudential standards.

BusinessEurope has sent out ambivalent signals. On the one hand, its traditional pro-integration stance has been confirmed. The single market must be further integrated and existing barriers removed (BusinessEurope, 2009). For Business Europe, the expected benefits of integrated EU financial markets in terms of increased competition, reduced costs of raising capital and lower trading costs will only be realised if confidence in financial markets is restored and legislation is implemented and enforced consistently. This, in turn, requires increased cooperation between national supervisors and regulators and convergence of national regulators’ day-to-day application of legal provisions. Yet European employers’ representatives have clearly stressed that financial services and supplementary pension funds do not compete with each other and so there is ‘no need to have the same rules for insurers and IORPs’ (CEC, 2009c). For the European Trade Union Confederation (ETUC), we are witnessing the failure of the existing regulations (ETUC, 2009a).

As far as the more technical debate is concerned, in December 2009 CEIOPS published its Financial Stability Report. This stressed that the financial turmoil has hit Institutions for Occupational Retirement Provisions (IORPs) primarily in their role as institutional investors. But the impact has not been as severe as in other financial sectors. The long-term nature of the liabilities has helped to give some protection in this respect and IORPs have not experienced the liquidity problems seen elsewhere, e.g. in the banking sector (CEIOPS, 2009a: 3). IORPs have a number of safety mechanisms available in the event of under-funding. No Member States have reported material exposure to ‘toxic assets’: this is seen as immaterial in relation to the fall in asset values and has had a limited impact on the funding levels of European pension schemes.

In terms of the policy responses to be implemented, CEIOPS firstly emphasised the complex set of challenges to the financial sustainability of funds: defined benefit (DB) occupational pension funds are under increased pressure, partly because of low interest rates and the prevailing longevity risk. The crisis has also been challenging for defined contribution (DC) plans, making plain that careful investment
strategies, such as suitable default options and lifecycle mechanisms, are important elements in mitigating the effect of market downturns on plan members. What is more, financial education and awareness is increasingly felt to be crucial, in order to empower people to make sensible and informed choices regarding their pension provision. As a result of the crisis supervisors reacted differently, depending on the nature of pension funds, by for example closer monitoring of riskier funds, increasing the frequency of reporting, performing stress tests, using the flexibility in their funding frameworks and increasing disclosure requirements (CEIOPS, 2009b).

Thus last year saw a shift in the way the network on the single market in pension funds has approached the pension challenge. Traditional support for the widening of pension funds has weakened. Two main criticisms have appeared: the first concerns the weakness of the EU regulatory framework for financial markets. Secondly, the need for better governance of pension funds has been emphasised. Stricter control over the investment strategies of pension fund managers has been demanded. Stakeholders have agreed on that but stressed the need to consider the specificity of pension funds (especially IORPs) and their improved performance, if compared to that of other insurers, in recent years. In that respect, attempts to establish common supervision of financial institutions have largely been rejected.

3.2 Financial sustainability of pensions in view of population ageing and the economic downturn

The European network on the sustainability of pension systems has engaged in more in-depth reasoning about the crisis, its impact and the way to deal with it. In the short term, increased deficits have been allowed to limit the consequences of the crisis. Yet in the long term, structural reforms have been assumed to be decisive. The Economic Policy Committee has pointed out that 'successful fiscal expansion to counter recession and longer-term fiscal sustainability are not incompatible'. But fiscal measures to increase confidence and support demand are only successful if they are perceived by the markets and public opinion as temporary and consistent with long-term sustainability (EPC, 2009).
In a context of severe economic recession, discretionary fiscal stimulus and automatic stabilisers have been assumed to help limit negative social consequences. They have provided a cushion for economic activity and contributed to the recent signs of improvement, but have led to a substantial deterioration in government accounts. From a deficit of 0.8% of GDP in 2007 – the best result for thirty years – government deficits in the EU are forecasted to average 6% of GDP in 2009 and around 7% in 2010. In the three years to 2010, the gross debt ratio for the EU as a whole is increasing by more than 20 points (ibid.).

The economically oriented actors have stressed that the main problems are related to the combined effect of the crisis and of ongoing population ageing. The fiscal costs of the crisis and of projected demographic developments combined make fiscal sustainability an acute challenge. Again, the need for structural cutbacks has been stressed: ‘in the absence of ambitious efforts to implement structural reforms and consolidate government accounts, there would be very large increases in expenditure on debt interest and public pensions, as well as on healthcare and long-term care during the coming decades’ (CEC, 2009d).

The message from the EPC and its Ageing Working Group has been that there is no defined upper limit to sustainable debt levels. Limits to sustainability differ across countries and time. The capacity to run high debts depends on the degree of development of financial markets, perceived risks, and trust in the capacity of a government to implement structural reforms and consolidate deficits. Countries with high debt ratios – as well as large external imbalances or contingent liabilities – are particularly exposed to market turbulences, such as changes in interest rates and spreads during times of evolving economic perspectives. Fiscal expansion in a crisis context is not detrimental for sustainability as long as the measures adopted by governments are temporary. But concerns arise when high deficits are structural (EPC, 2009).

The EPC has drawn attention to the fact that strains on the long-term sustainability of the public finances are affecting all Member States. However, there are major variations across the Member States. A first group of countries (Bulgaria, Denmark, Estonia, Finland and Sweden) has comparatively strong budgetary positions and undertaken important reforms in the last few years. Though the crisis is expected to lead to a deterioration in government accounts and a substantial increase in
government debt in each of these countries, their structural fiscal
positions remain sounder than in most other EU countries and present,
therefore, a low long-term risk.

A second group of countries (Belgium, Germany, France, Italy, Hungary,
Luxembourg, Austria, Poland and Portugal) reveals very different
characteristics in relation to their initial budgetary position and age-
related expenditure. Belgium, Germany and Austria are projected to
bear costs of ageing that are close to, or above, the EU average, but their
initial budgetary positions are relatively sound, provided that the crisis-
related deterioration in government accounts does not become
structural. For France, Italy, Hungary, Poland and Portugal, the long-
term costs of ageing are not projected to be particularly high. However,
their initial budgetary positions imply that the countries’ fiscal policy is
unsustainable, even without considering any increase in age-related
expenditure. In all these countries, the crisis and the support for
recovery are leading to a very fast increase in debt ratios. In general, for
this group the long-term sustainability risk is medium.

For a third group of countries, the sustainability gaps are the result of a
very large projected increase in age-related expenditure, compounded
in most cases by large initial imbalances, and hence they are exposed to
a higher long-term risk. The sustainability gaps in the Czech Republic,
Cyprus, Ireland, Greece, Spain, Latvia, Lithuania, Malta, the Netherlands,
Romania, Slovenia, Slovakia and the United Kingdom are all above 6% of
GDP. The possible continuing effects of the crisis on the budgetary
position and on medium-term growth are a serious concern for most of
these high-risk countries (ibid., 27-29).

What is important here is that the three groups of countries do not
overlap with traditional classifications of pension models in Europe.
Some of the countries with high-level public protection against old-age
risks (e.g. Finland, Sweden and even Italy) are not assumed to be more
at risk than countries with multi-pillar pension systems (Ireland and
the UK being among those most at risk).

What is more, while traditional demands for structural reforms persist,
the perception of private pension funds is not so positive. As pointed
out by the Commission, future pensioners have been encouraged to top
up their public pensions with their own savings and funded old-age
income. Yet developments in financial markets during the crisis have illustrated the risks associated with the shifting of a large share of pension provision to privately-managed funded schemes, and has reduced the political and social support to implement reforms that leave a large proportion of pensions subject to market fluctuations. In that respect the Commission has said that it will continue to work with the Council and Member States to identify lessons for the design of funded schemes and target beneficiaries in order to secure adequate and sustainable private pension provision (CEC, 2009e; 2009f; 2009g).

At the same time, the assessment of recent pension reforms is largely positive. The EPC has made the point that EU countries have tried reducing the generosity of public pension schemes so as to make these programmes financially more sustainable in view of demographic trends. They have raised the statutory retirement age in a gradually phased way over the long-term for old-age pensions and restricted access to early retirement schemes and strengthened the incentives to prolong working lives, which leads to a containment of the increase in old-age and early retirement spending. By contrast, prospects for the short-term sustainability of supplementary pension funds are assumed to be more negative. The Ageing Report does refer to the few countries where pension funds already play a big role in the determination of pensioners’ income (ibid.). For all of them, Sweden included, the prospects are worrying.

The network on the sustainability of pension systems has thus put particular emphasis on the sustainability of private pensions, with accompanying demands for a revision of the broad strategy for privatisation. Long-term financial viability of pension systems have been approached through complex sets of measures based on structural reforms, debt and deficit reduction, and especially an increase of employment rates. After the crisis the network has recognised the tensions affecting supplementary pension funds and the need for more cautious strategies.

3.3 The enhanced focus on social adequacy and pensions

As for those in the camp of the EU institutions (the SPC and its Indicators Sub-Group ISG) and stakeholders, who are more keen to
defend the adequacy of present and future pensions, they have reinforced their critical attitude towards the progressively increased role of supplementary pension funds. And they have stressed the important role of public pensions to protect against economic risks. As argued by the Social Protection Committee (SPC, 2009a), strong policy intervention, focused on recovery and social protection systems acting as automatic stabilisers, played a major role in mitigating the social consequences of the crisis.

Regarding the longer-term impact of the crisis on pension schemes and social security schemes in general, the SPC has emphasised that pensions in payment are mainly delivered by public PAYGO schemes on which the crisis in financial markets has no direct effect. By contrast the book value of the assets of pensions funds have been significantly reduced, and real issues of solvency could emerge if markets take a long time to recover. But apart from in a few Member States, this would primarily affect the incomes of future pensioners in the medium to long term. Therefore most Member States perceive their pension systems as quite resilient. However, if the crisis deepens and continues for several years, even PAYGO systems will be affected, as unemployment and lower growth will reduce revenue from taxes and social contributions and will weaken public finances. Despite the severity of recent market turbulence, European pensions have not experienced problems to the same degree as other types of financial institutions, nor those of pension systems in some other countries outside the EU. So clearly the system is relatively robust, at least over the short term for those retiring today (SPC, 2009b).

The Open Method of Coordination (OMC) process has provided a tool for the European Commission to explore with Member States where there may be weaknesses in pension systems that could need addressing in the future. For instance, one critical point has been the importance of ensuring that investment frameworks for DC pension schemes are designed to encourage the right choices and that the 'lifecycling' of asset allocation is the mainstream option for everyone. Another is that 'a careful monitoring and an in-depth and open discussion about pension systems in Europe, and in particular a critical review of the relative role, design and performance of the private pillar will be necessary’ (CEC, 2009c).
The Commission and Council have noted in the Joint Report on Social Protection and Social Inclusion (CEC, 2009d) the need to mitigate risk in defined contribution pensions, particularly for those people approaching retirement, and have called for appropriate solutions for the pay-out phase which are still missing in a number of countries with mandatory schemes (Fischer, 2009).

The trade union movement and social NGOs have largely supported a broad revision of the pension reform agenda of recent decades. As stated in the ETUC commentary on the Joint Report on Social Protection and Social Inclusion, in the opinion of the ETUC the crisis requires certain existing policies to be modified, particularly concerning the privatisation of pension systems; the Union should be aiming higher and ploughing more resources into social policies (ETUC, 2009a; 2009b). The ETUC reaction to the Joint Report was critical in many respects. The report failed to deliver any answers that matched the challenges with regard to the social inclusion of certain disadvantaged groups, such as migrants for example. The ETUC examined the case of pensions, stressing that the income of employees currently retiring is heavily dependent on the role played by private pension schemes, notably ‘defined contribution’ schemes, in the constitution of their pensions (ETUC, 2009b). Certain financial assets, such as shares and high-risk investments, have lost up to 30% of their value; it has emerged that while all systems are affected by the crisis, they are not all affected in the same way. For example, pay-as-you-go schemes are performing less badly than those where the engine is essentially ‘financial’, in other words where the amount of the pension depends on investment performance.

According to a study conducted by the European Federation of Retired and Older Persons (FERPA) (see ETUC, 2009c), over the past five years the income of retired people has suffered a drop in purchasing power of between 15 and 20%, with women and older retirees bearing the brunt. It is the people currently embarking on retirement, and whose pensions include a large share of ‘capitalisation’, who are being hardest hit by the effects of the financial crisis. Conversely, in those countries where the amount of the pension is largely covered by the public system, retired people are faring better; the importance placed on or argued in favour of capitalisation pensions boils down to passing the risk on to the worker. To put it another way, pensions are slipping from the collective
dimension into an individual dimension; managers lack a long-term vision in their investment strategies and are intent on immediate profitability, focusing too often on high-risk investments.

In the social camp, AGE (the European older people’s platform) has strongly reaffirmed the need to focus on ensuring adequate pensions for the elderly. Here the focus is more on the need to modernise pension policies to deal with broad societal challenges. AGE members have reiterated the demand for balanced pension systems with adequate and reliable statutory schemes (first pillar). Enhanced security for individual entitlements in funded pension schemes should be secured through measures to facilitate the retention of older workers in their jobs and access to quality employment for those seeking work, measures to address gender inequalities in old-age income and avoid creating new sources of inequalities for future cohorts, and measures to support individuals with shorter or atypical employment careers to help them build sufficient pension rights (AGE, 2009).

This network has thus stepped up the criticism of pension privatisation and the development of supplementary funded schemes to protect old-age risks. The effect of the crisis is assumed to have been exacerbated by recent developments as concerns pension funds. Yet it is still questionable whether the network may change the EU agenda in the field.

**Conclusions**

This article has shed light on the three dimensions of the EU debate on pension policy. The financial and economic crisis has affected all three related networks and consequently the debate about pension reforms and the role each pillar is expected to play. The crisis has largely shaped the key messages proposed at EU level.

The first network is related to the aim of completing the single market. The DG responsible for the internal market took up the issue while, during the 1990s, various actors, especially economic and financial players, became increasingly involved. The network, centred on the internal market directorate, consists of numerous lobbying groups sustained – willingly or not – by academic networks that are influential in their field. These institutions shared the same guidelines and policy
goals, while other non-state actors advanced more differentiated arguments. The last year has seen a shift in the way the network on the single market for pension funds has approached the pension challenge. Competent European institutions have stressed the need to revise EU regulation and supervision of financial markets. Stricter control over the investment strategies of pension fund managers has been demanded. Stakeholders have agreed on that but stressed the need to consider the specificities of pension funds (especially IORPs) and their improved performance in the last years.

The second circle consists of macroeconomists orbiting around the EPC. Here, the groups involved are asymmetrical, and the unions are poorly represented. Although the Member States control the agenda with precise mandates determined by the Heads of State and national governments, the Commission now has the task of keeping this agenda, and its associated reforms, open at national level. Discussion has had to take on board different interests and become less fragmented than previously. National reforms undertaken under the auspices of qualifying for monetary union have stimulated debate on more significant and radical innovation. The network on the sustainability of pension systems has put particular emphasis on the sustainability of private pensions, with accompanying demands for a revision of the broad strategy for privatisation. Long-term financial viability of pension systems has been approached through complex sets of measures based on structural reforms, debt and deficit reduction, and especially the raising of employment rates.

The Ministers of Social Affairs, and the related network, have succeeded in placing other aspects on the agenda, going beyond financial matters. They have also managed, thanks to the support of the Social Protection Committee, to develop the common understanding necessary for further discussion. This third and much more fragmented network surrounds the SPC, which aims to place greater emphasis on the social purpose of pensions. Here, non-state actors participate merely through consultation by the SPC, formal in the case of social partners, informal in that of NGOs. This network has stepped up the criticism of pension privatisation and the development of supplementary funded schemes to protect old-age risks. The effect of the crisis is assumed to have been exacerbated by recent developments as concerns pension funds.
Recent developments in the way the three networks have framed the main challenges to pension systems prove that the crisis may lead to wider debate on the role of each type of pension programme belonging to the first, second and third pillars. Consideration of the social adequacy of present and especially future benefits has gained momentum in the social network, as well as in the more economic and financial ones. In parallel, disagreements about the role of the market have become more evident. All this may destabilise the previous interplay between the three networks mentioned above and has a direct influence on the struggle between advocates of the development of private pension schemes and supporters of the ongoing role of public pension systems.

References

AGE (2009), Statement on pensions, Ensuring adequate pensions for all in the EU – a shared responsibility for society, European Older People’s Platform, Brussels (www.age-platform.org).


CEC (2009b), Feedback statement: consultation on the harmonization of solvency rules applicable to institutions for occupational retirement provision (IORPs), Brussels, 16 March 2009.

CEC (2009c), Summary of panel discussions, Consultation on the harmonization of solvency rules applicable to institutions for occupational retirement provision (IORPs), Brussels, 27 May 2009.


CEC (2009f), Dealing with the impact of an ageing population in the EU, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2009) 180 final of 29 April 2009.


EIOPC (2009), Draft minutes of the 13th meeting of the European Insurance and Occupational Pensions Committee, markt.h.2 (2009) 307624.


ETUC (2009c), Social Protection Newsletter, No.15/2009, European Trade Union Confederation, Brussels.

Pensions in turmoil owing to the crisis: key messages from the EU


SPC (2009a), Second Joint Assessment by the SPC and the European Commission of the social impact of the economic crisis and of policy responses, SOC 715, 16169/09, ADD1, Brussels, 24 November 2009.


Trichet, J.C. (2009), Insurance companies, pension funds and the new EU supervisory architecture, speech at the CEIOPS conference, Frankfurt am Main, 18 November 2009.
Main developments in European cross-industry social dialogue in 2009: ‘bargaining in many shadows’

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2009 promised in many respects to be an interesting, challenging as well as very difficult year for the European cross-industry social dialogue. The European social partners ETUC/BusinessEurope/UEAPME/CEEP not only had to submit their third autonomous work programme, but also agreed to engage in several important negotiations/talks more or less outside the margins set out in that work programme, such as the negotiations on a revised parental leave framework agreement/directive and the so-called ‘joint talks’ on the implications of the European Court of Justice (ECJ) judgments Viking, Laval, Rüffert and Commission vs. Luxembourg. Furthermore, there was the backdrop of the economic crisis which would certainly not facilitate these different excercises, in particular the negotiations on an autonomous framework agreement on inclusive labour markets. And finally, there were the scheduled institutional changes such as the European Parliament elections, the establishment of a new European Commission and the full ratification by all the EU-27 of the Lisbon Treaty, which would/will all have implications for the future (role) of

1. Cases C-438/05, C-341/05, C-346/06 and C-319/06 respectively. All case law is available on the ECJ website at: http://curia.europa.eu/jcms/jcms/101_6308/. For more information on all these cases, including fact sheets, trade union and academic commentaries, etc., see the specific ETUI website section on the ECJ cases at http://www.etui.org/en/Headline-issues/Viking-Laval-Rüffert-Luxembourg.

2. The Lisbon Treaty finally entered into force on 1 December 2009 following its ratification by the Czech Republic and entails several changes to the articles related to the European social dialogue (former Articles 138-139 of the Nice Treaty). Firstly, a new article (Article 152) has been added at the beginning of the chapter devoted to social policy. It states: The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of the national systems. It shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue’. This article thus extends recognition and promotion of the European social dialogue from the Commission (as stipulated in ex-Article 138 TEC) to the
European social dialogue at both cross-industry and sectoral level. In this chapter, it is aimed to provide a comprehensive albeit concise overview of the most important features, processes and outcomes over the past year in the European cross-industry social dialogue.

1. **Third autonomous work programme 2009-2010**

With 2008 – and thus the term of their second work programme 2006-2008 – nearing its end, the European social partners started their negotiations on the orientation and content of their third autonomous work programme in October 2008. Whereas the ‘Lisbon Strategy’ formed the overarching context for the actions planned under the first two autonomous work programmes 2003-2005 and 2006-2008, this work programme has thus been configured with as a background an economic and financial crisis which was clearly also going to have a hugely detrimental social impact on citizens and workers throughout Europe. The introduction to the third work programme leaves no doubt about this when stating that ‘the European social partners are aware of the new context created by the current financial and economic crisis and are ready to consider the short, medium and long term implications this will have on workers and employers. To foster sustainable development, the European social partners consider that Europe needs to restore economic growth, to improve competitiveness, productivity and job quality, to achieve full employment and social progress and to enhance environmental protection. In this context, they will seek to

Union and also gives Treaty status to the most important instrument for tripartite concertation, the Tripartite Social Summit. Furthermore, there are two further changes to the former Articles 138-139 TEC (now Articles 153 and 154 TFEU) clarifying, firstly, that framework agreements incorporated into a Council decision (like the ones on parental leave, part-time work and fixed-term work) may also be implemented by the social partners at national level like directives that are adopted through the classic legislative procedure. Secondly, according to paragraph 4 of Article 154, the European social partners can already enter into negotiations after the first consultation and not only at the stage of the second consultation as before. A consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union is published in the Official Journal C 115 of 9 May 2008 and is available at: http://eur-lex.europa.eu/en/treaties/index.htm.

3. For an overview of the context, content and implementation of this work programme, see: Schömann (2009) and the ETUC/ETUI Benchmarking Working Europe reports for 2007, 2008 and 2009.
evaluate the appropriate mix of macro, micro and labour market policies conducive to stabilising the economy and to reaching sustainable growth and high levels of employment’ (ETUC et al., 2009a). Furthermore, the European social partners also opted for the first time for a two-year programme (instead of three), as its completion would thus coincide with the end of the Lisbon Strategy in 2010 and enable them to take account in any future work programme of whatever will be the major orientations and actions identified for and contained in the new ‘post-Lisbon’ strategy. Just as for their second work programme 2006-2008, they again opted for a ‘qualitative’ rather than ‘quantitative’ approach, thereby focussing on only a few but important issues and actions, not least because there were still several actions from that second work programme which still had to be finalised and/or embarked on. These included amongst others:

— the negotiation and implementation of an autonomous framework agreement on inclusive labour markets;

— finalisation of the national studies on economic and social change in the EU-27 in order to effectively manage change and restructuring;

— the negotiation of a framework of actions on employment;

— continuation of the work on capacity building for social partners in an enlarged EU, in the EEA and in candidate countries, including further developing the activities of the social partners’ respective resource centres4;

— monitoring, assessing and evaluating the implementation of EU social dialogue framework agreements and frameworks of actions; and

— further development of their common understanding of the various instruments resulting from their negotiations, determining

4. As concerns the ETUC, this resource centre can be found at: http://resourcecentre.etuc.org/. The employers’ resource centre can be found at: http://www.erc-online.eu/Content/Default.asp.
their impact on the various levels of social dialogue, and further co-ordinating the various levels of social dialogue and negotiations, including the development of better synergies between European cross-industry and sectoral social dialogue.

As for entirely new actions, they identified the following ones:

— a joint recommendation aimed at contributing to the definition of the post-2010 Lisbon Agenda, including in the context of the current economic and financial crisis;

— the development of a joint approach to the social and employment aspects and consequences of climate change policies with a view to maximising opportunities and minimising negative effects and to identify possible joint actions;

— jointly monitoring the implementation of the common principles of flexicurity, notably in order to evaluate the role and involvement of the social partners in the process and to draw joint lessons; and

— jointly addressing mobility and economic migration issues and promoting the integration of migrant workers in the labour market and at the workplace in order to identify possible joint actions.

Although the intention had been to present this work programme officially to the Tripartite Social Summit in March, its finalisation was slightly delayed and it was thus officially presented on 7 May 2009 in the framework of, and as clear signal to, the special European Jobs Summit held in Prague on that same day. Due to this small delay, but mainly because in 2009 the European social partners devoted most of their time to finalising actions/negotiations under the second work programme as well as to social dialogue exercises falling somewhat outside the scope of their work programme (see different subchapters below), no real joint activities (e.g. in the form of joint seminars/conferences, joint studies and/or joint discussions/negotiations) were undertaken on any of the new issues/themes. They have however set 3 February 2010 as the date for a meeting to kick off the discussions on the joint recommendation aimed at contributing to the definition of the post-2010 Lisbon Agenda.
2. Towards an autonomous framework agreement on inclusive labour markets

In the 2008 issue of Social Developments in the European Union, Isabelle Schömann already reported on the history and context of these negotiations (Schömann, 2009). Indeed, although the second work programme 2006-2008 foresaw negotiations on an autonomous framework agreement on either lifelong learning or the integration of disadvantaged groups into labour markets, it was decided as both issues were so interlinked to refocus the topic for negotiations and try to agree on a framework agreement regarding so-called inclusive labour markets. The actual negotiations started on 17 October 2008 and from the beginning, the negotiations proved to be very difficult for several reasons. First of all there was the fact that the negotiations started off at a moment where the crisis (and the impact it would have on the social side as well) was omnipresent. Although both sides of the negotiating table agreed that, in the current times of crisis, the issue at stake was all the more pertinent and that dealing with it was even more important and urgent, the argument over the crisis overshadowed the negotiations on several occasions and on several points. In particular, on how far each of the actors concerned (social partners, public authorities, individual workers and jobseekers, etc.) bore (shared) responsibility, but more importantly on who should pay for the action to be taken.

Furthermore, the European social partners started from sometimes very divergent points of view. Firstly, there were the initial diverging views on who should be covered by the agreement. Whereas the employers wanted to target primarily those currently outside the labour market and needing to be (re-)included (the so-called ‘outsiders’), the trade unionists not only wanted to cover those outside the labour market but also those who were currently in the labour market but at risk, e.g. because of restructuring, as well as to ensure that all workers could also make progress in the labour market (i.e. the so-called ‘insiders’). Secondly, there was also an initial diverging view on who should bear the main responsibility for ensuring labour market inclusion, whereby the employers considered the responsibility of the individual worker/jobseeker a very important factor, whereas the trade union side preferred to focus rather on the ‘collective’ responsibility of enterprises, trade union and public authorities. Thirdly, there was also
the very thin borderline between what concrete actions the social partners could actually undertake jointly and what is rather the shared and/or exclusive responsibility/competence of others (i.e. public authorities, NGOs, social economy, education systems, etc.).

Despite all this, and after more than ten months of negotiations and 15 meetings of either the full negotiating delegations and/or the so-called drafting group, the European social partners were able to reach a draft autonomous framework agreement on 9 December 2009. In a sense, this is a truly innovative agreement as never before have the European social partners tried to cover such a vast and complex matter in a framework agreement. Having to cover such an overarching issue, entailing competence for taking action in often very divergent fields (labour law, labour market policy, social security, taxation, education, etc.), certainly did not always facilitate the negotiations.

The text of the draft agreement reached consists of three parts: the agreement as such, comprising six clauses, an annex containing several recommendations of the European social partners to public authorities and others (e.g. social economy, NGOs, education systems) and an annex listing several existing European legislative and non-legislative instruments whose implementation and application is particularly relevant in order to achieve the aims and principles set out in this draft framework agreement. As for the six clauses forming the actual body of the agreement, they concern more particularly:

5. For the record, concerning the full negotiating delegation, on the ETUC side each country concerned (EU/EEA/candidate country) can nominate one representative (irrespective of whether trade union pluralism exists in the country or not; in case of such pluralism the different affiliated trade unions decide amongst themselves which organisation will be representing the country) as well as a pre-determined number of members representing the European Industry Federations affiliated to the ETUC and the ETUC Women’s Committee. Furthermore, the so-called liaison committee Eurocadres-CEC also has the right to nominate a representative. On the employers’ side, the three organisations BUSINESSEUROPE, CEEP and UEAPME decide amongst themselves about the concrete composition of their delegation. On each side, and depending on the issue as well as taking into account the geographical context, the negotiating delegation appoints from its members the colleagues to be at the so-called drafting group, which tries to arrive at actual drafting proposals based on the orientations and regular feedback given by the respective negotiating delegations.

6. Certainly when one compares this to earlier more ‘easier’ or at least ‘more targeted’ issues like for example parental leave, fixed-term work, telework or harassment and violence at work.
An introduction describing the ‘history’ of the exercise (i.e. the work programmes of the social partners) as well as the context in which the negotiations took place (the economic crisis as well as the fact that they recognise that achieving inclusive labour markets does not only depend on their actions but also on those of others such as public authorities, etc.).

A clause highlighting the aims of the agreement, in which it is clearly spelled out that the agreement concerns not only access but also the return to, retention in and development within the labour market of each individual (cf. above on the diverging views of the target groups). In that sense the agreement aims at increasing the awareness, understanding and knowledge of employers, workers and their representatives of the benefits of inclusive labour markets as well as to provide workers, employers and their representatives at all levels with an action-oriented framework to identify obstacles to inclusive labour markets and solutions to overcome them.

Clause 3 on ‘description and scope’ again spells out that the framework agreement covers those persons who encounter difficulties in entering, returning to or integrating into the labour market and those who, although in employment, are at risk of losing their job, all of this being due to different factors which may be of a contextual, work-related or individual nature. For each of these categories of factors, some clear examples are provided.

Clause 4 on the other hand provides a non-exhaustive list of obstacles which can occur for people willing to enter, stay in or progress on the labour market. Again a non-exhaustive list of obstacles are enumerated, which may relate amongst others to 1) availability of information, 2) recruitment, 3) training, skills and capabilities and/or 4) working life in general (e.g. working conditions and environment).

The actual solutions to achieving more inclusive labour markets, for the achievement of which the European social partners consider themselves (and their affiliates) the main actors, are set out in Clause 5 in a non-exhaustive way.

Clause 6 forms the traditional implementation and follow-up clause and is quite similar in its wording to corresponding clauses in the previous
autonomous framework agreements on work-related stress and harassment and violence at work.\footnote{As for the autonomous framework agreement on harassment and violence, it should be highlighted that the Social Dialogue Committee adopted on 16 June 2009 the second annual table on the implementation of this framework agreement; the text is available along with others at: http://resourcecentre.etuc.org/linked_files/documents/Final_joint_table_2009%20harassment_violence_EN.pdf. As for the autonomous framework agreement on work-related stress, reference could be made to the fact that on 2 July 2009 the European Commission organised a major conference entitled ‘Tackling work-related stress in the EU – Lessons learned from the European social partners’ agreement’. All documents (including a DVD presenting the agreement via interview of representatives of the European social partners and other stakeholders are available at: http://ec.europa.eu/social/main.jsp?catId=329&langId=en&eventsId=85&furtherEvents=yes. The conference was also intended as a launching pad for the work on the Commission’s own implementation report which it envisages to publish in summer 2010.}

As mentioned, the agreement is complemented by two annexes. Annex 1 lists a whole range of actions which the European social partners think lie within the competence and responsibility of other actors in first instance. The second annex refers to relevant existing European legislative and non-legislative texts, such as directives (e.g. on fixed-term work, part-time work, and non-discrimination), as well as former framework agreements or other joint texts agreed upon by the European social partners.

At the time of writing of this article, the draft agreement had been submitted to the respective member organisations of the European social partners for their internal consultation with a view to its eventual formal adoption by the respective decision-making bodies of the European social partners. Following that, it will certainly be interesting to see and monitor how the various stakeholders (public authorities, NGOs, etc.) to whom the agreement is addressed and who need to be involved will respond to it and actually act upon this framework agreement.

3. The joint declaration on the economic crisis

At the beginning of 2009 and looking ahead to the Tripartite Social Summit of March 2009, the European social partners also engaged in joint talks with a view to delivering at the Summit a Joint Declaration
on action to address the current financial and economic crisis’ focussing mainly on the social and labour market implications of the crisis and also including an annex with recommendations of the European social partners on how the European Social Fund (ESF) can support economic recovery. The objectives of the declaration were 1) to recall the specific contributions which the European social dialogue was expected to deliver in relation to the crisis via its third work programme (see above), 2) to specify the urgent measures European social partners considered necessary in the short run to stabilise the economy and limit the most severe social consequences of the crisis, 3) to describe the medium-term actions they considered necessary to turn the economy round and restore job creation, and 4) to recall the need to intensify consultations with them by the EU institutions. However, after several intense debates, the European social partners could not reach a consensus on the content of such a joint declaration. Although there were several reasons for this, one was for instance that ETUC wanted a declaration with would clearly and emphatically specify what were the real reasons for the crisis and thus not hide this behind soft language or analyses. ETUC wanted the declaration to clearly spell out that it was the lack of a Social Europe and a social dimension as well as the unregulated and uncontrolled financial markets which had caused all this and also had further exacerbated social inequalities, including income inequality. The employers’ side could not however accept such strong language. Another major reason was that the employers’ side wanted to integrate into the text a call for a general (and at least temporary) reduction of labour costs via the reduction of employers’ contributions, this being for all incomes irrespective of size. The trade union side could not accept this, as it considered this might (further) undermine social security systems throughout Europe, the (financial) sustainability of which – in particular in times of economic but also social crisis – had to be upheld and ensured. Despite the failure to reach a consensus on the declaration, the European social partners did however achieve a compromise on 7 May 2009 on ‘Joint recommendations on support to economic recovery by the European Social Fund’.

In this document the European social partners recognise that the ESF represents the EU’s main financial instrument for investing in people by supporting the implementation of active inclusion measures, activation measures, re-training and skills upgrading. However, and in order to ensure maximum impact, part of the ESF’s resources should be redirected to priority areas with immediate relevance to the crisis. They list a number of measures to improve access to ESF resources as well as to maximise the impact of the ESF on labour markets, especially as to how ESF support could maintain employment, encourage entrepreneurship and new jobs and help to increase employment of young people in particular. The European social partners furthermore ask to be involved in decision-making and implementation processes regarding the ESF at all levels.

4.  The ‘ECJ talks’

In the course of 2007 and 2008, the European Court of Justice (ECJ) interpreted existing European rules on posting of workers in the context of the freedom to provide services (Laval, Rüffert and Commission vs. Luxembourg cases)\(^9\) and on the freedom of establishment (Viking case)\(^10\). In these judgments, the ECJ gave in particular its interpretation of the relationship between fundamental social rights and economic freedoms in the internal market.

In October 2008, the European Commission and the French Presidency of the Council called on the European social partners to jointly develop an ‘analysis of the consequences of the ECJ cases and of the challenges related to the increased mobility in Europe’, and thus contribute to the re-establishment of confidence in the further development of the internal market. This invitation was accepted by all of them, although with some hesitation and reservation on both sides and also very low expectations on a positive outcome, given the very divergent views on the issue from the outset. It was deliberately decided not to call this

\(^9\) Respectively C-341/05, C-346/06 and C-319/06. All case law is available on the ECJ website at: http://curia.europa.eu/jcms/jcms/jcms/Jo1_6308/.

\(^10\) Cases C-438/05. All case law is available on the ECJ website at: http://curia.europa.eu/jcms/jcms/jo1_6308/.
exercise negotiations, but ‘talks’, in order not to give the impression that the European social partners might come up with an Agreement on this topic. It was also intended to make this a very quick exercise, but due to the often widely diverging opinions the discussions became delayed, have been extended several times and were even on the verge of breaking down on several occasions. In the meantime, during 2009 they have held three plenary meetings (30 March, 5 June and 26 October) and three meetings of a smaller-sized group (18 May, 26 September and 14 December).

The social partners are now hoping to find a consensus soon on what is called a ‘progress report’ on the state of play of the various discussions. This progress report is intended to highlight some of the points where they are in agreement on the possible consequences of the judgments; however most of the text as it stood at the time of writing this article highlights instead the divergent points of view on many other implications of the judgements. The European social partners have so far focussed their discussions around two central themes a) the context of the single market and the impact of the ECJ rulings, and b) the relationship between economic freedoms and fundamental (social) rights. Other issues which they intended to work on included: 1) the obstacles to be removed and the conditions to be put in place to improve free movement, and 2) the challenge of respecting the diversity of national industrial relations systems and the eventual responses to these challenges.

A further plenary meeting is scheduled for 18 and 19 January 2010, at which hopefully a final text of the progress report will be reached, so that it can be submitted and presented at the next meeting of the Social Dialogue Committee on 25 February 2010.

It should also be noted that, following the ECJ’s interpretation of the Posting of Workers Directive in several of these cases (e.g. that the Directive sets out ‘maximum’ rather than ‘minimum’ requirements), a huge debate is taking place amongst and between European social partners and European institutions on the possible need for a revision of this Directive. Whereas the employers’ side sees no real need for a revision of the Directive’s provisions but wishes, rather, to ensure a more effective implementation and application of it – in particular through enhanced cooperation between Member States and their
authorities (and seems to have backing here from for example the Commission and Council) – the ETUC calls for a revision of the Directive in several respects\textsuperscript{11}. In the meantime, the Commission has launched several activities in the form of research studies and a High-level Expert Group to examine and discuss the possible actions to undertake in relation to the revision of the Directive and/or strengthening of its implementation and application. Furthermore, Commission President Barroso, in his submissions to the European Parliament aimed at obtaining its support for his re-election, promised to look at the need for a regulation on the Posting of Workers Directive. The parallel existence of all these different processes (social partners’ talks, High-level Expert Group discussions, etc.), and in particular the clear interplay between them, has turned this issue into an extremely difficult and politically sensitive game of chess whereby any move in any of the processes might have a considerable impact in the other processes.

5. Towards a revised Parental Leave framework agreement/directive

On 18 June 2009, a new milestone in the European social dialogue was reached. Having started in September 2008, and after six months and seven rounds of negotiations, the European social partners signed a framework agreement revising their 1995 Framework Agreement on Parental Leave\textsuperscript{12}. It is in fact the first time in the history of the European social dialogue that such a revision exercise of a pre-existing framework agreement has been undertaken.

It is worth remembering that the Commission had already consulted the European social partners in October 2006 and May 2007 in a first and second stage consultation on the reconciliation of professional, private and family life, and, among other things, had addressed the issue of updating the regulatory framework at Community level. The Commission had thus encouraged the European social partners to

\textsuperscript{11}. The respective positions of the European social partners can be found on their respective websites.
\textsuperscript{12}. This framework agreement was incorporated into Directive 96/34/EC of 3 June 1996.
assess the provisions of their framework agreement on parental leave with a view to its review\textsuperscript{13}. On 11 July 2007, the European social partners jointly informed the Commission of their intention to evaluate the existing parental leave arrangements throughout Europe in connection with other work/life balance arrangements and to assess whether joint action on this issue was needed. They submitted the results of this evaluation in the form of a progress report on 13 March 2008 to the Tripartite Social Summit and expressed therein their wish ‘to undertake joint work on the Parental Leave Directive’\textsuperscript{14}. Although they recognised that the initial framework agreement/directive had been a catalyst for positive change and played a significant role in helping working parents in Europe to achieve better reconciliation, the European social partners considered that certain elements of the agreement needed to be adapted or revised in order to better achieve its aims. This included *inter alia* ensuring higher take up of parental leave by fathers and taking into account the growing diversity of the labour force and societal developments, including the increasing diversity of family structures. Formal negotiations started on 17 September 2008 and, although it was envisaged to be ‘a short exercise’, ended six months later on 23 March 2009\textsuperscript{15}. That the negotiations took longer than expected was certainly due to several factors, such as the fact that – in this author’s experience – the negotiation of agreements destined to become ‘hard-core law’ always proves harder and more awkward than any other negotiations. But the ‘crisis’ was in addition a decisive element, in particular as some on the employers’ side questioned whether negotiating more and better paid parental leave arrangements was the most important issue to tackle in times of (economic) crisis.

\textsuperscript{13} The formal Commission consultation documents are available at: http://ec.europa.eu/social/keyDocuments.jsp?type=50&policyArea=0&subCategory=0&country=0&year=0&advSearchKey=&mode=advancedSubmit&langId=en. The ETUC replies can be found at: http://www.etuc.org/r/1348.

\textsuperscript{14} The full progress report is available at: http://www.etuc.org/IMG/pdf_2008-00393-E.pdf.

\textsuperscript{15} It should be noted that only a few days before the start of the negotiations, on 3 September 2008, the European Parliament adopted a Resolution calling for the improvement of Directive 96/34/EC, including by providing more incentives for fathers, improving the employment rights of workers who take parental leave, making the leave arrangements more flexible, and increasing the duration of parental leave and pay during such leave (European Parliament Resolutions P6_TA(2008)0399).
Despite all this, the European social partners were able to make further progress in a constructive spirit towards ensuring enhanced possibilities for the reconciliation of private, family and professional life. The most concrete positive results are the following:

1. the introduction of one additional month of leave (4 months instead of 3 for each parent, of which at least one month is non-transferable) (Clause 2§2);

2. the strengthening of the ‘individual’ nature of the entitlement (Clause 2§1);

3. strengthening of the rights of ‘atypical’ workers (fixed-term, part-time, temporary agency work) to parental leave (Clause 1§3 and 3§1(b));

4. increased protection against unfavourable treatment as a result of exercising the right to parental leave (and thus not only in relation to dismissal, as in the 1995 agreement) (Clause 5§4);

5. the introduction of a new provision relating to a right to request flexible working arrangements upon return to work after parental leave, as well as the provision to ensure arrangements whereby the worker on leave is ‘kept in touch’ with what is going on in the enterprise during the leave period (Clause 6);

6. ensuring respect for diversity of family structures (lone parents, same sex couples, etc.) when establishing parental leave rights (Clause 1§1);

7. the need for recognition of the rights of, and need for special measures for, parents of children with disabilities or long-term illnesses (Clause 3§3).

16. The text of the revised framework agreement can be found at: http://www.etuc.org/IMG/pdf_Framework_agreement_parental_leave_revised__18062009.pdf
On the other hand, only limited progress has been made in regard of the following aspects:

— the principle of non-transferability for the whole period of leave: whereas already in the 1995 Agreement the whole period of parental leave was considered to be ‘in principle’ non-transferable, this principle was not always correctly applied in the Member States. This basic principle is still inscribed in the new version of the agreement, but — in particular to ensure a higher take up by fathers — it is now stipulated that the additional fourth month of leave may not under any circumstances be transferred between the parents (Clause 2§2 and Preamble 16);

— although on the trade union side there was a determination to ensure a clear reference and right to paid parental leave, the final text of the agreement provides only some references to the role and level of income in relation to the take up of parental leave, in particular by fathers (Clause 5§5 and Preamble 18-20).

Finally, it has to be admitted that it is a pity that the European social partners were not able to ensure changes to the following aspects:

— no increase in the age of the child (still 8 years – Clause 2§1);

— the new agreement only deals with parental leave and not with other forms of leave such as paternity leave, filial leave (i.e. leave for taking care of dependent family members), adoption leave, etc.;

— no new rules on the leave for reasons of ‘force majeure’ (Clause 7).

As for what one could call these missed opportunities, it is also noteworthy that the European Parliament’s Committee on Women’s Rights and Gender Equality discussed at its meeting of 29 September 2009 a motion for a resolution tabled by MEP Eva Britt-Svensson, in which the agreement is considered to be a ‘first step towards flexible methods for achieving a work-life balance’ and thus ‘supports the agreement between the social partners on parental leave and regards it as an important aspect of equal opportunities policy in support of the reconciliation of professional, private and family life’. It also welcomes the increased attention given to the rights of part-time, fixed-term and
temporary agency workers. However, the motion for a resolution also regrets that certain issues are not covered or are not adequately taken into account in the current framework agreement. These include amongst others: 1) no new rules on other forms of leave (like paternity and filial leave; the resolution therefore calls on the Commission to come up with concrete new legislative proposals); 2) the fact that the non-transferability was limited to only the additional month of leave and not the whole four-month period; 3) the way consideration was given to remuneration issues; 4) no increase in the age of the child providing the right to parental leave, etc.\textsuperscript{17}

On 30 November 2009, the European Council of Ministers of Employment/Social Affairs reached a political agreement on the text of the proposal for a directive incorporating this revised framework agreement\textsuperscript{18}.

6. Other activities

Next, as set out in their own work programmes, the European social partners also undertake to continue to take action both at bipartite and tripartite levels in reaction to European Commission proposals and initiatives. This includes the joint/separate replies to European Commission consultations under Article 154-155 of the EC Treaty of Lisbon (former Articles 138-139 under the EC Treaty of Nice). In 2009 the following thematic consultations were launched amongst others:

- 1\textsuperscript{st} Consultation on notifications by Member States under Article 17(5) of Directive 2003/88/EC (working time of doctors in training);


\textsuperscript{18} At the time of writing of this article, the directive was not yet published in the Official Journal and thus the final implementation date is not yet known.
— 1st Consultation of the social partners on the protection of workers from the risks related to exposure to electromagnetic fields at work, and

— 2nd consultation of the European social partners on the revision of exclusions concerning seafaring workers.

On 14 October 2008, the Commission launched another consultation with particular relevance for the European sectoral social dialogue but also for the cross-industry one. The consultation had as its objective ‘taking stock of the implementation of the Commission Decision of 20 May 1998, which set up the sectoral social dialogue committees with a view to better strengthen and promote the sectoral European social dialogue and its functioning in accordance with Articles 138 and 139 of the Treaty’.

As the Communication indicates, the European sectoral social dialogue has developed rapidly over the years, with – at that time – 36 committees established and several sectors preparing for the creation of new ones. Sectoral social dialogue produces outcomes of practical importance. Over 70 million workers and nearly six million undertakings can be covered by the social partners’ decisions, declarations and agreements at sectoral level. It thus proves the growing importance of sectoral social dialogue and the European commitment to support and enhance its role.

This is why the Commission invited the European social partners at both sectoral and cross-industry level to reply to a set of questions relating to the creation and functioning of the sectoral social dialogue committees (including questions relating to their autonomy, representativeness, perimeters of the sectors, their capacity to negotiate, their ‘administrative’ functioning, etc.), on the synergies between different actors (between Commission and sectors, amongst the sectors themselves, etc.) and on the implementation of their outcomes and their impact.

19. All the formal consultation documents can be found at: http://ec.europa.eu/social/main.jsp?catId=528&langId=en. As some issues relate to more sectoral matters, it might be possible that the European cross-industry social partners did not react to them but left it rather to the social partners of the appropriate sectoral social dialogue committees. In any event, the responses of ETUC, BUSINESSEUROPE, UEAPME and CEEP are in principle made available on their respective websites.
Some of the questions were particularly relevant for the relationship between European sectoral level social dialogue and dialogue at cross-industry level. For example, in section 3 on ‘Synergies and cooperation’, two questions pertained to the cooperation between sectors and the cross-industry level and asked in particular (1) how should sectors integrate cross-industry autonomous agreements in their work and reflection?, and (2) to what extent do social partners cooperate with the cross-industry social dialogue as well as with the European Works Councils?

Although many of the European Industry Federations (EIFs) affiliated to the ETUC\(^\text{20}\) submitted their sector specific replies, they also subscribed to a general reply which the ETUC had fleshed out in consultation with them (ETUC, 2009a). As for the questions above, the reply highlighted the following. Concerning the integration of cross-industry autonomous agreements in the work and reflection of the Sectoral Social Dialogue Committees (SSDCs), the ETUC is certainly in favour of such an approach and ready to contribute to doing so in any way possible. The ETUC considers that the Liaison Forum\(^\text{21}\) could serve as a forum where an initial introduction to the cross-industry agreements could be presented, but that there is in addition a clear need for concrete joint meetings between the cross-industry and sectoral social partners to discuss in depth the agreements reached and how the SSDCs could best use them in their own work. Another way of improving this integration is for the Commission to ensure that wherever desirable and envisaged, joint project applications by the sectoral social partners to adopt and implement these agreements are fully supported, including financially. Furthermore, the ETUC also considers that it would be very useful and mutually beneficial if representatives of the SSDCs could be invited to meetings of the cross-industry Social Dialogue Committee to present concrete results achieved via their sectoral social dialogue. As for multi-sectoral initiatives, the ETUC certainly welcomed the few examples so far made known. In particular, the ongoing multi-sectoral initiative to look at the possibilities for more targeted implementation of the cross-industry

\(^{20}\) For the moment 12 in total; for an overview see: http://www.etuc.org/a/17.

\(^{21}\) This Liaison Committee could best be described as a meeting platform to which representatives not only of the different sectoral social dialogue committees but also of the European cross-industry social partners are invited and where they can present and discuss activities and outcomes reached in their respective dialogues in a cross-sectoral and cross-level way and thus learn from each others’ experiences and raise awareness of the results achieved.
framework agreement on harassment and violence is to be welcomed and supported.

BusinessEurope highlighted in its reply of 27 November 2008 (BusinessEurope, 2008) first of all the fact that sectoral social dialogue is the appropriate place to tackle subjects specific to the sectors concerned. For horizontal themes, concertation or negotiations between the social partners should take place in the cross-industry social dialogue, where sectors play a role through national employers’ associations and feed into national coordination procedures. It further stressed that sectoral organisations are also invited to participate in negotiations that take place in the cross-industry social dialogue if sector-specific aspects make it necessary. Past experience includes the negotiations on part-time work, fixed-term work and temporary agency work. On the other hand, in the framework of the European sectoral social dialogue, BusinessEurope considers that sectoral social partners must be free to choose their discussion themes and how they organise their social dialogue. They may decide to develop initiatives which build upon or are in line with cross-industry social dialogue activities or agreements.

CEEP for its part considers the cooperation between both levels of EU social dialogue as essential and believes that it should be further improved. On the sectoral social partners’ side there is the evident need to better evaluate whether and when cross-industry agreements can be a starting point for their discussions, in order to check whether the necessarily broad cross-sectoral instruments need any integration or specification at sectoral level. They also refer to the ongoing multi-sectoral work on third party violence. However, CEEP’s evaluation of sectoral initiatives is less positive: they simply replicate what has already been signed at cross-sectoral level. CEEP feels in fact that those initiatives do not bring mutual strength but on the contrary they weaken social dialogue effectiveness. CEEP also considers that the information given during Social Dialogue Committee (SDC) meetings about current activities at sectoral level is sporadic and always left to EC representatives. Therefore, CEEP attaches particular importance to the implementation of the 2009-2010 work programme of the European social partners stating that they will ‘further coordinate the various levels of social dialogue and negotiations, including the development of better synergies between European inter-professional and sectoral social dialogue’. This should lead, in practice and amongst other things, to systematically inviting to SDC meetings any sectoral social partners who
have just reached new agreements, in order to present their initiatives and have an exchange of views on possible repercussions for the cross-industry work (CEEP, 2009)\textsuperscript{22}.

Finally, UEAPME stresses first of all that both dialogues should have well defined tasks and responsibilities, with a clear demarcation between cross-industry and sectoral level. It is important to better differentiate between subjects that should be dealt with at cross-industry level and subjects that should be dealt with by sectors. Cross-industry social dialogue should deal with horizontal economic, social and employment issues, whereas sectoral social dialogue should deal with specific matters affecting the branches of industry, including when necessary the adaptation to their sectors of the framework conditions and agreements decided at cross-industry level. In terms of content, the adaptation at sectoral level of EU framework agreements such as the ones on telework and stress has proved the practical complementarity between the cross-industry and sectoral levels. However, for UEAPME, optimal functioning of the two levels of social dialogue requires good coordination and well organised reciprocal flows of information on their respective activities. Furthermore, it also considers that the Liaison Forum offers a good platform for exchanges of information at various levels between the stakeholders. This is primarily a place for the European Commission to inform the European social partners, but sometimes in the past it has even been used for consultations with all the European social partners. It is also a structure where the two levels of European social dialogue, cross-industry and sectoral, meet and present their results and exchange views (UEAPME, 2008)\textsuperscript{23}.

All the respective replies to this review exercise were presented and discussed with all stakeholders at a seminar held in Brussels on 24 April 2009. Based on the replies received and the discussion at the seminar, the Commission is currently preparing a Communication, in which it is expected to express its views on the future direction of the European sectoral social dialogue. This Communication is likely to be published in the spring of 2010.

\textsuperscript{22} The reply is available at: http://www.ceep.eu/images/stories/pdf/Opinions/ responses/CEEP%20Answer%20Consultation%20SSD.pdf

Conclusions

It was the late Professor Brian Bercusson who described the European social dialogue as ‘bargaining in the shadow of the law’\(^{24}\), referring to the fact that the European social partners had been able to obtain a co-regulatory role in the European legislative process by having the capacity of negotiating framework agreements subsequently incorporated into directives, but also referring to the fact that – at least in the early years – they only ever negotiated when there was a serious threat that the Commission would launch legislative proposals if the European social partners did not start negotiations or could not successfully complete them.

The European social dialogue in 2009 could be described as ‘bargaining in many shadows’. Firstly, there has been the shadow of European institutional reform. 2009 saw the advent of a new European Parliament where a further rightward shift in the political majority might not prove favourable, at least for the trade union side, and might thus influence the already fragile power relationship between them and the employers’ side in respect of entering into negotiations or reaching agreements. There was also the inauguration of a new European Commission, and at least judging by the political priorities set out by Mr. Barroso himself in his ‘Europe 2020’ agenda, it is clear that the social dimension – apart from tackling unemployment in the wake of the economic crisis – seems once again not to be high up on the priority list. Furthermore, there was also at long last the coming into force of the Lisbon Treaty in December 2009, which at least provides for some new and promising avenues to make progress in the social arena as well as in the European social dialogue as such\(^{25}\). And, finally, it remains to be

\(^{24}\) See Bercusson (1990); as Professor Bercusson sadly passed away in 2008 and was a true friend of the (European) trade union movement, the ETUI honoured him by publishing a selection of his writings including this landmark article. For full details of the book of selected writings, see the references.

\(^{25}\) See footnote 3. Furthermore, and at least for the ETUC, it would be worth exploring how one could build on some positive social features, such as:
- the reinforcement of social values and principles (such as solidarity, equality and gender equality, non-discrimination, etc.);
- the social and employment objectives (‘full employment’, ‘social market economy’);
- the incorporation of the Charter of Fundamental Rights;
- the right of initiative for citizens;
seen how the outcomes of the Commission’s review of the European sectoral social dialogue will not only influence and/or reorient that dialogue, but also whether or not it has implications for the interplay between the European social dialogue on the cross-industry and sectoral level.

Secondly, there was the shadow of the social partners’ own work programmes, in two senses. On the one hand, 2009 saw the adoption of the third autonomous work programme, which not only contains a lot of ‘left-overs’ from the second work programme but was also developed in the wake of what will become the post-Lisbon Strategy but of which the content is – at least at the time of writing this article – still very unclear. On the other hand, and as described above, the European social partners agreed to enter into a number of exercises falling outside the margins of, or rather lying in the shadow of, their work programmes, such as the talks on the ECJ cases and the negotiations on the revised parental leave agreement; the European social partners expended a good deal of time and energy in trying to finalise them in a successful manner.

Thirdly, there was the shadow of the economic crisis. In fact one could state that the ‘spectre of the crisis was omnipresent in 2009 and clearly ‘overshadowed’ many if not all of the discussions. Although several discussions, including the one on the joint declaration as well as the ones on the framework agreement on inclusive labour markets, were certainly pertinent and now was the right time to tackle them, the argument of the crisis by no means facilitated the negotiations on them or on the European social dialogue in general.

Despite all the above, the European social dialogue at cross-industry level still proved its added value for the development of Social Europe. Of course, not everything was rosy but at least some tangible steps forward were made via the Revised Parental Leave agreement and the draft autonomous framework agreement on inclusive labour markets

- the legal base for services of general interest, and
- the social clause.

See for more information on this the ETUC Resolution on ‘ETUC and the Lisbon Treaty’ available at: http://www.etuc.org/a/6741.
Main developments in European cross-industry social dialogue in 2009

(although at the time of writing it was still unclear whether this would be accepted by all the European social partners’ respective decision-making bodies).

References


ETUC, BusinessEurope, UEAPME and CEEP (2009b), ‘Second annual table on the implementation of the ETUC/ BusinessEurope -UEAPME/


ETUI and ETUC (2009), Benchmarking Working Europe 2009, ETUI, Brussels.


EU pharmaceutical policies: direct-to-consumer advertising

Rita Baeten

Introduction

The clash between the EU’s internal market rules and the national competence for healthcare and social protection becomes particularly evident in the field of EU pharmaceutical policies.

Spending on pharmaceuticals accounts for a significant proportion of total health spending in the EU countries. Increased consumption of pharmaceuticals due to the marketing of new drugs and the ageing of populations has been a major factor contributing to increased overall health expenditure (OECD, 2009). Pharmaceutical pricing and reimbursement policies are therefore key elements of national health policies.

Despite healthcare remaining a national-level competence, the evolving EU regulatory framework increasingly impacts on pharmaceutical policies in particular with regard to financing. European legislation ensuring the free movement of pharmaceutical products covers key aspects of pharmaceutical policies. These include market authorisation, data protection, advertising, wholesale distribution and the content of package leaflets. Most of these matters were agreed in the run-up to the 1992 deadline for the Single European Market (SEM). However, with deadlock preventing any further progress in the SEM – particularly over pricing and reimbursement policies – the Commission’s focus has shifted towards improving the competitiveness of the industry, the pharmaceutical sector being a key economic sector in the European

1. I would like to thank Tammy Hervey and Ilaria Passarini for their constructive comments and feedback on earlier drafts of this chapter.

2. Accounting for between 8 and 27% of health expenditure in the EU Member States (OECD, 2009).
Union (Permanand and Mossialos, 2005). EU pharmaceutical policies have until recently fallen under the responsibility of the European Commission’s DG Enterprise, whose task it is to ensure that EU policies contribute to the lasting competitiveness of EU enterprises.

This chapter will highlight these tensions by analysing the recent EU legislative initiatives aiming to relax the prohibition on pharmaceutical companies advertising to the general public pharmaceutical products that are subject to medical prescription.

Direct-to-consumer advertising (DTCA) of prescription drugs is only permitted in New Zealand and the United States. In 2008 the pharmaceutical industry poured $5 billion into DTCA in the US (Humphreys, 2009). Evidence shows that DTCA is increasing demand for those medicines that are most heavily advertised and is driving sales especially for newer, more expensive drugs for conditions with enormous market potential. It increases demand for drugs that are not necessarily needed, effective or the best value for money. It furthermore prioritises drugs over other treatments and lifestyle changes (see e.g. Law, 2009 and Toop, 2006). The resulting rising costs have also put the issue of drug marketing on the agenda of the current reform of the US health-care system (Humphreys, 2009).

Community legislation prohibits the advertising to the general public of medicines subject to prescription but does allow advertising for other medicines under certain conditions (European Parliament and Council, 2001). The rationale behind this ban is that advertising would boost healthcare expenditure, without necessarily contributing to health gains, and that the needless consumption of drugs can be harmful to health.

A proposal to weaken the EU’s ban on advertising prescription-only medicines to the public was overwhelmingly rejected by the European Parliament and the Council in 2003. Despite this, the Commission managed at the end of 2008 to present a new proposal to weaken this ban for direct-to-consumer advertising on prescription-only drugs. The European Commission has been able to keep this issue on the EU policy agenda for more than ten years. In this chapter we will try to understand how the Commission has done so and why. We will trace the antecedents of the proposal currently under discussion and will
demonstrate that industrial interests rather than health and social concerns have been driving this policy.

Our analysis illustrates the imbalance between the economic and social policy objectives of the EU and reveals a natural alliance between the Commission’s single market priorities and the industry’s economic demands. Whereas subsidiarity ensures that the Commission has competence over industrial policy matters alone, its institutional leaning is towards the interests of industry (Permanand, 2006).

1. Direct-to-consumer advertising on the EU political agenda

DTCA of drugs has been legal in the United States since 1985, but only really took off after 1997, once the US Food and Drug Administration changed its rules and eased up on a rule obliging companies to offer a detailed list of side-effects in their ‘infomercials’ (Humphreys, 2009). Ever since then, the pharmaceutical industry has been exerting pressure for DTCA to be allowed in Europe and has managed to put the issue on the policy agenda. Similar discussions about revising the ban on advertising are taking place in Canada and Australia.

The industry’s strategies to increase pressure are well illustrated in a ‘battle plan’ for DTC marketing in Britain and Europe, presented by the Association of the British Pharmaceutical Industry (ABPI) in 2000. It announced: ‘to employ ground troops in the form of patient support groups, sympathetic medical opinion and healthcare professionals – known as “stakeholders” – which will lead the debate on the informed patient issue. This will have the effect of weakening political, ideological and professional defences (...)’. Then the ABPI will follow through with high-level precision strikes on specific regulatory enclaves in both Whitehall and Brussels’ (Boessen, 2008).

The issue was put on the policy agenda for the first time during the so-called ‘Bangemann’ round tables, which were set up by European Commissioner Bangemann at the end of the 1990s to discuss the completion of the Single European Market in pharmaceuticals with Member States and industrial interests. At the final round table in December 1998 DTCA was a central topic, based on a Communication
in which the Commission argued for the issue to be examined in greater depth (Boessen, 2008). The issue was presented in the context of the influence of electronic commerce on advertising (Commission of the European Communities, 1989).

During the same period, the European Commission’s DG Enterprise asked the Pharmaceutical Committee – an advisory committee composed of Member States and chaired by the Commission – to set up a working group to review DTC advertising issues. The establishment of such a working group had been requested by the pharmaceutical industry at a meeting of the Transatlantic Business Dialogue in 1998. This forum, composed of major American and European companies, is convened by the US Administration and the European Commission and aims to help establish a Barrier-Free Transatlantic Market\(^3\). However, since Member States only agreed to provide the working group with an extremely limited mandate, it met just once to circulate a questionnaire (Boessen, 2008).

Two years later, in spite of the clearly limited appetite among Member States, the European Commission presented, in the framework of the so-called ‘pharmaceutical review’, a legislative proposal to partially lift the ban on DTCA. The proposal allowed manufacturers, in a five-year pilot study, to inform patients about their medicinal products for HIV, AIDS, diabetes and asthma (CEC, 2001). The idea to change the legislation on DTCA was not at any point discussed politically with Member States or Parliament before the proposals were put forward, although the stakes for national healthcare budgets were extremely high. Member States were informed at a special meeting of the Pharmaceutical Committee only days before the review was officially presented to the press (Pharmaceutical Committee and Veterinary Pharmaceutical Committee, 2001; Boessen, 2008).

The plan met with severe criticism in the European Parliament and the Council. The Parliament rejected the proposal at first reading by an overwhelming majority of 494 votes against, 42 in favour and 7 abstentions, and this notwithstanding the fact that the rapporteur on

the issue, Françoise Grossetête, was much less critical of the Commission proposal (European Parliament, 2002).

The European Parliament did nevertheless ask the Commission to present a report outlining a comprehensive consumer/patient information strategy to ensure good quality, objective, reliable and non-promotional information on medicinal products and other treatments, based on an amendment laid down by Rapporteur Grossetête (European Parliament, 2002). There are reliable indications that this amendment was drafted in close consultation with the Commission’s DG Enterprise, once it became clear that the Parliament would veto the proposed pilot (see e.g. Boessen, 2008).

In spite of this overwhelming rejection, the European Commission, in its revised proposal, did not accept the parliamentary amendment deleting the pilot project with regard to information on prescription-only drugs (CEC, 2003a), even though it was already very clear at that stage that the Member States in the Council did not want to accept this aspect of the pharmaceutical review either. And indeed, in its common position adopted a few months later, the Council did not accept the Commission’s proposal to relax the ban on pharmaceutical advertising (Council of the European Union, 2003b).

In December 2003 the European Parliament and the Council scrapped the pilot project, whilst retaining the request to the Commission to provide a report on patient information4. This request for a report allowed the Commission to keep the issue on the agenda (Boessen, 2008).

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4. The full wording of this amendment, Article 88a of Directive 2001/83/EC, introduced by Directive 2004/27/EC states: ‘Within three years of entry into force of Directive 2004/27/EC, the Commission shall, following consultation with patients’ and consumers’ organizations, Member States and other interested parties, present to the European Parliament and the Council a report on current practice with regard to information provision – particularly on the Internet – and its risks and benefits for patients. Following analysis of the above data, the Commission shall, if appropriate, put forward proposals setting out an information strategy to ensure good-quality, objective, reliable and non-promotional information on medicinal products and other treatments and shall address the question of the information source’s liability’. 
The European Commission did not give up the battle, however. Already in 2001, in parallel to the discussions on the pharmaceutical review, the Commission had set up a G10 High Level Group on innovation and the provision of medicines. It was composed of representatives of some Member States, some pharmaceutical companies, health insurers and a research centre on patients’ views, all selected by the European Commission itself, which chaired the Group. The pharmaceutical industry was overrepresented compared to health advocacy groups5. It aimed ‘to establish common ground and agree objectives on a new agenda to improve the framework for competitiveness in the pharmaceutical industry and to harness its power to deliver on Europe’s healthcare goals’. Information to patients was one of areas on the agenda of the G10. It was perceived as an initiative to build consensus on ideas for which the Commission did not get enough backing in the legislative process of the pharmaceutical review. It was a safety net to keep issues that were not agreed upon in the review on the political agenda (Boessens, 2008). With regard to information to patients, the G10 recommended in its final report the production, in cooperation with all stakeholders, of a workable distinction between advertising and information; the development of standards to ensure the quality of such information; and the establishment of a collaborative public-private partnership involving a range of interested parties (CEC, 2002). In its reply, the European Commission announced its intention to explore, with stakeholders, a range of approaches to provide ‘a realistic and practical framework for the provision of information on prescription and non-prescription medicines’ (CEC, 2003b). The European Commission thus successfully used the informal G10 debates to bypass the traditional institutions involved in the Pharma Review (Hervey and Vanhercke, 2010). Or, in the words of the European Commissioner: ‘The G10 Medicines process has been valuable in reaching consensus in areas where there has often been sterile debate. Our task now is to work with Member States and the European Parliament to ensure that the process has a long-term beneficial impact’ (CEC, 2003c).

5. From the Member States, the Swedish Minister of Industry, together with the French, German, UK and Portuguese Ministers of Health; from the industry, EFPIA, EGA, AESGP; from health insurers, AIM; and for patients the Picker Institute.
Further to this Commission Communication, the Council of the European Union adopted a resolution on ‘Pharmaceuticals and public health challenges – focusing on the patients’, in which it invited the Commission to explore together with Member States the possibility of setting up a European Information System for patients and health professionals (Council of the European Union, 2003).

In spite of the fact that its legislative proposal for a pilot project to partially lift the ban on advertising for prescription-only drugs had been rejected by the European Parliament and the Council by overwhelming majorities, the Commission thus had a request in early 2004 to study information provision and, if necessary, propose new legislation (review result); a recommendation to establish a public-private partnership (G10) and a mandate to explore options for a European information system (Council resolution) (Boessen, 2008).

To take the process further and tackle some of the recommendations of the G10, the European Commission set up the High Level Pharmaceutical Forum in 2005, as a three-year process. The Forum brought together Ministers from – this time – all the EU Member States, Members of the European Parliament and representatives of the pharmaceutical industry, healthcare professionals, patients and insurance funds. It was chaired by the European Commissioners responsible for public health and for industry.

Information to patients on pharmaceuticals was the theme of one of the three expert working groups of the Forum. This working group agreed on a set of quality principles on information to patients and on key elements for core information6. These had been submitted to a public consultation7.

However, the European Social Insurance Partners (ESIP) and the Association Internationale de la Mutualité (AIM), the European umbrella organisations of social health insurers, dissociated themselves from the work of this working group and expressed strong concerns

about the lack of transparency in the Forum, particularly in the above-
mentioned working group. They criticised the working group for not taking into consideration the suggestions they put forward in the process and debate (ESIP and AIM, 2007). They also criticised the Forum for being ‘dominated by market-driven interests to the detriment of public health interests’ (AIM and ESIP, 2008). These views were endorsed by a coalition of organisations of mutual insurers, patients, prescribing health professionals, independent drug bulletins and public interest organisations (Medicines in Europe Forum, ISDB, HAI Europe, 2007). They argued that information to patients should not come directly from those who produce medicines because the main goal of pharmaceutical companies is to maximise sales. They expressed concern over the conflicts of interest if pharmaceutical companies are allowed to provide information for patients.

Given the composition of the Forum, with strongly opposed interests and objectives of the participating stakeholders, its final conclusions, which were presented in October 2008, remained rather general and did not provide the clear mandate the European Commission was hoping for. With regard to access to and quality of information to patients on diseases and treatments, the Forum argued for greater accessibility of information to citizens and suggested new collaborations between public and private partners in the field of information to patients. It recommended that ‘all the relevant players, including national competent authorities, the Commission, public health stakeholders and industry, should ensure high quality information and thereafter should commit themselves to implementing and using the core quality principles and their methodology of use for the development of information, and to identifying poor quality information’. The European Commission was invited to set up a process to evaluate the direct outcomes and follow-up of the Pharmaceutical Forum on information to patients (High Level Pharmaceutical Forum, 2008). A footnote specifies that AIM, the umbrella organisation of the social mutual insurance funds, ‘expressed some reserves concerning the involvement of industry in providing information to patients’.

Without however awaiting the final conclusions of the Pharma Forum and without liaising with this Forum, the European Commission organised in parallel in 2007 a consultation on current practices with regard to the provision of information to patients on medicinal products
EU pharmaceutical policies: direct-to-consumer advertising

(CEC, 2007a). This consultation was a sole initiative of DG Enterprise, unlike the Pharmaceutical Forum which was led by both DG Enterprise and DG Sanco (health and consumer protection). It looks as though DG Enterprise, aware of the deadlock in the Pharma Forum, wanted to open up an alternative avenue to achieve legitimisation to continue its efforts to allow the pharmaceutical industry to provide information on its medicines to patients. When the Commission put forward its legislative proposal at the end of 2008, it did indeed justify its initiative on the grounds that ‘The responses to the public consultation confirmed that the legislative framework on information to the patients should be improved’ (CEC, 2008g). DG Sanco was much more reluctant to go ahead with a legislative proposal. The report on ‘current practices with regard to the provision of information to patients on medicinal products’ was presented as the implementation of the mandate the Commission received in the 2004 pharmaceutical review under Article 88a of Directive 2001/83/EC, mentioned above. However, the Commission report is limited to ‘provision of information to patients on medicinal products’ whereas Article 88a requests a report on ‘information on medicinal products and other treatments’ (CEC, 2007b). This strengthens the assumption that the mandate inserted during the 2004 pharmaceutical review was intended to enable the Commission to work on the issue, but was formulated in a way that made it difficult for MEPs to oppose, since its formulation suggested patient empowerment objectives.

Public health stakeholders heavily criticised the Commission report, stating that ‘the report’s conclusions are exclusively biased in favour of allowing drug companies to communicate directly with the public, further undermining the Commission’s credibility’, and ‘Despite the incomplete inventory of sources of information in Europe in this report, and the flawed methodology used to produce it, the authors come to the firm conclusion that only the pharmaceutical industry is capable of providing patients with the information they would otherwise miss’ (ISDB et al., 2007).
2. **The pharma package: second attempt to regulate DTCA**

In December 2008 the European Commission yet again put forward a legislative proposal to allow pharmaceutical companies to provide certain types of information to patients. This proposal was presented as part of the so-called ‘pharmaceutical package’, a raft of texts on pharmaceutical legislation, consisting of four key parts:

1) A Communication to launch reflection on ways to improve market access and price-setting mechanisms and to develop initiatives to boost EU pharmaceutical research (CEC, 2008a);

2) A proposal to tackle counterfeiting and illegal distribution of medicines (CEC, 2008b);

3) Proposals to strengthen the EU system for the safety monitoring (‘pharmacovigilance’) of medicines (CEC, 2008e);

4) Proposals to allow pharmaceutical companies to provide information on prescription-only medicines to patients (CEC, 2008c and 2008d).

The presentation of the proposal to relax the ban on advertising was preceded, in early 2008, by yet another public consultation organised by the European Commission’s DG Enterprise, on a document containing the key principles for a legislative proposal (CEC, 2008f). But this consultation too was launched before the Pharmaceutical Forum had presented its final conclusions, and did not refer to or take into account the work of this Forum. The document argues that any communication not covered by the definition of an advertisement should be regarded as information, and aims to clarify the distinction between allowed and non-allowed information.

In a reply, the Council called on the Commission in May 2008 to provide a clear definition of non-promotional information, instead of a definition of advertising as suggested by the Commission. The Council stressed the need for in-depth reflection on the issue with a view to a more rational use of medicines and to avoiding unnecessary administrative burdens for competent authorities and marketing authorisation holders (Council of the European Union, 2008).
We may well wonder why, for its legislative proposals, the Commission did not build on the work of the Pharmaceutical Forum. Carboni points out that ‘the Pharma Package was the result of strong lobbying, especially from industries’ (Carboni, 2009). She suggests that the Commission might have used soft instruments such as consultation platforms to divert the attention of public interest advocacy groups away from the process of drafting the legal proposal (Carboni, 2009). The fact that even the website of DG Enterprise suggests that it would take a non-legislative approach to addressing the issue of information to patients is an element that validates this assumption8. Carboni cites a lobbyist of a health organisation: ‘It was very bad. The Commission was preparing the package while we were engaged in the Pharma Forum. Therefore, it was not very clear who contributed to it. Only one result of the Pharma Forum – the quality criteria – was partially included in the package’. Commission policy officials involved in the process argued that the Pharma Forum and the Pharma Package were not linked to each other, and the Pharma Forum was not used to discuss the upcoming Commission legislative proposals, because ‘the Pharma Forum and the Pharma Package were moved by different political mandates. The Commission is a very fragmented policy house: each DG has its own political mandate and communication is not very easy among different Units’ (Carboni, 2009). The two DGs involved in the policy-making process – DG Enterprise and DG Sanco – thus had their own policy agendas.

The adoption of the pharmaceutical package by the EU executive had been delayed several times and had been the subject of tricky negotiations within the Commission. With regard to the proposal on information to patients, disagreements arose essentially between Commissioner Vassiliou, responsible for Health, and Commissioner Verheugen (Enterprise). As a result, several important provisions were modified, amongst other things to refer the question of distributing information via the printed press back to the Member States9.

The legislative proposal on information on prescription-only medicines includes the following provisions (CEC, 2008c and 2008d):

Certain types of information are exempted from the scope of the provisions prohibiting advertising of prescription-only medicines: (1) Summaries of products characteristics, labelling and package leaflets, as approved by the competent authorities or information which does not go beyond these elements, but presents them in a different way; (2) Information on prices and factual, informative announcements; (3) Product-related information about non-interventional scientific studies, or accompanying measures to prevention and medical treatment or information which presents the medicinal product in the context of the condition to be prevented or treated.

Communication channels for the dissemination of information that are allowed according to the proposal are (1) internet websites on medicinal products, to the exclusion of unsolicited material actively distributed to the general public; (2) written answers to a request for information of a member of the general public; (3) in the printed press, in health-related publications as defined by the Member State of publication, to the exclusion of unsolicited material actively distributed to the general public. Information on TV and radio are excluded.

The information provided must comply with certain quality criteria such as being objective and unbiased; being based on evidence and verifiable; up-to-date; reliable; factually correct and not misleading; understandable and not contradict the product information as approved by the competent authorities.

Member States are expected to monitor the information made available. In general, the information should be subject to monitoring after it has been disseminated. Some types of information are however subject to ex ante instead of post hoc monitoring. Internet sites containing information on prescription-only medicinal products shall be registered and monitored.
If we compare the final proposal with the document submitted for public consultation by DG Enterprise (CEC, 2008f), some provisions have been restricted. The possibility to provide information in the audiovisual media was removed. According to the Health Commissioner, this was done at her insistence. However, the umbrella organisation of the pharmaceutical industry, EFPIA, already stated in its reply to the public consultation on the draft proposal that it considers neither TV and radio nor the print mass media to be appropriate ways for the industry to communicate information on specific prescription medicines to European citizens (EFPIA, 2008). This does not mean that EFPIA is opposed to allowing the industry to advertise in these media, but they propose that this should only be ‘general information on diseases, e.g. covering awareness, prevention etc. but not mentioning specific medicines’. Information on the specific medicines would then be provided in ‘specialised’ media or at the request of the patient. This position might well be part of a charm offensive, given the assertions from within the industry itself that recourse to direct-to-consumer ads was ‘the single worst decision’ drug makers had ever made, because of the damage it had done to their image (Humphreys, 2009). It might well also be more advantageous from a marketing viewpoint to raise awareness in the general audiovisual media only about disorders for which it is the intention to promote medicines, without clarity about who is providing the seemingly objective ‘information’ and without mentioning the specific medicine, thus encouraging patients to look themselves for information on the pharmaceutical products.

Furthermore, according to the final proposal some types of information are subject to ex ante instead of post hoc monitoring. However, the text still contains inconsistencies in this respect. Member States are also given more freedom to determine the mechanism for monitoring the information. The idea of obliging Member States to establish co-regulatory bodies in a public-private partnership to supervise the information providers and to establish national codes of conduct, as initially proposed by DG Enterprise, was not maintained.

10. Intervention by Commissioner Vassiliou at the conference ‘Health systems governance in Europe, the role of EU law and policy’, on 11 December 2008 in Brussels.
3. The policy process and stakeholder positions

The Council reacted particularly strongly against the Commission proposal. At the Council of June 2009, over 20 Member States did not see the proposal as ‘an appropriate basis for continued negotiations’ (Council of the European Union, 2009b). They maintain that the distinction between ‘information’ and ‘advertising’ is not sufficiently clear and therefore fear that the proposals will not provide sufficient guarantees that the prohibition of advertising of prescription-only medicinal products to the general public will not be circumvented (Council of the European Union, 2009c). They fear that the suggested system will be overly burdensome for competent authorities without leading to significant improvements in the quality of the information provided to patients. Some Member States held that the proposal, if adopted as it stood, may have significant negative consequences on healthcare budgets owing to a possible unjustified increase in the use of medicinal products (Council of the European Union, 2009b). As a result, the Czech and Swedish EU presidencies left the proposal untouched.

European Commissioner Günter Verheugen, who throughout his term of office was personally very committed to making this change of legislation happen, initially did not want to cede to the Council rejection of the Commission’s proposal11. In September 2009 he declared before the European Parliament that he was ‘more than ever convinced’ of the merits of the proposal and rejected the position of Member States in strong terms, regretting that health bureaucracy was almost impossible to combat12. Nevertheless, only three months later, at the Health Council in December 2009, the Commission made clear that it was prepared to show flexibility in order to find a common basis for future negotiations (Council of the European Union, 2009b). It might well be that negotiations between the Commission’s DG Enterprise and the pharmaceutical industry in the meantime led to this changed position. Indeed, Arthur Higgins, president of EFPIA, declared at a press conference in November 2009 that the industry would allow an

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11. Europolis, 10 June 2009.
independent authority to vet information provided to patients\textsuperscript{13}. This is considered as a concession from the pharmaceutical industry\textsuperscript{14}.

Strikingly, the press conference at which the industry revealed its changed position was organised in the European Parliament, jointly with Françoise Grossetête, the French EPP MEP who has since 2000 been EP rapporteur for many key legislative acts on pharmaceutical products, including the pharmaceutical review (see above) and who represented the European Parliament in the Pharmaceutical Forum. At this press conference she called on MEPs to join with patient groups to form a united front against health ministers who have blocked the directive\textsuperscript{15}. This again smacks of strong collusion between the pharmaceutical industry, some MEPs in key positions and the European Commission.

The new Commission is expected to come up with amendments to the current proposal\textsuperscript{16}. The Health Commissioner designate, John Dalli, called during his hearing at the European Parliament for progress to be made on the issues where consensus can easily be built (pharmacovigilance and counterfeit products) and to leave the most divisive issues to be tackled separately\textsuperscript{17}.

The votes on the proposal in the European Parliament are expected in the competent committee and the plenary session in June 2010. The rapporteur on the proposal, Christofer Fjellner (EPP, Sweden), is known to be ‘positive’ about the Commission’s proposal and wants to find a backing majority in the EP\textsuperscript{18}. Other Christian Democrats are however less supportive of the proposal and are calling for genuinely


\textsuperscript{14} The industry is however well aware of the fact that health authorities are unable to validate all the information and that prior vetting is even forbidden by some Member States’ constitutions.


\textsuperscript{16} Europolitics, 2 December 2009.

\textsuperscript{17} http://www.euractiv.com/en/priorities/dalli-guardian-consumers-interests/article-188912, accessed on 15 January 2010

objective information\textsuperscript{19}. On the whole, the positions of the MEPs seem not to be along to the lines of the political groups. Other factors, such as the importance of the domestic pharmaceutical industry\textsuperscript{20}, or the political agendas of the stakeholder groups behind the MEPs\textsuperscript{21}, also seem to play a role.

So far, it looks as though there is less vocal criticism of the proposal in the European Parliament than in the Council.

The rapporteur on this issue in the Committee of the Regions, Susanna Haby (SE/EPP), warned in a press release that the EC pharmaceutical proposals put patients at risk and are biased in favour of pharmaceutical companies (Committee of the Regions, 2009). It is worth noting that she is from the same country and political party as the rapporteur in the European Parliament, who takes a completely opposite view.

The European Economic and Social Committee, the consultative body representing the European social partners, is also quite critical of the proposal. It states that it is difficult to distinguish between advertising and information, and recommends setting up an independent body to provide information. It urges that information on non-interventional scientific studies should not be considered as information which can be disseminated to the public and that ‘health-related publications’ are not an appropriate means of disseminating information on prescription-only medicines (European Economic and Social Committee, 2009).

Before the Pharma Package was unveiled, twenty umbrella organisations in the field of health, representing patients, consumers, health professionals and social health insurers sent a joint letter to both Health Commissioner Vassiliou and the President of the EU Commission,

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\textsuperscript{19} German Christian Democrat Peter Liese and Belgian Christian Democrat Anne Delvaux, 02/09/2009 (Bulletin of the European Union, 2009).
\textsuperscript{20} For instance, the German Socialist MEP Dagmar Roth-Behrendt said she could not understand the aversion to providing controlled information to patients. http://www.euractiv.com/en/health/commissioner-final-plea-drug-information-directive/article-185025 retrieved on 12 January 2010, whereas many other social democrats expressed strong concerns about the proposal (http://www.epha.org/a/3313).
\textsuperscript{21} For instance, Christofer Fjellner is a former researcher at the Swedish free market hardliner think thank Timbro, which later formed the Stockholm Network.
\end{flushleft}
Mr Barroso, to express their fears about the draft proposal relating the pharmaceutical package, in particular the role it would give to the pharmaceutical industry concerning information to patients on prescription-only medicines (Age et al., 2008a and 2008b).

Most of these stakeholders also welcomed the Health Ministers’ critical conclusions on the proposed directive, stating that ‘Under the guise of patient “information”, these proposals would, in reality, lead to the relaxation of the ban on direct-to-consumer advertising of prescription medicines in Europe, risking citizens’ safety and the sustainability of national healthcare systems’ (Age et al., 2009).

4. Discussion

Having learned from its initial failure in legislating on the topic during the pharmaceutical review in 2001-2004, the European Commission involved stakeholders and tried build consensus through the creation of high-level reflection groups and all kinds of public consultations. By organising a multitude of parallel initiatives the Commission created a whole series of avenues from which it could draw legitimation for further actions at the appropriate moment. The Commission thus managed to keep the issue on the agenda and to bypass formal legislative veto points by using informal avenues or practices (Carboni, 2009).

By taking parallel and overlapping initiatives, the Commission created confusion, which diverted stakeholders’ attention. By those means, the Commission could remain the sole player in control of the whole process. The non-transparent approach of inviting stakeholders often resulted in an overrepresentation of industrial interests. Also, the formulation of the consultation papers was geared towards a role for industry, and the conclusions of the consultations did not reflect in a balanced way the replies of the different stakeholder groups (Boessen, 2008).

The Commission played the role of policy broker. By favouring an exchange of information and opinions among stakeholders, building supportive networks and promoting public consultations, the Commission tried to influence the policy outcome of its proposals (Carboni, 2009).
The public consultations, furthermore, were instrumental in depoliticising the debates and aimed to create ownership of the final proposals among stakeholders (Hervey and Vanhercke, 2010).

Throughout the policy process, the European Commission’s DG Industry was in close contact with the pharmaceutical industry. It is striking that Commissioner Verheugen twice gave way on its position on the legislative proposal, each time after a public declaration by EFPIA proposing a change in the draft. This was the case with the changes made during the adoption of the proposal by the College of Commissioners and with Mr Verheugen’s declaration in the Council of December 2009 that he was prepared to show flexibility.

This is in line with the findings of Permanand, based on an analysis of other EU initiatives in the field of pharmaceutical legislation. He shows that the research-based industry was present at every stage of the policy process: the policy networks invariably began with the Commission and EFPIA (Permanand, 2006). DG Enterprise, responsible for the draft legislation, selectively offered access to advocacy groups whose policy preferences were in line with those of the DG (Boessen, 2008 and Carboni, 2009). DG Enterprise gave access and listened to pharmaceutical companies and associations, more than it did to public health and consumer groups. Carboni even quotes a policy officer at DG Enterprise stating ‘We represent industries’ (Carboni, 2009). Whereas industry and some patient groups had good access to DG Enterprise, the point of reference for public health and consumer organisations was DG Sanco. Abraham shows how the pharmaceutical industry managed, at the national level too, to influence drug regulation by persuading governments and their regulatory agencies that other interested parties, such as consumer organisations, patients’ associations and the wider medical and scientific community, should have few or no rights of access to the regulatory process (Abraham, 2002).

Throughout the whole process, DG Enterprise overruled DG Sanco. DG Sanco was known to be against the initial 2001 proposal for a pilot study (Boessen, 2008). Also, during the Pharmaceutical Forum the relationship between the two Commissioners of DG Enterprise and DG Health (Günter Verheugen and Markos Kyprianou respectively) co-chairing the Forum seemed rather tense. They had different views with regard to the legislative proposal. DG Sanco was however unable to
counterbalance the industry-oriented proposals of DG Enterprise (Carboni, 2009).

Rhetoric was important. The Commission cleverly reframed the issue in many ways and created confusion about the concepts. The rhetoric was in line with the approach taken by the research-based industry.

The issue was presented from the onset in the context of improving the competitive position of the European pharmaceutical sector vis-à-vis US industry. It was argued that Europe as a whole is lagging behind in its ability to generate, organise and sustain innovation (see e.g. CEC 2002 and 2008a). This discourse is the same as the discourse of EFPIA, the association of the European-based pharmaceutical industry, which states that, since the early 1990s, the research-based pharmaceutical industry in Europe has been losing competitiveness with respect to its main competitors, in particular the US22. Yet a recent comprehensive study shows that the United States never did overtake Europe in research productivity, and that Europe in fact is pulling ahead of US productivity (Light, 2009). As shown by Abraham, this type of argument has constantly and successfully been used by the pharmaceutical industry for the last 50 years to ward off regulation it perceives to be contrary to its interests, not only at EU level but also at national level. He argues that the pharmaceutical industry has been quick to warn that such regulation results in research going abroad or damages results for the nation’s export trade, balance of payments or employment. He provides evidence showing the opposite of what the industry has been claiming (Abraham, 2002).

The Commission presented its proposals as proposals on information to patients rather than advertising. In this way it hoped to find allies in the European Parliament and among patient advocacy groups in favour of patient empowerment. Since actors could not simply ignore a request for information, this concept allowed the discussions to continue (Boessen, 2008). However, a clear definition of non-promotional information was never put forward. This resulted in more confusion rather than more clarity on the difference between information and advertising. Moreover, confusion was created between information on

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pharmaceutical products on the one hand and information on diseases and treatment options on the other, which allowed for the use of the mandates received from the European Parliament and the Council during the pharmaceutical review.

The notion of ‘equal access’, which primarily has a social connotation and which it is thus difficult to oppose, was used to refer to the differences in national legislation on the kind of information the pharmaceutical industry is allowed to provide to patients.

The term ‘independence’ (freedom from commercial influence) was replaced by ‘objective’. However, objective information can also be misleading owing to incompleteness or a lack of balance and context (Toop and Mangin, 2007).

Unlike the 2001 pharmaceutical review proposal, in the 2008 Pharma Package the different policy topics - the reform of pharmacovigilance, the legislation on counterfeits and the DTCA – are presented in different legal acts. This allows progress to be made on the less controversial proposals, whilst delaying the policy process on DTCA. During the pharmaceutical review it was in fact argued that the whole reform should be approved before enlargement, which did not allow for complex compromise building on the topic of information to patients (Boessen, 2008).

However, the Commission seems not really to have succeeded in making stakeholders change their views. The issue has remained extremely controversial, as illustrated by the strong reactions from the Council and health advocacy groups. Carboni argues that policy learning as a process is most likely to concern only secondary aspects of a belief system, leaving the policy core of a coalition intact, and bringing only minor policy changes (Carboni, 2009).

So far, it appears that there are less critical noises and more goodwill towards the legislative proposal in the European Parliament than there were during the pharmaceutical review of 2002. The composition of the European Parliament is different, and EU enlargement brought new perspectives into the Parliament. The European Commission’s efforts to strike the right note of the debate and to reframe the issue of DTCA might well have had their desired effect on MEPs. The strong terms in which Commissioner Verheugen, speaking in the European Parliament,
and MEP Françoise Grossetête, condemned Member States’ rejection of the proposal is also part of the strategy. MEPs are susceptible to arguments allowing them to take a stance asserting the Parliament’s position in relation to the Council.

Direct lobbying of MEPs by the pharmaceutical industry certainly also plays a role. MEPs are more dependent than Commissioners or Member States on lobby groups to provide them with vital information and expertise to form their opinion, since they have limited resources to analyse all the aspects of the legislative proposals submitted to the Parliament (Carboni, 2009). Especially regarding proposals for which there is no clear guidance from the political groups, as is the case with this issue, MEPs are more vulnerable to lobbying by interest groups. The pharmaceutical industry has much greater financial and human resources to come to MEPs’ aid than health advocacy groups. But at this stage of the decision-making process it is even more important to have preferential contacts with some specific MEPs, considered as opinion leaders on the topic, or to be able to influence the appointment of MEPs to key positions. The joint press conference of the pharmaceutical industry with Françoise Grossetête, the MEP who has since 2000 been rapporteur in the EP for many important legislative acts on pharmaceutical products, including the pharmaceutical review (see above), is enlightening in this respect. The appointment of Christofer Fjellner, who has a track record in hardline free-market organisations, as rapporteur on the proposals, might also have its importance.

5. The Lisbon Treaty: towards a new balance?

Almost unnoticed, the Lisbon Treaty inserted a new legal basis in the Treaty on the Functioning of the European Union for EU pharmaceutical legislation.

The new Art. 168, on public health (former Art. 152), states:

(…)

4. By way of derogation from Article 2(5) and Article 6(a) and in accordance with Article 4(2)(k) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure
and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting in order to meet common safety concerns:

(a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;

(b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;

(c) measures setting high standards of quality and safety for medicinal products and devices for medical use.

As a consequence, future EU harmonising measures in the field of pharmaceutical products (and medical devices) will in principle be based on Article 168 TFEU, rather than on the articles on the internal market as has been the case so far. Furthermore, with the inauguration of the new European Commission, the Commission services responsible for pharmaceutical policies will be transferred from DG Enterprise to DG Sanco.

It is too early to tell what the policy effect thereof might be. Health advocacy groups have long argued for this transfer (EPHA et al., 2009). It will in principle imply that the stakeholder coalitions defending industrial interests and public health respectively will meet with officials of the same service within the Commission, whereas so far each of them had access to a different DG. However, one might wonder whether this will really impact on the Commission’s views. For instance, the fact that, in the last few years, pharmaceutical policies have increasingly been discussed in the Council formation responsible for health, whereas before they were discussed in the Council responsible for economic policies, has not really changed the Commission’s positions, although both responsible DGs, Enterprise and Sanco, were represented at the meetings. The EU still has no responsibility for healthcare organisation, delivery and especially funding. Furthermore, industry lobbies remain extremely powerful.

Nevertheless, the changed Treaty provision might bring about a shift in the dominant paradigm on EU pharmaceutical policies. DG Sanco’s task
is to protect human health rather than to ensure that EU policies contribute to the lasting competitiveness of EU enterprises. This might lead at least to a different rhetoric.

**Conclusion**

This chapter has illustrated, based on a concrete policy proposal, the clash between the EU’s free movement rules and the national competence for healthcare policy.

The European Commission managed to keep the issue of relaxing the ban on direct-to-consumer advertising on the policy agenda for more than ten years. The Commission had a clear agenda: to allow pharmaceutical companies to communicate directly with patients on prescription-only drugs. This topic emerged under pressure from the pharmaceutical industry, in the wake of the relaxation of the rules on DTCA in the US. Throughout the policy process, the competent DG, DG Enterprise of the European Commission, remained in close contact with the pharmaceutical industry.

The Commission managed to keep the issue on the agenda thanks to a succession of initiatives through which it could receive mandates to continue working on the topic. Having learned from its initial failure in legislating on the DTCA during the pharmaceutical review of 2001-2004, the European Commission tried to build consensus through the creation of high-level reflection groups involving stakeholders.

By taking parallel and overlapping initiatives such as consultations, the Commission created confusion and could remain the sole player in control of the whole process. The way in which stakeholders invited to participate in the processes were selected, consultation papers were formulated and conclusions were interpreted, were biased and geared towards a role for industry in information provision.

Rhetoric was important. The Commission reframed the issue in many ways and created confusion about the concepts.

The Commission did not really succeed in making the stakeholders change their views, however. The issue remained extremely controversial...
for Member States and health advocacy groups. The Commission’s initiatives might nonetheless have created more good will towards the legislative proposal in the European Parliament, although it is too early to have a complete insight into Parliament’s position.

We can assume that, as long as the EU has no financial responsibility over healthcare provision, other policy objectives that are more in line with the EU’s core business, namely the creation of the internal market, will gain the upper hand in its policy initiatives. Nevertheless, the insertion of a new legal basis on pharmaceutical legislation into the public health article in the Treaty of Lisbon might lead to a different paradigm, at least at the level of rhetoric. In addition, the fact that the same Commission services will be in contact with all the relevant stakeholders might also encourage a more balanced approach in the EU’s pharmaceutical policies.

References


CEC (2008f), Public Consultation, Legal proposal on information to patients, European Commission, Directorate-General Enterprise and Industry.

CEC (2008g), Citizen’s Summary, Legal Proposals on Information to Patients by pharmaceutical companies.


EFPIA (2008), EFPIA contribution to the European Commission public consultation on a legal proposal on information to patients, Brussels, April 2008.


The European Court of Justice and EU social policy: a brief look at recent case law

Dalila Ghailani

Introduction

Although somewhat absent from the Treaty of Rome, the social dimension of the European Union has gradually come to the fore as a result of socio-economic changes and the increasing economic and monetary integration of the Member States. Today that dimension is the source of a considerable Community acquis comprising over two hundred pieces of legislation (Yung, 2009), legislation whose application still raises questions of interpretation for the Court of Justice of the European Communities. Frequently called upon by national courts, the ECJ has had occasion as its case law has developed to define fundamental concepts such as equal pay for men and women, family benefits in the context of the coordination of social security schemes, and, for example, the concepts of transfers of undertakings, employer insolvency and working time.

In what follows, it is proposed to give an overview of that case law, although referring to only a small number of decisions handed down in 2009. We have decided to divide these into three groups relating to principles of equality and non-discrimination, social security for migrant workers, and the rights and obligations of workers and employers. This will afford an opportunity to discuss successively legal protection for pregnant workers in the event of dismissal, equal treatment in statutory social security schemes, the individual right of action of workers and the right to annual leave, among others.
1. **The principles of equal treatment and non-discrimination**

1.1 The right of pregnant workers to effective legal protection in the event of dismissal: the *Pontin v T-Comalux SA* case

Having been employed by T-Comalux since 2005, Ms Pontin was dismissed with immediate effect on 25 January 2007 on grounds of serious misconduct following an unauthorised absence of more than three days. The following day she informed T-Comalux that she was pregnant and claimed that the dismissal was null and void by virtue of the legal protection given to pregnant workers. Since there was no response from her employer and since Ms Pontin considered her dismissal to be wrongful, she brought proceedings before the Esch-sur-Alzette *Tribunal du travail* (Labour Court), seeking a declaration that her dismissal was null and void. The *Tribunal du travail* enquired of the Court of Justice whether the provisions of the Luxembourg *Code du travail* (Labour Code) transposing Directive 92/85/EEC (Council of the European Communities, 1992) which prohibits amongst other things the dismissal of female employees who have been medically certified as pregnant for twelve weeks following confinement, were incompatible with Community law. Indeed, the Luxembourg provisions impose short time-limits (fifteen days from the dismissal) in which pregnant workers who have been dismissed during their pregnancy can bring proceedings, time-limits liable to deny them the opportunity to bring proceedings to safeguard their rights and, at the same time, deprive them of the opportunity, available to any other employee, to bring an action for damages against the employer (provision is made only for an action for nullity of the dismissal and reinstatement).

The Court pointed out that Member States must take the necessary measures to enable wronged persons to exercise their rights in legal proceedings in accordance with the principle of the effective judicial protection of an individual’s rights under Community law. They have a duty to protect pregnant workers or those who have recently given birth or who are breastfeeding against the consequences of unlawful dismissal.

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1. Case C-63/08 *Pontin* [2009], not yet published in the Court Reports.
Basing itself on its case law in *Paquay*, the Court noted that domestic provisions must accordingly ‘ensure effective and efficient legal protection, must have a genuine dissuasive effect with regard to the employer and must be commensurate with the injury suffered’ (paragraph 42). It is for the national court, which has knowledge of the procedural rules governing remedies in domestic law, to ascertain whether those principles have been observed.

As regards the fifteen-day time-limit for bringing proceedings, the Court acknowledged that Member States can set reasonable periods in which to bring legal proceedings. Those time-limits must not however render ‘practically impossible or excessively difficult the exercise of rights conferred by Community law’. Here, the procedure for the action for nullity and reinstatement of a dismissed employee does seem to render particularly difficult the exercise of the rights of pregnant workers under Community law. According to the Court, the fifteen-day time-limit is rather a short time in which to obtain legal advice and to bring an action for nullity or for reinstatement. The Court also observed that ‘it appears from the case-file that some of the days included in that fifteen-day period may expire before the pregnant woman receives her letter of dismissal and is thus notified of the dismissal (...) The fifteen-day period begins to run, according to the case law of the Luxembourg courts, from the time the letter of dismissal is posted’ (paragraph 63). On that basis, it is for the national court to ascertain whether or not, on the facts, the fifteen-day limitation period complies with the principle of effective judicial protection of an individual’s rights under Community law. If it does not, that time-limit would contravene Directive 92/85.

The Court went on to address the subject of the action for damages. According to the referring court, the only remedy available to a pregnant woman dismissed during her pregnancy is an action for nullity and reinstatement. The Court found that ‘if it emerges, after verification by the referring court (...) that an action for nullity and reinstatement does not comply with the principle of effectiveness, such an infringement of the requirement to provide effective judicial protection laid down [by the Directive] would constitute “[l]ess favourable
treatment of a woman related to pregnancy” (paragraph 74) and would amount to discrimination within the meaning of Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women (Council of the European Communities, 1976). ‘If the referring court were thus to find there had been such an infringement of the principle of equal treatment, within the meaning of (...) Directive 76/207, it would have to interpret the domestic jurisdictional rules in such a way that, wherever possible, they contribute to the attainment of the objective of ensuring effective judicial protection of a pregnant woman’s rights under Community law’ (paragraph 75).

1.2 Equality in statutory social security schemes: the Gómez-Limón case

Proceedings in Spain enabled the Court to examine in greater detail Directive 96/34/EC (Council of the European Union, 1996) in the context of a case on equality between men and women in relation to parental leave.

Ms Gómez-Limón Sánchez-Camacho had been employed full-time by Alcampo SA since 1986. From 6 December 2001 she benefited from the system of reduced working time applicable to workers with legal custody of a child under six, in accordance with the legislation in force. Her daily working time was reduced by a third. Alongside this, her remuneration and the amount of contributions paid both by the undertaking and by the claimant to the general social security scheme were reduced in the same proportion.

A decision of 30 June 2004 of the Instituto Nacional de la Seguridad Social found that Ms Gómez-Limón Sánchez-Camacho suffered from permanent total invalidity rendering her incapable of working in her usual occupation and that she was entitled to a pension of 55% of a basis of assessment of €920.33 per month. She brought an action in the Juzgado de lo Social No.30 de Madrid (Employment Court No.30, Madrid), before which she submitted that, although the calculation did take into account the contributions actually paid, those contributions

3. Case C-537/07 Gómez-Limón [2009], not yet published in the Court Reports.
were decreased in proportion to the reduction in her pay following the reduction in her working time during the period of parental leave granted to her to care for a child, whereas her pension should have been calculated on the basis of the amount of contributions corresponding to full-time work. According to Ms Gómez-Limón Sánchez-Camacho, the calculation applied to her amounted to negating the practical effectiveness of a measure intended to promote equality before the law and to eliminate discrimination on grounds of sex. The Spanish court therefore enquired of the ECJ as to the scope of Directive 96/34/EC and the impact of Directive 79/7/EEC (Council of the European Communities, 1979), since it is primarily women who take parental leave.

The Court found first of all that Clause 2(6) of the framework agreement safeguarding maintenance of rights acquired at the start of parental leave has direct vertical effect and can therefore be relied on by individuals before national courts. The same does not apply, however, to Clause 2(8) which requires Member States to examine social security questions relating to the framework agreement. Taken together, the two clauses do not preclude the taking into account, in calculating social security benefits, of periods of part-time work which gave rise to proportionate remuneration and contributions. Nor does the principle of equal treatment for men and women enshrined in Directive 79/7/EEC preclude taking such periods into account. Referring to its earlier case law, the Court pointed out that Article 7(1)(b) of the Directive, which deals with the acquisition of entitlement to benefits following periods of interruption of employment due to the bringing up of children, allows Member States to exclude those periods from the scope of application of the Directive, although it does not impose any obligation in that regard. Advocate General Sharpston quite correctly pointed this out in his Opinion. To reduce the risk of indirect discrimination resulting from an unequal sharing of family responsibilities and to ensure that the entitlement to parental leave is effective, Member States must ensure adequate social protection. As matters stand, however, Community law contains no obligation on them to do so (paragraphs 54 and 55 of the Opinion).

We invite the reader to look at Stefan Clauwaert’s contribution in this volume. In it he looks at, amongst other matters, progress made by the social partners in reviewing the framework agreement on parental leave.

1.3 Discrimination on grounds of age: the Age Concern England v Secretary of State for Business and Hütter cases

Having confirmed the boundaries of the prohibition on discrimination on grounds of age, and returning explicitly to the question of whether or not there is a general principle of non-discrimination by reason of age, the Court has again been asked as to the extent of the justifications for different treatment on grounds of age which are permitted by Directive 2000/78, which prohibits discrimination on grounds of age in employment and occupation (Council of the European Union, 2000).

The United Kingdom transposed Directive 2000/78/EC on the elimination of discrimination on grounds of age by means of the Employment Equality (Age) Regulations 2006. This instrument provides amongst other matters that employees who have reached their employer’s normal retirement age or, if the employer does not have one, 65, can be dismissed by reason of retirement without such treatment being considered discriminatory. The Regulations set out a number of criteria intended to verify that the reason for the dismissal is retirement and require compliance with a specific procedure.

Most unusually, the Court has to rule in relation to proceedings brought at the initiative not of a trade union but of another association with ‘a legitimate interest in ensuring that the provisions of this Directive are complied with’. Here, the National Council on Ageing (Age Concern England), a charity which promotes the welfare of older people, challenged the legality of the legislation on the ground that it does not properly transpose the Directive. According to Age Concern, the fact that an employee aged 65 or over can be dismissed by reason of

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6. Case C-388/07 Age Concern England [2009], not yet published in the Court Reports.
7. Case C-88/08 Hütter [2009], not yet published in the Court Reports.
8. Case C-144/04 Mangold [2005], ECR I 998.
retirement infringes the Directive. The High Court (United Kingdom), hearing the case, referred the following points to the ECJ: does the Directive permit Member States to introduce legislation providing that a difference of treatment on grounds of age does not constitute discrimination if it is a proportionate means of achieving a legitimate aim; does it require them to define in the form of a list the kinds of differences of treatment which may be justified?

The Court stated first of all that ‘[t]he transposition of a directive into domestic law does not (...) always require that its provisions be incorporated formally in express, specific legislation’ (paragraph 42). The Directive in question ‘cannot be interpreted as requiring Member States to draw up (...) a specific list of the differences in treatment which may be justified by a legitimate aim’ (paragraph 43). It added however that other elements, taken from the general context of the measure concerned, must ‘enable the underlying aim of that measure to be identified for the purposes of review by the courts of its legitimacy and whether the means put in place to achieve that aim are appropriate and necessary’ (paragraph 45). The Court notes that the aims which the Directive regards as ‘legitimate’ and capable of justifying derogation from the principle prohibiting discrimination on grounds of age ‘are social policy objectives, such as those related to employment policy, the labour market or vocational training. By their public interest nature, those legitimate aims are distinguishable from purely individual reasons particular to the employer’s situation’ (such as a reduction in costs) (paragraph 46). The national court must therefore ascertain whether the United Kingdom legislation meets such a legitimate aim and whether the means chosen were appropriate and necessary to achieving it.

Whereas all the age discrimination cases which the Court has had occasion to hear until now have related to the end of working life, the Hütter case concerns the start. In Austria the legislation on the organisation of universities provides that, for the purposes of calculating the seniority for pay-related purposes of members of the technical staff, only periods of employment completed after the age of 18 are taken into account. Having worked as an apprentice between the ages of 15 and 19 for an institution covered by that legislation, Hütter, a young worker, claimed discrimination on grounds of age. On a referral by the Oberster Gerichtshof (Supreme Court), the Court of Justice held...
firstly that since the subject-matter of the proceedings related to an employment and working condition, it did indeed fall within the matters covered by Directive 2000/78/EC (Article 3(1)(c)). It had then to determine whether there were any objective and reasonable justifications within the meaning of Article 6(1).

According to the Austrian Government, the legislation in issue was intended to promote the employment of people who have been in vocational education and not to treat less favourably those leaving general secondary education, which is longer. According to the Court, the two aims are contradictory, and the means used in pursuing them therefore appear not to be appropriate and necessary. Furthermore, it continued, since the legislation in issue bases seniority for pay-related purposes on experience acquired during periods of employment

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imposing an additional age criterion represents an inappropriate bias. The Austrian legislation in question therefore does infringe the Directive.

This judgment is likely to attract the attention of those Member States in which a number of public services still have in their pay structures the concept of an age group, that is to say the normal age of recruitment based on the length of the studies leading to the qualification required for the job, below which periods of employment are not taken into account (Jacqmain, 2009).

2. **Social security for migrant workers**

2.1 Benefits in kind relating to the risk of reliance on care: the *von Chamier-Glisczinski* case

Mrs von Chamier-Glisczinski, a German national living in Munich, since she was reliant on care, was in receipt of the care insurance benefits established in Paragraph 38 of Book XI of the SGB (*Sozialgesetzbuch*, Social Security Code) from the DAK, the social security organisation with

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9. The Court had already accepted that criterion in its judgment in *Cadman*, Case C-17/05 *Cadman* [2006], ECR I-9583.
10. Case C-208/07 *von Chamier-Glisczinski* [2009], not yet published in the Court Reports.
which she was insured through her husband. On 27 August 2001 she applied to the DAK for the benefits in kind to which she was entitled under the German rules to be provided at a care home in Austria in which she wished to stay. That request was refused on the ground that, in such situations, Austrian law does not provide for the grant of benefits in kind to beneficiaries of its social insurance scheme. According to the DAK, Mrs von Chamier-Glisczinski could claim only the care allowance referred to in Paragraph 37 of Book XI of the Sozialgesetzbuch. Mrs von Chamier-Glisczinski accordingly brought proceedings before the Munich Sozialgericht (Social Court) but her action was dismissed by a judgment of 11 October 2005. She appealed to the Bayerisches Landessozialgericht (Regional Social Court of the Land of Bavaria) in Munich. That court referred two questions to the Court of Justice:

— Under Article 19(1)(a) of Regulation No.1408/71, does the institution in the worker’s State of residence have to pay, on behalf of the competent institution, cash benefits, possibly in the form of the repayment or assumption of costs by the competent institution, where, unlike the social security system of the competent State, that of the State in question makes no provision for its insured persons to receive benefits in kind?

— Is there, in the light of Articles 18, 39 and 49 EC, any entitlement to payment – subject to prior approval – by the competent institution of the costs of in-patient care in a care home situated in another Member State, in the amount of the benefits payable in the competent Member State?

11. Article 19(1)(a) of Regulation No 1408/71 provides: ‘1. A worker residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident: (a) benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the legislation administered by that institution as though he were insured with it; (b) cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State. 2. The provisions of paragraph 1 (a) shall apply by analogy to members of the family who are residing in the territory of a Member State other than the competent State, where they are not entitled to such benefits under the legislation of the State in whose territory they reside’.
To answer the first question, the Court returned to its case law in *Molenaar* and interpreted Article 19 of Regulation No.1408/71 as meaning that an insured person is to receive, in the Member State in which they reside, benefits in kind so far as the legislation of that State provides for the provision of benefits in kind designed to cover the same risks as those covered by the insurance concerned in the competent State. In addition, Article 19(2) extends the benefit of the protection to family members who are therefore entitled to receive benefits in kind provided by the institution of their place of residence within the limits and in accordance with the provisions of the legislation administered by that institution. Article 19 of Regulation No.1408/71/EEC should be interpreted as not requiring the provision of benefits in kind outside the competent State by or on behalf of the competent institution where, unlike the social security system of the competent State, that of the Member State of residence of the socially insured person does not provide for the provision of benefits in kind. The Court partially accepted the arguments advanced by the participating governments and the Commission whilst dismissing the suggestion that, in the case of residence in a Member State other than the competent State, the socially insured person’s access to benefits in kind is governed exclusively by the legislation of the Member State of residence, so that, where the legislation of the latter Member State does not provide for the grant of benefits in kind covering the risk in respect of which entitlement to such benefits is claimed, those provisions have the effect of preventing the competent institution from granting such benefits in kind.

The Court then examined whether the case fell within Articles 18, 39 and 49 of the EC Treaty. It pointed out that the definition of ‘worker’ in Article 39 EC has a specific Community meaning and must not be interpreted narrowly. However, it was apparent in the present case that the von Chamier-Glisczinskis were not exercising the freedom of movement guaranteed by Article 39 EC. That primary law provision cannot therefore be held to apply.

Article 49 EC relating to the freedom to provide services covers only provision on a temporary basis and not the situation of a national of one Member State who establishes their principal residence, on a permanent
basis, in another Member State, as occurred in the present case. Article 49 EC cannot therefore apply.

However, by establishing her residence in Austria, the applicant did exercise her right to free movement and residence conferred on citizens of the European Union by Article 18 EC. The Court wished therefore to identify all the possible consequences of that exercise of the freedom under Article 18(1) EC. In terms of social security there is no such thing as Community harmonisation, only rules on the coordination of legislation. Article 18(1) EC cannot therefore guarantee to an insured person that a move to a different Member State will be neutral as regards social security. The Federal Republic of Germany and the Republic of Austria are at liberty to choose how they organise their sickness insurance schemes, and one of those schemes cannot be considered to be the cause of discrimination or a disadvantage for the sole reason that it has unfavourable consequences when it is applied in conjunction with the scheme of another Member State.

Article 18 EC does not preclude legislation such as that under Paragraph 34 of Book XI of the Social Security Code, on the basis of which a competent institution, independently of the mechanisms introduced by Paragraph 19 or, as the case may be, Paragraph 22(1)(b) of that legislation and for an unlimited period, refuses to assume the costs linked to a stay in a care home in the Member State of residence up to the amount of the benefits to which that person would have been entitled if they had received the same care in a care home – party to a service agreement – in the competent State.

2.2 Less favourable invalidity benefits for migrant workers: the Leyman case

Having been employed in Belgium from 1971 until 2003, Ms Leyman, a Belgian national, moved to Luxembourg in 1999 to take up employment in that country. From 2003 she was subject to the social security scheme of the Grand Duchy of Luxembourg. In July 2005 the

13. Case C-3/08 Leyman [2009], not yet published in the Court Reports.
competent Luxembourg authorities found her to be incapable of work for the period from 8 July 2005 to 29 February 2012, the date of her retirement. Luxembourg granted her invalidity allowance for the insurance periods completed in Luxembourg. The Belgian social security system, for its part, granted her invalidity allowance from 8 July 2006, under Article 40(3)(b) of Regulation No.1408/71 and Article 93 of the 1994 Belgian Law. Dissatisfied with that situation, the applicant appealed the Belgian decision, seeking payment of the allowance from 8 July 2005.

The Nivelles Tribunal du travail (Labour Court) referred to the Court of Justice for a preliminary ruling on whether Article 39 EC and Article 42 EC must be interpreted as precluding a condition such as that contained in Article 93 of the 1994 Law which has the effect that a person such as Ms Leyman who, having worked and resided in Belgium – a Member State with type A legislation – went to live in another Member State, whose legislation was type B, was deprived of any allowance payable by the competent institution in the first Member State during the first year of incapacity to work and as meaning that the condition thereby gives rise to discrimination against a worker exercising their right to freedom of movement.

According to the Court, under Article 40(3)(b) of Regulation No.1408/71, a Member State may make the grant of those benefits subject to the expiry of an initial period during which the person concerned has either been incapable of work or has received cash sickness benefits, an opportunity which the Belgian legislature has taken up by providing, in Article 93 of the Law of 1994, for the expiry of a period of primary incapacity of one year before the right to such benefits is acquired.

Article 42 EC leaves in being both substantive and procedural differences between social security systems. However, the aim of Article 39 EC would not be met if, as a result of exercising their right to freedom of movement, migrant workers were to lose social security advantages guaranteed to them by the laws of a Member State. Such a consequence might discourage Community workers from exercising their right to freedom of movement enshrined in Article 39 EC and would inevitably constitute an obstacle to that freedom. The Belgian Law of 1994 draws no distinction between workers who have exercised their right to freedom of movement and those who have not.
Application of those provisions nevertheless has the effect of disadvantaging migrant workers for the first year. Whereas workers who have remained in Belgium can receive the primary incapacity allowance, workers, such as Ms Leyman, who have exercised their freedom of movement, have no entitlement to any similar allowance in Belgium or in Luxembourg and pay contributions on which there is no return as regards the first year of incapacity. The Court accordingly found that Article 39 EC must be interpreted as precluding application by the competent authorities of a Member State of national legislation which, in accordance with Article 40(3)(b) of Regulation No.1408/71, makes acquisition of the right to invalidity benefits subject to the condition that a period of primary incapacity of one year has elapsed, where such application has the result that a migrant worker has paid into the social security scheme of that Member State contributions on which there is no return and is therefore at a disadvantage by comparison with a non-migrant worker.

3. The rights and obligations of workers and employers

3.1 Calculation of compensation for dismissal in the event of part-time parental leave: the *Meerts v Proost NV* case

Employed by Proost NV on a full-time basis under an employment contract of indefinite duration since 1992, from 1996 Ms Meerts took various forms of career break. From November 2002 she worked half-time as a result of parental leave which was due to end on 17 May 2003. On 8 May 2003 she was dismissed with immediate effect subject to payment of compensation for dismissal equal to ten months’ salary, calculated on the basis of the salary she was receiving at the time, which was reduced by half because of the equivalent reduction in her working hours. She challenged the amount of that compensation for dismissal before the *Arbeidsrechtbank van Turnhout* (Labour Court, Turnhout), claiming that the compensation for dismissal should be calculated on the basis of the full-time salary which she would have been receiving if

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14. Case C-116/08 *Meerts v Proost NV* [2009], not yet published in the Court Reports.
she had not reduced her working hours in connection with parental leave. The Hof van Cassatie (Court of Cassation), hearing the case, stayed proceedings and referred to the ECJ for interpretation of a number of provisions of Directive 96/34 putting into effect the framework agreement on parental leave (Council of the European Union, 1996).

The Court of Justice observed that ‘Clause 2.6 of the framework agreement on parental leave states that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are to be maintained as they stand until the end of parental leave’ (paragraph 38). The Court inferred from its wording and context that the ‘provision is intended to avoid the loss of or reduction in rights derived from an employment relationship, acquired or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, with regard to those rights, he will find himself in the same situation as that in which he was before the leave’ (paragraph 39).

Since the framework agreement on parental leave pursues the objective of equal treatment between men and women, Clause 2(6) must, according to the Court, be considered as articulating a particularly important principle of Community social law which cannot be interpreted restrictively. ‘Rights acquired or in the process of being acquired’ must be understood as ‘all the rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship, which the worker is entitled to claim from the employer at the date on which parental leave starts’ (paragraph 43). These include ‘all those relating to employment conditions, such as the right of a full-time worker on part-time parental leave to a period of notice in the event of the employer’s unilateral termination of a contract of indefinite duration, the length of which depends on the worker’s length of service in the company and the aim of which is to facilitate the search for a new job’ (paragraph 44). The Court also pointed out that this ‘body of rights and benefits would be compromised if, where the statutory period of notice was not observed in the event of dismissal during part-time parental leave, a worker employed on a full-time basis lost the right to have the compensation for dismissal due to him determined on the basis of the salary relating to his employment contract’ (paragraph 46).
The Court found therefore that national legislation which has the effect of reducing rights arising from the employment relationship in the event of parental leave could deter workers from taking that leave and could encourage employers to choose from amongst the workers to be dismissed those who are on parental leave. That would completely defeat the aim of reconciling working and family life pursued by the framework agreement.

That agreement must therefore be interpreted as precluding ‘where an employer unilaterally terminates a worker’s full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place’ (paragraph 56).

3.2 Right to annual leave in the event of sickness: Joined Cases Schultz-Hoff and Stringer and Others\(^\text{15}\)

In these cases, on referral from the Landesarbeitsgericht Düsseldorf (Higher Labour Court, Düsseldorf) and the House of Lords (United Kingdom), the Court of Justice defined the right to paid annual leave established by the Working Time Directive (European Parliament and Council of the European Union, 2003) and in particular the right to paid annual leave for workers on sick leave.

In *Schultz-Hoff*, the German court, the Landesarbeitsgericht, had to rule on the allowance payable to a worker who was not able to exercise his right to paid annual leave as result of incapacity for work which led to his retirement. Paragraph 7(3) of the Federal Law on leave (*Bundesurlaubsgesetz*) provides that a worker’s entitlement to an allowance in lieu of paid annual leave not taken is extinguished at the end of the calendar year concerned and at the latest at the end of a carry-over period of three months. In the event of incapacity for work until the end of the carry-over period, no allowance may be paid, on

\(^{15}\) Jointed Cases C-350/06 and C-520/06 *Schultz-Hoff and Stringer* (2009), not yet published in the Court Reports.
termination of the employment relationship, in lieu of the paid annual leave not taken.

In *Stringer*, the House of Lords was hearing a claim for an allowance in lieu of annual leave not taken during the leave year set by United Kingdom law. The United Kingdom supreme court had to examine amongst other cases that of a worker who, during sick leave of indeterminate duration, asked her employer if she could take a number of days' paid annual leave in the two months following the request.

In relation to the right to take paid annual leave during a period of sick leave, the Court of Justice stated that the right to sick leave and the conditions for exercise of that right are not governed by Community law (paragraph 27). It went on to point out that it is for Member States to lay down the conditions for the exercise and implementation of the right to paid annual leave, 'by prescribing the specific circumstances in which workers may exercise the right, without making the very existence of that right, which derives directly from Directive 93/104, subject to any preconditions whatsoever' (paragraph 28). The right to paid annual leave therefore precludes neither the grant of paid annual leave during a period of sick leave, nor refusal of that leave provided the worker in question has the opportunity to exercise their right to leave during another period.

The Court then looked at the right to paid annual leave in the case of sickness during all or part of the leave year, where the incapacity for work continues on expiry of that year or of a carry-over period determined by national law. In accordance with its case law in *Bectu*¹⁶, the Court stated that 'with regard to workers on sick leave which has been duly granted, the right to paid annual leave (...) cannot be made subject by a Member State to a condition concerning the obligation actually to have worked during the leave year laid down by that State' (paragraph 41). This means, the Court found, that national provisions may establish that the right to paid annual leave is lost at the end of a leave year or of a carry-over period provided the worker in question has actually had the opportunity effectively to exercise their right to paid leave (paragraph 43). This is not what occurs where, on the one hand, a

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¹⁶ Case C-173/99 *Bectu* [2001], ECR I-4881.
worker is on sick leave throughout the leave year and beyond a carry-over period set by national law, nor where, on the other hand, a worker has worked for part of the leave year before going on sick leave.

It found that the right to paid annual leave enshrined in the Directive ‘must be interpreted as meaning that it precludes national legislation or practices which provide that the right to paid annual leave is extinguished at the end of the leave year and/or of a carry-over period laid down by national law even where the worker has been on sick leave for the whole leave year and where his incapacity for work persisted until the end of his employment relationship, which was the reason why he could not exercise his right to paid annual leave’ (paragraph 49).

The Court concluded with the right, at the end of the employment relationship, to an allowance in lieu of paid annual leave not taken. In the Court's view ‘the allowance in lieu (...) must be calculated so that the worker is put in a position comparable to that he would have been in had he exercised that right during his employment relationship. It follows that the worker's normal remuneration, which is that which must be maintained during the rest period corresponding to the paid annual leave, is also decisive as regards the calculation of the allowance in lieu of annual leave not taken by the end of the employment relationship’ (paragraph 61).

3.3 Workers' individual rights of action in the event of collective redundancy: the *Mono Car Styling case*

The Court of Justice had to rule for the first time on whether or not Directive 98/59 on collective redundancies (Council of the European Union, 1998) gives an individual right of action to employees wishing to challenge an infringement of the information and consultation procedure.

In the case, a manufacturer of automobile parts and accessories in Belgium, *Mono Car Styling*, had to make redundancies following a substantial drop in orders. In the context of the information and

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17. Case C-12/08 *Mono Car Styling* [2009], not yet published in the Court Reports.
consultation procedure, an agreement was reached with the staff representatives to set the number of employees to be made redundant at 30 and to take accompanying measures. However, a number of employees brought proceedings claiming non-compliance with the redundancy procedure. They were awarded damages at first instance, and the company appealed the decision to the Liège Cour du travail (Labour Court) which referred several questions to the ECJ for a preliminary ruling.

The Belgian legislation transposing Directive 98/59 lays down the information and consultation procedure. The employer is assumed to have complied with the procedure if it provides evidence that the four conditions listed by the transposing legislation have been complied with: it has presented a written report to the workers’ representatives; it has assembled the representatives themselves; it has allowed them to ask questions and to put forward proposals; it has replied to any questions and proposals (Article 66(1) of the Belgian Law of 13 February 1998 on measures in favour of employment).

Only an allegation of non-observance of those four conditions enables a redundant employee to challenge the collective redundancy procedure, subject also to the staff representatives having notified any objections to the employer within 30 days from display of the notice of collective redundancy (Article 67 of the 1998 Law).

On the question of whether such a limitation on workers’ individual right of challenge or the fact that exercise of the right is subject to the foregoing conditions may deprive the provisions of Directive 98/59 of useful effect or restrict the protection of workers established by the Directive, the Court replied that it did not. The Court stated that ‘it is clear, first of all, from the text and scheme of Directive 98/59 that the right to information and consultation which it lays down is intended for workers’ representatives and not for workers individually’ (paragraph 38). It based itself on a teleological interpretation of the Directive: ‘the information and consultation (...) are intended, in particular, to permit, first, the formulation of constructive proposals covering, at least, ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences of such redundancies and, secondly, the possible submission of comments to the competent public authority, workers’ representatives are best placed
to achieve the objective which the directive seeks to attain’ (paragraph 40). The Court pointed out that this right is intended to benefit workers as a collective group and is therefore collective in nature.

It found in consequence that the national legislation gives those representatives a right of action which is not limited by specific conditions. The level of protection required by the Directive is therefore achieved. Nor does the legislation go against fundamental rights, in particular the right to effective judicial protection under Article 6 of the European Convention on Human Rights.

After that, the Court drew attention to the Community law principle that national law must be interpreted in conformity with Community law. The Court found in fact that the obligations imposed on the employer by the Belgian legislation in the event of collective redundancy did not reflect all the obligations referred to in Article 2 of Directive 98/59. Whilst it conceded that the Directive does not have direct effect (paragraph 59), it pointed out nevertheless that the national court was still bound to interpret that law, so far as possible, in the light of the wording and the purpose of the Directive in order to achieve the result sought by it (paragraph 60). That principle therefore requires the referring court to ensure that Directive 98/59 is given useful effect, so that the obligations on the employer are not reduced below those set out in Article 2 of the Directive.

**Conclusion**

The ECJ’s activity has been intense if nothing else. Whilst it has not delivered any extraordinary judgments, the decisions handed down do nonetheless give us a better understanding of the social aspects of Community law. The Court reaffirmed the right of pregnant workers to effective judicial protection in the event of dismissal (*Pontin*) and carried out an in-depth examination of Directive 96/34/EC in a case concerning gender equality in relation to parental leave, something which it had declined to do hitherto (*Gómez-Limón*). In the *Age Concern England* and *Hütter* cases the Court again ruled on the extent of the justifications permitted by Directive 2000/78 for differences in treatment on those grounds. It also shed light on the rules governing social security for migrant workers in *Leyman* and *von Chamier-
It likewise clarified aspects of rights to annual leave (Schultz-Hoff and Stringer) and workers' individual rights of action in the event of redundancy (Mono Car Styling).

Other issues will have to be determined in 2010. They will be many and varied. Amongst other matters, the Court will have to determine whether Article 11 of Directive 92/85/EEC (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) has direct effect and whether the article creates a right for a female employee to continue receiving an allowance for on-call duty whilst away from work while pregnant and/or during maternity leave\(^\text{18}\). In Ingeniørforeningen, the task will be to define the scope of application ratione personae of Directive 2002/14 on employee information and consultation\(^\text{19}\). On conclusion of the Petersen case, the Court will have to determine whether Directive 2000/78/EC (establishing a general framework for equal treatment in employment and occupation) precludes a national measure under which authorisation to practise as a panel dentist expires at the end of the three-month period during which the dentist reaches 68\(^\text{20}\).

References


\(^{18}\) Case C-194/08 Gassmayr, Opinion of Advocate General Poiares Maduro delivered on 3 September 2009.

\(^{19}\) Case C-405/08 Ingeniørforeningen, Opinion of Advocate General Bot delivered on 29 October 2009.

\(^{20}\) Case C-341/08 Petersen, Opinion of Advocate General Bot, delivered on 3 September 2009.


Future prospects

Christophe Degryse

Two major issues forced their way on to the international political agenda in 2009: economic governance (mainly because of the G20 events in London and Pittsburgh) and the fight against climate change (mainly owing to the Conference of the Parties to the United Nations Framework Convention on Climate Change, in Copenhagen). Weakened though it has been by very uneven levels of ambition, the international community now finds itself having to devise common rules of the game, a level playing field, on both of these fronts. The challenge is to go beyond immediate concerns (regional, national, industrial, etc.) and construct the most ambitious set of common standards possible - which has of course prompted numerous lobbies and established interest groups to do their utmost to disrupt progress, in respect of both climate change and financial regulation.

Be that as it may, it is tempting to welcome this international agenda-setting, which in itself constitutes progress, and to begin mulling over the next step. Within Europe, that next step could be encapsulated in the following question: at a time of burgeoning unemployment, when budget deficits and public debt are such that fiscal restraint is a must in almost all Member States, how can we revive the EU’s fortunes in the medium and long term, and what form will that revival take?

This question was under debate at the very start of 2010. But the budgetary position of Member States being what it is, the debate has immediately come to focus, in a somewhat blinkered manner, on the sole issue of how to boost economic growth while consolidating budgets. On the eve of the European Council of 11 February 2010, for instance, the new President of that body, Herman Van Rompuy, declared: ‘We need more structural and sustainable growth to be able to
finance our social model and maintain what I call our “European way of life” (...)’. This discourse is broadly in line with that of the European Commission in its consultative document on the ‘EU2020’ Strategy\(^1\) and then its final Communication of 3 March 2010\(^2\). The aim is to create ‘a knowledge-based, connected, greener and more inclusive economy’. The goals for 2020, therefore, are a more competitive Union, enhanced productivity, lower consumption of non-renewable resources and energy, and greater energy efficiency. All of this ‘will stimulate growth and help meet our environmental goals’. In other words, more growth will fuel ambitions in the social and environmental spheres – taking us straight back to the paradigm of the ‘second life’ of the Lisbon Strategy (see Foreword and chapter by Ramón Peña-Casas).

It is interesting to note the reactions to the Commission’s consultative document from stakeholders (governments, regions, social partners, NGOs, etc.), most of whom were supportive of the priority attached to growth and employment. Two of these reactions, however, were symbolic of two diametrically opposed routes out of the crisis: that of the International Monetary Fund (IMF) and that of some university circles. The IMF believes that ‘the new Strategy [EU2020] should aim at creating the best possible environment for markets to support employment and productivity, focusing on reforming labour markets and on raising productivity’\(^3\). Most of the academic contributions, for their part, argue that ‘Europe’s current growth model is unsustainable, that the benefits of growth should be shared more fairly and that the financial system should serve the “real” economy’\(^4\). Without doubt, the tension between these two quite distinct points of view reflects the challenges already confronting us as we recover from the crisis: will the recovery come from market freedoms, enhanced productivity and flexicurity, or will it lie in a different model of society, where social and environmental considerations are given precedence over GDP growth?

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4. Ibid.
Concurrent challenges

When reflecting on prospects for the medium and long term it is essential to begin by taking stock of the present, and one of the main points to note is that a number of challenges exist concurrently. Climate disruption is no longer a purely environmental issue: it has become a systemic problem that is testing our model of growth and our entire system of production, transport, distribution and consumption. It is upsetting geopolitical equilibria and alliances, disrupting diplomatic and social relations as well as economic and industrial policies, and so on.

Nor does the financial crisis, for its part, any longer appear to be a mere problem of regulation or supervision: it has proved to be a broader problem of society. The crisis has revealed the delinquency of capitalism, demonstrating the ludicrousness of certain paradigms of standard economic theory (market efficiency, agent rationality), which claims to organise all aspects of society. It has also cast light on an apparent paradox: it is because of this form of capitalism, which purportedly generates so much wealth, that our countries are now set on a course of fiscal restraint and public expenditure cutbacks, but also unemployment, job instability and impoverishment. Social inequality is growing incrementally, its mirror image being capital accumulation. While it is true that the market economy seems to be a powerful machine for wealth creation, the hidden costs of this delinquent capitalism are beginning to appear more burdensome as the days go by.

Reassessing the status quo

The concurrence of these two challenges – climate and finance – is undermining the established order and almost everything we took for granted, reviving debate about what would constitute a truly sustainable model of society. 2009 saw a number of theoretical reappraisals of GDP growth as the ultimate policy goal. These reappraisals occurred at a time when long-term surveys and indicators were showing that over recent decades GDP growth had become decoupled from increased well-being in developed societies (see on this point the Index of Sustainable Economic Welfare, ISEW, or the Genuine Progress Indicator, GPI). Beyond a certain threshold of material
comfort there is no longer a correlation between GDP growth and a (subjective) assessment of well-being. Besides, the increase in added value over the past few decades has mainly benefited capital owners, with the portion enjoyed by wage-earners in constant decline. And as if widening inequality between and within countries were not enough, this pattern of growth also poses an unprecedented environmental threat. Under these circumstances, an increasing number of western economists are now wondering, what is the point of striving for quantitative GDP growth that is all-consuming, inegalitarian and even destructive?

It is surprising, to say the least, that the European Commission’s work on ‘GDP and beyond’, published in August 2009, did not find its way into either the preparatory document for the EU2020 Strategy (even though some of the stakeholders in the consultation process did ask for that to happen) or the final document. The main focus of the Commission’s work had been to supplement GDP with other indicators taking into account the impact of growth on social and environmental well-being. In order to accurately gauge economic and social progress in the longer term, and notably the ability of a society to tackle issues such as climate change, resource efficiency or social inclusion, ‘there is a clear case for complementing GDP with statistics covering the other economic, social and environmental issues, on which people’s well-being critically depends’, stated the Commission in the aforementioned document. So why did that work not feed into the definition of Europe’s medium-term strategy?

**Possible scenarios**

If we wish to learn our lessons from recent events, we must address ourselves to a variety of questions about how best to emerge from the crisis. Is it purely and simply a matter of reviving ‘growth’, which it is...
nowadays politically correct to qualify as ‘sustainable’? There is not an infinite choice of scenarios for sustainable growth, in other words ones respectful of the earth’s physical limits. The first scenario, based on faith in technology, consists of pushing back the environmental limits (in terms of climate change, particularly geo-engineering solutions); the second seeks to decouple growth from its energy requirements and its harmful effects on the environment (green growth, sustainable development, eco-innovation, new technologies, etc.).

So far, geo-engineering projects - such as seeding the oceans with iron sulphate, projecting sulphur into the stratosphere or installing mirrors in space so as to reduce climate change - have been described by the IPCC scientists as largely speculative and risky in terms of their unknown side-effects. Such schemes do nevertheless have some backers owing to their main ‘advantage’: there is no need to alter the current system (carbon capture and geological storage schemes have the same advantage).

As for the scenario of decoupling growth from its energy and raw materials requirements, it is attractive at first sight. Part of the European Sustainable Development Strategy is in fact based on this concept of decoupling, the idea being to invent a kind of growth that is less energy-intensive and consumes fewer raw materials. Yet some studies assert that decoupling is a myth: the trend in fossil energy (oil, coal, natural gas) consumption has broadly kept pace with the worldwide trend in GDP over the past 25 years8. Moreover, it was demonstrated long ago that an improvement in energy efficiency often leads to a rise in global energy consumption9. Finally, the question of environmental limits is not confined to energy and the climate but also encompasses issues such as biodiversity, waste, soil degradation, pollution of water and the water table, etc., issues for which decoupling has no convincing solutions.

9. See on this subject the Jevons paradox.
Above and beyond these scenarios, there is now beginning to be talk of prosperity without growth\textsuperscript{10}. This, in our opinion, could become a major topic of political debate in the years ahead, which is why we intend to dwell on it briefly below.

This third scenario consists not just in examining growth itself, but also in reflecting on a new social democratic settlement which would no longer be vitally dependent on growth, given that quantitative GDP growth cannot be perpetuated without an irreversible impact on the environment and climate. But this scenario immediately poses many problems, given that the social democratic settlement of European societies is based specifically on a continuing increase in the wealth of nations. It is fuelled by growth in a way that mitigates or even masks conflicts over distribution and redistribution.

Could an alternative model of society produce a consensus around a better share-out of employment and wealth? Consideration of such a model is still in its infancy and faces many obstacles. Difficulties abound in view of the fears over jobs, over the funding of social protection and over public investments and public services (although it should be noted that the current model of growth is by no means immune to such fears). It would be a matter of moving from a growth model based on continuous productivity gains to a system of sustainability and quality gains - plus a sharing thereof.

Some economists are calling for the establishment of an ‘economic economy’ based on a greater proximity of production and consumption, enhanced product sustainability, a rapid switch to decentralised energy systems, compulsory and systematic recycling of materials, the development of immaterial use-values (social services, social inclusion) and a reduction in mandatory working time\textsuperscript{11}. The economist Jean Gadrey argues that the quality and sustainability of manufactured goods should be improved, and seeks to demonstrate that such improvements would create worthwhile jobs, reduce unemployment and preserve social protection without GDP necessarily growing. He

\textsuperscript{10} Jackson, op. cit.
\textsuperscript{11} See for example Réginald Savage, in \textit{La Revue Nouvelle}, March 2009.
aspires to a sustainable, abstemious society with full employment and consequently a considerable decline in inequality\textsuperscript{12}.

Many western countries (the UK, France, Canada, etc.) are witnessing the emergence of groups who favour ‘transition’ (transition towns, transition communities, transition networks, etc.) in the light of peak oil and the fight against climate change: other groups are trying to promote ‘slow food’, ‘soft mobility’ and ‘voluntary simplicity’. These initiatives do not of course constitute a ‘model of society’ in the usual sense of the term, but they do have the merit of showing that individual and collective well-being can be improved in ways other than the ones industrial society has been pursuing for almost two centuries. They prove the point: greater well-being and a better environment can exist without quantitative growth. What is more, such initiatives illustrate the sheer illogicality of rich countries offering discounts to consumers so that industry can dispose of its chronic overproduction\textsuperscript{13}. The scenario of an economic economy is clearly a remote prospect.

Nevertheless, this scenario is in fact in keeping with the underlying trend towards falling growth rates observed in western European countries over the past 50 years\textsuperscript{14}. Hence the need, in a medium- and long-term perspective, citing Daniel Cohen, to think in terms of a model of society that is no longer ‘fleeing headlong’ into perpetual growth. In any event, we should henceforth consider our social model and methods of distribution before we contemplate growth, given that greater equality is the driver of ‘prosperity without growth’.

Could it be that a progressive new blueprint for Europe may be the one described by the British economist John Maynard Keynes in his ‘Economic possibilities for our grandchildren’? Keynes states in this essay, dating from 1930, that it would not be at all surprising if ‘a hundred years hence we are all of us, on the average, eight times better off in the economic sense than we are to-day’. He infers from this that


\textsuperscript{13} For instance the car scrappage schemes adopted by certain European countries.

the needs of human beings will then be so well satisfied that ‘we prefer
to devote our further energies to non-economic purposes’ – although he
had presumably not envisaged the increased inequality that was to
accompany this increased wealth. In 1944, Karl Polanyi pointed out the
need to subordinate the economy to society by ‘embedding’ the former
in the latter. André Gorz wrote in 1988 that economic activity must be
at the service of the loftier purposes which make it useful. ‘Re-
embedding’ the economy in a fair, sustainable society by establishing
distribution and redistribution methods that are less (or preferably not)
growth-intensive: could this be a new scenario for a medium-term EU
strategy?

Galilée, 1988 (page 164).
Chronology 2009
Key events in European social policy

Christophe Degryse

JANUARY

1st January: Greece, Spain, Hungary and Portugal lift labour market restrictions for Bulgarian and Romanian workers.

8-9 January: an international conference held in Paris on the overhauling of capitalism ('New World, New Capitalism') is attended by many political and economic leaders (http://www.colloquenouveau monde.fr/home/).


15 January: the European Central Bank (ECB) lowers its key interest rate by half a point, from 2.5% to 2%.


19 January: according to the European Commission’s early interim forecast, GDP growth in the EU looks set to shrink by 1.8% in 2009 before undergoing a slight rise of 0.5% in 2010. 3.5 million jobs are likely to be lost; the EU’s overall deficit will probably amount to 4.5% (http://ec.europa.eu/economy_finance/pdf/2009/interimforecastjanu ary/interim_forecast_jan_2009_en.pdf).

22-23 January: the European Economic and Social Committee (EESC) holds a conference in Brussels entitled 'Rien ne va plus? Ways


**28 January:** according to the International Labour Office, unemployment, the number of working poor and insecure jobs will increase significantly owing to the global economic crisis. ILO, *Global Employment Trends Report 2009* (http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_101461.pdf).

**FEBRUARY**


**4 February:** the European Parliament adopts the final report of its Temporary Committee on **Climate Change** (A6-0495/2008 of 4 February 2009).

**19 February:** the European Parliament gives its go-ahead for the adoption of the directive providing for sanctions against employers of
illegally staying third-country nationals in the EU (the ‘sanctions directive’) (A6-0026/2009 of 27 January 2009).


22 February: a meeting of the G4 (Germany, France, United Kingdom, Italy) in Berlin broaches the problem of failed economies in Central and Eastern Europe.

25 February: the Commission meets the employers and trade unions in an effort to confront the economic crisis and act in favour of jobs.

27 February: on the eve of the informal European Union (EU) meeting of 1st March, the European Trade Union Confederation (ETUC) calls upon European leaders to adopt clear rules on migrant and posted workers to avoid increasing protectionism (http://www.etuc.org/a/5880).

MARCH

1st March: Informal meeting of the EU Heads of State or Government, asserting their determination not to resort to protectionism in view of the worsening economic crisis.

3 March: the ETUC launches a European campaign to fight the crisis, to include four European events from 14 to 16 May (on 14 May in Madrid, 15 May in Brussels, 16 May in Prague and Berlin) (http://www.etuc.org/a/5895).

4 March: in a joint press statement published by the ETUC, EPSU (European Federation of Public Service Unions), Ver.di (Vereinte Dienstleistungs gewerkschaft) and ICTU (Irish Congress of Trade Unions), the European trade unions declare themselves ‘stunned to observe the president of the ECB attacking public sector wages once again’ (http://www.epsu.org/a/4702).
5 March: the ECB decides to lower interest rates in the euro zone again, by 50 basis points.


11 March: the General Assembly of CEEP (European Centre of Enterprises with Public Participation) elects Ralf Resch to the post of Secretary General for a three-year term. He takes over from Rainer Plassman.

12 March: the British and Czech conservatives announce their intention to quit the European People’s Party (EPP) at the June 2009 elections.

12 March: the European Parliament adopts a resolution on employees’ participation in companies with a European statute, calling upon the
Commission to embark on consultations with the social partners on this issue (B6-0110/2009 of 12 March 2009).


20 March: several European human rights organisations note that the financial and economic crisis is causing an upsurge in racism and xenophobia, especially towards the most vulnerable population groups.

22 March: ahead of the G20 summit in London (2 April), the ITUC, TUAC and the Global Unions adopt a Global Unions London Declaration calling upon the G20 leaders to develop a five-point strategy, to tackle the crisis and to build a fairer and more sustainable world economy for future generations (http://www.gpn.org/ituc-csi_org_No_16_-_G20_London_Declaration_FINAL.pdf).

23 March: the decision of the European Council to hold the Prague Jobs Summit on 7 May on a Social Troika basis is considered by the ETUC as a ‘downgrading’ (http://www.etuc.org/a/5999).

23 March: the WTO announces an unprecedented downturn in international trade in 2009, likely to fall by 9% in volume terms as a result of the global recession (http://www.wto.org/english/news_e/press_e/pr554_e.htm).

24 March: the EESC adopts a social, economic and environmental pact for Europe entitled ‘Programme for Europe: proposals of civil
24 March: the OECD publishes its Economic Outlook Interim Report, in which it predicts that GDP in OECD countries will fall by 4.3% in 2009, with a sharp rise in unemployment, which is likely to reach double-digit levels in many countries by the end of 2010 (www.oecd.org/dataoecd/60/33/42438380.pdf).


30 March: the Transport Council endorses a general approach towards the proposal for a directive on the organisation of the working time of persons performing mobile road transport activities. It supports the exemption of self-employed drivers from this directive (see 5 May). 2935th Meeting Council Transport, Telecommunications and Energy, Brussels, 30-31 March 2009.

APRIL


2 April: the G20 London Summit pledges to build a new global financial system and take action against tax havens (http://www.londonsummit.gov.uk/en/summit-aims/summit-communique/).

2 April: the ECB decides on a further interest rate reduction of 25 basis points. The principal refinancing rate in the euro zone is now 1.25%.

2 April: the second European Parliament/Council conciliation meeting fails to reach an agreement on revising the ‘working time’ directive.
2 April: the European Parliament adopts the advisory report of Kathalijne Buitenweg on ‘equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation’ (A6-0149/2009 of 2 April 2009).


16 April: annual inflation in the euro zone was down to 0.6% in March 2009, compared with 1.2% in February. Inflation is at an all-time low, according to Eurostat (http://europa.eu/rapid/pressReleasesAction.do?reference=STAT/09/52&format=HTML&aged=0&language=EN&guiLanguage=en).

20 April: the European Commission organises the first round of high-level consultations aimed at assisting road transport, regarded as the sector worst hit by the economic crisis.

21 April: in its Global Financial Stability report, the IMF estimates that the crisis has cost the financial sector $4,000 billion and calls for a more rapid redesign of the financial system (http://www.imf.org/external/pubs/ft/gfsr/2009/01/pdf/summary.pdf).

21 April: the UN conference on racism (Durban II) unexpectedly reaches a consensus on the adoption of a final document examining different aspects of racism, listing the progress made and the efforts still to be undertaken (http://www.un.org/apps/newsFr/storyF.asp?NewsID=18967&Cr=racisme&Cr1=Durban).

22 April: the IMF envisages in its World Economic Outlook that the global economy will shrink by 1.3% in 2009, its worst performance of the post-war period. The unemployment rate in most of the advanced economies will exceed 10% in 2010. World Economic Outlook (WEO), Crisis and Recovery (http://www.imf.org/external/pubs/ft/weo/2009/01/pdf/text.pdf).


24 April: according to a progress report of the European Commission, the EU is unlikely to reach the 2010 indicative renewable energy targets (http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/639&format=HTML&aged=0&language=EN&guiLanguage=en).

28 April: Albania officially applies for EU accession.

28 April: Parliament and the Council again fail to agree in the conciliation committee on a revision of the ‘working time’ directive: a minority of governments refuse to end the opt-out.


MAY

1st May: Denmark lifts labour market restrictions for Bulgarian and Romanian workers.


5 May: Eurogroup president Jean-Claude Juncker warns that the looming social crisis should not be underestimated: ‘We are in the midst of an economic and financial crisis; we are heading towards a social crisis, because there definitely will be a crisis of employment’. Bulletin of the European Union, No.9895 of 6 May 2009.


6 May: rather than voting on the Estrela report aimed at improving protection for **pregnant workers** and young mothers in Europe, the European Parliament decides to refer the report back to committee owing to the strong opposition from the conservative and liberal groups (A6-0267/2009 of 23 April 2009).

7 May: the **EU Employment Summit** in Prague sets out a list of specific actions to combat the rise in unemployment, to which the ETUC does not subscribe on the grounds that they are too general and inadequate (http://www.etuc.org/a/6136).

7 May: the **ECB** decides to lower its key interest rate to 1% (-25 basis points) and decides on ‘unconventional’ measures to inject liquidity into the market.

8 May: Eurostat announces that the EU countries rejected more asylum applications in 2008 than in 2007: around 73% of all applicants were turned down (http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-08052009-AP/EN/3-08052009-AP-EN.PDF).

15 May: in the first quarter of 2009, European gross domestic product fell by a record 2.5% on the previous quarter.

14-16 May: four Euro-demonstrations called by the ETUC brought some 350,000 people onto the streets in four European capitals (Berlin, Brussels, Madrid and Prague).

15-16 May: the 8th European Meeting of People Experiencing Poverty pointed out that no fewer than 78 million European citizens are at risk of poverty as a result of the economic crisis (http://www.eu2009.cz/scripts/modules/diary/action.php?id=662).


19 May: a study published by business consultants A. T. Kearney asserts that the East European countries are becoming less ‘attractive’ for the relocation of industry or services and are losing out to certain Maghreb or Middle Eastern countries.


28-29 May: the 55 member countries of the Leading Group on Innovative Financing for Development are joined by international organisations (World Bank, Global Fund AIDS, OECD, FAO, Unitaid, European Union) for a meeting in Paris to discuss ‘innovative financing’ for developing countries (http://www.leadinggroup.org/rubrique20.html).

28-29 May: the ACP countries and the EU Member States give the official go-ahead for the second five-yearly review of the Cotonou Agreement.

JUNE


2 June: in April 2009 the unemployment rate in the euro zone reached 9.2%, its highest level since 1999. The unemployment rate for the EU as a whole rose to 8.6%, according to Eurostat.


4 June: the EU-27 pledge to help Malta, Italy, Cyprus, Greece and Spain, where boatloads of illegal immigrants coming from North Africa are arriving on a regular basis.

7 June: the right continues to dominate the European Parliament following the European elections. Also, the left is in retreat, the Greens surge forward and populism is on the rise (http://www.europarl.europa.eu/parliament/archive/elections2009/en/index_en.html).

8 June: the Employment and Social Affairs Council studies the Commission’s Communication on ‘A shared commitment for employment’ and adopts conclusions on flexicurity at a time of crisis. It also adopts conclusions on social services. Moreover, during a debate on the proposal for a directive on cross-border healthcare, the 27 voice their concern that health systems should continue to be organised nationally. 2947th Council Meeting Employment, Social Policy, Health and Consumer Affairs, Luxembourg, 8 June 2009, Press: 124, Nr: 9721/2/09 REV2.


12-13 June: at their meeting in Lecce (Italy), the G8 Finance Ministers discuss for the first time a strategy for recovery from the crisis (http://www.g8italia2009.it/static/G8_Allegato/Comunicato_G8_Ministri_Finanziari__Lecce_13_giugno_2009.2.pdf).

16 June: lawyers from across Europe specialising in social and labour law call on the European Council to reinforce the social dimension of the EU, demanding that fundamental rights of workers and their
representatives not be subordinated to market freedoms and competition law' (http://www.etuc.org/IMG/pdf_160609_Irish_guarantes_d2let.pdf).


**18 June:** the European Social Partners (ETUC-BUSINESSEUROPE-UEAPME-CEEP) officially adopt an agreement revising their 1995 framework agreement on parental leave (http://www.etuc.org/IMG/pdf_Framework_agreement_parental_leave_revised__18062009.pdf).


**19 June:** according to the Food and Agriculture Organization (FAO), world hunger will reach a historic high in 2009 with more than a billion people going hungry (http://www.fao.org/news/story/en/item/20690/icode/).

22 June: the European Conservatives and Reformists (ECR) announce the formation of a new anti-federalist political group in the European Parliament.

22-23 June: the European Commission holds its latest ‘Restructuring Forum’. It tackles issues such as the number of jobs lost and created due to climate change, ways in which skills and qualifications need to change, and the role to be played by the social partners.

24 June: the ETUC publishes a report warning against an early return to a ‘casino capitalism’ economy; it reveals that the financial markets are beginning again to speculate on a new raw materials bubble (http://www.etuc.org/IMG/pdf_Green_shoots_Discussion_note_2009-03_EN.pdf).


29 June: in its Quarterly Report on the euro area, the Commission expresses the view that ‘the worst is behind us’ as concerns falling GDP.

30 June: the annual inflation rate in the euro zone is -0.1% in June, compared with 0% in the previous month, according to Eurostat.

30 June: the German Constitutional Court paves the way for ratification of the Lisbon Treaty, while holding it up by demanding that the Bundestag first adopt a law confirming the powers of the German parliament.
30 June: in the 2009 edition of International Migration Outlook, the OECD shows that the crisis has slowed migration flows towards the North but is substantially increasing unemployment rates among immigrants (http://www.oecd.org/document/51/0,3343,en_2649_33931_43009971_1_1_1_1,00.html).


JULY

1st July: Jürgen R. Thumann, former president of the Federation of German Industry (BDI), takes over from Ernest-Antoine Seillière as president of BusinessEurope for a two-year term of office (renewable once).


3 July: in the light of misgivings in the Parliament, the Swedish EU presidency postpones until autumn the vote on renewing Mr Barroso’s term of office at the head of the European Commission.

8 July: an ETUC delegation is invited to participate in the work of the informal meeting of the Employment and Social Affairs Council, so as to give the social partners their rightful place in tackling the employment crisis.

9 July: the 27 Member States formally decide on Mr Barroso as the European Council’s candidate for the post of President of the European Commission for 2009-2014.

9 July: the ‘Spring Alliance’, grouping together the ETUC and a number of social, environmental and development-cooperation NGOs, publishes its ‘Manifesto for a European Union that puts people and planet first’ (http://www.concordeurope.org/Files/media/internet documentsENG/3_Topics/Topics/Alliance/Spring-Alliance-Manifesto--final.pdf).

17 July: the European social partners in the healthcare sector sign an agreement on the prevention of injuries and the risk of infection among healthcare professionals (http://www.epsu.org/IMG/pdf/EN_Final_Agreement.pdf).

23 July: Iceland officially submits its application for EU accession.

23 July: Eurostat announces that the youth unemployment rate in the EU-27 for those aged 15 to 24 was 18.3% in the first quarter of 2009, raising fears of a ‘lost generation’.


29 July: the Commission publishes a report on the implementation of European legislation on equal treatment for men and women and
the fight against discrimination in the workplace (http://ec.europa.eu/social/BlobServlet?docId=3305&langId=en).

AUGUST


31 August: a congress of European nutritionists meeting in Vienna estimates that 30 million people living in the EU are undernourished (http://www.espen.org/vienna/).

SEPTEMBER

3 September: the European Parliament’s Committee on Development calls for the introduction of a Green Tobin Tax, despite opposition from the EPP Group. Draft motion for a resolution (PE427.995v01-00) on the EU strategy for the Copenhagen Conference on Climate Change (COP 15).


14 September: the WTO, in its third report on the evolution of trade measures in connection with the economic and financial crisis, states that limited protectionist tendencies have become apparent since the G20 summit in London in April 2009 (http://www.wto.org/english/news_e/news09_e/trdev_14sep09_e.htm).

14 September: the European Commission presents its latest economic forecast and announces the end of the recession, now anticipating positive GDP growth for the EU-27 in the third quarter of 2009 (+0.2%).
16 September: the Parliament endorses President José Manuel Barroso to head the Commission for a second term.


17 September: the Informal European Council declares its determination not to allow the recovery to result in a return to the practices responsible for the collapse of the financial system.

21 September: the Party of European Socialists, the European Trade Union Confederation and several organisations active in the social sector launch an information campaign and exert political pressure in favour of immediate, effective regulation of international finance (http://www.europesforfinancialreform.org).


24-25 September: the G20 Summit in Pittsburgh reaches an agreement on better regulation of the financial system, on reform of the IMF and the World Bank, and on putting the G20 on a firmer footing as a forum for international economic cooperation (http://www.pittsburghsummit.gov/).

29 September: the report of the Social Protection Committee notes that social protection systems have helped to protect European people from the worst effects of the financial crisis. It nonetheless points out that social protection alone is not enough to prevent poverty and exclusion (http://ec.europa.eu/social/BlobServlet?docId=3899&langId=en).

29 September: the European Parliament’s Committee on Employment and Social Affairs rejects the report by Edit Bauer on the proposal for a directive amending Directive 2002/15/EC on the organisation of the working time of road hauliers, aimed at subjecting all drivers of heavy goods vehicles to the same working time regulations.
OCTOBER

1st October: the IMF, when presenting its World Economic Outlook, announces that the global recession is coming to an end, although the recovery will be arduous. World Economic Outlook (WEO), Sustaining the Recovery (http://www.imf.org/external/pubs/ft/weo/2009/02/pdf/text.pdf).

2 October: the Irish people vote in favour of the Lisbon Treaty at the second referendum held on the treaty.

7 October: Eurostat announces that GDP fell by 0.2% in the eurozone, and by 0.3% in the EU-27, in the second quarter of 2009 compared with the previous quarter.

20 October: while Europe’s Finance Ministers call for a substantial consolidation of public finances once the recovery is under way, the ETUC adopts a policy statement calling for ‘a European investment plan’ of 1% of GDP to be paid by those revenues who have profited from speculation and have caused the crisis (http://www.etuc.org/a/6589).


21 October: the ETUC Executive Committee adopts a resolution on ‘Climate change, industrial policies and ways out of the crisis’ (http://www.etuc.org/a/6790).


29 October: at the Tripartite Social Summit, which precedes the European Council, the delegation representing the ETUC puts forward its proposals on developing an inclusive and sustainable economy and quality jobs (http://www.etuc.org/a/6627).
29-30 October: the European Council meeting is mainly devoted to the EU’s position with regard to the international climate negotiations in Copenhagen (December 2009). Brussels European Council, 29 and 30 October 2009, Presidency Conclusions (15265/1/09 REV1).

NOVEMBER

3 November: Czech President Vaclav Klaus signs the instrument for ratification of the Treaty of Lisbon by the Czech Republic. The new treaty enters into force on 1st December 2009.

3 November: according to the deputy director of Frontex, the number of illegal immigrants intercepted at EU entry-points has declined markedly since the start of the year owing to the economic crisis. In all, 51,600 illegals were stopped at the EU’s land and sea borders during the first six months of the year: 17% fewer than in the same period of 2008. Bulletin of the European Union, No.10011 of 4 November 2009.

5 November: the ECB keeps its interest rates unchanged and prepares for a gradual withdrawal of its enhanced credit support measures.

6 November: as a result of the economic crisis, according to Eurostat, the number of people in employment fell by 1.9% in the EU-27 and by 1.8% in the euro zone between the second quarters of 2008 and 2009. The EU-27 has witnessed an average reduction of 0.7 hour of work per week for those in full-time work and a rise in part-time work, along with a sharp fall in the number of unskilled jobs.


13 November: Eurostat notes that Europe returned to growth in the third quarter of 2009. The EU is emerging from the recession with a 0.4% rise in GDP in the euro zone; 0.2% in the EU-27.
Chronology


27 November: Mr Barroso, President of the European Commission, allocates the portfolios of the new Commission for 2010-2014.

30 November: the meeting of the Employment and Social Affairs Council focuses on how to recover from the crisis and prepare for the post-2010 Lisbon strategy. The Council also reaches political agreement on the revised directive on parental leave (implementing the framework agreement concluded by the social partners at European level), which will enter into force by 2012. 2980th Council Meeting Employment, Social Policy, Health and Consumer Affairs, Brussels, 30 November 2009, Press: 348 Nr: 16611/09.
DECEMBER

1st December: the Lisbon Treaty enters into force.


2 December: French trade unionist Joël Decaillon is elected Deputy General Secretary of the European Trade Union Confederation (ETUC) by its Executive Committee, following the appointment of his predecessor Maria Helena André as Minister of Labour and Social Protection in the new Portuguese government following the September 2009 elections (http://www.etuc.org/a/6733).

3 December: the European Central Bank leaves key interest rates in the euro zone unchanged, but begins the gradual withdrawal of its enhanced credit support measures.

3 December: on the eve of the European Council in Brussels on 10 and 11 December, the European Anti-Poverty Network (EAPN) calls on the Heads of State and Government to react to the Commission’s proposal on the future EU 2020 Strategy, which in its opinion does not deliver on a full stakeholder debate on the development of a new ‘social and sustainable’ post-2010 agenda (http://www.eapn.eu/content/view/1293/30/lang,en/).

7 December: the Party of European Socialists, meeting in Prague, re-elects Poul Nyrup Rasmussen as its president and decides for the first time to adopt a ‘mandate for change’ to determine a common identity and shared programme (http://www.pes.org/en/news/re-elected-pes-president-poul-nyrup-rasmussen-tells-party-reform-or-die).
10-11 December: the European Council is mainly devoted to the Copenhagen climate talks (COP15), as well as the economic and financial crisis (how to gradually remove the budgetary support measures): it calls on the IMF to devise a global levy on financial transactions. The Council also adopts the Stockholm Programme. European Council, Conclusions (10-11 December 2009), EUCO 6/09, Brussels, 11 December 2009.


19 December: the 15th Conference of the Parties (COP-15) of the United Nations Framework Convention on Climate Change
(UNFCCC), meeting in Copenhagen (Denmark), closes with the adoption of a document entitled ‘Copenhagen Accord’, and is regarded by most observers as a failure (http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf).

22 December: Serbia formally lodges its application for accession to the European Union.

Chronology drawn up by Christophe Degryse.
## List of abbreviations

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ABPI</td>
<td>Association of the British Pharmaceutical Industry</td>
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<td>AEIP</td>
<td>European Association of Paritarian Institutions of Social Protection</td>
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<td>AESGP</td>
<td>Association of the European Self-Medication Industry</td>
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<tr>
<td>AIDS</td>
<td>Acquired immune deficiency syndrome</td>
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<td>AIM</td>
<td>Association internationale de la mutualité</td>
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<td>BDI</td>
<td>Federation of German Industry</td>
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<tr>
<td>BEPGs</td>
<td>Broad Economic Policy Guidelines</td>
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<td>BIS</td>
<td>Bank for International Settlements</td>
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<td>BCBS</td>
<td>Basel Committee on Banking Supervision</td>
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<tr>
<td>BusinessEurope</td>
<td>Confederation of European Business</td>
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<tr>
<td>CEA</td>
<td>European Insurance and Re-insurance Federation</td>
</tr>
<tr>
<td>CEB</td>
<td>Chief Executives Board</td>
</tr>
<tr>
<td>CEC</td>
<td>Commission of the European Communities</td>
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<tr>
<td>CEDEFOP</td>
<td>European Centre for the Development of Vocational Training</td>
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<tr>
<td>CEEP</td>
<td>Central and Eastern European countries</td>
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<tr>
<td>CEIOPS</td>
<td>Committee of European Insurance and Occupational Pensions Supervisors</td>
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<tr>
<td>CFS</td>
<td>Council for Financial Stability</td>
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<td>CLS</td>
<td>Core labour standards</td>
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<td>CRISP</td>
<td>Centre de recherche et d'information socio-politiques</td>
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<tr>
<td>CSR</td>
<td>Corporate social responsibility</td>
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<tr>
<td>DB</td>
<td>Defined benefit</td>
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<td>DC</td>
<td>Defined contribution</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>DTCA</td>
<td>Direct-to-consumer advertising</td>
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<td>EAPN</td>
<td>European Anti-Poverty Network</td>
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<td>EC</td>
<td>European Community</td>
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<td>ECB</td>
<td>European Central Bank</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECOSOC</td>
<td>Economic and Social Council</td>
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<td>ECR</td>
<td>European Conservatives and Reformists</td>
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<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>EES</td>
<td>European Employment Strategy</td>
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<td>EESC</td>
<td>European Economic and Social Committee</td>
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<td>EFC</td>
<td>Economic and Financial Committee</td>
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<tr>
<td>EFPIA</td>
<td>European Federation of Pharmaceutical Industries and Associations</td>
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<td>EFRP</td>
<td>European Federation of Retirement Provision</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>EG</td>
<td>Employment Guidelines</td>
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<td>EGA</td>
<td>European Generic medicines Association</td>
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<td>EGF</td>
<td>European Globalisation adjustment Fund</td>
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<td>EIB</td>
<td>European Investment Bank</td>
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<td>EIOPC</td>
<td>European Insurance and Occupational Pensions Committee</td>
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<td>EMU</td>
<td>Economic and Monetary Union</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>EPA</td>
<td>Economic Partnership Agreement</td>
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<td>EPC</td>
<td>European Private Company</td>
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<td>EPC</td>
<td>Economic Policy Committee</td>
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<td>EPP</td>
<td>European People’s Party</td>
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<td>EPPF</td>
<td>European Parliamentary Pension Forum</td>
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<td>EPSU</td>
<td>European Federation of Public Service Unions</td>
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<td>ESF</td>
<td>European Social Fund</td>
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<td>ESFS</td>
<td>European System of Financial Supervisors</td>
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<td>ESIP</td>
<td>European Social Insurance Partners</td>
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<td>ETF</td>
<td>European Transport Workers’ Federation</td>
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<td>ETUC</td>
<td>European Trade Union Confederation</td>
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<td>ETUI</td>
<td>European Trade Union Institute</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FAFA</td>
<td>Financial and Administrative Framework Agreement</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<td>FEFSI</td>
<td>European Federation of Fund Managers</td>
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<td>FERPA</td>
<td>European Federation of Retired and Older Persons</td>
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<td>FSA</td>
<td>Financial Services Authority</td>
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<td>FT</td>
<td>Financial Times</td>
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<td>FTA</td>
<td>Free Trade Agreement</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<tr>
<td>GB</td>
<td>Governing Body</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GES</td>
<td>Growth and Employment Strategy</td>
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<td>GJP</td>
<td>Global Jobs Pact</td>
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<td>GPI</td>
<td>Genuine Progress Indicator</td>
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<td>GSP</td>
<td>Generalised System of Preferences</td>
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<td>IASB</td>
<td>International Accounting Standards Board</td>
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<tr>
<td>ICTU</td>
<td>Irish Congress of Trade Unions</td>
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<td>IFI</td>
<td>International Financial Institution</td>
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<td>IG</td>
<td>Integrated guidelines for growth and employment</td>
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<td>IIF</td>
<td>Institute of International Finance</td>
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<td>ILC</td>
<td>International Labour Conference</td>
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<td>ILO</td>
<td>International Labour Office</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>IMEC</td>
<td>Industrialized Market Economy Countries</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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List of abbreviations

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<th>Abbreviation</th>
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<tr>
<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
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<td>IORPS</td>
<td>Institutions for Occupational Retirement Provision</td>
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<td>ISDB</td>
<td>International Society of Drug Bulletins</td>
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<tr>
<td>ISEW</td>
<td>Index of Sustainable Economic Welfare</td>
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<td>ISG</td>
<td>Indicators Sub-Group</td>
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<tr>
<td>ITUC</td>
<td>International Trade Union Confederation</td>
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<td>LS</td>
<td>Lisbon Strategy</td>
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<td>MDG</td>
<td>Millennium Development Goals</td>
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<td>MEP</td>
<td>Member of the European Parliament</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>OJ</td>
<td>Official Journal</td>
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<tr>
<td>OMC</td>
<td>Open method of coordination</td>
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<tr>
<td>OTC</td>
<td>Over The Counter</td>
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<td>PAYGO</td>
<td>Pay-as-you-go</td>
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<tr>
<td>PPRF</td>
<td>Public pension reserve fund</td>
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<td>RBSA</td>
<td>Regular Budget Supplementary Account</td>
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<td>SDC</td>
<td>Social Dialogue Committee</td>
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<td>SDS</td>
<td>Sustainable Development Strategy</td>
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<td>SEM</td>
<td>Single European Market</td>
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<td>SGP</td>
<td>Stability and Growth Pact</td>
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<td>SME</td>
<td>Small and medium-sized enterprise</td>
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<td>SPC</td>
<td>Social Protection Committee</td>
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<td>SSDC</td>
<td>Sectoral Social Dialogue Committee</td>
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<tr>
<td>TEC</td>
<td>Treaty establishing the European Community</td>
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<td>TEU</td>
<td>Treaty on the European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<tr>
<td>TUAC</td>
<td>Trade Union Advisory Committee (at the OECD)</td>
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<tr>
<td>UEAPME</td>
<td>European Association of Craft, Small and Medium-sized Enterprises</td>
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<tr>
<td>UN</td>
<td>United Nations Organization</td>
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<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<tr>
<td>UNICE</td>
<td>Union of Industrial and Employers' Confederations of Europe</td>
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<tr>
<td>US</td>
<td>United States of America</td>
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<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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<tr>
<td>VAT</td>
<td>Value added tax</td>
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<tr>
<td>WEO</td>
<td>World Economic Outlook</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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List of contributors

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Pierre Defraigne, an economist and European civil servant from 1970 to 2005, is currently Executive Director of the Madariaga - College of Europe Foundation. Deputy Director-General in DG Trade after having been Chef de Cabinet for Pascal Lamy (European Commissioner for Trade), Pierre Defraigne was Director for North-South Relations from 1985 to 1999, and previously Chef de Cabinet for Etienne Davignon (then Vice-President of the European Commission). He set up Eur-IFRI, the Brussels branch of the French Institute for International Relations (IFRI), which he managed from 2005 to 2008. Pierre Defraigne is a lecturer in political economy at the College of Europe (Bruges) and at the Institute for European Studies (UCL and FUSL). He is also a visiting professor at Zhejiang University (China). His interests focus on international economic policies, political economy and relations with developing countries.

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2009 began amidst one of the worst economic crises experienced in Europe for 80 years. The credit crunch of autumn 2008 sent the real economy into freefall in most of the European Union Member States and led to restructuring measures, bankruptcies, redundancies and unemployment. Recovery plans, both national and European, were in place throughout the year in an effort to limit the damage. But this sequence of events will weigh heavily on the public finances of EU countries for years to come, having already resulted in fiscal restraint.

This 2009 edition of *Social developments in the European Union* examines the ways in which the 'European social model' has cushioned the blow – more so in some instances than others. This model is compared with that of the United States; the EU’s role in multilateral financial governance (in particular at the G20) and within international organisations (such as the ILO) is also assessed. In addition, this volume analyses the specific impact of the crisis on the Union’s social policies: employment strategy, pensions funding, social dialogue, social inclusion, etc.