Introduction: The sustainability of the European Social Model

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The sustainability of the European Social Model (ESM) is a topic of highest relevance in the current climate of European policy making. At least since the economic crisis of 2008 the focus of attention has shifted in the European Union to economic and fiscal policies, and the question is: what is the expense of social and employment policies? The future of the latter policies is unclear. In this situation an appraisal of their achievements seems a good basis for an assessment of times ahead.

Until recently the Commission was proud to view integrated economic, social and employment policies as representing an ESM. The concept was repeatedly invoked by Commissioners responsible for social and employment policies (for example, Diamantopoulou 2001). It seemed to characterise not only the special nature of European social policies but of responsible economic policies in general. However, enthusiasm has subsided gradually since about 2004 and we are now in a post-2008 economic crisis era. This certainly demands new perspectives but, at least in our view, does not require abandoning the utopias of the past.

The findings presented in this book are guided by concerns to discover new answers based on research carried out within the FP7 project GUSTO (Governance of Uncertainty: Meeting the challenges of economic uncertainty and sustainability through employment, industrial relations, social and environmental policies in European countries). The book is divided into three parts. The first part deals with general issues related to social and employment policies. It analyses interactions between EU law and national policies from a comparative perspective and discusses the role of the main institutions responsible for interpreting and enforcing EU law: the Court of Justice of the EU (CJEU) and the Commission. Chapters in this part contain analyses of key characteristics of EU governance, including underlying principles like sustainability and
The use of alternative legal instruments to hard law in the form of soft law and the Social Dialogue.

The second and third parts are devoted to assessments of core social and employment policies and focus more specifically on governance issues. The second part evaluates the Working Time Directive and its implementation in four countries: France, the Czech Republic, the Netherlands and the UK. Analyses of EU policies regarding social services of general (economic) interest and their implementation in the same four countries are topics of the final third part.

1. THE MOBILISING EUROPEAN SOCIAL MODEL VERSUS THE EXISTING ESM

In the following we use the notion of the ESM as an analytical tool. We distinguish a normative and an analytical dimension. The normative aspect can be linked to a ‘mobilising ESM’ (Barbier 2008); that is, the ESM as a political resource for mobilisation of actors. The expression ‘European Social Model’ was first used while Jacques Delors was president of the Commission during an era when competition between the United States and Europe triggered debates among international and especially European elites (Jepsen and Serrano Pascual 2005). The steps leading to the introduction of the European Employment Strategy (EES) in 1997, the adoption of the ‘Lisbon Strategy’ in 2000, and the ensuing introduction of various open methods of co-ordination (OMCs) in other social policy fields, were influenced both by the debate over an ESM and by competition with the ‘US model’.

A number of observations can be made about the ESM. First, the normative ESM bears similarities to the German concept of soziale Marktwirtschaft (social market economy), which was promoted as an economic doctrine by German economists such as Alfred Müller-Armack after the Second World War (Müller-Armack 1981). It became the ideological cornerstone of the political project of restructuring the German economy pursued by successive conservative German governments in the 1950s and 1960s and captures well the specific economic model of post-war West Germany. The influence of the concept of social market economy on the normative ESM dates back to the formative years of European integration. It was advocated by the first president of the European Commission, Walter Hallstein, in developing ‘a workable model of European competition law’ (Mestmäcker 2013). And in this context it should be emphasised that the draft Constitution of the EU contained a reference to the ‘social market economy’, in addition to the
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objective of achieving ‘a high level of social protection’ (article I-3), although it did not mention the ESM (Joerges and Rödl 2004).

Secondly, in order to be able to contrast the concept of an ESM analytically with other ‘models’, especially the US one, we have to identify the defining characteristics of an ‘existing ESM’. For this purpose, we assume an ESM with two ‘layers’, consisting of an aggregate of the existing national systems of social protection in the 28 member states, plus an EU-level component. Social protection is thereby defined broadly, including traditional sets of institutions and policies pertaining to the national systems of industrial relations and to welfare systems such as health, pensions, education and training (Barbier and Théret 2009). These systems include various sets of actors, and their institutions comprise trade unions and employer associations, labour law and employment rights, as well as the various more or less informal norms governing employment relationships. The use of ‘models’ is common in the comparative literature on welfare states. This research operates with causal relations between, on the one hand, institutions and systems and, on the other, ‘outcomes’. In accordance with such an approach, our two-layered ESM can be operationalised by indicators such as security of income, jobs, poverty, inequality, demographic patterns, employment and activity rates. In such a way it could be possible systematically to compare the US model with the ESM.

Thirdly, in order to understand social protection systems fully it is necessary to establish their structural links with economic policies. For the ESM, which is characterised by a mix of national systems and a quasi-federal layer of institutions and policies, this implies taking into account the complex interaction of four types of policy: (1) EU-level economic and monetary policies; (2) national economic policies; (3) EU-level social policies; and (4) national social policies. With respect to the comparison of the ‘existing ESM’ with the ‘US model’, this leads to the question: Does the set of empirical relationships that exist between the four types of policy have any similarity with the US model (Alber 2010, Alber 2006)? Such a question is of significant importance in light of the fact that a great deal of the comparative literature on social policies in Europe tends to support the idea that the very existence of the (normatively defined) ESM will in the long run have to succumb to a US-style free market and competition (‘antitrust’) policy.
2. THE FUNCTIONS OF THE ESM

It is obvious that the notion of the ESM pursued by the European Commission until recently combines a contradictory set of values. On the one hand, it is largely synonymous with the so-called ‘social dimension’ of European integration based on values such as security, inclusive society and adaptability that are guaranteed by rights introduced at the supranational level. On the other, the Commission also pursues under the heading of the ESM neo-liberal economic policies of reduced public expenditure for social services, financial sustainability, competitiveness, deregulation, flexibility, and privatisation and individual responsibility.

However, a proper assessment of the ESM needs to look not only at its contradictory content and value basis but at its function as well (Rogowski 2013, ch. 8). The ESM has a number of specific characteristics in this respect that delineate it from any national welfare model. Three functional aspects of the ESM can be highlighted: its multi-layered structure, its decentred and plural nature, and its reflexive style of policy making.

First, the ESM consists of a multi-layered structure, accompanied by multi-level governance. The European Union as such is not the main player in devising and carrying out economic, social and employment policies; the responsibility for carrying out and financing these policies rests with the member states, and they stay ultimately in control. Officially the European Union only assists the member states and acquires competences beyond coordination only in specific areas. Decision making and the provision of welfare and protection are inherently decentred in the European Union. Even the most sophisticated coordination efforts at the centre cannot change this fact and ‘decentralisation’ (or, more accurately, the absence of centralisation) is widely viewed as a positive feature, and indeed appreciated as a major virtue of the model. Coordination is not disguised harmonisation. It is deliberately designed to preserve the right of the member states to be the ultimate decision makers, captured by the subsidiarity principle.

Secondly, the ESM is plural. It does not consist of one but of several models. The plural nature of the ESM supports both homogeneity and diversity (Scharpf 2002). The ESM does not favour a European federal welfare state that replaces national welfare approaches but encourages instead ‘competitive federalism’ (Barnard 2000) in its coordination policies. Depending on the intensity of the role of state intervention, it is possible to distinguish four basic social security models that are in operation in a variety of combinations among the member states. In the
statist model the state is responsible for providing welfare financed out of general taxes. In the solidarity-based social insurance model the role of the state is to provide general regulation under which employees are insured against social risks and employers and employees are obliged to pay contributions. In the corporatist model the state supports the regulation of welfare through collective agreements or company agreements between trade unions and, respectively, employee representatives and employer associations or companies. Finally, under the individualist solution, favoured by neo-liberal economic policies, protection against risks is left to the individual seeking it through private insurance, thereby reducing the role of the state to granting tax relief or other concessions.

The third functional aspect of the ESM is that it is at its very core characterised by reflexive policy making (see Luhmann 1990; Teubner 1993, ch. 5) and an increased use of soft law instruments, in particular the OMC. Reflexive in relation to the OMC means that the EU makes creative use of its limits, in particular limited legal competences. The OMC is policy making in the absence of hard legal competences. In fact, the EU takes advantage of lacking hard law in order to become innovative in introducing new soft law instruments. This self-awareness makes the European Union’s understanding of the ESM particular and reflexive. It reflects on the needs for reform of the member states’ economic and welfare policies and understands its role as being a facilitator. Reflexive modernisation of economic policies and welfare states is demanded in order to cope with the challenges that both the risk society and globalisation pose. The EU becomes reflexive by reducing its role to acting as the coordinator of self-transformation of the member states (Rogowski 2013, ch. 8).

3. IS THE ESM SUSTAINABLE?

In the following we link the discussion of the ESM to the social sustainability debate that has emerged at the international level and is fast becoming a central topic in EU policy development. The question of the sustainability of the ESM transcends the narrow concern with political conditions for pursuing social and economic policies. It looks at the broader context, including in particular global environmental conditions. In fact, sustainability is nowadays a separate policy discourse in the EU and beyond and includes a specific debate about social sustainability.
a) The Social Sustainability Discourse – General Remarks

The idea of social sustainability originated in the international debate over sustainable development. The paradigm of sustainable development emerged as a normative concept in discussions within the United Nations (United Nations 1993) and combines social, economic, environmental and institutional objectives (UNSD 2009). It calls into question the orientation towards a global deregulated free trade economy without concern for social or environmental conditions (Thiele 2013).

Social sustainability at the international level and in the EU is closely linked to the Millennium Development Goals pursued by various UN bodies. There is a lively discussion over the right courses by which to pursue the goals, although the EU seems to favour a linkage to trade as the path to sustainable development (Lightfoot and Burchell 2005). The World Bank is particularly active in issuing Social Indicators of Development (http://www.ciesin.org/IC/wbank/sid-home.html) which contain data for more than 170 economies, assessing human welfare to provide a picture of the social effects of economic development.

There is a considerable debate over the meaning of ‘social sustainability’. For our purposes the working definition offered by Jesse Dillard and his colleagues is useful. They define social sustainability as ‘the processes that generate social health and well-being now and in the future, and those social institutions that facilitate environmental and economic sustainability now and for the future’ (Dillard et al. 2009, p. 4). This definition captures both the linkage of policy processes and the institutional side needed to achieve the policies in the long run. These dimensions are relevant for an assessment of the ESM.

b) Three Discourses of Social Sustainability in the European Union

Within the debate over social sustainability in the European Union we can distinguish three distinct discourses of sustainability: The socio-ecological discourse, the socio-feminist discourse and the social systems theory discourse of a sustainable ESM.

i) Socio-ecological discourse of sustainability

The socio-ecological discourse dominates the policy discourse on social sustainability in the EU. It acknowledges that ecology has become a main concern of global politics and that economic and social policies have to be streamlined in order to achieve the global ecological goals.

Prominent in the socio-ecological discourse of sustainability is the three-pillar model of sustainability consisting of the ecological, the
economic and the social pillar. Sustainability is achieved if these pillars are intelligently combined. There exist various so-called ‘policy integration’ concepts. Social sustainability is considered an integral part of sustainable development, and social sustainability criteria (in addition to economic and environmental criteria) provide the basis for strategies, initiatives and ‘scenarios’ (see Begg, in this volume).

The socio-ecological sustainability discourse challenges the ‘European development model’ for presupposing a trade-off of ‘alienating working conditions for a compensation by high consumption levels’, externalisation of social costs of production and an unsustainable labour-based social security system (Spangenberg and Omann 2006). The alternative is an integrated system that pays equal importance to each of the three pillars.

ii) Socio-feminist discourse of sustainability
The socio-feminist discourse of sustainability focuses on the link between paid and unpaid work, the latter most often carried out by women. This link should be of central concern in economic, social and employment policies in the EU. Feminists argue that social sustainability is intricately linked to social reproduction and requires in particular addressing the need for better redistribution of care giving between men and women. Achieving equality has to be seen to be integral to long-term social and economic sustainability (Dujon 2009).

If the EU wants to increase female labour market participation the problems of balancing family and work commitments must become central. There are a number of EU policies that indeed address this topic, for example working time regimes. To some extent these policies have been shaped by feminist demands for more flexible and varied working-time arrangements (Conaghan 2006). Although mainly promoted for reasons of economic efficiency, they are nevertheless supported by feminist authors in order to facilitate female employment opportunities and the opportunity for men to engage in care giving. ‘In a context such as Poland, where the tensions between employment and social reproduction have been particularly evident since the country’s political-economic transition, family- or employee-friendly working-time measures may be key to easing the burdens currently carried by women workers’ (Zbyszewska 2012, p. 428).

Linking social sustainability to social reproduction transcends the traditional confines of social and employment policies and requests social sustainability policies that are able to achieve equal opportunities. Stephen McKenzie goes a step further. For him social reproduction is not an individual affair but linked to policies that aim at systemic guarantees
of ‘even gender structures’. These objectives can only be pursued collectively and should be built on notions of ‘community ownership’ (McKenzie 2004).

iii) System-theoretical discourse of a sustainable ESM
The focus of the system-theoretical discourse is on the sustainability of the field of European social policy as such. It analyses conditions at the supranational level and is concerned with sustaining the achievements of the ESM at this level. The thesis of the system-theoretical discourse is that successful sustainability of the ESM is linked to reflexive governance (Deakin and Rogowski 2012). The question of sustainability has to be applied to sustainable policies pursued by the ESM itself.

In linking sustainability to appropriate governance, the centre of attention becomes the use of new instruments to achieve sustainable policy goals pursued under the heading ‘ESM’. In particular, the increased use of soft law is interpreted as self-aware policy making. In shifting the focus of the ESM from protection to promotion of employment and coordination of welfare reforms in member states, European regulation becomes reflexive insofar as it embarks on conscious regulation of self-regulation.

Furthermore, the system theory discourse analyses EU governance as reflexive in another sense. Social policy making is increasingly confronted with problems that arise from using different OMCs for different social policies. The EU has embarked on reforming this soft law instrument and calls these reforms ‘simplification’. In a reflexive governance perspective these reforms can be interpreted as attempts to cope with self-created complexity and engage in ‘coordination of coordination’, a typical form of reflexivity using the very idea of OMC to reform the method itself (Zeitlin in Armstrong et al. 2008; Kjaer 2010; Dawson 2011; Rogowski 2013, Ch. 8).

4. GOVERNANCE OF THE EUROPEAN SOCIAL MODEL

A main thesis of this book is that the future and the sustainability of the ESM depend on the combination of various modes of governance. A good example of the governance approach adopted for EU social and employment policies is the concept of ‘flexicurity’. The linguistically awkward combination of flexibility and security into flexicurity succinctly captures the essence of European social and economic policy making since its inception, a balancing of economic and social interests
that understands social and employment policy as an integral part of economic policy (Rogowski 2007, 2008).

EU social policy includes in our definition the entire array of policies and programmes that constitute the systems of social protection and social services, as well as labour law. These areas are often treated separately and by different specialist scholars, predominantly in law, sociology and political science. Whether it is precisely defined or rather crafted in political terms by politicians, a specific ESM has de facto underpinned the entire array of social policies pursued by the European Commission, whereby member states have tended to prefer a ‘con-sociational’ mode of governance over more integration of the national systems of social protection.

There exists a substantial theoretical and empirical literature on EU governance. Governance can be differentiated according to the steering modes (more or less hierarchical), the instruments, the decision levels (transnational, regional and local) and the actors involved (public or private, experts or elected representatives …). We envisage EU governance as the combined purposive intervention of relevant EU-level actors, forming a constellation in the coordination, steering and regulation of a great variety of policy areas.

EU governance is political in many ways, despite the ‘non-partisan’ appearance it always takes at the EU level (see Barbier and Colomb, in this volume). Because of this political dimension, EU governance can never be equated with the rational management of public choices about public goods: power relationships are always involved (see Smith 2006; Marginson and Keune, in this volume). The Commission makes political choices, for instance by promoting social housing as a safety net in contradiction with the Dutch universal conception of housing corporations (see Sol and Vos, in this volume). Furthermore, there exists a political bias in favour of economic freedoms over social collective entitlements in EU policies, supported by EU law and interpretations of it by the CJEU (see the chapters by Barbier and Colomb, Hartlapp and Rogowski, in this volume).

The main actors in promoting a de-politicised approach in EU policy making are the CJEU and the Commission. The CJEU’s decision-making practice contributes to a surface de-politicisation, which is also visible in the discourse and lexicon used by the EU Commission. However, since distributional issues are always in the background, ‘de-politicisation’ cannot be taken as an empirical fact, as the handling of the economic crisis since 2008 has amply demonstrated (Barbier 2013).

Inspired by the literature on governance ‘instruments’ (Lascoumes and Le Galès 2007), and for the sake of simplifying the present analysis, we
suggest that five main instruments constitute the core substance of EU governance in the area of social protection and social rights. These are:

1. Legislation and formal regulation in the form of EU law; regulative decisions (for instance, ‘prudential’ regulation) of the independent and autonomous European Central Bank form part of this first instrument.

2. The second instrument is money redistribution (at the EU level, the Structural Funds and the Common Agricultural Policy).

3. The third instrument acts by way of devising, promoting and disseminating common standards, strategies and ideas, and here the ideal-typical instrument is the OMC (Rogowski 2013, Ch. 8). The best known example among EU policies is macroeconomic and monetary coordination (using ‘Broad Economic Policy Guidelines’). Other specific coordination policies can be found in the area of ‘sustainable development’ (see Begg, in this volume) and for employment policies in the form of the European Employment Strategy (see by Erhel, Gautié and Gazier, in this volume; and Rogowski et al. 2011).

4. A fourth instrument of governance is provided by negotiations between social partners at the EU or at sector level (‘social dialogue’; see Marginson and Keune, in this volume).

5. A fifth instrument is also involved; that is, communication with the general public. To use Viviane Schmidt’s typology, this latter mainly refers to a ‘communicative discourse’, as opposed to a ‘coordinative’ type of instrument (Schmidt 2006). This form of coordination is not addressed as such, but the reader will find that it is present in many of the chapters.

The use of these instruments is directly influenced by unequal power resources. Much social science literature has emphasised the ‘newness’ of the instruments used in EU policy making, and some social scientists have been fascinated by what they observe as promotion of a Habermassian discursive democracy by new soft law instruments (Goetschy 2003; Jacobsson and Vifell 2003; Zeitlin and Trubek 2003). Empirical work, however, has shown that this is at best a dream (or perhaps a nightmare) (Büchs 2007; Kröger 2007; de la Porte 2008). Even when scholars were able to precisely identify ‘learning effects’, they had to take into consideration that power relationships were involved in what was learned and by whom (Barbier 2013).
5. THE ESM IN THE LIGHT OF EMPIRICAL ANALYSES

Several contributions in this volume combine sociological accounts of EU policy making with legal analyses in evaluating modes of governance. Some focus on new methods of governance, like multi-level governance (Marginson and Keune, in relation to the Social Dialogue) and the OMC (Erhel, Gautié and Gazier), while others compare hard law making in the form of the ‘community method’ with new methods of governance (Hartlapp; Rogowski). Areas of European social and employment policies covered in these contributions are social inclusion, active ageing policies and job or employment quality. They provide sober accounts of achievements of the EES and the Lisbon Strategy and contain evidence that the idea of an ESM has often served as a fig leaf or Trojan horse for the relentless pursuit of neo-liberal free market policies at the EU level (Countouris and Freedland 2013).

Parts II and III of the volume contain comparative empirical assessments of governance and regulation in two policy areas: the regulation of working time and social services of general interest. The contributions in these two areas analyse the reality of implementation of EU law and political change as a result of European policies in four countries: the Czech Republic, France, the Netherlands and the United Kingdom. Social services, on the one hand and labour law, on the other serve here not as representative areas of governance of social policy but as highly significant areas of the play existing today between EU governance and the traditional national means of governance and government.

The case studies on the Working Time Directive confirm the diversity of worlds of compliance that has been found in previous research on enforcement of EU law (Falkner et al. 2005). Each of the countries studied adopts a specific way of implementing and coping with European demands. Implementation has been ambivalent in most countries, with improvements for some categories of employees combined with new uncertainties, due to opt-out policies and unclear reform attempts of the directive at the EU level. Moreover, research presented in this part reveals a number of ways in which member states have tried to influence European policies in order to convert their own policies into EU law.

In the case of social services the case studies reveal that implementation of EU law and policy is widely differentiated. In the Netherlands the threat to Dutch policy of social housing deriving from European law and policies on services led to a challenge to European law in front of the CJEU. In the UK, not only social housing but also social care and health
care have been significantly transformed by EU law. In the Czech Republic, EU service provisions had a particular impact on labour law and employment services, leading to interesting interactions of EU law and Czech law. In France, finally, the areas of old-age care and child care, domains where associations are dominant, were negatively affected by the implementation of the Services Directive.

The findings show that the current ESM is under considerable strain as a result of uneven social and economic policies. In order to maintain its distinct character of balancing economic and social interests that understands social and employment policy as an integral part of economic policy and as an important factor of production in the European economy, the ESM has to face up to the new challenges. These derive nowadays also from global competition (Moreau 2011; Schiek 2013). Bold approaches to boost European social and employment policy through, for example, the introduction of European unemployment insurance (Chopin and Fabre 2013) and comprehensive social risk management (Schmid 2006, 2008) can be helpful to stem the neo-liberal tide. However, the analyses of policies and the case studies in this book show that in the medium term the sustainability of the ESM depends heavily on addressing governance failures and rethinking European governance.

The editors are well aware of the great transformation that was brought to ‘Social Europe’ as a consequence of the economic crisis since 2008. The neo-liberal redirection of EU policy making in addressing uncertainties and ambiguities regarding appropriate governance/government in the European Union increasingly irritates voters (citizens). Recent elections, conducted at the supranational and the national levels, have shown a growing concern with the European integration process, thereby reducing the margin of manoeuvre for technicians and non-partisan experts (Scharpf 2014). However, it is an open question if ‘ politicisation’ will lead to ‘resocialising Europe’ (Countouris and Freedland 2013) or to further victories of the ‘EU liberalisation machine’ (Streeck 2014) that is flattening not only economic and fiscal but increasingly also social and employment policies in the European Union.

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