The UK out, Social Europe in? Rethinking EU social integration in the wake of Brexit

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Abstract: This article considers the impact of Brexit on the future of Social Europe. Through recourse to key moments in the history of European social integration, where Britain more often than not vehemently opposed any coming together, its role as an important veto player in EU social policy-making is established. With the UK set to leave the Union, the option for further social integration is no longer inconceivable. It is featured as one of the possible scenarios in the Reflection Paper on the Social Dimension of Europe, and recent developments, such as the European Pillar of Social Rights, together with its accompanying initiatives appear to lay the groundwork towards that. The article concludes that although the realisation of Social Europe is more likely post-Brexit, there are other Member States willing to take over the UK's role and act as veto players on their own terms.

Keywords: Brexit; European Union; social integration; Social Europe; veto player

1. Introduction

The United Kingdom (UK) has not traditionally been an ally of Social Europe. Any support ensued after giving up fierce resistance, either subsequent to change in domestic party politics or, as a price to pay for gaining advantage from other measures that came as part of an overall package. Those measures were almost always linked to a liberal,

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economic and free-market oriented paradigm, which the UK framed as the essence of its European Union (EU) membership. Mainly, the UK faced the social dimension of EU integration, with disgruntlement and wariness, increasingly so during the period preceding the Brexit referendum. This is said to contribute, at times significantly, to the pro-Leave majority. Now that the UK is set to leave the Union, will its social dimension finally draw level with its economic one?

Social Europe had been in a stalemate until recently, despite the Lisbon Treaty's proclamation of the social market economy as a key paradigm for the Union. At the same time, the global economic and financial crisis' aftermath is still lingering. The resulting anti-austerity narrative, calling for a reorientation of the EU's agenda, might, together with the UK's departure, act as a key catalyst, as epitomised by Juncker's pledge for a more Social Europe following his 2014 election as Commission President. The unveiling of the European Pillar of Social rights, accompanied by social policy consultations and proposals, demonstrates accelerated momentum. The departure of a persistent objector might enable the Union to finally move forward.

The article's key aim is to test the hypothesis that Britain's departure would strengthen the social dimension of EU integration. To do so, it employs an analytical framework rooted in the political science theory of veto player, coined by Tsebelis in 1995.[1] By looking at the structure and evolution of EU social policy-making, and through recourse to key moments where progress towards further social integration was stalled due to the UK's opposition, the paper establishes Britain's role as a veto player on the

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[1] George Tsebelis, 'Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism' (1995) 25(3) British Journal of Political Science 289.

basis of three grounds: ideology (1), party politics and Euroscepticism (2), and external interference (3). It then proceeds to present the policy change that a veto player's departure would prompt in relation to current policy development indicated by the Reflection Paper on the Social Dimension of Europe (specifying an aspect of the White Paper on the Future of Europe) and the European Pillar of Social Rights alongside accompanying initiatives. Their viability is ascertained in light of the UK's departure, with reference to European Scrutiny Committee reports and other pertinent UK Government documents in order to substantiate observations on the British position towards these initiatives. The latter will allow to assess whether Brexit will have an emancipatory outcome for Social Europe, as a key veto player is set to leave. Following that, the key constraints to the afore-mentioned position are analysed based on other Member States' attitudes toward the social dimension of EU integration, to show that whilst the British departure might give social integration a push, there will be other obstacles that can impede the realisation of a truly social Social Europe.

2. The UK as a veto player

2.1 The veto player theory as an analytical framework

The veto player theory made its initial appearance in two pivotal comparative politics studies of the early 1990s, which used terms such as "veto points" or "constitutional structure".[2] Interestingly enough both studies were focused on social policies developed

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[2] Ellen Immergut, *The political construction of interests: national health insurance politics in Switzerland, France and Sweden, 1930–1970* (CUP 1992); Evelyn Huber, Charles Ragin and

in national settings. They investigated the influence of the power dynamics between different institutional and political actors on the decision-making processes and resulting policy outcomes. As Immergut argued 'welfare state programs […] are not simply the product of long-term social and political trends; such programs have been introduced in steps, through discrete instances of legislative conflict'.[3] It is not only the underpinning ideologies in a country's society and governing political elite that leave their mark on social policy development, but also the end product of the law-making processes in which compromises are sought between actors with various competing interests.

While these discussions were significant in providing a new perspective on the policy-making discourse, Tsebelis's seminal work conceived the notion of "veto player" and introduced it into the dictionary of political science. According to him, 'a veto player is an individual or collective actor whose agreement is required for policy decisions'.[4] The flexibility and adaptability of the concept to different systems and settings, including supranational institutions,[5] led to a plethora of applications in an array of diverse ways

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John Stephens, 'Social Democracy, Christian Democracy, Constitutional Structure, and the Welfare State' (1993) 99(3) *The American Journal of Sociology* 711.

[3] Ellen Immergut, (n 2) 32.

[4] George Tsebelis, (n 1) 293.

[5] Mark Hallerberg, 'Empirical Applications of Veto Player Analysis and Institutional Effectiveness' in Thomas König, George Tsebelis and Marc Debus (eds.) Reform Processes and Policy Change: Veto Players and Decision-Making in Modern Democracies (Springer 2011) 24-25.

and scenarios.[6] This article engages with the axiomatic use of the veto player theory,[7] drawing on its pre-existing application to EU level policy-making[8] and makes reference to the key moments of UK opposition towards furthering Social Europe, in order to test the hypothesis that Brexit will favour a stronger EU social dimension.

2.2 Veto Players at EU level

Veto player theory, though initially conceived through comparative studies of national policy-making was soon used to analyse dynamics of EU policy-making by Tsebelis himself. He concluded that up to the introduction of the Single European Act in 1987, each Member State was an autonomous veto player; this still applies in areas that require unanimity for EU legislation and as regards Treaty revisions, which require ratification by all Member States (Article 48 TEU).[9] Post-1987, with the gradual introduction of Qualified Majority Voting (QMV) in the Council and the expansion of co-legislation of Council and Parliament in today's ordinary legislative procedure, many EU decision-making processes are now imbued by the presence of collective veto players, found in the amalgamations of the key institutions.[10]

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[6] Steffen Ganghof, 'The empirical Uses of Theoretical Models: The Case of Veto Player Theory' (2015) 15(1) *Political Studies Review* 49.

[7] Ibid,

[8] Mark Halleberg (n 5) 36.

[9] George Tsebelis, 'Lessons from the Greek crisis' (2016) 23(1) *Journal of European Public Policy* 25, 39.

[10] George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton University Press 2002).

While as autonomous veto players Member States can independently block reforms, as collective veto players they need to forge coalitions with other Member States to advance or veto policy proposals[11] through avoiding or achieving blocking minorities, as well as influencing voting in the Parliament. EU policy-making thus requires finding allies among countries and politicians sharing the same vested interests, underpinning ideologies and/or policy preferences. In many areas, including social policy, unanimity remained important post-1987 for EU legislation, and it is still required for extending the social dimension through Treaty reform.[12] The individual role of a Member State as veto player thus retains its relevance for the social dimension of EU integration.

2.3 The UK as a Veto Player in EU Social Policy-making

This section showcases the numerous instances where EU social integration was rejected by the UK government. Since 1973, when the UK became an EU Member State, Labour and Conservative governments have succeeded each other in power, and a Conservative – Liberal Democrat coalition government was in charge between 2010-2015. Inevitably, this means that different governments, at different points in time rejected some of the reforms for different reasons. This section groups the British grounds of veto in three categories: (1) rejections due to the ideological underpinnings of the ruling party, (2) rejections due to internal party politics and the diffusion of embedded-Euroscepticism

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[11] Herman Lelieveldt and Sebastiaan Princen, *The Politics of the European Union* (CUP 2011).

[12] The Single European Act, introduced QMV in the area of health and safety of workers, but not in others. Niklas Bruun and Bob Hepple, 'Economic Policy and Labour Law', in Bob Hepple and Bruno Veneziani (eds.) *The Transformation of Labour Law in Europe: A Comparative Study of 15 Countries 1945-2004* (Hart 2009) 48.

and (3) rejections due to concerns about external interference. Whilst there is unavoidably some overlap between the reasons behind the vetoing of social reforms at EU level, and all three groupings are in a way manifestations of scepticism over Social Europe, the categories were coined on the basis of the key reason underlying each rejection.

2.3.1 Ideological Rejections

This section is almost exclusively dedicated to vetoes by the Conservative party, fuelled by a liberal ideology and a strict commitment to shielding the British liberal social model from any pro-welfare initiative.[13] Whilst Labour also rejected aspects of EU integration, for example in campaigning for the 1975 referendum, their ideological orientation called for the outright rejection of EU integration based on its economic roots, supported by an anti-market sentiment on behalf of most trade unions, which did not translate to

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[13] According to leading typologies on the varieties of capitalism and the worlds of welfare capitalism, the UK had the majority of the characteristics pertaining to a liberal market economy, or a liberal welfare state respectively (Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton University Press 1990); Peter Hall and David Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (OUP 2001). Nonetheless, it has been argued that during periods of Labour-led governments such characteristics were weakened to make room for collectivist elements, which were once again attacked during the more recent Coalition government. (Damian Grimshaw and Jill Rubery, 'The end of the UK's liberal collectivist social model? The implications of the coalition government's policy during the austerity crisis' (2012) 36(1) *Cambridge Journal of Economics* 105).

ideological opposition to EU social reforms.[14] The Conservative party's ideology did not conflict with the initially predominantly economic nature of the European project: the Treaty of Rome left social matters to the Member States, despite the momentum building during the Paris negotiations in the 1950s, in an arrangement modelled after the 'embedded liberalism' paradigm.[15] This allowed the Heath government to negotiate the British accession to the block in 1972.

A resurgence of Social Europe in the 1970s did not face British opposition, whose Labour government was able to nominate the Commission's Director-General for Social Affairs, Michael Shanks.[16] The 1980s proved more tremulous: the Thatcher government, elected in 1979, adhered to a liberal agenda and vetoed any legislative proposals, e.g. directives covering the rights of fixed-term and part-time workers, or parental leave.[17] The Thatcher government embraced the Single Market project, perceiving it as supportive of the market liberalisation it aspired for the UK. It opposed any social initiative that could undermine competitiveness, and the welfare state retrenchment that was underway in Britain.[18] It was also thought that having to comply with EU social legislation, would

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[14] David Butler and Uwe Kitzinger, *The 1975 Referendum* (MacMillan, 1996) 107.

[15] Dagmar Schiek, 'Towards More Resilience for a Social EU – the Constitutionally Conditioned Internal Market' (2017) 13(4) *European Constitutional Law Review* 611, 615-617.

[16] Michael Shanks, 'The Social Policy of the European Communities' (1977) 14(4) *Common Market Law Review,* 375.

[17] Jeff Bridgford and John Stirling, 'Britain in a social Europe: industrial relations and 1992' (1991) 22(4) *Industrial Relations Journal* 263.

[18] Robert Geyer, Andrew Mackintosh and Kai Lehmann, Integrating UK and European Social Policy: The Complexity of Europeanisation (CRC Press 2005).

increase bureaucratisation and impose additional regulatory burdens to the employers'
business plans.[19]

Under such circumstances the introduction of QMV by the Single European Act
(1987) had limited impact on European Social Policy in the years immediately following
its adoption: QMV was extended in the social field only to the area of health and safety
of workers, [20] leaving unanimity as the rule in the rest of the social arena. This was a
concession to the British position.[21] Moreover, in the mid-1980s, various stakeholders

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[19] In relation to the nexus between decrease in working standards in the UK during the Thatcher
era and its opposition to protective measures: Alasdair Blair, John Leopold and Luchien
Karsten, 'An Awkward Partner? Britain's Implementation of the Working Time Directive'
(2001) 10(1) *Time & Society* 63, 65. Further discussion on the deregulation of employment
laws during the 1980s: Simon Deakin 'Equality under a market order: the Employment Act
1989' (1990) 19 *Industrial Law Journal* 1. Although the election of the conservative Kohl
government, with its liberal tendencies, in Germany in 1982 also contributed to the stalemate,
its position was arguable more accommodating compared to their British peers. Andrew
Moravcsik, *The Choice For Europe: Social Purpose and State Power from Messina to
Maastricht* (Cornell University Press, 1998).

[20] The resurgence in the area of health and safety of workers only happened in the late 1980s-
early 1990s, and this was among the very few aspects of the envisaged European social area
where legislatives initiatives actually materialised. For more seet: Bob Hepple 'The Crisis in
EEC Labour Law' 16(1) *Industrial Law Journal* 77; Karen Anderson, *Social Policy in the
European Union* (Palgrave 2005).

[21] Linda Hantrais, 'Assessing the Past and Future Development of EU and UK Social Policy'
(2018) 17(2) *Social Policy and Society* 265, 270.

prompted a reorientation of the Community's priorities, by criticising the solely economic nature of the 1985 internal market programme, which -perhaps unsurprisingly – had been drafted under the direction of Lord Cockfield, a Conservative Commissioner from the UK.

The criticisms resulted in the subsequent adoption of various working papers pushing for a stronger social dimension at EU level, with proposals in the areas of health and safety of workers, employee participation, and benefits for those that exercise their free movement rights.[22] The proposals came to a crescendo with the adoption of the Community Charter of the Fundamental Social Rights of Workers, in December 1989, which nonetheless, was fiercely opposed by the UK, contributing to the final document's non-binding nature, and, thus, weak influence over the establishment of concrete and justiciable labour rights.[23]

At the end of the 1990s, the next obstacle to Social Europe by the UK was observed in the talks for the Charter of Fundamental Rights, during which Britain opposed a comprehensive inclusion of social rights.[24] Interestingly enough, this was instigated by a Labour government, which initially displayed a constructive approach to EU policy-

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[22] HG Mosley, 'The social dimension of European integration' (1990) 129(2) *International Labour Review* 147, 154-157.

[23] SJ Silvia, 'The Social Charter of the European Community: A Defeat for European Labor' (1991) 44(4) *Industrial and Labor Relations Review* 626.

[24] Koen Lenaerts, 'Exploring the Limits of the EU Charter of Fundamental Rights' (2012) 8 *European Constitutional Law Review* 375.

making with the endorsement of the Social Chapter in 1997.[25] Of course, this was not just any Labour government, but the one crafting the paradigm-change to New Labour, abandoning a quasi-socialistic ideology in favour of market economics. Thus, the social policy choices at EU-level made initially by Labour faded away over time, coinciding with the erosion of the party's social-democratic heritage under the Third Way paradigm, normatively bridging social and market policies, but in practice veering to the anti-welfare, neoliberal discourse of the right.[26]

2.3.2 Internal Party Politics and Eurosceptic rejections

This persistent hostility by the British authorities to the strengthening of Social Europe cannot be attributed solely to the conservative government of that time, but also to the Euroscepticism towards the reach of EU law that prevailed even among Labour politicians and trade unionists, preventing any support for a change of approach.[27] The Conservative Major government of 1990 softened the UK's stance towards the EU, yet retaining the former position towards Social Europe. Rifts in the Conservative party around the Thatcher legacy affected the acceptance of enhanced social policy provisions

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[25] Simon Bulmer, 'New Labour, New European Policy? Blair, Brown and Utilitarian Supranationalism' (2008) 61(4) *Parliamentary Affairs* 597.

[26] Paul Smith, 'New Labour and the commonsense of neoliberalism: trade unionism, collective bargaining and workers' rights' (2009) 40(4) *Industrial Relations Journal* 337.

[27] Bob Hepple, 'The Implementation of the Community Charter of Fundamental Social Rights' (1990) 53(5) *Modern Law Review* 643.

at EU level in particular. As a result, Major had no choice but to reject the Social Chapter proposed for the Treaty of Maastricht as a substantive policy change.[28]

The British opt-out of the Social Chapter led to its displacement as an Agreement on Social Policy, annexed to the Treaty as a Protocol.[29] This instance represents a good example of the 'exploitation' by the UK side of the unanimity required for Treaty reform, and therefore of its power as a veto player therein post-1987. Only in 1997, when Blair's New Labour government came to power in the UK, the opt-out was reversed and the Social Chapter was finally included in the Treaty of Amsterdam. This enabled the EU to better involve the social partners and to more comprehensively tackle policy fields such as working conditions and labour market activation. UK opposition in another area requiring unanimity, that of equality under the then Article 141 EC, led to redirecting the planned Pregnant Workers Directive towards the competence base of health and safety of workers, which provided for QMV, but required to withdraw the aspects not related to health and safety.[30]

The emergence of Euroscepticism as the new trend within the Conservative Party was fuelled by Cameron's utilitarian view of the EU as something desirable as long as its benefits outweigh its costs. Cameron displayed enmity and discontent with the widened scope of integration, and in particular the extended influence on the sphere of social

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[28] Anthony Forster, Britain and the Maastricht Negotiations (Palgrave 1999).

[29] David Baker and Pauline Schnapper, *Britain and the Crisis of the European Union* (Palgrave 2015).

[30] Roberta Guerrina and Annick Masselot, 'Walking into the Footprint of EU Law: Unpacking the Gendered Consequences of Brexit' (2018) 17(2) *Social Policy & Society* 319, 323.

policy.[31] Welfare benefits for EU citizens that exercised their free movement rights were particularly targeted. That resurgence of the anti-welfare Eurosceptic rhetoric, brought the UK back as an active veto player. This time it was not content to only veto, but strove to abandon existing - and already agreed to - levels of integration.

With the pledge for an EU Referendum to please the anti-EU side of the Conservative party, and his subsequent win in the elections making it happen, Cameron further pushed Europe to water down the reach of welfare benefits for EU migrants in the text of the so-called "EU Reform Deal".[32] The looming referendum arguably motivated the CJEU in Commission v. United Kingdom to backtrack its jurisprudence - and consequently the social acquis on social security benefits, in order to accommodate the UK's pre-referendum demands.[33] But the result of the referendum favoured the exit from the EU project over any concessions on certain, partly social policy-related aspects of that.

This rejection of the acquis communautaire was also shared by circles within the Labour and Liberal Democrats. After all, their overarching stance throughout the last decade was that of a wary, half-hearted embracement of the European project, pegged on

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[31] Nathaniel Copsey and Tim Haughton, 'Farewell Britannia? 'Issue Capture' and the Politics of David Cameron's 2013 EU Referendum Pledge' (2014) 52(1) *Journal of Common Market Studies* 74.

[32] Anita Heindlmaier and Michael Blauberger, 'Enter at your own risk: free movement of citizens in practice' (2017) 40(6) *West European Politics* 1198.

[33] Case C-308/14 Commission v United Kingdom [2016] ECLI:EU:C:2016:436. Further discussion in: Charlotte O'Brien, 'The ECJ sacrifices EU citizenship in vain: Commission v. United Kingdom' (2017) 54(1) *Common Market Law Review* 209.

the UK's prevailing national interests, something that outside the peculiar domestic context of Britain could even amount to soft Euroscepticism when compared to the political discourse of their West European peers.[34]

2.3.3 External Interference Rejections

Arguably, most rejections to social integration at EU level could be grouped under the aegis of the first two categories, given the perseverance of their underlying reasons. Nonetheless, a moment in the not so distant past merits its own categorisation under the banner of rejections of external interference. As a continuation of its neoliberal turn described above, the New Labour, to appease concerns that were expressed in relation to an increase in the external influence of the EU on the UK legal order, vouched to secure an opt-out from the Charter of Fundamental Rights, in light of its binding force with the adoption of the Lisbon Treaty.[35]

The UK government presented with much fanfare that it managed to secure an opt-out in protocol 30 annexed thereto, which was still linked to demurs over the justiciability of the rights enshrined in the Charter's Solidarity Chapter, and the fear of creeping EU interference.[36] Yet what was presented as an opt-out was an opt-out in name

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[34] Isabelle Hertner and Daniel Keith, 'Europhiles or Eurosceptics? Comparing the European policies of the Labour Party and the Liberal Democrats' (2017) 12(1) *British Politics* 63.

[35] Catherine Barnard, 'The 'Opt-Out' for the UK and Poland from the Charter of Fundamental Rights: Triumph of Rhetoric over Reality?' in Stefan Griller and Jacques Ziller (eds.) *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty?* (Springer 2008).

[36] Steve Peers, 'The 'Opt-out' that Fell to Earth: The British and Polish Protocol Concerning the EU Charter of Fundamental Rights' (2012) 12(2) *Human Rights Law Review* 375.

only. The Select Committee commented that it represented more of a clarification on the horizontal scope of the Charter and a reaffirmation of the fact that it does not extend the EU's competences to the UK, than a declaration that the UK is not bound by its provisions.[37]

In any case the fact remains that while for a left-wing party such as Labour, it was almost preordained to adopt and follow more easily a pro-social agenda, even when 'imposed' by the EU, the fact that it was this supranational body that instigated the policy change, had the ability to shift the focus of national debates from the traditional notions of left and right to other antithetic pairs such as centre-periphery, national-supranational, us-them.[38] External interference was somewhat vilified in these debates, and in order to remain in power, the New Labour had to find a way to tame the emerging national concerns.

3. Brexit's Potential for Social Europe

Through the milestones presented in the previous section, the UK could be perceived as a vivid veto player, impeding progress in the realisation of Social Europe, its rejections centred around three cores. To put the potential significance of Brexit in context, it is useful to note Tsebelis's observation that 'if a veto player with significant differences enters or leaves […], important policy changes will follow'.[39] This implies that Brexit

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[37] Catherine Barnard, (n 35).

[38] Katerina Linos, 'How Can International Organizations Shape National Welfare States? Evidence From Compliance With European Union Directives' (2007) 40(5) *Comparative Political Studies* 547, 564.

[39] George Tsebelis, (n 1) 314.

may signal a watershed moment for Social Europe. The matrix of collective veto players, prominent at EU level, is likely to be shaken upon the UK's departure, thus altering the output of the Union's institutions to reflect a more pro-welfare line, once the most prominent veto player would no longer be part of the block.[40] It became clear from the preceding analysis, that the UK in the European social arena had most of the characteristics of a significantly divergent Member State in this respect. Britain's inability to influence the debate on Europe's future post-Brexit might act as a liberating event for the EU.

Nevertheless, adopting a more social stance may not be the only option forward for the EU, as demonstrated by the Commission's White Paper on the Future of Europe of 1 March 2017[41] with its five different scenarios: maintaining the status quo b, focusing solely on the Single Market, shaping coalitions within a multi-speed Europe, enhancing progress in certain areas whilst leaving others behind, and, lastly, integrating further.[42] The White Paper's core function was to test the waters by expressing in very general terms potential directions for the EU, in the light of its 60th anniversary and the impeding trigger of Article 50 TEU by the UK. While social considerations were briefly mentioned, the White Paper's inherently broad nature meant that all specifications were left to five

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[40]   George Tsebelis, 'Veto Players and Institutional Analysis' (2000) 13(4) *Governance* 441.

[41]   European Commission, 'White Paper on the Future of Europe' COM (2017) 2025.

[42]   Ibid 15-25.

more focused reflection papers,[43] among which the Reflection Paper on the Social Dimension of Europe of 26 April 2017,[44] showcasing the importance the EU institutions placed on the Union's social aspirations. This should come as no surprise after Juncker's 2014 speech which introduced the new position of Vice-President for the euro and social dialogue, and pledged for a social triple-A rating for Europe, of equal importance to the economic and financial one.[45] The social is clearly featured as one of the Commission's –and consequently the Union's- key priorities nowadays. While the Reflection Paper makes no reference to Brexit, the fourth chapter's heading "a possible way forward for the EU 27" indicates that the UK's withdrawal was considered in its drafting.

The Reflection Paper aims to 'galvanise Europe's social spirit',[46] by seeking to map out the possible avenues for this to be translated in EU actions. It kicks off by presenting the different views on the current state of Social Europe, followed by its ongoing and future challenges. These pave the way for the diverse resolutions that are presented as alternatives therein. Due to the nature of the Reflection Paper as a follow up to the White Paper on the Future of Europe, it incorporates a table addressing the

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[43] The other four being the Reflection Paper on Harnessing Globalisation, the Reflection Paper on the Deepening of the Economic and Monetary Union, the Reflection Paper on the Future of European Defence, and the Reflection Paper on the Future of EU Finances.

[44] European Commission, 'Reflection Paper on the Social Dimension of Europe' COM (2017) 206.

[45] Jean-Claude Juncker, 'Time for Action – Statement in the European Parliament plenary session ahead of the vote on the College' (Strasbourg, European Parliament plenary session) < http://europa.eu/rapid/press-release_SPEECH-14-1525_en.htm> accessed 3 January 2018.

[46] European Commission (n 44) 3.

consequences of the White Paper's five scenarios for Social Europe.[47] Notwithstanding that, moving forward, it groups the possible outcomes for the social dimension of Europe into three categories: a limited Social Europe as a side-note of free movement, a multi-speed Social Europe, or, a further integrated one among the EU 27.[48]

The first option presented is that of scaling back and stripping down of the social acquis to only those aspects that are vital to free movement. In this vision, the social dimension is anything but, becoming instead a facilitator of free movement of persons. Such a functionalist approach departs from the EU citizens qua citizens approach and the enhanced levels of social integration that –should- come with it, drifting back into the EU citizens qua economic actors dogma.[49] In the latter, there is only space for rules on the transferability of social security contributions and health care coverage, or the simplification of the posting of workers.[50] Any substantive social development, such as the right to paid annual leave, the framework on employee consultation, the regulation of health and safety in the workplace, the minimum standards for temporary agency and part-time work and the Open Method of Co-ordination in the area, could all be easily sacrificed on the altar of free movement and deregulatory gains.[51]

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[47] Ibid 23.

[48] Ibid 24-31.

[49] Eleanor Spaventa, Free Movement of Persons in the European Union. Barriers to Movement in their Constitutional Context (Kluwer 2007).

[50] European Commission (n 44) 26.

[51] Ibid.

Ultimately, the aim of this scenario is to tackle concerns over the bureaucratisation of the internal market, the single most important thing the EU has to offer according to some, a position long shared by the UK.[52] This position, if proclaimed, would also vindicate the more deterministic views on Social Europe, which see the latter as almost always subordinate to the European economic constitution, rendering the national level the sole playing field for any deeper social dimension to take place.[53] The position, apart from appeasing the UK demands, should the country wishes to remain a Member State, is problematic for two reasons. First, the market-first thesis, also articulated by the Court of Justice of the EU in the *Laval Quartet*,[54] is gradually giving way to more balanced worldviews in the aftermath of the global economic and financial crisis.[55] Second, the laws and measures threatened with extinction under this scenario have been less problematic in practice, compared to those that are to be retained; the saga surrounding the regulation of posted workers is a good example of that. Thus, the viability of this

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[52] Geoffrey Garrett, 'International cooperation and institutional choice: the European Community's internal market' (1992) 46(2) *International Organization* 533.

[53] Kaarlo Tuori, *European Constitutionalism* (CUP 2015) 266-268.

[54] Case C-438/05 International Transport Workers' Federation, Finnish Seamen's Union v. Viking Line ABP, OÜ Viking Line Eesti [2007] ECR I-10779; Case C-341/05 Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundet, avd. 1, Svenska Elektrikerförbundet [2007] ECR I-11767; Case C-346/06 Rechtsanwalt Dr. Dirk Rüffert v. Land Niedersachsen [2008] ECR I-1989; and Case C-319/06 Commission v. Luxembourg [2008] ECR I-4323.

[55] Simon Deakin, 'In Search of the Social Market Economy' in Niklas Bruun, Klaus Lörcher and Isabelle Schömann (eds.) *The Lisbon Treaty and Social Europe* (Hart 2012).

option is questionable, and becomes even more so in light of Brexit: if the UK, which even contemplates rescinding limitations of working time,[56] leaves the EU, it is difficult to imagine that the remaining Member States retain the impetus for such ambitious deregulation of basic social rights. Even if they did, then there would be no social policy for the remaining Member States and/or institutions to act as veto players in. The Commission also appears rather dismissive of this scenario, establishing in the Reflection Paper that its negatives outweigh any potential benefits.[57]

The second scenario of the Reflection Paper depicts a situation not much different to the current one. Thus, according to it, minimum standards of protection would remain the norm, with the mechanism of enhanced cooperation open to groups of Member States that wish to do more in the field.[58] It is a tad paradoxical that the possibility for willing Member States to boost their social policies together under enhanced cooperation is presented as something novel by the Reflection Paper. After all, the notion of Europe à la carte has been trending since the 2000s, as a process that allows for different responses by separate groups of like-minded Member States to emerge.[59]

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[56] Tony Dobbins, 'Tory attack on Working Time Directive signals a post-Brexit race to the bottom' The Conversation (20 December 2017).

[57] European Commission (n 44) 27.

[58] Ibid 28.

[59] On the basis of the underpinning ideologies of the political elites in power therein. Maurizio Cotta and Federico Russo, 'Europe à la carte? European citizenship and its dimensions from the perspective of national elites' in Heinrich Best, György Lengyel and Luca Verzichelli (eds.) *The Europe of Elites: A Study into the Europeanness of Europe's Political and Economic Elites* (OUP 2012).

It seems though, and the emphasis placed on that matter in the Reflection Paper makes it clear, that the inclusion of this scenario is laid out as a possible remedy to the social deficit within the Economic and Monetary Union (EMU), which was exacerbated during the years of the crisis.[60] It alludes to the inherently asymmetric structure of the EMU, which shows a Europe veering to a neoliberal, primarily economic model with just an atrophic social side attached to it.[61] These asymmetries, not limited to but particularly connected to the EMU, have led to deterministic accounts highlighting the impasse the EU is faced with when enacting policies to 'socialise' the landscape.[62] Indeed, any efforts to enhance the social dimension of the EMU based on soft integration through Europe 2020 and the European Employment Strategy have not been very successful, calling for more concrete legally binding measures as the way forward.[63] The enhanced cooperation

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[60] European Commission (n 44) 28.

[61] Amy Verdun, 'An "asymmetrical" economic and monetary union in the eu: Perceptions of monetary authorities and social partners' (1996) 20(1) *Journal of European Integration* 59; Andreas Bieler, *The struggle for a social Europe. Trade unions and EMU in times of global restructuring* (Manchester University Press 2006).

[62] Fritz Scharpf, 'After the Crash: A Perspective on Multilevel European Democracy' (2015) 21(3) *European Law Review* 384.

[63] Caroline de la Porte and Elke Heins, 'Game Change in EU Social Policy: Towards More European Integration' in Maria João Rodrigues and Eleni Xiarchogiannopoulou (eds.) *The Eurozone Crisis and the Transformation of EU Governance. Internal and External Implications* (Routledge 2015); Caroline de la Porte and Elke Heins, 'A New Era of European Integration? Governance of Labour Market and Social Policy Since the Sovereign Debt Crisis'

proposed by the Reflection Paper appears to fit these criteria, despite the -similar to the first scenario- danger of a race to the bottom and regulatory divergence between the Eurozone members and the rest of the EU. In terms of potential vetoes by the Member States, then differentiated integration could lead to coming together solely of those wishing to advance the social acquis, with veto players arising in concentrated cases of reforms that would de facto affect a group of countries, for example those of the eurozone.

Nonetheless, the differences between EMU and non-EMU members might not be as great as they first appear to be. Studies have shown that in terms of social expenditure the patterns between Eurozone and non-Eurozone Member States during the crisis did not differ significantly, exhibiting a form of peer pressure for retrenchment throughout the Union.[64] Scharpf speculates that only an EU-wide crisis shaking up the current institutional framework could remedy the inherent asymmetries that overshadow social integration;[65] in that regard, Brexit could play the role of such a wake-up call.

Yet, if Brexit is to instigate radical change at EU level, it is not difficult to imagine a path departure from the well-worn regime of the second scenario in relation to Social Europe. This is precisely what the third scenario stands for. Unlike the disintegrationist first, this one imagines a firm commitment to a more social EU, by taking new actions and elevating the efforts to reinforce its social dimension in lieu of merely reaffirming

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in Caroline de la Porte and Elke Heins (eds.) *The Sovereign Debt Crisis, the EU and Welfare State Reform* (Palgrave Macmillan 2016).

[64] Olivier Bontout and Terezie Lokajickova, 'Social protection budges in the crisis in the EU' (2013) *European Commission Social Europe Working Paper* 1/2013.

[65] Fritz Scharpf (n 62).

what is already there.[66] Despite calling for the revaluation of the admittedly limited competence regime on social policy together with the extension of the legislative reach from setting minimum standards to harmonisation, the Paper underlines the fact that the 'centre of gravity for action in the social field should and will always remain with national and local authorities and their social partners'.[67] This vision allows to draw parallels with scholarly views that see a future for Social Europe in tandem with the retention -to varying degrees- of national welfare states.[68]

It seems that this scenario is the one endorsed by the drafters of the Reflection Paper. Its envisioned impact in practice appears much more multi-fold compared to the first two, and its pros and cons list contains only two negatives; that of the difficulty to reach consensus among the EU 27 and the feeling of detachment some of their citizens might feel due to an increase in centralised EU decision-making.[69] Furthermore, the third scenario explicitly refers to and builds on the Rome Declaration of the EU 27 leaders and of the European Council, the European Parliament and the European Commission.[70] The declaration is among the first since the Brexit Referendum where the UK is absent from. According to it, an enhanced Social Europe is among the key agenda items the EU is

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[66] European Commission (n 44) 30.

[67] Ibid.

[68] For a succinct overview see: Dagmar Schiek, 'The EU's Socio-economic Model(s) and the Crisi(e)s – Any Perspectives?' in Dagmar Schiek (ed.) *The EU Economic and Social Model in the Global Crisis. Interdisciplinary Perspectives* (Routledge, 2013) 13-14.

[69] European Commission (n 44) 31.

[70] Council of the EU, 'The Rome Declaration' *Press Release 149/17* (25/03/2017).

going to work towards achieving in the next decade.[71] Moreover, the vision is also supported by the commitment of the Juncker Commission to widen the scope of Europe's social dimension.[72] It signals a policy change that should come as the natural consequence of a veto player's departure, according to the pertinent literature.[73]

4. The Proposals for a Stronger Social Dimension of the EU

This section sets out to examine the elements of the proposed policy change. The viability of the third scenario of the Reflection Paper is further boosted by some accompanying actions that the EU Institutions have taken recently, signalling a 'social renaissance'. They corroborate the commitment to bolster the social dimension of the Union. The timing of the unveiling of these actions, which coincides with the Brexit negotiations and with a UK absent from crucial meetings about the EU's future, cannot help but cement the thesis that the country's intended departure -and its prior role as a veto player- is likely to have liberating effects for the EU 27 and Social Europe more specifically. In addition to that, Brexit could be just the tip of the iceberg, the final act not closely related to but still coming after a series of spirited reactions to a neoliberal European agenda, whose adverse effects grew exponentially during the crisis.[74] That agenda was also promulgated by the CJEU, which has now cautiously started to revise its position.[75] Brexit, thence, is

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[71] Ibid.

[72] Jean-Claude Juncker (n 45).

[73] George Tsebelis (n 1).

[74] Simon Deakin (n 56).

[75] Konstantinos Alexandris Polomarkakis, 'A tale of two approaches to Social Europe: The CJEU and the Advocate General drifting apart in Case C-201/15 AGET Iraklis' (2017) 24(3) *Maastricht Journal of European and Comparative Law* 424.

what caused the alarm-bell for the future of Social Europe to finally ring and led to more concrete actions to be put forward. They are these actions, the recent developments made public en masse around the middle of 2017, that spurred euphoria to the proponents of a more pronounced EU social dimension and pinpointed to a deeper social integration as the way forward for the future without Britain. Or, at least, that is what this 'social' experiment stands for.

4.1 The European Pillar of Social Rights

The measures that led to the resurgence of attention towards the social dimension of the EU were presented together with the Reflection Paper, with much fanfare. These included the launch of the consultation processes to address the challenges of access to social protection for people in all forms of employment[76] and to revise the Written Statement Directive (Directive 91/533/EEC),[77] the proposal for a work-life balance Directive for parents and carers to repeal Council Directive 2010/18/EU[78] and the interpretative

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[76] European Commission, 'CONSULTATION DOCUMENT of 26.4.2017' C (2017) 2610 final.

[77] European Commission, 'CONSULTATION DOCUMENT of 26.4.2017' C (2017) 2611 final.

[78] European Commission, 'Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU' COM (2017) 253 final.

communication on the implementation of the Working Time Directive.[79][80] The afore-said initiatives were all taken under the aegis of the simultaneously launched European Pillar of Social Rights,[81] the highlight of them all, which was proclaimed by the triad of the key EU institutions during the Gothenburg Social Summit for fair jobs and growth in November 2017.[82] It being proclaimed so fast shows an allegiance to galvanise the discourse towards achieving a more comprehensive EU social dimension. This might

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[79] European Commission, 'Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time' C (2017) 2601.

[80] It also included the publication of two Staff Working Documents on the implementation of the Active Inclusion and Investing in Children Recommendations. For more consult: European Commission, 'COMMISSION STAFF WORKING DOCUMENT on the implementation of the 2008 Commission Recommendation on the active inclusion of people excluded from the labour market' SWD (2017) 257 final; European Commission, 'COMMISSION STAFF WORKING DOCUMENT Taking stock of the 2013 Recommendation on "Investing in children: breaking the cycle of disadvantage"' SWD (2017) 258 final.

[81] European Commission, 'COMMISSION RECOMMENDATION of 26.4.2017 on the European Pillar of Social Rights' C (2017) 2600 final. The Pillar also came with a Social Scoreboard to monitor progress by the Member States in achieving the Pillar's objectives.

[82] Council of the European Union Press Release, 'European Pillar of Social Rights: Proclamation and signing' (17 November 2017) 673/17.

subsequently lead to the Pillar gaining Treaty-like status by the next Treaty amendment, in a similar way that the Charter of Fundamental Rights of the EU did.[83]

The Pillar, while initially conceived for the Eurozone members, is now addressed to all Member States as its preamble 13 states.[84] The latter also includes the bases of its inception, found in the elusive concept of social market economy embedded in Article 3 TEU, the horizontal social clause of Article 9 TFEU, the social policy chapter of the Treaties together with other closely related provisions such as those on free movement of

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[83] Zane Rasnača, 'Bridging the gaps or falling short? The European Pillar of Social Rights and what it can bring to EU-level policymaking' (2017) *ETUI Working Paper 2017.05* 38.

[84] It seems that most EU documents referring to the Pillar include the expression that it is 'primarily conceived for the euro area but applicable to all EU Member States wishing to be part of it'. This was altered with the proclamation of the Pillar, in that preamble 13 thereof states that 'the European Pillar of Social Rights is notably conceived for the euro area but it is addressed to all Member States'. There was a change from a voluntary to a more stringent approach. In addition, following a systematic review of the Pillar's preamble and substantive provisions as proclaimed in the Social Summit, it appears that there are no rights or principles applicable exclusively to the euro area Member States, and neither are there limitations as to what can be done by and for the Member States that do not belong to the Eurozone. The voluntary character of the taking up of the Pillar's provision by the non-Eurozone Member States as accentuated by the pre-proclamation documents, thus, seems superfluous considering the soft law approach embedded in the Pillar. The latter does not distinguish between Member States that are part of the euro area or not; no hard law obligations are imposed towards the euro area Member States by the Pillar whatsoever, something that can also be attributed to its particular legal nature.

workers, and the Charter of Fundamental Rights of the EU.[85] Accordingly, and in trying to awaken the dormant social side of the European project, the Pillar contains 20 rights and principles which are grouped in three Chapters: equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion. These rights and principles involve a wide spectrum of social policy areas, such as equality, education, labour market policies, social dialogue, workers' rights, health and safety at the workplace, social inclusion, care, housing, and social security. It is a comprehensive list that aims to call attention to fields of EU policy-making that were left neglected compared to economic integration.

The Pillar's key function is to act as stimulus, to push for further and more concrete actions to enrich the Union's social acquis. That is why the rights and principles included therein are for the most part not new at EU-level. Instead, they are catalogued in the Pillar, complemented by it in a way as to take into account the new social realities, in the hope of raising awareness, but most importantly, their 'actual take-up'.[86] The chosen way to achieve these aims is through a flexible –predominantly soft law-approach, allowing for a melange of methods mainly at the level of the Member States, paying due respect to the principle of subsidiarity.[87] According to the Pillar, the EU takes on a mostly supporting and supervisory role, to lay down the appropriate framework, to

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[85] Preambles 1 to 6 European Pillar of Social Rights.

[86] European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Establishing a European Pillar of Social Rights' COM (2017) 250 final 7.

[87] Ibid 2-4.

make sure that the ground is fertile enough for the relevant initiatives to be adopted, and to monitor any progress using the Social Scoreboard.[88] The EU toolkit, as shown through the proposals accompanying the unveiling of the Pillar, may include both legislative and non-legislative measures.[89]

4.2 Accompanying measures

As said supra, the Pillar was accompanied by a series of legislative and non-legislative initiatives that aim to reinforce the Union's renewed interest towards its social side. The most tangible and concrete among them was the proposal for a work-life balance Directive aimed at both parents and carers, to repeal the Council Directive on parental leave (2010/18/EU).[90] The proposal was made by the Commission through its power to initiate legislation, omitting negotiations with the social partners, as the employers' side, BusinessEurope and UEAPME more specifically, did not support any new legislative action in the area.[91] Endeavouring to achieve higher levels of work-life balance, gender equality and labour market activation for women, to acknowledge the thorny area of carers, and to raise the number of men taking up parental leave and flexible working

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[88] Ibid 6-7.

[89] Ibid 3.

[90] European Commission (n 78).

[91] European Commission, 'Commission's statement accompanying the. Commission Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU' <http://ec.europa.eu/social/BlobServlet?docId=17644&langId=en> Accessed 10 January 2018.

arrangements,[92] the proposed Directive guarantees parental leave's level of pay (Article 8), introduces a stand-alone paternity leave of 10 days (Article 4) and a carers' leave of 5 days a year (Article 6), and expands flexible working arrangements (Article 9).

While not ground-breaking and certainly diluted to gather the approval of both the Parliament and the Council,[93] the proposal for the Directive represents a step forward in trying to shape a fairer and more social Europe. This might be easier to materialise upon the UK's departure. Britain's initial refusal to accept the Agreement on Social Policy allowed the first Directive on parental leave (96/34/EC) to be adopted under the Agreement without having to stumble upon the UK veto, since the country was excluded from its application. The UK's absence from the negotiating table might also lead to stronger provisions making their way to the final version of the Directive, given the country's dismissive attitude, requiring concessions and watered-down proposals, which at times did not even manage to guarantee its agreement.[94]

Going back to the measures that accompanied the unveiling of the Pillar, the two consultation processes launched in April 2017 to address the challenges of access to social

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[92] European Commission, 'Explanatory Memorandum' COM (2017) 253 final 2017/0085(COD).

[93] In order to avoid perhaps the fate of the Maternity Leave Directive. For a more thorough discussion consult: Ania Plomien, 'EU Social and Gender Policy beyond Brexit: Towards the European Pillar of Social Rights' (2018) *Social Policy & Society* Online First doi:10.1017/S1474746417000471 9-11.

[94] Colette Fagan and Jill Rubery, 'Advancing Gender Equality through European Employment Policy: The Impact of the UK's EU Membership and the Risks of Brexit' (2017) *Social Policy & Society* Online First doi:10.1017/S1474746417000458 4-5.

protection for people in all forms of employment and to revise the Written Statement Directive (91/533/EEC) bore fruits. The Commission combined them and, by exercising its legislative initiative once more, proposed a new Directive on transparent and predictable working conditions in December 2017, after seeing no light at the end of the tunnel in relation to the involvement of the social partners, faced anew with opposition by the employers' representatives.[95]

The Directive aims to tackle new social risks and contemporary challenges of industrial relations, by going a step further as regards to the minimum harmonisation of social protection of workers in all forms of employment, introducing in Article 2 thereof an EU-wide definition of worker emanating from the CJEU case-law. Furthermore, Chapter III of the proposed Directive lays down a new set of minimum requirements for their working conditions. The draft also includes stringent sanctions and provisions for redress, much more thorough than those of the Written Statement Directive. Arguably, if these proposals go forward, the revamped Directive, rather neglected in its current form, is likely to achieve its Cinderella moment at last.[96]

The UK opposition to the Written Statement Directive was first and foremost ideologically driven, Britain already having in its legal system an obligation on employers

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[95] European Commission, 'Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union' COM (2017) 797 final.

[96] Jon Clark and Mark Hall, 'The Cinderella Directive? Employee Rights to Information about Condition Applicable to Their Contract or Employment Relationship' (1992) 21(2) *Industrial Law Journal* 106.

to issue written statements to employees.[97] Nevertheless, given the ongoing 'colonisation' of labour law through deregulation and re-regulation,[98] for Britain to remain competitive in the global marketplace,[99] it is unlikely that the afore-said proposal would be welcomed with open arms, if the UK chose to remain in the EU. To the contrary, introducing minimum rights that would affect non-standardised forms of employment, could be seen as an attack to the country's competitive advantage.

The rest of the accompanying initiatives either refer to already well-established legislative measures, such as the Working Time Directive,[100] or concern a soft law approach, like the documents on the implementation of the Active Inclusion and Investing in Children Recommendations,[101] and, thus UK opposition would be implausible. The proposed measures are complemented by the new plans under the Commission's Work Programme, also known as the Social Fairness Package, for a European Labour Authority and a European Social Security Number, which are currently underway. Apart from a supervisory role, ensuring the proper adherence to EU labour and social standards, these

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[97] Jeff Kenner, 'Statement or Contract? Some Reflections on the EC Employee Information (Contract or Employment Relationship) Directive after Kampelmann' (1999) 28(3) *Industrial Law Journal* 205, 213-214.

[98] Robert MacKenzie and Miguel Martínez Lucio, 'The colonisation of employment regulation and industrial relations? Dynamics and developments over five decades of change' (2014) 55(2) *Labor History* 189.

[99] Philip Cerny, 'The competition state today: from raison d'État to raison du Monde' (2010) 31(1) *Policy Studies* 5.

[100] European Commission (n 79).

[101] European Commission (n 80).

developments could lay the seeds for a more institutionalised concept of EU social citizenship.

5. Reflections: Will Policy Change Follow?

5.1. Brexit Britain's position

Moving on to the UK side, the consultation phase for the European Pillar of Social Rights which preceded all other initiatives occurred simultaneously with the run up to the Brexit Referendum in the first half of 2016. The rest of the afore-mentioned initiatives coincided with the period following the Referendum's result. The political reality in post-referendum Britain inevitably influenced the country's position apropos of the new social developments at EU level. In that regard, the European Scrutiny Committee's reports are quite enlightening. While the first report on the matter does not offer much insight on the UK's position due to its exploratory nature,[102] the second one incorporates Brexit into the debate. The report underscores its defining character as to how the future relationship with the EU is to be shaped, on which the country's stance towards the EU's social proposals would depend.[103] If the UK chooses regulatory convergence or approximation for example, some apposite social proposals would merit further exploration. In its third report, published in February 2017, the Committee welcomes the UK's involvement in the Pillar, notwithstanding the Leave vote, on the basis of commitments made by the

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[102] European Scrutiny Committee, *Twenty-Ninth Report* (HC 2015-16, 342-xxvii) 15-19.

[103] European Scrutiny Committee, *Eight Report* (HC 2016-17, 71-vi) 31-36.

Prime Minister to maintain most of the European social acquis;[104] fast-forward to the end of 2017, such guarantees became shaky.[105]

In addition to the above, it is also important to look at the evidence submitted by the UK Government as a response to the Commission's consultation on the Pillar. The document apart from praising the country's position as regards its adherence to and compliance with the principles and rights set out therein, suggests that no further actions by the EU are needed, showcasing once more Britain's negative stance towards further social integration.[106] In the Explanatory Memorandum on the White Paper on the Future of Europe, the Department for Exiting the European Union switched roles from that of a veto player to the one of a leaver, by simply deferring to the EU 27. The same position was adopted in relation to some of the Reflection Papers as well, acknowledging that this was essentially instigated by Brexit. The developments are a sign of the emancipatory effect the UK's departure might have for European integration; a veto player is no longer sitting at the table.

On the other hand, if the UK reconsidered and chose to remain, it is difficult to reconcile the proposed reforms with the categories of objections presented in section 2 of this paper. The policies adopted by the Conservative government continue the austerity

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[104] European Scrutiny Committee, *Thirty-First Report* (HC 2016-17, 71-xxix) 112-115.

[105] Tony Dobbins (n 56).

[106] Evidence in response to the consultation on a European Pillar of Social Rights <http://ec.europa.eu/social/BlobServlet?docId=17273&langId=en> Accessed 10 January 2018. Note that in its submission, the Scottish government exhibited a much more welcoming stance.

paradigm and embed the neoliberal underpinnings of the welfare-to-workfare mantra. Market-correcting measures such as those proposed come in direct confrontation with that, hinting a possible ideological rejection. The party unity rejection could also be invoked, given the current state of division within the political elite, and the Eurosceptic hysteria by some party members.[107] Not only that, but the proclamation of the Pillar and the proposals under the Social Fairness Package may as well raise concerns about an extension of the EU's competences without the appropriate treaty reform, bringing the external interference rejection into play. Potentially rejecting the proposals on all three grounds means that Brexit could avert a catastrophe for the social acquis, given UK's likelihood of veto.

5.2. Constraints: the other Veto Players.

Whilst it could plausibly be argued that Brexit would facilitate the realisation of a stronger social dimension for Europe, it is not certain that this would be the end result. The concretisation of the Pillar and its accompanying initiatives is still at an early stage, and it is not certain if, when and to what extent this would materialise. Its cautious approach relying heavily on soft law measures, which lack the bite of legislative ones, casts doubts on its effectiveness in the long run. This was picked up by the relevant stakeholders, who called for more concrete measures in their responses to the Pillar's consultation phase.[108]

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[107] Will Jennings and Martin Lodge, 'Brexit, the tides and Canute: the fracturing politics of the British state' (2018) *Journal of European Public Policy* Online First: doi.org/10.1080/13501763.2018.1478876.

[108] For example: European Anti-Poverty Network, 'Last Chance for Social Europe? EAPN Position Paper on the European Pillar of Social Rights' (2016).

In particular the European Trade Union Congress (ETUC) has been critical of the overstatement of the social acquis and the alleged improvements to the labour market, the lack of linkages to economic integration and the disregard of collective bargaining.[109] The Pillar being at an early stage shall not be used as an excuse not to evaluate its progress and outcomes, as a more comprehensive social agenda should have already been in the making.[110]

Policy-making under the shadow of the veto threatens not only the coming of an EU law into existence, but its actual content as well. Thus, the other Member States, smaller veto players of the fringes, may as well substitute the UK in diluting the furthering of Social Europe. In such a scenario, a common denominator would need to be sought, which is likely to be the lowest one, putting the proposals in danger of being watered down in order to become accepted. This is especially relevant to areas where unanimity is still required, since compromises are inevitable to occur therein. Yet, without its *enfant terrible* and the polar opposite views that came with it, Social Europe might come a step closer to materialising, even through the road of compromises. The 'socialness' of the final outcomes is likely to be improved post-Brexit.[111] The UK departure may not be fully

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[109] ETUC, 'Reflection Paper on the Social Dimension of Europe - ETUC Assessment (position)' (2017) <http://www.etuc.org/sites/www.etuc.org/files/document/files/en-reflection-paper-social-dimension.pdf> Accessed 14 January 2018.

[110] Zane Rasnača (n 83).

[111] Nick Parsons and Philippe Pochet, '"Social" Europe' in Kenneth Dyson and Angelos Sepos (eds.), *Which Europe? The Politics of Differentiated Integration* (Palgrave MacMillan 2010) 254.

liberating, but, be that as it may, less controversial reforms would more easily move forward as their dogmatic opponent would no longer sit at the table.

The proposed reforms' actual content and reach is of paramount importance, in a similar way that their take up by the Member States is for the Pillar's success. The danger that lurks with this approach is that even if Britain, the key veto player in EU social policy-making, leaves, there will be others that may take up its position, and which have been relatively quiet so far. A few years ago, the now abandoned amendments to the Directive on maternity leave were rejected not exclusively because of the UK's opposition: it formed a blocking minority together with Germany, Hungary, Ireland, Latvia, Malta, the Netherlands and Sweden to achieve this.[112]

The latter was not the only instance where the UK was not the sole Member State opposing a social proposal. Examples go as far back as the 1980s, when the harmonisation proposals in the areas of employment rights and industrial democracy were blocked by the British government, but as Bruun and Hepple note 'with the active or tacit support of some other governments'.[113] Indeed hiding behind the UK's skirt has been a tactic for some Member States prior to the 2004 enlargement, with a noted path-dependence of a blocking minority consisting of the UK, Denmark, Germany and Ireland on social matters, such as the proposals on information and consultation in the event of collective

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[112] Colette Fagan and Jill Rubery (n 94).

[113] Niklas Bruun and Bob Hepple (n 12) 47-48.

redundancies, or the temporary agency work Directive.[114] Following Eastern enlargement, the post-socialist Member States have been perceived as forging a 'market-making coalition' with Britain, opposing any market-correcting measure. While Brexit might come as shock, their ambition to leave their stamp in EU policy-making, may render them the new vocal veto players.[115]

It is, thus, true that while Britain was the most overt of the veto players, and perhaps the more consistent opponent of Social Europe, in recent years it was not the sole Member State voting down legislative proposals. A study found that during 2009-2015 in employment and social affairs, Germany was in the minority as often as the UK was in the Council of Ministers.[116] These changes and the introduction of other players ties well with the discussion in the veto player literature of the change in power dynamics within the EU institutions with the introduction of QMV and the expansion of the ordinary legislative procedure. The literature argues that in an enlarged EU with diverse policy interests and an increased role of QMV policy changes will be difficult to materialise,

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[114] Peter Nedergaard, 'Blocking Minorities: Networks and Meaning in the Opposition Against the Proposal for a Directive on Temporary Work in the Council of Ministers of the European Union' (2007) 45(3) *Journal of Common Market Studies* 695, 703-706.

[115] Nicole Lindstrom, 'What's Left for 'Social Europe'? Brexit and Transnational Labour Market Regulation in the UK-1 and the EU-27' (2018) New Political Economy Online First doi.org/10.1080/13563467.2018.1484719.

[116] Simon Hix and Sara Hagemann, 'Does the UK win or lose in the Council of Ministers?' (2015) LSE EUROPP Blog http://blogs.lse.ac.uk/europpblog/2015/11/02/does-the-uk-win-or-lose-in-the-council-of-ministers/ <accessed July 2 2018>. It even exhibited this in the 1980s according to n 20.

resulting in high levels of policy stability and increasing the role of bureaucracy (the Commission) and the Court.[117] Voting in the Council has become extremely difficult, and it has been advanced that this would likely stall any policy-making going beyond the status quo.[118] The proposed reforms, in trying to alter the social acquis, might become victim of that. Whilst trying to find more Member States to openly oppose a proposal might have sounded more difficult in the past, in an EU of 27 this is no longer such an arduous task, as the Central and Eastern European countries or the building coalition of the New Hanseatic League show.

In addition to that, it is not inconceivable that some of the rejection categories presented in section 2 could also apply in relation to some of the EU 27. Whilst the ideological rejections are in a way more endemic to the liberal British social model,[119] Macron's proposed welfare cuts in France invites comparison with New Labour's paradigmatic change of social policy narrative. His attitude might also impact the country's stance vis-à-vis the social reforms at EU level. It is indicative for example that in the Franco-German Meseberg Declaration of June 2018, social reforms do not get much attention whatsoever.[120] The second type of rejections, the Eurosceptic and party unity ones, can also be triggered by some of the EU 27. Euroscepticism has been diffused

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[117] George Tsebelis (n 10).

[118] George Tsebelis and Xenophon Yataganas, 'Veto Player and Decision-making in the EU After Nice: Policy Stability and Bureaucratic/Judicial Discretion' (2002) 40(2) *Journal of Common Market Studies* 283, 304.

[119] Refer to the discussion in n 13.

[120] The Press and Information Office of the Federal Government, Meseberg Declaration: Renewing Europe's promises of security and prosperity (2018) 214 2018.

in almost all Member States' party systems, in parties of the left and the right, forging competing poles even within a single party.[121] As for the last category of fears of external interference, countries already in hurdles with the EU, for example Poland, may not welcome further reforms on that basis. This would not be the first time Poland exhibits such traits, given its 'opt-out' from the Charter sitting alongside the British one in Protocol 30 thereof. The veto player drama does not seem to have an end in sight; just a change of cast.

The previous remarks are especially important for the enactment of any legislative proposal, which is more likely to induce significant policy change. The adoption process gives significant negotiating –and consequently veto- power to the Member States. On the other hand, in relation to non-legislative or soft law initiatives, such as those included in text of the Pillar, other difficulties lie ahead, again, involving the Member States. The deferential soft law approach requires persevering commitment for the measures' full potential to be unleashed. Otherwise, it risks becoming a halfway house, a flawed mechanism much like the OMC, and lead to a catastrophe similar to that of the Lisbon Strategy.[122] Even in its proclaimed form the Pillar is largely dependent on the Member States' discretion. Peer pressure is the only effective way under which its principles would be acted upon, if legislating is not on the horizon, and it is here where the looming Brexit might help, but perhaps not conclusively as this section has shown.

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[121] Paul Taggart and Aleks Szczerbiak, 'Putting Brexit into perspective: the effect of the Eurozone and migration crises and Brexit on Euroscepticism in European states' (2018) 25(8) *Journal of European Public Policy* 1194.

[122] Vassilis Hatzopoulos, 'Why the Open Method of Coordination Is Bad For You: A Letter to the EU' (2007) 13(3) *European Law Review* 309.

6. Conclusion

The referendum of June 2016 was the first step towards the UK's departure from the EU, following what has been, admittedly, an uneasy relationship over the years. The British stance over Social Europe exemplifies the uncomfortable moments of that relationship, moments that can be traced back to the early attempts of establishing a formalised social dimension for the Union. The successive Conservative governments of Thatcher and Major saw any such development as a threat to their neo-liberal worldviews and to internal party politics in some instances, perceiving the then Community as a synonym of free trade. New Labour's take over in 1997 saw a change of approach initially, endorsing the institutionalisation of certain social policies at EU level, a largely symbolic gesture to make amends with the party's social past. Its position was rescinded a few years later, coinciding with its widespread turn to more liberal policies, by securing a new opt-out from the Charter, also in fear of external interference. By opposing social integration so often, the UK was the key veto player in EU policy-making therein.

Up until 2016, the UK was known for its opt-outs from Social Europe. The anti-welfare and Eurosceptic rhetoric of the new Conservative government, wishing to scale back on what the UK had already agreed with at EU level social policy-wise, led to a new change of circumstances: the 'Bropt-outs' are dead, long live Brexit! From a veto player, the UK would eventually become a spectator. This, in turn could be a positive development for Social Europe, which could finally start getting into full swing, as the third scenario of the Commission's Reflection Paper shows. The latter, in a similar way as the White Paper did, contemplates on the challenges the social side of the European project is facing in the wake of the Brexit referendum. Its third scenario advocating for a further integrated Social Europe skirts around the dangers of deregulation, a divided EU and a race to the bottom, yet it requires strong political commitment in order for its

initiatives to be taken up and not to result to EU scapegoating and citizens of other Member States demanding to 'take back control'. It also requires the elimination of all opposition by other veto players, something that at present looks unlikely, at least in the short term.

Nevertheless, with Britain gone, a key player advocating against the advancement of the social acquis is lost. Moreover, together with the publication of the Reflection Paper, which makes it clear that further integration is the most beneficial route for Social Europe, the Commission presented its proposals for the European Pillar of Social Rights, accompanied by a series of other social initiatives, cementing Juncker's vow to revive the social side of the Union. These developments showcase a commitment, at least on behalf of the Commission, towards achieving enhanced social standards EU-wide, which can only become more daring now that their familiar foe is no longer at the negotiating table, if for nothing else than to test the waters for further integration in the field. A plan for policy change has been put on the table, following the veto player's departure.

Consequently, it would be naïve to disregard the potential of the social initiatives that have emerged in the wake of the Brexit Referendum. Granted, some, such as the EU Pillar of Social Rights were in the making before that, in order to tackle the rising levels of dissatisfaction towards the EU in crisis-ridden Member States. However their momentum and scope has undoubtedly been revisited post-June 2016. The prospect of the British departure acted as a wakeup call, but also liberated the strained EU social agenda by opening up room for more far-reaching experiments, such as the proposals for the work-life balance and transparent and predictable working conditions for EU workers in all forms of employment Directives, or the European Labour Authority. With the persistent objector out of the equation, things might finally be able to move forward.

It is still too early to speculate the exact direction the EU would pursue in the future, and, for the purposes of this article, to predict with certainty whether the UK's departure would trigger the necessary impetus for further social integration to actually meaningfully materialise at EU level. Was the UK the only weight to be taken off in order to finally achieve Social Europe? It may be so, but other veto players are still lurking in the remaining Member States, particularly in the Central and Eastern European Member States, which perceive aspects of social integration burdensome for their competitiveness.[123] They are also lurking in the collective -institutional- structures, such as the European Parliament, following the post-1987 developments as the veto player theory suggests. This, coupled with Eurosceptic and deregulatory attitudes elsewhere in Europe, on which it is still too soon to evaluate the looming Brexit's impact, might mean that there are still a few obstacles Social Europe has to overcome prior to materialising.

As for the EU developments, they need to reflect determination and include legislative initiatives, not just soft law measures, so that they trigger acceptable compliance levels to solidify Social Europe's position in the European landscape. If the afore-mentioned proposals manage to cultivate the right climate and get the majority of the Member States on board, then peer pressure in combination with the opposing Member States' less unmalleable –compared to the UK at least- red lines, might allow them to be persuaded without weakening the reforms themselves. On a different note, the Brexit referendum showed that every so often a significant number of citizens feel detached from Europe, something that the national political elites easily take advantage

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[123] Petr Kopecký and Cas Mudde, 'The Two Sides of Euroscepticism: Party Positions on European Integration in East Central Europe' (2002) 3(3) *European Union Politics* 297.

of.[124] What better way to welcome them back to the EU then, than by showing that the Union cares, through the –long overdue- expansion of its social dimension?

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[124] Sara Hobolt, 'The Brexit vote: a divided nation, a divided continent' (2016) 23(9) *Journal of European Public Policy* 1259.