ISCTE IUL
Instituto Universitário de Lisboa
Lisbon University Institute

IUL School of Social Sciences

Department of Political Economy

The Great Transformation of Political Economies in Europe: A Polanyian appraisal of European Integration after the Maastricht Treaty

Mariana Figueiras Alves dos Santos

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Supervisor:
PhD Ana Cristina Costa, Assistant Professor
ISCTE - Lisbon University Institute

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Abstract

Throughout its history, many were the times the European project was pronounced dead. From 1992 Danish blockage to the Maastricht Treaty to the French and Dutch 'No's to a European Constitution in 2005, the spectre of faltering political institutions for shaping an integrated economy seems to rise stronger every time.

The hypothesis of this dissertation is that the European project is well captured by Polanyi's thesis of the Double Movement. The institutional architecture of European integration, it is argued, triggers a process of market disembeddedness. This architecture is characterized by an asymmetry between negative integration advanced by supranational enforcement of the Single Market and intergovernmental governance of positive (market-shaping) integration.

As a result, particularly after the Maastricht Treaty, domestic institutions have been pressured to comply with market requirements. At the same time, however, protective countermovements arose to reembed a disembedded economy.

This dissertation is structured as follows: Chapter 1 explores Polanyi's thesis of the Double Movement; chapter 2 builds on the Varieties of Capitalism approach to identify distinct market embedding institutions in Europe (according to these differences, a set of countries is chosen in order to monitor the process of market disembeddedness); chapter 3 outlines the hypothesis of asymmetric integration; chapter 4 identifies institutional arenas in which market is disembedded; chapter 5 assesses the impact upon market-embedding institutions of the selected economies and identifies protective countermovements.

The dissertation concludes by drawing implications that may contribute to the ongoing debate over European integration.

Key-words: Institutional change, European integration, Asymmetric integration, Market Disembeddedness

JEL: B52, F55

Resumo

A construção de um Mercado Europeu foi, desde cedo, uma questão muito mais popular e exequível do que a da construção de uma integração política. Desde cedo, contudo, que os mais proeminentes europeístas como Delors ou Schuman defenderam que uma União económica não seria possível sem instituições políticas à escala Europeia que salvaguardassem a coesão social dos efeitos do mercado livre. Ao longo da sua história, o aprofundamento da integração económica foi marcado por bloqueios e convulsões que iam denunciando a resistência das sociedades relativamente a um Mercado Único Europeu sem uma Europa Social. Do 'não' Dinamarquês ao Tratado de Maastricht, em 1992, à rejeição da Constituição Europeia nos referendos populares em França e na Holanda, em 2005, muitas foram as vezes que o projecto Europeu foi tido por condenado, traído por um mercado que tinha ido longe demais e pelo espectro da questão política.

Esta dissertação parte da intuição inicial de que a arquitectura institucional da integração Europeia consubstancia uma determinada economia política que Polanyi (1947) designa por *Obsoleta Mentalidade Mercantil*.

A *Obsoleta Mentalidade Mercantil* traduz a ideia de que a maximização do lucro individual e o princípio do *laissez-faire* correspondem a uma natureza humana e ordem social espontânea, sobre a qual instituições não mercantis (políticas, regulatórias, etc.) exercem constrangimentos artificiais; criar condições para a instalação de um mercado competitivo e sem distorções ("artificiais") no sistema de formação de preços com base na oferta e na procura seria, portanto, condição suficiente (e ideal) para a coordenação dos actores sociais e económicos. Nada há, contudo, segundo Polanyi, de mais contrário à realidade. A Economia assenta em instituições histórica e culturalmente determinadas, e o mercado deve ser compreendido como um padrão de relacionamento parametrizado por essas estruturas social e historicamente determinadas e incrustado nelas. O que é artificial é, portanto, a desincrustação do padrão de mercado dessas estruturas.

Particularmente, a ingenuidade e utopia de um tal projecto residem em que ele ignora a realidade daquilo que Polanyi designa por Mercadorias Fictícias. Trabalho, terra e moeda não foram produzidos para serem vendidos e organizados segundo o mecanismo do mercado. Isto é muito intuitivo relativamente ao trabalho humano: se o valor da mercadoria é definido pela interacção entre procura e oferta, então a mercadoria trabalho tem de estar sujeita a ser deixada de parte, sem nenhum valor atribuído, na circunstância de não haver procura e

utilização para ela; isto, como é evidente, não pode ser feito sem arriscar a vida do indivíduo que é o "portador" dessa mercadoria.

A mercadoria fictícia trabalho (nesta dissertação, iremos apenas focar-nos na desincrustação do mercado do ponto de vista da mercadorização do trabalho) é desmercadorizada por instituições colectivamente determinadas que definem noções de vida e de oportunidades de bem-estar que devem ser reconhecidas aos indivíduos dessa sociedade, independentemente do funcionamento do mercado. Ao mesmo tempo, contudo, estas instituições limitam a completa organização do trabalho num mercado, produzem atrito a que o seu valor reflicta a interacção entre a oferta e a procura. Reside aqui o paradoxo do mercado, ao mesmo tempo que estas instituições garantem que o seu funcionamento não resulta na destruição do indivíduo e na desagregação do tecido social, é o próprio mercado que pede que o trabalho (elemento essencial da actividade económica) esteja disponível e organizado num mercado competitivo.

A criação desse mercado, contudo, ao contrário do que a *Obsoleta Mentalidade Mercantil* do *laissez-faire* quer fazer parecer, não tem nada de natural, não corresponde a nenhuma característica ou tendência essencial do mercado para se instalar como mecanismo de coordenação dos indivíduos em sociedade; antes corresponde a um processo altamente artificial de remoção dos parâmetros instalados pelas instituições referidas que colocam obstáculos e produzem atritos. Esse processo artificial de remoção de entraves à organização social num mercado competitivo, importa frisá-lo, é um processo de decisão de remoção desses parâmetros: o mercado é criado legislativa e judicialmente.

A artificialidade desta construção resulta em que o mercado nunca pode ser inteiramente desincrustado das estruturas sociais que o parametrizam e que, em particular, que desmercadorizam a actividade humana. Ao mesmo tempo que decisões políticas e judiciais criam e fazem avançar o princípio organizacional do mercado, reacções espontâneas surgem sob as mais variadas formas para recalibrar o tecido institucional de forma a puxar o mercado de volta para uma posição incrustada. É este o fundamental da economia política polanyiana do Duplo Movimento que irá informar a nossa análise: o mercado é criado; a reacção social para reincrustá-lo é espontânea – "*o laissez faire foi planeado; o planeamento não*" (Polanyi, 2001[1944]: 147, minha tradução)

A hipótese que esta dissertação se propõe a investigar é, neste quadro, a seguinte: *A história da integração Europeia pode ser contada nos termos da narrativa polanyiana do Duplo Movimento.*

Para tanto, esta dissertação estruturar-se-á da seguinte forma: (1) o primeiro capítulo desenhará a economia política polanyiana do Duplo Movimento que servirá de quadro teórico

à leitura do projecto Europeu, aqui serão identificados elementos conceptuais estratégicos que estruturarão e orientarão toda a dissertação (a noção de uma perspectiva da economia como um processe assente em instituições; o conceito de instituições de incrustação do mercado e desmercadorização do trabalho – relações industriais e *Welfare States* -, a artificialidade da desincrustação do mercado e o carácter defensivo e desarticulado do segundo movimento).

O (2) segundo capítulo partirá da abordagem à economia enquanto processo institucional e da noção de instituições de desmercadorização do trabalho trabalhadas no capítulo 1), e identificará que configurações estas instituições assumem de facto nas economias políticas europeias (deste trabalho, um conjunto de países será seleccionado, pelas suas especificidades institucionais, com vista a uma mais próxima monitorização do processo de desincrustação, ao longo de toda a dissertação).

O (3) terceiro capítulo exporá a arquitectura institucional que desencadeia a desincrustação do mercado nas economias políticas europeias; esta arquitectura caracteriza-se por configurar uma assimetria fundamental entre os modos de governação das liberdades de mercado (supranacional-hierárquico) e os modos de governação da construção de instituições de incrustação do mercado à escala Europeia (negociações intergovernamentais). Em particular, identificar-se-á o período pós-Maastricht como o ponto marcante da habilitação desta estrutura de integração assimétrica, que marca a transição, na história da integração Europeia, para uma fase em que esta passa a adereçar as instituições domésticas de desmercadorização do trabalho; assinalar-se-á também o papel estratégico desempenhado pelo Tribunal de Justiça da União Europeia nesta estrutura, assim como no processo de criação do Mercado único e, sobretudo, no processo da sua desincrustação das instituições domésticas.

O (4) quarto capítulo exporá como esta estrutura de integração assimétrica se traduziu em actos específicos de criação de mercado. Focar-nos-emos nas liberdades económicas que foram consolidadas com Maastricht: o princípio da livre provisão de serviços, o princípio de liberdade de estabelecimento e princípio da livre circulação de capitais. Estas garantias configuram a criação de um mercado único para a provisão de serviços e para a governação corporativa desincrustado das estruturas colectivas de relações industriais. Este quarto capítulo mostrará também como as liberdades de Mercado, no contexto de integração assimétrica, ameaçam os arranjos institucionais domésticos para desmercadorização do trabalho que se baseiam no financiamento colectivo (no modelo continental de segurança social, baseado em contribuições relacionadas com a participação no trabalho) e/ou no financiamento público (baseado nas receitas fiscais); no contexto de integração assimétrica exposto no terceiro capítulo, o mercado único desencadeia uma "concorrência de regime"

(Scharpf, 2001, 2006), traduzida em pressões sobre os custos não salariais do trabalho (o que afecta particularmente os modelos de segurança social baseados nas contribuições do trabalho), e em concorrência fiscal (Ganghof and Genschel, 2007, Genschel et al. 2009). Finalmente, este capítulo prestará ainda atenção às pressões adicionais sobre as instituições dos países da zona euro pela União Económica e Monetária; especificamente, dando conta de como o paradigma subjacente ao Pacto de Estabilidade e Crescimento constrange ainda mais a opção de financiamento público dos *Welfare States*.

Finalmente, o quinto (5) capítulo divide-se em três momentos cruciais. O primeiro identificará tendências de mudança institucional nos campos das instituições de incrustação do mercado (i.e. relações industriais e *Welfare States*) das economias políticas escolhidas no capítulo 2, que são consistentes com os elementos identificados no quarto capítulo. O segundo momento identificará tendências de reincrustação ao nível de cada uma destas economias, no quadro da distinção polanyiana entre a artificialidade do primeiro movimento de criação de mercado e o segundo movimento defensivo, composto por iniciativas desarticuladas e focadas em dar uma resposta de reincrustação a estímulos de mercadorização particulares. O terceiro momento identificará sinais do segundo movimento à escala Europeia, e avaliará criticamente o seu alcance, no âmbito da integração assimétrica.

Finalmente, desta análise da integração europeia como hipótese polanyiana serão retiradas conclusões que possam constituir contributo à construção de uma solução europeísta e democrática para os actuais problemas e estrangulamentos da construção Europeia, não só relativamente à actual crise das dívidas soberanas, mas, mais profundamente (e porque se considera que esta é muito mais uma crise de configuração institucional do que uma crise localizada nos problemas de endividamento externo de algumas economias), relativamente ao problema estrutural da integração assimétrica.

Palavras-Chave: Mudança institucional, Integração Europeia, Integração Assimétrica, Desincrustação do Mercado

Classificação JEL: B52, F55

Ackowledgments

The process leading to the idea conducting this investigation has not been a straightforward one. The abstract intuition that historical narratives are forged in societies interacting amongst themselves and with the structures that parameterize their collective lives was not always easy to articulate with the vibrant feeling that, for European societies, those very narratives were unfolding now, in each decision held at a Summit, in each evening news opening.

My approach to the economy "as an instituted process" has been deeply influenced by my supervisor, Ana Cristina Costa, to whom I am most grateful for patience, openness and guidance.

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Contents

Introduction

European integration as a Polanyian hypothesis

Throughout its history, many were the times the European project was pronounced dead. From 1992 Danish blockage to the Maastricht Treaty to the French and Dutch 'No's to a European Constitution in 2005, and, currently, in the midst of the most severe crisis in the history of Eurozone, the spectre of faltering political institutions for shaping an integrated economy seems to rise stronger every time. The Single Market was, since the beginning, a project dear to all. As from an early stage too, however, prominent Europeanists, such as Delors or Schuman, defended that an Economic Union would not be viable unless political institutions at a European scale could safeguard social cohesion from the effects of the free market. Accordingly, advances in economic integration were punctuated by stranglements and convulsions which denoted a wide spreading resistance from societies against a European Market without a Social Europe. 2005 French and Dutch referenda were held in a climate of controversy over the so called Services Directive. It was considered to promote social dumping, as a Portuguese worker could be posted to France earning Portuguese wages, thus leaving French workers in a competitive disadvantage. In the same year, the Dutch 'No' campaign theme tune - the *No Constitution Rap* sang "if you want a social Europe, and a Europe for the people, not for business and money, then say 'No' to the constitution"[1]. Also, the project of a single currency turned out to be even just as vulnerable to critiques. Here, too, warnings were issued pointing out the effects of a single currency introduced in what was not an Optimal Currency Area[2] and with no prospects of being framed by institutions such as a Treasury or Euro-area public debt issuance. In a first trial with the European Monetary System, heterogeneity among Member States' economic conditions and the absence of institutions for reducing exposure of currencies in free capital markets have dictated the failure of the system and catapulted the United Kingdom and Denmark out of the system. Currently, the Eurozone has been, to the date of conclusion of this dissertation, hostage to a sovereign debt crisis starting in the aftermath of the 2007-2009 financial crisis. Eurozone countries agree upon the urgency of enacting a solution for the exposure of sovereign debt of peripheral countries to the financial markets; disagreement over the configuration that such

[1] *BBC News*, 01/06/2005, 'Varied reasons behind Dutch 'No'', http://news.bbc.co.uk/2/hi/europe/4601731.stm
[2]The Telegraph, 25/08/2011, 'Professor Mundell, Euro, And 'Pessimal Currency Areas'', http://robertmundell.net/2011/08/professor-mundell-euro-and-pessimal-currency-areas/

arrangement must have has, however, dictated a Europaralysis which is translating in that the burden of adjustment is falling entirely upon populations.

Hayek (1996[1948]) foresaw in a European integration project a favourable agenda for liberalism. On the one hand, as countries would have to compete for mobile resources, the capacity of the state to burden the economy with taxes for financing welfare states would be restricted; on the other hand, as countries' nationals would not share a common collective identity, institutions of redistributive nature could not be enacted at a European scale. Likewise, a single currency (the logical step to eliminate currency risk as a non-tariff barrier) was unlikely to be framed by similar corrective institutions that cushioned disinflationary impacts of economic adjustment; this would translate in an administration of monetary policy in the same moulds as the Gold Standard. As Polanyi (2001[1944]) describes, under the Gold Standard, societies would have to *adjust* to the monetary corridor determined by inflows and outflows of gold shaped by free international trade. In the aftermath of the First World War, in face of the eminent collapse of the system, governments were forced to make a choice: either protect the value of national currency (and the system under which it was determined), or protect their citizens from brutal adjustments. The unfolding of this choice confirms Polanyi's fundamental these, which we subscribe: the idea according to which the enactment of competitive markets, i.e. removing "artificial" distortions in the price-setting mechanism of supply and demand, is sufficient (and ideal) for social and economic coordination is a purely utopian endeavour. Polanyi (1947) names this fiction the *Obsolete Market Mentality.* In the sense of what has been exposed so far, our departing intuition is that the set up of European integration is the institutional translation of this *Obsolete Market Mentality*.

The *Obsolete Market Mentality* is underpinned by the idea that the maximization of individual gain and the principle of laissez-faire correspond to some transcendent human nature and to an original and spontaneous social order, upon which non-market institutions (political, regulatory, etc.) exert artificial constraints. This, however, is in the antipodes of the reality of society. Following Polanyi (1957), the economy must be approached as "an instituted process", that is, underpinned by institutions which are historically and culturally determined; likewise, the market must be understood as a particular relational pattern that is parameterized by and embedded in those structures. What is artificial is, thus, the uprooting – the disembeddedness – of the market pattern from this structures. Particularly, the naïveté of such project lies in its ignoring the reality of what Polanyi describes as Fictitious Commodities.

Labour, land and money were not produced with the purpose of being organized for being sale and bought in the market. This is especially intuitive with regard to labour: to the extent that

the statute of the commodity lies in its value being determined by means of the supply and demand interplay, then the commodity is liable to being set aside, worthless, if there is no demand for it; with regard to labour, it is self-evident, this cannot happen without endangering the very life of the human being who happens to be "attached" to this peculiar commodity.

In this dissertation, we will be focusing upon the implications of the *Obsolete Market Mentality*, as it translates into the institutional set up of European Integration, in terms of commodifying implications to fictitious commodity labour. Following Esping-Andersen (1990), labour is decommodified by non-market institutions which translate collectively determined notions of right to live and opportunities for wellbeing, which must be ascribed to individuals independently of market outcomes. But, at the same time, these institutions limit the organization of labour into a full-fledged market, as they restrict the extent to which the value of labour reflects only the interplay between supply and demand. Here lies the essential paradox of the market pattern: while these institutions ensure that its functioning does not result in destruction of individuals and the social fabric, the market requires their dismantling.

The enactment of this market, therefore, is anything but natural; it is the outcome of a highly artificial process of removal of the parameters set by the referred institution that pose obstacles to the price system. This is a process that relies upon *decision*: the market is created by means of legislative and judicial action. Moreover, the artificiality of this construction has, as its corollary, that the market can never be entirely disembedded from the social structures that, in particular, restrict the commodification of labour. While legislative and judicial decisions create and advance the market, protective countermovements arise in order to recalibrate the institutional fabric and bring the market back into an embedded position. These protective countermovements, however, are of a distinct nature; while the first, market-creating movement corresponds to a set of initiatives articulated under a single project (the creation of a competitive market), the second, protective countermovement corresponds to multi-shaped and often disarticulated reactions, with no unified underlying agenda but, rather, the spontaneous intuition that social cohesion and values must be defended against market expansion. This is the core of polanyian political economy of the Double Movement that will frame our analysis: the market is created; reaction to reembed it is spontaneous – "laissez faire was planned; planning was not" (Polanyi, 2001[1944]: 147).

The hypothesis of this dissertation is thus, the following: *the European integration project can be put in terms of the polanyian narrative of the Double Movement.*

The institutional architecture of European integration, it is argued, sets in motion a process of market disembeddedness. This architecture is characterized by the asymmetry between

negative integration advanced by supranational enforcement of the Single Market and intergovernmental governance of positive integration (enactment of European level market-embedding institutions). In this context, we will emphasize the pivotal role of the European Court of Justice in creating judicial tools that have allowed for supranational (Commission plus ECJ) "constructing a liberal order by jurisdiction" (Münch, 2010). As referred, this dissertation will be concerned with market disembeddedness with regard to the commodification of labour. In that sense, it will be argued that, particularly after the Maastricht Treaty, domestic institutions for decommodification of labour – i.e. arrangements in the spheres of industrial relations and the Welfare State - have been increasingly pressured by asymmetric integration. At the same time, protective countermovements were triggered, with the purpose of protecting society from disruptive effects of market exposure.

The hypothesis of European integration as a polanyian Double Movement narrative will be explored in five structuring moments: (1) chapter 1 explores Polanyi's political economy of the Double Movement; (2) chapter 2 builds on the analytical toolkit of the Varieties of Capitalism approach to identify the several shapes that market-embedding institutions take in European political economies (according to these differences, a set of countries will be chosen in order to monitor the process of market disembeddedness); (3) chapter 3 outlines the institutional architecture of European integration and explores the hypothesis of asymmetric integration; (4) chapter 4 identifies specific institutional arenas in which market is disembedded by means of European asymmetric integration; finally, (5) chapter 5 will assess the impact of the elements of market disembeddedness identified in chapter 4 upon the institutions for labour decommodification of the selected political economies, and will identify the respective protective countermovements.

Unveiling the institutional configuration of market disembeddedness - asymmetric integration – allows to conclude that Europeanist market-reembeddedness must give an answer to the "joint-decision trap" (Scharpf, 2001, 2006). Concentration of legislative powers at the Council, on the one hand, and high consensus requirements, on the other, often result in either blockages, least denominator agreements or preference for soft-law mechanisms; while this aims at preserving national sovereignty, it configures a situation in which domestic non-market institutions become greatly exposed. This is a conclusion which is of particular relevance for the current debate over the *aporias* of European governance. At a time when the debate seems to polarize between Eurocepticism and Federalism, this dissertation will conclude by drawing implications that may contribute to a democratic solution to the joint decision dilemma.

Chapter one

What is at stake? - The political economy of the Double Movement

"*The market pattern (…) is capable of creating a specific institution, namely, the market. Ultimately, (…) it means no less than the running of society as an adjunct of the market*."

Karl Polanyi, *The Great Transformation* (2001[1944]: 60)

Our hypothesis is that European integration enacted an institutional set up such that markets were uprooted from social structures which previously contained and regulated it, leading to disruptive effects upon those collectively determined non-mercantile structures. At the same time, this has been met by protective countermovements, underpinned by social resistance against being run purely in accordance to market nexus. In short, we contend that the history of European integration can be read in terms of a polanyian Double Movement.

In order to develop this hypothesis, we will begin by enacting a theoretical framework informed by the political economy of Karl Polanyi, to be tested in the confrontation with the history of institutional changes brought about in the context of European integration.

1.1. The *Obsolete Market Mentality* and the Commodity Fiction: Building a Substantive View of the Economy

In building a polanyian framework, a first crucial analytical step will be the demarche from what Polanyi describes as *Our Obsolete Market Mentality*[3], towards a substantial view of the economy. The "obsolete market mentality" corresponds to the naturalization of the isolated individual, maximizing individual gain through perfectly rational choices. Polanyi also calls it a formalistic perspective on the economy (1957), as it is built on an abstract conception of human rationality that ignores its historical and social substance.

In ignoring this historical and social framing, the formalistic perspective of the economy falls into what Polanyi defines as the economistic fallacy. The economistic fallacy implies two biases. The first one is the *naturalistic* fallacy, which assumes that the prosecution of individual gain is the universal feature of human nature and solo pattern of behaviour. The

[3] "[A]bout man, we were led to accept (…) that his motivations can be described as «material» (…) In a market economy, [this was], evidently, true. But only in such an economy." Karl Polanyi (1968), in *Our Obsolete Market Mentality*

other is the *teleological* fallacy, which predicates from this universal and unidimensional human nature a sacred statute of natural law for laissez-faire, prescribing it as the utility (and, therefore, welfare) maximizer *tèlos* for all societies, in all times.

For Polanyi, deconstructing and surpassing this economistic fallacy calls for the transition to a substantial view of the economy. In this substantial perspective, the economy is understood as an 'instituted process'. That is, a system simultaneously *structured by* and *structuring of* multidimensional social interaction, through a set of communication and sanctioning mechanisms, both formal and informal, that thereby regularizes expectations and behaviours (Rodrigues, 2002: 3-4).

This transition points to a re-conceptualization of social coordination. In the "obsolete market mentality" of classical economics, the sole mechanism according to which individuals would coordinate in society was the market. In conceptualizing the economy "as an instituted process" (Polanyi, 1957), however, we recognize that the market nexus is one among other rationales according to which actors coordinate.

In his substantive approach to the economy, Polanyi takes into account two other coordination modes: reciprocity and redistribution. *Market*, *reciprocity* and *redistribution* are, according to Polanyi, the logics of human behaviour and social coordination that have shaped human societies in history. These patterns, however, do not exist purely by themselves, but are associated with specific institutional configurations: reciprocative behaviour can only take place in a social environment organized according to the principle of *symmetry*[4]; a redistributive order requires an institutional architecture composed by allocative centres (which perform collection, storage and redistribution functions)[5]; finally, the market requires an institutional arena that enacts a price-setting mechanism.

In pre-capitalist societies, reciprocity and redistribution were the main rationales shaping the institutional environments of societies[6]. Following Polanyi (2001[1944]: 57), "the orderly production and distribution of goods was secured through a great variety of individual motives disciplined by general principles of behaviour". Markets – that is, "a meeting place

[4] Polanyi exemplifies the pattern of reciprocity with the social organization in the coastal tribal villages of the Trobriand Islands, where the exchange of breadfruits and fish would take place in the form of reciprocal distribution of gifts. (2001[1944]: 51)

[5] Polanyi's example of the organizational principle of centricity is the hunting tribe. Given the irregular nature of hunting activity, hunting societies would deliver the game to the head of the tribe for redistribution. In a context of irregular hunting outcomes, redistribution was the only mode of coordination if the group was not to split after each hunt. The same principle applied under the feudal system. (2001[1944]: 51-2)

[6] "[A]ll economic systems known to us up to the end of feudalism in Western Europe were organized either on the principle of reciprocity or redistribution" (Polanyi, 2001[1944]: 57)

for the purpose of barter or buying and selling"[7] - existed in all these societies, but they were *embedded* in – and *parameterized by* - the moral, religious and political structures of society.

The question underlying *The Great Transformation* is, therefore, which institutional changes triggered an uprooting of the market from such structures of collectively sanctioned social life. Likewise, in building our theoretical framework, a first concept to guide our investigation will be the concept of *embeddedness*.

Polanyi identifies the development of the factory system that followed the introduction of elaborate machinery during the Industrial Revolution as the turning point marking the process of extension of the market principle to the social structures in which it was embedded.

To conceptualize this process, Polanyi makes use of the concept of commodity. As industrial production became increasingly complex, entailing long-term investments (and matching risks), the stronger was the claim for assurance about the continuity of production. This required safeguarding that all elements of industry were made available for acquisition to those who sought them, by those who had them – that is, according to the supply and demand mechanism[8]. This meant, of course that, as crucial parts of the production system, *labour*, *land* and *money* would also have to be available and organised into markets, and have their value determined by the interaction between supply and demand – in short, as commodities.

Alongside the concept of embeddedness, the concept of *commodity* will, thus, be a nuclear one in our theoretical framework, so let us clarify it a little deeper.

The ontological statute of the commodity lies in its value being determined extrinsically. In itself, the commodity has no value; rather, it is ascribed its value by the fact that someone ascribes value to it by signalling willingness to acquire it. Conversely, the value of the commodity will only hold as long as there is someone to whom it is valuable; when this ceases to be the case, the commodity will be set aside deprived of any value.

It is easy to see why labour, land and money can never be entirely converted into commodities. First, *labour* is inextricable of man; for Polanyi, "it is only another name for human activity which goes with life itself" (2001 [1944]: 75). As such, it would not be possible to deploy it indiscriminately, expose it to irregular valuing or, ultimately, set it aside, without destroying the individual[9]. The same, of course, applies to *land*: the faith of nature

[7] Polanyi, 2001[1944]: 59

[8] "In practice this means that there must be markets for every element of industry; that in these markets each of these elements is organized into a supply and a demand group; and that each element has a price which interacts with demand and supply." (Polanyi, 2001 [1944]: 75)

[9] "[A] market could serve its purpose only if wages fell together with prices. In human terms such a postulate implied for the worker extreme instability of earnings, (…) abject readiness to be shoved and pushed about indiscriminately, complete dependence on the whims of the market." (2001 [1944]: 184)

cannot be left to be decided upon the price mechanism without destroying it or leaving it to turn into wilderness[10]. Finally, *money* is not a commodity to the extent that it has not been produced but is a symbol of purchasing power; leaving its value to be determined in the market would periodically result in shortages and excess of money, which "would prove as disastrous to business as floods and droughts in primitive society" (2001[1944]: 76).

1.2. Market-creating and Market-embedding institutions: the commodification and decommodification of Labour

Labour, land (nature) and money can only be but fictitious commodities; their uprooting from all social and normative structures would prove destructive of human and social life. In this dissertation, however, we will only be focusing upon the impact of European integration upon the embeddedness of labour, that is, how its institutional architecture gears the commodity statute into labour, and what consequences for social organization has this disembeddness.

To that purpose, however, we first need to identify and define what sort of institutions are linked to the patterns of labour commodification and labour decommodification – that is, we need to identify the *instituted process of the economy of labour commodification*.

Labour could never be deprived of its social structuring and be, instead, entirely administrated according to the market nexus without threatening human life itself. This directs our attention to the social institutions which structure the protection and maintenance of human life.

In his investigation on the institutional transformations triggering the "running of society as an adjunct to the market", Polanyi focuses on the arrangements which express the eighteenth century society's resistance against being run as appendages of the market. The most emblematic of these is England's Speenhamland Law of 1795.

The Speenhamland Law was an allowance system which granted aid-in-wages subsidies (funded by local taxes), indexed to the price of bread, "so that a minimum income should be assured to the poor irrespective of their earnings" (Polanyi, 2001[1944]: 82). The rationale underpinning Speenhamland was that no individual would be left to starve on account of the value that was ascribed to his work by the market; instead, there was a value of human life which was socially acknowledged as independent of market outcomes.

In essence, Speenhamland was the institutional translation of this socially acknowledged right to live; we find, here, the very essence of labour embeddedness in society.

[10] "Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted (…)" (2001 [1944]: 76)

Turning to our theoretical framework, we may, in this sense, define *market-embedding institutions* as the *collectively sanctioned sheltering of human life* against market exposure.

Following this, when analysing labour embeddedness in the institutional set ups of European political economies, we will be focusing upon *Welfare State institutions*.

Polanyi accounts for the incompatibility between the right to live principle and the mercantile system in nineteenth century England[11]. Publicly subsidized aid-in-wages implied a fundamental contradiction between the two institutional principles that shaped the social organisation of labour: on the one hand, the market system compelled people to earn their living by selling their labour force in the marketplace; on the other hand, the protectionism of Speenhamland deprived their labour of its market price[12].

This institutional obstacle to the wage system was removed by 1834 Poor Law Reform. The Poor Law of 1601 decreed that the able bodied should be put to work (i.e. their labour force should be available for purchase in the market – should be a commodity), while (under Speenhamland regime) the parish would supply complement to their wage earnings (i.e. would perform a labour decommodifying function). By abolishing Speenhamland (and the right to live principle), the Poor Law Reform ensured that a competitive market for labour was being created, by guaranteeing that the able-bodied would have to live (and therefore accept work) on any wages the market for labour would set[13] (Polanyi, 2001[1944]).

The New Poor Law, thus, provides us with definition for the institutional arrangements underpinning a process of labour commodification; we thus add here to our theoretical framework the concept of *labour commodifying market-enabling institutions*: institutional arrangements which aim at *creating* a competitive market where it previously did not exist, and that, in the process of so doing, increase the exposition of individuals to the market.

1.3. Market utopia and the Double Movement

What we wish to capture from this turn from Speenhamland to the Poor Law Reform is exactly this notion of *market creation*. That is, unlike the "obsolete market mentality" likes to

[11] *The Great Transformation* (2001[1944]), chapters 7 and 8.

[12] "[T]he Industrial Revolution demanded a national supply of labourers who would offer to work for wages, while Speenhamland proclaimed the principle that no man need fear to starve and that the parish would keep him and his family, however little he earned." (Polanyi, 2001[1944]: 93)

[13] In the terms of the New Poor Law, outdoor relief was discouraged and the only way the poor could access relief was by entering a workhouse, which was little less than a prison, not to mention the stigmatizing process involving the access to it.

assume, there is nothing natural about markets; instead, they are the product of intentional human - and, more specifically, political - creation.

The enactment of a competitive market for labour corresponded less to an intrinsic expansion dynamics contained in a transcendent nature of the market pattern, but, rather, to political choices of shaping the social arena of labour so as to enable a price system for the administration of human work[14].

Our theoretical framework is thereby provided with another conceptual element: assessing the uprooting of market from market-embedding institutions will require that we identify the *institutional pivotal points of decision* of market expansion. Following this, our investigation on market disembeddedness triggered by European integration will be paying attention to the deliberative processes in the legislative and executive centres of the EU architecture (the Council and the Commission); also, a privileged focus will be given to the legislative power implicit in the judiciary activism of the European Court of Justice, in its function of deciding on the compatibility between national laws and Treaty provisions (chapter 3).

Returning to Polanyi, as a politically shaped process, market expansion embodied the social compromises achieved through the balance of power between social classes[15]. With the changes brought about by the Industrial Revolution and increased complexity of machine production, a class of entrepreneurs and industrialist arose who pressured for this political choices of organizing all elements involved in industrial production into competitive markets.

This adds two more conceptual elements to our framework. First, the analysis of the institutional changes undertaken in national political economies within the context of European integration will require an understanding of the *balance of social powers* embodied in the new institutional set ups (e.g. the new law, the new reform, etc.). Our analysis will thus be sensible to role played by the relative institutional power of labour and business classes in shaping outcomes of institutional change. Secondly, the relevance of the institutional power of labour and business' classes in the process of shaping human exposure to the market will mean that, when considering *market-embedding institutions*, we will also be focusing upon the sphere of *industrial relations*.

By means of the Poor Law Reform, and the abolition of market-embeddedness function performed by Speenhamland, as well as withdrawal of outdoor relief, a competitive market

[14] "[T]he gearing of markets into a self-regulating system (…) was not the result of any inherent tendency of markets towards excrescence, but rather the effect of highly artificial stimulants administered to the body social in order to meet a situation which was created by the non less artificial phenomenon of the machine." (Polanyi, 2001[1944]: 60)

[15] "The spread of the market was thus both advanced and obstructed by the action of class forces." (2001[1944]: 162)

for labour implied that the individual would take any work and wage conditions offered in the market or accept the degradation and shame of the workhouse[16]. This, however, was almost instantaneously met by a self-protection movement.

The nineteenth century witnessed the uprising of a myriad of working class movements (Luddism, Owenism, Chartism, Marxist ideologies), struggling for the introduction of limits on human exposure to the market (social legislation, factory laws and social insurance).

But what is peculiar about this protective countermovement is that it was no longer restricted to a single class, as the first, market-enabling movement had been. Parallel to market expansion, the industrialists and capitalist class regularly called for state intervention and regulation (such as anti-trust laws or industrial policy) in order to reduce the dependence of business outcomes from purely laissez faire markets[17].

This duality of principles that interplay in a market economy – the expansion of market order for pursuant of individual interest and the collectivist reaction against disruptive disembeddedness – is what Polanyi labels the Double Movement:

"[The Double Movement] can be personified as the action of two organizing principles (...). The one was the principle of economic liberalism (...) relying on the support of the trading classes, and using largely laissez-faire and free trade as its methods; the other was the principle of social protection (...) relying on the varying support of those most affected by the deleterious action of the market (...) and using protective legislation (...)" (2001[1944]: 138)

To conclude, it is important to note that, with regard to the first, market-creating movement, this second, protective countermovement is of an entirely distinct nature. While the organization of social and economic life according to the market principle was the intentional product of political acts and choices, articulated under a single plan – the creation of a market -, the second movement corresponded to spontaneous defensive responses to locally- felt disruptive stimulus caused by market disembeddedness, and, as such, they took distinct

[16] "Never perhaps in all modern history has a more ruthless act of social reform been perpetrated; it crushed multitudes of lives while merely pretending to provide a criterion of genuine destitution in the workhouse test. Psychological torture was coolly advocated and smoothly put into practice by mild philanthropists as a means of oiling the wheels of the labor mill." (Polanyi, 2001[1944]: 162)

[17] "Finally, the behavior of liberals themselves proved that the maintenance of freedom of trade (…) far from excluding intervention, in effect, demanded such action, and that liberals themselves regularly called for compulsory action on the part of the state (…)"(2001[1944]: 157)

shapes, were not articulated under a single conscious intentionality of a broad plan for the organization of society[18]. In short,

"While laissez-faire economy was the product of deliberate State action, subsequent restrictions on laissez-faire started in a spontaneous way. Laissez-faire was planned; planning was not." (2001[1944]: 147)

Summary

The political economy that will be framing our investigation departs from the principle that the process of constructing a market (and the European integration was ultimately the enactment of a market) inevitably is accompanied by a second movement demanding the construction of parallel institutions which contain the market and limit human exposure to it. These two movements are distinct in nature: while the first, market-creating movement corresponds to strategic and intentional political or judicial actions of removal of market barriers that are articulated according to a broad blueprint for the organization of the society (i.e. the market economy), the protective countermovements are mostly spontaneous and disarticulated in nature.

[18] "The countermove against economic liberalism and laissez-faire possessed all the unmistakable characteristics of a spontaneous reaction. At innumerable disconnected points it set in without any traceable links between the interests directly affected or any ideological conformity between them." (2001[1944]: 156) This reflected in that these protective countermovements took very different shapes, from highly politicized movements, demanding universal suffrage and legislation on social protection, to radical direct action, directed towards destruction of industrial machinery (such as Luddism), and, most importantly, to a context favourable to fascist impulses, promising to protect society from market openness (Polanyi, 2001[1944]).

Chapter two

Market-embeddedness in European Varieties of Capitalism

"[N]ever before our own time were markets more than accessories of economic life. As a rule, the economic system was absorbed in the social system (...) Regulation and markets, in effect, grew up together."

Karl Polanyi (2001[1944]: 71), *The Great Transformation*

Our theoretical framework enacted a substantive view of the economy, which approached economic systems as instituted processes. Particularly, we identified two types of institutional principles that organize social life: the principle of economic liberalism, focused upon organising the elements involved in economic life into competitive markets that make them available under the supply and demand mechanism (underpinning market-enabling institutions); and the principle of collective sanctioning of the extent to which social outcomes may be left to depend upon the price system (underpinning market-embedding institutions). Furthermore, our polanyian theoretical framework contained a theory of institutional change, which stated that while the market principle called for the disabling of non-market structures interfering with the price system, this utopia of thinking about markets as some primordial, natural order, upon which social and political institutions exerted artificial constraints, would reach a saturation point of human and social exposure to market contingencies that would trigger a protective countermovement in order to push market back into a embedded position.
Identifying market disembeddedness processes that are brought about by European integration requires the preliminary identification of the institutional structures of market-embeddedness in European political economies.
Consistently with our "economy as an instituted process" approach, we will for this purpose rely upon the rich analytical toolkit that has been produced within the *Varieties of Capitalism* (VoC) literature. A first section will present the VoC approach, and its contributes to enhance our process of identification of market embedding institutions in European political economies; a second section will account for the role played by the state in institutional set ups; a third and fourth sections will then focus upon the actual forms market-embedding institutions take, in the field of industrial relations (2.3) and welfare state institutions (2.4).

Following the typologie for institutional analysis that will result, a set of European political economies will be chosen, in order to provide illustration to our investigation.

2.1. Approaching *The Economy as an Instituted Process* – VoC's analytical contribute

In conceptualizing the economy "as an instituted process" - i.e. in acknowledging a qualitative diversity of principles underpinning the institutions that parameterize social life - we are confronted with the issue of social coordination no longer "as a plain mobilization of a unique principle of calculus and power (that of the market or of the State, for example) but rather as a set of mechanisms that use different forms of coordination of individual actions and that mobilize several social structures: the market, the State, the community, interests associations, networks, firms" (Reis, 2009: 20-1[19]). In short, distinct institutional logics (cultures, rules, values) will mobilize differently the social structures they underpin.

VoC's institutionalist approach departs - as analytical unit - from the firm, in its activity of devising strategies for coordination with other relevant actors, and exploiting the opportunities and constraints that are configured by the institutional configuration it finds itself in. More specifically, firms must enter into coordination relations with their labour force, bargaining over wage and working conditions within a specific set up of *industrial relations*. Also, they have requirements in terms of specific skills and qualifications, and must therefore relate to *vocational training and education systems.* Thirdly, firms must secure strategic solutions in the sphere of *corporate governance*; that entails the mode of access to funding as well as the shape of *intra-firm coordination relations*, that is, the coordination mode underpinning relations of information sharing and decision making. Finally, the firms' access to technology transfer fluxes as well as to schemes of R&D will be conditioned upon *inter-firm relations* (the coordination networks linking the firm to suppliers, clients, etc.). (Hall and Soskice, 2001)

These, of course, are not well compartmentalized spheres; instead, as Hall and Thelen (2009: 10-1) put it, "strategies are conditioned simultaneously by multiple institutions, often in different spheres of the political economy". That is, actors, in devising their strategies for action within the fields of opportunities and constraints that are shaped by several institutions in several spheres of the political economy, trigger interactional effects among these institutional fields causing them to co-evolve. Co-evolution, in this sense of co-adjustment,

[19] My translation.

tends to produce *institutional complementarities* and *standard patterns of coordination* (Boyer, 2005; Hall and Soskice, 2001).

VoC's argument of institutional complementarities implies that consistency between strategies for coordination tends to tight up into coherent systems. Accordingly, VoC identifies two radically distinct logics for coordination underpinning two ideal-types of institutional set ups[20].

On the one hand, we find *Liberal Market Economies* (LMEs), in which the logic for coordination is primarily the competitive market. Firms devise their strategies relying mostly in two market key factors: i) the price system enabled by institutions aimed at securing competition, and on which firms base marginal calculations so as to adjust supply and demand of goods or services; and ii) a legal system supportive of complete formal contracting. Reliance upon competitive markets as coordination logic underpins a standard set up of institutional complementarities: First, fluid labour markets that allow companies to address downturns by cutting labour are complementary to a market- based financial system that makes the financing of the firm dependent on short-term profitability. Secondly, such fluid labour markets are consistent with an educational system oriented towards general, rather than firm-specific, skills acquisition; it is also complementary to highly mobile financial investments, which alter the demand for professional profiles. Finally, this is consistent with minimalist protection by welfare institutions, which discourages investment in specific skills acquisition and increases fluidity and competitiveness of the labour market by pushing people to accept whatever wages the market sets. (Hall and Soskice, 2001)

On the other hand, we find *Coordinated Market Economies* (CMEs), where firms coordinate with other actors mostly through non-market, collaborative and collectively sanctioned relations. Reliance on strategic interaction for solving coordination issues is supported by institutions that support consensus-building and frame the credibility of commitment, namely through i) the exchange of information within networks, ii) network monitoring of actors' behaviour, and iii) collective sanctioning of defection from cooperation. In CMEs, institutional complementarities are underpinned by powerfully organized collective actors such as strong business associations and trade unions. In that sense, employment protection is high and so is labour representation at firm and industry levels; this is consistent with firms'

[20] We will find how these two ideal-types of coordination modes are consistent with the two institutional principles that we have identified in the polanyian framework. Further elaboration of these principles within the institutionalist framework of VoC will deep the analytical accuracy of our correspondence between the Polanyian framework of market-enabling/market-embedding institutions and the actually existing institutional set ups of European political economies.

strategic orientation towards high-value-added production of capital goods. Such pattern of industrial specialization, in turn, is supported by a vocational training and education system oriented towards the acquisition of industry-specific skills, which is also consistent a status-protective welfare state, which links benefits to wage- related contributions and therefore encourages lifelong skill acquisition. Finally, the complementarities between workers' participation at firm level decision making, strong employment protection and an industrial profile based on high-value-added capital goods are consistent with bank-based financial system and ownership structures which allows for access to patient capital and shelters firms' decision making from short-termism. (Hall and Soskice, 2001)

As ideal types, these are, of course, radical abstractions of the coordination and liberal rationales which must be approached as the opposite poles of a spectrum along which actually existing economic systems position themselves. In fact, empirical research body of VoC often shows us that, although to different extents, many political economies mix elements of both coordinated and liberal logics, as well as coordination secured by an active role by the state (Hancké *et al*., 2007; Molina and Rhodes, 2007).

This complexity calls for a broadening of the standard VoC's dicothomic typology of CMEs-LMEs. More specifically, three aspects are worth of consideration, in order to make our VoC's framework more comprehensive of the reality of European political economies: the role played by the state in the economy, the organizational specificities of labour and business' interests and the welfare state[21] (Streeck, 2010; Deeg and Jackson, 2007; Schmidt, 2003). This finer-grained typologie will point us the several shapes that market-embedding institutional fields identified in the polanyian framework (industrial relations and the welfare state) actually take in European non-liberal market economies[22].

2.2. The role of the State

Following Hancké *et al*. (2007), the role played by the state within the institutional set up of a political economy may be one of either close or arm's length relations to business.

[21] These criteria for reading the institutional set ups of European political economies are actually consistent with the conceptual elements enlightened in our polanyian theoretical framework: the centres of political decision, the institutional power of social class actors and market-embedding institutions in general (cf. chapter 1).

[22] As the question of our concern is market-disembeddedness, we therefore choose to focus upon political economies where the institutional fields of our interest are underpinned by a labour-decommodifying, rather than by a liberal, rationale for coordination.

Political economies where the state develops arm's length relations with business (mainly through the setting of legal framework for coordination) correspond to the two VoC ideal-types: LMEs and CMEs.

LMEs rely on competitive markets, supported by formal legal contracting, for coordination. The role of the state is to set detailed legal framework for market operations, ranging from complete contractual legalistic framework to an architecture of independent regulatory agencies to monitor anti-competition practices (Roberts, 2010). Legal framework for market competition include labour and business legislations that both *reflect* and *reinforce* decentralized and weakly coordinated collective interests movements (business and labour associations) (Hall and Soskice, 2001). The standard VoC's example of this is *Britain*.[23]

The state also plays arm's length, frame setting role in CMEs. Here, however, frame-setting aims at supporting *autonomous* bargaining and coordination by endorsing strong collective actors' strategic bargaining positions[24]. The state is absent as an active player; rather, its role is to ensure that regulation arises from voluntary but powerful *collectively-sanctioned compromises*. This entails a role of monitoring power symmetry in actors' bargaining positions; in this context, social protection schemes assuring workers they will be protected in case of dismissal are crucial features in maintaining the relative institutional power of labour (Hall and Soskice, 2001; Hall, 2007). The standard VoC's example of this is *Germany*; we will also be focusing on *Austria*, *Netherlands* and *Sweden*[25].

That the two opposing poles of VoC's spectrum occur when the state is absent, as an active player, from the economy, underlines the importance of other institutional features that

[23] With Hall (2007), one can identify as decisive landmark point in Britain's institutional constitution as a fully fledged LME the frame-setting activity of the Thatcher executive in the 1980s. Britain's political strategy to cope with the inflation challenges of the late 1960s had focused on improving institutions for strategic wage coordination. This, however, collided with an incompatible structure of labour movement and endemic weaknesses in employers' associations (based on a tradition of shop stewards and sectoral craft unionism), triggering a wave of industrial conflict that undermined legitimacy for state interventionism and provided ideological hegemony to Thatcherite reforms. In dismantling labour unions power, retrenching market-sheltering welfare benefits, privatizing national enterprises and deregulating markets, these initiatives reinforced and completed the set of LME institutional complementarities: arm's length, frame setting state-economy relations and fragmented interests organization.

[24] Unlike Britain, Germany performed well through the inflationary problems of the 1960s precisely on account of CME-type autonomous strategic coordination, not only among the social partners, but also within the broader macroeconomic framework. Wage increases demanded by powerful unions in centrally coordinated wage-setting system were moderated by threats of restrictive monetary policy from an independent central bank. (Hall, 2007; Hancké and Herrmann, 2007).

[25] The case of Sweden blurs the strict portrait of CMEs as bearing arm's length relations between the state and the economy. In fact, as we will see, Sweden displays a framework for autonomous labour-business coordination (*Lex Britannica*), with government not intervening in wage-setting (*Tarifautonomie*); but its welfare state arrangements place high emphasis upon employment creation in the public sector (Hall, 2007), a strategy which relies upon a strong presence of the state in the economy. This divergence enlightens the relevance of considering welfare state arrangements in comparative institutionalism analysis.

account for the radical distinction among them, namely, as we will see, the organizational specificities of labours' and business' interests. But it is also indicative of the decisive role played by the political choices of government in its frame setting activity, and, therefore, of the national political-party system as well as ideological and political culture and history.

Where the state has traditionally played an active role in the economy, it has done so in two ways: either by *steering* the main industries and controlling the main credit supply channels, or by *compensating* for coordination deficits. (Hancké *et al*., 2007)

The first case's paradigmatic example is *French étatisme*, where the state's steering role has ranged from ownership of the main industries and of the largest banks[26] to control of the national training system (*Grandes Écoles* and *Écoles Polytechniques)* where public officials and business elites were trained and socialized together. This state-business economic and sociological interpenetration, involving close (formal and informal) relations to the industrial elites, translates in weaker relative institutional power of labour unions, which is, however, compensated by paternalistic state intervention in social and labour standards. (Menz, 2005)

The second case of close state-economy relation describes most of the Mediterranean economies - particularly, *Italy* and *Spain* -, where interests organization are sufficiently powerful to pressure the state although not cohesive and articulated enough to generate autonomous VoC-type synergetic complementarities. The state controls a key business sector so as to provide key industrial inputs and steers the wage-setting system (often in the form of legislative activity, but also through some forms of tripartite concertation arrangements), compensating for an absent autonomous capital-labour settlement system. This compensating role also includes state financed wage-compensation schemes in times of industrial restructuring and welfare states strongly based in social transfers. (Hancké *et al*., 2007)

2.3. The role of market-embedding institutions: Industrial relations

Recalling chapter 1, it will be assumed that, in determining wage and working conditions, as well as in influencing matters of employment and labour market legislation, the more powerful labour interests' organization is, the less will labour be exposed to the market nexus.

[26] By the mid- 1980s, growing public sector deficits placed downward pressures on the franc, forcing the Mitterrand executive to a political choice between the French *étatiste* strategy and commitment to the European Monetary System (created in 1979 with the purpose of stabilizing exchange rates in Europe). The following wave of privatizations - that put France on a track of convergence towards LME practices of corporate governance and industrial relations - did not, however, change the close relation between the state and the economy, with the state retaining a steering role in the economy, both by protective industrial and competition policies (directed at the protection and promotion of its National Champions) (Thatcher, 2007), and through its social policies, fixed national minimum income and public administration wages (Hall, 2007).

Conversely, it is assumed that the more powerful employers' associations are the higher will be pressure for linking work and wages to the price system set in competitive markets.

Menz (2005) draws on the neocorporatist framework[27] to aggregate European political economies according to common traits of organizational specificities and relative institutional power of class interests' actors. Based on his parameters, we will read the organizational strength and institutional power of organized labour *vis-à-vis* business' attending to four criteria – (1) *degree of centralization and internal coherence* of the organization's structure (the control enjoyed by peak-level bodies over lower associates and level of internal coordination), (2) *representation among clientele* (that is, density in trade union and business associations), (3) *access to government,* and (4) *workers' representation at firm-level*.

This will result in a scale ranging from high neocorporatism (where both labour is endorsed with high institutional power) to a low level of corporatism (where actors are either weakly coordinated or have weak bargaining power *vis-à-vis* the state), with an intermediate level of neocorporatism, characterized by medium level of centralization of interest mediation. More specifically, in applying these criteria to read industrial relations' arrangements in the European political economies referred in 2.2.[28], three profiles can be identified[29].

Austria and *Sweden* present *highly neocorporatist* profiles. In both countries, both labour and employers are traditionally organized in *highly centralized and internally coherent structures* in which either a single one (Austria) or a limited number of national peak-level bodies (Sweden)[30] maintain tight control over sectoral and regional levels of bargaining. Representation of workforce tends to be very high, with trade union membership in Sweden traditionally situated in levels around 70% of total workforce; in Austria, these representation levels are lower (around 40%), but, given that business' membership in employers association is compulsory (density of 100%), bargaining coverage is probably the highest in Europe. While both countries display a framework for wage setting based on the principle of

[27] As a body of research, neocorporatist literature was rather influent in the 1960s and 1970s - and was indeed a major theoretical influence to VoC -, when the big economic concern was the inflation and unemployment problems experienced in most European economies. This approach was concerned with the effects of the arrangements for wage and working conditions setting upon macroeconomic outcomes, and thus focused on – and categorized countries in terms of - the organizational specificities of the wage-setting system. (Hall and Soskice, 2009[2001])

[28] Except Britain, for already specified reasons.

[29] Information on countries' profiles of industrial relations is drawn from the *European Industrial Relations Observatory* (EIRO). For more detailed comparative analysis, each country's profile regarding labour's relative institutional power within the set of industrial relations can be consulted in Appendix A.

[30] *In Austria*: the Austrian Trade Union Federation (Österreichischer Gewerkschaftsbund, ÖGB); *in Sweden*: the three trade union confederations (labour is organized by occupation) are the Swedish Trade Union Confederation (Landsorganisationen i Sverige, LO), the Swedish Confederation of Professional Employees (Tjänstemännens Centralorganisation, TCO) and the Swedish Confederation of Professional Associations (Sveriges Akademikers Centralorganisation, SACO). (EIRO; cf. Appendix A)

autonomous bi-partite bargaining (*Tarifautonomie*), this is more thoroughly applied in Sweden, where government stays out of bargaining and compliance with collective agreements is not achieved by an official procedure making them nationally mandatory, but rather through a specific legal framework (*Lex Britannica*) which endorses Unions with monitoring functions, assisted by the right to take industrial action against non-complying employers. In Austria, *Tarifautonomie* is complemented by union's traditionally favourable access to government, by means of formal and informal consultation on legislative initiatives before these are presented in the parliament, which compensates for lower levels of trade union's *vis-à-vis* employers' density. Finally, an important feature of Austrian and Swedish strong neocorporatism is the workers firm-level representation and involvement in decision-making; in both countries workers are represented by firm-level works councils that are entitled to a number of seats at companies' supervisory board[31].

Germany and the *Netherlands* have *intermediately neocorporatist* profiles. Despite being considered the standard CME case, German interests' organization is not particularly centralized; as in Sweden, there are three national trade union confederations[32], but they abide by the federal principle of strong constituents enjoying autonomy at sectoral- and regional-levels bargaining. In this context, the organizational structures are significantly more centralized for employers, with strong coordination between peak-level associations[33] and powerful sectoral employers associations[34]. The same pattern is found in Netherlands[35]. Representation levels are, in both countries, also more favourable to business' interests than to workers'[36], which, in either the German framework of *Tarifautonomie*, or in Dutch mixed system (comprising both bi-partite bodies and a tripartite Social and Economic Council[37]), results in stronger relative institutional power for employers. In both countries, workers set up

[31] In both countries company law mandates two-tier structure for firms above a certain size (number of employees); that is corporate structure is composed of an administration board and a supervisory board, in which workers are entitled to representation.

[32] The Confederation of German Trade Unions (DGB), the German Civil Service Association (dbb) and the Christian Confederation of Trade Unions in Germany (CGB). (EIRO; cf. Appendix A)

[33] There are two German peak level bodies for business' organization - the German Confederation of Employers' Associations (BDA) and the Federation of German Industries (BDI) – which both achieve stronger control and better coordination with lower level bodies than it is case in its labour counterparts. (EIRO; Menz, 2005)

[34] Such as the German metal sector association Gesamtmetall.

[35] The unified employer association (VNO-NCW) is more centralized and internally coherent than its ideologically fragmented three labour counterparts, the Dutch Trade Union Federation (FNV), the Christian Trade Union Federation (CNV) and the Federation for Managerial and Professional Staff (MHP).

[36] With medium levels of unionization (around 20%) in both countries, *vis-à-vis* business associations' membership of around 60% in Germany and 80% in the Netherlands.

[37] By means of which consultation of social partners occurs through informal, non-binding hearings and parliamentary committees.

works councils at workplace which enjoy information and consultation rights and, in some cases, also participation rights at firms' supervisory boards[38].

Finally, *low levels of neocorporatism* are found in statist *France*, and MMEs *Spain* and *Italy*. In these countries, the state plays an active role, compensating for either weaker *institutional strategic power* of labour's interests *vis-à-vis* employers' (in *France*[39]) or endemic weaknesses of the labour movement itself (in *Italy* and *Spain*).

In France and Italy, the labour movement is highly fragmented and decentralized[40] on account of strong ideological cleavages which make compromises over a common position very difficult to reach; these are also structures with low degree of internal cohesion, bearing a paradoxical combination of national-level strength and severe problems of control over sectoral- and firm- levels (Menz, 2005). In France, this is compensated by paternalistic state intervention in the wage setting system, which, however, must not be mistaken for high institutional power of labour's interests[41]. In Italy, decentralized though it is, the labour movement is still more strongly organized than weaker and more divided Confindustria[42].

Finally, deficitary labour movement in Spain[43] is compensated by favourable government action, either by consultation in social dialogue processes[44], or by official procedures extending collectively set agreements to all economy, compensating for coordination deficits among national union confederations[45] and lower (sectoral and firm) bargaining levels.

Although legislation in these three countries allows workers to constitute works councils for representation at firm-level, these bodies enjoy only information and consultation rights.

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[38] In *Netherlands*, works councils in companies with at least 50 employees may nominate candidates for supervisory board; in *Germany*, companies with 2000 or more employees have 50% representation at supervisory board.

[39] In a context in which, however, peak-level unions have remarkable capacity of mobilization to street protests and strikes.

[40] *In France*, there are five national level trade union confederations: the General Confederation of Labour (CGT), the French Democratic Federation of Labour (CFDT), the General Confederation of Labour – Force ouvrière (CGT-FO), the French Christian Workers' Confederation (CFTC), and the French Confederation of Professional and Managerial Staff – General Confederation of Professional and Managerial Staff (CFE-CGC); *Italy* has three national trade unions confederations – Cgil, the Italian Confederation of Workers' Trade Unions (Cisl) and the Union of Italian Workers (Uil) - and several other confederations as well as some independent autonomous unions.

[41] By establishing a minimum wage as well as public administration wage levels (Hall, 2007); but also by making extensive use of the official procedure through which the Ministry of Labour extends agreements set at tripartite concertation to all economy (EIRO). Although this translates in high bargaining coverage (around 90%), it hides the stronger relative institutional power of business' interests, which, not only unify under a single and fairly centralized peak level structure (Medef), but also enjoy more favourable formal and informal access to government, on account of the already referred shared social and educational background of business and public elites (Menz, 2005; Hancké et al., 2007)

[42] The Italian national level business confederation.

[43] On account of one of the lowest levels of union density in Europe, according to EIRO.

[44] Which, however, are of an informal, non-binding character (EIRO).

[45] The Trade Union Confederation of Workers' Commissions (CCOO) and the General Workers' Confederation (UGT)

2.4. The role of market-embedding institutions: the Welfare State

The political economy of social policy is that it determines the degree to which an individual's survival and set of opportunities for a good life are made contingent on market functioning or, on the contrary, are embedded in collectively sanctioned notions of well being. The extent to which welfare state institutions provide alternative to labour market earnings, thus, corresponds, in a capitalist economy, to the degree of decommodification of work in that political economy[46]. In this sense, and in line with Esping-Andersen (1990: 23), we shall define decommodifying welfare states as arrangements in which "citizens can freely, and without potential loss of job, income, or general welfare, opt out of work when they themselves consider it necessary".

In this sense, depicting national welfare states in terms of labour-decommodification will focus on four dimensions: (1) *access* to benefits and their *duration*[47], (2) *income replacement* rates[48], (3) the *range* of entitlements[49], and (4) *universality*[50]. (Esping-Andersen, 1990)

Scruggs (2006) has built a Comparative Welfare Entitlements Dataset (CWED)[51] that allows us to compare national arrangements for social protection, according to Esping-Andersen's criteria on the decommodification of labour. According to it, we may group the political economies of our concern into one of three welfare state profiles: *Social Democrat*, *Continental* (or bismarckian) and *Mediterranean* (Esping-Andersen, 1990, 2002)[52].

Swedish traditionally high replacement rates of pensions and non-employment (unemployment and sickness) benefits, as well as facilitated access to these benefits[53],

[46] As Esping-Andersen puts it, "[i]t is possible to withhold washing-machines from the market until the price is agreeable; but labour is unable to withhold itself for long without recourse to alternative means of subsistence" (1990: 37). This is consistent with Polanyi's account on why labour can never be entirely commodified (cf. chapter 1)

[47] Decommodification will depended upon obstacles to access, such as requirements of contributory career, means-test, waiting days until receiving benefits, etc., as well as upon temporal extent, with limited-period programs rendering lower levels of decommodification.

[48] Lower replacement levels will mean higher pressure for the individual to be in the labour market; higher replacement rates will mean alternative to selling one's workforce for earning a living.

[49] The range of covered social risks and recognized social needs – unemployment and sickness insurances, disability and old age pensions, parental and educational leaves, etc.

[50] Coverage of relevant population (for instance, non-employment protection concerns all population within working age).

[51] In the Comparative Welfare Entitlements Dataset (CWED), Scruggs (2006) applies Esping-Andersen's labour decommodification index to several countries' structures of pensions and non-employment protection benefits (unemployment and sickness insurances). The CWED is available at http://sp.uconn.edu/~scruggs/.

[52] National profiles of labour decommodification by means of the pensions systems and non-employment protection (unemployment and sickness insurance) can be consulted with greater detail in Appendix B.

[53] In all three categories of social benefits under study, Sweden presents the least stringent requirements of previous contributory period to access benefits of all studied economies, as well as the most extended duration of protection (cf. Appendix B, Tables 1,2 and 3).

translate a rationale of *universalism* underpinning its welfare state model, which also translates in the highest scores for benefits' coverage of relevant population among all the countries studied. This places Sweden within the cluster of *Social Democrat* welfare states, which can be summarized by two main features: first, an earnings-related insurance scheme tailored to suit middle-class earners' expectations of status maintenance is integrated within and articulated with an egalitarian level field of universal provision of the highest standards of social rights (rather than minimal needs) (Esping-Andersen, 1990); secondly, this universalist provision of high standards social entitlements, which relies upon levels of work participation close to full employment (in order to provide tax revenue for public funding of entitlements) (Hall, 2007), is carried out through a network of public sector services of health, social and family care, which, in turn, serves the purpose of employment creation[54], in a mutually reinforcing institutional complementarity.

In *Austria*, *Netherlands*, *France* and *Germany* social protection has traditionally displayed a strong *occupational* character; that is, regarding to pensions and unemployment benefits, the level of protection granted to individuals relates strongly to their previous work- related earnings[55]. This is typical of the *Continental* bismarckian welfare regime, which is underpinned by a *conservative* rationale, present in two distinctive marks: first, in a concern with socioeconomic stratification[56]; secondly, in the influence of conservative-Catholic tradition which proclaimed the preservation of traditional household model, promoting a model focused on the protection of the male breadwinner, both through highly protective employment legislation and strong non-employment protection in the form of social transfers rather than services provision[57]. (Esping-Andersen, 1990, 2002)

[54] Hall (2007) notes that it was during the 1960s that the Swedish strategy of mass creation of public jobs in the provision of welfare sector, in order to tackle the unemployment crisis that affected almost all European economies at this time of that, dictated the evolution from a transfers based model to a services provision model. Particularly, besides serving the purpose of universalist provision of high social standards, the focus of this Swedish 'service-provision' approach to the welfare state upon social and family care services aimed at increasing the rates of employment among women.

[55] In fact, we can see that, with regard to their pensions systems, these countries present the highest levels of benefits' funding by beneficiary, ranging from 45 (in Austria) and 50% (in Germany and France) to the Dutch case, where the link between previous work participation and contributory career is even more strict (with a purely occupational system until 1998, in which the beneficiary would support 100% of her pension, and still high percentage – of around 70% - of benefits' funding supported by beneficiary after the transition to a mixed system). Also, with regard to unemployment benefits, access to protection requires longer periods of contributions in these countries than in the other studied economies (cf. Appendix A, tables 1, 2 and 3).

[56] As Esping-Andersen (1990: 24) refers "[o]f special importance in this corporatist tradition was the establishment of particularly privileged welfare provisions for the civil service."

[57] Family- related services were traditionally underdeveloped in these conservative welfare regimes, as this was considered to be responsibility of the household (particularly of women). The preference for social transfers, rather than services provision destined at promoting employment participation, was consistent with the conservative male breadwinner model. (Esping-Andersen, 2000)

Finally, *Spain* and *Italy* fall under the *Mediterranean* model, which mixes both elements of the Continental model and universalist arrangements (Molina and Rhodes, 2007). In fact, while the rationale underpinning their pensions and unemployment insurance systems is the bismarckian principle of social insurance (work- contributions and social transfers), these countries have progressively introduced flat rate non contributory schemes (i.e. tax funded), aimed at complementing contributions- related protection[58]. Also, with regard to their health care and education systems, arrangements in these countries are underpinned by the social democrat rational of universal provision, and are therefore organized into National Health Systems and Public Education Systems (Guillén, 2008).

Summary

Institutional set ups for market embeddedness and labour decommodification present distinct configurations, depending on (1) the coordination rationales – either liberal or coordinated – underpinning relations among socioeconomic actors, (2) the role played by the state (either active or frame-setting), (3) the organizational specificities and relative institutional power of labour's interests *vis-à-vis* employers', and (4) the institutional arrangements for labour decommodification through social policy. In assessing market-disembeddedness brought about by means of European integration, the market-embedding institutions of European political economies which we will be considering can be mapped according to their decommodification score as Figure 1 shows.

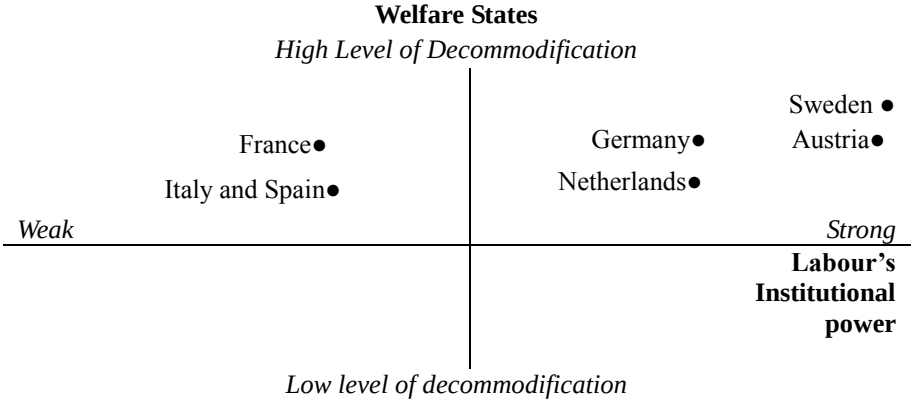

Figure 1: Market-embedding set-ups in European Varieties of Capitalism

[58] These are arrangements such as minimum pension supplements, as 'complementos a minimos', in Spain (Guillén, 2008)

Chapter three

The institutional architecture of market disembeddedness

"*Thus even those (...) whose whole philosophy demanded the restriction of state activities, could not but entrust the self-same state with the new powers, organs, and instruments required for the establishment of laissez-faire.*"

Karl Polanyi, *The Great Transformation*, (2001[1944]: 147)

In the last chapter we outlined the distinct institutional arrangements that embed labour in European political economies. Proceeding along our investigation, this chapter will be drawing an outline of the institutional architecture of European integration, in order to identify in what terms, by which mechanisms, may it trigger market disembeddedness.

The first section will present a historical perspective on the European integration process and identify the period starting with the signing of the Maastricht Treaty (1992) as a turning point in EU- induced domestic institutional change. A second section will outline the architecture of EU multilevel polity and present it in terms of an asymmetric integration hypothesis (Scharpf, 2001, 2006; Höpner and Schäfer, 2007, 2010; Van Apeldoorn, 2009). It will be defended that the EU structure of multilevel governance bears a fundamental institutional asymmetry between two modes of integration: supranational-hierarchical governance and intergovernmental negotiations. This asymmetry configures a second one: a bias favouring the advance of market integration unaccompanied by political construction of market-embedding integration.

3.1. Three phases of the European integration

Höpner and Schäfer (2007) draw a history of European integration in three acts of institutional enactment: the Customs Union, the Common Market, and the Economic Union.

Between the late 1950s and the mid 1970s, a Customs Union as designed by the Treaty of Rome (1957) abolished import tariffs and facilitated trade between member states that, however, remained largely autonomous with regard to their national varieties of welfare states and economic policy goals.

Two decisive features made this possible: (1) First, the Luxembourg Compromise (1966) reaffirmed the practice of unanimous decision making, ascertaining governments that no

legislation would pass without their consent and that, after tariff barriers had been lifted, further progress on economic integration could be adjusted to national institutional set ups (welfare state, industrial relations, taxation schemes, public services and infrastructures, etc.); (2) secondly, most European legal systems applied international law according to the principle of *lex posterior derogat legi priori* (the last law passed substitutes previous legislation), which gave national governments plenty of mechanisms to circumvent or accommodate communitarian law into national specificities and interests, while leaving supranational entities with little more than a declaratory statute (Alter, 1996). In this sense, markets would only be allowed to expand within politically determined limits, that is, they were kept embedded in collectively sanctioned conditions of social cohesion and stability.

The second phase – the Common Market – would be shaped by the event of 1973 enlargement, which brought the UK, Denmark and Ireland into a scenario which, until that point, had been shaped by countries bearing fairly similar institutional set ups (continental welfare states); harmonization of national rules through European legislation and the Luxembourg unanimity requisites for progressing beyond the customs union seemed now highly difficult to achieve, among what was now a very heterogeneous group in terms welfare states, industrial relations, and – in the Irish case - states of economic development.

This second phase can thus be read in terms of a series of steps that were taken to surpass this Eurosclerosis. The deepening of the Common market focused upon mechanisms that could overcome joint decision deadlocks in the Council on account of heterogeneity. Three decisive steps can be identified: (1) key legal decisions in the 1960s established that EC law, as interpreted by the European Court of Justice (ECJ), would have supremacy over national law, thereby enlarging the relevance of supranational entities – particularly the ECJ - as political actors; (2) the introduction of the principle of mutual recognition; first, through ECJ's rulings in the late 1970s *Dassonville* (C-8/74) and *Cassis de Dijon* (C-120/78) cases, and secondly with its political consubstantiation in the 1985 White Book on the Completion of the Single Market, in the 1986 Single European Act (SEA) and in 1992 Maastricht Treaty; finally, (3) the introduction, by the SEA, of qualified majority voting in Council for directives completing the internal market programme, contributing to defrost the paralysis installed by the requirements of unanimity.

In the path breaking *Dassonville* ECJ case, the Treaty provision prohibiting "quantitative restrictions on imports and all measures having equivalent effect"[59], had been interpreted by

[59] Art. 28 TFEU, ex Art. 23 TEC.

the ECJ so as that "all trading rules enacted by member states (...) capable of hindering, directly or indirectly, actually or potentially, intra-community trade [were] to be considered measures having an effect equivalent to quantitative restrictions"[60]. Countries, however, were allowed[61] to apply such barriers whenever they fulfilled some specified purpose of public interest[62], as long as they did not discriminate between imports and national products. To prevent this from seriously threatening market integration, ECJ's ingenious solution, given the time-consuming and often inconclusive processes of intergovernmental negotiations over regulatory harmonisation in the Council, was the principle of mutual recognition. The principle of mutual recognition arose from the *Cassis* decision, and stipulated that goods that were lawfully sold in one EU country's market could also be traded in any other member state, and that restrictive national regulations under (ex) Art. 30 would only be permitted if they passed the Courts' proportionality rule[63] (Scharpf, 2010). The principle of mutual recognition was a landmark in the asymmetry between negative (market-enabling) and positive (market-regulating) integration that was being shaped during this phase: while the country of origin principle dismissed (time-consuming) intergovernmental political agreement over positive harmonization, the enactment of a European legal order, through the doctrine of supremacy of Community law, provided for supranational entities to advance (negative) harmonization through the dismantling of national regulations deemed distorter of the free market. At this stage, though, market integration still remained fairly circumscribed to the circulation of "genuine commodities" (Polanyi, 2001[1944]).

The third phase - initiated with the Maastricht Treaty (1992) - corresponds to changes triggered by (1) the extension of economic integration from product markets to services provision[64] and (2) by the convergence criteria for the establishment of the Economic and Monetary Union (EMU).

[60] C-8/74 *Procureur du Roi v Dassonville*, decision of 11.07.1974, §5.

[61] Under ex Art. 30 TEC, now Art. 36 TFEU.

[62] Such as "public morality, public order or public security; the protection of health and life of humans, animals and plants (...)" (Art. 36 TFEU)

[63] That is, if the purpose of safeguard of public interest that was alleged to justify the restriction could not be achieved by any other means. The *Cassis de Dijon* formula of Art. 30 stated that "obstacles to movement within the Community (…) must be accepted insofar as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of comercial transactions, and the defense of the consumer." (C-120/78, 20.02.1979, §8)

[64] Though it was already contained in the Treaty of Rome (1957), in Articles 59 through 66, transnational service provision remained a rather dormant issue until the late 1980s and the Maastricht Treaty.

The freedom of services provision was one of Maastricht four liberties, abolishing national restrictions to foreign services providers[65]. Among other changes, this placed high uncertainty on the legal statute of posted workers, as firms from national economies with low wages and weak social protection, which entered economies with higher wages and stronger social standards, could refer to the obscure Articles 6 and 7 of the Rome Convention (1991) and choose between the labour legislations and wage levels of the home or the destination country. The famous ECJ *Rush Portuguesa* ruling (C-113/89) summarizes perfectly what came to be at stake throughout this phase of European integration. In 1990, the ECJ trumped the decision of French immigration office OMI demanding work visas from the Portuguese workers posted to a construction work in Paris by the subcontracted Portuguese company Rush Portuguesa. Rush Portuguesa paid these posted workers home-level wages - that is, below French minimum wage. While the referred Art. 6 and 7 excluded mandatory codified legal regulations (what the international laws designates by *ordre public*), and, therefore, Rush Portuguesa had to comply with health and safety regulations codified into French law, as well as with its 35 hour week, the ECJ did not consider that the French minimum wage constituted part of French *ordre public* core law[66].

The expectable national re-regulatory strategy was thus to include more exact conditions into mandatory national law (Menz, 2005; see chapter 5). However, the 1996 Posted Workers Directive (96/71/EC), which was the legal consubstantiation of the Rush Portuguesa ruling, acknowledging the right of member-states to require compliance with the rights and duties contained in their *ordre public* core laws from companies posting workers to their territories, did not prevent national re-regulations to be tackled by ECJ creative interpretations, favouring market expansion over preservation of national arrangements of industrial relations[67].

The other pillar of the Maastricht Treaty that triggered the Economic Union phase of European integration was the convergence criteria for establishing EMU[68].

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[65] Art. 56 TFEU, ex. Art 49 TEC.

[66] The ECJ stated it did not oppose "that the member states apply their legislation or their collectively agreed wage regulations to all persons performing a paid activity upon their territory" (C-113/89 *Rush Portuguesa Lda against Office national d'immigration*, cited by Menz, 2005: 17). What made this such a problematic issue was that, apart from minimum wage regulations, wages are very rarely codified into law, rather being the result from collective bargaining between labour unions and employers associations.

[67] The most emblematic were the *Viking*, *Laval*, *Rüffert* and *Commission vs Luxemburg* cases. The impact of EC law and ECJ rulings upon member-states' industrial relations will be further explored in chapter 4.

[68] In 1992, the preconditions paving way for the convergence criteria had already been laid. A 1990 Council amendment to the Directive implementing the liberalization of capital movements (86/566/EEC) had already demanded from member-states that they liberalized capital movements without further postponement. Also, major economic preconditions for EMU concerning some indirect tax harmonisation and competition policy competition policy had already been set up in the 1986 SEA. Finally, the Delors Committee issued its 1989 *Report on Economic and Monetary Union in the European Community*, recommending economic convergence

This consisted of (1) the organization of an European System of Central Banks with the centralization of monetary policy into a newly created Community institution – the European Central Bank (ECB) -, whose primary task would be to assure price stability, and who would act independently from political power, (2) pegging of national currencies to a basket unit (ECU) and excessive deficit procedures so as to assure member-states' compliance with budgetary discipline and price stability (effectively institutionalized in 1997 with the adoption of the Stability and Growth Pact).

As Hancké and Herrmann (2007) explain, the Maastricht criteria generalized across member-states the institutional configuration of the relation between the central bank and the wage-setting system that prevailed in the deutschemark block[69]. As will be further explored in chapter 4, a monetarist Aggregate Demand Management Regime administered by an independent, inflation-targeting central bank had significant impact upon domestic institutions of labour embeddedness. First, it required a disinflationary wage-setting regime (that is, in order to keep inflation rates stable, nominal wages must be set between the floor of past inflation level and a ceiling given by labour productivity); secondly, it was inherently contradictory to the Keynesian rationale[70] underlying several publicly funded institutional arrangements of welfare provision that were found in many European countries.

From the Maastricht Treaty onwards, the European integration has thus entered a phase in which the liberalizing trend that set the pace of product market integration began to address domestic institutions (Höpner and Schäfer, 2007, 2010).

Due to institutional specificities of European multilevel governance modes (Scharpf, 2001, 2006), however, this market and economic integration was not accompanied by – and embedded into - positive integration (Scharpf, 2010). Drawing to our polanyian framework, we argue that, just like 19th century industrial life required the statute of commodity to be extended to all elements involved in the production process, so this specific multilevel structure was pivotal in gearing the commodity statute into labour.

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through price stability and budgetary discipline before fixing the exchange rates between national currencies in the monetary union, and devising the institutional lay out that would be consubstantiated in the Maastricht Treaty.

[69] The Deutschemark block was composed by Austria, Belgium, France, Germany, the Netherlands and Denmark, who after the committing to the European Monetary System in 1979, followed the Bundesbank monetary policy, by having their currencies pegged to the deutsche mark under the ERM's fixed exchange rate regime.

[70] Which was one of an accommodating monetary policy, supportive of the fiscal policy role in maintaining aggregate demand. (Keynes, 2010[1936])

3.2. European multilevel polity: The asymmetric integration hypothesis

The European set up is a complex structure in which member states coordinate according to multiple logics. Mapping these logics will expose EU multi-level governance structures and the distinct dynamics of integration that are thereby geared.

Scharpf (2001: 3) characterizes the European polity as a "structure of 'network governance'" in which, on the one hand, "member states are subject to increasingly tight European constraints in the exercise of their own governing powers", with "interactions among their citizens and corporations [being] increasingly governed by European law", but in which, on the other hand, "member states continue to be endowed with a full range of governing powers" as "European legislation depends primarily on the agreement of member governments".

Within the framework configured by EU multi-level structure, four modes of governance and coordination can be identified: *'mutual adjustment'* and '*intergovernmental negotiations*', '*supranational-hierarchical direction*' and '*joint decision making*'. (Scharpf, 2001, 2006)

The *mutual adjustment* mode describes the situation in which, in the context of market integration, national governments, in adopting national policies, consider the policy choices of other countries' governments in a non-cooperative way; this often translates into a "regime competition" (Scharpf, 2001), mostly expressed through regulatory and tax competition (Ganghof and Genschel, 2007; Genschel *et al*., 2009).

In the *intergovernmental mode*, on the other hand, coordination or harmonization of national policies is sought by means of negotiations between the representatives of national governments at the Council. The decisional process is largely maintained under their control, since legislation approval requires agreement to be expressed by unanimity or qualified majority voting (governments are *veto players*). In analysing the intergovernmental negotiations level of EU polity, Scharpf (2006) draws on Coasean theorem postulates and concludes that, while the rationale underpinning unanimous or nearly unanimous voting requirements is the liberal stance that agreements effectively reached are truly welfare improving (as all participants must have had preferred the change over the *status quo*), if agreement is made dependent on 'all channel' negotiations (that is, between all individual actors involved), self interested bargaining will be fundamentally biased into favouring *status quo* prevalence. In a context of heterogeneity of varieties of capitalism like we have studied in the last chapter, intergovernmental bargaining between veto players will be more likely to

produce sub-optimal policy outcomes (either based on lowest denominator compromises, or even resulting in unproductive blockages).

In the *supranational-hierarchical* mode of governance, competencies are centralized at European level actors that enjoy institutional autonomy from national governments. In EU polity, these supranational actors are the European Central Bank, the ECJ and the European Commission. Since they are not constrained by requirements of consensus-building among national representatives, supranational-hierarchical actors need not deal with issues of problem-solving effectiveness, like sub-optimal outcomes (blockages or lowest denominator compromises). On the other hand, however, as their centralized character and institutional autonomy from national governments are anchored in the Treaty, their potential for advancing integration remains restricted to negative integration; that is, integration through the removal of national institutional heterogeneity deemed restrictive of the economic liberties of the Treaty, without the institutional tools or democratic legitimacy for autonomous political building of positive market regulation. This brings us the joint decision mode of governance, which is the standard procedure in European-level legislating activity, and in which centralized supranational initiative articulates with intergovernmental negotiations.

Until recently[71], the Commission had the exclusive of legislative initiative and legislation proposals presented by the Commission were passed only if they secured unanimity or qualified majority agreement in the Council and a majority voting in the European Parliament. As Scharpf (2006) notes, in theory, this prerogative of the Commission constituted a consensus-facilitating tool which softened the constraints of pure intergovernmental bargaining and enhanced its problem-solving capacity. Returning to the Coasian formulation of all channel negotiations between self-interested veto players, if a single central agent had the monopoly of agenda setting, then this agent could assess the interests at stake and develop creative win-win solutions that, even though they might differ from original individual preferences, all (or a qualified majority of) veto players could prefer over the *status quo*.

In practice, governments faced a *joint decision trap* (Scharpf, 1997, 2001, 2006): high heterogeneity among Member States in intergovernmental negotiations often resulted in either suboptimal policy outcomes (agreements on a least common denominator basis) or preference for non-binding, soft law mechanisms (‘agree to disagree’)[72]. This, in turn, configured a situation in which either there was no community provisions concerning political shaping of

[71] 2009 Lisbon Treaty endorsed the European Parliament with enhanced legislative initiative, through Article 14 TEU (see chapter 5).

[72] We will return to this in section 3.2.2. of this chapter.

the Single Market to match supranational enforcement of economic freedoms of the Treaty by the ECJ, or existing provisions were much too vague (in order to secure the consensus requirements for approval at the Council) and, in that case, ECJ interpretations would end up having the effect of legislating *in lieu* of the Council. In either way, an ECJ ruling would be binding for all Member States[73], and reversal at the Council was dependent on the same consensus requirements which prevented approval of a common framework in the first place. In short, while concentration of legislative competencies at the level of intergovernmental negotiations in the Council and Member States' constituted veto players by high consensus requirements aimed at preserving the principles of subsidiarity and national sovereignty. This, however, ended up configuring a 'joint-decision trap', in which, paradoxically, domestic non-market institutions became far more exposed to negative integration.

The distinct rationales of intergovernmental negotiations and supranational-hierarchical governance trigger fundamentally distinct dynamics of integration. In line with Scharpf (2006, 2010) and Höpner and Schäfer (2010), we argue that these two distinct logics configured two fundamental institutional asymmetries in the EU multilevel structure of governance. The first one concerns the structural bias towards integration advances by non political actors, through supranational-hierarchical governance, *vis-à-vis* intergovernmental construction of political agreements. The fact that supranational-hierarchical mode is based on Treaty provisions and *acquis communautaire* (secondary legislation, directives and regulations) and intergovernmental negotiations result in either vague or least common denominator legislation (to secure approval) or soft law, non-binding political compromises translates into a second asymmetry favouring negative, market-creating integration over positive, market-embedding integration. In short,

"[I]nstitutional conditions were most favourable to (…) market-making (…) European law. In contrast (…) market correcting (…) depended on political legislation, either in the intergovernmental mode or the joint decision mode, where very high consensus requirements and heterogeneity of Member-states (…) would make agreement difficult or impossible." (Scharpf, 2006: 854)

[73] We will address this "judiciary activism" (Scharpf, 2010) of the ECJ in the next section.

3.2.1. Supranational-hierarchical governance and market integration

The Treaty of Rome (1957) instituted the ECJ with the mandate to "ensure that in the interpretation and application of [the Treaty], the law is observed"[74]. From its originally weak position in ensuring compliance with common law, on account the principle of *lex posterior derogat legi priori* (the last law passed substitutes previous legislation), under which international law was applied in most European legal systems, the ECJ has emerged as a strong political actor, playing a crucial role in the construction of a European legal order. As sole interpreter of the Treaty, the ECJ has built itself the means to advance European integration in closer connections with the market liberties of the Treaty than the political needs of market correction. The questions arising are, thus, (1) which judicial tools allowed the ECJ to enjoy such strong position in the context of EU institutional structure?, and (2) what kind of order is enacted by this ECJ's "judicial construction" (Münch, 2010) of Europe?

Given the referred limitations of intergovernmental and joint decision modes of governance, and since the Commission needs both Council and European Parliament's approval to pass legislation proposals, the ECJ occupies a particularly prominent position in EU institutional structure. Interpretation of the Treaty is not only a symbolic capital, but above all a power resource of the ECJ: it has permitted the construction of the judicial tools of *preliminary reference* procedure, and the doctrines of *direct effect* and *supremacy* of European law.

If the core of ECJ power is its prerogative of exclusive interpreter of the Treaty, it is worth noting that this is only functionally activated by Art. 267 TFEU, which establishes the mechanism for transferring ECJ interpretations into national jurisdictions: the preliminary reference procedure (Münch, 2010). Preliminary reference allows national courts to directly request the ECJ for interpretation and technical advice on communal law, and thereby to act as its direct delegates. As it does not require transference to national higher and supreme courts, this direct dialogue has empowered lower national courts *vis-à-vis* higher instances, which has, in turn, constituted an institutional stimulus for using this tool. Moreover, the preliminary reference procedure is a powerful tool for advancing EU law into national jurisdiction not only because of this institutional stimulus, but also because, in addressing lower instances, this creates direct channelling between individual litigants and the ECJ. (Münch, 2010; Scharpf, 2010) As intra- EU trade grew, the number of references to the ECJ

[74] Art. 19 TEU (Lisbon consolidated version)

issued by national courts has increased significantly[75]. Because of this open door between individual litigants and the ECJ, thus, we can note, with Münch (2010: 37), "a spill over from economic to political and legal integration".

This link between EU and national jurisdiction configured by the *preliminary reference procedure* has provided the set up for the enactment of two key principles guaranteeing the ECJ status of constitutional court, deciding of the compatibility between national and European laws: the doctrines of *direct effect* and *supremacy*.

In the 1963 *Van Gend en Loos* case (C-26/62), the Court validated the request of a Dutch company to refer directly to (ex) Art. 12 EC[76] and take legal action at national court against an increase in tariffs. The ECJ opted for a narrow interpretation of direct effect (according to which Community law confers rights on individuals that national courts ought to enforce) and stated that, unlike ordinary international law, EU law went beyond the mere creation of mutual obligations between the contracting countries and indeed constituted a legal order in itself whose subjects were member-states and their citizens alike, thereby endorsing individuals with subjective rights they could use against national states. Other series of such bold interpretations of the Treaty on the part of the ECJ laid basis for the institutionalization of the doctrine of supremacy of European over national law.

As Münch (2010) explains, the provision requiring that member-states take all necessary steps to comply with obligations arising from the Treaty[77], does not literally imply that, should conflict arise, Community law is automatically given primacy over national legislation. Such interpretation was built upon a sequence of case law, starting with the *Costa vs. Enel* case (C-6/64), in which the Court ruled that the Treaty represented a legal system on its own which should be integrated into legal systems of member states so that national courts could directly apply it without intermediate detours of national law or legal instances; later, on the *Simmenthal* case (C-106/77), the ECJ ruled explicitly that Art. 4 TEU would mean that Community law would enjoy supremacy over national legislation and that, should conflict arise, national courts should disregard national law and rule according to Community law[78].

Moreover, since the doctrine of direct effect endorsed individuals with legal tools to emancipate themselves from restrictions of national law they found conflicting with the rights

[75] The number of preliminary reference procedures has increased from only a few in the 1960s to around 50 per year throughout the 1970s, to an average of 100 in the 1980s, and to more than 250 during the 1990s, then lowering to under 200 by the end of the 1990s. (Münch, 2010)

[76] Now Art. 18 TFEU, providing that "any discrimination on grounds of nationality shall be prohibited".

[77] Article 4 TEU

[78] In the *IN.CO.GE'90* case (C-10-22/97) the Court would further clarify that these previous case law rulings did not imply that national law would have to be nullified, but rather that the national courts' role was to not apply national legislation whenever it clashed against European law.

they received by Treaty provisions, a logical step was the judicial introduction of the principle of state liability. After a series of ECJ rulings[79], it was decided that compensation by the state would be in due whenever failure to transfer EU directives into national legislation in due time impeded individuals from exercising the rights configured by those directives.

In short, the preliminary reference procedure, direct effect of community law (ascribing individuals subjective rights enforceable against national legislations), and state's liability enacted an architecture in which individuals (and here, logically, are included companies as well) were highly empowered against national regulatory restrictions on market freedoms.

This answers our second question - what kind of order is enacted by ECJ's judicial construction of a European legal order? As Münch puts it, given the individuals central role in the ECJ case law procedure, they "are working as pioneers, helping European law initiate preliminary rulings and (...) implementing the new ethics of individualism" (2010: 41).

As Scharpf puts it, "the power to interpret became a power to legislate" (2006: 852), but the Court's power was ultimately dependent on the cases coming before it. There are two ways by which cases reach the ECJ: besides preliminary reference procedure, the Commission has the power to bring before the ECJ member-states whose regulations or practices might be deemed to conflict with community law[80]. Therefore, the strategic power of the ECJ can only be fully appreciated in articulation with the Commission's powers.

Given ECJ's judicial tools of direct effect and supremacy, the Commission is empowered with two strategies for legislative action. It can make use of its already referred legislative initiative prerogative and submit regulations or directive to the Council and the European parliament. But it may also circumvent the often impassing intergovernmental negotiations at the Council by taking judicial action against particular regulations or practices in member-states found conflicting with Treaty obligations. If the Court endorses the Commission's view, then the interpretation underlying its ruling will be law for all member-states.[81] (Scharpf, 2006)

Moreover, Treaty violation proceeding is a particularly effective legislative resource available to supranational governance of market-expansion, given the extreme difficulty of ECJ's rulings reversal. Case law involving interpretation of Treaty provisions can only be reversed by means of Treaty amendments, which in turn entails ratification in member-states' national

[79] In the *Francovich and Bonifaci vs Italian Republic* (C-6/90 and 9/90), the *Brasserie du Pêcheur vs Federal Republic of Germany*, and the *Factortame III* (C-46-93 and 48/93) cases.

[80] Art. 258 TFEU, stating that "[i]f the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion [and] (…) [i]f the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union".

[81] Scharpf (2006) points the strategic role that these Treaty violation proceedings initiated by the European Commission had in breaking public service monopolies in some member-states.

parliaments or referendums; as to rulings involving interpretations of secondary legislation (directives and regulations), reversal can only be obtained by means of the Commission presenting new legislation and its being approved by at least a qualified majority at the Council and a majority at the European Parliament.

3.2.2. Intergovernmental governance and market-embedding integration

With Höpner and Schäfer (2010), we identify three pillars that shape market-embedding European integration: (1) european-level binding legislation, (2) soft law mechanisms of multilateral surveillance and (3) social dialogue of capital and labour constituted as transnational actors.

The scope of European binding market-embedding legislation is restricted by the legislative competencies ascribed by the Treaty, with Art. 5(3) TEU establishing that "under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States (...) but can rather (...) be better achieved at Union level". This, however, ignores constraints inflicted on national policy making and institutions by asymmetric integration; at the same time, the post- Maastricht period witnessed the widespread notion that the European integration was growing increasingly biased towards market integration, at the expense of employment and social cohesion. (Schäfer, 2006)

Ever since the Treaty of Rome, consensus at the Council for amendments to include more EU legislative competencies on labour and social matters have only managed to secure provisions on general matters such as gender equality, portability of social security entitlements to enhance free circulation of labour, working conditions and information and consultation of workers. Given heterogeneity in member-states and high consensus requisites, the intergovernmental negotiations method was evidently an ineffective solution to secure legally binding (above minimum) standards on social and labour rights or to agree on transference of further legislating competencies from national sovereignty onto EU level.

Pollack, referred by Schäfer (2006), translates this into a principal-agent problem. EU member-states' delegation of sovereignty in supranational actors justifies on grounds of monitoring compliance, reducing transaction costs arising from incomplete contracting, and ensuring technical expertise governance through independent regulation and agenda setting. For supranational actors, as principals can never fully control agents, this can, however, as we have seen before, be exploited to advance integration; on principal's view, thus, agency loss

vis-à-vis supranational actors' discretionary power will only be rational inasmuch as the degree of conflict among the principals and between the principals and their agents is reduced enough to ensure both consistency with each individual principal's preferences and a low potential for defection among principals. In a context of high heterogeneity among the participants, thus, in matters where substantial disagreements might arise (such as those concerning labour and social policies), governments would better prefer pooling sovereignty rather than delegating it on supranational actors. Moreover, governments had learnt from the Maastricht ratification process[82] that the solution to controversial issues which blocked ratification at home was either their removal from the Commission draft, or the mechanisms of opt-out clauses and phasing-in of policies.

Following the post- Maastricht euroscepticism, the 1993 Delors White Book and the 1994 Essen Summit both outlined non binding guidelines for a European strategy for growth, competitiveness and employment that came to shape the chapter on employment introduced in the 1997 Amsterdam Treaty. Unlike the Maastricht experience, the inclusion of a chapter on employment, as well as the Treaty ratification itself could run rather smoothly on account of the introduction of the Open Method of Coordination (OMC) as preferred governance mode for social and labour policies' coordination (Schäfer, 2006)[83]. The OMC[84] would be developed throughout the 1997 Luxembourg Process, during which the European Employment Strategy was outlined, and reach its paramount in the 2000 Lisbon Strategy. The 2000 Lisbon Summit presented the OMC as the "fully decentralised approach" which could "be applied in line with the principle of subsidiarity", while promoting "best practice and achieving greater convergence towards the main EU goals" (European Council, 2000, §37).

In principle, the OMC was the win-win solution that allowed for harmonisation of European policy goals whereas member-states could devise implementation measures in accordance to each country's situations and specificities. Commitment to common goals would tackle

[82] After the Maastricht Summit in 1991, Denmark rejected the Treaty in a 1992 referendum, and in France, it only passed by a small difference. The Danish accepted ratification on a second referendum held in 1993, after four opt out clauses had been agreed upon (concerning EMU, Common Security and Defence Policy, Justice and Home Affairs and the citizenship of the EU.

[83] As Schäfer (2006) explains, though there was dominance of social-democratic governments in the Council during the pre- Amsterdam process, and, thus, a strong support for the introduction of an employment chapter, these governments remained very different among each other. If we think of Jospin in France, Blair in the UK, Kohl for Germany and Aznar for Spain, and recall the argument, in chapter 2, of distinct institutional complementarities, it is understandable why, while they all represented social-democratic parties, they defended very distinct labour market policies and thus insisted on the principle of subsidiarity

[84] The OMC is a mode of governance based on multilateral surveillance procedures. These consist in the adoption of guidelines, definition of quantitative and qualitative indicators, establishment of benchmarks and Commission and Council- led periodic monitoring.

asymmetry between negative and positive integration, while respect for susbsidiarity was maintained. Under the OMC, however, asymmetric integration was even further stressed.

The first and most prominent limitation of the OMC as governance mode of positive integration is evident in itself: while not legally binding, success depends upon voluntary commitment on the part of national governments, and, therefore, it cannot enforce policy change with the same effectiveness as supranational enforcement of negative integration by the Commission and the ECJ do.

But the reasons why soft law mechanisms for governance of market-embedding integration structurally lag behind hard law mechanisms for market-expanding integration go beyond these formal or procedural considerations. In fact, considering the OMC simply as normatively neutral technical procedure misses its fundamental political economy content (Kröger, 2009; Van Apeldoorn, 2009a). However, the political economy of the OMC is crucial to fully understand the asymmetric integration hypothesis.

As preferred governance mode for positive integration, the OMC is the policy toolkit for implementation of Europe's agendas for employment and social matters[85]; however, with regard to the process of OMC organisation itself, definition of orientations and issuing of recommendations does not happen in a neutral forum. The fact that it has non-binding character implies that the OMC is devised *within* an architecture of *binding* obligations, that is, Treaty market liberties and, for EMU countries, a monetarist monetary policy which restricts national fiscal policies and social and employment policy to supply side measures[86]. In short, as noted by Kröger (2009: 7), "rather than being a neutral forum for open-ended learning, the OMC occurs in an environment that is shaped by multiple pressures on the welfare state and (…) is less voluntary and more competitive", biasing its options of policy goals towards supply-side measures. (Kröger, 2009; Van Apeldoorn, 2009a, 2009b).

That social protection would have to be articulated with market liberties has exactly been the rationale underpinning EU agendas social and employment matters. This was particularly evident in 2000 Lisbon Strategy[87], which sought to articulate three goals: (1) that, within a ten years- period, the EU would have become the world's most competitive economic region; this required enhancing the Single market, particularly the market for labour, in which reforms should be implemented so as to increase its flexibility; (2) that, instead of opposed interests, the goals of competitiveness and social cohesion should be articulated as interdependent and

[85] From the 1997 European Employment Agenda to the 2000 Lisbon Strategy and to the 2010 Europe 2020.
[86] This will be further developed in chapter 4.
[87] Which has framed EU discourse on social and employment matters for over a decade.

mutually reinforcing[88]; and (3) that in face of challenges posed by ageing, globalization and the transition to a knowledge intensive paradigm, the goal of preserving the European Social Model should be modernised.

The first identifiable trait of the political economy underpinning this articulation lies in the message that, "if we want to preserve and improve our social model we have to adapt it" (High Level Group, 2004: 44), presenting rationalisation of welfare market-sheltering entitlements as the only alternative in the face of population ageing and globalization; the second element of the political economy of EU discourse on social policy is a *Schumpeterian workfare* notion of social inclusion (Van Apeldoorn, 2009), according to which "a job is often the best protection against exclusion" (European Commission, 2002: 12).

Altogether, this discourse silences the constraints upon the welfare state as labour decommodifying structures that are specifically enacted by European asymmetric integration (Palier, 2006; chapter 4). Particularly, a single market configures powerful pressures for labour to be organized according to the price mechanism settled in competitive markets; just as the Industrial Revolution had increased pressures for the establishment of a competitive market for labour in nineteenth century England and the political-institutional response was the abolition of market-sheltering Speenhamland, so a Single Market that is enforceable both by supranational governance and by mutual adjustment[89] configures a space in which option for soft law governance of positive integration is biased towards market-compatible goals. This "strategic selectivity" (Van Apeldoorn, 2009) is thus, in our view, strongly conditioned by asymmetry between hard law market integration and soft law social policy.

The same limits and constraints shaped by this hard law- soft law context of the OMC as mode of governance of social matters also strain the third pillar of market-embedding integration identified by Höpner and Schäfer (2010): the Social Dialogue.

The institutional set up configured by EMU's independent monetary policy authority and by the threats of competitive downward pressures on wages posed by the Single market provided incentives for corporatism and social dialogue arrangements for policy-making (Hancké and Herrmann, 2007). And indeed the EU peak level bodies of national trade unions, employers and industrial associations (such as the European Trade Union Confederation and its employers counterpart, Business Europe) were given a mandate to transpose into Directives the results from their negotiations (the so called Social Partners Directives), which the

[88] The Lisbon Strategy was presented as a "positive strategy which combines competitiveness and social cohesion" (European Council, 2000: 2)

[89] Through deregulatory competition, as we have referred in section 3.2 of this chapter.

Council then turns into binding legislation without further discussion (Höpner and Schäfer, 2010; Bieler, 2009).

The potential role of the Social Dialogue in market-embedding integration must not, however, be overstated. In fact, it has only produced few agreements on minimal standards, as here, too, heterogeneity of interests and countries' institutional specificities render binding agreement highly difficult to achieve. Therefore, social partners have been increasingly relying on the same soft coordination methods used at intergovernmental negotiations level to produce non-binding common orientations (Höpner and Schäfer, 2010)[90]. Furthermore, not only wage bargaining issues are automatically precluded from these processes (as wage-setting is not included in EU legislating competencies), but also the areas covered by the negotiation mandate ascribed to the Social Dialogue exclude the high majority of issues which would be relevant for market embeddedness at EU level (Bieler, 2009).

Summary

The institutional architecture of European integration is a multilevel structure comprising distinct mechanisms of governance and coordination among member-states. While Community law enjoys supremacy over national law, and can be enforced by supranational-hierarchical mechanisms (with the ECJ enjoying a strategic position), the definition of the contents included in Community law are defined at the level of intergovernmental negotiations at the Council. While, in a context of high heterogeneity among member states, this is due to protect national sovereignty, difficulties to reach common positions on market-embedding integration *either* lead to blockades and/or suboptimal (least denominator) outcomes, *or* to preference for soft law mechanisms such as the OMC. In either way, positive, market-embedding integration remains of asymmetric nature and scope *vis-à-vis* market-creating integration.

[90] For instance, agreements on the regulation of telework (2002) or concerning work-related stress did not result in a binding EU directive, resting rather as a voluntary task of the social partners. (Bieler, 2009)

Chapter four

The Great Transformation of European capitalisms? – First Movement: Disruption

"The commodity fiction, therefore, supplies a vital organizing principle in regard to the whole of society affecting almost all its institutions in the most varied way, namely, the principle according to which no arrangement or behaviour should be allowed to exist that might prevent the actual functioning of the market mechanism (...)."

Karl Polanyi (2001[1944]: 76), *The Great Transformation*

Article 3(3) TEU defines the political economic identity of the European project as "a highly competitive social market economy". Its architecture, however, configures, as we have seen, a fundamental asymmetry between the economic goal of market integration and the political construction of market-embedding integration.

As we have seen in chapter 2, the distinctive mark of CMEs – strategic coordination through collective bargaining processes underpinned by commitment networks – has one of its biggest expressions in the arrangements of industrial relations. Wage and working conditions are not a strict function of the market nexus, but, rather, they are secured in spite of it by collective determination. Likewise, these political economies further decommodify labour through arrangements whose underpinning rationale is sheltering and emancipating individuals' survival and opportunities for well being from their having to sell their workforce.

The institutional set up of European integration, however, is a multilevel governance structure in which market liberties enjoy institutional supremacy over domestic regulatory, non-market institutions. In this chapter we will show how these market liberties, in the context of asymmetric integration, have managed to uproot market forces from domestic institutions in which they were previously embedded.

We will also try to show how these movements of market-disembeddedness have been consistent with Polanyi's stance that "laissez-faire was planned" (2001[1944]: 147), that is, have not been the epiphenomenon of some natural laws of society at work, but rather have corresponded to deliberate, strategic acts of political and often judicial decision that, in Münch's (2010) words, have been "constructing a liberal order by jurisdiction".

4.1. Industrial relations

For the purpose of analysing the impact of asymmetric integration upon industrial relations in organized market economies, we will focus on the impact of the three principles of freedom of services provision, freedom of establishment and free movement of capital. These are framed by three Treaty provisions, which will be pivotal for our analysis: respectively, (1) Art. 56 TFEU, stating that "restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended"; (2) Art. 49 TFEU, stating that "restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited[91]"; and (3) Art. 63 TFEU, stating that "all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited".

The freedom of services provision has relevance for our study of impact upon domestic industrial relations in that it translates into the Directive on the Posting of Workers[92] (DPW), determining the extent to which a foreign company providing services in a Member State is subject to that Member State's arrangements for business-labour relations. The relevance of the freedom of establishment principle lies in its impact upon national company law, which is an important legal expression and guardian of prevailing industrial relations. Finally, we also wish to account for how the free movement of capital principle, translated in the directive regulating takeover bids[93] (DTB), has corresponded to a disembeddedness of the market for corporate governance.

4.1.1. The freedom of Services Provision and the Directive on the Posting of Workers

The market for services is essentially distinct from the market for goods in a way which is crucial for our analysis: the provision of a service requires the co-presence between the consumer and the producer (the provider). This means that the provision of services in a foreign country implies that a worker carries her activity into an institutional framework other than the one regulating her own statute. Although the freedom of services provision was

[91] To which it is further added that "[s]uch prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State"
[92] Directive 96/71/EC
[93] Directive 2004/25/EC

already outlined in the 1957 Treaty of Rome, it was only after the 1980 Rome Convention that a window of institutional arbitrage was opened regarding the posting of workers. Art. 6 allowed the choice between the rules of the host country and the rules prevailing at home, inasmuch as it did not deprived the worker of the protection granted by the mandatory rules (*ordre public*) of the law of the host country[94]. In the face of amounting uncertainty regarding the legal statute of posted workers (mostly after the already referred *Rush Portuguesa*[95] ECJ case law), the subsequent DPW did not altered fundamentally the provisions contained in the Rome Convention, declaring that member-states should guarantee workers posted to their territories the minimum rates of pay and working conditions "laid down by law, regulation or administrative provision, and/or by collective agreements or arbitration awards which have been declared universally applicable"[96].

However, in most organized market economies, apart from national minimum wages that are mandatory by law, agreements over sectoral minimum rates of pay and wage brackets remain at the collective concertation level, binding only the companies and employees affiliated to the represented associations, unless a requirement (which must, in turn, fulfil some specified conditions) is issued to the respective national Ministry of Labour (EIRO). What the *Rush Portuguesa* and other similar ECJ case law[97] came to show was that, while wage levels remained out of national mandatory law, nothing prevented firms from lower wages countries from securing contracts to provide services in higher wages countries, benefitting from the competitive advantage of cheaper posted workers. Thus, if the national transposition of the DPW opens a window of institutional arbitrage between what is settled at collective bargaining and what is included in national legislation important incentives for the practice of outsourcing and subcontracting to foreign low wage companies, and for defection from domestic coordinated bargaining systems are being introduced[98].

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[94] Article 6(1) of the Rome Convention stated that "(...) in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law (...)".

[95] C-113/89 Rush Portuguesa Lda v. Office national d'immigration

[96] Directive 96/71/EC, Art. 3(1)

[97] In the *Rüffert* case (C-346/06), the ECJ disallowed the law of German *Länder* Niedersachsen, which required that tenderers to public contracts payed their workers at least the remuneration established in the collective agreement prevailing at the place where the activity was carried out. German firm Objekt und Bauregie GmbH & Co, which had secured a public contract for a construction work that it then subcontracted to a Polish company, took legal action against the Niedersachsen authority when it withdrew the contract (and demanded further penalties), after discovering that 53 posted workers were being paid only 46.57% of the locally applicable minimum wage for the construction sector. The law of Niedersachsen was not considered mandatory according to the provisions established in the DPW because it did not itself fix the minimum rates of pay, which were set by social partners in collective bargaining.

[98] This issue will be addressed in the chapter 5.

Furthermore, the DPW has also been particularly weakening of the standard CMEs sanction mechanisms against employers' defection from collectively bargained agreements – industrial action taken by organized labour – which, although recognized in their national courts, have more often than not been trumped by ECJ rulings.

For instance, in 2005, Swedish unions took industrial action against Latvian construction company Laval over the working conditions of Latvian workers posted to the town of Vaxholm. Laval had refused to bind to prevailing collective agreement and paid its employees about two times less than the average wage established for similar construction jobs in Sweden. The trade unions initiated a blockade of the work place, which led Laval to take legal action claiming it was being put out of business. The case was referred to the ECJ through the preliminary reference procedure initiated by the Swedish Labour Court and, despite the Swedish law endorsed the unions' right to industrial action, the ECJ ruling[99] favoured the company instead, since, as in German Länder Niedersachsen, the paying rates were settled by the social partners and were not legally fixed.

An obvious solution would be, of course, to introduce legal mechanisms for automatically rendering the agreements of collective bargaining universally binding, and/or to make amendments on the labour legislation so as to account for posted workers situations, since public policy provisions would be protected under Art.3(10), stating that the "[d]irective shall not preclude the application by Member States (...) of terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions (...)". In fact, as we will see, this was the path followed by many member states seeking to protect their labour standards and industrial relations' arrangements. However, here too ECJ rulings based on restrictive interpretations of Art. 3(1) of the DPW watered down many of such efforts.

Art. 3(1) of the directive requires that "[m]ember States *shall ensure*" (my emphasis) that posting companies observe mandatory legal provisions of the host country as well as conditions established by collective agreement regarding to a specified set of issues[100], including minimum rates of pay, which have been rendered universally applicable.

[99] C-341/05 *Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet and Others*. A similar case was the *Viking* case (C-438/05).

[100] "(a) maximum work periods and minimum rest periods; (b) minimum paid annual holidays; (c) the minimum rates of pay, including overtime rates (…); (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings; (e) health, safety and hygiene at work; (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; (g) equality of treatment between men and women and other provisions on non-discrimination". Directive 96/71/EC, Art. 3(1)

In a series of rulings[101], however, the Court's interpretation has established that these would be the *maximum*, rather than the minimum, requirements that posting companies could be obliged to respect. The most emblematic and radical of these has been the *Luxembourg* case[102], in which the Commission took legal action against the state of Luxembourg arguing that the country's legislation transposing the DPW was inconsistent with the spirit of the directive and constituted an abusive interpretation of Art. 3(10). According to the legislation of Luxembourg, a foreign employer posting its workers to that country would have to comply with a certain number of terms, considered public policy provisions, among which were the indexation of remuneration to the cost of living and the respect of collective agreements. While Luxembourg argued that these provisions constituted measures to safeguard public interest, the Court however stated that, in spite of Luxembourg's legislation stating "that measures resulting, in particular, from collective agreements (...) constitute mandatory provisions falling under national public policy (…) [s]uch a provision cannot, however, constitute a public policy exception within (...) Article 3(10) of Directive 96/71"[103]. The Court's ruling went further on to declare that "there is no reason why provisions concerning collective agreements (…) should per se (…) fall under the definition of public policy"[104]. According to the ECJ, this constituted higher-level protection which was not to be considered a public policy provision, as, by approving the European Directives, the Member States had already stipulated the adequate minimum level of protection to be granted by workers within an integrated market for services provision. The 'minimum protections' prescribed by Art. 3(1) should, thus, be interpreted in a narrow sense. Therefore, by means of its interpretations, the ECJ has come to stipulate a concept of 'minimum rates of pay' which does not allow for: sectoral minimum wages settled by collective agreement that are not universally binding by law (*Laval* case), minimum wages established by collective agreement that, although being universally applicable by law, apply only to a sector or region of the host country (*Rüffert* case), legal provisions of indexation of minimum wages to inflation rates (*Luxembourg* case).

In sum, by means of ECJ's narrow interpretations of 'minimum protections', the DPW is fundamentally biased against crucial features of CME industrial relations: (1) the autonomy of coordinated wage-setting systems[105], (2) the coverage and centralisation of coordinated collective bargaining, and (3) the organizational power of organized labour for sanctioning

[101] In the *Luxembourg* (C-319/06), the *Arblade* (C 369/96 and 366/96), the *Mazzoleni* (C-165/98), and in the *Finalarte* joined cases (C-49/98, 50/98, 52/98, 54/98, 68/98, 71/98).
[102] C-319/06, *Commission v Luxembourg*
[103] *Ibid*., decision of 19.06.2008, §63-5
[104] *Ibid*.
[105] *Tarifautonomie* (in Austria, Germany and Sweden), cf. chapter 2.

employers defection[106]. Accordingly, ECJ rulings often end up trumping these arrangements, thus opening important breaches in the institutional complementarities set ups of CMEs and advancing negative integration. Also, recalling what was said on the previous chapter, and the polanyian stance on the artificiality of market-creation, the *Commission v. Grand Duchy of Luxembourg* (C-319/06) case is the perfect illustration of the legislating path that is available to the Commission by its prerogative to initiate Treaty infringement procedures against Member States under Art. 258 TFEU, providing paradigmatic example of supranational-hierarchical enforcement of negative integration.

4.1.2. The freedom of establishment and the origin of incorporation principle

We now turn to the impact that the freedom of establishment principle may have upon industrial relations whenever it provides opportunity for defection from domestic company law. Let us start with an introductory illustrative example. German company Go Ahead GmbH (www.go-ahead.de) provide service packages that help German businesses benefiting from Art. 49 TFEU, facilitating their incorporation under the legislation deemed most favourable. In practice, according to the company's website, around 39.000 firms have been started up as British Limited Liability companies (Ltd.) since 2003. Among the advertised advantages from incorporating into more flexible British corporate law are the lower capital requirements (1€ instead of the 25000€ required by German company law), the less demanding personal liabilities and, more importantly, the exemption from German requirement of workers' representation at supervisory board in firms employing over 2000 workers.

That "whoever dislikes his national company law is now free to pick one of the other members' company laws" (Höpner and Schäfer, 2007: 20) is, again, a product of key ECJ rulings[107] concerning the interpretation of the principle of freedom of establishment, which have substituted the seat of management principle, according to which company case law have always been ruled in most national courts, for the origin of incorporation rule.

The most emblematic was the *Centros* ruling. In 1997, the owners of Centros Ltd., a wine company incorporated under British law, were denied registration of company's branch office in Denmark, where it actually carried its activity. The Danish authorities refused, arguing that, since it did not conduct any business there, the company's legal seat in Britain was a

[106] The "gentlemen's agreements" principle underlying Swedish *Lex Britannica* (see chapter 2).

[107] In the 1999 *Centros* (C-212/97), the 2002 *Übersseering BV* (C-208/00) and the 2003 *Inspire Art Ltd*. (C-167/01) cases.

fraudulent mechanism to circumvent Danish legislation over minimum capital requirements, and thus consisted of an abuse of the freedom of establishment principle. The owners took legal action which was referred to the ECJ who ruled that "the fact that a national of a Member State who wishes to set up a company chooses to form it in the Member State whose rules of company law seem to him the least restrictive and to set up branches in other Member States cannot, in itself, constitute an abuse of the right of establishment"[108].

As we have seen in chapter 2, a key feature of CMEs industrial relations is strong representativeness of workers at firm level. Employees' representatives enjoy statutory information and consultation rights, and in Austria, Germany and Sweden these rights extend to co-determination, that is, participation in supervisory boards, and, thereby, in decision making. What the *Centros* and, similarly, the subsequent *Übersseering BV* (C-208/00) and the *Inspire Art Ltd* (C-167/01) cases signalled was, thus, that those national legislations safeguarding workers' representation and participation at workplace could be circumvented and that a less work representation- friendly company regime could easily be imported.

It may be argued that two European Council directives provided a general framework which extended across all EU member-states some standards for workers' representation[109]. These, however, were rather limited, as mandatory constitution of works council was limited to large multinational groups, and mandatory rights were limited to information and consultation of workers in a preset list of issues; supervisory codetermination rights were thereby left outside this supranational regulatory framework.

In the *Centros* judgement, the German government argued for the application of the seat-of-management principle in order to secure compliance with legal provisions granting employees codetermination rights. The ECJ, however, did not consider that this qualified as public interest justification for raising a restriction to the freedom of establishment principle[110].

In short, by declaring the principle of seat of management to be inconsistent with the freedom of establishment provision, and by applying, instead, the origin of incorporation principle[111] for settling disputes between company practices and national company law requirements, the ECJ created an important mechanism for defection from company legislations which are protective of workers representation at workplace.

[108] C-212/97, decision of 9.03.1999 , §27

[109] Directives 94/45/EC, establishing the statute of European Work Councils, applicable to undertakings employing in total more than 1000 employees in the EEA, and at least 150 larger firms with more than 50 workers; and 2002/14/EC, requesting information and consultation rights to be granted to employees' representatives in firms employing over 50 workers, or comprising establishments with more than 20 employees.

[110] C-212/97, decision of 9.03.1999, §87-9

[111] Which is only another formulation for mutual recognition and country of origin principles See chapter 3.

4.1.3. The free movement of capital and the Directive on Takeover Bids

The impact of the freedom of establishment principle upon national company law is largely magnified if we read it in articulation with European integration of financial markets. Completing the integration of financial markets, so as to comply with the free movement of capital principle, was a central goal in the Lisbon Strategy (2000); pivotal for achieving this was the much contested and revised directive on Takeover Bids (DTB)[112].

The key elements of the DTB are: (1) Art. 9(2), stating that "[d]uring the period [of the bid], the board of the offeree company shall obtain the prior authorisation of the general meeting of shareholders (...) before taking any action (...) which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company"; (2) Art. 3(1a), stating that "if a person acquires control of a company, the other holders of securities must be protected"; and, finally, but most importantly, (3) Art. 11(3), establishing that "[r]estrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Art. 9" and, specifically, "[m]ultiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures in accordance with Art. 9".

The main goal of the DTB was to institutionalize an active and fully integrated market for corporate control. This, however, had an asymmetric impact over distinct varieties of capitalism. In CMEs, firms' ownership structures are typically concentrated, characterized by banks and non-financial firms as long-term, stable owners. Corporate governance rely mainly on bank loans for securing patient capital, which is consistent with the stable, compromise-based networks of inter- and intra- firm relations, allowing for long-term specific and co-specific investment strategies (Hall and Soskice, 2009[2001], Goyer, 2007). Commitment among employers and workers translate into employees' representation at managerial decisions, which in turn causes CME firms to follow cost-absortion adjustment strategies rather than shedding labour in order to comply with short-term profitability requisites (Börsch, 2007). As to statist France and MMEs Italy, Spain, after massive privatization processes of public enterprise sector, the state usually retained special voting rights to perform its steering role (Molina and Rhodes, 2007).

[112] Directive 2004/25/EC

Such corporate governance models of CMEs and MMEs, however, were only consistent with securities markets in which they were sheltered from takeover threats, as exposure to takeover introduces pressures to maximize shareholder-value, which, in turn, discourages firms from pursuing strategies other than maximization of marginal returns on equity (Goyer, 2007). CMEs orientation towards incremental innovation and long-term investment, as well as its stakeholder-based corporate governance system, in this sense, typically translates into a "low profits – low price" profile of national firms' shares *vis-à-vis* companies from LMEs, where, conversely, the legal regime emphasizes investor protection and corporate governance orientation towards shareholder value is facilitated through CEO concentrated authority. As Callaghan and Höpner (2005) explain, a "low profits – low price" firm profile, however, is not sustainable in an open market for corporate control. Such market profile translates into lower relative valuation of shares which makes the firm in question vulnerable both to hostile bidders, who can profit from a takeover premium after focusing on increasing short-term profitability, and to takeovers by means of share swaps between companies with higher market relative valuations and shareholders of the target firm (who are, thereby, lured into retaining a swap premium).

Since "[m]arket value relative to turnover is more than four times higher in Britain than in Germany" (Callaghan and Höpner, 2005: 9), it was only justified that continental countries feared a wave of takeovers: governments feared losing their national champions, business struggled for ownership and trade unions feared disaggregation of their protective industrial relations into more LME-type, shareholder-oriented corporate governance models. An article by Dohmen, Hawranek and Tietz in *Der Spiegel International*[113] reports that German companies have been increasingly facing the threat of takeovers. Since they "have few debts, plenty of cash and are bringing in good profits, but their value on the stock market is relatively low", their "low price – low profit" profile means an attractive takeover business, as costs are largely compensated by dividends in future years. According to the article, around a dozen of the country's 100 largest companies are in this situation.

In its original draft version by the Commission, the DTB's cornerstone was the removal of the defensive mechanisms on which supervisory boards of target firms used to rely to defend themselves from takeovers. This so-called neutrality rule, however, was a highly problematic issue for most organized economies. After the takeover of German telecom company Mannesmann by Britain's Vodafone in 2000, the Germans feared that the same would happen

[113] *Der Spiegel International Online*, 10/26/2010, 'German Companies Fear Wave of Hostile Takeovers', http://www.spiegel.de/international/business/0,1518,725145,00.html

to Volkswagen if its protective statute, securing protection from takeovers by a special legal provision which granted the federal state a blocking minority of 20%, ended up dismantled by the DTB. For the Swedes, the elimination of multiple voting-rights in authorising defensive measures against takeover bids could leave unprotected strategic corporate empires, such as Ericsson, where one class of shares implies 1,000 times the voting rights of another class[114]. Also, in the case of France, the dismantling of the typically statist legal framework requiring foreign corporations to secure approval from Paris before taking stake in any French company operating in one of the 11 specified strategic sectors could cost France its national champions such as Danone (which was sheltered from takeover by American PepsiCo.) or Alstom (which had been targeted by German Siemens)[115]. The same stance applied to MMEs Spain and Portugal, which were under the Commission's mire for the special voting rights retained by the state in the larger companies of the telecommunications (Portugal Telecom, in Portugal, and Telefonica, in Spain) and energy sectors (EDP in Portugal and Repsol in Spain)[116].

This resulted in mass contestation, blockades in the Council and rejection in the European Parliament (2001), and only in 2003, after the inclusion of an opting-out clause allowing Member-states to decide how the DTB was to be transposed into their national legislations regarding multiple-voting rights of firms targeted by takeover bids[117], could the DTB be approved. The Commission was disappointed with the final directive which came out from intergovernmental negotiations[118]; however it still had the supranational-judicial legislative path at its disposal.

Right after the approval of the final version of the DTB, and despite most countries had opt-out Art.11, the Commission relaunched its judiciary legislative quest by initiating legal procedure against Germany[119] in 2005, on account of the statute of Volkswagen AG. According to the Commission, the statute was conflicting with the free movement of capital Treaty provision, as it granted the *Länder* of Niedersachsenof a blocking minority of 20% concerning major decisions of the firm. The case for special voting rights was defended on grounds of preserving the interests of employees, as changes in ownership and management practices resulting from the takeover might impact negatively upon workers' codetermination rights.

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[114] *The Economist*, 11.27.2003, http://www.economist.com/node/2251820

[115] *Der Spiegel International Online*, 10/26/2010, 'German Companies Fear Wave of Hostile Takeovers', http://www.spiegel.de/international/business/0,1518,725145,00.html

[116] C-463/00 *Commission v. The Kingdom of Spain;* C-367/98 *Commission v. Republic of Portugal*

[117] This will be further developed in the next section, concerning national re-regulatory strategies

[118] With Internal Market Commissioner Frits Bolkestein declaring that the final DTB was "not worth the paper it was written on".

[119] C-112/2005, *Commission v. Federal Republic of Germany*

In fact, while the Business Transfers Directive (BTD)[120] provides some degree of protection to employees' rights in the event of a transfer or merge, there are some important limitations which leave key features of CMEs industrial relations relatively unprotected. This will be better explained through two examples.

In 2006, attempt from Portuguese Sonaecom's to takeover Portugal Telecom was seen with major concern both by trade unions and PT's works council (Comissão de Trabalhadores), who opposed strongly the bid and asked the government to make use of its veto power through its golden shares if needed. As PT's branch, PT Comunicações, was the only company in the telecommunications sector where the workers were covered by collective agreement, the employees' representatives' were concerned with the consequences that the takeover could have for the sectoral industrial relations, as well as for the workers' health and safety plans and pension fund managed by the company[121]. The reason for the concern lied in that Art. 3(3) of BTD provides that "following the transfer, the transferee [that is, the new employer] shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor [the previous employer]", but it explicitly defines that such obligation exists only "until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement"; it does not oblige the new employer to enter into new collective bargaining.

Another meaningful example is the Volkswagen case. The BTD only rules explicitly over the employees' rights to be *informed* of "the date or proposed date of the transfer, the reasons for the transfer, the legal, economic and social implications of the transfer for the employees, [and] any measures envisaged in relation to the employees" (Art. 7(1)). Regarding codetermination rights, Art. 6(1) is extremely vague, leaving many loopholes for new owners to alter the configuration of the workers' representation scheme[122].

In sum, an integrated market for corporate control as shaped by the neutrality rule of the DTB uprooted capital market from standard industrial relations of organized economies, contributing to increased exposure to disruption and pressures towards more shareholder-

[120] Council Directive 2001/23/EC

[121] *Público*, 13/02/2006, 'Comissão de Trabalhadores da Portugal Telecom defende manutenção da "golden share"', http://economia.publico.pt/Noticia/comissao-de-trabalhadores-da-portugal-telecom-defende-manutencao-da-golden-share-1247699

[122] Art. 6(1) states only that, following the transfer, "if the undertaking (…) preserves its autonomy, the status and function of the representatives (…) of the employees (…) shall be preserved on the same terms (…), *provided that* [my emphasis] the conditions necessary for the constitution of the employee's representation are fulfilled"; whereas, if it "does not preserve its autonomy, the Member States shall [only] (…) ensure that the employees transferred (…) continue to be properly represented during the period necessary for the reconstitution or reappointment of the representation of employees in accordance with national law or practice".

oriented and CEO- concentrated managerial practices. Furthermore, if we recall that, under the freedom of establishment principle, businesses are free to incorporate under any member-state's company law deemed more favourable, and considering the limitations of the protection granted under the BTD, this potential disruptive impact of an unrestricted market for corporate control is stressed even further.

4.2. Welfare State

The EU agenda for social policy reform presents labour market flexibility and rationalisation of market-sheltering welfare entitlements as the 'one best way' solution to deal with problems arising (as if exclusively) from maturing institutional structures, population ageing and mounting pressures from external global competition, if a "European Social Model" is to be preserved. We argued that this discourse silences pressures which are specifically enacted by the architecture of European integration. Although it is not the aim of this section neither to defend that Europeanization is the sole cause of welfare state reforms, nor to dismiss the role of pressures for welfare state reform arising both from exogenous (globalization, technological change) and endogenous (ageing of population, growing dependency ratios of national welfare structures and programs) factors, we do claim, however, that a political economy of welfare state reform in European countries must not disregard EU multilevel asymmetric governance "as an intervening, cathartic and framing variable" (Palier, 2006: 2).

Recalling the governance modes identified by Scharpf (2001, 2006) in the EU structure of multilevel governance[123], and following Genschel *et al*. (2008) and Scharpf (1997, 2010), we contend that three interrelated mechanisms in the EU multilevel polity put unequal pressure upon the financing schemes of universalist and continental welfare models *vis-à-vis* liberal, more privately funded models: (1) mutual adjustment in the Single market; (2) supranational governance of EMU and ECJ case law; and (3) reliance on soft law mechanisms to resolve the joint decision trap in intergovernmental bargaining in the Council.

As we have seen, distinct VoC have distinct welfare state arrangements, implying, among other differences, differences in their financing schemes and, thereby, in the economic burden they represent for distinct economic actors. While universalist models rely on equalitarian welfare provision collectively funded by tax revenue, the continental bismarckian model of social insurance depends mostly upon work related contributions. In what concerns the

[123] Mutual adjustment, supranational-hierarchical direction, intergovernmental bargaining and joint decision making; see chapter 3.

configuration of funding, the economic burden of the former is reflected mainly in the national tax system, whereas the latter reflects mainly in non wage labour costs. Neither universalist nor continental models are, today, purist prototypes; instead, most systems that fall within the Universalist and Continental labels mix, although to different extents, public, tax revenue- based and collective, work- related funding solutions in their arrangements for social services and pensions and health care systems. It would thus be limited to associate in exclusive a particular EU-shaped challenge to a single welfare model. We can, however, disaggregate the types of arrangements that are mixed and that can be distinguished within both models into *publicly* funded arrangements (financed through general tax raising by the state) and occupational systems that are *collectively* funded by work related contributions.

Our hypothesis is that European asymmetric integration triggers a strategic selectivity biased against publicly and collectively funded schemes in the following sense: (1) market integration and the single currency reduce transaction costs of cross border tax and institutional arbitrage, configuring a context in which welfare models that burden mobile firms and capital with either taxes or work related contributions are put in a competitive disadvantage; (2) ECJ jurisprudence more often than not dismisses motives of revenue raising as reasons for restrictions to the free movement and freedom of services provision principles; on the other hand, the supranational macroeconomic environment shaped by EMU is essentially contradictory to the fiscal policy model underpinning universalist and, generically, publicly funded arrangements; (3) finally, these competitive mutual adjustment and supranational advance of negative integration take place within a context where coordination at intergovernmental level for devising a harmonised framework for tackling tax competition and sustaining collectively and publicly funded arrangement is fundamentally impeded by heterogeneity of member states' and high consensus requirements.

4.2.1. The Single Market: tax and labour costs competition

Mutual adjustment corresponded to the coordination mode according to which each individual member state would make its own policy choices considering the choices of others in a non-cooperative fashion, in order to secure competitive advantage. In an integrated market, as transaction costs arising from tariff barriers (and non-tariff barriers having similar restriction effects upon the volume of cross border trade) and currency risk have been eliminated, competition results in a strategic selectivity that is fundamentally biased towards those welfare arrangements that represent less of an economic burden to mobile capital, whereas

those imposing high tax burdens or labour costs will be in a competitive disadvantage. In this sense, taxes and employers' contributions rates to social insurance schemes are two problematic issues for publicly and contributions-based funded welfare arrangements competing in a Single market with the minimalist welfare models not only of LMEs Britain and Ireland but also, especially after the 2004 enlargement, of Eastern and Baltic economies[124].

In continental welfare states, the most significant challenge related to the financing of compulsory pensions, health and unemployment insurances. As they relied upon employment related contributions, these arrangements faced two challenges pushing into opposite directions. On the one hand, competition in the single market exerted strong downward pressure upon labour costs, pushing for lower employers' contributions rates; on the other hand, this happened at the same time that population ageing, maturing welfare programs and high levels of unemployment increased the dependency ratios of the occupational schemes, thus pushing up contributions and, therefore, non-wage labour costs (Streeck and Trampusch, 2005). In order to brake competitiveness losses and mounting unemployment arising from high labour costs, many governments in countries with bismarckian social insurance systems were thus confronted with the choice between either shifting (at least part of) the financing of those arrangements onto the domestic tax base, subsidizing private insurance and pension funds[125], or retrenching entitlements.

The option of mixing bismarckian occupational systems with publicly prefunded arrangements to alleviate pressures upon non-wage costs faced by employers, however, had to face the threat that tax competition posed to the revenue raising capacity of national governments. Genschel *et al*. (2008) identify the "institutional embeddedness of tax competition" in the EU as an interplay between four interrelated mechanisms, enacted by asymmetric integration: (1) in the context of market integration, the more transaction costs to

[124] Bohle (2009) accounts for how, during the pre-enlargement period, the Viségrad countries (Czech Republic, Hungary, Poland and Slovakia) engaged in radically liberalising reforms of their welfare and tax systems. The examples of the Baltic countries' success in attracting FDI, and competitive pressures exerted by liberal reforms started by Slovakia in order to attract transnational corporations from neighbouring continental countries (specially German capital), triggered a true race to the bottom between the V4 which, amounting to their already lower wages and working standards, also resulted in stronger competitive pressures for older continental EU members.

[125] During the late 1990s many countries changed from "purer" models towards mixed pensions systems: Spain mixed the pay-as-you-go system with a prefunded one in 2000, the Netherlands turned its early retirement system from a paygo system into a funded one in 1995; France (1997) and Germany (2001) created funds to supplement their existing pensions systems and alleviate either government's budget (in the French case) and the employment contributions rates (in the German case). Italy and the Netherlands are the two most prominent examples of paygo pension systems being progressively complemented by (government incentivised) private funds. (Social Reforms Database fRDB)

cross border tax arbitrage (tariff and non tariff commerce restrictions, currency risk, etc.) are eliminated, the more tax competition intensifies (the authors call this the *integration effect*); (2) the increasing heterogeneity between member states' domestic institutions (tax structures and rates, work related contributions levels, etc.) extends the scope for institutional arbitrage and intensifies competition (this is the *enlargement effect*); (3) intergovernmental negotiations for devising an harmonised framework for taxation are watered down by heterogeneity of member states and unanimous voting requirements (the *coordination effect*); finally, (4) paradoxically enough, the unanimity rule for tax policy issues, while intended to preserve member states' autonomy regarding national taxation, has the perverse effect of preventing the political construction of an harmonised framework, thus ending up backfiring against national unilateral defences against tax competition, on account of supranational enforcement of Treaty economic liberties by the ECJ (Genschel and Jachtenfuchs, 2010) (Genschel *et al*., 2008, call this the *judicialization effect*).

Following Genschel *et al.* (2008), tax competition shaped by the integration and enlargement effects may assume two forms. On the one hand, there is general tax competition, shrinking tax rates across the domestic tax base; on the other hand, competition may take a targeted approach, in which particularly tax sensitive and mobile fractions of capital benefit from preferential tax regimes (PTRs).

Reporting OECD data, the authors tell us that, in 2006, the EU15 accounted for 55 of the 70 PTRs indentified on OECD list, including 47 "potentially harmful regimes identified in 2000 (14 holding company regimes and 9 preferential tax regimes introduced after 2000)[126]. Tackling the issue of harmful tax competition was considered a critical issue for the completion of the single market program. However, the limitations of intergovernmental negotiations stressed the asymmetry between market integration and market-embedding integration. Intergovernmental negotiations at the Council regarding tax competition issues focused mostly upon targeted competition[127]. Securing agreements on the ban of PTRs was far easier to achieve than devising harmonised framework for domestic direct taxation for two reasons: on the one hand, structures of PTRs deployed by member states were more similar among themselves than overall national taxation structures; secondly, restricting tax

[126] For instance, the Luxembourg special holding regime, the Dutch cost plus regime for multinational companies, and Irish special reduced corporate tax applicable to manufacturing activities in Ireland and to financial services held in the Dublin docks. (Genschel *et al*., 2008)

[127] Following the conclusions of the Ecofin Council Meeting on 1.12.1997, acknowledging the "need for coordinated action at European level to tackle harmful tax competition in order to help achieve certain objectives such as reducing the continuing distortions in the Single market [and] preventing excessive losses of tax revenue (…)" (Conclusions of the Ecofin Council, 1.12.1997, 98/C 2/01), 1999 Primarolo Report identified 40 harmful PTRs in EU15. In 2003, the Council formally adopted this list.

coordination to PTRs was the win-win solution that granted to the biggest losers of the corporate tax competition (Germany and France, since their domestic tax base was larger) some limits to excessive competition, while assuring the champions of tax competition (like Ireland) that the field of general tax competition would still be left open for the pursuance of their strategy (Genschel *et al*., 2008).

In fact, as some coordination regarding PTRs was achieved but divergences concerning harmonization of domestic taxation of corporate and capital profit persisted[128], tax competition strategies have shifted towards general tax competition. Taking the example of Ireland, that, while abolishing its PTR Shannon Freezone also slashed dramatically its general tax rates, we may conclude, with Genschel *et al*. (2008), that "to the extent that the code[129] is effective in constraining targeted tax competition, it tends to fuel general tax rate competition".[130]

General tax competition, however, is no less harmful. As Genschel *et al*. (2008) explain, it has asymmetric impact not only between private and publicly or collectively funded arrangements, but also between small and large countries. In a context of general tax competition, in small countries (that is, small domestic bases) revenue losses resulting from a general rate cut can be compensated by revenue gains resulting from an increase in incoming foreign tax base. For larger countries, however, revenue losses resulting from general cuts across the domestic base will not be so easily outweighed by inflows of foreign base.

In this context, 2004 enlargement had the effect of increasing the number of potential winners[131] willing to sideline with Ireland's competitive strategy, thus leaving German and French bids for a binding common minimum corporate tax isolated in the Council

[128] Ever since 1992 Rudin Report and 1996 Monti Memorandum on Taxation in the European Union, corporate tax harmonisation attempts have been set aside. The Commission envisaged project of a Common Consolidated Corporate Tax Base (CCCTB) has been under work since 2001 and only recently has taken the form of proposal for a Council Directive (COM/2011/121). However, here too limitations in intergovernmental negotiations have traditionally resulted in preference for soft law coordinating mechanisms.

[129] In 1999 Member States adopted a soft law code of conduct for business taxation containing non binding commitments to the dismantling of harmful PTRs and renouncing to introducing new ones (SN 4901/99). It is interesting to recall here Schäfer's (2006) account of reliance upon soft law mechanisms to resolve deadlocks at intergovernmental negotiations, and how this strategy reinforces negative integration rather than preserving Member States autonomy.

[130] Evidence reported by authors tell us that, ever since the 1990s, statutory tax rates have fallen faster and reached lower levels in the EU than anywhere else.

[131] Bohle (2009) accounts for the intensification in tax competition between the Viségrad countries during the pre-enlargement period. After Hungary, Poland and Czech Republic had undertaken tax reforms that lowered all tax rates during the late 1990s, Slovakia triggered another round in the "fiscal bidding contest" (Genschel *et al*., 2008) by introducing a flat tax rate regime of 19% for income, corporate and value added tax which left the corporate income tax significantly below both the EU average and the average among the other new comers, thus pressuring them to do the same, and ultimately increasing overall pressures to all EU members.

intergovernmental bargaining processes[132], and ultimately pressuring them, as well as other larger countries such as Spain and Italy, to start following the same strategy instead[133], regardless the consequences for the financing of their welfare states.

As Ganghof and Genschel (2007) explain, the harmful consequences of tax competition lie less in the direct effect on company tax revenue, than in the indirect effect of corporate tax competition upon the taxation of personal income. Since companies can be used as tax shelters for high personal incomes, the corporate tax rate performs an important backstop function that protects taxation of those earnings. If nominal corporate tax rates are pushed down by tax competition, then governments must choose between either accepting a tax rate loophole for top earners, or lowering nominal tax rates for top personal incomes, thus affecting the progressivity of the personal income tax system and, thereby, constraining its redistributive capacity.

To sum, at the same time that labour costs competition and increasing dependency ratios of European pay-as-you-go systems pressured contributions-based models towards (at least partially) publicly funded solutions, on the other hand, tax competition has enacted significant limits upon the revenue raising and redistributive capacity of member states' tax systems.

4.2.2. Supranational governance: ECJ case law and EMU

It is generally assumed (Hooghe and Marks, 2008; Moravcsik, 2002; Majone, 1998) that national autonomy over the arrangements and financing of the welfare state is sufficiently sheltered from EU supranational governance by means of the subsidiarity principle (Article 5(3) TEU). In the next two subsections we will show how this common wisdom hides an important bias in the same way that the EU discourse on social and employment issues silences the pressures upon welfare state that are enacted specifically on account of EU asymmetric integration.

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[132] In 2004 French Finance Minister Nicolas Sarkozy and German Finance Minister Hans Eichel defended that common corporate taxes rules, particularly a common minimum rate for corporate income tax, were necessary "fair conditions for competition". Also, Gerard Schroeder asked for action against "ruinous" tax cuts by Eastern European countries. Ireland's Prime Minister Mary Harney, however, responded that "nobody [was] stopping France and Germany and other high-tax countries from reducing their taxes". (*Bloomberg News*, 1.06.2004, 'EU Newcomers Anger France, Germany With Tax Cuts', http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aHHCzI1gwQkg)

[133] *Bloomberg News*, 28.05.2007, 'Tax-Cut War Widens in Europe as U.K., France, Germany Jump In', http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aev_LMGsw3aw

(1) ECJ case law

That harmonisation of tax laws for the purpose of ensuring a smooth functioning of the single market is a Treaty Provision (Art. 113 and 115 TFEU), whereas the motive of social policy financing is not, grants supranational governance entities scope to act in spite of intergovernmental negotiations blockades, resulting in negative integration.

This is also Genschel and Jachtenfuchs (2010) position. They argue that, while taxation has been regarded a most sensible issue regarding national sovereignty, indeed giving national actors effective veto power at council intergovernmental negotiations[134], Art. 113 and 115 (TFEU) have provided scope for the Commission and the ECJ to build up a vast *acquis communautaire* of tax regulations; given that reversal of ECJ interpretations faces the same (or perhaps even harsher, if it is a treaty provision that is at stake) blockades at council intergovernmental negotiations that prevented harmonisation in the first place, governments find themselves in a joint decision trap (Scharpf, 2006) that ends up being far more restricting of national sovereignty regarding domestic tax laws than it is the case in other models of interstate integration studied by the authors such as the United States. In short, "[p]aradoxically, it is the purported protections of national tax autonomy (the lack of a proper EU tax, the restricted tax policy mandate of EU institutions, and the unanimity requirement in tax harmonisation) that promote autonomy constraining European tax regulation" (Genschel and Jachtenfuchs, 2010: 294).

The authors report that, despite that the four major taxes (VAT, excises, personal income tax and corporate tax) are now covered by EU tax law[135], this coverage is uneven, with the majority of secondary EU tax law concerning indirect taxation (VAT and excises) and harmonisation of direct taxation being still very incomplete. However, while the route of intergovernmental negotiations blocks harmonisation of direct taxes, national autonomy is significantly undermined by ECJ case law.

As Genschel and Jachtenfuchs (2010) report, the number of tax cases handled by the ECJ has risen from only four cases between 1958 and 1967 to more than 400 cases between 1998 and 2007. In this judicialization of European tax harmonisation two trends can be identified: either cases deal with secondary legislation of the Council, mostly regarding, as referred, indirect taxation, or, in cases concerning direct taxation, where EU laws are incomplete, it is most

[134] Articles 113, 114(2) and 223(2) TFEU

[135] Directives 67/227/EEC and 67/228/EEC for VAT systems; directives 69/169/EEC, 72/464/EEC and77/799/EEC regarding excises; directives 90/434/EEC and 90/435/EEC on the taxation of multinational companies; and finally the 2003 savings tax directive (2003/48/EC), concerning personal income.

likely that the Court's ruling ends up playing the part of Council legislation, thus creating "judge made European tax law in a field where the Council has traditionally refused to legislate (Genschel and Jachtenfuchs, 2010: 302); it is also worth noting that, in the first case, through its interpretations, the Court plays an important legislative function as well in narrowing the compromises and ambiguities of the original formula that had secured unanimity at Council. Regarding the impact of this tax harmonisation by means of ECJ case law, it is important to note that it tends to incorporate an inherent tax reduction bias.

First, as tax regimes were historically designed for purposes of efficient resource allocation and redistributive fairness within national territories, their configurations were intrinsically committed to the protection and promotion of national economies rather than to non-discriminatory cross border economic liberties. In this sense, in its having Treaty provisions and secondary legislation for legal basis, ECJ case law tend to disfavour Member states' side[136] on tax cases. More importantly for our question of concern, rulings tend to be fundamentally biased against motives of protection against tax competition and revenue raising as requirements of public interest that justify unequal tax treatment between internal and tax border transactions[137].

Secondly, as case law could be triggered through infringement procedures initiated by the Commission and rulings would henceforth become valid for all Member States, the Commission often used this path to remove tax obstacles that Member States could not agree to harmonise through legislation at the Council. Case law did facilitate consensus building on legislative harmonisation; however, the harmonised framework resulting from such judicial harmonisation would inevitably oriented towards enhancement of market freedoms rather than motives of revenue raising and welfare state financing.

A third important element biasing judicial harmonisation towards tax reduction consisted in the fact that most procedures were initiated by means of preliminary reference procedures, whereby national courts referred to the ECJ the claims of private tax payers seeking to exploit eventual incompatibilities between (costly) national tax laws and EU provisions; as they succeeded, the number of potential winners motivated to follow this strategy increased (Genschel *et al*., 2008; Genschel and Jachtenfuchs, 2010), contributing to raise the volume of tax reduction- biased case law informing subsequent legislative harmonisation at the Council.

[136] For instance, according to Genschel *et al*. (2008), between 1986 and 2003, Member States lost more than 80% of the corporate tax cases.

[137] See, for instance, the *Eurowings* case (C-294/97), dealing with German anti avoidance measures applied to a firm benefiting from Irish PTR Shannon Freezone, in which the Court ruled that, if companies exploited lower levels of taxation applied in other member states, this would not constitute an abuse of the free movement principle, but, rather, a legitimate rights arising from the Single Market, which, as such, should be protected.

To conclude, it must be referred that tax collection is not the only field through which supranational enforcement of EU *acquis communautaire* by the ECJ has placed strain upon national publicly and collectively funded welfare arrangements. On account of the freedom of services provision, the Court has paved the way for beneficiaries of publicly or collectively financed health care systems to seek and receive treatment abroad and receive reimbursement of expenses from their national insurance arrangements, at the expense of domestic tax payers and/or collective insurance funds[138] (Scharpf, 2010; Münch, 2010).

To sum up, the ECJ liberal stance of empowering the individual *vis-à-vis* national laws (instituted, as we have already seen in chapter 3, in the very architecture of the European legal order by means of the preliminary reference procedure) results in significant pressures upon publicly funded solutions for welfare provision.

(2) EMU and the Stability and Growth Pact

European monetary integration generalized across countries joining the eurozone[139] the institutional configuration of the relation between the aggregate demand management regime (ADMR), the wage setting regime and the welfare state that prevailed in Germany and other deutschmark bloc countries (Hancké and Herrmann, 2007). The Maastricht Treaty generalized a European Central Bank independent from political institutions[140] and focused on price stability[141]. Furthermore, in order to facilitate and maintain this goal, a Stability and Growth Pact (SGP) was further adopted in 1997, establishing, as criteria for integrating the monetary union, that (1) the Member States' annual government's budget could not present deficits higher than 3% of GDP, and that (2) the gross government debt could not exceed 60% of GDP. Building on Articles 121 and 126 (TFEU), the rule framework of the SGP configured a

[138] See, for example, the *Kohll* (C-158/96) and *Decker* (C-120/95) cases. Case law such as these have paved the way for the Commission proposal for a 'directive on the application of patients' rights in cross border health care (COM (2008) 414 final).

[139] It is important to clarify that, while we contend that EMU has to be considered in any account of how multilevel governance structure of European integration constrains market-embedding institutions, not all EU Member States integrate EMU. In fact, amongst Scandinavian countries – the standard examples of universalist welfare regimes – only Finland is part of the Eurozone. Our reference country for an universalist welfare state model – Sweden – has remained outside the single currency since it joined the EU by a loophole in its opt-out clause which states that it must adopt the Euro after fulfilling the ERM II criteria. Sweden, however, has deliberately not joined the ERM II. The interest of accounting for the relation between EMU and universalist arrangements - such as national health and education systems, which are publicly funded through tax raising and grant universal access – lies in the fact that these can also be found in other countries, particularly in MMEs, which have adopted the Euro.

[140] Art. 130 TFEU

[141] Art. 2 of the Protocol No 4 "On the Statute of the European System of Central Banks and of the European Central Bank"

system of multilateral surveillance and coordination (the preventive arm), whereby the Member States were requested to present their economic guidelines to comply with the convergence criteria (the preventive arm), and a system of warnings and sanctions against non-complying members (the corrective arm).

This approach, focused on a non-discretionary monetary policy supported by a strongly legalistic framework, was consistent with the monetarist framework (Martino, 2008; Roberts, 2010) that had also informed the ADMR led by the *Bundesbank* in Germany. For the monetarist paradigm, which had gained its momentum in the late 1970s, after the *aporia* of the Keynesian model during the stagflation period[142], the problem of aggregate demand and economic growth was to be tackled through a supply-side approach, that is, by setting the exact amount of money supply which would allow for maximum non-inflationary growth, leaving the economic actors (such as governments and unions) to adjust within this monetary corridor defined by the central bank. The primary goal was, thus, price stability; the key coordinating function was assigned to monetary policy, and it was the economy (that is, the claims of the economic actors over the economic product) that would *adjust to* and *accommodate into* the fixed interest rate rather than the other way around. (Scharpf, 2011)

For many countries with universalist and publicly funded arrangements, however, the non-discretionary, non-accommodating monetary policy practiced by the ECB implied a stark contradiction between a supranational ADMR shaped according to neoclassical, supply-side economics and Keynesian, counter-cyclical fiscal policies and institutions at domestic level (Palier, 2006; Scharpf, 2011). In fact, the Keynesian answer to the problem of aggregate demand ascribed the leading role to fiscal policy. During a recession period, aggregate demand would be boosted through tax cuts and deficit-financed public expenditure, whereas overheating of economic activity would be tackled through spending cuts and tax increases. In stark contrast with the monetarist paradigm, thus, the Keynesian model would require monetary policy to adjust interest rates to the fiscal policy intervention in the business cycle in pursuant of full employment. Interest rates would accommodate to the dynamics of economic activity rather than the other way around. (Keynes, 2010[1936])

As we have seen, competitive mutual adjustment in the Single Market constrained the bismarckian, occupational model of social insurance by pressuring non-wage labour costs; at the same time, however, the increasing dependency ratio of these arrangements on account of

[142] The Keynesian model departed from the principle that inflation and slowing economic growth (and increasing unemployment) were mutually exclusive. The aporetic nature of the stagflation period of the 1970s thus consisted in that the keynesian approach to the problem of aggregate demand had no policy instruments to tackle simultanously inflation and mounting unemployment.

population ageing and unemployment increased demands for higher contributions (Streeck and Trampusch, 2005). In this competitive context, many governments opted for transiting from pay-as-you-go systems to mixed arrangements that included public funding from national tax collection[143]. However, as increasing tax competition and a liberal, individual empowering stance of the ECJ supranational enforcement of market liberties restricted national tax systems, the public funding component tended to burden governments' budgets.

In principle, public funding of universalist welfare institutions (or, although to a less extent, the publicly funded components of mixed systems) tend to translate into higher sensitivity of cyclically adjusted government primary balance. That is, during a macroeconomic shock, public expenditure in countries with such arrangements would necessarily increase relatively to revenue raising (as the amount of collected taxes would be lower).

Therefore, along the spectrum that ranges between pure reliance upon automatic stabilizers financed through *pay-as-you-go* schemes (pure bismarckian model) and purely universalist models, the bigger is the role of public funding within the welfare system, the higher will be the impact from a macroeconomic shock upon governments' primary expenditure. Figure taken from Girouard and André (2005) illustrates this, with countries denoting different levels of responsiveness of their government's primary expenditure to the business cycles, depending on the volume of public funding of welfare and social benefits and/or the size of the role played by the state in creating and maintaining public employment[144].

Cyclical Sensitivity of the Fiscal Position and Government Size

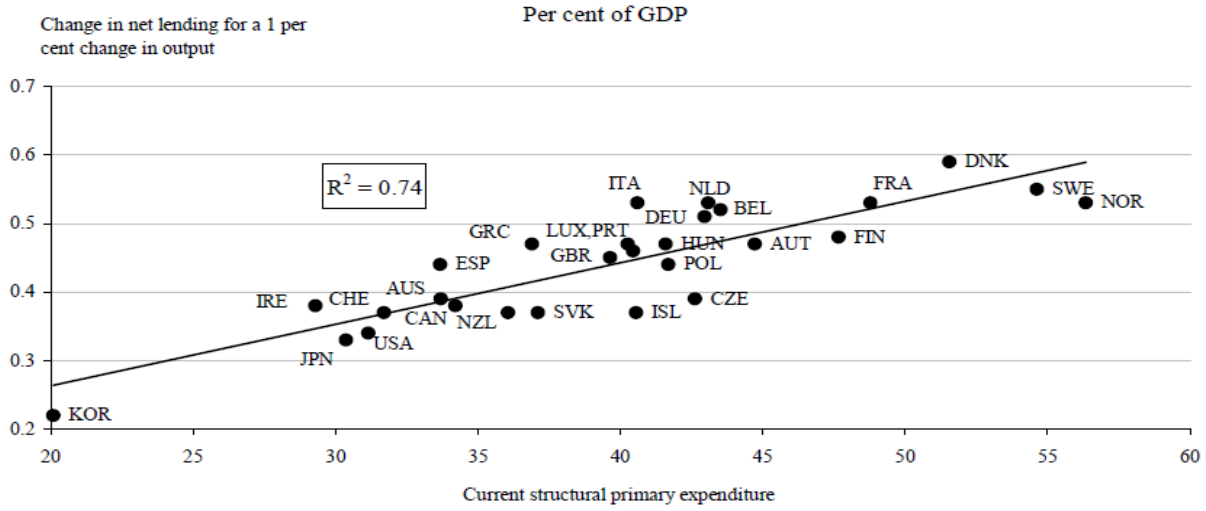

Figure 2: Cyclical sensitivity of the fiscal position and government size (% GDP) (Girouard and André, 2005)

[143] Social Reforms Database, fRDB; chapter 5.
[144] This is also consistent with analysis from Soskice (2007) and Amable and Azizi (2011).

Considering this, we may now turn to read data from the European Commission Directorate-General for Economic and Financial Affairs (summarized in Table 1) which show us that all organized economies under study (with public and mixed systems of welfare financing) have breached both or at least one of the SGP criteria (the budget criterion).

Breach of SGP Convergence Criteria		
Country	***Breach Periods for deficit criterion (3% GDP)***	***Breach Periods for gross government's debt criterion (60% GDP)***
Austria	1995–1997	2003–
France	2003–2007	2003–
Germany	1994; 1996; 2003–2006	2003–
Italy	2003–	2003–
Netherlands	2004–2005	-
Spain	2008 -	2008-

Table 1: Breach of Convergence Criteria by Organized Economies (*Source*: European Commission Directorate-General for Economic and Financial Affairs)

In principle, according to the Keynesian framework, countercyclical responsiveness performed by public expenditure should be accommodated by monetary policy, which would lower interest rates during fiscal reflationary period. (Keynes, 2010[1936])

In the context of EMU, however, non accommodating monetary policy makes countercyclical action of fiscal policy instruments and institutions much less affordable (Scharpf, 2011; Palier, 2006). Moreover, the Stability and Growth Pact places an effective straitjacket upon the scope of countercyclical responsiveness of government's primary expenditure to macroeconomic shocks. We may, thus, conclude from the argument exposed in this subsection that, for EMU countries, the option of shifting the financing of welfare systems towards public funding, in response to competitive pressures upon non-wage labour costs in the Single Market and in order to avoid welfare retrenchment, is cornered, on one side by constraints upon revenue raising shaped by tax competition, and on the other side, by the fiscal discipline requisites of the SGP convergence criteria.

Summary

We have tried to show how, in the context of European asymmetric integration, Treaty market liberties have triggered disembeddedness of many market arenas from the domestic institutional structures which kept them under collective control. Particularly, concerning industrial relations, we have focused on how the freedom of services provision has disembedded the market for services from national set ups of industrial relations, how freedom of establishment provided scope to circumvent national corporate law, and an integrated market for corporate control has disembedded the capital markets from national structures of corporate governance. Concerning welfare arrangements, we have argued that the economic liberties associated with the single market seriously endanger both national states' capacity to raise revenue for financing universalist programmes (because of tax competition) and bismarckian, contributions- based solutions of social insurance (on account of non-wage labour costs). For EMU countries the monetarist paradigm underlying EMU and the SGP places a straitjacket upon the scope of countercyclical responsiveness of fiscal policy associated with publicly (or partially) funded welfare provision, thus constraining even more publicly funded arrangements.

Chapter five

The Great Transformation of political economies in Europe – Second Movement: Reembedding a disembedded economy

"Social history (...) was thus the result of a double movement: the extension of the market organization in respect to genuine commodities was accompanied by its restriction in respect to fictitious ones."

Karl Polanyi (2001[1944]: 79), *The Great Transformation*

In his introduction to *The Great Transformation*, Block (2001[1944]: xxv) illustrates the thesis of the Double Movement through the comparison of the process of market expansion to the extending of an elastic band: "[w]ith further stretching, either the band will snap – representing social disintegration – or the economy will revert to a more embedded position". Münch supports this view, stating that "a point seems to have been reached in the 1990s, where the pure liberalization of the order of the European multilevel system has hit its legitimatory limits and where the forces recalling the necessity of national market regulation (…) have gained in legitimacy and thus in strength of accomplishment" (2010: 63).
In this chapter we will try to identify and monitor these reembedding countermovements: a first section will account for national strategies for reembedding disruptive trends in the fields of industrial relations and market sheltering institutions (Welfare State); a second section will try to recognize signs of market reembeddedness at European level.

5.1. Reembeddedness at national level

We have enunciated some institutional features which were configured by means of European asymmetric integration. Concerning *industrial relations*, we have focused on how the regulation on the posting of workers, the principle of freedom of establishment and the regulation on takeover bids might affect industrial relations. Concerning the *welfare state*, we have focused on the impact of three interrelated mechanisms of governance (mutual adjustment in the single market, supranational direction by the ECJ case law and EMU, and the limitations of intergovernmental negotiations) upon continental and universalist models. While it is not the goal of this dissertation to measure the strength of the causality between

those features and identifiable trends in national patterns of industrial relations and welfare reforms, this chapter adds empirical illustration to our theoretical hypothesis: that European integration can be read as a polanyian hypothesis of a Double movement; that is, that asymmetric integration exerts disembedding pressures that meet resistance and reembedding countermovements.

5.1.1. In the field of industrial relations

European integration has disembedded many market arenas from the domestic institutional structures of industrial relations: particularly, by means of market integration for services and for corporate control. How and to what extent have these disembedded market arenas (and the effects of this disembeddedness) been dealt with and reembedded?

(1) Strategies of implementation and re-regulation of the Directive on the Posting of Workers

The freedom of services provision introduced into the fields of industrial relations new elements, configuring new sets of opportunities for actors' strategies and, thus forging new complementarities and paths of institutional change. Directive 96/71/EC regulating the posting of workers (DPW) requested only that posting firms complied with those provisions that were nationally mandatory by law (*ordre public).* National strategies of implementation of the DPW were, in this sense, crucial in determining whether there were gaps between what was requested by national legislation and what was agreed in collective bargaining, or, on the contrary, gaps of institutional arbitrage were closed and a Single market for services provision was reembedded. Analysis of EIRO reports on the transposition of the DPW into national legislations, as well as of further amends[145] that have been made in order to accommodate the reality of an expanded market for services, shows us interesting trends.

Austria and *France* promptly adopted very complete, gap-closing and protective legislation, making the standard wages and work conditions agreed in collective bargaining automatically mandatory to posted workers in all sectors of the economy (Menz, 2005; EIRO, 2010). In both countries this was possible because the government was favourable to transposing the bids of a strongly organized institutional actor into mandatory legislation: in Austria it was

[145] National legislations implementing Directive 96/71/EC can be consulted in Appendix C (data is from EIRO).

due to favourable government access on the part of unions, whereas in France the dominant actors have been powerful employers who, concerned with disloyal competition and accustomed to government's statist strategies, here, too, relied upon state's protection.

In MMEs *Italy* and *Spain*, the issue of loopholes available for social dumping was also tackled by means of government legislative action, which implemented the DPW by means of a single decree law[146], settling the issue by extending to posted workers in all sectors the minimum salary established by law or by the applicable collective agreement (which was periodically rendered generally applicable by means of Ministry of Labour extension).

Germany and *Netherlands* went through two periods in their respective processes of reembedding the single market for services into their sets of industrial relations. In a first moment, social partners in both countries were widely reluctant in accepting legal provisions that would be applicable nationally and to posted workers of all sectors[147]. In fact, agreement on mandatory provisions regarding standard sectoral wages that would have to be paid to posted workers could only be reached with respect to the construction sector, which was the most vulnerable to the posting of workers from subcontracted foreign firms. However, re-regulation restricted to the sectoral level did not mean that agreement over a protective, gap-closing legislation was any easier to achieve. In Netherlands, where a legalistic tradition already included a national minimum wage[148] in the *ordre public*, progress towards the extension of standard Dutch wage brackets and working conditions to posted workers in the construction sector could only be conceded to unions with the employers' side securing that the provision would only apply to postings lasting more than four weeks. In Germany, the loophole left for institutional arbitrage was, in this first moment, even wider. Not only there was no national minimum wage, but also social partners could not agree upon adopting one; at the end, only a minimalist national minimum wage for the construction sector was conceded to unions. Moreover, this nationally mandatory minimalist minimum wage for the construction sector did not apply to temporary workers posted to Germany through Temporary Work Agencies. (Menz, 2005; EIRO, 2010)

[146] 2000 Legislative decree 72/2000, in Italy and Law 45/1999, in Spain.

[147] Of course, the solution for this could have been a legal provision declaring mandatory that all firms posting workers to these countries' territories would have to be signatories of the applicable sectoral collective agreement. And this was indeed the strategy followed by German transposition of the DPW into the 1999 Posted Workers Act (AEntG). However, in 2001, ECJ's ruling on the *Commission v. Germany* (C-493/99) case declared that legal provisions contained in the AEntG, requesting foreign firms to be signatory to all the collective agreements applicable in the relevant sector of activity, in order to be allowed to provide services and/or hire their workers to national firms in other EU member states, constituted a violation of the EU freedoms of establishment and services provision. The AEntG was thus amended in 2002 in order to comply with this decision.

[148] Regulated by the Law on minimum wages (*Wet minimumloon*).

In a second moment, however, re-regulation became more protective and gap-closing in both countries: in Netherlands, after 2005 revision of the Act on the Terms of Employment of Cross Border Employment, all wage brackets set on sectoral agreements declared universally binding would also be mandatory to posted workers; in Germany, 2007 revision of the Posted Workers Act (AEntG) extended to further industries (such as the caring services and the security services sectors) the provision rendering mandatory to workers posted in those sectors the minimum wage set in the respective collective agreement; also, 2009 revision instituted that, before declaring a collectively agreed minimum wage to be mandatory under the Posted Workers Act, the Ministry of Labour would have to consult a joint commission instituted under the Collective Agreement Act. Workers posted through temporary work agencies, however, still remain uncovered by these legal provisions. (EIRO, 2010)

It is interesting to notice the difference between the paths followed by both strongly neocorporatist Austria and *Sweden*: while Austria strongly organized labour relied on access to favourable government to transpose the DPW into complete, gap-closing legislation, Sweden opted for clarifying into the legislative provisions implementing the DPW[149] that the Swedish legal framework[150] would be applicable to posted workers in all sectors. This strategy of preserving *Tarifautonomie*, however, resulted in that wages remained outside mandatory law, exclusively at the level of collective bargaining. This meant that compliance of posting firms with collectively agreed wages was not a legal provision (was not protected by law), rather was dependent on the Unions' capacity to sanction employers. This capacity, however, was powerfully undermined by ECJ case law such as the already referred *Laval*[151] and *Viking*[152] cases, stating that, while the right to strike was a recognized EU right, it would have to be exerted under the proportionality principle, particularly whereas it imposed obstacles to the freedom of establishment principle. Therefore, in the aftermath of the *Laval* ruling in 2007, a commission was settled, in order to develop recommendations for future changes in the law.

In sum, the extension to which the single market for services provision was re-accommodated or, on the contrary, remained disembedded by means of gaps between what was part of the *ordre public* and what was left at collective bargaining, depended much on the implementation and re-regulatory strategies followed by national political economies

[149] 1999 Foreign Posting of Employees Act (cf. Appendix C)
[150] *Lex Britannica*, which relies on unions' monitoring function and right to take industrial action in case of non-compliance in order to secure the application of collectively set standards. Cf. chaper 2 and Appendix C.
[151] C-341/05 *Laval Un Partneri Ltd v Svenska Byggnadsarbetareförbundet*
[152] C-438/05 *International Transport Workers Federation and Finnish Seamen's Union v. Viking Line ABP and OÜ Viking Line Eesti*

concerning the DPW. These, in turn, were significantly shaped by the organizational specificities and institutional power of the labour's and business' interests. (Menz, 2005; Ebbinghaus and Hassel, 1999).

(2) Strategies of implementation and re-regulation of the Directive on Takeover Bids

The Directive on Takeover Bids (DTB) [153], directed at the European integration of financial markets, shaped a process of disembeddedness of corporate control from national institutional structures of corporate governance. That is, as Horn (2009: 132) puts it, a "process through which who controls the corporation and to what purpose it is run becomes increasingly mediated by the stock market, that is, through the share price as the regulative mechanism". In the same way as the DPW, the transposition of the DTB into national legislations was crucial for determining the degree to which an integrated capital market (and, more specifically, an integrated market for corporate control) would gear irresistible pressures for firms to shift towards more shareholder- oriented and CEO- concentrated models of corporate governance, or if, on the contrary, CME stakeholder- oriented models of corporate governance[154] were able to enact defences against takeover offensives in the market. If we recall the potentially disruptive impact of the freedom of establishment principle upon national company law concerning employees' representation at firm-level[155], we understand how crucial the degree of a firm's exposition to takeover is for industrial relations.

As it first came out in 2001, the DTB's cornerstone was the removal of the defensive mechanisms on which supervisory boards of targeted firms used to rely to defend themselves from takeovers. The anti- frustrating action and breakthrough provisions[156], however, caused Council representatives from both statist (France) and coordinated economies (Germany and Sweden) to strongly lobby against them[157]. Only in 2003, after the inclusion of an opting-out provision, could the DTB be approved - in both Council and European Parliament. This

[153] Directive 2004/25/EC

[154] Which, as we have seen, typically translate into 'low price – low profit" profile that renders these firms attractive targets for takeover actions (Callaghan and Höpner, 2005).

[155] Moreover in a context in which the Business Transfer Directive (Directive 2001/23/EC) could not oblige the new employer to enter into new collective agreements, and was vague with regard to the protection of supervisory board co-determination rights.

[156] Respectively, Art. 9(2) and (3) and Art. 11 (2004/25/EC).

[157] These so-called neutrality rules were the blocking issue in the process leading to the approval of the DTB. When it was voted for the first time in 2001 in the European Parliament, the "neutrality" provision of the DTB triggered a true "clash of capitalisms", with the members from organized, stakeholders-oriented economies voting against the directive and the nationals from LMEs shareholder-oriented regimes voting for it, despite their respective positioning within the EP ideological spectrum (Callaghan and Höpner, 2005).

opting out clause - Art. 12(1) - stated that "Member States may reserve the right not to require companies (...) which have their registered offices within their territories to apply Article 9(2) and (3) and/or Article 11" [158]. If they made use of this opting out provision, Member States were nevertheless required to grant nationally listed companies the possibility of voluntarily opting in both provisions[159]. Finally, the opt-out clause also allowed Members states to exempt firms applying Art. 9 and 11 from doing so, should they be targeted by a company that did not apply the same provisions as well (reciprocity rule)[160]. Regarding their strategies of transposition of the DTB into their national legislations[161], the following trends can be found:

First, all the economies under study have opted out Art. 11, with the exception of Italy, who has nevertheless opted in the reciprocity provision and thereby exempts its listed companies from complying with breakthrough rules when being targeted by a company that does not abide by the same rules. Secondly, considering the countries who abide by the two-tier model of corporate governance, and where workers' representatives enjoy codetermination rights (Austria, Germany and Sweden), while all three countries opted out Article 11, two distinct paths were followed with regard to the implementation of Art. 9(2) and (3): Germany opted out, while Austria and Sweden both opted in.

While Art. 9(6) clarifies that "for the purpose of [Art. 9(2)] where a company has a two-tier board structure «board» shall mean both the management board and the supervisory board", for these member states, where workers enjoy rights of participation in supervisory board, making mandatory previous authorisation from the shareholders before the board takes any defensive measures (i.e. opting in Art. 9(2) and (3)) seems to constitute an important disembedding change (to the extent that decision making is made more exposed to shareholder interests). However, it is important to understand national approaches to Art. 9 in articulation with each country's own legal provisions concerning takeover bids.

As Höpner and Schäfer (2007) note, Art. 11 inhibited regulations that restricted to specified amounts the voting rights of single shareholders (a defensive mechanism which was used in German companies), but, on the other hand, it was relatively permissive regarding some types of multiple voting rights (which were typical in Sweden and in France, but had long been

[158] Art. 9 (2) and (3) forbids the board of a targeted firm from taking defensive measures which may result in the frustration of the bid, without previous authorisation from the general meeting of shareholders. Art. 11 provides that restrictions on voting rights, as well as multiple-vote securities, shall not apply in the general meeting of shareholders deciding on whether defensive actions against a takeover will be taken. (cf. chapter 4)

[159] 2004/25/EC, Art. 12(2)

[160] *Ibid*. Art 12(3)

[161] National legislations implementing Directive 2004/25/EC, as well as each country's position regarding the optional arrangements contained under Art. 12 can be consulted in Appendix C.

banned in Germany[162]). In this sense, the DTB provides an illustrative example of how European regulation can have asymmetric impact upon distinct varieties of capitalism, and, correspondingly, of how similar reembedding motives can take the form of distinct strategies. For Germany, opting out Art. 9 corresponded to a last resource reembedding strategy, given that the standard defensive mechanisms usually deployed by German companies (and allowed under German Takeover law) were ineffective under Art. 11, if a firm had voluntarily opted to include compliance with its provisions in its statutes[163]. For Austria and Sweden, on the other hand, opting in Art. 9 constituted a win-win strategy: on the one hand, it enhanced the market-oriented, shareholder-friendly profile of companies listed in these countries (thus improving their relative value); on the other hand, even if firms voluntarily complied with Art.11 provisions, some forms of defensive unequal voting rights would still be possible.

This win-win strategy of reembedding a Single market for corporate control (opting in Art. 9 and opting out Art. 11) also served well the interests of France and Spain, where the state played a strategic role in business. While opting in Art.9, both countries however apply the reciprocity rule, that is, companies may be exempted from having defensive measures dependent upon shareholders' approval if the bidder firm does not abide by such provision.

Moreover, consistently with its VoC statist profile, the French strategy has taken further protective steps. Not only it allows for the issuance of share warrants as a frustrating measure (the so-called 'poison pills'), but also the 2006 new regulations for the *Autorité des Marchés Financiers* include protective provisions suspending the application of any restrictions on the number of voting rights that may be exercised by a shareholder in cases when the bidder has acquired more than two thirds of the company's shares or voting rights[164].

(3) Coping with decentralisation trends

According to EIRO, since the 1990s all the economies we have been monitoring have experienced a generalized tendency towards decentralisation of collective bargaining. While it is not argued that integrated market for services provision and corporate control is the

[162] In Germany, unequal voting rights were banned since 1998, under the 'Corporate Sector Supervision and Transparency Act'.

[163] In order to improve its relative market value by making its corporate profile more market-oriented and more shareholder friendly (cf. chapter 4, on how the CME protective profile regarding stakeholders' interests *vis-à-vis* the shareholders' typically translated into lower relative share value).

[164] Which was in the antipodes of what was initially proposed by the High Level Group of company law experts (the so-called Winter Group) that prepared the report informing the Commission's draft proposal (2002 report 'On a Modern Regulatory Framework for Company Law in Europe'): that a bidder acquiring 75% of the firm's shares or voting rights could breakthrough any sort of defensive mechanisms in the form of special voting rights. (Horn, 2009)

exclusive direct cause of such trend, we do contend, however, that it configures important incentives that are consistent with decentralisation trends.

Concerning disembeddedness of the market for services provision, as Menz (2005) points out, if the regulatory framework for posted workers opens a differential between the wages collectively settled for directly employed nationals and those paid by subcontracted foreign firms to their employees, then important incentives for outsourcing and subcontracting foreign firms paying lower wages are being created. In intermediate neocorporatist countries (Germany and Netherlands), where the adopted legislation was at first permissive, allowing for gaps of institutional arbitrage, loopholing re-regulation had important consequences for the wage and labour market structures of both countries. In his analysis of the accommodation of the Single market for services provision into their political economies, Menz (2005) concludes that in both countries there has been a significant disaggregation of the labour market into double- tiered structures, in which directly employed domestic workers, covered by collectively agreed standards (top tier) face wage dumping pressures from workers who enjoy only the minimal protection and wage levels (second tier) which the social partners have agreed to include in the *ordre public*. The existence of a second-tier labour market provides incentive for defection from centralised collective bargaining. Moreover, as the ECJ 2001 ruling on the *Commission v. Germany* (C-493/99) case had shown, legal provisions requesting foreign firms to be signatory to collective agreements would be regarded as a violation of the EU freedoms of establishment and services provision, which meant that domestic firms competing with foreign firms which did not abide by collectively agreed standards faced pressures for doing the same.

With respect to the disembeddedness of the capital market, as already referred, the Business Transfers Directive[165], protecting the rights of employees during the transfer of ownership after a takeover process, only ensured compliance with the relevant collective agreement to the extent that employees' contracts were to be maintained in the same terms. However, it did not request that the new owner engaged in new collective agreements. And so, to the extent that the directive on Takeover Bids required that member states opting out Art. 9 and 11 still granted their national listed companies the option of voluntarily opting in both provisions (meaning lower defensive mechanisms against takeover actions), and combined with the provisions of the BTD, a more dynamic market for corporate control further enlarged the scope for defection from centralised bargaining. Finally, trends towards decentralisation can

[165] Directive 2001/23/EC

be further enlighten if we recall that, in a context that allowed firms to incorporate under whichever EU national company law they found favourable, the directive on Information and Consultation rights[166] (which aimed at harmonising the framework for workers' representation rights at firm level), secured only employees representation rights at firm-level. What profiles of decentralisation in bargaining can then be found, amongst European organized economies since the 1990s?[167]

First, an important indicator is that density in interests' organization[168] has decreased significantly. Decline has been more pronounced in trade union density (with density dropping around 10% in all countries, except in Spain) than in employers' association density (which has either been kept stable – Austria, France, Netherlands -, or decreased only slightly – Germany, Italy, Sweden). Secondly, in terms of the centralisation of bargaining, these developments have been associated to trends reported by EIRO and the ICTWSS Database.

In *Austria* and *Sweden*, we may speak of an "organised decentralisation", in which higher-level bargaining parties have consistently been appointing bargaining tasks to the lower levels (sectoral and company level) – mostly with regard to working hours and variable pay –, while maintaining some degree of control over those lower-level bargaining processes. These delegation processes have been advanced by means of monitored introduction and use of the so-called derogation clauses, which delegate the regulation of carefully specified issues to company level bargaining between the management and works councils. In these two strongly neocorporatist countries, where labour's organisation is strongly centralised and peak level bodies enjoy strong control over the lower levels of bargaining, derogation clauses have been used as a compromise strategy, providing firms with some degree of flexibility while ensuring that the hardcore provision of collective agreements (i.e. wage brackets) are applied.

In *France* and *Germany*, such derogation clauses have been widely applied[169]; however, due to the lesser degree of centralisation of interests' organization, and, therefore, less effective transmission and monitoring channels between peak level and lower levels of bargaining, progressive flexibilization and promotion of derogation clauses consisted more of an

[166] Directive 2002/14/EC

[167] Analyses will build upon data from EIRO reports as well as from the ICTWSS Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 countries between 1960 and 2007 (Visser, 2010), which is available at http://www.uva-aias.net/208. A table accounting for decentralisation trends in European organised economies, as well as for the strategies adopted to contain and/reembed them can be consulted in Appendix D. Data is for the period between 1990 and 2008.

[168] That is, membership of the relevant actors – workers and employers - in trade union and business associations.

[169] According to EIRO, in Germany, by 2005, 75% of establishments with 20 and more employees were making use of these opening clauses.

adjustment to increasingly firm-level bargaining, in order to avoid complete defection from standards collectively set at upper levels.

In *Netherlands*, *Spain* and *Italy*, the tradition of state intervention as a facilitator, whenever insufficiently autonomous bargaining could threat the setting of collectively set standards, has helped to maintain bargaining centralisation stable at the sectoral level[170].

We can see that national strategies dealing with decentralisation trends in bargaining have denoted a major influence of the organizational specificities and institutional power of interests' organization[171] (Menz, 2005). More importantly, perhaps, these distinct national strategies produced different consequences in terms of bargaining coverage.

Where decentralisation towards firm-level has resulted from an organised and monitored delegation of bargaining tasks by peak level bodies onto lower levels (in strongly neocorporatist Austria and Sweden), bargaining coverage has remained stable at high levels (98% in Austria and 90% in Sweden). Bargaining coverage has also remained relatively stable wherever the state strategic facilitating role in tripartite concertation (in MMEs Spain and Italy, but also in Netherlands) has maintained bargaining centralisation stable at the traditional bargaining level (the sectoral level in the three cases), or where the state has played a strong intervening role in the process of setting wage levels (by setting the minimum wage, and/or public sector wages), despite traditionally firm level bargaining (as in statist France).

Contrastively, in Germany, decentralisation towards company level bargaining has corresponded less to an adaptative and controlled strategy to reembed decentralisation trends than to actual defection from coordinated bargaining, the result being a dramatic and continuous decrease in bargaining coverage[172].

5.1.2. In the field of Welfare State

The political economy of the European social discourse states that a rationalisation of market-sheltering welfare provisions and a shift towards activation are direct urgent claims from maturing domestic institutional structures under the pressures of globalization and ageing

[170] Cf. Appendix D

[171] Particularly interesting is the difference between Netherlands and Germany. While both fall under the 'intermediate neocorporatist' label, the former has been able to keep bargaining stable at sectoral level, while the latter has experienced a strong trend towards decentralisation to firm-level bargaining. This may be attributed to the role played by the State: while, under German traditional *Tarifautonomie* principle, the state has been reluctant in intervening in bargaining, in the Dutch case the state has intervened whenever autonomous bargaining was not efficient, thus preventing defection from the upper sectoral level bargaining towards the firm level, as was the case in Germany.

[172] Between 1990 and 2008, bargaining coverage in Germany has dropped from 72% to 62% (cf. Appendix D).

population. While it was not our goal to discuss this, we have argued that such lines of reasoning must be placed into a broader framework, in which the role of European multilevel structure is taken into account.

We have tried to show how the structure of asymmetric integration induces relevant constraints upon continental and universalist regimes. Notably, we have argued that while the economic liberties associated with the single market seriously endanger both national states' capacity to raise revenue for financing universalist programmes (because of tax competition) and bismarckian, pay-as-you-go solutions of social insurance (on account of non-wage labour costs), the monetarist paradigm underlying EMU and the SGP places an effective straitjacket upon the scope of countercyclical responsiveness of fiscal policy associated with publicly (or partially) funded welfare provision, thus limiting the extent to which public funding can be a solution to the tax and labour costs competition problems.

Against this background, we will now account for significant changes which have occurred since the 1990s in the domestic rearrangements for social policy in the economies under study, and assess them in terms of their labour commodifying/decommodifying performance, that is, in terms of the extent to which they have left the individuals more or less dependent on the market nexus. Analyses of social policy reforms tend to focus generically on social expenditure levels. However, an assessment of the evolution in the performance of European welfare states regarding labour (de)commodification requires a more qualitative- oriented approach, that focuses on changes in effective entitlements. In fact, whereas a quantitative account of overall social expenditure as percentage of GDP may, at a first glance, frustrate any retrenchment/re-commodification hypothesis (as expenditure levels have either remained at existing levels or, in some cases, even increased[173]), significant qualitative shifts in the entitlements' structures of EU countries' social policy regimes have occurred which - we will try to show - are consistent with a generalized path towards a lesser degree of independence from the market enjoyed by individuals.

A full comprehension of the labour (de)commodification performance of social policy reforms requires a reading of the entitlements' structures in articulation with the evolution in the employment protection legislations of the countries under analysis. As previously mentioned, the EU discourse on social and employment issues emphasizes labour market flexibility. As the degree of protection granted by legal provisions to work contracts determines the degree of workers' exposure to the market in a given political economy, from a

[173] Data from OECD

polanyian perspective, a loosening in employment protection legislation corresponds to an increase in labour commodification. However, increases in labour commodification levels produced by flexibilization of employment protection legislation may be compensated by decommodification through social policy (Esping-Andersen, 1990). That would be the rationale behind the so-called *flexicurity*.

Analyses of the fRDB Social Reforms Database[174] and the LABREF Database[175] show, as a generalized trend, that *a flexibilization of employment protection legislation has been accompanied by a shift from standard market-sheltering entitlements* (pensions and unemployment allowances) *towards measures aiming at facilitating the integration of the individual in the labour market*, that is, the so-called active labour market policies (ALMPs). This perception will structure our in-depth analysis in three levels: (1) we will depict trends in labour market flexibilization; (2) we will portrait the retrenchment in market-sheltering entitlements; (3) we will evaluate the resource to ALMPs according to their commodifying/decommodifying character. Conclusions drawn in (2) and (3) provide the context in which labour market flexibilization is to be read.[176]

(1) Labour market flexibilization

To classify labour market reforms into their being commodifying or decommodifying, we will depart from Polanyi's general critique: labour is made a (fictitious) commodity by its "being made available for purchase [that is] organized for sale on the market" (Polanyi, 2001[1944]). In this sense, commodifying reforms will be those which increase the availability of labour according to market rules, that is, that increase its exposition to the market nexus[177]. Deploying these criteria in the analysis of national reforms in employment protection legislation[178], the following trends can be found:

[174] Social Reforms Database of the Fondazione Rodolfo DeBenedetti (fRDB)

[175] The Labour Market Reforms (LABREF) Database of EC Directorate-General for Economic and Financial Affairs is available at http://ec.europa.eu/economy_finance/indicators/economic_reforms/labref/

[176] As a methodological consideration, the scope of the reform must be taken into account, that is, reforms may be structural or marginal in their scope, depending on whether they address the overall design of the existing system or only change minor, circumscribed features.

[177] Building on this principle, a more detailed analytical grid has been developed, in order to categorize reforms in employment protection legislation according to their being commodifying or decommodifying, and can be consulted in Appendix E, Table 1.

[178] The commodifying/decommodifying profile of reform paths undertaken by each country was obtained by applying the analytical grid built in Appendix to the reforms in national employment protection legislations listed in the Social Reforms Database (fRDB) and in the LABREF Database for the period between 1990 and 2007 (accounts for Swedish and Austrian reforms, however, begin from 1995 onwards, as the two countries have

On account of strongly neocorporatist traditions and highly centralised labour's interests organization (topped with access to favourable government), *Austria* and *Sweden* have both kept their protective employment legislation relatively stable. *Austria* has applied only marginal reforms aiming at decentralising some dismissal- related issues[179] (so as to allow for more flexible arrangements), facilitating the hiring of temporary workers through private employment agencies[180], and loosening sanctions upon dismissals of older workers with work tenures of less than two years (as a measure to stimulate hiring of older people). *Sweden*, in turn, while also experiencing a trend towards some decentralisation of dismissal related bargaining to local level (as referred in the last section), has opted for a strategy of flexibilization different from Austria's, by adopting, in the late 2000s, a trade off between a loosening in the dismissal procedural requirements associated with permanent contracts and a lower ceiling on the number of possible renewals of fixed term contracts.

All the other studied political economies, however, have registered notable trends towards labour market flexibilization. In general, these trends have been manifest in reforms in the labour markets aimed at easing the rules and sanctions over dismissals and over the use of fix or shorter-term contracts. Moreover, these commodifying changes have been mostly structural and, wherever they were addressed by compensating re-embedding efforts, such decommodifying measures have only been marginal in their scope, concerning mostly regulation of part-time and fixed-term work, or extension of social protection to previously unsheltered groups (like the self-employed or part-time workers) and/or groups that would become more vulnerable due increase in market exposure (such as disabled people)[181]. More specifically, four profiles exist:

First, *Germany* and *Netherlands* took a strictly *liberalizing path*, each applying to their labour markets structural reforms[182] (among several other changes marginal in scope), which considerably lowered difficulties associated with dismissal procedures (such as severance payments) as well as restrictions on the use of fixed-term contracts (such as the number of times a fixed term contract can be renewed).

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only joined the EU in 1995). National profiles regarding reforms in employment legislation protection can be consulted with greater detail in Appendix E, Table 2.

[179] In the 1997/98 collective agreements.

[180] 2002 Economic Stimulation Act.

[181] Cf. Appendix E, Table 2, number and scope (structural or marginal) of commodifying measures vs. number and scope of decommodifying measures

[182] In Germany: the 1996 Reform of Labour Market and 2003 Protection against Dismissal Act; in Netherlands: 1995 structural changes in dismissal procedures and 1999 Flexibility and Security Law

Italy followed a strongly liberalizing path up to the mid- 2000s, with structural reforms that loosened restrictions on dismissals[183] and increased flexibility associated with temporary forms of contracts[184], which was then met by a reembedding inflexion towards more protective legislation, with 2007 reforms re-stipulating a limit on renewals of fixed term contracts and abolishing some of the most precarious forms of contracts that had been introduced by means of the Biagi Law. The opposite trend may be identified in *France*, which, during the 1990s and early 2000s, had secured highly protective labour legislation (mostly by reinforcing restrictions upon temporary work and tightening rules upon redundancies motives for collective dismissals[185]), but, from 2004 onwards, implemented several structural reforms loosening the restrictions on collective dismissal procedures (2004 Fillon Law) and extending the possibility of renewal of fixed term contracts (2005).

Finally, *Spain* has attempted a *balanced approach* to labour market flexibilization, trying to compensate several (structural) labour commodifying reforms[186], focused upon reducing the penalties protecting permanent contracts against lay-offs, as well as the employers' contributory obligations associated with them, with (1) more stringent protection of temporary forms of contracts[187] (including severance payments and maximum number of renewals), on the one hand, and (2) measures to improve protection of disadvantaged groups such as the temporary workers in the construction sector[188] or temporary workers hired through temporary work agencies[189].

(2) Retrenchment of market-sheltering entitlements

In evaluating changes in market-sheltering entitlements, we will be looking at reforms undertaken in the realms of *pensions systems* and *non-employment protection benefits*.

[183] 1997 Treu Package

[184] 2003 Biagi Law introduced four new types of "atypical" temporary contracts: job-on-call (lavoro intermittente); job sharing (lavoro ripartito), whereby two or more workers jointly undertake a single work obbligation; "supplementary work" (lavoro accessorio), occasional job undertaken by persons at risk of social exclusion; and "lavoro a progetto", which joined the already existing "co.co.co", contracts with the duration of a project.

[185] Notably, by means of the 2001 Social Modernisation Bill.

[186] 1994 structural changes easing rules on individual and collective dismissals; 1997 structural reforms, introducing a new type of permanent contract requiring reduced severance payments and lower employers' contributions rates; 2002, 2005 and 2006 labour market reforms loosening the strictness of severance payments obligations concerning permanent contracts.

[187] 1997 reforms, articulating the newly created permanent contract (with more flexible protection) with higher contributions rates associated with fixed term contracts; 2006 Reforms, enhancing the possibility to transform temporary contracts into permanent ones with lower dismissal costs, and introducing a ceiling on the number of renewals of fixed-term contracts.

[188] 2007 Reform, introducing severance payment for temporary contracts in the construction sector.

[189] 1999 Law on Temporary Employment Agencies.

Following Esping-Andersen criteria for the assessment of labour decommodification through social policy (cf. Chapter 2), we will focus on reforms' impact upon: (1) the access of individuals to benefits (eligibility criteria, previous contributions period, how long does protection last); (2) the replacement rates of benefits (to what extent do benefits provide alternative to earnings from selling labour force in the market); (3) the range of entitlements; and (4) universality (groups covered by protection arrangements). These criteria configure an analytical grid through which we can read the national profiles of reforms in the pensions and non-employment benefits systems[190] in terms of their labour (de)commodifying performance.

The history of *reforms in the pensions systems* undertaken since the 1990s tells us that, despite public expenditure on benefits for old-age and survivors has actually risen in all the studied countries (except in Netherlands) between 1990 and 2007 (OECD data), reforms have led to significant retrenchment in the effective entitlements of individuals in all countries. Main trends followed by countries have focused on *decreasing the dependency ratio* of the pensions systems and *limiting their strain upon contributions rates and/or public expenditure*.

Attempts at *decreasing the dependency ratio* have focused on maintaining people at work. Although this orientation can be found in all countries, strategies for achieving this goal, however, varied between more negative approaches, *forcing* people to stay longer in the labour market (by raising the age of retirement, increasing the contributions period, restricting early retirement), and more positive approaches, *incentivising* people to remain at work, either by allowing them to access (at least to some) entitlements at the same time (like allowing them to cumulate part of the pension benefits with wages, or promoting the exchange of early retirement for reduced working hours until statutory retirement age), or by introducing stay-in work premia and/or special tax credits. Our analysis[191] indicates that countries have mainly privileged the negative approach. Restrictions in the access to pension benefits were highly increased in Italy[192], Germany[193], and Sweden[194]; although to a less extent, restrictions were

[190] Analytical grid to assess the commodification/decommodification profile of national reforms in the field of market-sheltering welfare entitlements (pensions and non-employment – unemployment and sickness – benefits) can be consulted in Appendix F, Table 1.

[191] National profiles in terms of reforms in the pensions systems are built on data from the Social Reform Database (fRDB) and the LABREF Database, and can be consulted in Appendix F, Table 2.

[192] With the 1992 Amato Reform, the 1995 Budget Law and Dini Reform, the 1997 Prodi Agreement and the 2004 and 2007 Reforms of Pensions Systems, which have raised the statutory age of retirement, increased contribution rates and the contributory history necessary to qualify.

[193] 1992 Pensions Reform, 2001 New Pension Reform and the reforms undertaken in 2006-7 have raised the statutory age of retirement (from 60 and 63 years – for women and men, respectively – to 65, first, and then, in 2006, to 67 years), extended the necessary contributions period and increased importance of earning-related component.

[194] 1994 measures raising retirement age and 2001 law forbidding social partners to conclude agreements on compulsory retirement before the age of 67

also tightened in France[195] and Austria[196]. Countries also deploying positive approaches have been France[197], Italy[198] and Spain[199].

With regard to the goal of *containing/stabilizing contribution rates and/or public expenditure*, strategies adopted by the countries under study allow us to identify three profiles.

In *Germany*, *Sweden* and *Austria*, strong neocorporatism has prevented radically innovative structural changes (Ebbinghaus and Hassel, 1999; Streeck and Trampusch, 2005) and, in that sense, strategies have denoted, almost in exclusive, (and more than elsewhere) concern with the trade off between contributions rates associated with the pay-as-you go systems and the rates of replacement of benefits. Either this trade-off has been solved more at the expense of replacement rates of benefits or more at the expense of universality and access (by reinforcing the occupational character of the system), in all three cases, the systems' capacity to provide alternative to earnings in the labour market (that is, to decommodify labour) has decreased.

In *Germany*, superior organizational power of the employers' side has resulted in higher focus upon lowering and/ or stabilizing contributions rates in the long term; this concern underpinned the introduction of a voluntarily funded system to complement gradual reduction of contribution rates to the public pay-as-you-go system[200], but ended up being made mostly at the expense of replacement rates in the long run[201]. In *Austria* and *Sweden*, the institutional power of labour interests' organization has impeded dramatic declining of replacement rates; however, in face of pressures to reduce the strain upon public financing component of the systems, importance of the link between benefits and wage earnings has been raised[202].

Italy, *Netherlands*, *Spain* and *France* all sought mid-way escapes from straining public funding and labour- related contributions. In this group, *Netherlands* and *Italy* turned more

[195] By means of the 1993 Balladur Reform of Régime Générale, the 2003 Rafarin Act and the 2007 reform, which has extended contributions period from 37,5 years to 40 years from 2012 onwards, and, from 2016 onwards, to 41 years.

[196] Measures taken in 1996, 1998 and 2000 restricted early retirement schemes; 2004 Pension Harmonisation Law increased the importance of earnings- related component of the pension benefits

[197] 1998 law made it possible for workers to opt for reduced hours instead of early retirement, 2003 law enabled workers to continue to work while receiving a pension.

[198] 2004 Law of Reform of the Pension System granted the possibility of accumulating pension benefits and earned income and gave a special tax treatment to both pension and work income to people who decide to continue at work; also, a 2004 law introduced a "Super bonus", in the form of a tax-free extra increase of the salary, for workers who, having acquired their pension rights, decide to continue working afterwards (Social Reforms Database fRDB).

[199] A 2005 law entitled people with disabilities to combine disability pension with work earnings.

[200] 2001 New Pension Reform (Social Reforms Database fRDB, cf. Appendix F, Table 2)

[201] Specially by means of 2004 reform, aiming at the stabilization of the contribution rate in the long-term basis (until 2030) by means of a change in calculation formula that lowers pensions levels in the long run and higher taxation over received benefits, which results in overall lower replacement rates (i.e. increased commodification)

[202] In Austria, 1997 Pensions Reform and 2004 Pension Harmonisation Law; in Sweden, 1998 New Pension System and 2001 and 2007 reforms.

aggressively towards private solutions, while *France* and *Spain* took more commodification-cushioning approaches, compensating commodification in the occupational component of the system with restructurings aimed at improving the situation of disadvantaged groups.

The *Dutch* strategy combined the transition from purely paygo systems to some funded arrangements (1995) with both loosening in the investment rules for General Government Pension Fund (ABP) (1993) and privatisation of some pension funds[203], in order to maintain both fiscal balance and tax competitiveness, as well as to comply with the dominant institutional actors' (the employers) concerns (competitive labour costs). The *Italian* strategy was to aggressively combine retrenchment in entitlements and replacement rates of basic pension systems[204] with strong fiscal incentives to the use of private pension funds[205].

Both *France* and *Spain* attempted compensated approaches to their restructuring of entitlements. *Spain* tried to compensate commodification geared by retrenchment in the replacement rates and harder access to entitlements[206] with the extension of protection and/or enhancement of protection of disadvantaged groups such as dependent people[207], surviving spouses[208] and small owners in the agriculture sector[209]. Moreover, the transition (starting in 2000) to a mixed system (mixing contributions and public funding), during a period of above EU average Spanish GDP growth, has helped softening the commodifying impact of Spanish reforms in the occupational component of the pensions systems. Although retrenchment in replacement rates did take place, *France* also took a moderate approach[210]. Non-contributory pensions were transferred to a tax funded system[211] and financial surpluses from social solidarity contributions and old-age solidarity funds were channelled to consolidate the public financing of the pensions system (in 1997), so as not to strain neither contributions rates nor the public budget. The 2003 Rafarin Act, however, marked an inflexion point in this strategy towards more commodifying arrangements, containing several measures increasing the

[203] 1996 Privatisation of the Pension Fund for Civil Servants. This trend was further stressed with 2006 removal of distinction between pension funds and insurers.
[204] Mostly contained in the 1995 Dini Reforms
[205] Through 1995 Budget Law, 1995 Dini Reforms, and 2004 Reform of Pensions System
[206] 1997 Reform of the pensions system raised contributions rates and restricted entitlements; 2006 reforms restricted access to early retirement and increased the contributions period necessary to qualify entitlements.
[207] 2003 renewal of 1995 Pensions Agreement (the Toledo Pact) created a new system for the social protection of dependent people.
[208] Besides the 2003 renewal of Pensions Agreement, measures improving protection of surviving spouses and orphans were taken in 2004 and 2007 reforms.
[209] In 2005 (cf. Appendix F, Table 2)
[210] Possibly on account of its tradition of the Public Pensions System being managed by Social partners and of powerful street protests mobilization capacity of Unions (Ebbinghaus and Hassel, 1999)
[211] Through the 1993 Reform of Régime Générale

contributions period[212], decreasing replacement rates and launching foundations for third pillar pensions (compulsory saving schemes).

With regard to non-employment protection benefits, data[213] on national expenditure on these forms of welfare entitlements reveal us three groups of countries: in a first group (Germany, Sweden and Netherlands) expenditure in non-employment protection has decreased consistently since the 1990s; in a second group (Italy and Spain), expenditure has been kept relatively stable; and, finally, in France and Austria, expenditure in non-employment benefits has increased until the mid- 2000s and then started a decreasing trajectory. What narratives of institutional change underpin these figures?[214]

Consistent with the liberal spirit underpinning its reforms of the pension systems, the *Dutch* rearrangements of non-employment protection have been strongly oriented towards pushing people into the labour market, both by weakening the levels of protection they may access[215], and by tightening access to that protection[216].

Like the Netherlands, both *Sweden* and *Germany* have considerably retrenched the protection offered to their nationals in non-employment situations. During the 1990s and the 2000s, several measures were implemented which have tightened eligibility conditions (including job acceptance requirements, participation in activation policies and the restriction or elimination of the possibility of renewal of protection by participating in activation schemes), and reduced both replacement rates and the duration of the protection, not only of unemployment insurance, but also of sickness insurance[217]. However, unlike the Dutch strategy to (re)activate

[212] 2007 reform furthered stressed this commodifying trend, by extending the required contributions period from 37,5 years to 40 years from 2012 onwards, and, from 2016 onwards, to 41 years.

[213] Data from Eurostat, cf. Appendix F, Table 4.

[214] National profiles in terms of reforms in non-employment protection (unemployment and sickness insurances) are built on data from the Social Reform Database (fRDB) and the LABREF Database, and can be consulted in Appendix F, Table 3.

[215] Notably, through 1992 law removing the automatic link between the minimum wage and social benefits and making it dependent upon a reference value in the dependency level of the system (the ratio of full-time beneficiaries to full-time employed people); 1996 law, which removed eligibility to unemployment benefits after voluntary quits; 2004 reforms referring self-employed people to private forms of insurance or to their own resources during occupational disability, maternity and leave for adoption or child care; and, finally, after 2006 Reform of Unemployment Insurance System, which has shortened duration of protection, extended the contributions period necessary to access entitlement and tightened reintegration obligations.

[216] In fact, among all other studied economies, Netherlands has registered the most significant trend towards tighter means tested access to entitlements, especially with the 1996 General Social Assistance Act and the 2004 Work and Social Assistance Act, which have delegated to municipalities full policymaking and financial responsibility for means tested access, compliance with job acceptance requirements, and also the 2006 Reform of Unemployment Insurance System. (Social Reforms Database, fRDB)

[217] In Germany, besides several retrenchment measures that took place during the 1990s concerning sickness and unemployment insurances, the1997 Employment Promotion Law, the 2004 Unemployment Benefit II Programme and the 2006 reform of unemployment insurance system have all reduced replacement rates and duration of benefits, tightened eligibility job acceptance requirements. In Sweden, the most significantly restricting reforms have been the 1997 Employment Bill (increasing qualifying period and the importance of

the individuals in the labour market merely through retrenchment of protection and a tight system of controls and sanctions, both Sweden and Germany have, since the 2000s, tried to reembed the withdrawal of market-sheltering non-employment benefits into a system of policymaking interventions in the labour market, aimed at improving the opportunities of individuals in the labour market[218].

A third profile – identified in *Austria* and *Spain* - comprises a significant initial retrenchment (tighter access, reduced replacement rates and duration of both unemployment and sickness insurance benefits), during the mid and late 1990s[219], which was then replaced by a strategy of active policymaking interventions in the labour market, on the one hand, and reforms in the social insurance systems aimed at improving the protection of specific groups[220].

An interesting profile is that of *Italy*. Despite having undertaken re-arrangements that have left fictitious commodity labour more exposed to the market nexus in the realms of legal protection and pensions systems, Italy has, unlike the Netherlands, kept and configured the institutional realm of non-employment protection benefits as a decommodifying mechanism, performing a reembedding function on the commodifying impacts triggered by labour market flexibilization[221], with particular focus upon those in disadvantaged position[222].

Finally, *France* has also been initially protective of its labour decommodifying institutions of non-employment protection[223]. From 2003 onwards, however, this protective stance has been

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earnings related component, and eliminating the possibility of renewal through participation in training schemes), and the 2006 reforms of unemployment and sickness insurance systems.

[218] The shift of, not only Austria and Sweden, but also of other organized economies under our analysis, towards some types of Active Labour Market Policies will be further developed in the next subsection.

[219] Cf. Appendix F, Table 3.

[220] In Austria, a 2004 law (enhanced by 2007 reform) extended unemployment insurance coverage to self-employed workers; in Spain, several reforms enhanced the protection of workers with disabilities (2004), people with employability problems (2005), people in part-time jobs (2007) and temporary workers in agricultural and construction sectors (2006).

[221] Differences between the Dutch and Italian cases are interesting to be read in our VoC framework. Behind them may be the distinct role played by the state in the coordination mode of the economy: while the Netherlands is an intermediate neocorporatist CME, in which the employers' associations enjoy superior organizational and institutional power (which explains the consistently liberalising drift), Italy is a MME in which the state plays a crucial compensating role in the overall coordination of the institutional actors, which - as we have seen in the field of industrial relations' adjustments to the Single market – can be a facilitating element in the translation of disruptive effects of market disembeddedness in one sphere of the economy into a reembedding institutional rearrangement in another.

[222] 1994 Reform of the Wage Supplementation Fund (Cassa Integrazione Guadagni) extended benefits to previously uncovered groups, 2006 reforms in the Unemployment Insurance system extended duration of protection and increased net replacement rates; finally, 2007 reforms increased again replacement rate of ordinary unemployment benefits and allowed for more favourable tax treatment to protection benefits received by workers in agricultural sector.

[223] Between 1997 and 2001there were annual raises in the three basic social benefits, the RMI (basic income support), the ASS (special solidarity allowance for the unemployed at the end of their entitlement) and the AI (unemployment benefit for young first job seekers). Also, 2001 Social Modernisation Bill increased the minimum compensation due to workers laid off on grounds of redundancy.

replaced by a 'retrenchment plus activation' approach, in which several commodifying measures[224] were combined with active policymaking intervening in that labour market.

According to the complementarities between labour market legislation and market-sheltering institutions that have been reshaped through national institutional reforms between 1990 and 2007, we may conclude that all organized economies have sought a strategy in order to decommodify liberalising rearrangements. If we map our countries according to such strategies, the picture is consistent with our VoC framework.

Strongly neocorporatist CMEs Sweden and Austria have retained high levels of employment protection and the retrenchment in market-sheltering entitlements has been cushioned *both* by the strengthening protection of potentially disfavoured groups, *and* reliance upon political shaping of labour market through active labour market policy instruments. *Intermediate neocorporatist* CMEs Germany and Netherlands have registered significant liberalising drifts, *both* in employment protection legislation *and* in market-sheltering institutions, denoting the superior institutional power of business interests' organization; in this context, decommodifying concerns have thus concentrated upon policymaking intervention in the labour market. Finally, *where the state plays a decisive role* (in statist France and in MMEs Spain and Italy), commodifying arrangements in one sphere of the economy have been compensated either by protection of decommodifying institutions elsewhere, or by active labour market policies.

In a context of a clearly identifiable reliance upon active labour market policies, the question that seems to arise is, thus, in which terms may these strategies qualify as protective countermovements?

(3) The shift towards Active Labour Market Policies

The rationale underpinning market-sheltering welfare entitlements is the right of individual to have her survival and opportunities for wellbeing sheltered from dependence upon the market. Retrenchment in market-sheltering entitlements may thus be read in the same terms as the demarche from the "right to live principle" contained in the process of creation of a competitive labour market in nineteenth century England, by means of 1834 abolition of Speenhamland Law and outdoor relief (cf. chapter 1). It is interesting to note, however, that

[224] Such as 2003 law replacing the existing 'minimum integration income' (revenu minimum d'insertion, RMI) for a new "minimum employment income integration contract" (contrat d'insertion-revenu minimum d'activité, RMA), or the 2006 Reform of the Unemployment Insurance System, which tightened eligibility conditions and reducing the duration of unemployment insurance protection.

Speenhamland was not the only institution in England's social framing of the labour market. It was articulated with the Statute of Artificers, which organised labour according to three principles: the enforcement of labour principle, apprenticeship clauses (entailing periods of vocational training), and annual wage assessment by public officials. After the removal of Speenhamland, Polanyi refers, newly organized industrial working classes pressured strongly for the enforcement of apprenticeship clauses[225].

This constitutes a useful frame for analysing the shift towards active labour market policies: our hypothesis concerning a reembedding countermovement is that, while a substantial retrenchment in the institutions shaped according to the "right to live principle" has taken place, policymaking efforts destined at improving individuals' opportunities in the labour market may fall under a *broad* sense of Polanyi's sense of reembeddedness. Moreover, if we recall Esping-Andersen's definition of labour decommodification (cf. Chapter 2) and deploy it in its general spirit – independence of individuals' opportunities from the market nexus – we may conclude that, while they aim at placing the individual *into* the labour market (i.e. at putting her into a position in which she sells her labour force) and are, in that sense commodifying arrangements, some types of active labour market policies (which we will identify in this subsection) correspond, nonetheless, to non-mercantile interventions in the market nexus that have the result of shaping the process of formation of the value of human labour. In this sense, in a context of retrenchment of institutions which provide alternative to *actually* being in the labour market, these measures can thus be said to be *second-best decommodifying arrangements*.

As Bonoli (2010: 10) explains "active labour market policies have distinct origins and take different shapes". In LMEs' sense, "labour activation" is interpreted and undertaken in the form of reinforcing negative incentives in order to push people into the labour market (that is, limiting benefits and/or time of recipiency, restrict eligibility requirements, etc.) – that is, the Speenhamland- removal strategy. Contrastively, as they were developed in Scandinavian countries during the 1950s, ALM programmes were supportive tools of universalist social-democrat welfare regimes. Investment in human capital through vocational training was consistent with the full employment levels required for the sustainability of the system, as well as with highly and up-to-date skilled labour force necessary to high-value-added production. In this sense, the author builds a typology of ALMPs which covers the extensive

[225] "In the two decades following Speenhamland its [the working class'] endeavours were focused on the stopping of the free use of machinery (…) by the enforcement of the apprenticeship clauses of the Statute of Artificers (…)" (Polanyi, 2001[1944]: 175)

range of policy instruments that fall under the generic label of labour market activation; it comprises four categories: (1) incentive reinforcement (focus on stressing the positive and negative financial incentives for people on benefits accepting work); (2) employment assistance (aim at facilitating the placing of individuals in the labour market); (3) human capital investment (improve the individuals' skills, enhancing their chances of securing a job); and (4) occupation (measures aiming at direct job creation).

Apart from type 1 measures, policies contained in the other three categories correspond to interventions (politically determined interventions) in the labour market that shape the individuals' opportunities in it; either by increasing the number of jobs available, or by improving the individuals' skills, these measures constitute active elements that intervene in the market mechanism in order to produce a better outcome in the formation of the value of the individuals' labour. Considering this criterion – *the extent to which individuals' opportunities in the market place are improved by ALMPs* – a decommodification scale has thus been added to Bonoli's typology, in which category 1 contains the least decommodifying policy measures and category 4 comprises the solutions which are most improving of the individuals' opportunities in the labour market[226]. Deploying this analytical grid, analysis of labour market policies since the 1990s reveal us the following trends[227]:

Consistently with the liberalising profile of the reforms enacted in the realm of social policy, the *Dutch* activation strategies fall under category 1. Tighter conditions of non-employment assistance (several reforms tightening eligibility conditions and reducing duration of protection[228]) have been stressed by tax schemes aimed at making work attractive, both for the job seeker[229] and for the employer[230]. A mild shift towards the use of some more decommodifying ALMPs has occurred in the 2000s and has focused only upon improving the opportunities of disadvantaged groups that could be most excluded by a flexible labour market and left unprotected by a retrenching welfare state[231].

In *Italy*, where the non-employment protection benefits have remained a rather strongly decommodifying structure, the shift towards labour market activation has not been as expressive as in other countries (only some type 2 and 3 measures in the late 2000s[232]).

[226] This typology can be consulted with greater detail in Appendix G, table 1.
[227] National profiles in terms of ALMP can be consulted with greater detail in Appendix G, Table 2
[228] Of which it is worth mentioning the 2006 Reform of Unemployment Insurance System.
[229] The 2001 Income Tax Act introduced fiscal incentives for employees.
[230] 1997 "SPAK" program.
[231] 1998 Act on the reintegration of disabled (REA); 2000 ID-Jobs Program for long-term unemployed; 2004 Modernisation of the Sheltered Work Act (WSW) (subsidised jobs for disabled people).
[232] ALMPs applied in 2007 created three special funds destined to support youth and female entrepreneurship projects, and enacted training schemes for disadvantaged workers in the Emilia Romagne Region.

Austria has made a relatively moderate use of ALMPs as a compensating decommodification strategy. As in Spain, turn to ALMP in Austria has come in the 2000s as a strategy to put a halt on non-employment protection retrenchment, and has mainly taken the shape of incentives given to employers to create employment and, more specifically, to hire people on benefits[233]. If we recall that, with regard to employment protection legislation, Austria has kept stable its high standards of labour protection, then this focus of activation measures upon financial incentives (specially the bonus-malus system, lowering the burden of social security contributions) and subsidised job positions is understandable. In *Spain*, whose profile in the approach to non-employment protection had been similar to the Austrian (initially retrenching but, from the 2000s onwards, replacing retrenchment for activation policies), but where, on the other hand, employment legislation had been made more flexible, labour market policies have focused mostly upon improving the position of disadvantaged groups (such as people with disabilities) that could suffer the most in a flexible labour market[234], and also upon creating entrepreneurship- friendly conditions for the creation of self-employment by those suffering by looser dismissal rules[235].

As referred, both *Sweden* and *Germany* have, since the 2000s, turned to decommodifying ALMPs (type 2, 3 and 4)[236] in reaction to the declining in the labour-decommodification capacity of their non-employment protection institutions. It is interesting to note, however, that, while strongly neocorporatist Sweden has (like Austria) been able to prevent severe

[233] In 2000, a "Bonus-Malus System" (type 1 ALMP) has been reshaped, in order to reinforce incentives for hiring and/or keeping older workers in employment. The "Bonus-Malus System" is a two-pronged strategy of financial incentives directed at employers; it comprises reduced (or elimination of) social security contributions obligations for employers hiring an unemployed person over 50, and a penalty (included in the calculation of severance payment) in case of dismissal of an employee who is over 50. Also, in 1998 subsidised wages for employers hiring people receiving benefits were introduced, and, in 2005 subsidised apprenticeship positions were created (type 2 measures).

[234] In 1997 and 2004 ALMPs were introduced to improve employability of people with disabilities.

[235] ALMPs implemented in 2005 aimed at promoting self-employment by increasing the amount of unemployment benefit if the beneficiary chose to receive benefits in a lump-sum in order to create a business project. Also 2006 'Business Seedbed' Program (Semillero de Empresas) was enacted with the purpose of supporting youth entrepreneurship.

[236] Relevant examples in Germany have been the 2004 New Special Programme for the provision of Initial Vocational Training, the Start-up Grants introduced in 2006, the 2006 '50 plus Initiative' (type 2 ALMPs aiming at facilitating employment of youth, recently unemployed and older workers respectively), and also the Job-AQUTIV-Gesetz Act (2002) and the "LM –Work for the long-term unemployed" Programme (2003) (arrangements combining type 3 measures concerning vocational training and type 4 direct job creation). In Sweden, most important cases of decommodifying ALMPs have been the 2005 Plusjobb Program (combining type 2 and 4 measures), the 2005 'Workplace Introduction for Immigrants' programme (deploying type 2 and 3 policy instruments), and 2007 'Job and Development Guarantee' programme (involving both subsidised jobs and vocational training schemes).

loosening of employment protection legislation, use of ALMPs has not been as expressive as it has been in Germany, where the labour market has been made far more flexible[237].

Finally, the *French* profile is consistent with the reforming patterns in the realms of both employment legislation and non-employment benefits institutions. While labour's exposure to the market has *both* remained rather limited (by protective employment legislation) and decommodified (by protective non-employment protection) until the early 2000s, the liberalising drift that has occurred since then (liberalising employment protection and retrenching market-sheltering entitlements) have been met by a high volume of type 2, 3 and 4 ALMPs. However, it must be noted that, in the French case, the particular forms that these measures took (mostly new types of subsidised temporary contracts[238]) have been consistent and reinforcing of the flexibilizing trends, rather than contrary to and reembedding of them, which reduces the extent to which French strategic resource to ALMPs can be read as protective countermovements.

5.2. Reembeddedness at European level

The last section confirmed our polanyian hypothesis that societies react to protect themselves from the disruptive impacts of market disembeddedness upon collectively determined institutional structures. Despite they do qualify as reembedding countermovements, the identified national strategies have in common an asymmetry in power between them and the disembedded market they attempt at reembed. Both organised decentralisation (in the field of industrial relations) and labour market policies (in the field of welfare state) are, from a polanyian labour decommodification point of view, "second-best" to – respectively - pulling back completely decentralisation and defections trends into the existing national system of industrial relations, and re-regulating the economy so that the labour decommodifying function of welfare institutions remained untouched by market pressures.

This asymmetry in power and scope of national reembedding responses *vis-à-vis* market disembedding pressures is consistent with our asymmetric integration hypothesis: while the market has been uprooted from national structures and expanded to a European-wide scale, market-embedding institutions have remained at national level; while market integration can be enforced by means of supranational-hierarchical governance, limitations intrinsic to

[237] Cf. Appendix G, table 2.

[238] Such as the 'Contrat jeune en entreprise' (subsidised apprenticeship positions in companies for youth, in 2004 and 2005), the 'contrat d'insertion dans la vie sociale' (contract of integration in social life, introduced in 2005) and the 2004 'employment starter contracts' (contrats d'activité, CDA).

intergovernmental negotiations concerning market (political) re-regulation at European level have prevented market-embedding institutions from having the same European scope and binding strength. In short, to the extent that a Single Market exists and the economy has been uprooted from domestic institutions by means of economic integration, either market reembeddedness remains of a second-best nature (and subject to supranational enforcement of market liberties[239]), or institutional solutions are enacted at European level that can match the power and scope of European economic integration.

In this context, we now turn to developments at European level that can be read as embrionary forms of European structures for the reembeddedness of the integrated economy. However, as it was the case with national-level reactions, and consistently with Polanyi's distinction between the natures of the first and second movements, we will see that here too signs of reembedding countermovements correspond more to a localized and defensive character than to intentional and articulated efforts to advance some unified project[240].

5.2.1. In the field of industrial relations

As we have seen in chapter 4, the freedom of establishment principle provided sufficient scope for companies to circumvent the company law of the country where their activity was carried out by simply incorporating under a foreign jurisdiction. Case law from the ECJ provided evidence of how the freedom of establishment principle configured windows of institutional arbitrage that business could explore in order to avoid unwanted regulations from national legal provisions. While the main motive for incorporating under foreign company law was avoidance of national requirements of minimum subscribed capital, this strategy contained, however, important consequences for industrial relations (specially at firm level), since workers' representation rights were provisioned by national company law and Member States' provisions regarding workers' participation at firms' decision making diverged widely. This disruptive impact was further stressed by the completion of the Single Market for corporate control by means of the Directive on Takeover Bids.

Concerning the disembeddedness of market forces *vis-à-vis* coordinated industrial relations, two signs can be identified at European level that can be read under the polanyian label of

[239] Scharpf (2010) points out how some mixed funded solutions for welfare provision (such as the publicly subsidized charities in Germany) may be exposed to ECJ enforcement of EU competition policy, triggered by private claims contesting those arrangements on grounds of illegal state-aid.

[240] Such as the project of a Social Europe, which, within the polanyian framework, would be the equivalent to the project of a Single Market underpinning the first movement and giving its unity

reembedding countermovement: (1) the 2009 recast of the European Works Council Directive; and (2) the Employee Involvement Directive, supplementing the statute of the European Company (*Societas Europaea*, SE).

(1) An enhanced European Works Council Directive

Since 1994, employees in large multinational companies[241] have had – as referred in chapter 4 – information and consultation rights protected under a communitarian provision - the European Works Council Directive[242] - which requests those firms to enact a European Works Council (EWC). The EWC sets a framework in which the representatives of workers from the EU Member States where the company operates (usually representatives from national trade unions) meet with management, receive information and express their views on decision making affecting the workers. The statute of the EWC, however, has long been criticized by the European Trade Union Confederation (ETUC) for several limitations.

The first concerns the threshold number of employees for setting a EWC in a company. As Reiner Hoffmann, Deputy General Secretary of the ETUC, put it, since "the right to information and consultation laid down in article 27 of the European Union's Charter of fundamental rights has the character of a fundamental right [,] for the ETUC the basic question arises, whether employees can be excluded from the application of the EWC directive on the sole ground of the size of the enterprise"[243].

The second appointed limitation concerns the lack of a proper framework for sanctioning firms that do not comply with information and consultation obligations[244]. Non-compliance, however, has been related to another important limitation which, until 2009 recast of the EWC directive, had been appointed by ETUC: the definitions of information and consultation. The 2002 Directive on information and consultation rights of employees (2002/14/EC), as well as the EID, had clarified provisions on these matters; the original 1994 EWC directive[245], however, still contained very vague and easy to circumvent provisions.

Finally, the ETUC had also been long concerned with the lack of provisions concerning a proper framework for providing EWC members with adequate training required to perform

[241] Undertakings or groups of undertakings employing 1000 or more workers, and at least 150 employees in each of two or more EU and/or European Economic Area Member States 1000.
[242] Directive 94/45/EC
[243] Interview given to ETUC Newsletter Nº 26, April 2008, p.6, available at http://www.etuc.org/IMG/pdf_Newsletter_2008_04_EN.pdf
[244] ETUC finds this a question of major concern since the cases of the restructuring processes of Renault (in Belgium) and Nokia (in Finland), which were carried out without complying with the consultation provision.
[245] Directive 94/45/EC

representation of workers' interests on a transnational scale (such as training on languages and economic, financial and social affairs).

After ten years of lobbying for the revision of the EWC directive in order to tackle these limitations, ETUC welcomed[246] the 2009 recast directive[247], which will enter in force by 2012. Changes introduced by the recast EWC directive have been considered by the ETUC as strengthening the institutional power of EWCs. Namely, the directive facilitates the creation of new EWCs, by setting up a special negotiating body (SNB) to represent the employees in the negotiations with the management for the creation of an EWC[248]. Also, the definitions of information and consultation obligations were clarified[249], in harmonisation with provisions already contained in the directives on information and consultation rights of employees (2002/14/EC) and on employee involvement (2001/86/EC, cf. next subsection). Finally, it ensures that the workers' representatives are provided with proper training[250].

(2) The Employee Involvement Directive

More promising than the EWC directive, however, is the statute of a European Company, and its associated provisions on workers' participation rights. As from 2004, it is possible for companies to operate and engage in merging activities across EU and EEA countries under a single European corporate regime, governed by Community law directly applicable in all Member States rather than by national law. In part, the *Societas Europaea* (SE)[251] can be seen as a European level answer to the deregulatory regime competition triggered by the freedom of establishment and the completion of the single market for capital under the DTB.

The potentially reembedding character of a SE lies in its focus upon cross-border character[252]: while facilitating cross-border mergers and activity, the SE frames it. Although the SE is not registered at a EU level authority, but rather on the national register of the EU Member State

[246] ETUC Press Release of 27/04/2009, '*ETUC welcomes Council decision to strengthen European Works Councils'*, available at http://www.etuc.org/a/6102

[247] Directive 2009/38/EC of the European Parliament and of the Council, of 6 May 2009, on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. Recasts Directive 94/45/EC.

[248] *Ibid*. Art. 5.

[249] *Ibid*. Art. 2 (f) and g)).

[250] *Ibid*. Art. 10(4), stating that "(…) the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages."

[251] Established under Council Regulation 2157/2001.

[252] There are four ways of constituting a SE: by merger, by constitution of a holding company or joint venture between companies from different Member States, creation of a joint subsidiary or by changing the statute of a public limited company previously formed under national law.

where the company wishes to register its legal seat[253], there are important harmonising features about it that are worth mentioning as attempts at reembedding the disembedded market for corporate control. Besides setting a harmonised minimum subscribed capital[254], the statute of the SE is supplemented by the Employee Involvement Directive (EID) [255].

By means of the EID, negotiations for settling arrangements for employee involvement are mandatory for SE. That is, in the process of constitution of a SE, "the management or administrative organs of the participating companies (…) shall as soon as possible (…) take the necessary steps (…) to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE"[256]. Such "necessary steps" consist of the creation of "a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments"[257]. The directive also provides that among these employees' representatives in charge of negotiating with management the arrangements for workers' participation may be included representatives of trade unions of concerned Member States[258], and that this negotiating body may be assisted by representatives of Community level trade union organisations[259].

However, the most relevant element of reembeddedness contained in the EID is the improved framework for the protection of employees' rights of participation at administrative or supervisory body. If an agreement between the negotiating body and the management cannot be reached, the directive stipulates statutory standard rules, which include standard rules on participation. These provide that, if any of the participating companies was governed by participation rules before registration of the SE, then the employees of the SE and its subsidiaries shall have the right to elect members of the administrative or supervisory body[260]. The promising character of the SE is, thus, that by means of the EID, the notion of 'workers' involvement', that is to be protected in case of a merger or in case of a company becoming

[253] Directive 2001/86/EC, Art. 6. Which means that, therefore, some potentially deregulatory impacts associated with this are not altogether resolved.
[254] Council Regulation 2157/2001, Art. 4(2), establishes a minimum subscribed capital of 120 000€, which is, however, subject to the provision that where a Member State requires higher levels of subscribed capital, SE registered in that Member State must abide by that requirement. The minimum subscribed capital requirements have been, as we have seen, one important reason for companies to incorporate under foreign legislations.
[255] Council Directive 2001/86/EC of 8 October 2001, supplementing the Statute for a European company with regard to the involvement of employees.
[256] *Ibid*. Art. 3(1)
[257] *Ibid*. Art. 3(2)
[258] *Ibid*. Art 3(2b), §2
[259] *Ibid*. Art. 5
[260] *Ibid*. Part 3(b), "(…) the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE."

subsidiary to other that is registered in other Member State, is extended from the narrow level field that was shaped by the Directive on information and consultation rights[261].

5.2.2. Concerning the Welfare State

Asymmetric integration configures important elements that challenge market-sheltering institutional arrangements: on the one hand, labour costs competition puts downward pressures upon employment- related contributions; on the other hand, tax competition - and tax reduction- biased judiciary harmonisation by ECJ case law - constrain governments' capacity of raising revenue in order to finance publicly (or partially publicly) funded arrangements. To EMU Member States, publicly funded solutions are even further constrained by the limits inflicted by the Stability and Growth Pact. While European asymmetric integration enacts pressures for welfare state retrenchment, it also confines national reembedding countermovements to second-best decommodifying strategies.

If reembeddedness at the national level of a European-wide economy and market cannot be fully succeeded, which signs, if any, can be identified at European level that may indicate a reembeddeding countermovement? First, (1) some signs increased flexibility can be identified in supranational governance. Secondly, (2) some elements introduced by 2009 *Lisbon Treaty* may contribute to untie the knot of the joint decision trap.

(1) Protective signs in supranational governance?

We will here identify some recent situations in which the strictness in supranational enforcement of Treaty provisions has been alleviated in order to protect domestic institutions.

The *first* sign is identified in ECJ tax jurisprudence. As Genschel and Jachtenfuchs (2011) have noted, in a context in which a proper communitarian framework for direct taxation is prevented by the limitations intrinsic to intergovernmental negotiations, tax case law frequently result in a situation in which either there is no communitarian provisions (and then national legislation are exposed, by the supremacy doctrine, to the economic liberties contained in Treaty provisions) or existing communitarian provisions are so vague (in order to secure the high consensus requirements for approval at the Council) that, by means of its interpretations, the ECJ often ends up legislating *in lieu* of the Council. In either way, ECJ

[261] Directive 2002/14/EC, establishing a general framework for informing and consulting employees in the European Community.

performs a pathbreaking role in European tax legislation by means of judiciary harmonisation. This judiciary harmonisation, however, contains, as we have seen, an intrinsic tax-reduction bias, as the Court's judiciary activism (Scharpf, 2006; Münch, 2010) is limited to the cases which are brought before it by means of the preliminary reference procedure, and these, in turn, correspond to claims of private litigants who expect to benefit from incompatibilities between community law and (costly) national tax laws (Genschel *et al*., 2009).

In their analysis of ECJ tax jurisprudence since 1987, Genschel *et al*. (2009) conclude that, while until 2003 Member States have lost more than 80% of corporate tax cases, a slight inflexion of this trend can be identified since 2003, with some less strict interpretations and enforcement of market liberties by the ECJ against national tax institutions.

In the *Marks & Spencer* (C-446/03) case, dealing with the case of a retail sales group claiming for tax relief from British tax authorities for losses incurred by its Belgian, German and French subsidiaries, the Court did not endorse the litigant's claims that United Kingdom legislation on group tax relief[262] was incompatible with Treaty provisions on the freedom of establishment. While the ECJ did find British legislation to constitute a restriction on freedom of establishment, as it configured different tax treatment between losses incurred by a resident subsidiary and losses incurred by a non-resident one, such restriction was justified by overriding reasons of public interest, such as limiting the risk of tax avoidance[263]. Given the impact of tax competition and deregulation upon revenue raising by Member States, as well as upon the progressivity and, thus, redistributive capacity of national tax systems (cf. chapter 3; Ganghof and Genschel, 2007), ECJ rulings on cases such as the *Marks & Spencer*[264], may be read as the acknowledgement (at least implicit) that "national tax systems may not only be something to be pried open but also as something to be protected" (Genschel *et al*., 2008).

The *second* sign concerns the strictness associated with the governance of EMU, by means of the Stability and Growth Pact. As we have seen in chapter 4, the monetarist paradigm which underlies the monetary policy of EMU is fundamentally inconsistent with publicly (or partially) funded welfare institutions, which perform a countercyclical role and translate into high responsiveness of public expenditure to macroeconomic shocks. The convergence criteria of the SGP constrain the fiscal dynamics associated with publicly funded institutions,

[262] The Income and Corporation Taxes Act 1988 (ICTA), allowing resident companies in a group to set off their profits and losses among themselves but preventing them from doing so with regard to losses incurred by subsidiaries with no establishment or activity in the United Kingdom.

[263] As within a group of companies, losses could be transferred to the companies established in the Member States with the highest rates of taxation, and, conversely, profits to companies established in Member States with lowest corporate tax rates, meaning that tax deduction on account of losses would be majored while taxation of profits would be reduced.

[264] Similar cases have been the *Oy AA* (C-241/05) and the *Lidl Belgium* (C-414/06) cases.

and, accordingly, all the organized market economies of our concern have breached the deficit criterion of 3% of GDP[265]. A strict enforcement of the SGP provisions, namely, of the so-called corrective arm, would have caused the Commission to trigger excessive deficits procedures (EDP)[266] against the non-complying countries.

In 2005, however, under the pressure of France and Germany, the Ecofin Council adopted an amendment to the regulation governing the EDP[267], which relaxed the provisions under which a budget deficit would be considered excessive. In the revised SGP, the ceilings for budget deficit (3% of GDP) and for public debt (60% of GDP) would be maintained, but the criteria for judging on whether a government's budget deficit would justify an EDP would now attend to new, more comprehensive parameters, such as the behaviour of the cyclically adjusted budget[268] or the enactment of reforms requiring public funding[269]. These changes softened the incompatibility between the governing principle of EMU (the convergence criteria) and domestic institutions underpinned by the opposite (Keynesian) rationale of countercyclicality.

What is interesting to note in this particular development (and what made us consider it as a protective countermovement) is not so much the amount of flexibility which has been added, but rather the fact that, formally, it corresponded to a political process (of intergovernmental negotiations at Council level) of reaction against constraints over domestic economies.[270]

(2) The Lisbon Treaty and asymmetric integration

In 2009 the Lisbon Treaty came into force. While this is not the place to develop an extended analysis of the overall changes that have been brought about by it (and while it is certainly not being argued that the Lisbon Treaty in itself qualifies as a reembedding countermovement), two features deserve to be considered as potentially contributing for a reembedding shift in European governance.

The first one is the new Art. 14 TEU, which states that "[t]he European Parliament shall, jointly with the Council, exercise legislative and budgetary functions". In itself,

[265] Cf. Chapter 4

[266] The Excessive Deficit Procedure, governed by Council Regulation 1467/97 EC (amended in 2005), enacts a system of warnings and financial sanctions to be applied to Eurozone Member States which do not comply with the SGP criteria.

[267] Council Regulation 1056/2005.

[268] *Ibid*. Art. 1(2)

[269] Particularly, the revision explicitly provided that, in the framework for considering a budget deficit liable to the EDP, consideration would have to be given to the implementation of reforms in the pensions systems that might entail a mandatory funded pillar. *Ibid*. Art. 1(5).

[270] It must be noted, however, that an equivalent but opposite development has taken place recently with 2011 Europlus Pact, hardening sanctions over non-compliance with convergence criteria.

decentralization of legislative competencies from intergovernmental negotiations at the Council onto the European Parliament does not, of course, mean that market-embedding institutions at European level will from now on be built. It may, however, prove a decisive contribute to overcome the limitations of intergovernmental negotiations.

Recalling chapter 3, high heterogeneity among Member States resulted in either suboptimal policy outcomes (agreements on a least common denominator basis) or preference for non-binding, soft law mechanisms. This, in turn, configured a situation in which either there was no community provisions concerning political shaping of the Single Market, or existing provisions were much too vague (in order to secure the consensus requirements for approval at the Council). In either way, an ECJ ruling would be binding for all Member States, and reversal at the Council was dependent on the same consensus requirements which prevented approval of a common framework in the first place. Legislative competencies concentrated at the level of intergovernmental negotiations at the Council, with Member States as veto players, aimed at preserving the subsidiarity and national sovereignty. This, however, ended up configuring a 'joint-decision trap' (Scharpf, 1997, 2001, 2006), in which, paradoxically, domestic non-market institutions were far more exposed to negative integration.

Under the asymmetric integration hypothesis (as our political economy theory on market disembeddedness in European political economies), the potential for market-reembeddedness contained in Art. 14, thus, lies in possible solutions it may offer to the riddle of the joint decision trap. But even if changes in European multilevel governance brought about under Art. 14 do not facilitate directly the advance of European- level institutions for reembedding the Single Market, the Lisbon Treaty contains a second interesting feature: the Protocol on Services of General Interest[271]. The two articles which compose this protocol enact two interesting provisions.

The first one (Art. 1) acknowledges the diversity between national arrangements for services of general economic interest as well as the differences in the needs and preferences of users. By saying that these needs and preferences "may result from different geographical, social or cultural situations", it recognizes the embedded nature of institutional arrangements; accordingly - the text continues - national, regional and local authorities are deemed to play a crucial role and their discretion in the "provisioning, commissioning and organisation" of those services considered of general economic interest is reinforced. That these authorities are considered autonomous with regard to the organisation of the provision of these services is

[271] COM(2007) 725 final, on a 'Protocol on Services of General Interest', published in the Official Journal of the European Union, C 306/158 of 17.12.2007.

justified on grounds of the right of these arrangements to be "as closely as possible to the needs of the users", and in order "to ensure a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights". While this was already tacitly contained in the principle of subsidiarity, we have seen how often the right to determine the arrangements of domestic institutions has in practice been framed by the requirement of compatibility with market freedoms[272].

In the history of ECJ definition of the extent to which a Member State is allowed, under Art. 36 TFEU[273], to apply regulations and/or institutional arrangements which are capable of hindering intra-community economic liberties[274], the provision requesting such arrangements to comply with a proportionality test[275] deployed by the ECJ has meant in practice that non-market arrangements have been vulnerable to the market provisions of the Treaty.

The Protocol on Services of General Interest, however, endorses Member States with a powerful weapon against this outcome of supranational enforcement of negative market integration: Article 2 explicitly states that "[t]he provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest. The inclusion of such a provision into the *acquis communautaire* may thus prove not only a useful legal instrument available to Member States for defending non-market spheres of their economies from supranational enforcement of market liberties, but also (and more importantly), considering the pathbreaking role of ECJ case law for legislative activity, and given enhanced legislative competencies of the European Parliament, an important institutional knot gearing a bottom-up push for the correction of the asymmetry between market-expanding and market-embedding European integration.

However, in this case too the potential scope for reembeddedness is not free of limitations. While liberty to organize services of general interest is stressed by binding strength of Treaty provision, we have seen before how the ECJ frequently subordinates non-market Community

[272] Remember the *Laval* (C-341/05) and *Viking* (C-438/05) cases, which signalled that, although National States were autonomous with regard to the arrangements of their industrial relations, and despite the right to strike was considered a fundamental EU right, such rights would, however, be subject to the condition that they did not clash with the economic liberties of the Single Market.

[273] Recall that Art. 36 TFEU allows Member States to maintain institutional structures resulting in restrictions to the free movement and free trade principle on grounds of "public morality, public order or public security; the protection of health and life of humans, animals and plants (...)" (cf. Chapter 3).

[274] Which, following the *Dassonville* (C-8/74) formula, is contrary to Art. 28, prohibiting measures that may result in restriction of the volume of cross-border trade.

[275] Introduced with the *Cassis de Dijon* decision (C-120/78). The proportionality rule is the principle according to which the national laws under judgement will be considered allowed under Treaty provisions, even if they result in restrictions to the free movement principles, if the motives of public morality, public order or public security, the protection of health and life of humans, animals and plants, cannot be satisfactorily safeguarded by any other means.

law[276] to market liberties. Moreover, in EMU countries, this acknowledged liberty remains nevertheless subject to SGP requisites of fiscal discipline.

Summary

National patterns of change are consistent with the market disembedding stimulus enacted by European asymmetric integration. Particularly, trends of decentralisation in collective bargaining, and retrenchment in market-sheltering entitlements (in a context of looser of employment protection), are identifiable in all political economies under study. These trends have triggered attempts at reembeddedness: in industrial relations, either unions have been relying upon organised decentralisation strategies, or governments have been stepping in as facilitating actors, so as to maintain bargaining coverage; in the field of the welfare state, in order to cushion labour commodifying trends, national strategies have focused upon enhancing market-sheltering provided to groups that would be most vulnerable in a more flexible labour market, and/or policy intervention in the labour market aimed at improving individuals' opportunities. Despite qualifying as reembedding countermovements, these strategies have in common an asymmetry in power between them and the market they attempt at reembed. To the extent that a Single Market and economy exist, either market reembeddedness remains of a second-best nature, or institutional solutions are enacted at European level. Although at European level some reembedding countermovements can be identified, these are limited in scope, owing both to prevalent limitations at intergovernmental negotiations and to stringencies of EMU criteria; however, the strengthening of European Parliament's legislative competencies is seen as a promising sign to solve the 'joint decision trap' that has traditionally blocked market-embedding integration.

[276] Such as the right to strike; remember *Viking* and *Laval* cases.

Concluding Remarks

A research agenda for an Europeanist second movement

"The discarding of the market utopia brings us face to face with the reality of society. (…) The discovery of society is thus either the end or the rebirth of freedom"

Karl Polanyi, (2001[1944]: 267-8), *The Great Transformation*

After completing the five steps which have structured our reading of the European project in terms of the polanyian hypothesis of the Double Movement, we are now ready to conclude by summoning to the debate Polanyi's deepest concerns: human freedom and democracy.

In all the undertaken analytical steps, we have emphasized the distinction between the two movements. That the second movement takes distinct and disarticulated forms (such as a strike by powerful unions in Sweden, or Luddism in nineteenth century England, or protective legislation demanded by French employers after 1990 Rush Portuguesa ECJ ruling, or a training program destined at improving human capital in some disfavoured region in South Italy) does not mean they have nothing in common. In fact, the nature of protective countermovements is a matter of utmost importance.

They correspond to what Polanyi calls the discovery of society. "The liberal creed" and "the discovery of society"[277] are the two faces of the same coin. The discovery that society corresponds to "an instituted process" takes place in the moment when disruption by market exposure is felt: it is at the historical moment of social degradation in the decade after the removal of Speenhamland that the need arises for legislation and social insurance protecting the individual from the "endeared" competitive labour market; it is when Latvian workers come to Vaxholm earning two times less than the average wage paid to workers protected by collective agreements that limits upon the envisaged Single market for services are demanded. But the discovery of society, that is, that it does not exist in a vacuum but, rather, there are limits of exposure to the market nexus that it cannot cross without risking disagreggation, has historically triggered distinct answers. As Polanyi summarizes, one answer has been the struggles for legislation, social protection, parliamentary democracy and universal suffrage (this was the Social Democrat answer); this was, too, the rationale underpinning the protective countermovements we have studied. However, other answers judged individual freedom a fair price to pay for the protection of the collective against market openness (this underpinned Fascist and Communist dictatorships).

[277] 2001[1944], cf. chapters 12 and 10, respectively.

Building on promises of protecting national workers, their jobs and their social security, as well as their cultural and religious values, against market openness, radical right, anti-Europeanist and anti-immigration parties have been gaining popularity and political relevance. In 2007, extreme right groups in the European Parliament have formed the first far-right faction in the European Parliament in ten years[278]. Also, this year, in the midst of the Eurocrisis, a mushrooming of these signs can also be identified, such as the record results obtained by radical right, anti-Europeanist French National Front in France local elections of March 2011[279], or the results obtained by Finland extreme right, anti-immigration party - True Finns - on account of popularity gained by campaigning against EU bail-outs of countries most affected by the sovereign debt crisis[280].

Recalling Block's (2001) metaphor of market disembeddedness as the stretching of an elastic band, we conclude by saying that, if market disembeddedness brought about by European structure of asymmetric integration is reaching its stretching limits – and we believe it is – protective countermovements will take place anyhow; either it will be resolved by a dramatic reembeddedness back into national structures, involving a disagreggation of European integration (this would correspond to the rupture of the elastic band), or the band gains increased flexibility in its structure in order to accommodate tension caused by the market.

At a time when the debate over the European Project seems to polarize around either sovereignist Euroscepticism or 'muscled' Federalism[281], we hope this dissertation may contribute to the debate on the configuration of a democratic Europe. Some leads have been laid: (1) the urgency to discard the utopia of the market as single, sufficient and adequate mechanism for social coordination, and, instead, to discover society and the economy as "instituted processes" which cannot be dismantled without risks; (2) the urgency to devise a solution for the joint-decision dilemma, that does not, however, entail neither loss of popular accountability, neither the insufficient Europaralysis, or mild preference for least denominator agreements or non-binding, soft law mechanisms. The joint decision trap may not be easy to solve, but the answers that the European project will find in the near future to the problem of asymmetric integration will surely be crucial for its survival.

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[278] *Der Spiegel International*, 15.01.2007, 'Far-Right Parties Form New Group in European Parliament', http://www.spiegel.de/international/0,1518,459793,00.html

[279] *The Telegraph*, 21.03.2011, 'French National Front makes "historic" gains in local elections', http://www.telegraph.co.uk/news/worldnews/europe/france/8395287/French-National-Front-makes-historic-gains-in-local-elections.html

[280] *BBC News*, 15.04.2011, 'True Finns' nationalism colours Finland election', http://www.bbc.co.uk/news/world-europe-13091920

[281] With the recently approved Europlus Pact reinforcing supranational competencies of economic governance.

References

ALTER, K. J. (1996). The European Court's Political Power, *West European Politics*, Vol. 19, No. 3, pp. 458 - 87

AMABLE, B., Azizi, K. (2011). Varieties of Capitalism and Varieties of Macroeconomic Policy: are some economies more pro-cyclical than others?, *MPIfG Discussion Paper 11/6*, Max Planck Institute for the Study of Societies

BLOCK, F. (2001), Introduction, In: Polanyi, K. (2001) [1st. Pub. 1944]. *The Great Transformation The Political and Economic Origins of Our Time*, Beacon Press, pp. xviii-xxxviii

BIELER, A. (2009). Globalization and Regional Integration: The Possibilities and Problems for Trade Unions to Resist Neoliberal Restructuring in Europe, In: Van Apeldoorn, B., Drahokoupil, J., Horn. L. (ed.) *Contradictions and Limits of Neoliberal European Governance From Lisbon to Lisbon*, Palgrave Macmillan, pp. 232 - 249

BOHLE (2009). Race to the Bottom? Transnational Companies and Reinforced Competition in the Enlarged European Union, In: Van Apeldoorn, B., Drahokoupil, J., Horn. L. (ed.) *Contradictions and Limits of Neoliberal European Governance From Lisbon to Lisbon*, Palgrave Macmillan, pp. 163 - 186

BONOLI, G. (2010). The Political Economy of Active Labour Market Policy, *Working Papers on the Reconciliation of Work and Welfare in Europe*, RECWOWE Publication, Dissemination and Dialogue Centre, Edinburgh

BÖRSCH, A. (2007). Institutional Variation and Coordination Patterns in CMEs: Swiss and German Corporate Governance in Comparison, In: Hancké, B., et al. (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford: Oxford University Press, pp. 173 - 194

CALLAGHAN, H., Höpner, M. (2005), European Integration and the Clash of Capitalisms: Political Cleavages over Takeover Liberalization, *Comparative European Politics*, Volume 3, Number 3, September 2005 , pp. 307-332

CROUCH, C., et al. (2005): Dialogue on Institutional Complementarity and Political Economy, *Socio-Economic Review* 3(2), 359–382

DEEG, R., Jackson, G. (2007). Towards a More Dynamic Theory of Capitalist Variety. *Socio-Economic Review*, 5(1), 149–179

DE GIORGI, G. et al. (2008). The Social Reforms Database fRDB, Fondazione Rodolfo DeBenedetti

EBBINGHAUS, B., Hassel, A. (1999) Striking Deals: Concertation in the Reform of Continental European Welfare States, *MPIfG Discussion Paper 99/3*, Max Planck Institute for the Study of Societies

ESPING-ANDERSEN, G. (1990) *The Three Worlds of Welfare Capitalism*, Polity Press

ESPING-ANDERSEN, G. (2000) Um Estado Providência para o Século XXI, Sociedades em envelhecimento, economias baseados no conhecimento e sustentabilidade dos Estados-providência europeus, In: Boyer, R. et al. (ed.) *Para Uma Europa da Inovação e do Conhecimento*, Celta Editora, pp. 79 - 123

ETUC (2004), 'ETUC welcomes the inception of the European Company Statute', available from: http://www.etuc.org/a/402

ETUC (2010), *On the Offensive for More and Stronger European Works Councils The New European Works Council Directive ('Recast')*, available from: http://www.etuc.org/IMG/pdf_CES-Depliant_The_New_Recast_Directive_def.pdf

European Commission (2004). 'Delivering Lisbon: Reforms for the Enlarged Union', Report from the Commission to the Spring European Council, 20 February, COM 29 final/2

European Commission (2007). 'Protocol on Services of General Interest' COM 725 final, *Official Journal of the European Union*, C 306/158 of 17.12.2007

European Commission (Directorate-General for Economic and Financial Affairs), The Labour Market Reforms (LABREF) Database, available from: http://ec.europa.eu/economy_finance/indicators/economic_reforms/labref/

European Council (2000). 'Presidency Conclusions: Lisbon European Council 23 and 25 March 2000', DOC/008, 24 March

GANGHOF, S., Genschel, P. (2007). Taxation and Democracy in the EU, *MPIfG Discussion Paper 07/2*, Max Planck Institute for the Study of Societies

GENSCHEL, P., Jachtenfuchs, M. (2011). How the European Union constrains the state: Multilevel governance of taxation, *European Journal of Political Research*, 50: 293–314

GENSCHEL, P., Kemmerling, A., Seils, E. (2008). Speeding up, down the hill: how the EU shapes corporate tax competition in the single market, *TranState Working Papers No. 78*

GIROUARD, N., André, C. (2005). Measuring Cyclically-Adjusted Budget Balances For OECD Countries, *Working Paper No. 434*, OECD Economics Department

GOYER, M. (2007). Capital Mobility, Varieties of Institutional Investors, and the Transforming Stability of Corporate Governance in France and Germany, In: Hancké, B., et al. (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford: Oxford University Press, pp. 195 - 219

GUILLÉN, A. (2008). Defrosting the Spanish Welfare State: the Weight of Conservative Components, Palier, B. (ed.) *A long Good Bye to Bismarck: The politics of Welfare Reforms in Continental Europe*, Amsterdam: Amsterdam University Press

HALL, P., Soskice, D. (2001). Introduction. In: Hall, P., Soskice, D. (eds.), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press, 1–68

HALL, P. (2007). The Evolution of Varieties of Capitalism in Europe. In: Hancké, B., et al. (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford: Oxford University Press, 39–85

HALL, P., Thelen, H. (2009). Institutional Change in Varieties of Capitalism, *Socio-economic Review* (2009), 7 (1): 7-34

HANCKÉ, B., Rhodes, M. (2007): Introduction: Beyond Varieties of Capitalism. In: Hancké, B., et al. (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford: Oxford University Press, 3–38

HANCKÉ, B., Herrmann, A. (2007). Wage Bargaining and Comparative Advantage in EMU, In: Hancké, B., et al. (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford: Oxford University Press, pp. 122 - 144

HÖPNER, M., Schäfer, A. (2007). A New Phase of European Integration: Organized Capitalisms in Post-Ricardian Europe, *MPIfG Discussion Paper 07 /4*, Max Planck Institute for the Study of Societies

HÖPNER, M., Schäfer, A. (2010). Polanyi in Brussels? Embeddedness and the Three Dimensions of European Economic Integration, *MPIfG Discussion Paper 10 /8*, Max Planck Institute for the Study of Societies

HORN, L. (2009). Organic Intellectual at Work? The High Level Group Company Law Experts in European Corporate Governance Regulation, In: Van Apeldoorn, B., Drahokoupil, J., Horn. L. (ed.) *Contradictions and Limits of Neoliberal European Governance From Lisbon to Lisbon*, Palgrave Macmillan, pp. 121 – 140

KEYNES, J. M. (2010) [1st. Pub. 1936]. *Teoria Geral do Emprego, do Juro e da Moeda*, Relógio D'Água

KRÖGER, S. (2009). The Open Method of Coordination: Underconceptualisation, Overdetermination, de-politization and beyond. In: Kröger, S. (ed.) What we have learnt: Advances, Pitfalls and remaining questions in OMC Research, European Integration Online Papers (EIoP), Special issue 1, Vol. 13, Art. 5

MARTINO, A. (2008). Milton Friedman and the Euro, *Cato Journal*, Vol. 28, No. 2, Spring/Summer 2008

MENZ, G. (2005). *Varieties of Capitalism and Europeanization: National Response Strategies to the Single European Market*, Oxford: Oxford University Press

MOLINA, O., Rhodes, M., (2007). The Political Economy of Adjustment in Mixed Market Economies: A Study of Spain and Italy, In: Hancké, B., et al. (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford: Oxford University Press, pp. 223 – 219

MORAVCSIK, A. (2002). In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union, *Journal of Common Market Studies*, Vol. 40. Number 4, pp. 603 - 24

MÜNCH, R. (2010). *European Governmentality The Liberal Drift of Multilevel Governance*, Routledge

PALIER, B. (2006). The Europeanisation of Welfare Reforms, *Paper* presented at the Inequality Summer Institute 2006, Kennedy School of Government, June 15-16, 2006

PEDERSINI, R., Pallini, M. (2010). Posted workers in the European Union, *Report for the European Industrial Relations Observatory (EIRO)*, available from: http://www.eurofound.europa.eu/eiro/studies/tn0908038s/tn0908038s_1.htm

POLANYI, K. (2001) [1st. Pub. 1944]. *The Great Transformation The Political and Economic Origins of Our Time*, Beacon Press

POLANYI, K. (1947), Our Obsolete Market Mentality, Commentary, 3, pp. 109-117

POLANYI, K. (1957). The Economy as Instituted Process in *The Sociology of Economic Life*, ed. Granovetter, M. and Swedberg, R., Boulder, CO: Westview Press

REIS, J. (2009). *Ensaios de Economia Impura*, Edições Almedina

ROBERTS, A. (2010). *The Logic of Discipline*, Oxford University Press

RODRIGUES, J. (2002). Endogenous Preferences and Embeddedness: Implications for Economic Theory a Reappraisal of Karl Polanyi, Dinâmia

RYNER, M. (2009). Neoliberal European Governance and the Politics of Welfare State Retrenchment: A Critique of the New Malthusians, In: Van Apeldoorn, B., Drahokoupil, J., Horn. L. (ed.) *Contradictions and Limits of Neoliberal European Governance From Lisbon to Lisbon*, Palgrave Macmillan, pp. 46 – 63

SCHÄFER, A. (2006). Resolving Deadlock: Why International Organisations Introduce Soft Law, *European Law Journal*, Vol. 12. No. 2, March 2006, pp.194 - 208

SCHARPF, F. (1997). Economic integration, democracy and the Welfare State, Journal of European Public Policy, Vol. 4, No. 1, pp. 18 - 36

SCHARPF, F. (2001). Notes Towards a Theory of Multilevel Governing in Europe, Scandinavian Political Studies, Vol. 24 – No. 1

SCHARPF, F. (2006). The Joint-Decision Trap Revisited, *Journal of Common Market Studies*, Vol. 44. No. 4, pp. 845 - 64

SCHARPF, F. (2010). The Asymmetry of European Integration: Or why the EU Cannot Be a "Social Market Economy", *Socio-Economic Review*, 8(2), 211–250

SCHARPF, F. (2011). Monetary Union, Fiscal Crisis and the Preemption of Democracy, *MPIfG Discussion Paper 11/11*, Max Planck Institute for the Study of Societies, Cologne

SCHMIDT, V. (2003). French Capitalism Transformed, Yet Still a Third Variety of Capitalism. *Economy and Society*, 32(4), 526–554

SCRUGGS, L. (2006). The Comparative Welfare Entitlements Dataset (CWED), available from: http://sp.uconn.edu/~scruggs/#data

STREECK, W., Trampusch, C. (2005). Economic Reform and the Political Economy of the German Welfare State, *German Politics*, Vol.14, No.2 (June 2005), pp.174–195

STREECK, W. (2010). E Pluribus Unum? Varieties and Commonalities of Capitalism, *MPIfG Discussion Paper 10/12*, Max Planck Institute for the Study of Societies, Cologne

THATCHER, M. (2007). Reforming National Regulatory Institutions: the EU and Cross-National Variety in European Network Industries, In: Hancké, B., et al. (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford: Oxford University Press, pp. 147 - 172

VAN APELDOORN, B. (2009). The Contradictions of 'Embedded Neoliberalism' and Europe's Multilevel Legitimacy Crisis: The European Project and its Limits, In: Van Apeldoorn, B., Drahokoupil, J., Horn. L. (ed.) *Contradictions and Limits of Neoliberal European Governance From Lisbon to Lisbon*, Palgrave Macmillan, pp. 21 - 43

VISSER, J. (2010). The ICTWSS Database: Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 Countries between 1960 and 2007. Amsterdam Institute for Advanced Labour Studies (AIAS)

Appendix A: **Institutional power of Labour's interests organization**

Institutional power of Labour's interests' organization				
Country	***Degree of Organizational Coherence***	***Representation among clientele***	***Access to Government***	***Workers' representation at firm level***
Austria	**Strong** control over lower levels by single national peak level trade union confederation (ÖGB); *vis-à-vis employers*: **equally strong**	**High**; around 40%; (however, as business organization (membership is mandatory, bargaining coverage is very high: 98–99%)	**Favourable**; social partners exert **consultation and recommendation** functions at tripartite concertation before bills are presented at the parliament; government may extend a collective agreement (on application from either one of social partners)	**Works Councils** must be set in establishments employing five or more workers; works councils enjoy **co-determination rights**, as well as **information and consultation rights**
France	**Weak** control of 5 national peak-level bodies over lower levels (mostly *firm level* bargaining; ideological fragmentation); *vis-à-vis employers*: **weaker;** 5 trade union confederations are the General Confederation of Labour (CGT), the French Democratic Federation of Labour (CFDT), the General Confederation of Labour – Force ouvrière (CGT-FO), the French Christian Workers' Confederation (CFTC), and the French Confederation of Professional and Managerial Staff – General Confederation of Professional and Managerial Staff (CFE-CGC)	**Low** level of unionization **(8%) vis-à-vis employers'** organizations density (around 75%); *however*, due to extension of collective agreements by government, **coverage is very high** (around 90%)	Labour's access to government is **weaker** *vis-à-vis employers;* however government traditionally plays a protective/paternalist role. The main tripartite body, the Environmental, Economic and Social Council (Conseil économique, social et environmental, CESE) is purely **consultative**; despite non-binding character, Government must submit draft bills to social partners for consultation; government can **extend** collective agreements at the request of one of the bargaining parties	**Employee delegates** (*délégués du personnel*) in establishments with more than 10 workers (information and consultation rights, ensure implementation of legislation and collective agreements); **works councils**, either at company (*comité d'entreprise*) or establishment level (*comité d'établissement*), in companies with more than 50 employees (information and consultation rights); **union stewards** (*délégués syndicaux*) negotiate and sign collective agreements at firm level
Germany	**Intermediate** control by 3 national level confederations over	**Medium** level of unionization (around 20%),	**Informal consultation** only (non-binding	**Works Councils** must be set in establishments

Institutional power of Labour's interests' organization				
Country	***Degree of Organizational Coherence***	***Representation among clientele***	***Access to Government***	***Workers' representation at firm level***
	sectoral and company level bargaining; *vis-à-vis employers*: **weaker;** 3 trade union confederations are the Confederation of German Trade Unions (DGB), the German Civil Service Association (dbb) and the Christian Confederation of Trade Unions in Germany (CGB)	*vis-à-vis* higher density of business associations (around 60%); *intermediate level of bargaining coverage* (around 60%)	character); **no framework** for institutionalised tripartite or bipartite economic and social concertation; government may issue an order imposing extension of agreements at request of both social partners	employing five or more workers; works council enjoy **co-determination rights**, as well as **information and consultation rights**
Italy	**Weak** (Sectoral level bargaining; ideological fragmentation); 3 major union confederations with **weak control** over lower levels of bargaining; *vis-à-vis employers*: **stronger**; *3 national trade unions confederations*: Cgil; the Italian Confederation of Workers' Trade Unions (Cisl); the Union of Italian Workers (Uil); several other confederations and some independent autonomous unions	**Medium** level of unionisation (around 35%) *vis-à-vis* representation among business organizations (around 50%); bargaining **coverage is relatively high** (around 80%)	**Informal consultation**; no institutionalised tripartism; no formal extension mechanism for collective agreements	Right to organise **plant-level union representation** (*Rappresentanza sindacale aziendale*, RSA); **unitary workplace union structure** (*Rappresentanza sindacale unitaria*, RSU) negotiate at plant level on issues delegated from the industry-wide level; information and consultation rights
Netherlands	**Intermediate** control of national level confederations over *sectoral and company level* bargaining; *vis-à-vis employers*: **weaker;** *3 national trade unions confederations*: The Dutch Trade Union Federation (FNV), the Christian Trade Union Federation (CNV) and the Federation for Managerial and Professional Staff (MHP); other small trade unions	**Medium** level of unionization (around 20%), *vis-à-vis* higher density of business associations (around 90%); *intermediate level of bargaining coverage* (around 80%)	**Medium**; consultation within *tripartite body* (Social and Economic Council), as well as within *bipartite body* (STAR); in many sectors, agreements may be **extended** at the request of one or more social partners	Companies with at least 50 employees set up **works councils** (information and consultation rights; may **nominate** candidates for supervisory board); companies employing 10 to 50 workers set up a **personnel delegation** (more limited set of powers than the works council)

Institutional power of Labour's interests' organization				
Country	***Degree of Organizational Coherence***	***Representation among clientele***	***Access to Government***	***Workers' representation at firm level***
Spain	**Weak** control over *sectoral and firm level* agreements by the 2 major national trade unions: Trade Union Confederation of Workers' Commissions (CCOO) and the General Workers' Confederation (UGT);	**Low** level of unionization **(16%) vis-à-vis employers'** organizations density (around 70%); *however*, due to extension of collective agreements by government, **coverage is significant** (around 60%)	**Informal, but favourable** (informal consultation through national social dialogue processes has been increasing); signed agreements have law statute	**Workers' committees** (*comité de empresa)*, workplaces with more than 50 workers; **workers' delegates** (delegados de personal). Rights include receiving information and ensuring fulfilment of the agreed working conditions
Sweden	**Strong** control over lower levels of bargaining by 3 main trade union confederations - Swedish Trade Union Confederation (LO); Swedish Confederation of Professional Employees (TCO) and Swedish Confederation of Professional Associations (SACO); *vis-à-vis employers:* **stronger**	**High**; trade unions: around 70% of workforce; employers' associations: 80%; bargaining coverage: 90%	**No legal framework** for tripartite negotiations; strong culture of self-regulation through collective bargaining by the social partners. No legal principle of statutory extension of collective agreements to cover an entire industry	**Trade union representative** (negotiate between the parties); **Health and Safety Committee** (Ensure safety at the establishment according to legal framework); **Work Environment Committee** (Work environment, health and safety issues); **Workers' delegate** (Employee Board representation) Information and consultation rights; codetermination rights

Sources: EIRO, Menz (2005)

Appendix B: **Decommodification of Labour by European Welfare State Institutions**

Decommodification of Labour by the Pensions Systems 1990-2002							
Country	**Replacement (%)**		**Access**			**Universality**	**Decom. Score**
	Minimum Pension	***Standard Pension***	***Necessary contributing period (years)***	***% supported by beneficiary***	***Age of retirement (Men; Women)***		
Austria	40 - 49,9%	*1990-2000*: 82-88,9%; *2000-2002*: dropped to 85%	45	Stable at 45%	65; 60	Stable at around 86%	11,2 – 12,9
Sweden	42,8 – 35%	65 – 59,4%	30	n.d	65 (both men and women)	102 - 103,7%	13 - 12
Germany	*1990 – 1997*: 17,8 – 19%; *1997 – 2002*: dropped back to 17,8%	*1990 – 1997*: 75,4 – 78,4%; *1997 – 2002*: dropped to 72%	45	Stable at 50%	63; 60 – 65; 63	94 (data from 1994) – 99,5%	10,1 – 10,9
Netherlands	47,6 – 51%	47,6 – 51%	-	1990 – 1998: 100%; 1998 – 2002: 71 – 74%	65 (both men and women	106,5 - 107,6% (in 2001)	Stable at 14
Italy	26,9 – 29,6%	71,6 – 93,3%	40	28% (in 1991) – 27%	60; 55 – 65; 60	100%	Stable at 14
France	45,3 – 42,5%	59,8 – 52%	37,5	48% (data from 1989) – 50%	60 (both men and women)	99,5% (data from 1994 only)	14 - 12

Table 1: Decommodification of Labour through the Pensions Systems 1990 – 2002 (*source*: Comparative Welfare Entitlements Dataset (CWED), Scruggs, 2006)

Decommodification of Labour by Unemployment Insurance 1990-2002						
Country	***Access***			***Replacement Rates[282] (%)***	***Universality (%)***	***Decom. Score***
	Waiting days	***Duration of Protection (weeks)***	***Qualifying Period[283] (weeks)***			
Austria	*0*	*30*	*156*	*58 - 56*	*67 - 66*	*5,8 – 5,4*
Sweden	*0-5*	*60*	*52*	*85 - 74*	*77 - 84*	*11,1 – 10,6*
Germany	*0*	*52*	*104*	*63 - 60*	*72 - 69*	*7,5*
Netherlands	*0*	*78 - 104*	*156 - 208*	*74 - 78*	*89 - 88*	*11,3 – 10,6*
Italy	*7*	*26*	*104*	*20 - 45*	*n.d.*	*1,8 – 4,5*
France	*0-7*	*130*	*61*	*70*	*56 - 58*	*7,5 – 6,9*

Table 2: Decommodification of Labour through Unemployment Insurance 1990 – 2002 (*source*: Comparative Welfare Entitlements Dataset (CWED), Scruggs, 2006)

Decommodification of Labour by Sickness Insurance 1990-2002						
Country	***Access***			***Replacement Rates***	***Universality***	***Decom. Score***
	Waiting days	***Duration of Protection (weeks)***	***Qualifying Period (weeks)***			
Austria	*3*	*26 - 52*	*0*	*78*	*85 - 83*	*9,8 – 10,1*
Sweden	*0 - 1*	*999*	*0*	*83 - 82*	*100 - 93*	*14,9 – 13,6*
Germany	*0*	*78*	*0*	*100 - 92*	*87*	*12,8 – 12,3*
Netherlands	*2 - 0*	*52*	*0*	*74 - 78*	*89 - 88*	*10,7*
Italy	*3*	*26*	*0*	*73 - 76*	*64 - 66*	*7,0 – 7,5*
France	*3*	*156 - 72*	*52*	*63 - 61*	*n.d*	*9,7 – 7,8*

Table 3: Decommodification of Labour through Sickness Insurance 1990 – 2002 (*source*: Comparative Welfare Entitlements Dataset (CWED), Scruggs, 2006)

Decommodification of Labour by Welfare State 1990 - 2002 (Overall Decom. Score)	
Austria	27,4 – 28,6
Sweden	42,5 – 35,7
Germany	27,9 – 26,6
Netherlands	35,4 – 34,2
Italy	21,3 – 27,3
France	31,9 – 27,3

Table 4: Decommodification by the Welfare State (overall decommodification score 1990 – 2002 (*source*: Comparative Welfare Entitlements Dataset (CWED), Scruggs, 2006)

[282] Reimbursement of medical expenses (Scruggs, 2006)
[283] Period of insurance needed to qualify for benefit (Scruggs, 2006)

Appendix C: **National strategies of reembeddedness of the Single Market for Services Provision and of the Single Market for corporate control**

Country	**National Implementation/ Re-regulation Strategies**	
	Posting of Workers (96/71/EC)	***Takeover Bids (2004/25/EC)***
Austria (strongly neocorp.)	Employment Contract Law Adaptation Act (Arbeitsvertragsrechts-Änderungsgesetz, 1999); Foreign Nationals Employment Act (Ausländerbeschäftigungsgesetz, AuslBG, most recent amendment in 2007); protective re-regulation; extends all collectively agreed wage brackets to posted workers in all sectors	2006 Takeover Act (Übernahmegesetz – ÜbG); opts in Art. 9, opts out Art. 11 (allows firms to voluntarily opt in); applies reciprocity rule
Sweden (strongly neocorp.)	Foreign Posting of Employees Act (SFS 1999, amended 2001); small legislative change; clarifies that Swedish framework (Lex Britannica) applies to posted workers in all sectors; a commission was established to develop recommendations for changes in the law following the *Laval* ruling	2006 Takeover Act (Sw. Lag om offentliga uppköpserbjudanden på aktiemarknaden); Opts in Art. 9, opts out Art. 11 (allows firms to voluntarily opt in); applies reciprocity rule
Germany (intermediate neocorp.)	Arbeitnehmer-Entsendegesetz (AEntG, 1996, revised 1999, 2003, 2006, 2007, 2009); initially permissive re-regulation, became more protective after 2009 revision; still limited to some industries	2006 Implementation Act, amending the German Securities acquisition and Takeover Act (WpÜG); opts out both Art. 9 and Art. 11; must grant national firms the option of voluntarily opting in; applies reciprocity rule
Netherlands (intermediate neocorp.)	Modified Sectoral Wage Contract for Construction Sector (CAO Bouw 1996-1999); Act on the Terms of Employment of Cross Border Employment (1999, amended 2005); initially permissive re-regulation (construction sector only); became more protective since 2005 (all sector agreements declared universally binding also apply to posted workers)	2007 Bid Rules, supplementing the Dutch Takeover Act; opts out both Art. 9 and Art. 11; grants national firms the option of voluntarily opting in; allows for reciprocity rule regarding both articles in case of firms which had voluntarily opted in

Italy (MME)	2000 Legislative decree 72/2000; complete re-regulation: extends to posted workers the same standard wages stipulated by collective agreements as well as conditions established by regulatory legislative provisions	2007 Legislative Decree No. 229 amending the Italian Securities Act; opts in both article 9 and 11; applies reciprocity rule
Spain (MME)	Law 45/1999; complete re-regulation: extends to all posted workers the minimum salary established by law or in the applicable collective agreement	2007 Law 6/2007 and Royal Decree 1066/2007; opts in Art. 9; opts out Art. 11; applies reciprocity rule
France (Statist)	Loi Quinquennale relative au travail, à l'emploi et à la formation (1993, amended in 2003); protective re-regulation; extends standard wages and conditions to all posted workers	2006 Takeover Act (Loi sur les offres publiques) and amendment of the general regulations of the Financial Markets Authority (Autorité des Marchés Financiers) (AMF); opts in Art.9, opts out Art. 11; applies reciprocity rule regarding Art. 9

Sources: For National legislations implementing the DPW: EIRO; Menz (2005); For national legislations implementing the DTB: Max Planck Institute for Comparative and International Private Law (for Germany); Smith *et al.* (2007) (for Italy, France, Spain and the Netherlands); von Haartman (2006) (for Sweden)

Appendix D: **Trends in European industrial Relations 1990 – 2008**

Main trends in European industrial relations 1990-2008						
	Centralisation and coordination	**Firm-level derogation clauses**	**Bargaining coverage**	**Trade union density**[284]	**Employers' organisation density**[285]	**Government intervention in bargaining**[286]
Austria (strongly neocorp.)	Organised decentralisation	Yes	Stable at 98%	Decreased from 46,9% to 29,1 %	Stable at 100%	2
France (Statist)	Stable at lower-levels (company level)	Yes (introduced by 2004 Fillon law)	Generally stable (decreased slightly, from 92% to 90%)	Decreased from 9,9% to 7,6%	Stable at 75%	3
Germany (intermediate neocorp.)	Strong trend towards decentralisation	Yes	Decreased from 72% to 62%	Decreased from 31,2% to 19,1%	Decreased from 63% to 60%	2
Italy (MME)	Stable at sectoral level	n.	Generally stable (decreased slightly, from 83% to 80%	Decreased from 38,8% to 33,4%	Decreased from 62% to 58%	4-2 (government intervenes directly in absence of autonomous bargaining)
Netherlands (intermediate neocorp.)	Some degree of decentralisation towards firm level; sectoral level remains the most important	Yes *cafeteria* and *a la carte* agreements	Stable at 82%	Decreased from 24,3% to 18,9%	Stable at 85%	4-2 (government intervenes directly in absence of autonomous bargaining)
Spain (MME)	Stable, strengthening at sectoral and firm levels	n.	Increased at sectoral level; decreased at provincial level; but generally kept stable	Increased from 12,5% to 16% in the 1990s; starting to decrease (15% in 2008)	Increased from 72% to 75%	3
Sweden (strongly neocorp.)	Organized decentralisation	n.	Stable at 90%	Decreased from 80% to 68,3%	Decreased from 86% to 83%	2

Sources: EIRO; OECD; ICTWSS Database, 2011

284 OECD data

285 We use here Visser's index, deployed in the ICTWSS Database, referring the percentage of workers (of total employed labour force) who are employed by firms organized in employers' associations (Visser, 2011).

286 (4) the government participates directly in wage bargaining (tripartite bargaining); (3) the government influences wage bargaining outcomes indirectly through price ceilings, indexation, tax policy, minimum wages, and/or public sector wages; (2) the government influences wage bargaining by providing institutional framework for mostly autonomous coordination (Visser, 2011: 7)

Appendix E: **Trends in Employment Protection Legislation 1990 – 2007**

Analytical Grid to Classify Reforms in Employment Protection Legislation **Reforms will be (1) commodifying/ (2) decommodifying if they…**	
(1) … increase labour's exposition to the market	**(2) … restrict labour's exposition to the market**
⅄ Ease the rules on lay-off legislation and/or individual and collective dismissals, including severance payments and collective redundancies; ⅄ Ease restrictions on the use of fixed-term and other short-term contracts, including time limits and possibility of renewal; ⅄ Extend the trial periods; ⅄ Legalize and promotes temporary work agencies; ⅄ Introduce new types of "atypical" temporary and flexible contractual forms, such as training contracts or project contracts (contracts with the duration of a particular project).	⅄ Restrict rules on dismissals; ⅄ Restrict the use of temporary forms of contracts, including automatically changing of fixed-term contracts into permanent ones after a certain period of time and/or number of renewals; ⅄ Extinguishing precarious forms of employment.

Table 1: Analytical Grid to Classify Reforms in Employment Protection Legislation

Trends in Employment Protection Legislations 1990 - 2007				
	Commodifying reforms		***Decommodifying reforms***	
	Quant.	***Most relevant***	***Quant.***	***Most relevant***
Austria	3	1997/98 collective agreements allow flexible arrangements at regional level; 2002 Economic Stimulation Act (facilitating hiring of temporary workers through private employment agencies); 2003 law, easing dismissal procedures involving older workers with job positions of less than two years	4	2000 law allows older employees to contest a dismissal in court; 2002 reform extends entitlement to severance pay to all private sector employees from the first day of employment onwards, regardless the reason for the termination of the contract
France	21	2004 Fillon Law (5 structural changes loosening rules on collective dismissals); 2005 new type of open ended contract allowing for longer trial period during which the worker may be dismissed without compensation	8	2001 Social Modernisation Bill (strengthening protection of fixed-term contracts)

Trends in Employment Protection Legislations 1990 - 2007				
	Commodifying reforms		***Decommodifying reforms***	
	Quant.	***Most relevant***	***Quant.***	***Most relevant***
Germany	11	1996 reform (structural), liberalising dismissal conditions; 2003 Protection against Dismissal Act (4 structural changes loosening rules on dismissals, severance payments and the use of short-term contracts)	5	Marginal reforms
Italy	12	1997 Treu Package (4 structural changes easing rules on dismissals and temporary contract forms); 2003 Biagi Law (introducing 4 new types of "atypical" temporary contracts, including a 'job on call' type – 'lavoro intermittente')	4	2007 reforms: after 36 month period, new fixed term contracts can only be stipulated jointly with Provincial Labour Office and with participation of Trade Unions (otherwise the contract should become automatically open-ended); repeal of 'lavoro intermittente' contracts
Netherlands	7	1995 structural changes in dismissal procedures; 1999 Flexibility and Security Law	5	Marginal reforms
Spain	14	1994 structural changes easing individual and collective dismissals; 1997 structural change introducing a new permanent contract with reduced severance payments and employers' contributions rates; 2001 labour market reform; 2005 and 2006 reforms loosening the strictness of permanent contracts regarding severance pay	9	1997 reform, suppressing certain forms of temporary contracts and raising contribution rates for others; 1999 Law on Temporary Employment Agencies; 2006 Reforms, enhancing the possibility to transform temporary contracts into permanent ones with lower dismissal costs, and introducing a ceiling on the number of renewals of fixed-term contracts
Sweden	7	1996 Law, delegating agreement on recruitment and dismissal provisions to local unions; in 1997 restrictions on the use of twelve-months fixed term contracts are lifted; 2006 law, loosening the dismissal procedural requirements for permanent contract	4	2006 law, limiting the use of fixed-term contracts to a maximum period of two years, after which it becomes a permanent contract

Table 2: Trends in Employment Protection Legislations 1990 – 2007*(Sources*: Social Reforms Database fRDB; LABREF Database (European Commission's DG ECFIN))

Appendix F: **Retrenchment in Market-Sheltering entitlements (Pensions and Non-employment Protection) 1990 – 2007**

Analytical grid to read National Paths of Social Reforms		
	Esping-Andersen criteria	**Reforms will be considered *commodifying/ decommodifying* if...**
Pensions Systems	***Access***	- Access to early retirement is made *more difficult/easier* ; - Changes result in a *raise/decrease* in the age of retirement; - Changes result in the required period of contribution years being *extended/diminished*; - Changes result in the rates of contributions being *raised/lowered*
	Replacement Rate	- Changes in calculation formula (including changes in the contribution basis, introduction of new variables such as a demographic factor, or changes in indexation criteria and tax treatment) result in *lower/higher* levels of received monetary benefits; - Changes in overall levels (e.g. an increase in minimum pension) result in *lower/higher* levels of monetary benefits
	Range of Entitlements	- changes in contribution basis *preclude/ include* non-working periods such as parental leaves or family assistance, training/educational leaves, etc.
	Universality	- particular groups within the system *lose* benefits/ particular groups who were previously uncovered *gain* coverage of the system (like part-time or self-employed workers)
Non-Employment Protection Benefits	***Access***	- changes in means-tests result in *tighter/ looser* conditions of access; - changes *increase/ decrease* the contribution period necessary to access benefits - the earnings-related component of unemployment insurance is made *more/less* relevant - the duration of protection period is *shortened/ extended*; - conditions to retain protection benefits (such as the obligation to accept a job offer or perform public interest jobs) are *tightened/ loosen* (e.g. If the definition of "suitable job offer" tightens)
	Replacement Rate	- overall unemployment allowance levels are *lowered/ increased* - changes in calculation formula (including changes in the earnings-related component, indexation criteria or tax treatment) result in *lower/ higher* monetary compensation
	Range of Entitlements	- the extent to which unemployment insurance *cannot/can* be accumulated with other entitlements such as child/family allowances, training and educational grants, etc.
	Universality	- particular groups within the system *lose* benefits/ particular groups who were previously uncovered *gain* coverage of the system (like part-time or self-employed workers)

Table 1: Analytical grid to assess commodification/ decommodification trends in social reforms *(Based on*: Esping-Andersen, 1990)

Trends in Reforms of Pensions Systems 1990 - 2007				
	Commodifying reforms		***Decommodifying reforms***	
	Quant.	***Most relevant***	***Quant.***	***Most relevant***
Austria	12	1997 Pensions Reform (increasing the level of self-financing relatively to public budget financing); 2004 Pension Harmonisation Law (unifying the various pay-as-you-go public pension systems; 3 structural changes reducing replacement rate and increasing earning-related component)	4	Marginal reforms, extending benefits to previously unsheltered groups such as people in occasional jobs (1997 reform)
France	23	1993 Balladur reform of *Régime Générale*; 2003 *Rafarin Act* on pensions reform; 2007 reform extends contributions period from 37,5 years to 40 years from 2012 onwards, and, from 2016 onwards, to 41 years.	13	Marginal reforms
Germany	26	1992 Pensions Reform (5 structural changes raising the statutory retirement age, reducing replacement rates, limiting the inclusion of educational leave period into contributory history); 2001 New Pension Reform (increasing importance of earnings-related component and decreasing replacement rates); 2004 Pension Reform, aiming at the stabilization of the contribution rate in the long-term basis and corresponding to a long-term decrease of the pension level; 2004 Alterseinkünftegesetz (new tax scheme for contributions and income of older workers); 2006 reform raising contributions rates and statutory retirement age from 65 to 67 years; 2007 reforms strengthened second-pillar pension schemes (increasing the importance of the work-related component)	17	1999 Finance Minister Oskar Lafontaine suspended and reformed 6 measures of the 1997 Law on Pensions Reform
Italy	32	1992 Amato pensions reform; 1995 Dini reform (6 structural changes raising contributions rate, tightening eligibility requirements and lowering replacement rates); 1997 Prodi Agreement; 2004 Law of Reform of the Pension System (4 structural changes); 2007 reforms, raising the statutory age of retirement, increasing contribution rates and period and changing calculation formula (decreasing replacement rate)	12	2006 Totalizzazione reform; allows for workers who have accumulated in none of the pension schemes a minimum contribution period to receive benefits, to aggregate the contribution periods in different schemes
Netherlands	9	1996 Privatisation of the Pension Fund for Civil Servants; 2004 Reform of the Occupational Disability Insurance Act (WAO); 2006 removal of distinction between pension funds and insurers	2	Marginal reforms

Spain	17	1997 Reform of the pensions system (3 structural changes raising contributions rates and restricting entitlements); 2003 renewal of 1995 Pensions Agreement (the Toledo Pact); 2006 reforms, restricting access to early retirement, and increasing contribution period	18	2003 renewal of 1995 Pensions Agreement (the Toledo Pact) created a new system for the social protection of dependent people and improved protection of surviving spouses and orphans; 2004 and 2007 reforms reinforced this trend; 2005 law integrated small owners in the agricultural sector in the social security regime for self-employed workers
Sweden	10	1998 New Pension System (3 structural changes increasing retirement age and diminishing rate of replacement); 2001 new pensions scheme (increasing importance of earnings-related component); 2007 New collective occupational scheme (reinforcing the occupational character of the system)	1	1998 the state guarantees a minimum pension to people who haven't earned enough to access entitlements

Table 2: Trends in reforms of national pensions systems 1990 - 2007 *(Source*: Social Reforms Database fRDB; LABREF Database (European Commission's DG ECFIN))

Trends in National Reforms of Non-Employment Benefits 1990 - 2007				
	Commodifying reforms		***Decommodifying reforms***	
	Quant.	***Most relevant***	***Quant.***	***Most relevant***
Austria	10	Several retrenchment measures between 1995 and 1998: Incentives for early retirement are phased out, access to unemployment benefits and special help for long-term unemployed is restricted, and the contributions history to qualify for unemployment benefits is extended; 2007 reform of Social Insurance (tightens job acceptance requirements)	21	2002 reform of the Unemployment insurance system; 2004 law extending unemployment insurance coverage to self-employed workers (enhanced by 2007 reform); **Moderate use of decommodifying ALMPs** after the mid 2000s (type 2 and 3)
France	8	2003 law replacing the existing 'minimum integration income' (revenu minimum d'insertion, RMI) for a new "minimum employment income integration contract" (contart d'insertion-revenu minimum d'activité, RMA); 2006 Reform of the Unemployment Insurance System (tightening eligibility conditions and reducing duration)	35	***Several raises in the three basic social benefits*** (every year, between 1997 and 2001): RMI (basic income support), ASS (special solidarity allowance for the unemployed at the end of their entitlement) and the AI (unemployment benefit for young first job seekers); 2001 Social Modernisation Bill; ***Highly relevant use of decommodifying ALMPs*** (type 2, 3 and 4)

Trends in National Reforms of Non-Employment Benefits 1990 - 2007				
	Commodifying reforms		***Decommodifying reforms***	
	Quant.	***Most relevant***	***Quant.***	***Most relevant***
Germany	20	Several retrenchment measures during the 1990s; unemployment and sickness insurance replacement rates are reduced (1994, 1996), duration of unemployment, insurance is reduced (1995); 1997 Employment Promotion Law (reduces replacement rates, tightens eligibility requirement and eliminates possibility of refusing a job offer); 2004 Unemployment Benefit II Programme (3 structural changes reducing replacement rate and duration of unemployment benefits and tightening the job acceptance requirements); 2006 reform of unemployment insurance system tightens job acceptance requirements	24	1999 reforms reversing previous retrenchment measures; 2006 Multigenerational Homes (provision of family related services); ***Highly relevant use of decommodifying ALMPs*** (type 2, 3 and 4)
Italy	3	1998 budget law tightens to obligation to accept a job offer; most entitlements are subject to means-test	17	1994 Wage Supplementation Fund (Cassa Integrazione Guadagni) extends benefits to previously uncovered groups; 2006 reforms in the Unemployment Insurance system (extends duration and increases net replacement rates); 2007 reforms increase replacement rate of ordinary unemployment benefits, gives favourable tax treatment to protection directed at workers in agricultural sector; ***from the 2000s onwards: Moderate use of decommodifying ALMPs*** (type 2 and 3)
Netherlands	13	1992 law making the link between the minimum wage and social benefits dependent upon the dependency ratio levels of the system; 1996 General Social Assistance Act (activation obligation); 2002 Work and Implementation Structure; 2004 reform referring self-employed people to private forms of insurance or to their own resources during occupational disability, maternity and leave for adoption or child care; 2006 Reform of Unemployment Insurance System (shortens duration, extends the contributions period necessary to qualify, tightens reintegration obligations)	8	**Moderate use of decommodifying ALMPs** (type 2)
Spain	8	1992 Reforms (6 structural changes reducing duration and replacement); 2005 active integration income scheme (makes benefits	15	***Measures improving benefits of specific groups***: workers with disabilities (1997, 2004); people

Trends in National Reforms of Non-Employment Benefits 1990 - 2007				
	Commodifying reforms		***Decommodifying reforms***	
	Quant.	***Most relevant***	***Quant.***	***Most relevant***
		dependent upon participation in activation measures)		with employability problems (2005); people in part-time jobs (2007); temporary workers in agricultural and construction sectors (1995, 2006); ***Relevant use of decommodifying ALMPs*** (mostly type 2)
Sweden	17	1997 Employment Bill (increasing qualifying period and the importance of earnings related component; eliminates possibility of renewal through participation in training schemes); 2000 Activity Guarantee Program (restricts access to unemployment benefits to participation in activation scheme); 2006 reforms of unemployment insurance system (reducing duration of protection, extending the necessary contributions period and diminishing gross replacement rates); 2006 reforms of sickness insurance system (the ceiling is lowered and employers responsibility in cofinancing is abolished)	14	***Relevant use of decommodifying ALMPs*** (types 2, 3 and 4)

Table 3: Trends in national reforms of non-employment benefits 1990 - 2007 *(Source*: Social Reforms Database fRDB; LABREF Database (European Commission's DG ECFIN))

Expenditure in Unemployment Protection Benefits (% GDP)						
Country	***1999***	***2005***	***2006***	***2007***	***2008***	***2009***
Germany	2,11	2,01e	1,72e	1,29e	1,10e	1,52e
Spain	1,44	1,45	1,43	1,44	1,87	2,96
France	1,51	1,58	1,38	1,24	1,17	1,42
Italy	0,67	0,78	0,77	0,69	0,81	1,39
Netherlands	2,05e	2,02e	1,70e	1,41e	1,29e	1,70e
Austria	1,33	1,52	1,40	1,24	1,16	1,50
Sweden	1,63	1,16	0,94	0,65	0,45	0,72

Table 4 : Expenditure in Unemployment Protection Benefits (% GDP) (*source* : Eurostat)

Appendix G: **Shifts towards Active Labour Market Policies (1990 – 2007)**

Analytical Grid to Read Active Labour Market Policies			
Type	**Objective**	**Tools**	**Decom. index[287]**
1. Incentive reinforcement	Strengthen positive and negative work incentives for people on benefit	- Tax credits, in-work benefits - time limits on recipiency - benefit reductions - benefit conditionality - sanctions	1
2. Employment assistance	Remove obstacle to employment and facilitate (re-)entry into the labour market	- placement services - job subsidies - counselling - job search programmes	2
3. Human capital investment	Improve the chances of finding employment by upskilling jobless people	- basic education - vocational training	3
4. Occupation	Keep jobless people occupied; limit human capital depletion during unemployment	- job creation schemes in the public sector - non employment-related training programmes	4

Table1: Analytical Grid to Read Active Market Labour Policies (*adapted from*: Bonoli, 2010: 11)

National Profiles of ALMPs 1990 - 2007				
Country	***Type 1***	***Type 2***	***Type 3***	***Type 4***
Austria	**6**; *Most relevant*: 1996 bonus-malus system to encourage employment of older workers (enhanced in 2000)	**8;** *most relevant:* 1998 subsidised wages for employers hiring people receiving benefits; 2005 subsidised apprenticeship positions	**4**; *Most relevant*: 2005 Professional qualification courses in health care	-
France	**5** (measures resulting in tighter control over access to unemployment benefits)	**11**; *Most Relevant*: New Service, New Job (1997); Personalised Action Plan For a New Star (PAP-ND) (2001); Contrat jeune en entreprise (2004 and 2005); contrat d'insertion dans la vie sociale (2005)	**5**; *most relevant*: 2003 national intersectoral agreement on 'employees' lifelong access to training'; 2007 obligation for enterprises to pay 0.9% of their payroll to the vocational training system	**4**; *most relevant*: 2004 'employment starter contracts' (contrats d'activité, CDA);
Germany	**10**; (mostly measures tightening control over access to unemployment benefits) *most relevant*: Employment Promotion Law (1997), Unemployment Benefit II Programme (2004)	**12;** *most relevant*: 1998 New Employment Initiative; 2001 Disabled Person Act; 2004 New Special Programme for the provision of Initial Vocational Training for young people; 2006 Start-up Grants; 2006 50 plus Initiative	**7**; *Most relevant*: Life Long Learning Federation Land pilot scheme (2000), Job-AQUTIV-Gesetz Act (2002); LM –Work for the long-term unemployed" Programme (2003); New Special Programme for	**4;** *Most relevant*: LM –Work for the long-term unemployed" Programme (2003)

287 Where (1) stands for the least degree of decommodification; (2) and (3) correspond to intermediate levels of decommodification; and (4) is awarded to the most decommodifying solutions

National Profiles of ALMPs 1990 - 2007				
Country	***Type 1***	***Type 2***	***Type 3***	***Type 4***
			the provision of Initial Vocational Training for young people (2004)	
Italy	1	**8**; *Most relevant*: 2007 creation of 3 funds to support female and youth entrepreneurship	**3**; *Most relevant*: 2007 training schemes for disadvantaged workers in Emilia Romagne Region	-
Netherlands	**8**; *most relevant*: 1997 "transitional SPAK" program (to cushion the tax burden of employers paying a worker between 115 and 130% of the legal minimum wage); 2001 Income Tax Act (financial incentives for employees) 2006 Reform of Unemployment Insurance System (shortening duration and tightening reintegration obligations)	**6**; *Most relevant*: 1998 job-seekers Employment Act (WIW) and Act on the reintegration of disabled (REA); 2000 ID-Jobs Program for long-term unemployed; 2004 Modernisation of the Sheltered Work Act (WSW) (subsidised jobs for disabled people)	1	1
Spain	**5**; *most relevant*: 2001 Reduction in social security contributions for employers hiring people receiving benefits	**14**; *Most relevant*: 1997 (measures to help people with disabilities into employment), 2003 Employment Law, 2004 employment for disabled people with special difficulties; policies enacted in 2005 increased the amount of unemployment benefit if the unemployed chooses to receive benefits in a lump-sum to create a business project; 2006 'Business Seedbed' Program (Semillero de Empresas) to support youth entrepreneurship	**3**; (only after the mid-2000s) *Most relevant*: 2006 occupational training schemes available to companies introducing new production procedures/ technologies	-
Sweden	**7** (mostly measures tightening control over access to unemployment benefits)	**7**; *Most relevant*: 2005 Plusjobb Program; 2005 Three Step Model for job seekers with disabilities; 2005 Workplace Introduction for Immigrants; 2006 New Start Job Program, 2007 Job and Development Guarantee	**3**; *Most Relevant*: 2005 Workplace Introduction for Immigrants; 2007 Job and Development Guarantee	**2**; *Most relevant*: 2005 Plusjobb Program

Table 2: National Profiles of ALMPs 1990 – 2007 *(Source*: Social Reforms Database fRDB; LABREF Database (European Commission's DG ECFIN))