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EU Internal and External Social Policy in Times of Global Crisis

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Introduction

The European Union (EU) has enjoyed a limited amount of competence to develop a social policy applicable to its Member States since the adoption of the Single European Act in 1986. The underlying rationale for a European social policy has hitherto been the demand for broad equivalence in labour standards. In order to achieve this goal, the EU has increasingly relied upon soft law mechanisms and dialogue instead of hard law mechanisms to adopt minimum standards. Since the early 1990s, the EU has also been active in promoting a social policy in non-Member State countries by incorporating social values into EU external relations. This has been in response to calls for a ‘social side’ to globalisation in order to counter-balance the economic facets of world trade. Thus, the European Commission has repeatedly committed itself to supporting a social side to globalisation. Moreover, the EU has ‘shifted from a rather narrow approach of promoting core labour standards through trade policies to a broader and more ambitious social agenda’ (Orbie and Tortell 2009: 1). In promoting this external social policy and after initial failed attempts at fostering agreement on a hard law approach, the EU has focussed on a soft law and dialogue-oriented approach thus mirroring the mechanisms used in recent years in the development of an internal EU social policy. It has therefore been argued that the nature of the EU’s external social policy depends mainly on how much the EU develops its own social self. Recent events, in particular the entry into force of the Treaty of Lisbon and the ongoing global economic crisis, demand a reassessment of this argument in order to determine the effects of both events on the EU’s internal and external social policies.

This paper thus proposes to re-examine the validity of the argument that there exists a level of interdependence between the EU’s internal and external social policy approaches. In order to do so, the paper first outlines the development of the EU’s internal and external social policies. It then describes the effects of the entry into force of the Lisbon Treaty and of the ongoing global economic crisis on the EU’s internal and external social policies. Finally, the paper discusses the impact of the Lisbon Treaty and the global economic crisis in order to

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assess whether parallels between internal and external social policy approaches can be drawn or whether both are developing in distinct and different ways.

EU Internal Social Policy

The concept of an EU internal social policy has its origins in a report written by a group of independent experts appointed by the Governing Body of the International Labour Organisation (ILO). The report (1956: 40-41) noted that:

So long as we confine our attention to international differences in the general level of costs per unit of labour time, we do not consider it necessary or practicable that special measures to ‘harmonise’ social policies or social conditions should precede or accompany measures to promote greater freedom of international trade.

As a result, European social policy in the founding Treaty of the European Economic Community (EEC) was limited to the free movement of workers, equal pay and cooperation in the area of social security. The Treaty also made provision for cooperation between the EEC and the ILO and it was hoped that ILO Conventions could be used to ‘solve certain of the social problems connected with closer European economic co-operation’ (Report 1956: 116). However, effective cooperation between the two organisations has proved to be sporadic. Within the EU, any attempts which have been made to introduce a comprehensive policy – largely under the banner of a so-called European Social Model – have been dependent on the effective accommodation of political interests (Weinstock 1989). As a result, the European Social Model is patchy in its coverage of rights.

The European institutions have from time to time adopted key roles in trying to advance a catalogue of rights.² This was facilitated by the introduction of a limited amount of legislative competence in the field of labour law by the Single European Act in 1986. Apart from the provisions contained in the EU Treaties which enable the EU institutions to act in order to facilitate the free movement of workers, article 153 of the Treaty on the Functioning of the European Union (TFEU) allows for the introduction of directives on working conditions, information and consultation of workers, and equality at work between men and women. Particularly following the entry into force of the Maastricht Treaty in 1993, the European Commission together with the social partners, took advantage of the Treaty

² Däubler (1989) describes repeated attempts to introduce a European charter of social rights from 1965 to 1984.

provisions in actively pursuing a social policy. However, a period of legislative stagnation which characterised the end of the 20th Century resulted in a change of approach by the Commission which, keen to avoid a return to the political stalemate that had occurred during the recession of the 1980s, turned to a new *modus operandi* for social integration: since the turn of the century, the emphasis has been on soft law mechanisms – ‘framework agreements, joint declarations and guidelines and codes of conduct’ (Marginson 2006: 103) – in order to achieve some sort of harmonisation in the sphere of social policy. This shift to new forms of governance³ was accompanied by the launch of the EU’s Lisbon Strategy in 2000 which aimed to turn the EU into ‘the most dynamic and competitive knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion’ (European Council 2000) by 2010. The social goals of the Lisbon Strategy sought to ‘modernise the European Social Model and to build an active welfare state’. The main policy instrument introduced to achieve this was the Open Method of Coordination (OMC) – ‘a coordinated and Commission-facilitated inter-governmental process (European Council 2000)’ – which has been described as a ‘means of spreading best practice and achieving greater convergence towards the main EU goals’ (Commission 2002). It ‘combines processes of common target setting by member states, cross-country benchmarking and periodic review’ (Marginson 2006: 103). Barnard and Deakin (2002) argue that the OMC can be seen as a way of regulatory intervention which attempts to provide space for experimentation in rule-making and to encourage regulatory learning through the exchange of best practice between different levels. Scott and Trubek (2002: 4-5) explain that:

The OMC aims to coordinate the actions of several Member States in a given policy domain and to create conditions for mutual learning that hopefully will induce some degree of voluntary policy convergence. Under the OMC, the Member States agree on a set of policy objectives but remain free to pursue these objectives in ways that make sense within their national contexts and at differing tempos.

³ There is a vast amount of literature on this topic. For a good overview of the shift to new forms of governance including references to other literature see Armstrong and Kilpatrick 2007.

The OMC can therefore be seen as ‘a response to regulatory failure, as well as a response to the ‘joint decision trap’ or the ‘competency gap’ in social policy and in other policy areas.’⁴ Advocates of the method (Ashiagbor 2004: 308) argue that, as a form of governance, the OMC ‘has the potential to achieve policy coordination without threatening jealously-guarded national sovereignty, *and* to allow Member States to implement policy in accordance with their socio-economic development.’ Moreover, ‘with an increasingly differentiated European Union, and in light of [...] enlargement, the coordination approach is appealing, as it does not seek to establish a single common framework, but instead, to put the EU Member States on a path towards achieving common objectives’ (De la Porte 2002: 39). In this respect the OMC’s strength lies in its potential as a normative tool which can be used to enshrine a series of common values within the national policies of member states so that the ultimate goals are the same, yet the methods for achievement can be adapted to better suit domestic frameworks. It can be asserted that the process embraces the principle of subsidiarity which is increasingly promoted alongside the aspiration for a democratically accountable Union (Ashiagbor 2004).

Opponents of the OMC (De la Porte 2002: 50) challenge its effectiveness and argue that it only ‘impacts on domestic policy-making, when the European objectives coincide with the national policy objectives.’ Streeck (1995: 424) criticises that a shift from hard to soft law in social policy (which he describes as ‘neo-voluntarism’) could lead to ‘a type of social policy that tries to do with a minimum of compulsory modification of both market outcomes and national policy choices, presenting itself as an alternative to hard regulation as well as to no regulation at all.’ Moreover, according to Hatzopoulos (2007: 318-319), the OMC may:

damage the future legitimacy of the EU and its Institutions [...] as it does not confer any new competencies on them but specifically limits their reach on national policies in the fields concerned. More importantly still, there is a risk that the OMC replaces the classic Community method in fields where the latter currently prevails.

Although the Lisbon Strategy and the OMC can be criticised for a lack of effective time constraints on implementation or enforcement mechanisms to ensure compliance, there seems

⁴ Ashiagbor (2004: 318): The ‘joint decision trap’ or the ‘competency gap’ describes a situation where ‘the national capacity to regulate markets is severely reduced as a result of economic integration, whilst the problem-solving capacity at European level is constrained by conflicts of interest among governments.’

to be a general consensus (Goetschy 2008) that the Lisbon Strategy ‘enlarged the EU employment and social agenda on matters of national priority.’

The Lisbon Strategy came to an end in 2010 when, following a broad consultation, the European Commission launched the Europe 2020 Strategy whose aim is to ‘turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion [...], taking into account different needs, different starting points and national specificities so as to promote growth for all’ (European Commission 2010). The Strategy combines five EU headline targets which are to be translated into national targets, a number of flagship initiatives, and integrated guidelines for employment and economic policies (European Commission 2012). Soft law mechanisms continue to be the preferred instruments to achieve these aims and there have been suggestions⁵ that the EU 2020 Strategy, rather than providing for innovative new forms of governance, instead tries to strengthen the existing framework. Thus, similar to Lisbon 2010, it could be argued that the coexistence of soft law mechanisms alongside hard policy goals under the Europe 2020 Strategy, leaves little room for the development of new legislative initiatives. On the other hand (Vanhercke 2011: 8), ‘one of the most striking features of the Europe 2020 Strategy is its insistence on targets, and the monitoring of progress towards these.’ In this respect (Vandenbroucke 2012: 33), ‘Europe 2020 offers something to hold on to’ and it may be that the use of soft law mechanisms combined with specific targets will result in a process ‘whereby the European social model can gradually be better defined.’ This then may eventually lead to a European Social Model with a wider and more effective coverage of rights.

EU External Social Policy

The EU’s ‘external social policy’ is not a clearly defined area of competence set out in the Treaties. Any competence that the EU lays claim to is derived from its internal social policy and is pursued through external policy instruments in the areas of trade, development or foreign and security policy where the EU has defined competences. As illustrated above, the EU’s competence in internal social policy is rather limited and, as a result, external competence is far from wide-reaching. The ‘social’ aspect of ‘external social policy’ is also a vague concept. The ILO’s World Commission on the Social Dimension of Globalisation

⁵ Conference Paper of B. Vanhercke, *Is ‘The Social Dimension of Europe 2020’ an Oxymoron?* at the CELLS Conference on ‘The European Union’s economic and social model – still viable in a global crisis?’, Leeds, 8th – 9th December 2011. Hereinafter: Vanhercke 2011.

(2004) defines ‘social’ in the broadest sense as everything that is development-related, ranging from poverty reduction and economic growth, to health and education, democratic development and human rights. A study commissioned by the European Parliament (Eichhorst et al.: 20) in 2010 defines ‘social’ more narrowly in terms of ‘working conditions, labour rights and associated policy-making’, thereby mirroring the EU’s internal ambit on social policy. This paper copies this narrow approach and borrows the European Parliament’s definition in order to look at whether parallels exist between the EU’s role in promoting working conditions and labour rights internally and externally.

The main point of reference to determine the nature of EU competence in the sphere of external social policy is the Court of Justice’s (CJEU) Opinion 2/91 on the division of competences between the European Community and the Member States to conclude an ILO Convention on Chemicals at Work. In its Opinion the CJEU first reiterated a previous Opinion (1/76) where it stated that ‘whenever Community law created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community had authority to enter into the international commitments necessary for the attainment of that objective even in the absence of an express provision in that connection.’ Based on this reasoning, the Court ruled that external Community competence is exclusive in areas where the Community has already adopted harmonising legislation. However, the Court went on to clarify that the nature of Community competence also depends on the scope of the measures in question. Thus, whenever the EU sets minimum labour standards, as is the case most of the time, external competence is shared by the Union and the Member States. This effectively limits the competence of the EU to those areas in which it can act internally, thereby excluding most collective labour rights and competence in respect of setting wage standards, both of which could be of particular importance when working towards a social side to globalisation. Cooperation with Member States in external social policy also deprives the EU of the ability to act with one voice and diverging interests between Member States and the EU institutions have the potential to hamper the development of an effective and coherent external social policy.

EU initiatives in external social policy can be traced back to the early 1990s when the European Commission began to push for a social dimension to its external relations. In particular, the EU and its Member States focussed their attention on the promotion of ‘the most fundamental standards linked with respect for human rights: abolition of slavery, forced labour and child labour, freedom to organise, and, the right to collective bargaining’ (Orbie and Tortell 2009: 6). This initial rationale for an external social policy – based on human

rights principles – stands in stark contrast to the considerations given to the introduction of an internal social policy; namely, whether social harmonisation was necessary to promote economic integration. Even though there have been moves away from the economic argument as justification for the existence of an internal social policy – the introduction of the Charter of Fundamental Rights by the Treaty of Lisbon (discussed below) is a recent example⁶ – the fundamental underlying difference between the EU’s internal and external social policies remains: one is based on principles of fundamental human rights; the other traces its roots to economic harmonisation. However, the means by which the EU has given effect to its two policies throws up interesting parallels.

Initial attempts by the EU in its external social policy to ensure for the observance of core labour standards concentrated on a hard law approach by advocating the introduction of social clauses into trade policy in order to encourage respect for core labour standards by rewarding those countries that adhered to them. Driven by the establishment of the World Trade Organisation (WTO) in 1994, numerous European governments, particularly France and Belgium, were in favour of linking labour standards with trade rules through the introduction of a social clause in the WTO rules. This was supported by the European Parliament and the Commission (which at the time was also actively pursuing an internal social policy). However, Germany and the UK along with other Member States opposed any type of social clause, arguing that the WTO is a ‘trade organisation, not a social organisation’⁷. As a result, Member States could not agree on adopting a common position in response to a communication issued by the European Commission in 1996 on the trading system and internationally recognised labour standards in the run up to the WTO’s first Ministerial Conference held in Singapore in December 1996. A social clause was not adopted at this conference, the compromise instead being support for and recognition of the ILO’s role in promoting core labour standards (Leary 1997). Although consensus was not reached on the issue of a social clause in the WTO context, the EU took the decision by a qualified majority vote in the Council to introduce labour standards conditionality through a unilateral social clause into its Generalised System of Preferences (GSP) trade regime (Orbie and Tortell 2009). Under the GSP, the EU offers tariff preferences to countries which have signed and are effectively implementing the core UN human rights and ILO labour rights conventions. In addition, the EU has created a special incentive arrangement (GSP+), which obliges beneficiary countries to ratify multiple core human and labour rights, and

⁶ For other examples see Däubler (1989).

⁷ Quote from UK Minister of Trade Ian Lang, House of Commons Hansard Debates, 6 December 1996.

environment and good governance conventions in order to benefit from additional tariff reductions. To date, 16 countries benefit from the GSP+.

While the Lisbon Strategy did not make suggestions for an EU external social policy, its new forms of governance nonetheless infiltrated the field. Since the early 2000s, the EU has moved away from using hard law mechanisms and has increasingly turned to soft law instruments in order to promote a social dimension of globalisation. At the same time, there has been a shift in focus from the core labour standards mentioned above to broader social and development-related objectives (Orbie and Barbarinde 2008). In 2001, the European Commission indicated that it would not only focus on core labour standards but also on general issues of social governance. Thus, the EU has been active in promoting a European framework for corporate social responsibility by introducing voluntary ways such as social reporting in which multinational enterprises' compliance with labour standards can be monitored. The Commission has also committed itself to promoting corporate social responsibility externally through trade incentives, development agreements and cooperation with the ILO and has formed a European Alliance for corporate social responsibility with the business community. The EU's approach to corporate social responsibility has been described as a 'holistic approach' as it 'includes principles on human rights, labour standards and the environment, unlike other international initiatives which tend to include only one dimension of corporate responsibility, such as environmental issues' (Gatto 2005: 435). However, the frequent lack of a specific connection between labour standards and incentives or sanctions has also been criticised (Faber and Orbie 2007) as it weakens the EU's potential in encouraging higher labour standards.

It must therefore be questioned to what extent the EU has actually developed a global social identity. Its use of hard law – making trade arrangements conditional on the observance of core labour rights – certainly has the potential to improve labour standards in less-developed countries. A recent study (Gasiorek et al. 2010) has shown that the EU's GSP and GSP+ schemes have been relatively successful in raising social standards and the ratification of international conventions. The International Trade Union Confederation (2010) also presents evidence of improved labour standards as a result of GSPs. However, other reports (Orbie and Tortell 2009) are less positive and criticise the EU for lack of transparency in applying its trading preferences. Moreover, only 16 countries currently benefit from the GSP+ which has greater potential to promote sustainable development and good governance than the GSP (Gasiorek 2010). The difficulty facing the EU in trying to improve labour standards through hard law is not necessarily surprising. The literature examining whether

human rights conditionality in trade agreements has led to improved human rights standards is mixed. Overall there seems to be a lack of a link between the ratification of human rights conventions as part of a trade agreement and higher levels of human rights protection.⁸ What seems important to ensure for compliance with higher labour standards (Wells 2006) is to combine effective monitoring of implementation of standards with positive incentives (such as linking increased market access to effective implementation). The ILO can play a major part in such an approach; a potential which the European Commission has recognised. In 2004, the Commission signed a Memorandum of Understanding with the ILO aimed at enhancing cooperation at all levels in order to make ‘the greatest possible contribution to strengthening the social dimension of development cooperation.’ The Memorandum has led to EU co-funding of ILO initiatives and ILO involvement in the implementation of EU co-operation programmes and projects. Apart from being a useful partner for the EU, involvement with the ILO also serves another purpose. As Orbie and Tortell (2009: 9) argue, ‘the Commission’s normative and development-oriented role in the ILO is less contested by EU member states than hard law activities related to labour standards conventions.’

The EU’s 2020 Strategy – which unlike the Lisbon Strategy places emphasis on an external dimension to the EU’s social policy – also provides hope that the EU may further develop its own external social policy. An informal meeting of ministers of employment and social security in January 2010 concluded that ‘the EU 2020 Strategy should also have an external dimension. [...] [An] objective of the Employment Strategy should be to improve our response to the external dimension of employment, social protection and social inclusion’ (Presidency Background Paper 2010). If such an objective were to become a clear target, the EU could go beyond merely stressing (Orbie and Tortell 2009: 8) the exemplary character of the European Social Model and the OMC for international social governance and use the resources that it has at its disposal to combine hard and soft law mechanisms – effective monitoring of labour standards with positive incentives – in order to achieve a social dimension to globalisation. This in turn would enable the EU to develop its own global social identity.

The next sections of this paper consider whether the Lisbon Treaty and the economic crisis have any impact on the EU’s involvement in social policy both internally and externally.

⁸ For an overview of the literature and a study examining the hypothesis of compliance see Hathaway 2002.

The Lisbon Treaty

The Lisbon Treaty came into force on 1st December 2009. It makes a number of changes to the Treaties and to the structure of the European Union. However, the Lisbon Treaty only has a limited effect on the EU's internal social policy as its provisions do not greatly alter the Treaties in the area of employment. The Treaty inserted a new provision (article 151) into Title X of the TFEU on Social Policy which consolidates and clarifies the role of the social partners in the making of social policy through the social dialogue. In doing so, it recognises the diversity of national systems and emphasises the autonomy of the social partners.

Similarly, the Lisbon Treaty does not alter the extent of the EU's competence in external social policy although the Treaty introduces a number of provisions which have the potential to clarify the scope of the EU's actions. Article 47 of the Treaty on the European Union (TEU) states that the EU 'shall have legal personality'. This gives formal status to the EU as a legal body capable of entering into international agreements. Leading on from this, the Lisbon Treaty seeks to clarify the areas of EU competence in articles 3 – 6 TFEU. Under article 4 TFEU, the Union has shared competence with the Member States in the area of social policy. This builds on the CJEU's Opinion 2/91 and seems to partly codify and clarify the relationship between the EU and its Member States in the field of external social policy. However, art. 4 TFEU does not deal with the Court's suggestion that the EU has exclusive competence in areas where harmonising legislation has been adopted. It is therefore unclear how the Treaty provision and the jurisprudence of the Court will interact.

Finally, the Lisbon Treaty establishes a High Representative for Foreign Affairs, aided by the European External Action Service to conduct the EU's common foreign and security policy. While the exact scope of the Representative's role is unclear at present, she has the potential to provide a stronger link between the EU and the ILO by supporting the ILO's work during international consultations, encouraging non-EU countries to ratify and implement ILO Conventions on international labour standards, and, to raise major cases of labour standards violations.

Undoubtedly the main contribution of the Lisbon Treaty to EU internal and external social policy is the Charter of Fundamental Rights. The Charter is given binding legal effect by the insertion of an amendment into article 6 TEU which results in it having the same legal value as the Treaties. The Charter applies to the actions of the European institutions but also to the Member States when implementing EU law. Thus, an argument could be made that the Commission must respect those rights laid out in the Charter when implementing EU co-operation programmes and projects in third countries.

The Charter sets out the full range of civil, political, economic, and social rights of European citizens and all persons resident in the EU and, as well as encompassing the European Convention on Human Rights (ECHR) and ILO principles, is also based on the constitutional traditions of the Member States, the Council of Europe's Social Charter, the Community Charter of Fundamental Social Rights of Workers, and the case law of the CJEU and of the European Court of Human Rights. The Council acknowledged its primary objective as being to make citizens' rights 'more visible' through consolidation and restatement of pre-existing texts rather than to establish any new rights. The Charter stresses the importance of fundamental social rights by placing them alongside more easily recognisable fundamental rights such as the right to life (art. 2) or the prohibition of torture (art. 4). In this it is exceptional as it is the first international document to recognise the indivisibility of human rights by placing civil, political, social, cultural and economic rights on the same level. Moreover, the placement of the full range of rights within a single, legally binding document arguably signifies a process of deconstruction of the traditional hierarchy of rights within EU law which prioritises economic over social rights.

Perhaps the most compelling practical application⁹ of the Charter to the EU's internal social policy lies in its contribution to the identification of a unifying ideology and normalisation of social standards, particularly under the OMC. Without such a clear and unequivocal statement of common values, the judicial task of interpreting the existing rights provided by EU law against the backdrop of the OMC's potentially deregulatory guidelines could be severely compromised. Alongside the Charter's possible use in the judicial interpretation of employment policy, it has another role in the juridification of the soft law approach to employment regulation. This is perceptible in its guarantee of certain rights such as equality between men and women which amount to positive obligations whilst allowing for the progressive realisation of associated rights. By placing such rights within the context of a statement of underlying principles, the Charter enables their realisation through hitherto unchartered means, for example, by opening up the possibility at the inter-governmental level for the adoption of measures aimed at encouraging and incentivising Member States to utilise positive action as a means of effecting real change (Hepple 2004).

By providing a clear statement of the guiding principles of EU law, the Charter has the potential to stimulate a valuable interplay between its contents and the EU's citizens,

⁹ This argument is further developed in a conference paper entitled 'European Labour Law in Crisis: The Demise of Social Rights?' presented by N. Busby and R. Zahn at the 'Labour Law in Crisis' conference held at Kingston University on 11th May 2012 and at the Social Rights workshop, 'Integration or Disintegration? The Future of EU Law and Policy' at the Institute of European Law, Birmingham University on 28th June 2012.

courts, national governments and the institutions themselves. When placed within its wider constitutional setting, the Charter is at least capable of producing a centrifugal effect by which pre-existing obligations are clarified and strengthened through their interrelationships with associated provisions. Yet although the Charter consolidates modern economic and social rights with the more traditional and well established civil and political rights, this does not automatically convey equality in application across the whole range of rights. The Charter does little to disturb the *status quo* which has developed over the EU's life time through the juridification of rights. However, by including social rights alongside civil and political rights, the Charter has the potential to realign the underlying rationale of the EU's internal social policy with that of its external social policy by underpinning it with a human rights focus. In this respect, the Charter's significance in the social domain is more than just symbolic as, by its incorporation in the EU's constitutional law, 'the European market order can be said to incorporate a set of core social rights' (Deakin and Browne 2007: 23). This not only has the potential to strengthen the coverage of the European Social Model, it could also give new life to the EU's attempts to develop a global social identity. Overall, therefore, changes made by the Lisbon Treaty could make a positive contribution to the EU's pursuit of an internal and external social policy.

The Economic Crisis¹⁰

The current economic crisis, the biggest financial and economic downturn since the Great Depression, has its origins in the bursting of the American housing bubble and the consequent collapse of the sub-prime mortgage market in the United States in 2007 and 2008. The ever-growing number of defaults in the sub-prime mortgage market and the global proliferation of mortgage-backed securities led to uncertainty amongst banks as to the exposure of their counterparties to such toxic assets. As a result of this climate of fear, banks stopped lending to each other thus leading to a shortage of liquidity. Those financial institutions whose business models were predicated on the assumption that they would always be able to satisfy their liquidity requirements by tapping the wholesale markets, such as UK lender Northern Rock, were hit particularly hard by the sudden disappearance of interbank lending. The crisis peaked in the autumn of 2008 when the US government decided not to save the investment bank Lehman Brothers. Governments in the US and Europe had to

¹⁰ This section provides a very brief overview of the current economic crisis in order to provide a background to the discussion on its effects on the EU's internal and external social policies. Detailed descriptions of the crisis, its effects and possible solutions can be found in Gray and Akseli 2011 or Cassis 2011. An overview of the development of the crisis and its effects on the eurozone is provided in Bruun 2012.

step in to provide emergency funding for banks in their countries, to guarantee investments, to provide hefty stimulus packages for their economies and, in some cases, to nationalise failing institutions. The financial crisis in turn developed into a global economic crisis as global GDP contracted in 2009. This global recession considerably reduced public revenues and placed a heavy burden on welfare states. In addition, governments in most developed countries were burdened with costly rescue packages from bailing out banks in the wake of the financial crisis and had to initiate deep spending cuts and austerity measures in order to reduce their public deficit. At the same time, market confidence in sovereign debt faltered as investors and rating agencies began to doubt the creditworthiness of certain countries in the euro-zone – notably, Portugal, Ireland, Italy, Greece and Spain. The downgrading of such countries' credit ratings had the effect of raising interest rates for those countries making it harder for them to service their debt. In October 2009, Greece admitted that it was no longer able to pay its creditors and in February 2010, the country was placed under budgetary supervision by the European Commission. European leaders, together with the Commission and the International Monetary Fund have since agreed a number of rescue packages for Greece in exchange for the reform and stabilisation of Greece's public finances. In November 2010, Ireland was forced to draw on the financial support of the European Financial Stability Facility in order to service its debts and in April 2011, Portugal received a 78bn-euro bailout; Cyprus followed in June 2012.

The economic crisis has had different effects on the EU's internal and external social policies. Internally, 'increasing financial deregulation and privatisation has put the European Social Model under threat. [...] The economic recession resulting from the crisis further threatens Europe's approach to social welfare' (Van Reisen, Stocker and Vogiazides 2009: 44). At a national level, spending cuts to reduce public deficits have entailed a reduction in social, welfare and public services. Continued low growth rates have led to some of the highest levels of unemployment in the EU Member States since the Second World War.

At a European level the response has mainly focussed on recovery plans and rescue packages targeted at the financial sector. The rationale behind such support is that 'state guarantees and recapitalisations will allow banks to make more loans available, thus stimulating an increase in investment, which is expected to create and maintain jobs' (Van Reisen, Stocker and Vogiazides 2009: 44). However, this policy has also been criticised by many as ignoring the widening social inequalities which are developing in the Member States. There have been calls (Van Reisen, Stocker and Vogiazides 2009: 44) for the EU to adopt 'measures to integrate those who are excluded from the labour market, invest in social

and health services and improve social protection systems.’ So far, the EU (European Commission 2009: 2) has restricted itself to ‘developing guidelines on the design of labour market policies during the crisis.’ Indeed, a summit of EU leaders which was supposed to find a resolution for the growing unemployment problem as a result of the crisis was postponed in order to avoid false promises being made in the run-up to the European Parliament elections in 2009 (Labaki 2010). While a summit was held in February 2010, it focussed mainly on the Greek debt crisis rather than the social issues facing the Member States (Illmer 2010).

Although the EU institutions have the competence under the Treaty to adopt minimum standards in the area of labour law and social policy, there has been no talk of adopting hard law mechanisms in order to ease the effects of the crisis. Instead, the EU institutions have stressed the importance of the Lisbon Strategy and of Europe 2020 in responding to the economic crisis. Europe 2020 is meant to have a double purpose: ‘it should focus on how to overcome the crisis, and in the medium term, it should define the EU’s economic and social model, which is needed in order to face the challenges of globalisation.’ However, it is unclear what role Europe 2020 can play in overcoming the crisis. As Vanhercke (2011: 15) points out:

The underlying ‘growth, growth, growth’ paradigm of Europe 2020 is being challenged; and there is a very real risk that the social dimensions will become swamped by economic considerations [...]. Furthermore, there is a risk that the EU’s coordinating role with regard to social protection and social inclusion may be reduced to social inclusion alone, while social inclusion becomes narrowly focused on increasing access to the labour market. Finally, the new governance structure raises serious questions regarding the future operation of the Social OMC: even if it is unlikely that it will be completely abandoned, it is not clear whether and under what form [it] will continue, thereby further weakening the ‘social voice’ in Europe.

While the European Commission has published evidence (2010) that an increased use of social dialogue has had a positive impact on companies struggling with the economic crisis, much of this response stems from the national level and a coordinated Europe-wide approach to the social effects of the crisis is lacking. While the use of soft law mechanisms may lead to ‘an increased (potential) visibility and importance for social issues’ (Vanhercke 2011: 14),

they seem inadequate in coordinating an EU-wide response to the devastating effects that the economic crisis has had on national social models.

The lack of a coordinated and effective social policy to deal with the impact of the economic crisis is reminiscent of the EEC's response to the 1973 oil crisis (Weinstock 1989: 19-23). An attempt was made in the 1970s to improve the social dimension to European economic integration through the first Social Action Programme (SAP) which was signed in January 1974. However with the onset of the crisis, individual states focussed on their economic priorities and although the SAP did have some minor success, enthusiasm at a European level for a concrete social policy evaporated. The value of this comparison is limited as a common currency now mandates EU-wide solutions to the economic crisis at least within the eurozone. Yet it seems unfortunate that at the same time the EU has not learned from past experience by taking avail of its legislative competences to use the crisis in order to strengthen the European Social Model. In the current context, Deakin (2012: 35) argues that

the financial crisis has given the debate about the role of social policy in the EU a new and very hard edge. Social policy can no longer be seen as a marginal issue for the EU. [...] In the longer run, economies should be put on to a more stable growth path. In the labour market context, this implies a combination of measures aimed at restoring real wage growth, limiting income inequality and providing the basis for long-term productive investment in skills and resources. [However,] [t]his option, while in principle capable of offering a coherent, socially progressive response to the crisis, is not currently on the policy agenda as far as the EU is concerned.

Thus, judging by the current lack of initiative at an EU level, it seems that the EU is unclear as to how to further develop its social self.

Obviously, the pressing need at an EU level is to find satisfactory solutions to the banking and eurozone crisis which place an enormous strain on national economies, the eurozone and European integration as a whole. However, ignoring the future development of the European Social Model is a very short-sighted strategy. In an enlarged European Union of 27 Member States with very diverse social protection levels, economic integration needs to be coupled with a certain level of social integration in order to further European integration. The EU has the relevant tools – hard and soft law mechanisms – to develop a clearly defined ‘social voice’. It may be that the introduction of the Charter of Fundamental Rights which

gives social rights a status where they should not be ignored could be a turning point. However, whether the Charter with its lack of legislative dimension will provide the necessary impetus for the future development of social rights is doubtful in the current climate. Overall, one must therefore conclude that the economic crisis has had a negative effect on the EU's internal social policy. It has illustrated the weaknesses of the EU's limited competence in the social field and made visible the inadequacies of the new forms of governance under Europe 2020.

By way of contrast, a more positive picture emerges from an examination of the effects of the economic crisis on the EU's external social policy. A report commissioned by the European Parliament in 2010 (Eichhorst 2010: 10) found no evidence of a deterioration of social standards as a result of the economic crisis. Conversely, the Report found that:

[f]rom the outside, the EU is perceived as a normative power in social issues and an attractive partner, owing to the unique combination of economic dynamism with a social model. The EU has a good reputation, which can be seen as a major asset when it comes to international dialogue on social issues.

Evidence of the EU's commitment to its external social policy by acting in international fora can be found in the role it played during the negotiation of the ILO's Global Jobs Pact in 2009. This Pact attempts to address the social and employment impacts of the international financial and economic crisis by promoting tried and tested policy measures for member countries which put employment and social protection along with environmental sustainability at the centre of crisis responses. The EU played a key role in cooperating closely with emerging economies, developing countries and the social partners during the adoption of the Pact. Moreover, the widening of the Europe 2020 Strategy to include external social policy indicates that the EU remains keen to push for a social dimension to globalisation regardless of its internal preoccupations.

It must be recognised at this stage that it is of course easier for the EU to pursue an external social policy. Involvement within and supporting the ILO which does not have enforcement capabilities to ensure for observance of its labour standards does not require the EU to seek Member State approval which often acts as a bar to the adoption of internal social measures. Also, the main focus of the EU's external social policy has been on securing the implementation of core labour standards such as freedom of association, elimination of all forms of forced or compulsory labour, effective abolition of child labour and elimination of

discrimination in employment. While these are, without a doubt, important goals to work towards, it is arguably easier for the EU to support the abolition of child labour through the use of soft or hard law mechanisms than to get EU Member States to agree on directives setting legally binding minimum standards on specific working conditions within the European Social Model. Social integration within the EU, although patchy, goes much deeper than any attempts to introduce a social side to globalisation. Equally, under its current competence, the EU has much greater potential to develop an effective European social model than to visibly improve labour standards in developing countries. It is therefore not surprising that the EU faces stronger political pressures in the pursuit of its internal social policy and is thus less able to act in the face of such pressures.

The development of an external social policy which promotes core labour standards as part of a wider human rights and environmental framework sits comfortably within both the EU's governance agenda which focusses on incentives, targets and guidelines, and within the Charter of Fundamental Rights's primary aim which is to reaffirm and clarify the EU's commitment to democracy as expressed through the language of human rights. Promoting an external social policy either through trade agreements or within the ILO is thus a diplomatic way of showing that the EU is taking social rights seriously while avoiding a clash with its member states. Individual member states such as the UK have adopted a similar tactic. Despite huge budget cuts which have had a profound effect on the country's domestic economy, the UK's development and aid budget (which admittedly makes up a small percentage of the overall budget) has remained untouched and is set to increase (HM Treasury 2010). Due to the limited nature of EU competence in external social policy, it is perhaps not surprising that the economic crisis has had little impact.

Concluding Remarks

This paper set out to explore whether there were parallels between the EU's internal and external social policies and whether the development of one depended on the other. Both policies begin from different starting points and are founded on different rationales: the EU's internal social policy is based around a theory of economic integration whereas its external social policy has evolved around a human rights and development argument. However, the mechanisms used to achieve both social policies throw up interesting parallels: an initial preference for hard law mechanisms followed by a shift to new forms of governance and a reliance on soft law. There are signs that a combination of both types of mechanisms – for example linking enforceable targets with incentives – may be a successful strategy to pursue.

However, such a hybridisation of hard and soft law has been sporadic in practice. This does not mean to say that there has been convergence between the EU's internal and external social policies nor that this is a desirable outcome. The EU's internal social policy seeks to approximate national labour laws in order to facilitate economic integration whereas the EU's external social policy encourages respect of core labour standards.

The Lisbon Treaty and the economic crisis have had different effects on the EU's internal and external social policies. From the lack of recent initiatives taken in the field of internal social policy during the economic crisis, it seems that the European Social Model is itself in a crisis. There have been almost no hard law developments since 2002 and while the Europe 2020 Strategy sets ambitious targets, there are question marks over its ability to effectively tackle the negative impact of the crisis on employment and social welfare across the EU. The EU seems to be reluctant to take action in the social sphere despite it being necessary to counter the effects of the economic crisis thereby giving the impression that it is at a loss as to its social self and how that self is going to develop. This feeling of crisis is not present in the EU's external social policy. Although there are doubts as to whether the EU has developed a global social identity, recent initiatives such as the renewal of the GSP and GSP+, the EU's involvement in the ILO's Global Jobs Pact and the inclusion of external social policy in the Europe 2020 Strategy suggest that the EU is willing to take on a more active role in promoting an external social policy.

The Lisbon Treaty's introduction of the Charter of Fundamental Rights could have a positive effect on both the EU's internal and external social policies. Externally, the codification of human rights within the EU's constitutional legal order could give the European institutions greater legitimacy and encourage accountability when promoting social rights abroad. Internally, the Charter's incorporation of social rights makes it difficult to see them only as facilitators of economic integration. Rather, it gives social rights a status in EU law where they cannot be ignored and, as a result, 'the tensions [between economic and social policy] inherent in the [EU's] current policy make it likely that there will be a reevaluation of the relationship between social and economic policy at some point' (Deakin 2012: 36-37). Deakin suggests that such a reevaluation could take the form of a 'human-developmental view of labour law'. According to Deakin, 'the use of human development goals to benchmark national social and economic performance is not just relevant in the context of so-called emerging or transition systems.' Combining social rights and economic growth can also help the EU and its member states 'to ensure their mutual, long-run sustainability.' Such a strategy is oddly reminiscent of the EU's attempts hitherto to introduce

a social dimension to globalisation through its external social policy. Thus, while the EU's internal and external social policies are not mutually dependent there may be areas where one could learn from the other.

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