

Evolving Europe: Voices of the Future

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Swimming upstream: Health, civil society and the reform of economic governance in the European Union¹

1. Introduction

In a seminal article published in 2008, Scott Greer identifies a critical juncture in the development of contemporary European Union (EU) health policy (Greer 2008). As the result of a shock administered by the Court of Justice of the EU (CJEU), Greer hypothesises, the health policy space was thrown into a situation where ‘...the ordinary incrementalism of politics is temporarily replaced by uncertainty and the possibility of significant change, which will later stabilise and return to incrementalism’ – a critical juncture (Jones and Baumgartner in Greer, 2008). The shock, considered necessary for the creation of a critical juncture, took the form of a series of judgements which brought health services policy, previously the exclusive responsibility of member states, into the EU health policy arena. The arena and its actors, never having had competence in this area before, were largely unprepared and under-qualified, presenting a temporal space where each initial decision held the potential to shape possible policies and structures for many years to come. To demonstrate the potential long-term implications of decisions made at such a critical juncture, Greer employs a historical institutionalist model, drawing on the concept of ‘path dependency’. Here, a decision to take a particular course of action, even if it implies no binding commitment to follow that course over a period of time, will shape the behaviour of actors and institutions and raise the costs of changing paths to such a degree that the original course is likely to become entrenched. Initial choices will encourage social adaption and the creation of networks and practices specific to the status quo, greatly increasing the cost of adopting an alternative path (Pierson 1996: 145). As such, Greer identifies a crossroads in the development of EU health policy at that time – ‘decisions are highly contingent but, once taken, will shape politics and policy for the future’ (Greer 2008: 219).

This article mirrors Greer’s model of analysis by using historical institutionalism and the concept of path dependency to assess the critical juncture presented by the most recent ‘shock’ administered to the EU health policy arena. Since the reform of EU economic governance began in 2007, health has increasingly featured in the context of macroeconomic concerns, shifting the nexus of health policy-making upstream. Just as health services were brought within the EU’s health competence by the series of CJEU judgements that Greer identifies, so too the jealously guarded realm of health systems organisation and finance has been pulled in by the recent reforms instigated by the European Commission (herein Commission)². Processes such as the European Semester, launched in 2010, require member states to accept ever more detailed guidance on public expenditure and investment and to incorporate the macroeconomic concerns of the Union into their national budgets prior to their discussion at national level. In this way, vital decisions affecting the financing and organisation of health systems are now being taken at the level of EU finance ministers and economic advisors, far upstream from the traditional realm of health policy-making. Despite the significant impact of this changing institutional structure upon health outcomes, civil society actors remain absent from the process. Whilst health actors within the Council of the EU, the Commission and, to some extent, the European Parliament, are able to participate in and contribute to the new mechanisms, civil society organisations remain without an institutionalised role or the capacity to engage systematically.

¹ This article is developed from a report written for the European Public Health Alliance (EPHA) – see EPHA, 2013 – and is kindly supported by EPHA, Lancaster University and the Economic and Social Research Committee (ESRC), UK.

² The reforms have also been encouraged, shaped and implemented by a number of other actors, including the European Central Bank (ECB), the International Monetary Fund (IMF) and the member states themselves.

The remainder of this article utilises the historical institutionalist framework to illustrate and understand why it is crucial that action to remedy these weaknesses is taken now. Historical institutionalism identifies the critical juncture currently characterising EU health policy and explains how, via path dependency, the new model, with its existing flaws, will become entrenched unless timely action is taken. The article proceeds by examining the ‘shock’ administered by the on-going reform of the EU’s economic governance framework and the resulting expansion of the EU’s health competence. In particular, it focuses on the European Semester (herein Semester) as the new system of economic policy coordination and a crucial first step towards ‘genuine economic and monetary union’ (Commission 2012a) and the health impact of decisions and policies that are emerging from this new structure. The article then looks at the role for civil society organisations, both in principle and in practice, in the Semester framework – this analysis is supplemented by data collected from a number of interviews and case studies. Finally, it employs a historical institutionalist model to illustrate the significance of decisions taken during the initial cycles of the Semester in determining its trajectory and development. The article concludes that, in light of the critical juncture which currently characterises EU health policy, failure to address the weaknesses of the new economic governance framework promptly risks the entrenchment of this, democratically illegitimate, model and the undermining of traditional health policy. Data from secondary sources, official documents and legislation is supplemented by seven semi-structured interviews conducted with EU officials and civil society organisations between February 2013 and April 2013.

2. Theoretical framework

Developed in response to the behavioural perspectives that were influential during the 1960s and 1970s, the ‘new institutionalist’ approaches – including historical, rational choice and sociological, among other, variants – seek to depict the role that institutions play in the determination of social and political outcomes (Hall and Taylor 1996: 936). In contrast to the work of the foundational institutionalist school, the ‘new’ institutionalisms no longer understand institutions simply as political organisations – the term now embodies a range of structures which refer more broadly to a ‘stable, recurring pattern of behaviour’ and such approaches are interested in the way in which institutions personify values and power relationships (Lowndes 2010: 61). Though maintaining a distance from the traditional neofunctional-intergovernmental paradigm of European integration studies, new institutionalism challenges elements of both models, in particular the liberal intergovernmental premises that institutional evolution can be subject to tight control and that institutions embody the long term interests of those originally responsible for their design (Pierson 1996: 126). The three variants agree on a role for institutions as the rules that structure behaviour, but differ over their understanding of the nature of the beings whose actions are structured (Steinmo 2008: 162). Rational choice institutionalism asserts that institutions frame the strategic behaviour of individuals, who act to maximise gain, whilst sociological institutionalism considers that institutions frame how the world is seen by individuals who act according to a logic of appropriateness. Historical institutionalism, as a third variant, sits between the two – it posits that humans are both norm-abiding and self-interested actors, cutting across the rational/non-rational divide, and seeks to determine why a given outcome occurs as a balance of these characteristics (Pierson 1996).

The term ‘historical institutionalism’ emerged at the beginning of the 1990s and an early framework of the approach was laid out in Steinmo et al. (1992). The ‘old institutionalisms’ were characterised as ‘detailed configurative studies of different administrative legal and political structures’ and contrasted to the ‘new institutionalist’ works of Berger (1981), Hall (1986), Katzenstein (1978) and Skocpol (1992). Amongst these new approaches, a commonly accepted definition of an institution was identified – Hall (1986: 19) describes ‘...the formal rules, compliance procedures and standard

operating practices that structure the relationship between individuals in various units of the polity and economy'. Ikenberry (1988: 226) developed a concept of 'levels', distinguishing between government institutions, overarching structures of state and normative social order, and later works addressed both formal rules and organisations (Streeck and Thelen 2005) and informal rules and norms (Hall 1989; Marcussen 2000). In all these approaches, the central characteristic of institutions is the way in which they '...shape who participates in a given decision and, simultaneously, their strategic behaviour' (Steinmo 2008: 159).

In contemporary politics, historical institutionalism is distinguished by its focus on organisational configurations, as opposed to particular isolated settings and exhibits three key features: examination of big, substantive questions inherently of interest to the broad public and other scholars; rigorous consideration of time, sequences and transformations; and analysis of macroeconomic contexts combining the effects of institutions and processes (Pierson and Skocpol 2002). The 'agenda' of the 'modern' historical institutionalist approach has centred on the role of ideas and mechanisms of institutional change, resulting in a core set of embedded concepts common to most strands (Steinmo 2008: 167).

Firstly, path dependency emerged as an explanation for the inherent difficulty associated with institutional change in the historical institutionalist model. The notion path dependency first gained prominence in economics and technology literature, where it sought to explain why certain technologies gain advantage over others and prevail in the long run, even where they are less efficient than their alternatives – political science, and historical institutionalism in particular, has taken this concept and added an element of chance, through agency and choice, to explain why, once a path is chosen, it can become 'locked in' (Thelen 1999: 385). Until recently, the dominant explanation for change within this context of path dependency was the notion of punctuated equilibrium; here, institutions and processes remain stable – in the status quo – until faced with an exogenous external shock (Steinmo and Thelen 1992). However, this model came under criticism for its lack of agency and its failure to consider political conflict and the dynamic relationship between institutions (Peters et al. 2005). In its place, the concept of critical junctures has developed to explain choices which '...close off alternative options and lead to the establishment of institutions that generate self-reinforcing path-dependent processes' (Capoccia and Keleman 2007: 341). Two different sets of claims can be derived from the use of critical junctures in historical institutionalist analysis – the first involves the notion of crucial founding moments of institutional formation which set paths of development, whilst the second involves the continuing evolution of institutions in response to changing political contexts, in ways that are constrained by past trajectories (Thelen 1999: 387).

Finally, focusing on the role of ideas and the notion of agency and choice within historical institutionalism, Hay and Wincott (1998) state that, in order to differentiate itself from the rational choice and sociological variants, historical institutionalism must consider the relationship between structure and agency. The ontological and foundational premises of historical institutionalism, Hay and Wincott assert, presume that actors are strategic, information is imperfect and institutions are structures whose functionality is an open question – they can shape outcomes but are also themselves the outcome of political strategies and of choice (1998: 954). Responding to these claims, Hall and Taylor (1998) counter that historical institutionalism must retain an element of structuralism in order to establish the way in which institutions shape social and political life. From Hay and Wincott's analysis they draw a question relating to historical institutionalism's explanation of the link between institutions and individual action – a link which they say is not yet clarified but which historical institutionalism is well-placed to explicate.

3. Economic governance in the EU

The original structure for the coordination of economic policy between EU member states was set by the Maastricht Treaty in 1991. This introduced a 'triad' of measures, made up of the European Central Bank (ECB, Article 105 TEU), the Excessive Deficit Procedure (EDP, Article 104 TEU) and the Broad Economic Policy Guidelines (BEPGs, Article 99 TEU). These structures were supplemented as part of the European Economic and Monetary Union (EMU) framework, which created an umbrella for measures aimed at converging economic policies and provided for the introduction of the single currency in 1999. Building on these early foundations, two complementary processes were introduced in the late 1990s. On the demand-side, stabilisation policies such as the Stability and Growth Pact (SGP) and the Cologne Process encouraged macroeconomic discipline; on the supply-side, structural reform was prompted by the European Employment Strategy (EES) and the Cardiff Process of capital and market reform. These initiatives were followed in 2000 by the Lisbon Strategy for Growth and Jobs, which institutionalised the regular Spring Councils that had emerged to coordinate the EMU system and laid the foundations for the Europe 2020 Strategy. Finally, the Lisbon Treaty, which came into force in 2010, made a number of changes to the existing economic governance framework.

3.1 The pillars of EU economic governance and Europe 2020

Whilst certain elements of the framework elaborated above have been retained, a series of substantial reforms have dramatically altered the fundamental architecture and constructed five central pillars of EU economic governance; these are introduced chronologically below.

- The Stability and Growth Pact (SGP): Originally adopted in 1997, the SGP was reinforced as part of the Six Pack in 2011. Its overarching goal is to maintain budget discipline through a series of preventative and corrective measures which ensure fiscal policy is conducted in a sustainable manner and excessive deficits are corrected in a timely manner.
- The EuroPlus Pact: Adopted in March 2011 by 23 member states, the EuroPlus Pact commits euro area countries and other parties to the Treaty to closer coordination of economic policy and tighter surveillance at the EU level. It sets four objectives: fostering competitiveness; fostering employment; maintaining sustainable public finances; and facilitating financial stability.
- The Six Pack: Created in response to the weaknesses of the existing system, as uncovered by the economic crisis, the Six Pack entered into force in December 2011. Crucially, it codifies the European Semester and makes a number of changes to the process, such as the introduction of the Macroeconomic Imbalance Procedure (MIP). The Six Pack consists of two regulations addressing macroeconomic imbalance surveillance, and four pieces of legislation, three regulations and a directive, which address fiscal surveillance.
- The Fiscal Compact Treaty (FCT): The FCT was finalised in January 2012 and was adopted by all member states with the exception of the United Kingdom and the Czech Republic. Consequently, it is not part of EU law but rather is an international treaty, concluded between a given set of member states. Its elements of fiscal policy coordination run parallel to the SGP and, as the Lisbon Strategy institutionalised the Spring Council meetings, so the FCT institutionalises the summits of the euro area leaders. Its other key provisions include the introduction of a 'balanced budget' rule, requiring adherence to a medium term objective (MTO) under threat of sanctions by the Commission and the CJEU.
- The Two Pack: Adopted in March 2013, the Two Pack is a pair of regulations, applicable to euro area member states only, which contributes to the further strengthening of budgetary surveillance. The regulations provide for a separate European Semester for euro area

countries, with enhanced monitoring and assessment of draft budgetary plans and greater surveillance of member states threatened by financial difficulty.

The reform of the EU's economic governance framework is undertaken in the context of the Europe 2020 Strategy. Launched in 2010 to reinvigorate the flagging Lisbon Strategy of 2000, the Europe 2020 Strategy is an EU reform which mobilises all existing EU policies in pursuit of three core objectives: smart growth, sustainable growth and inclusive growth. Evaluation of member states' progress towards these growth priorities is conducted through five measurable headline targets in employment, education, sustainability, research and development and social inclusion. Finally, to ensure achievement of these targets, the 2020 Strategy creates seven 'flagship initiatives' including, among others, the Innovation Union, the European Platform Against Poverty (EPAP) and the Digital Agenda. Crucially, the pursuit of smart, sustainable and inclusive growth, the Commission noted in 2010, must be supported by a strengthening of the economic governance framework and greater economic policy coordination between the national and the European levels. The mechanism identified for ensuring such coordination is the European Semester.

3.2 The European Semester

The Semester brings together elements of the reformed economic governance framework whilst synchronising the various EMU reporting and assessment cycles and frames them in one coherent process. Whereas the SGP only interfered with fiscal policy outcomes, the Semester is heavily involved in fiscal policy formulation. It is divided into two stages. The first, running from November to June, is dedicated to coordination at the EU level, whilst the second stage is reserved for the incorporation of EU objectives and requirements into national budgets. The first stage formally begins with the release of the annual growth survey (AGS) which is used to guide member states in their pursuit of the Europe 2020 goals. Previously published in January, it is now released in the November of the year before and contains both a short list of priorities and a long list of objectives.

Once published, the AGS is used by member states in the construction of their national reform programmes (NRPs) and their stability and convergence programmes (SCPs). These outline, respectively, planned structural reforms and fiscal strategies. The SCPs, which examine the situation of member states' public finances form the preventative arm of the SGP and are the basis of the multilateral surveillance of budgetary positions and the coordination of economic policies. As such, they have little direct impact on specific policies. The NRPs, by contrast, are concerned with measures to boost jobs and growth, and accordingly outline member states' progress and activities towards implementing the five headline targets of the Europe 2020 Strategy. Primarily based on the priorities identified in the AGS, the NRPs also make increasing reference to implementation of the previous year's country specific recommendations (see below). Alongside the NRPs and SCPs, member states are encouraged, on a bi-annual basis, to submit their national social reports (NSRs)³. Launched as part of an attempt to reinvigorate the social open method of coordination (SOMC), these chart how the common objectives of the SOMC are being implemented at national level and feed into the annual report of the Social Protection Committee (SPC).

The NRPs, SCPs and, where applicable, NSRs, are assessed by the Commission and integrated into the country specific recommendations (CSRs). The CSRs bring together the priorities outlined in the AGS, the necessary measures identified in the national programmes, commitments made under the

³ In the alternate years where an NSR is not required, member states submit responses to two questionnaires, constructed by the Social Protection Committee (SPC), which allow for progress to be measured continuously, via the common social indicators.

broader economic governance framework, including the FCT and the EuroPlus Pact, and progress reports on member states' implementation of the previous year's CSRs, among other documents. They are drafted by the Commission, in discussion with the relevant Council of the EU configurations, before being endorsed by the European Council and adopted by the Council in early summer. This final adoption signals the end of the first stage of the Semester; member states now take these recommendations back to their national discussions and integrate them into domestic budgets and reform strategies.

Alongside the Semester process, a parallel series of reporting, guidance and assessment is conducted for those countries in receipt of financial assistance. These countries are generally not required to produce NRPs, SCPs or the specific reporting documents associated with the broader economic governance framework. Instead, their progress and performance is monitored by the Troika, made up of representatives from the Commission, the International Monetary Fund (IMF) and the ECB, and guidance is issued via the memorandums of understanding (MoUs). The Troika produces MoUs for each of the member states, regardless of financial status, but they are of particular significance for those countries in receipt of bailout funding, since the rescue packages agreed in these cases are typically conditional upon fulfilment of the MoU requirements.

3.3 The impact upon health

The Commission Communication launching the Europe 2020 Strategy identifies the health sector as a lever for controlling government debt, public expenditure and the sustainability of national finances. Specifically, it states that '...member states shall fully deploy their social security...systems to ensure adequate...access to healthcare' and that long-term financial sustainability must go '...hand in hand with important structural reforms, in particular of...health care [and] social protection' (Commission 2010). Accordingly, the Commission's proposal for the third multi-annual health programme – the Health for Growth Programme – '...strengthens and emphasises the links between economic growth and a healthy population to a greater extent than previous programmes' (Commission 2011b). This link is further entrenched in the progress reports on Europe 2020⁴, both of which noted the contribution of the health sector to job creation, and the Council conclusions on modern, responsive and sustainable health systems, which called for the health sector to play an adequate role in the implementation of the Europe 2020 Strategy (Commission 2011a, 2012b; EU Council 2011). Finally, in February 2013, the Commission released a staff working paper titled Investing in Health, which explicitly asserts that health is a precondition for economic prosperity and a 'growth-friendly' form of expenditure. It establishes a direct link between health and the Europe 2020 Strategy and identifies the European Semester, Horizon 2020 and the Innovation Partnerships, among others, as key EU level tools for the promotion of investment in health systems; 'Financial consolidation and structural reform of health systems', it stresses, '...should be addressed as part of the wider agenda of structural reforms within the context of Europe 2020 and the European Semester' (Commission 2013).

Consequently, health features prominently in the Semester process and is already being affected by the resulting policies and initiatives (EPHA 2013b). For example, in line with recommendations made in the 2012 AGS, the current German NRP commits the federal government to mapping out a preventative health strategy and cites the entry into force of the Care Structures Act (CSA), which creates a framework for universal, needs-based healthcare delivery. This objective is pursued via a

⁴ The Progress Reports are issued as annexes to the AGS – the link between the health sector and job creation is recognized in both the 2011 and 2012 Reports, but no report was produced for the 2013 AGS. Paragraph 1.4 of the Council Conclusions of 17 June 2010 provides that progress towards the headline targets of Europe 2020 will be regularly reviewed.

number of initiatives, including “...changes in financial incentives for physicians, the transfer of decision making to the regional level, and the creation of a new sector for highly specialized care” (Ozegowski and Sundmacher 2012). In its response to the German NRP, the Commission welcomed the actions and urged additional efforts ‘to enhance the efficiency of public spending on healthcare and long-term care’ (Commission 2012c), though reaction from other stakeholders has been mixed, with some feeling that it does not do enough to address supply inequity and sectoral division (Ozegowski and Sundmacher 2012). A similar example comes from the Belgian NRP, which, in line with the same recommendations regarding cost-effective and sustainable health systems, commits the government to cut healthcare spending whilst promoting a comprehensive network of family doctors and raising the profile of the caring professions (Government 2012).

The health outcomes of these measures, as well as those implemented as part of the ‘austerity programmes’ under way in many member states, are yet to be seen⁵. However, such early stage commitments set the framework of national health policy, defining the goals, parameters and budgets of public policy in the context of European macroeconomic priorities.

4. EU health policy at a critical juncture

Capoccia and Keleman define institutional critical junctures as situations where:

‘...the structural (that is, economic, cultural, ideological, organisational) influences on political action are significantly relaxed for a relatively short period of time, with two main consequences: the range of plausible choices open to powerful political actors expands substantially and the consequences of their decisions for the outcome of interest are potentially much more momentous. Contingency, in other words, becomes paramount’ (2007: 343).

In the case of health, the structural influences concerned are the framework in which policy is made at the EU level. Traditional health policy-making takes place via the community method, within the confines of Article 168 TFEU. In this model, legislative proposals by the Commission are debated and amended by the Council and the Parliament, after consultation with wider stakeholders, before being adopted as EU law. The mandate set out in Article 168 TFEU defines the parameters of this process, limiting EU intervention to areas of public health – the responsibility of member states for the organisation and delivery of health services and care is to be fully respected. However, many things that affect or are necessary to deliver health care are governed by provisions outside of Article 168 TFEU and are subject to the EU’s free movement laws, meaning that ‘...the explicit Treaty articles authorising the EU to enact measures affecting health are only a subordinate element of EU health law and policy’ (Greer et al. 2013: 1136). For example, the health professions are regulated according to the principles of professional mobility and mutual recognition of qualifications – policies created at the EU level in the 1970s. Consequently, health policy has long been affected by internal market rules, such as free movement of people, goods and services, as well as the substantial provisions of EU competition law.

It was an instance of precisely this kind of peripheral activity which Greer identified as a changing structural influence upon health in his 2008 article. A series of CJEU rulings handed down between the early 1990s and the mid-2000s confirmed that the provision of health services is, contrary to prior assumptions, subject to the principles of free movement⁶. This decision – the ‘exogenous shock’ in the

⁵ See EPHA Briefing: Reforming health systems in times of austerity, forthcoming 2013.

⁶ See joined cases C-120/95, *Nicolas Decker v Caisse de maladie des employés privés* and C-158/96, *Raymond Kohll v Union des caisses de maladie* [1998] ECR I-1831 ; case C-157/99, *Geraets-Smits v Stichting Ziekenfonds VGZ and H.T.M. Peerbooms v Stichting CZ Groep Zorgverzekeringen* [2001] ECR I-5473 ; case C-368/98, *Abdon*

historical institutionalist model – dramatically altered the structure of the health policy arena by presenting health policy-makers with a brand new competence and the power to shape a range of outcomes that were previously beyond their reach. As such, Greer saw health policy as having reached a critical juncture – each decision made held the potential to affect policy and health outcomes for many years to come.

The reform of economic governance and the introduction of the European Semester have administered a similar ‘shock’ to EU health policy. Whilst health has long been affected by internal market and competition law, as noted above, the economic crisis and reform of related governance procedures has opened up a new avenue of periphery influence – through macroeconomic policy and law. The institutionalisation of the Semester process is broadly acknowledged to have extended the EU’s mandate into the fiercely guarded area of health system organisation and financing (Baeten and Thomson 2012; Fahy 2012). However, whereas the Court’s decisions on health services were eventually brought within the scope of EU policy and law by Directive 2011/24/EU on Patients’ Rights in Cross-border Healthcare (Brooks 2012), the most recent extension has not occurred within the existing framework of health policy-making. Instead, decisions about national health expenditure, budgetary control and fiscal consolidation – decisions which dramatically delimit the policy resources available in ‘traditional’ EU public health – are made upstream, at the level of finance and economic ministries. As such, a two dimensional critical juncture can be identified. On the one hand, decisions made in the newly created ‘upstream’ arena create a *de jure* path dependency, in that they set the parameters for traditional health policy decisions by defining the level of expenditure and the objectives of a given health system. On the other hand, they establish a *de facto* path dependency in that, as with most new modes of governance, the early ‘cycles’ are a learning process. Substantial changes have already been made in light of the first two Semesters and the framework continues to be assessed and evaluated, both by those within and outside of its procedures. However, with each successive cycle, the individual components and mechanisms of the process become further embedded, rendering early adjustments critical to the development and trajectory of the Semester framework.

6. Civil society and democratic legitimacy in the European Semester

Acknowledging the path dependency of its development, which early adjustments and specific provisions should be prioritised in order to ensure that the Semester does not undermine the efforts of traditional health policy actors or contribute to declining health outcomes in the EU? The changes made to date have mainly addressed compliance procedures and the institutionalisation of the euro area as a sphere of deeper economic and monetary union. The Six Pack made a number of changes, including more stringent fiscal rules and increased right of intervention into national policy, based in part upon assessment of the first cycle. A second round of changes will be inaugurated in the 2014 Semester as the provisions of the Two Pack, adopted in March 2013, come into force. The main implication will be the institutionalisation of the divide between euro area and non-euro area member states. Under the new cycle, a separate Semester will be created for euro area countries, with an extended range of surveillance and guidance. Further to the weaknesses already addressed, critics point to a number of more fundamental issues, such as the role of the CJEU (Begg 2012), the interplay between governance mechanisms, the FCT and the MoUs (Dougan and Gordon 2012), and the

Vanbraekel and Others v Alliance nationale des mutualités chrétiennes (ANMC) [2001] ECR I-5363 ; case C-56/01, *Patricia Inizan v Caisse primaire d'assurance maladie des Hauts-de-Seine* [2003] ECR I-12403 ; and case C-8/02, *Ludwig Leichtle v Bundesanstalt für Arbeit* [2004] ECR I-2641.

framework's assumption that a good budgetary policy is 'an austere one that limits social expenditure' (Stierle and Haar 2012).

For the civil society sector, however, the fatal flaw in the Semester's design relates to participation and democratic legitimacy. There remains, despite two sets of revising documents and numerous calls from various European institutions and stakeholders (EU Council 2012, 2013; Parliament 2012), no formal role for civil society, social partners or national parliaments, and limited opportunity for the involvement of the European Parliament. The traditional health policy process, based around the ordinary legislative procedure (or co-decision), involves every central institution, commonly with consultation of the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). Furthermore, a number of agencies and decentralised bodies contribute to the debate, whilst civil society and other stakeholders are engaged via the various platforms and forums, which ensure input is received from a wide range of interest groups. Conversely, the European Semester process has proven remarkably difficult for civil society actors to pervade and remains resistant to an equal role for the European Parliament. Originally, the Semester required only that the European Parliament be 'duly involved', that the EESC and SPC be consulted 'where appropriate' and that relevant stakeholders, such as civil society and national parliaments, be involved 'in accordance with national legal and political arrangements' (Regulation 1175/11, Recital 16). Following the adoption of the Six pack legislation and the codification of the Semester, the Parliament was granted a slightly enhanced role, known as the Economic Dialogue – this invites the Parliament to follow, analyse and give opinions on the ongoing Semester cycle, whilst giving it the right to demand an audience with the economy commissioner, heads of the Eurogroup or the national finance ministers. However, the situation for civil society remains unchanged – those who are directly affected by the health outcomes resulting from European Semester decision-making remain excluded from the process.

Whilst this problem is particularly acute for civil society organisations concerned with health, there are some, working in the areas of environmental and social policy, who have sought to engage with the Semester process⁷. In particular, three organisations – the European Federation for Transport and the Environment (T&E), the European Anti-Poverty Network (EAPN), and the Social Platform (SP) – can be considered case studies in this regard. All three began working on the Semester during its first cycle, experimenting with different ways to influence and contribute to the AGS, NRPs, NSRs, CSRs and other documents via concrete recommendations, media campaigns, coalition building, awareness raising events and traditional political advocacy. Interviews with key staff members, however, reveal the barriers faced and the limits imposed upon civil society involvement. Short deadlines, limited resources and the breadth of the task are among some of the most commonly faced practical issues, but the most challenging element remains the extent to which the core Semester actors are willing to receive and consider civil society input. Formal input at national level is much more flexible, potentially providing a good avenue for national civil society organisations. However, experience 'on the ground' indicates that practices vary hugely between member states, with some asking for input on draft documents whilst others simply present their work to social partners in a uni-directional information session. Similarly, willingness to receive input varies at the European level and even between staff within the same DG (Interview 2013). Furthermore, the capacity of civil society to respond is far from absolute. Many of the obstacles to participation are related to lack of financial, time or knowledge resources. Such barriers will only be addressed by capacity building within and between the civil society sectors.

⁷ This section is developed from the EPHA Call to Action, April 2013 - see Epha, 'Epha Call to Action: Health, Civil Society and the Reform of Eu Economic Governance', (Brussels, 2013a).

7. Path dependency and the European Semester

Returning to the historical institutionalist model, this trend is of particular concern, since path dependency dynamics suggest that such patterns will become entrenched if not addressed during the formative period of the critical juncture. Pierson (1996) offers a persuasive insight into why this is the case. His historical institutionalist model seeks primarily to explain why gaps in member state control of European institutions and public policies emerge – and as such might provide a convincing account of how the European Semester emerged in the first place⁸ – but it is his analysis of why such gaps are difficult to close which is of greater interest here. Pierson states that institutions such as the Semester are inherently difficult to reverse, undo or dramatically alter as a result of three elements: the resistance of supranational actors, institutional barriers to reform, and rising exit costs (1996: 143).

Historical institutionalism assumes the autonomy and agency of institutions – taking a similar approach to neofunctional models, it presupposes that EU institutions will seek to use grants of authority for their own purposes, seeking to extend gaps in member state control and enhance their own autonomy (Haas 1958; Pierson 1996: 132). The European Commission, having been granted such a pivotal coordinating role in the Semester and enjoying unprecedented intervention into the fiscal activities of member states, is likely to seek retention, and even expansion, of this mandate. Indeed its commitment to deeper and more ‘genuine’ monetary union and consistent reference to the Europe 2020 project and the Semester as constituent elements of the EU’s evolving structure suggest it has no plans to reduce its role here (Commission 2012a). Quite conversely, whilst resource cuts have been implemented across the Commission, DGs have in fact increased the number of staff working on the CSRs and other elements of the Semester at the urging of senior Commission officials (Interview 2013). Similarly, the ongoing campaign by the European Parliament illustrates its desire to carve out a role for itself in the construction of economic and monetary union, ahead of any treaty changes (Phillips 2011).

Furthermore, the notion of agency may apply beyond the supranational institutions – where member states feel that the Semester is in their interest and gains can be made, they too may have an incentive to maintain or extend its activity. The Commission campaign for ‘genuine economic and monetary union’, for example, has been publically supported by the European Council as a ‘cornerstone of the EU’ (European Council 26 June 2012). Where more specific provisions are concerned, the drafting process of the CSRs presents a number of formal and informal opportunities for member states to contribute to the content of the recommendations. Formally, the CSRs have to be approved by the Council, so it is likely that any major misgivings will be resolved before they are adopted; informally, the Commission undertakes regular country visits, within the framework of the Directive on patients’ rights in cross-border healthcare, which also serve as fact-finding missions and dialogue mechanisms in relation to the CSRs. Consequently, procedures to facilitate member state input are readily available and, according to interview data, are routinely utilised by national governments. In health, for example, the Belgian government has encouraged the development of EU guidelines for the reduction of health expenditure and coordination between national finance and health ministries, so as to use the current crisis and its politics to reduce expenditure in areas such as pharmaceuticals (Commission 2012d: 16; Interview 2013).

⁸ Pierson (1996) identifies the autonomous action of EU institutional actors, the restricted time horizons of decision-makers, the potential for unintended consequences and the changing preferences of governments as key factors in explaining the emergence of gaps in member state control. Each of these factors can be applied in the case of the Semester to explain how the entrepreneurial action of the Commission, combined with national governments’ short-term concern to ensure re-election and the high issue density of the Semester process contributed to such a crucial shift in competency to the EU level.

Institutions are considered, in the historical institutionalist model, to be ‘sticky’ – that is to say, they are specifically designed to hinder reform. This problem is particularly acute, Pierson claims, in the EU. The decision-making structure is designed such that ‘The same requirements that make initial decision making so difficult also make previously enacted reforms difficult to undo, even if those reforms turn out to...infringe on member state sovereignty’ (1996: 143). Initially, the Semester was legally framed as a new code of conduct for the SGP, so as to require only the approval of the Economic and Finance Committee (ECOFIN), rather than the full Council. It was only later, when the process had become part of the economic governance ‘furniture’, that it was codified in a Regulation as part of the Six Pack. The same difficulty experienced in getting approval for the creation of the Semester is likely, historical institutionalism asserts, to afflict any decisions to amend or repeal the framework. This difficulty is further exacerbated by the complexity of the Semester’s legal foundation, which brings together a number of policies and mechanisms with a variety of legal bases.

Finally, the historical institutionalist approach considers gaps in member state control to be perpetuated by sunk costs and the rising price of exit. Once an institution is established, social adaption by other actors and policies raise the cost of changing to another course or pattern of interaction. The emergence of new networks and their formation around the new institution greatly increases the cost of adopting alternatives – this element perhaps most closely personifies the notion of path dependence. The time and resources invested by the Commission, member states, national actors and interest groups in adjusting to the requirements of the Semester process greatly reduce the likelihood of any decision to reverse its establishment. Furthermore, the same notion applies to the policies that result from the Semester, since policies ‘...can also contribute crucial systems of rules, incentives and constraints’ which create high fixed costs, learning effects and adaptive expectations (Pierson 1996: 145). For example, the Semester’s emphasis on the cost of medicines as a factor in health expenditure has given rise to a Commission proposal for a directive on transparency in pharmaceutical pricing (2012/0035) aimed at curbing pharmaceutical spending, creating a new set of incentives and constraints, as well as a new policy framework, for the actors and stakeholders involved.

8. Conclusion

The model of historical institutionalism presented above enables the identification of the current critical juncture facing EU health policy, the institutional elements that hinder alteration or reversal of initial decisions and the contingency of the Semester’s trajectory. It also illustrates, however, why weaknesses and limitations must be dealt with early in the Semester’s development. The failure to provide a formal role for civil society, social partners, national parliaments or, for the most part, the European Parliament, is arguably the greatest failing of the current Semester framework. Historical institutionalism highlights two fundamental reasons why it is vital that the health community, at the national and the EU level, acts to address this failing and secure a permanent and substantive role in the Semester process and the structure of EU economic governance.

Firstly, the *de jure* path dependency of the Semester means that the decisions being taken in the upstream arena of financial and economic contexts severely restrict and delimit the tools and resources available to policy-makers in the traditional public health sphere, thereby having a significant impact upon health outcomes. The time lag associated with the availability, collection and analysis of data and the absence of previous research into the response of health systems to economic crisis means that, for the immediate future, policy is being made ‘blind’ (Karanikolos et al. 2013). This reflects and is exacerbated by the historical institutionalist assumption that ‘...long term institutional consequences are often the by-products of actions taken for short term political reasons’ – even if data were available

to inform policy-makers of the long-term health impacts of Semester decisions, it would likely be considered of secondary importance to short-term considerations, such a re-election and political acceptability (Pierson 1996: 136). In order to address this issue, the democratic legitimacy of these processes must be enhanced to ensure that those who are directly affected – the patients, consumers and citizens of the EU – are represented and involved in the decisions which affect their health systems, medical care, and wellbeing.

Secondly, historical institutionalism illustrates the risk of the above exclusionist model setting the norm for the Semester, unless its institutional provisions are changed and adapted during the early, formative cycles. The *de facto* path dependency dynamic suggests that, if such steps are not taken, the current model will become entrenched and its structures increasingly difficult to alter as successive cycles are completed. The present critical juncture will occupy a relatively short period of time ‘...during which there is a substantially heightened probability that agents’ choices will affect the outcome of interest’ (Capoccia and Keleman 2007: 348). The situation presented is not dissimilar from that which Greer identified in 2008 – ‘The politics of Europeanisation in health are now about who can harness not so much decisions as the EU policy arena, thereby shaping its importance and parameters’ (2008: 229).

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