

SOCIAL POLICY MAKING IN THE EU:  
CONTENDING PARADIGMS AND ALTERNATIVE APPROACHES

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## **ABSTRACT**

### **SOCIAL POLICY MAKING IN THE EU: CONTENDING PARADIGMS AND ALTERNATIVE APPROACHES**

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This thesis analyzes the evolution of European social policy via focusing on the unfolding contentions between two different notions that disagree over Europe's direction regarding the best social-economic system in Europe. Taking its point of departure in the ratification crisis and the impasse surrounding the Constitutional Treaty, the thesis argues that the contrasting interpretations of the Treaty and the attendant cleavages in the European polity are illustrations of such ongoing ideological struggles among alternative paradigms and approaches. Naming these contending approaches as “project of neoliberalism” and “project of regulated capitalism”, the evolution of European social policy is investigated with a focus on interplays between these projects; the self-transformation of the projects in the course of integration; and the relations between economic and social governance in the construction of an “ever closer Union”.

To this purpose, the thesis theoretically employs Polanyian conceptual framework of “double movement” alongside theoretical approaches of Streeck, Hooghe&Marks, and Pochet that view the evolution of European social policy in conflictual encounters between two opposing notions. Against this theoretical background, the thesis surveys the integration history from the Treaty of Rome until the Lisbon Treaty of 2007. It concludes that the European social policy has evolved within interplays among projects of neoliberalism and regulated capitalism and there has always been an asymmetric relationship between the economic and social governance in Europe as the social governance has always had a secondary and even a subservient position with regard to economic governance in the European polity.

Keywords: European social policy, double movement, regulated capitalism, neoliberalism, Constitutional Treaty.

## ÖZ

### AVRUPA BİRLİĞİNDE SOSYAL POLİTİKALAR: ÇATIŞAN PARADİGMALAR VE ALTERNATİF YAKLAŞIMLAR

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Yüksek Lisans, Avrupa Çalışmaları Bölümü

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Bu tez Avrupa sosyal politikasının gelişimini Avrupa'nın, sosyal-ekonomik sistemiyle ilgili olarak izlemesi gereken yön hakkında farklı görüşler savunan iki ana eğilim arasında süregiden mücadeleler bağlamında incelemektedir. Avrupa Anayasal Antlaşmasının onay aşamasında ortaya çıkan krizden yola çıkan tez, Antlaşma üzerine yapılan tezat yorumlamalar ile bunların beraberinde ortaya çıkan AB içindeki fikir ayrılıklarının; alternatif paradigmlar ve yaklaşımlar arasındaki sürekli ideolojik çekişmelerin bir örneği olduğunu ileri sürmektedir. Söz konusu çatışan yaklaşımlar “neoliberalizm projesi” ve “düzenlenmiş kapitalizm projesi” olarak adlandırılarak, Avrupa sosyal politikası bahse konu projeler arasındaki karşılıklı etkileşimler; projelerin entegrasyon süreci boyunca geçirdikleri dönüşümler ve AB'nin iktisadi-sosyal yönetişimi ilişkisine odaklanılarak incelenmektedir.

Bu amaçla, tez teorik olarak Polanyi'nin “çift-yönlü hareket” kavramsal çerçevesi ile Avrupa sosyal politikasının gelişimini çatışan ve çekişen iki eğilim arasındaki mücadeleler ile açıklayan Streeck; Hooghe ve Marks ile Pochet'nin teorik yaklaşımlarını ele almaktadır. Çizilen teorik çerçeve ışığında, tez Avrupa sosyal politikasının gelişimini Avrupa Ekonomik Topluluğu'nu kuran Roma Antlaşması ile 2007 tarihli Lizbon Antlaşması arasında geçen süreci ele alarak, analiz etmektedir. Tez entegrasyon tarihi boyunca Avrupa sosyal politikasının neoliberalizm ve düzenlenmiş kapitalizm projeleri arasındaki mücadele ve karşılıklı etkileşimler çerçevesinde geliştiği; Avrupa iktisadi ve sosyal yönetişimi arasında hep asimetrik bir ilişki olduğu ve Avrupa'da sosyal politikaların iktisadi politikalara nazaran ikincil ve hatta boyun eğe bir pozisyonda olduğu sonuçlarına varmaktadır.

Anahtar Kelimeler: Avrupa sosyal politikası, çift yönlü hareket, düzenlenmiş kapitalizm, neoliberalizm, Anayasal Antlaşma

To my father whom I'm missing a lot...

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## **LIST OF ABBREVIATIONS**

<b>CAP</b>	Common Agricultural Policy
<b>CBI</b>	Confederation of British Industry
<b>CEEP</b>	European Centre of Public Enterprises
<b>CGT</b>	Confédération générale du travail (The General Confederation of Labour)
<b>EC</b>	European Community
<b>ECB</b>	European Central Bank
<b>ECJ</b>	European Court of Justice
<b>EEC</b>	European Economic Community
<b>EES</b>	European Employment Strategy
<b>EMU</b>	Economic and Monetary Union
<b>EMS</b>	European Monetary System
<b>EP</b>	European Parliament
<b>EPU</b>	European Political Union
<b>ERDF</b>	European Regional Development Fund
<b>ERT</b>	Roundtable of European Industrialists
<b>ESCB</b>	European System of Central Banks
<b>ESF</b>	European Social Fund
<b>ETUC</b>	European Trade Union Confederation
<b>EU</b>	European Union
<b>ICTU</b>	Irish Congress of Trade Unions
<b>IMF</b>	International Monetary Fund
<b>IGC</b>	Intergovernmental Conference
<b>IoD</b>	Institute of Directors

<b>MEP</b>	Member of European Parliament
<b>NAPs</b>	National Action Plans
<b>NGO</b>	Non-governmental Organization
<b>OMC</b>	Open Method of Coordination
<b>PES</b>	Party of European Socialists
<b>PJC</b>	Police and Judicial Co-operation in Criminal Matters
<b>PS</b>	Parti Socialiste (Socialist Party)
<b>QMV</b>	Qualified Majority Voting
<b>SEA</b>	Single European Act
<b>SGP</b>	Stability and Growth Pact
<b>SUD</b>	Solidaires Unitaires Démocratiques (Union Syndical Solidaires)
<b>QMV</b>	Qualified Majority Voting
<b>TCE</b>	Treaty establishing a Constitution for Europe
<b>TEC</b>	Treaty establishing the European Communities
<b>TEU</b>	Treaty establishing the European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UDF</b>	Union pour la Démocratie Française (Union for French Democracy)
<b>UMP</b>	Union pour un Mouvement Populaire (Union for a Popular Movement)
<b>UNICE</b>	Union of Industries of the European Communities
<b>WTO</b>	World Trade Organization

## CHAPTER I

### INTRODUCTION

There has always been an asymmetric relationship between economic policy and social policy since the advent of the European Community as integration in economic sphere has always constituted the primary focus of the Community while integration in social sphere always lagged far behind. This unequal relationship which represents a continuous thread of reality throughout the history of European polity is reflected in the “separate tracks” embraced for the European economic and social governance<sup>1</sup>. European economic governance, constituting the primary concern of European integration, has followed a path of continuous economic opening and supranational establishments. Whereas; the European social governance was kept insulated from not only the economic integration but also from the supranational mechanisms. Contrary to the open economic policies of Community, social policy was kept at the level of the welfare states, flavored by a very low profile social policy at European level. This unequal and hierarchical relationship is viewed to stem from the “constitutional asymmetry” of economic and social governance in a complementary account<sup>2</sup>. The asymmetric relationship which was not initially deemed a problem given the responsibility for social governance to be kept at the welfare states, turned out to be more of a problem as the ever-deepening economic integration combined with the monetary integration created constraints for the social governance for the welfare states itself.

In the face of concerns that the economic and monetary integration would lead to “semi-sovereign” welfare states by undermining national welfare states<sup>3</sup>, European social governance always lagging behind and being constrained by the European economic governance became a very topical issue, being debated not only by the academic world but also by the European societies. Whether the EU should be more prominent in the social

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1 Maurizio Ferrera, *The Boundaries of Welfare: European Integration and the New Spatial Politics of Social Protection*, (Oxford: Oxford University Press, 2005), p.2.

2 Fritz Scharpf, “The European Social Model: Coping with the Challenges of Diversity” in *Journal of Common Market Studies*, 40 (4), 2002, pp.645-70.

3 Stephen Leibfried and Paul Pierson, “Semisovereign Welfare States: Social Policy in a Multitiered Europe” in *European Social Policy: Between Fragmentation and Integration*, Leibfried and Pierson (eds), (Washington, D.C.: Brookings, 1995).

policy domain became issue of discussions. Concerns on the direction of European integration in terms of social-economic policies intensified with the globalization and the increasing European economic problems, signified by soaring unemployment levels. Such concerns also led to the politicization of the issue and questioning of the economic-social system of the Union and even the rationale of the integration itself not only by the academic circles but also by the European public. The most recent and major manifestation of this questioning was the ratification crisis of the Treaty aiming to establish a Constitution for Europe in the spring of 2005.

Against this background, the departure point of this thesis is the prolonged European Constitutional debate and the no votes that came out of the French and Dutch ballot boxes in the referenda process. Signed on October 29<sup>th</sup>, 2004 by the leaders of the 25 EU Member States the “Treaty Establishing a Constitution for Europe”<sup>4</sup> was deemed a milestone in the process of European integration at the time. The Treaty was to become law after the ratification of all Member States. However, “the ink used by the Heads of State and Government to sign the draft Constitutional Treaty was barely dry”<sup>5</sup> when no camps were founded across Europe and after months of acrimonious debate, the French and Dutch electorates rejected the Treaty by resounding “no” votes in the popular referenda. European Constitutional debate revolved around the social and economic issues alongside the allegations that the Constitutional Treaty would lead to a European superstate. Prioritizing and focusing on the social and economic issues as a main reason of opposition to the Constitutional Treaty, it will be argued that the debates surrounding the Draft Constitutional Treaty witnessed very contrasting interpretations of the Constitutional text and thus a major contrast between those finding the text “insufficiently social” and some others viewing the document as “meddling too much in national economic and political life”<sup>6</sup>. To put it another way, a first group of opponents was frustrated by the Constitutional text as they were expecting the establishment of some sort of a “constitutional parallelism” and a more equal relationship between social and economic governance; whereas a second group of opponents, eager to protect the status quo, was not prone to entrust any substantial power to the Community in the sphere of social governance.

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4 Henceforth the Constitutional Treaty.

5 Christophe Degryse and Philippe Pochet, “Foreword” in *Social Developments in the European Union 2005*· Christophe Degryse and Philippe Pochet (eds) (Brussels: ETUI, 2006), p.13.

6 Jonathan Hopkin and Daniel Wincott, *New Labour, economic reform and the European social model* [online] London: LSE Research Online, 2006. Available at: <http://eprints.lse.ac.uk/archive/00000645>.

The debates surrounding the Constitutional Treaty is a clear illustration of an ongoing ideological struggle between two different notions disagreeing over Europe's direction regarding the best social-economic system applicable to Europe. Hence, the Constitutional Treaty and the debates in the Constitutional process bear importance not only per se yet also for presenting a pertinent floor for the perception of how the EU Project is figured by the struggles in the EU. Indeed, Constitutional process is just a showcase of the nature of the European integration that is ridden with tensions between the pro-market/neoliberal attitude endorsing the operation of market as a self-regulating system and a pro-regulation attitude embracing social policy as a protection shield for the citizens. Thus, departing from the debates and struggles among those favoring a pure deregulationist neoliberal approach and a more regulationist approach both in the elaboration of the Constitutional Treaty and also during the referenda process, the main problematic to be handled here will be the evolution of European social policy within contentions between a neo-liberal approach and a regulationist approach to in the construction of an "ever closer Union". To be more precise, European social policy will be investigated via focusing on the unfolding clashes between projects of neoliberalism and the regulated capitalism; the self-transformation of the projects within the course of integration and the relationship between the economic and social governance.

Against this background, the **second chapter** of the thesis will deal with the departure point of the thesis; namely the Constitutional crisis. Enquiring the reasons behind the ratification crisis and the impasse surrounding the Constitutional Treaty that was indeed regarded as a milestone in the process of European integration, the chapter will aim at responding to a number of questions that will be raised to comprehend the essence of the Constitutional crisis. Why did the Constitutional referenda fail in France and the Netherlands, the two founding member states of the Union? Why did active "no" camps, rejecting the Constitutional Treaty were formed all around Europe comprising also the non-referendum countries? What were the primary motivations of the Europeans embracing a negative stance towards the TCE? With an objective to find answers to these questions, the chapter will firstly display the background of the Constitutional Treaty and the novelties brought about by the Treaty. After this brief introduction to the Treaty, the debate on the Constitutional Treaty will be outlined. Seeking to find the primary motivations of the Europeans embracing a negative stance towards the TCE; the Chapter will analyze surveys, news in the media, websites and declarations of the anti-Constitution groups; NGOs, Trade Unions, Employers' Organizations being the most prominent ones. Upon such a quest, the main groups that bear



different stances to the Treaty will be identified, the categorization of the no votes will be realized and the composition of the no camp will be displayed respectively in the Chapter.

With a departure from these analyses, the reasons for the rejection of the Treaty, endorsed by the groups in the no camp will be displayed and the social/economic concerns will be highlighted as a key reason behind the opposition to the Constitutional Treaty. Within this framework, the composition of the no camp that comprised diverse groups rejecting the Constitution- out of very opposing stances- will be put forward. Hence, the ratification process will be detailed and it will be argued that the Constitutional process with the long deliberations preceding it and with the debates surrounding the referenda present a platform that witnessed the crystallization of the debates between the pro-market/neo-liberal approach and a more regulationist approach to European integration.

The **third chapter** will outline the theoretical approaches arguing that the social policy has always evolved within tensions between opposing ideological positions. Before displaying the theoretical approaches to European social dimension with a perspective of clashing ideological stances that have shaped the European social policy, various definitions of social policy and particularly European social policy will be outlined again with an emphasis on the contentious nature of the concept. Following the definition section, theoretical origins of the above-mentioned clashing ideological positions will be investigated. Searching for the theoretical origins of the clashing ideological stances; first being a pro-market/neoliberal stance- viewing social policy arrangements only in market-making terms -and a more pro-regulation stance -emphasizing the market-supporting or market-correcting character of the social policy arrangements- Karl Polanyi's "double movement" will be introduced as the main conceptual framework in the chapter. So, the main framework to discuss the theoretical origins of the above-mentioned opposing ideological positions will be the "double movement", which can be defined as the conflict of two organizing principles in society: the principle of economic liberalism (*laissez-faire*) that aims to establish and expand the scope of a self-regulating market and the principle of social protection (*protective countermovement*) that emerges to protect those who suffer from the destructive effects of the free market. For the sake of a systematic analysis of the ideas that had inspired the current clashing ideologies of neoliberal and pro-regulatory stances; Hayek and Polanyi's ideas will be given as two polar views of social policy and state-market relations within the framework of "double movement". Hayek's arguments in "Road to Serfdom" will be put forward under the heading of principle of economic liberalism as the theoretical origins of pro-market/neoliberal attitude while Polanyian arguments in "The Great Transformation:

The Political and Economic Origins of Our Time” will be outlined under the heading of principle of social protection as the theoretical origins of pro-regulation ideology.

After outlining the theoretical origins of the ideological positions that determine the scope of the social policy within the framework of Polanyian double movement, it will be argued that a new form of double movement can be witnessed between a neoliberal attitude to European integration and a regulatory attitude as replacing the organizing principles of the original double movement. Within this framework, a number of scholarly analyses and models to account for the evolution of the European social dimension will be exposed: these being Streeck’s “Free Trade/ Alliance of Neoliberalism-Nationalism versus Supranational Welfare State Formation” Hooghe and Marks’ “Neoliberal Project versus Regulated Capitalism Project” and Pochet’s “Economists versus Social Group. After introducing these theoretical approaches and models, all being similar in logic to the Polanyian double movement, the chapter will present the methodology telling how to apply these models for a better understanding of the deepening of European social policy dimension within contentions between two contrary stances. Lastly, the chapter will end via setting the terminology to be utilized in the following chapters; so to name the two main ideological stances that underwrote the evolution of the social policy the project of neoliberalism and project of regulated capitalism will be employed.

Theoretically drawing on the previous chapter, in **the fourth chapter** historical evolution of the EU social policy will be investigated. In accounting for the features of European social policy from the debates leading to the Treaty establishing the European Communities (TEC) to the review of Lisbon strategy in 2005, the emphasis will be given to the unfolding clashes between neoliberal approaches and regulationist stances in the construction of an “ever closer Union”. These developments will be analyzed with due regard to the broader issues of political economy. In particular, the significant transformations that these projects have undergone as a result of the emerging cleavages and subgroups within the projects in the course of the evolution of the integration process will be investigated. It will be put forward that the European integration history has always been conditioned by an asymmetric relationship between economic governance and social governance. That is to say, while integration in economic sphere has always been the primary focus of the Community since the launch of the integration project, integration in social sphere stood only as a secondary concern. Thus, the market- supporting and market-correcting legislation to create a social dimension to European governance has always been overridden by the mainly market-making orientation of European integration. Overall, upon analysing the European social

policy from the Treaty establishing the European Economic Community up until the very latest developments in the Lisbon Treaty, it will be argued that the unequal and hierarchical relationship between the economic governance and social governance has also been reflected in the widening “constitutional asymmetry” of economic and social governance and a full-fledged social dimension could not be established in the face of an ever-deepening economic and monetary integration that created constraints for the social governance for the welfare states themselves. Accordingly, it will be argued that the social governance continued to bear a secondary position compared to the economic governance.

Having set the theoretical framework to analyze the European social policy and having analyzed the evolution of European social policy in time sequence, **the fifth chapter** returns to the departure point of the thesis and analyzes the Constitutional Treaty and the Lisbon Treaty. After outlining the background of the Constitutional Treaty and the opposition to the Treaty, the social credentials of the Treaty will be investigated through analyzing its provisions. In the second part of the chapter, Lisbon Treaty will be in focus with the process after the failed referenda, the social content of the Treaty and the differences between the two Treaties. Addressing the question of whether the Constitutional Treaty and Treaty of Lisbon are apparatuses of the neoliberal policies or a leeway for the social Europe this chapter will attempt to assess how the Treaty texts would impinge on the European social policy, assuming that they are ratified. It will be argued that the Lisbon Treaty whose social content is not very different from the failed Constitutional Treaty, maintained the unequal relationship between economic and social governance. That is to say, it will be put forward that the changes in Lisbon Treaty as regards the social provisions were far from launching a full-fledged social dimension as the changes were mostly in form rather than substance. Although the acquisition of legal status of the Charter of Fundamental Rights comprising political, social and economic rights will be noted as a positive development for the social Europe which would be promising for the future, the Lisbon Treaty would not bring much for redressing the ongoing imbalance between the neoliberal economic governance and the social dimension of the Union

In the conclusion, the main argument and the theoretical approach of the thesis will be summarized and the main findings of the thesis as a result of analyzing the European social policy with a perspective of clashing ideological stances will be put forward. It will be concluded that the European social policy has evolved within interplays among projects of

neoliberalism and regulated capitalism and there has always been an asymmetric relationship between the economic governance and social governance in Europe as the social governance has always had a secondary and even a subservient position with regard to economic governance in the European polity.

## CHAPTER II

### THE CONSTITUTIONAL CRISIS

The Campodoglio Hall which witnessed the very foundations of the Union during the signature ceremony of the Rome Treaty, once again hosted the European leaders for signing another historic document almost half a century later. On October 29<sup>th</sup>, 2004 leaders of the 25 EU Member States signed the “Treaty Establishing a Constitution for Europe” after long political deliberations.

The Constitutional Treaty was largely regarded as a milestone in the process of European integration and the merits of the Treaty was insistently uttered by the European bureaucrats and the European politicians in all fora. While the then German Minister for Europe; Hans Martin was describing the Constitutional Treaty as “the birth certificate of the United States of Europe” leading the Union forward in the direction of an ever closer union<sup>7</sup>, the former French Prime Minister Jean-Pierre Raffarin was asserting that it was opening a new era for Europe that signified “the irreversible nature of the integration”<sup>8</sup>. European leaders and bureaucrats either praised the Constitutional Treaty for being the instrument of democratic reform and an initiative for making the Union more effective and efficient or commented that the Treaty was indispensable for reconstituting the Union to face the practical and institutional challenges of the future, especially enlargement. The Constitutional Treaty was also deemed crucial by some for setting out the values of the European Union at the heart of Community law and strengthening the guarantee of civil and political rights for all Europeans via the Charter of Fundamental Freedoms. In sum, out of various justifications the Treaty was viewed as “a giant step forward in European integration” by the policy-makers of the European polity<sup>9</sup>.

This highly esteemed draft Constitutional Treaty was to become law after the ratification of all Member States. However, the seeming consensus on the Constitutional Treaty shattered as “no camps” were founded across Europe and after months of acrimonious debate, the

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7 Hans Martin Bury, the German Minister for Europe, “Debate in the Bundestag”, *Die Welt*, 25 February 2005.

8 Jean-Pierre Raffarin, *Le Metro*, 7th October 2004.

9 Romano Prodi, President of the European Commission, Speech in Brussels, 22nd May 2002.

French and Dutch rejected the Treaty by resounding “no” votes. Following these failed referenda, the Constitutional text descended practically to a status of a dead file with a very ambiguous future. After a prolonged period of deadlock, as of June 2007 a Reform Treaty emerged as the only feasible solution to overcome the failed European Constitution. After the October Intergovernmental Conference (IGC) signed European leaders on December 13, 2007 the Treaty of Lisbon that amends the existing treaties but drops a number of reforms proposed by the Constitutional Treaty. To be more precise, the highly praised Constitutional Treaty was dropped from the European agenda after the failed referenda process.

This chapter aims to display the background of the Constitutional Treaty and the debate on the Constitution. The reasons for the rejection of the Treaty, endorsed by the groups in the no camp will be displayed and the social/economic concerns will be highlighted as the key reasons behind the opposition to the Constitution. After identifying the main groups that embrace different stances to the Treaty, the categorization of the no votes and the composition of the no camp will be displayed.

## **2.1. General Framework of the Constitutional Treaty:**

The birth of a Constitutional Treaty came as a result of accumulation of debate on the future of Europe that intensified after the end of Cold War and with the advent of globalization. The already reigning debates concerning the future of Europe were spurred by the speech of the then German Foreign Minister Joschka Fischer entitled “Quo Vadis Europe?”<sup>10</sup> in 2000. This famous speech was calling for a debate on the finality of European integration. Then, the need to review the EU's constitutional framework, particularly in the light of the impending accession of ten new member states in 2004, was highlighted in a declaration annexed to the Treaty of Nice. The Treaty was intended to pave the way for further enlargement of the Union via institutional reforms, yet the Treaty was widely regarded as a failure to do so. Departing from the declaration annexed to the Treaty of Nice, the Laeken Declaration of December 2001 set out the process by which a constitution could be established. Containing a number of statements such as “The Union needs to become more democratic, more transparent and more efficient” and that “it should resolve “three basic challenges” which are “how to bring citizens...closer to the European design”, “how to organize...the European political area in an enlarged Union and how to develop the Union into a stabilizing factor and a model in the new, multipolar world”, The Laeken Declaration

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10 See <http://www.rewi.hu-berlin.de/WHI/english/fce/fcespez2/fischerengl.htm> for the full text of the “Quo Vadis Europe?” speech of Joschka Fischer on 12 May 2000.

took the decision for the Convention on the Future of Europe as a preliminary for the IGC negotiations<sup>11</sup>.

The European Convention, presided over by former French President Valéry Giscard d'Estaing, was given the task of consulting as widely as possible across Europe with the aim of producing a first draft of the Constitution. Then, the draft Constitution that came along with the Convention was submitted to the Thessaloniki European Council of June 2003 for negotiations and finally at the Brussels European Council in June 2004 political agreement on the Constitution was declared, which would consolidate and simplify the existing treaties and other legal texts.

The Constitutional Treaty was declared to “...complete the process which began when the Treaty of Rome established the basic framework for European integration and like the Treaty of Rome, it [would] serve for many years as the foundation of a Union at the service of its citizens”<sup>12</sup>. This Treaty comprised two documents: the proposed Constitutional text, replacing the overlapping set of existing treaties that comprise the Union's current Constitutional Treaty consisting of four sections and 448 articles in total and an additional document of Protocols and Declarations. The content of parts of Constitutional Treaty is as follows:

- Part 1 contains the provisions which define the Union, its objectives, values, competences; decision-making procedures and institutions. The symbols of EU including a flag, an anthem, a motto and currency unit; the EU citizenship, democratic life and financial principles are also described in this part.
- Part 2 is the Charter of Fundamental Rights, which was proclaimed at the Nice European Council in 2002.
- Part 3 deals with the Union's policies and actions and incorporates many of the provisions of existing Treaties.
- Part 4 deals with procedures for adopting and reviewing the Constitution.

For the first half-century of the European Union history, its constitutional law arose as a result of successive treaties, the most important among these being the Treaty of Rome (Treaty establishing the EEC, 1957) and the Maastricht Treaty (formally the Treaty on

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<sup>11</sup> An Intergovernmental Conference (IGC) is the formal procedure for negotiating amendments to the founding treaties of the European Union. IGCs are convened for the resolution of any political issues at the level of Heads of State or Government and for the conclusion of political agreement.

<sup>12</sup> See The Conclusions of the Presidency of the European Council Brussels, 17 and 18 June 2004. Available at: [http://europa.eu.int/constitution/index\\_eu.htm](http://europa.eu.int/constitution/index_eu.htm).

European Union, 1992). Despite being the first draft Constitutional Treaty throughout the history of European integration, the content of the Treaty is not totally different from the preceding treaties. In the words of Jean Claude Pirijs, “The Constitution is a mere evolution, building on the previous Treaties rather than a revolution”, (as its name denotes)<sup>13</sup>. In other words, the Constitutional Treaty is in large part a consolidation of the Treaty of Rome and the Maastricht Treaty, as modified by the more recent treaties of Amsterdam and Nice and it mostly reiterates the provisions of the existing treaties. As this thesis does not primarily aim at accounting for the Constitutional Treaty articles, the most tangible amendments would be introduced in the Appendix A to lay down the general context of the Constitutional Treaty.

To sum up, the European Constitution was drafted with the main objective of providing a blueprint for a more dynamic and effective polity, bringing together for the first time the many treaties and agreements on which the EU is based. TCE clarifies the nature of the Union, the extent of its powers and its relationship with its Member States; makes some changes to the Union’s institutions its policies and sets out wide-ranging “rights, freedoms and principles” including a whole list from the right to life and the right to liberty down to the right to strike. As mentioned also above, European political leaders were asserting the merits of the Constitution as it would open a new phase in the European integration, be a cure to the democratic deficit and to the legitimacy problems of the Union and so on. However, the signing of the new European Constitutional Treaty by the leaders of the Member States was only the first step as the Treaty had to be ratified by every European state, either in the Parliament or by popular referendum.

## **2.2. The Ratification Process of the Constitutional Treaty**

The draft Constitutional Treaty was to become law after the ratification by all Member States as stipulated by Article IV-447 of the Constitution, which sets out the legal requirements for the Constitution’s entry into force.

*“This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements...[it] shall enter into force on 1 November 2006, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step”.*

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<sup>13</sup> Jean Claude Pirijs, *The Constitution for Europe: A Legal Analysis*, (Cambridge: Cambridge University Press: 2006), p.186.



Hence, the rule was quite simple: if a State failed to ratify the Constitution, it would not enter into force. Actually, it was initially expected that almost all member states would ratify the Constitution via a parliamentary or other high political process, which would be quite straightforward, given the support of all ruling governments and its approval by an overwhelming majority in the European Parliament<sup>14</sup>. Indeed, the number of EU countries that opted for a parliamentary vote to approve the Treaty formed a large majority of the Member States. Of the 25 Member States, about 15 governments chose to ratify the Treaty through Parliament. 13 of them opted for a parliamentary vote and approved the Constitutional Treaty: Lithuania (11 November 2004), Hungary (20 December 2004), Slovenia (1 February 2005), Italy (by the Chamber on 25 January 2005 and by the Senate on 6 April 2005), Greece (19 April 2005), Slovakia (approval by Parliament: 11 May 2005)<sup>15</sup>, Austria (Approval by the *Nationalrat* 11 May 2005, by *Bundesrat* 25 May 2005), Germany (approval by *Bundestag*: 12 May 2005, Adoption by *Bundesrat*: 27 May 2005), Latvia (2 June 2005), Cyprus (30 June 2005), Malta (6 July 2005), Belgium<sup>16</sup> (8 February 2006) and Estonia (9 May 2006), Finland (5 December 2006). Sweden announced that it would postpone the parliamentary ratification.

The governments of the rest of the member states opted for a national referendum: In Czech Republic, Denmark, Ireland, France, Luxembourg, Portugal, the Netherlands, Spain and the UK voters were to make the final decision on how to build the renewed European Union. Poland did not clarify whether it would proceed through a referendum or through parliament.<sup>17</sup> Four member states organized referenda on the Constitutional Treaty. The first country that hosted a popular referendum was Spain where the Constitution was approved in the referendum vote by a great majority on 20 February 2005<sup>18</sup>. The Spanish referendum was followed by the unexpected referendum promise of the U.K. Prime Minister Tony Blair, which put pressure on other European states to follow suit. Then, under the pressure of this referendum promise of the UK and also bearing some other considerations, French President Jacques Chirac also declared a referendum in France. In this regard, the consensus on the draft Constitution was undermined as, after months of acrimonious debate, the French rejected the Treaty by a resounding “non” (55 %), followed by the Dutch “nee” with an even

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14 See Richard Corbett and Inigo Mendez de Vigo, “Report on the Treaty establishing a constitution for Europe”. This report formed the basis of Parliament's official position on the treaty.

15 In July 2005 Supreme Court of Slovakia suspended the process by asking the President not to sign the ratification of the European constitution until judges decide if there should have been a referendum on the new Charter.

16 The two chambers of the federal parliament approved the Treaty in April and May and the regional and Community parliaments approved the Constitution the last being the Flemish regional Parliament on 8 February 2006.

17 The Parliament failed on 5 July 2006 to vote on the ratification procedure

18 Referendum on 20 February 2005: 76,73% in favour, Turnout: 42,3%. Approval of the Congress on 28 April. Approval of the Senate on 18 May 2005 76,73% in favor out of a turnout of 42,32%.

greater majority (62 %). Following these “no” votes, a long-planned referendum in Luxembourg went ahead after the defeats in the Netherlands and France, but even in the historically pro-European Luxembourg the majority in favor of the Treaty was unexpectedly narrow<sup>19</sup>. Within this political climate Great Britain and Denmark, perceived as the most difficult hurdles in the ratification process, immediately declared the suspension of the ratification process in their countries despite objections on the part of Brussels. The Czech Republic followed suit, postponing the ratification process till the end of 2006.

It was widely commented after the “no” votes” that the Constitutional Treaty descended practically to the status of a “dead file” given the requirement of unanimity for the Treaty to enter into force. The Constitutional Treaty was immediately stamped by a “death certificate” by the British press that declared the Treaty “dead and buried”<sup>20</sup> although governments of neither France nor the Netherlands asked for the ratification process to be stopped after the failure of the referenda in their home countries<sup>21</sup>. On the contrary; after the failed French referendum, Chirac wrote to his 24 colleagues that : “[this situation] does not in any way put into question the historic and profound commitment of France to European integration...while nine countries have already approved this Treaty, it is now up all the other Member States to express themselves on it”<sup>22</sup>. However, out of a fear of backlash among Europe's voters, in the June European Council the then President of the European Council, the Luxembourg Prime Minister Juncker announced a temporary suspension of the ratification process saying there would be an “intense period of reflection”<sup>23</sup>. In this period, a broad debate involving citizens, civil society, social partners, national Parliaments and political parties would take place in each country. The main idea was to give the countries more time to debate and ratify the Constitution. Those who wished would put ratification on hold. In the Declaration by the Heads of State or Government of the member states, it was stipulated that “recent developments do not call into question the validity of continuing with the ratification processes. We are agreed that the timetable for the ratification in different Member States will be altered if necessary...” However, the optimism apparent at these statements was not reflected in reality and the Constitutional Treaty was shelved, being replaced by the Treaty of Lisbon that was signed on December 13, 2007<sup>24</sup>. With some

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19 Referendum on 10 July 2005: 56,52% in favour, 43,48% against out of a turnout of 86.8%.

20 *Guardian*, 4 June 2005.

21 Yet, it should be noted that Dutch Prime Minister Jan Peter Balkenende suggested that amending existing treaties should be an alternative to the efforts to create a new constitution in a joint press conference with Tony Blair. See Mike Rosen-Molina, *Jurist*, April 16, 2007, Available at: <http://jurist.law.pitt.edu/paperchase/2007/04/eu-treaty-amendments-better-than-new.php>.

22 Piris, op.cit. , p.36.

23 Juncker speaking at the press conference cited in Hans-Jürgen Schlamp and Frank Dohmen, “Brussels in Crisis, EU Summit Collapse is Historic Failure”, June 20 2005, p.1

24 See Chapter 5 for the details of the Treaty of Lisbon.

exceptions, the Treaty of Lisbon covers almost all amendments that were included in the Constitutional Treaty.

Yet, even if we disregard the similarities in the contents of the TCE and the Treaty of Lisbon, the failed Constitutional Treaty still deserves to be analyzed. Because, not only the Constitutional text itself, but also the debates in the Constitutional process present a very pertinent floor for the perception of the evolution of the EU project and various policies of the EU, social policy for the purpose of this thesis, and how the EU project is figured by the struggles in the EU. Indeed, departing from the debates and struggles among those favoring a pure neo-liberal approach and a more regulationist approach to European integration during the referenda process, the main problematic to be handled here will be the evolution of social policy within contentions between a neo-liberal approach and a regulationist approach to capitalism in general and state-market relations in particular.

### **2.3. Analysis of the Failed Referenda in France and in the Netherlands**

In this section, a detailed analysis of the course of the referenda campaign in the no-voting countries; France and the Netherlands will be given.

#### **2.3.1. France: the course of the campaign**

The then French President Jacques Chirac had been a keen supporter of the Constitution and in various occasions claimed that it must be ratified by the then 25 EU members. Upon the surprising UK decision to hold a referendum for the EU Constitution, on 4 March 2005 the President's office announced that France would hold a referendum on the Constitutional Treaty on 29 May. There were different reasons behind this decision. It was widely commented that strategic plans of Chirac to capitalize on the momentum of the “yes” vote in Spain was a vital motivation behind the referendum decision. But also, the increasing number of European states that announced their intention to hold a referendum pressurized the French government to follow suit. Indeed, initial public opinion surveys pointed to a clear victory for the “yes camp” with as much as 69% in September 2004 which remained unchanged in December hardly moved to 65% in January 2005<sup>25</sup>. Yet, as time went by, the victory of the “no” side became ever more definite.

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25 Le barometre d'intentions de vote au referendum sur la constitution européenne (9eme vague). Sondage de l'Institut CSA No 0500388A. CSA Opinion-Istitutionnel, March 2005.

The first vital promoter of the “yes” was the press, whose support was nearly unanimous and extremely vociferous. The biggest telling French dailies Le Figaro, Le Monde and Liberation all promoted a yes vote. One report at the conclusion of the campaign estimated that 73% of the mainstream press coverage was devoted to the “yes”<sup>26</sup>.

The three major political forces in France; Union for a Popular Movement (*Union pour un Mouvement Populaire*/UMP), Socialist Party (Parti Socialiste/PS)<sup>27</sup> and Union for French Democracy (*Union pour la Démocratie Française*/UDF) supported the proposed Constitution, as did President Chirac. Supporters of the Constitution from the left sought to emphasize that the Treaty incorporates a Charter of Fundamental Rights and thus it may help to secure the future of the European social model. Likewise, Jacques Chirac defended it as a possible barrier against neoliberal economic policies by stressing occasionally that the rejection of the Constitutional Treaty would “leave the field free for the partisans of ultra-liberal evolution of Europe”<sup>28</sup>.

Objections to the Constitution came from the right; notably Gaullist Nicolas Dupont-Aignan and Philippe de Villiers of the Movement for France, and from the extreme right, Jean-Marie Le Pen of the National Front. On the left, with the view that the Constitution would enforce a neoliberal economic model; there were some members of the Socialist Party who dissented from the party's stance as decided by its internal referendum, some members of the Green Party (though the party's official policy was also supporting ratification), the Communist Party and other parties of the hard left, such as the Trotskyist Revolutionary Communist League and Workers' Struggle, as well as associations like ATTAC (anti-globalization association) and trade unions such as the CGT (The General Confederation of Labour/Confédération générale du travail) and SUD (Union Syndical Solidaires/ Solidaires Unitaires Démocratiques). François Sabado, a member of the Political Bureau of the Revolutionary Communist League (LCR, French section of the Fourth International), and of the Executive Bureau of the Fourth International, was proudly telling that “there [were] ...more than 600 “no” committees in the country, holding thousands of meetings in every town, village and neighborhood” formed by trade unionists, academics and political leaders all parts of a left

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26 See Dennis Broe, “The French ‘Non’ To The European Constitution And Its Aftermath” for a detailed analysis of the newspapers. Available at: <http://ojs.gc.cuny.edu/index.php/situations/article/viewFile/28/27>.

27 On 1 December 2004, the opposition Socialist Party held a vote among its members to determine the stance it would take. The issue of the Constitution had caused considerable divisions within the party, with many members—although broadly in favour of European integration—opposing the Constitution for reasons including the threat they considered it posed to the European social model. The “Yes” side was led by party leader François Hollande while the “No” side was led by deputy leader Laurent Fabius. Out of 127,027 members eligible to vote, 59% voted “Yes”, with a turnout of 79%. Out of 102 Socialist Party regional federations, 26 voted “No”.

28 Financial Times, April 26 2005.

anti-neoliberal foundation<sup>29</sup>. Actually, one of the most vital factors contributing to the No was that there was an alternative network of information to confront the mainstream media: the internet sites. In addition, the left-wing L'Humanite and Le Monde Diplomatique were the two main newspapers against the Constitution.

On 29 May 2005 the referendum was held in France. The question put to voters was: « Approuvez-vous le projet de loi qui autorise la ratification du traité établissant une Constitution pour l'Europe ? » (Do you approve the bill authorizing the ratification of the treaty establishing a Constitution for Europe?)

The result was a victory for the "No" campaign, with 55% of voters rejecting the Treaty on a turnout of 69 %. As written by the activist Murray Smith, in the French referendum: “81 % of manual workers, 79 % of the unemployed, 60 % of white-collar workers and 56 % of “intermediary professions” voted “No”. “No” won by 59 per cent among 18-34 year-olds and 65 per cent among 35-49 year-olds. Politically, 67 per cent of left-wing voters opted for the “No” - almost unanimously among supporters of the Communist Party and the revolutionary Left, but also 59 per cent of Socialist supporters and 64 per cent of Green supporters. 61 per cent of non-aligned voters voted “No”. Only supporters of the two mainstream right-wing parties, the UMP and the UDF, voted massively (76 per cent) in favor of the Constitution. If we put the far right at 15 per cent of the electorate, that means that the other 40 per cent for the “No” came from supporters of the Left and the non-aligned”<sup>30</sup>.

The commitment of many trade unionists, of the anti-neo-liberal think tank Fondation Copernic and of ATTAC, was decisive for the success of the no campaign. The high unemployment rate that exceeded 10% in February 2005, the Bolkestein Directive<sup>31</sup> and the general concern of an undermining of the French social model led to a series of nationwide strikes and demonstrations, mass mobilizations against the government's plans for pension reform. Especially the mass demonstration of the 10<sup>th</sup> March and the one-day general strike on May 13, 2003 of both public and private sectors were important catalyzers for the no vote that came out of the ballot box. Moreover, the parallel massive movement of school students

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29 Farncois Sabado, “Approaching a political turning point” in International Viewpoint Online magazine : IV 366 - April 2005.

30 Murray Smith, “No! – from the Left,” in International Viewpoint, June 2005.

31 Bolkestein Directive, named after the former European Commissioner for the Internal market Frits Bolkestein is officially named as the “Directive on services in the internal market”. The Directive was proposed by the Commission with the intention of setting up a single market for services within the European Union (EU), like the single market for goods. The Bolkestein Directive provoked intense debate and indeed it was harshly criticised and led to protests in various EU countries led by the left wing. Critics stated that the Directive would erode Member State regulations governing industry and the environment, and would lead to competition between workers in different parts of Europe, resulting in a downward spiral in income levels, which would in turn led to social dumping. The directive was adopted on 12 December 2006 by the European Parliament and Council, as the Directive 2006/123/EC after substantial amendments.

which commenced with protests against the Fillon Plan, which threatened to lower the quality of education for the mass of school students, reinforce selection and in particular devalue the baccalauréat (the examination that gives students access to higher education) was also a decisive dynamic in the victory of the no camp in France.

All in all, the main concern on the part of the French public was regarding the “Market Europe” that was thought to become the means through which the French model was being dismantled for the sake of ‘Anglo-Saxon’ capitalism. “As both the French and Dutch campaigns illustrated, Europe can be perceived as responsible for economic problems rather than a vehicle through which growth and prosperity might be pursued”<sup>32</sup>. Underlining this issue, leftwing politicians in the no camp continuously asserted the argument that the Constitution did not go far enough in securing a Social Europe. In the words of Laurent Fabius, the leading proponent of the left in the no camp, the referendum was a choice between a more liberal versus a more social Europe. A ‘yes’ resulting in the former and a ‘no’ opening up for the prospect of the latter<sup>33</sup>. It was through such arguments that the no camp obtained a decisive victory in the ballot box.

Table 2.1. French Referandum Official Results

<b>Official results<sup>34</sup>:</b>		
Votes cast	28 988 300	69,37%
Abstentions	12 800 902	30,63%
Electorate	41 789 202	100,00%
<b>Of votes cast:</b>		
Votes expressing a view	28 257 778	97,48%
Blank or invalid votes	730 522	2,52%
Total votes	28,988,300	100,00%
<b>Of Yes and No votes:</b>		
Yes	12 808 270	45,33%
No	15 449 508	54,67%
Total	28,257,778	100,00%

32 R. Whitman, “No and after: options for Europe” in *International Affairs*, 81 (4), 2005, p. 685.

33 NouvelObs, May 17 2005 quoted in R.L. Nielse and L.L.Olsen, “Why did the French Reject the European Constitutional Treaty?”, *Working Paper* No. 26, (Odense: Centre for European Studies, University of Southern Denmark, 2005).

34 Le Site du Ministère de l'intérieur; Available at: [http://www.interieur.gouv.fr/sections/a\\_votre\\_service/resultats-elections/rf2005/000/000.html](http://www.interieur.gouv.fr/sections/a_votre_service/resultats-elections/rf2005/000/000.html).

### 2.3.2. The Netherlands: the course of the campaign

On 1 June 2005, just three days after the French referendum on the Constitutional Treaty, a consultative referendum was held in the Netherlands to ask whether the country should ratify the proposed Constitution. Actually, it was not binding on the government; however, the government declared that it would abide by the result, provided that the turnout exceeded 30 %. While opinion polls in the months before the referendum tended to show a public split on the issue, in the days leading up to the referendum, the polls were apparently pointing to the victory of the “no” campaign.

Both parties of the governing coalition; the Christian Democratic Appeal, People’s Party for Freedom and Democracy and Democrats as well as the major opposition parties: Labour Party and GreenLeft supported the proposed Constitution, along with the major newspapers. Objections to the Constitution came from the Socialist Party, List Pim Fortuyn, Group Wilders, Political Reformed Party and Christian Union. They all campaigned for a “No” vote.

On 1 June 2005 the referendum was held in the Netherlands. The question put to voters was: *Bent U voor of tegen instemming door Nederland met het verdrag tot vaststelling van een grondwet voor Europa?* (“Are you for or against approval by the Netherlands of the Treaty establishing a Constitution for Europe?”)

The result was a victory for the “no” campaign with 61.5 % of voters rejecting the Constitution on a turnout of 63.3 %. Willem Bos, the President of the “Grondwet Nee” No campaign was stating that: “...the lower the income of voters...the likelier they were to vote no. At the highest income levels the “no” had a narrow majority, while two-thirds of median- and below-median-income voters voted no.” As for the political distribution, among supporters of the two parties who called for “yes” social-democratic Labour party supporters voted against the constitution by 55% and supporters of the Green Left party voted yes by a narrow majority of 52%. Even among voters of the very pro-EU liberal D66 party, 45% voted against. Also among supporters of the ruling Christian Democrats 20% voted no. Among supporters of the right-wing liberal VVD party, almost 40% voted against<sup>35</sup>.

Alongside the concerns as for the absence of a social Europe, Dutch opposition to Constitutional Treaty also stemmed from the country’s loss of influence in an enlarged

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<sup>35</sup> Willem Bos, “Netherlands: a vote against neo-liberalism,” in *International Viewpoint*, June 2005.

Europe, the undervaluation of guilder when it entered the euro and country's excessive contribution to the Community budget<sup>36</sup>. Hence, the love story with the European integration, which used to characterize the three Benelux states, seems to face a great obstacle and the Constitutional referendum became the occasion for the Dutch people to express their discontent with the course of the EU project and their role within it.

Table 2.2. Dutch Referendum Official Results

<b>Official results<sup>37</sup>:</b>		
Votes cast	7.705.196	63.3%
Abstentions	4.467.544	36.7%
Electorate	12.172.740	100%
<b>Of votes cast:</b>		
Votes expressing a view	7.646.415	99.24%
Blank or invalid votes	58781	0.76%
Total votes	7.705.196	100 %
<b>Of Yes and No votes:</b>		
Yes	2.940.730	38.5%
No	4.705.685	61.5%
Total	7.646.415	100 %

#### 2.4. Categorisation of the “no” votes and the “no” voters:

The “no” votes that came out of the ballot boxes in France and the Netherlands were discussed much and several accounts have been provided to explain the French and Dutch 'no', including different explanatory variables in each case. In addition to the fear of negative repercussions of the eastern enlargement, other issues in the campaign were the prospective membership of Turkey connected with fears of an increase in immigration and outsourcing of jobs to new member states; a general lack of trust towards the political leaders; concerns about loss of sovereignty to an undemocratic Union; and the complexity of the text in question. Several other explanations also abounded in the media and scholarly debates. In a similar vein, the ultra-right, xenophobic leaders as Le Pen and Villiers of France and Wilders of Netherlands were brought into the foreground by the media. However, both the concerns

<sup>36</sup> Pochet, 2006, op.cit., p.14

<sup>37</sup> Dutch Electoral Council (Kiesraad). Available at: [http://www.kiesraad.nl/uk/collectie\\_homepage/electoral\\_council](http://www.kiesraad.nl/uk/collectie_homepage/electoral_council).



behind the no votes and the political and sociologic decomposition of the votes point also to a different direction.

Despite alternative arguments, in European polity the Constitutional debate revolved around the social and economic issues alongside the allegations that the TCE would lead to a European superstate. Further analyzing the referendum campaign, it is seen that the social-economic issues clearly dominated the referendum campaign in the no camp with endless debates over the ‘best’ social system applicable to Europe”<sup>38</sup> alongside the sovereignty discussions. To be more precise, three main strands of arguments can be discerned in the no camp to the Constitution. The first among them is the arguments that the Constitutional Treaty aimed at creating a European super-state that would erode national sovereignties of the member states. Alongside the sovereignty concerns, a somewhat related argument, regarding the socio-economic credentials of the Constitutional text, was that the Constitutional text purported to meddle too much in the national economic life through the provisions of the Charter that was included within the main body of the Treaty. Alongside the mentioned arguments that were embraced by those embracing a neoliberal and/or an ultra-right outlook, there were also interpretations of the Constitutional text to the very contrary, finding the text insufficiently social and thus “rejecting the liberal economic foundations that underpin the European edifice”<sup>39</sup>. Indeed, the latter arguments were those which were the most prominent and common in the European public and it was essentially those arguments which resulted in the no votes. As argued in the introduction, the ongoing imbalance between the European economic and social governance and the negative repercussions of the ever-deepening economic integration on the social policies of the member states themselves was very influential in the discontent of the European public with the Constitutional Treaty. Again failing to institute some sort of a “constitutional parallelism”<sup>40</sup> and a more equal relationship between social and economic governance, the Constitutional Treaty was viewed as an apparatus of neoliberalism that aimed at creating an ultra-free market economy within the EU and eroding social rights altogether by the majority of the no camp.

Before further elaborating on the main stances and concerns in the no camp, looking at the surveys conducted in France and the Netherlands is also instructive in highlighting the

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38 G. Ivaldi, “Beyond France’s 2005 Referendum on the European Constitutional Treaty: Second-Order Model, Anti- Establishment Attitudes and the End of the Alternative European Utopia” in *West European Politics*, 29 (1), 2006, p.60.

39 Pochet, 2006, op.cit., p.13.

40 Scharpf, 2002, op.cit.

concerns behind the no votes. In France,<sup>41</sup> the social concerns of voters emerged as the main voting motivation: 31% of citizens who voted against the Constitution declared spontaneously that they did so because they consider the Constitution to have negative effects on employment in France. In a similar vein, 26 % voted “non” with a consideration that “economic situation in terms of unemployment is already considered to be too high”. When combined together the highest score concerned the perception of the draft Treaty and in essence the Union as too liberal (19%) and social Europe as lagging behind a liberal Union (16%). It is also noteworthy that the much debated Bolkestein Directive had also had a stake in the rejection of the constitution, albeit with a small percentage (2%)<sup>42</sup>.

The message of French voters was that clear, whereas the reasons for the “nee” vote in Netherlands are more diverse<sup>43</sup>. While the lack of information was deemed as the top reason for voting against the Constitution (32%), the “cost” Europe for the Dutch tax-payers was also mentioned as a vital reason behind the “nee” vote (13%). It appears, nevertheless, that the social concerns have also been influential in the voting motivation of the Dutch as 7 % of the Dutch no voters declared that the Constitution would have negative effects on the employment situation in the Netherlands; 5% indicated that the economic situation in the Netherlands was already too weak; another 5 % rejecting the text for it being too liberal; and a further 2 % claiming that there was not enough social Europe. As obviously seen from the statistics the primary concern on the part of the Dutch voters were not social concerns as in the case of the French voters. Yet, it is also undeniable that these concerns have a stake at the no vote. Further, what is also striking is that a vast majority of the Dutch (2/3) thought that the rejection of the Constitution would allow for a renegotiation of the TCE in order to achieve a more social text<sup>44</sup>.

A very vital point to be highlighted is the fact that despite the victory of the “no” votes, neither the French people nor the Dutch called into question their country’s membership of the European Union<sup>45</sup>. Moreover, a majority of the “no” voters indicate their belief in a renegotiation towards a more social Constitution and a Union with greater emphasis on more

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41 Flash Eurobarometer EB171 “The European Constitution: Post-referendum Survey in France”, June 2005.

42 Opposition to French political leaders was mentioned by 18% of “no” voters; the complexity of the text by 12%. The other reasons given for voting “no” obtained citation rates of less than 10%; including the rejection of Turkey’s EU membership mentioned by only 6% of people who voted “no”.

43 Flash Eurobarometer EB172 “The European Constitution: Post-Referendum Survey in the Netherlands”, June 2005.

44 Piris, op.cit p.20.

45 In Netherlands, 82% of Dutch citizens indicate that the Netherlands membership of the European Union is a good thing. This opinion is not only present among citizens who voted « Yes » but also among a clear majority (78%) of those who voted “No” to the Constitution. In France 88% of respondents consider that France’s membership of the EU is a good thing. This positive opinion is shared not only by almost all the “yes” supporters (99%) but also by the vast majority of the supporters of the “no” vote (83%). Surveys in France and Netherlands, op.cit.

social aspects<sup>46</sup>. These statistics also denote that social concerns have an overwhelming importance in the negative stance of the French and Dutch people towards the Constitutional Treaty.

While the said surveys denote useful guidelines to contemplate the background of the no votes, it should be considered that the no camp and the opposition to the Constitutional Treaty can never be confined solely to the “no” voters in France and the Netherlands. Rather, all Europeans that participated or supported the no campaigns, and made an effort to turn down the Constitutional Treaty with its current text shall be taken into consideration in the analyses of the opposition to the Constitution. Hence, departing from the post-referenda surveys in these two countries, yet also considering the campaigns alongside the remarks and declarations of the major actors in the no camp, one of the most vital reasons behind the no votes emerges as the dissatisfaction regarding the economic/social performance of the European polity. However, as expressed earlier different segments of the no camp were putting forward different reasons for this dissatisfaction, thus viewing the Constitution as unsatisfactory from different angles.

To put forward the arguments of the opposing segments in the no camp; the first group in the no camp made up of Eurosceptics, ultra-right and some conservative and neo-liberal political parties and NGOs that were condemning the Treaty with arguments that the Constitutional Treaty for the European polity would undermine the sovereignty of the member states. Besides such arguments, the debates on the Constitutional Treaty also revealed criticisms of neoliberal subgroup concerning the social-economic construction of the European polity. They argued that the social policies should be modernized and restructured to alleviate the existing economic problems of the EU. Insisting on liberalizing economic reforms in the continental Europe to tackle globalization and to increase the competition, the neo-liberal camp was not satisfied with the Constitutional Treaty as they believed that the Treaty would restrict the operations of the market by bringing extra social rights through the Charter. The neoliberal camp further argued that insisting on the “outdated” welfare state against a thoroughly free market economy would only lead the EU to face more economic problems in the globalized world. Hence, the neo-liberal circles were for “a more flexible Constitution which would be in the form of a very general framework in which the social dimension is left behind and which legalizes the free movement of the goods and investments in a giant open market”<sup>47</sup>.

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<sup>46</sup> Dutch respondents (65%), France (62%)

<sup>47</sup> *The Economist* June 4th 2005.

To substantiate the mentioned arguments of the neoliberal circles regarding the socio-economic setting of the European polity, quoting the views of CBI/Confederation of British Industry-the UK's leading employers' organization would be useful. Following the UK government's decision to hold a referendum on the proposed EU Constitution, CBI welcomed the referendum announcement and further urged the UK government to maintain and entrench existing national vetoes concerning EU social policy measures, and to secure guarantees that the inclusion of the Charter of Fundamental Rights of the European Union in the Constitution, would not allow the European Court of Justice (ECJ) to reinterpret UK employment law. On 18 May 2004, the CBI president, Sir John Egan, told the Organization's annual dinner that:

*“The government must deliver on the red lines it has vowed to defend in its negotiations at the inter-governmental conference ... We will judge the treaty's acceptability by how far those red lines are met. To be good Europeans it is not necessary to always acquiesce to all the current elements of the European project. It is far more important that we use our British common sense to judge what is right to create a world-class competitive European economy”*<sup>48</sup>.

Moreover, former British foreign secretary Jack Straw also made explicit statements at the same event that the government had 'put the interests of business at the heart of [its] negotiating position on the EU constitutional treaty'<sup>49</sup>. Again mentioning the “red lines” of UK government, George Cox, Director General of the Institute of Directors (IoD), said that the government's achievement in securing its red lines was very welcome, but did not go far enough. He warned the government that “The Charter of Fundamental Rights leaves many crucial matters open for decision at a later date by the courts. Far from clarifying employment rights, this leaves businesses facing worrying uncertainty”.<sup>50</sup> As becomes apparent, the neo-liberal camp deemed the Charter of Fundamental Rights as the most appalling and unacceptable part of the Constitution and strongly argued for a revised Constitution that would embrace “more liberal” values. To sum up, the arguments of the neoliberal circles were nothing apart from an exposition of their views on the general direction of the Union as regards the economic-social policies in a globalized world. Their

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48 Mark Hall, “Employers and unions highlight concerns over EU constitution”, *Euro line, European Industrial Relations Observatory on line*, Available at: <http://eurofound.europa.eu/eiro/2004/05/feature/uk0405104f.html>.

49 The Guardian, 19 May 2004. Jack Straw further argued that “We will insist that any new treaty - amongst other things – keeps the national veto for tax and social policy and that the charter of fundamental rights creates no new rights under national law, so as not to upset the balance of Britain's industrial relations policy”.

50 George Cox, Director General of the Institute of Directors, IOD press release, 21 June 2004.

criticisms were directed against the Charter because they saw it as an attempt to cocrinstitute European social governance which had always left behind the economic governance.

Having put forward the arguments that the Constitutional Treaty would undermine the competitiveness of Europe via enshrining extra social rights and that the Treaty would undermine the sovereignty of the member states, from now on the arguments of the grandest coalition in the no camp will be put forward. Contrary to the previous arguments that was prevalent among the European business and European neoliberal media alongside the neoliberal European governments and political parties; the opposition to the Constitutional Treaty due to its liberal character was prevalent among the European public. Being widespread in the no-voting referendum countries, especially in France, but also in the no camps throughout the Europe, the major reason for the opposition to the Constitutional Treaty may be explicated as the dissatisfaction regarding the European construction which lagged a genuine social dimension. In other words, the anxieties of European citizens were augmented by fears of globalization, and they also related this in turn to a “liberal” European Union which had failed to protect them against the damage brought about by globalization. The social and political protest votes of these people, feeling insecure about their future, were mainly directed against “the liberal Europe”, rather than the constitutional specificities. With a baggage of economic, social and political insecurity, this segment of the no camp was primarily motivated by a number of perceived or directly experienced problems in their everyday lives: high unemployment rates, increases in levels of poverty, the fear of social dumping, and a feeling of insecurity, all of which triggered the “no” vote. Indeed, the Constitution was even regarded by some parties as a scapegoat for the damage created by globalization<sup>51</sup>. Kenner explicates this point as follows: “the Constitution became a vehicle for people to register a wider and deeper discontent with the state of affairs in Europe. First, and especially influential in France, was the perceived triumph of ‘Market Europe’ over ‘Social Europe’”<sup>52</sup>. In this respect, the opposition to the Constitution by the European citizens can be interpreted as an attempt to halt the ongoing neglect of the social dimension of Europe in the face of an ever-deepening economic and monetary integration<sup>53</sup>.

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51 It shall be noted that within the left there are also different opinions concerning the social credentials of the Constitutional text. ETUC announced its support to the European Constitutional Treaty following the Executive Committee decision on 13-14 October 2004. ETUC stressed that the introduction of social values, social objectives, social dialogue and most importantly the Charter of Fundamental Rights. Evaluating the failed Constitutional referenda in this manner, John Monks declared that the Constitution [which] is not a neo-liberal tract, [indeed having] a useful social dimension ... became a victim of other neo-liberal measures. See John Monks, ETUC, UGT-E Conference, Available at: <http://www.etuc.org/a/1337>.

52 J. Kenner, “The Constitution that never was: is there anything worth salvaging from the wreckage?” in *Industrial Relations Journal*, 36 (6), 2005, 541–567 p. 542.

53 G Ivaldi, “Beyond France’s 2005 Referendum on the European Constitutional Treaty: Second-Order Model, Anti-Establishment Attitudes and the End of the Alternative European Utopia” in *West European Politics*, 29 (1), 2006, 47 – 69, p.60.

To substantiate the opposition motivated by a negative stance against the neoliberal character of the Constitution, quoting the statement of Caroline Lucas, who is a very active Green Party MEP representing the South-East of England, is useful. Lucas asserted that "...the Constitution will commit member states to a path of increased competition and privatization, even in public services. By opening the door to a race-to-the-bottom in search of ever lower costs, it will transfer jobs to where the wages and other costs are lowest<sup>54</sup>.' Likewise, François Sabado, a member of the Political Bureau of the Revolutionary Communist League (LCR, French section of the Fourth International), and of the Executive Bureau of the Fourth International described the Constitution as follows: "... This constitution is not one more European treaty like the others, it is a shackle to lock the people into neoliberalism"<sup>55</sup>. Apart from the above-mentioned views coming from the left, regarding the votes of France and the Netherlands in the Constitutional referenda, a sarcastic article was published in NY Times, written by liberal Thomas Friedman. Claiming that the voters of France and the Netherlands said no to more globalization, more export of jobs and further dismantling of social provisions, Friedman's article was indeed denoting that he well apprehended the concerns of the voters and the message they have given to neo-liberal governments. Yet, he was not delighted with this message and with a sarcastic approach he argued that : "Voters in "old Europe" - France, Germany, the Netherlands and Italy - seem to be saying to their leaders: stop the world, we want to get off... It is interesting because French voters are trying to preserve a 35 hour work week in a world where Indian engineers are ready to work a 35-hour day. Good luck<sup>56</sup>".

As exposed above via putting forward the main arguments and quoting various representatives of the groups that opposed the Constitutional Treaty, the Constitutional process with the deliberations preceding it and with the debates surrounding the referenda presented a platform that witnessed the crystallization of the debates between opposing views as to the social-economic setting of the Union. While a first set of actors argued for liberalizing economic reforms in continental Europe to tackle globalization and increase competition, they were not content with the Constitutional Treaty as they asserted that the Treaty would restrict the operations of the market by bringing extra social rights through the Charter of Fundamental Rights that would allow the European Court of Justice (ECJ) to reinterpret the social/employment laws of the member states. So, embracing the major aim of ensuring more opening and supranational intervention in the sphere of economic

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<sup>54</sup> Caroline Lucas MEP, English Green Party, Taking the cons out of the Constitution, 2005. Available at: <http://www.pana.ie/idn/000405.html> PANA.

<sup>55</sup> François Sabado, "Approaching a political turning point" in *International Viewpoint Online magazine* : IV 366 - April 2005.

<sup>56</sup> Thomas L. Friedman, "A Race to the Top", *NY Times*, June 3, 2005.

governance while precluding any such supranational establishment as for the social governance, arguments finding the Constitutional text as unduly meddling in the market economy were mere reflections of the line of thought that embraced a more liberal Europe that prioritized competitiveness over employment and social security. On the opposite side, the group opposing the Constitutional Treaty because of its “too liberal” character put forward that the Constitutional text would solely reinforce liberalism at the EU-level by creating an ultra-free market economy within the EU with no social counterpart at the European level and by constitutionalizing the asymmetry between the European economic and social governance. As in the case of opposite arguments, the opposition to the Constitutional Treaty out of assertions that the Constitutional Treaty was “insufficiently social” was a reflection of dissatisfaction regarding the European construction which not only lagged a genuine social dimension but also created constraints on the welfare states.

## **2.5. Conclusion**

The European integration history has always been stamped by an unequal relationship between economic governance and social governance whereby the integration in economic sphere has always constituted the primary focus of the Community while integration in social sphere always lagged behind. This unequal relationship which has emerged from the “constitutional asymmetry” of economic and social governance<sup>57</sup>, became an acute problem within the course of the integration as the ever-deepening economic integration combined with the monetary integration led to constraints for the social governance at the welfare states and the implications of these constraints commenced to be felt at the everyday lives of Europeans in the form of high unemployment rates, increases in levels of poverty and fears of social dumping. Hence, in the face of concerns that the economic and monetary integration would further undermine national welfare states, European social governance always lagging behind and being constrained by the European economic governance became a very topical issue with the question of whether the EU should be more prominent in the social policy domain. The concerns on the direction of European integration in terms of social-economic policies intensified with the globalization and the increasing European economic problems led to the politicization of the issue and questioning of the economic-social system of the Union and even the rationale of the integration itself. The most recent and major manifestation of this questioning was the ratification crisis of the Treaty establishing a Constitution for Europe in spring 2005.

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<sup>57</sup> Scharpf, 2002, op.cit.

Looking at the views of the majority in the no camp the Constitutional crisis can be exposed as an attempt of the European citizens to halt the ongoing neglect of the social dimension of Europe in the face of an ever-deepening economic and monetary integration and an augmenting “liberal Europe”. In the next chapters, departing from the cleavages that came into ground in the Constitutional process regarding the European social governance between a neo-liberal approach and a more regulationist approach to European integration, the evolution of European social governance and its status compared to the economic governance will be sought. Hence, the main research topic of the thesis will be seeking the evolution of European social governance via surveying tensions and interplays among parties that embraced contrasting visions of Europe.



## CHAPTER III

### THEORETICAL APPROACHES TO SOCIAL POLICY

The chapter constitutes the theoretical chapter of the thesis. Through analyzing various theoretical approaches to the evolution of European integration in general and European social policy in particular, it will be argued in this chapter that the European social policy has always constituted a contentious arena witnessing the clashes between contending paradigms and alternative approaches that embrace distinct visions as to the socio-economic governance of the EU. However, before discussing the theoretical approaches to European social dimension with a perspective of clashing positions moulding the European social dimension, some general arguments about social policy will be outlined with the aim of denoting that social policy has always constituted a contentious arena subject to contentions between a pro-market attitude viewing social policy arrangements only in market-making terms and a more pro-regulation stance that emphasizes the market-supporting or market-correcting character of the social policy arrangements<sup>58</sup>.

Within this context, the chapter will comprise various sections. In the first section the definition of social policy and European social policy will be outlined again with an emphasis on the contentious nature of the concept. Defining the European social policy, the debates on the concept will also be displayed briefly with a focus on the level of social governance. The division of labor between the Community and the welfare states as to the economic and social governance will be exposed as the main reason lying beneath the secondary position of social governance behind the economic governance in European level. Following the definition of the concept and outlining related terminology, in the second section of the chapter the theoretical origins of the above-mentioned clashing ideological positions will be discussed via employing the assertions of Karl Polanyi and Friedrich von Hayek as main sources of inspiration to these ideological stances. The focus of this section will be the Polanyian concept of “double movement” which can be defined as the conflict of two organizing principles in society;

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<sup>58</sup> While social policies functional to the establishment and sustainability of an integrated market are named as market making social policies, market-supporting or market-correcting social policies are the ones that aim at correcting market failures and/or protect the society from the negative side effects of the self-regulating market. Streeck's terminology quoted in Stephan Pierson and Paul Leibfried, “The Dynamics of Social Policy Integration” in *European Social Policy between Fragmentation and Integration* Stephan Pierson and Paul Leibfried (eds), (Washington D.C: The Brookings Institution, 1995), p.455.

namely the principle of economic liberalism (*laissez-faire*) that aims to establish and expand the scope of a self-regulating market on the one hand and the principle of social protection (protective countermovement) that emerges to protect those who suffer from the destructive effects of the free market, on the other. For the sake of a systematic analysis of the ideas that had inspired the current clashing ideologies of neoliberal and pro-regulatory stances; Hayek's and Polanyi's ideas will be given as two polar views of social policy and state-market relations within the framework of double movement. While Hayek's arguments in "Road to Serfdom" will be put forward under the heading of principle of economic liberalism as the theoretical origins of pro-market/neoliberal attitude, Polanyian arguments in "The Great Transformation: The Political and Economic Origins of Our Time" will be outlined under the heading of principle of social protection as the theoretical origins of pro-regulation ideology.

In the third section of the chapter, a number of scholarly analyses and models to account for the evolution of the European social dimension will be exposed: these being Streeck's "Free Trade/ Alliance of Neoliberalism-Nationalism versus Supranational Welfare State Formation" and Hooghe and Marks' "Neoliberal Project versus Regulated Capitalism Project" and Pochet's "Economists versus Social Group". Via outlining these theoretical approaches and models and commenting on their applicability on the evolution of European social dimension, the theoretical framework to assess the evolution of European social policy within the interplay of contending approaches and paradigms will be set.

### **3.1. Defining Social Policy and European Social Policy: a very thorny issue**

*We all have our values and our prejudices...At the very least, we have a responsibility for making our values clear; and we have a special duty to do so when we are discussing such a subject as social policy which, quite clearly has no meaning at all if it is to be considered to be neutral in terms of values.*

R.M. Titmuss, Social Policy: An Introduction

The amelioration of the undesirable social consequences of economic life has always been an overriding concern on the part of people and governments. Departing from this, social policy can be broadly defined as the measures to address these concerns which can take a variety of forms; from workplace regulation, constraints on worker dismissal, through to income transfers in the form of unemployment benefits, pensions and the like. Management of the risk emanating from economic hardships that affect the individuals and communities alike is the main operation logic under the social policies. In another definition, social policy can be

delineated as the total of such policies seeking to remedy market failures and to protect the relatively disadvantaged members of society from the consequences of their economic weaknesses<sup>59</sup>. What is implicit in this definition is that the competence of social policy is tightly tied with the market and economic policy. In other words, it can be argued that the market sphere defines the boundaries of the subject matter of the social sphere, so that the definition of social policy rests on economic policy and dominant economic values (Walker, 1984; Beck, 1997; Bean, 1998). As a direct result of this, there arises an asymmetric relationship between economic policy and social policy. This unequal relationship between economic and social policy represents a continuous thread of reality throughout the history. Appertaining to this, characterizations of social policy differ depend on the ideological lenses that one is looking from and social policy bears many different interpretations and connotations, adherent to different notions of economic policy. While social policy may be perceived as the policies that ought to constitute an integral part of public policy to create and maintain living conditions that are conducive to human welfare, it might also be defined either as a “public burden”<sup>60</sup>, which leads to the distortion of the working of self-regulating and efficient market via state interventions or “the poor person’s economic policy”<sup>61</sup> that leads to numerous individuals, accustomed to idleness and live reliant on the state rather than working for their survival.

Passing on to the enquiry of social governance and social policy arrangements in the European Union, definition and evaluation of social policy becomes even thornier given the necessity of analyzing both the national and European levels alongside the interplay of the levels for a genuine account of the European social governance. Explicating this issue, Jo Shaw asserts that “one of the greatest difficulties when studying [social policy]...is finding a satisfactory definition of the rather amorphous concept of social policy, especially as it is applied in the EU context”<sup>62</sup>. On the one hand, the difficulties stem from the nature of social policy itself, which gives way to numerous definitions that are moulded by the ideological visions of the definers. On the other hand, the definition is further complicated by the nature and scope of the European social dimension being different from national social policies. Classically defined as “[t]he policy of government with regard to action having a direct impact on the welfare of citizens, by providing them with services or income”<sup>63</sup>, social policy is associated with the welfare state at national level. To put it another way, in the post-world war Europe social

59 Charles Bean, (et al.), (eds), *Social Europe: one for all*, (London: Centre for Economic Policy Research, 1998), p.xv.

60 Richard M. Titmuss, *Social Policy*, (London: George Allen and Unwin, 1974).

61 Miller quoted in Wolfgang Beck, (et al.), (eds), *The Social Quality of Europe*, (The Hague: Kluwer Law International, 1997), p.5.

62 Jo Shaw, “The Social Implications and Possibilities of the Constitutional Treaty”, Report prepared for Social Platform NGO Training Seminar, Brussels, 16 February 2005., p.2.

63 T. H Marshall, *Social Policy*, (London: Hutchinson, 1965).

policy arrangements comprising of social sharing and solidarity arrangements had been sustained by the nation-states to a demarcated community; namely to the citizens living within the boundaries of the welfare states. The welfare state concept was developed as the mainstay of the post war settlement, building on Keynesian economic ideas in the nation states of Western and Northern Europe to denote the states which had liberal market economies, yet at the same time bore excessive social sharing and solidarity arrangements. To be able to make a sound definition of European social policy, it would be useful to briefly put forward the main logic behind the European integration with regard to the economic and social governance and the division of labor as regards them between the national and European levels.

When the European integration project was launched in the 1950s, a division of labor between the new polity and welfare states was defined as regards the economic-social governance. According to this division of labor, the European Communities was to “concentrate on economic opening” so dwelling on the economic governance while the member states were to “keep for themselves the sphere of solidarity and welfare”, hence keeping the EU away from social governance<sup>64</sup>. So, the foundations of the asymmetric relationship between economic policy and social policy were laid with the advent of the European Community as integration in economic sphere was put on the forefront of integration while integration in social sphere was deliberately kept away from Community sphere. The major aim of founding fathers in setting economic integration as the primary vocation of the European integration and leaving social integration behind was preserving the welfare states as the sole arbiter of social security and solidarity provision, thus keeping the comprehensive social protection schemes, high labor standards and full employment objectives intact through sustaining them at the core of domestic agendas. Indeed, as will be also seen in the next chapter in the account of the Treaty establishing the European Community negotiations, “the mission of the EEC was to increase the intra-European trade flows, and thus indirectly to strengthen the occupational and financial basis for redistributive schemes...under strict home rule”<sup>65</sup>. Thus, a strong common market in Europe would bring prosperity via integrating the member countries’ economies and the same market would not pose any threat to the welfare states as the national sovereignty in social matters would be preserved in the transitional stage and would lead then to a progressive harmonization of social systems<sup>66</sup>. Hence, the very beginnings and the main logic of the European social policy was as such with the primary responsibility being at the domestic

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64 Ferrera, op.cit., p.2.

65 Ibid., pp.94-95.

66 Stefano Giubboni, *Social rights and market freedom in the European constitution : a labour law perspective*, (Cambridge: Cambridge University Press, 2006), pp.15-16. (The arguments were suggested by Giubboni for different purposes, actually. But, they are also very appropriate for accounting for the reasons of the left for a form of European integration, limited to economic dimension only).

welfare states, the European level arrangements in the sphere of social policy was very moderate with no genuine capacity of the Community to interfere in the social issues as a result of the division of labor between the Community and the nation state.

However, looking from the historical institutionalist framework developed by Pierson, although designed in line with own interests, once established the institutions may acquire their own life which would create unanticipated consequences<sup>67</sup>. The European Community was not an exception to this as the initial compromise on the division of labor between economic and social governance was impeded by the ever-deepening economic and monetary union alongside the changing global economic paradigm as the strict European economic governance created disciplining implications and thus direct or indirect constraints on the social governance not only at the European level but also at the national level. Thus, the unequal relationship between the European economic and social governance and the secondary position of social governance that represented a continuous thread of reality throughout the history of European polity turned out to be more of a problem as the ever-deepening economic integration combined with the monetary integration created constraints for the social governance at the welfare states itself, as will also be seen at the relevant section of the next chapter. That is why, the discussions on whether the EU should be more prominent in the sphere of social policy making came to the ground and debates on strengthening European level social policy making as a counterweight to the European economic governance came to the agenda.

Having put forward the context in which the European social policy has flourished, a number of points that is relevant in the definition of the concept can be raised. First among this is the unequal relationship between economic policy and social policy at the European level. First reason of this is that the economic governance has always been at the forefront of the European integration with social policies having only a secondary role. Initially aiming at the preservation of welfare states, this arrangement led to constraints on the social policy and also a "constitutional asymmetry" between economic and social governance in the European Union. Secondly, given the dominance of economic governance as the main integration dynamic of the Community, the already limited social policy arrangements at the European level were more often than not market-making ones rather than being in market-correcting or market-enhancing nature. Thus, a major point to be born in mind in studying European social policy is its secondary position to the economic governance. A second point is that the

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<sup>67</sup> Paul Pierson, "The Path to European Integration" in *Comparative Political Studies* 29, 1996.

European Social Model<sup>68</sup> as a regulated form of capitalism was what distinguished Europe from the US model in the post-war world and this model was based on the domestic level policies of welfare states rather than limited social policy arrangements at the Community level. However, it shall also be noted that the scope of Community level European social policies has also increased in the course of integration, although the domestic level stayed as the main arena for social policy making. Further, despite always existent since the advent of the Community in the 1950s, the constitutional asymmetry of social governance and economic governance emerged as a problem in the face of the ever-deepening economic and monetary integration and its evident constraints on welfare states and social policy-making.

Departing from the clarification regarding the concept of European Social Model, before finalizing the section for definition of the “amorphous” social policy concept when applied in the EU context, various concepts employed within the European social policy terminology will be in concern. Apart from the difficulty of defining European social policy per se, another difficulty stems from various scholarly definitions encompassing very different scopes in each and also the confusing references to European social policy; European social dimension and the European Social Model in the literature. Concerning the scope of definition, this thesis employs a simple and rather narrow definition as to encompass labor policies; the policies that provide rights, opportunities, benefits or protections to participants in the labor markets within the boundaries of the Community and also the economic and social cohesion policies which denote a kind of redistributive policies within the Community. Thus, rather than the comprehensive social policy content of the welfare states the Community level social policy arrangement will be in concern. As for the terminology; in the thesis European social dimension is employed interchangeably with European social policy as broad all-encompassing concepts to denote the sum of Community labor policies and the economic-social cohesion policies since the very foundations of the Community.

On the other hand, rather than defining “European Social Model” broadly as an alternative to the US model of capitalism that is made up of national welfare states, “European Social Model” is employed here in a narrow manner to denote the concept introduced in the 1980s by Jacques Delors, the then President of the Commission. Displayed as an alternative to the American free-market capitalism model, the purpose lying beneath the promotion of a European Social Model was re-embedding the European market into a supranational

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<sup>68</sup> European Social Model is made up by a cluster of national welfare regimes, possessing extensive systems of social protection and labor market institutions. Although each country had a slightly different interpretation of the welfare policies, broadly they are considered as constituting a distinct ‘European Social Model’, different from the free market model. To be more precise, each component of the model is a national welfare system. Hence, the “Social Europe” or the social dimension of the Union revolve around the complementary action at EU level, not a substituting one.

framework of social regulation after the post-war consensus on welfare states started to be challenged during the 1970s and 1980s. Hence, the attempts at overturning trade union rights and cutting benefits in order to encourage stronger economic growth were came to be responded by the left initiative attempting to use the European Community to maintain the welfare states. European Social Model was aiming to ensure social and redistributive policies for market-correction and cohesion alongside the promotion of market liberalization for economic growth<sup>69</sup>. To depict the frame of the model, the creation of a competitive home market and market liberalization were accepted by the model, yet Delors was insistently highlighting that “[t]he Community is not and will not be, a free trade zone. It is up to us to make a European organized space”<sup>70</sup>. Thus, though signifying similar content, the thesis employs European social dimension as a broader concept than the European Social Model and European social dimension encompasses European Social Model.

Despite having a scope incomparable with the national-level social policies and also lagging behind the economic integration of the Community, the European social policy has always evolved within contentions. Hence, even in a more aggravated manner than in national level, European social policy has always constituted a top subject for profound struggle among various social and political forces and any move towards more deepening in this sphere met with enthusiastic responses of both supportive and hampering kinds. Throughout time, this topical nature of social policy has been reinforced with the processes of globalization and the contention continued between the policy actors endorsing a social Europe approach and those supporting a deregulation approach. At the root of this conflict, there lies the contentious issues of what the most proper economic and political model for the EU in the future should be like and whether the EU should be prominent in the social policy making. To employ the Polanyian conceptual framework, that will be detailed in the next section, the tensions and the “double movement” between the market and the measures to restrict it revived at the supranational level with the advent of the Community and the tensions have been maintaining their momentum in shaping the European social dimension.

To better conceive the evolution of European social dimension within contentions among different visions of European social-economic governance in the next section the theoretical origins of the contentious ideological positions to social policy will be sought. Hence, the assertions of Karl Polanyi and Friedrich von Hayek as main sources of inspiration to the neoliberal and pro-regulation ideological stances will be displayed. In doing so, firstly the

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69 George Ross, *Jacques Delors and European Integration*, (Oxford: Oxford University Press, 1995), pp. 45-46.

70 Delors cited in Axel Krause, *Inside the New Europe*, (New York: Harper Collins, 1991).

Polanyian double movement will be defined and the arguments of Hayek and Polanyi as the representatives of the two contending principles of the double movement will be put forward within this framework.

### **3.2. Theoretical Origins of the Clashing Ideologies: The Double Movement: Economic Liberalism (laissez-faire) Versus Protective Countermovement (social protection)**

Writing on the social and political upheavals that took place in England during the rise of the market economy, the Hungarian scholar Karl Polanyi's "The Great Transformation: The Political and Economic Origins of Our Time" puts forward radical criticisms against the self-regulating markets. *The Great Transformation* is appraised by many scholars as the most powerful critique of market liberalism in general and the self-regulating markets in particular. The arguments of Polanyi regarding state-market relations and social policy matters will be detailed in the following section. Yet, to analyze them in a context and comparatively with the assertions of Hayek, again a Polanyian concept: "*the double movement*" will be used and the arguments of Hayek and Polanyi will be introduced under the respective contending lines of thought of the double movement.

In his challenging contribution to the understanding of the Western past; Polanyi not only accounts for a specific moment in time but he sheds light into the essence of the market societies. Thus Polanyi contributes to the methodological debates in the social sciences regarding the operations of the self-regulating markets and state-market relations. To be more precise, Polanyi qualifies the expansion of the market and the counter movements to check its expansion as *the double movement that governs the dynamics of modern society*<sup>71</sup>. Polanyi defines this *double movement* as the conflict of two organizing principles in society, having the support of definite social forces: The first being the principle of **economic liberalism (laissez-faire)** that aims to establish and expand the scope of a self-regulating market, using largely laissez-faire and free trade as its methods. The second is the **protective countermovement** or the **principle of social protection** that emerges to resist the negative side effects of self-regulating market and aims to protect those who suffer from the destructive effects of the free market operating without any restrictions.

As mentioned above, the main goal of Polanyi's *The Great Transformation* was to explain the crisis of the 1930s and the rise of fascism in terms of the impasse created by the conflict between economic liberalism and social protectionism. However, despite its focus on the 19th

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<sup>71</sup> Karl Polanyi, *The Great Transformation: the political and economic origins of our time*, (Boston: GowerBeacon Press, 1957), p.132.



century and the evolution of the inter-war crisis, the ideas behind The Great Transformation have a much wider application and as many scholars have argued Polanyi's work is vital for "comprehending the dilemmas facing contemporary global society"<sup>72</sup> as a new 'double movement' can currently be witnessed between the neoliberal globalization replacing the principle of economic liberalism and attempts to regulate it taking the place of the principle of social protectionism<sup>73</sup>. Reiterating the definition of social policy as the measures to remedy market failures and to protect the relatively disadvantaged members of society from the negative effects of market, Polanyi's postulate of *double movement* can be well applied into the evolution of social policy to identify the contending ideologies that take part in the determination of the scope of the social policies. Against this background, the principle of economic liberalism and principle of social protection, which do also have their counterparts as the contending ideologies in the evolution of European social policy, will be taken as the main ideological forces behind the emergence and evolution of social policies and these principles will be exposed through the assertions of Hayek and Polanyi himself as the respective parties to these organizing principles in society. For the sake of a systematic analysis, the double movement concept will be utilized as the framework within which the arguments of Hayek and Polanyi will be introduced under the respective contending organizing principles; the principle of economic liberalism and principle of social protection. In this regard, the next section will comprise the arguments of Hayek and Polanyi regarding state-market relations, market-society relations and social policy in their respective works "Road to Serfdom" and "The Great Transformation: The Political and Economic Origins of Our Time". Hayek and Polanyi are chosen as being sources of inspiration to the general ideological stances of pro-market/neoliberal and more regulatory/interventionist positions which have moulded the European social policy through their clashes.

### 3.2.1. Principle of economic liberalism: Pro-market approach

The first organizing principle that makes up Polanyi's double movement which emerges spontaneously in market societies is the principle of economic liberalism that aims to extend the self-regulating market via laissez-faire and free trade. The ideas behind the principle of economic liberalism are advocated by both classical economic approach and the neoliberal approach that ascended 1970s onwards. Classical economic approach and Hayek's ideas- as

<sup>72</sup> See Ronaldo Munck, *Globalization and Contestation: the new counter-movement*, (Oxon: Routledge, 2007), pp.18,19.

<sup>73</sup> See C. Chin., & J. Mittelman, "Conceptualising resistance", in, Gills, Barry K. (ed.) (Basingstoke: Palgrave in 2000); Robert Latham "Globalization and the Transformation of Economic Rights" in *Globalisation and the Politics of Resistance* Gills, Barry K. (ed.) . (Basingstoke: Palgrave2000); Peter Utting, "Rethinking Business Regulation From Self-Regulation to Social Control", *Technology, Business and Society Programme Paper* (United Nations Research Institute for Social Development, 15 September 2005); James Putzel, "Politics, the state and the impulse for social protection : the implications of Karl Polanyi's ideas for understanding development and crisis". *Working Paper*. Crisis States Research Centre, DESTIN, London, 2002.

the main inspirational source for the neoliberal approach- regarding the state-market relations and market-society relations will be introduced below as to create an insight to the contentious nature of the social policy matters.

### 3.2.1.a. Classical Economics

The ideas of principle of economic liberalism -aiming at establishment and expansion of the scope of self-regulating market through laissez-faire and free trade - are staunchly advocated by the classical economic approach which relies on the assumption of the rational individual making the best choices for his/her own advantage. Embracing the precepts of free enterprise, individual choice, competition, free trade and open markets, the intellectual father of capitalism Adam Smith observed over 200 years ago that the competitive market, as if by an "invisible hand," transforms self-interest into a force promoting the public good. Regarding this issue, the doyen of the laissez faire doctrine stated that welfare can only be assured via the market. Explicating this point, Smith argued that the mechanism of free and profit-oriented competition secures a far better societal provision of goods than any structure of state command could sustain<sup>74</sup>. So, perceiving the role of a government as being limited to the tasks of maintaining law and order; providing defense and public works, Smith was certain that the state was less able to bring welfare than the invisible mechanisms of the self-regulating market<sup>75</sup>. Thus, he indicated that the wealth of nations can only be constituted by means of a self-regulating market. For Smith, governments should not seek to subvert the creative process that is the market, but should only establish the framework necessary to keep it alive and enforce competition.

All in all, being hostile to state intervention in the economy, Adam Smith laid the foundations of the line of thought that excludes state activity from the provision of welfare and argues instead for the self-regulating market to distribute wealth.

### 3.2.1.b. Inspiring Neoliberalism: "Road to Serfdom"

*"Friedrich Hayek...was arguably the greatest social scientist of the twentieth century. By the time of his death, his fundamental way of thought had supplanted the system of John Maynard*

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<sup>74</sup> Adam Smith, "Book IV Of Systems of Political Economy - Chapter II: Of Restraints upon the Importation from Foreign Countries of such Goods as can be produced at Home", *An Inquiry into the Nature and Causes of the Wealth of Nations* / general editors R.H. Campbell and A.S. Skinner ; textual editor W.B. Todd, Volume I, ( Oxford: Oxford University Press, 1976) pp.452-472.

<sup>75</sup> Adam Smith, "Book V Of the Revenue of the Sovereign, or Commonwealth"- Chapter I Of the Expenses of the Sovereign, or Commonwealth" in *Ibid.*, pp.689-816.

*Keynes -- his chief intellectual rival of the century -- in the battle since the 1930s for the minds of economists and the policies of governments*<sup>76</sup>."

Julian Simon, Department of Economics, University of Maryland

*".. the most powerful critique of socialist planning and the socialist state which I read at this time [the late 1940's], and to which I have returned so often since [is] F. A. Hayek's The Road to Serfdom*<sup>77</sup>."

Margaret Thatcher, U.K. Prime Minister 1979-1990

*"[Hayek is] one of the great thinkers of our age ... [he] revolutionized the world's intellectual and political life*<sup>78</sup>."

George Bush, U.S. President, 1989-1993

The view confining the state's role to a "night watchman role" and leaving relations among individuals and social classes to their natural course is by no means peculiar to classical economics. Ascending in the second part of the 20<sup>th</sup> century and mounting up its influence since the 1970s, neoliberalism also de-emphasizes government intervention in the domestic economy; indeed it sharply rejects the social functions of state and social policies. Focusing on free market methods and fewer restrictions on business operations, neoliberalism strives to reject or mitigate labor policies such as a minimum wage and collective bargaining rights to improve corporate efficiency. Thus like the classical economic approach introduced briefly above, neoliberal approach advocates the establishment and expansion of the scope of self-regulating market through free trade methods and fewer restrictions on business.

Opposing all sorts of governmental interference into the market and defining the initiatives to regulate the market as the "Road to Serfdom", Friedrich von Hayek was one of the first and most influential scholars who inspired the neoliberal approach. He is also the scholar that greatly influenced both Thatcher and Reagan. Quoting the remarks of Margaret Thatcher, an outspoken *devotée* of Hayek's writings would be pertinent. John Ranelagh writes of Thatcher's remark at a key Conservative Party meeting in the late 1970's. During a speech praising the merits of the middle way as the pragmatic path for the Conservative party to take, "Margaret Thatcher reached into her briefcase and took out a book. It was

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<sup>76</sup> Julian L. Simon, "Hayek's Road Comes to an End", *The Independent Institute*, 13 April 1992 10.07.2007. Available at: <http://www.independent.org/newsroom/article.asp?id=311>.

<sup>77</sup> Margaret Thatcher, *The Path to Power*, (New York: Harper Collins, 1995), p. 50.

<sup>78</sup> George Bush, "Statement on the Death of Friedrich August von Hayek", *Presidential statement*, 23 March 1992, Available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=20756>.

Friedrich von Hayek's *The Constitution of Liberty*. Interrupting [the speaker], she held the book up for all ... to see. 'This', she said sternly, 'is what we believe', and banged Hayek down on the table"<sup>79</sup>. Beyond dispute, Hayek is the leading figure in formulating the legitimacy ground for the policies that aim at dismantling the Keynesian welfare state. Assessing the impact of Hayek and his most famous work in 2004, another Nobel Prize owner in economics, Amartya Sen asserted that the Friedrich Hayek's combative monograph "The Road to Serfdom" had a profound impact on political, economic and social thinking in the decades that followed its publication 60 years ago, serving as an intellectual manifesto against socialist planning and state intervention<sup>80</sup>.

As the name of his book also denotes Hayek's main concern was to describe the system that leads to serfdom and thus draw the way to be followed for liberty. It was not just a coincidence that Hayek was described as the "Freedom's Prophet" by his adherents<sup>81</sup>. Espousing a very different stance from the general liberal praise of the market mechanism as the best provider of economic prosperity, Hayek rather stipulates that the market and competition are the basic promoters of human liberty and freedom. Hence, discounting the prosperity argument of the founding fathers, he argues that the markets have to be judged by their role in advancing freedoms, not just in generating income. In this sense, more similar to social democrats than liberals, Hayek admits that markets do not always yield the benefits corresponding to one's competence. That is to say due to/thanks to their "good or ill chance" or "by accident" individuals may acquire more or less than they deserve<sup>82</sup>. In that sense, he deviates from mainstream liberals asserting that the market provides the exact benefits equivalent of peoples' competences and so he accepts as social democrats do, that injustice/inequality may occur because of market failures. Yet, where he diverges from social democrats is his perception that this is not a problem to be corrected, rather it is just a part and parcel from market mechanisms to be taken for granted. He defends that even if the market order leads to unfairness, this is not something peculiar to the market system, further for the sake of liberty, it should be endured. In his own words: "the choice open to us is not between a system in which everybody will get what he deserves according to some absolute and universal standard of right (*namely the ideal of justice of most socialists*) and one where individual shares are determined by accident...but between a system where it is the will of a few persons that decides who is to get what, and one where it depends at least partly on the ability... of people concerned and partly on

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79 John Ranelagh, *Thatcher's People: An Insider's Account of the Politics, the Power, and the Personalities*, (London: Harper Collins, 1991), p. ix.

80 Amartya Sen, "An Enduring Insight into the Purpose of Prosperity" in *Financial Times*, 21 September 2004.

81 Edwin J. Feulner Jr., "Freedom's Prophet" in *Wall Street Journal*, 7 May, 1999.

82 F.A. Hayek, *The Road to Serfdom*, (London: Routledge, 1993), p.76.

unforeseeable circumstances<sup>83</sup>”. Hence, apparently he praises the impersonal market system and competition mechanisms as promoting liberty even if they may lead to mismatches between the ability and benefits at times, compared with a collectivist society in which there would also be “inequalities which will appear unjust to those who suffer them.”<sup>84</sup> Hayek goes on to argue that “...when things occur in a society which is consciously directed, the way in which the people will react will be very different from what it is when they are nobody’s conscious choice”<sup>85</sup>. Actually, Hayek seems captivated by the enabling effects of the market system on human freedoms and he seems to downplay, although not totally ignoring, the lack of freedom that may result from a complete reliance on the market system, with its exclusions and imperfections, and the social effects of big disparities in the ownership of assets<sup>86</sup>.

To expound in more detail how he accounts for this road to serfdom as the endpoint: the book argues that many 'democratic' socialists have a “great utopian” ideal aiming at social justice and greater equality that would be glorious if it could be achieved<sup>87</sup>. Yet, a collectivist system based on economic planning is hardly close to achieving this ideal, Hayek argues. The economic decisions in general and redistribution of resources in particular can by no means be conducted by the state, a collectivist system with central planning, as this is not possible to bear all the existing information at one center. In line with the Austrian school prioritizing human action as the basis of economic theory, Hayek argues that individuals should be allowed to choose for themselves what price they are willing to pay for any given good or service for the best use of resources -known to any of the members of society- for ends whose relative importance are only known to these individuals themselves. So, he staunchly argues for employing the forces of competition, which are free of the coercive or arbitrary intervention of authority, as the best means of coordinating and guiding human efforts. In this manner, Hayek sets the best ever economic order as the one established on individualism, and claims that laissez faire policies would not be a means but the end-point to be reached. As for planning, Hayek asserts that planning is not “a medicine which taken in small doses” can solve the problems, it rather leads to more planning<sup>88</sup>. To his view, even a modest amount of economic planning requires coercive machinery to force people to act in certain ways, according to the plans that are decided on. Hayek says that this is a recipe for arbitrary government. Instead of treating people equally, the socialist planner has to treat them as mere instruments for the achievement of the economic plan. Hence, fairly soon, the grip of the planning agency over the

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83 Ibid., pp.76-77.

84 Ibid., p.79

85 Ibid. p.79.

86 See Amartya Sen, op.cit.

87 Hayek, op.cit. pp.23-24.

88 Ibid. p.31.

lives and ambitions of individuals must become more and more complete, and the power embodied in it attracts political leaders. Thus, moderate socialists find themselves drawn down a road which none of them wanted, and only the abandonment of their ideals will avoid the drift to totalitarianism<sup>89</sup>. So, being captivated by this whirl, even the moderate socialists reach the end point of the road, where serfdom was apparent.

Hayek's criticisms were not only directed against economic planning or socialist systems. Depicting the function and the domain for state intervention as establishing a legal order for sustaining competition<sup>90</sup>, Hayek was passionately objecting not only to the complete centralization of economic activity, but also to any sort of planning including the welfare state, social protectionist regulations and even the existence of restrictive institutions such as trade unions that would somehow meddle in the self-regulating markets<sup>91</sup>. In other words, he claimed that any sort of syndicalist or corporative organization of industry would lead to the suppression of competition through planning in the hands of separate industries or independent monopolies, "putting the consumer at the mercy of the joint monopolistic action of capitalists and workers in the best organized industries,.....which can only be rectified via control of monopolies by the state or return to competition"<sup>92</sup>. Further arguing that the market cannot operate in case of obligations that are brought by any non-market authority in the name of social justice, Hayek maintained a hostile attitude towards all sorts of interference to the market including any "Middle Way between atomistic competition and central direction"<sup>93</sup>. Thus, Keynesian macroeconomic policies and deficit financing were also disregarded by Hayek's arguments which were based on the assertion that economic planning is totally dissonant with individual liberties.

Actually, *The Road to Serfdom* is, by the author's own admission, a political book. But it is nevertheless a work of considerable scholarship. Further, it is also undeniable that Hayek is regarded as a key figure in the 20th century revival of liberalism and his ideas are even defined as playing a role in our time similar to the role the ideas of Adam Smith played in his own<sup>94</sup>. "If the central contest of the twentieth century has pitted capitalism against socialism, then F. A. Hayek has been its central figure. He helped us to understand why capitalism won

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<sup>89</sup> Ibid, pp.20-22.

<sup>90</sup> Ibid. pp.28-29.

<sup>91</sup> Ibid., pp.30-31.

<sup>92</sup> Ibid. p.30.

<sup>93</sup> Ibid. p.31.

<sup>94</sup> See Herbert Simon and Vernon Smith both being Nobel Prize winner in Economics. Herbert Simon argues that "No one has characterized market mechanisms better than Friedrich von Hayek" (*The Sciences of the Artificial*, 2nd Edition, (Cambridge: The MIT Press, 1981), p. 41). Vernon Smith asserts that "Hayek, in my view, is the leading economic thinker of the 20th century", ("Reflections on Human Action after 50 years", *Cato Journal*. Vol. 9, No. 2, Fall, 1999).

by a knockout. It was Hayek who elaborated the basic argument demonstrating that central planning was nothing else but an impoverishing fantasy<sup>95</sup>” argues Kenneth Minogue, as if being a spokesman of the neoliberal adherents of Hayek. In other words, by providing the theoretical background and legitimation for neoliberalism and through his overriding influence on politics, Hayek has definitely played a leading role in the change away from statism and back to liberalism. Moreover, as has been argued before Hayek’s arguments fit well into the principle of economic liberalism as Hayek stringently opposes all sorts of interference into the market and argues for the expansion of scope of market as the best promoter of human liberty.

### 3.2.2 Principle of Social Protectionism

The second organizing principle that makes up the double movement is the **principle of social protection** that emerges and is needed to resist the negative side effects of self-regulating market and aims to protect those who suffer from the destructive effects of the free market operating without any restrictions. The ideas behind the principle of social protection are advocated by people embracing a more regulatory and interventionist role for state to protect the society from the negative effects of self-regulating markets. In this section Polanyi’s ideas as an inspirational source for the pro-regulation approach will be introduced. Moreover, Polanyi’s assertions will be given below also to denote the theoretical origins of the arguments of social policy as a market-enhancing mechanism.

#### 3.2.2.a. Inspiring Regulatory Approach: “The Great Transformation: The Political and Economic Origins of Our Time”

*“...Polanyi created a way of thinking about economies and societies that has had substantial impact on economic history...The Great Transformation remains important as a highly original contribution to the understanding of the Western past; it has been and is important in methodological debates in the social sciences...As the double movement continues, the book is likely to remain one of the best guides available to what brought us where we are.”*<sup>96</sup>

Anne Mayhew, University of Tennessee

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95 Kenneth Minogue, “Giants Refreshed II: The Escape from Serfdom: Friedrich von Hayek and the Restoration of Liberty”.TLS: Times Literary Supplement, Jan 14, 2000, p. 11

96 Anne Mayhew, “Review of Karl Polanyi, The Great Transformation: The Political and Economic Origins of Our Time.” *EH.Net Economic History Services*, Jun 1 2000. Available at: <http://eh.net/bookreviews/library/polanyi>.

*"[The Great Transformation] did more than any work of that generation to broaden and deepen the critique of market societies."*<sup>97</sup>

John Buell, *The Progressive*

*"Polanyi does not profess to be writing history - he is rewriting it. He is not bringing a candle light into one of its dark corners, nor is he plausibly making it the public scripture of his private faith; instead, with insight as well as with knowledge, he is shedding a new illumination on the processes and revolutions of a whole age of unexampled change".*

R. M. MacIver<sup>98</sup>

*"Polanyi exposes the myth of the free market: there never was a truly free self-regulating market system".*

Joseph Stiglitz<sup>99</sup>

In the same year as Hayek's *Road to Serfdom* was published in the United Kingdom, in the U.S. another political economy book was being printed. The book concerned was of a Hungarian scholar who had elaborated his work as an exile in England and in the U.S, being forced first from Hungary and then from Vienna by the turmoil of revolutions and dictatorships. This scholar was Karl Polanyi who wrote *"The Great Transformation: The Political and Economic Origins of Our Time"* putting forward radical criticisms against the self-regulating markets. *The Great Transformation* is appraised by many scholars as the most powerful critique of market liberalism in general and the self regulating markets in particular.

Being contemporaries, Hayek and Polanyi dwelled on the same theoretical matter, yet they developed very contrasting arguments. As a tireless proponent of market liberalism and as an advocate of the ideas behind the principle of economic liberalism of the double movement framework at the time of his death Hayek was widely celebrated as the father of neoliberalism, being the scholar who had provided the intellectual legitimacy of neoliberalism as well as being the source of inspiration for both Margaret Thatcher and Ronald Reagan to pursue policies of deregulation, liberalization, and privatization. The high esteem for Hayek was also apparent in his lifetime as he was given numerous awards the Nobel Prize for economics and U.S. Presidential Medal of Freedom, being the most

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<sup>97</sup> John Buell, "Everything for Sale: The Virtues and Limits of Markets" in *The Progressive*, March 1997.

<sup>98</sup> R. M. MacIver, "Foreword" in *The Great Transformation: the political and economic origins of our time* Karl Polanyi, (Boston: GowerBeacon Press, 1957), p. ix.

<sup>99</sup> Joseph Stiglitz, "Foreword" in *The Great Transformation: the political and economic origins of our time* , Karl Polanyi, ( Boston: Beacon Press, 2001), 2nd Beacon Paperback ed, p.xiii.



prominents. Yet, as with Polanyi, his ideas were disregarded more often than not during his lifetime. Polanyi's eminent work has started to gain the visibility it deserves only with the end of the Cold War era, when the doctrine of market liberalism and the phenomenon of globalization came to dominate global politics and their negative repercussions on peoples began to be felt more densely. Here, the arguments of Polanyi will be introduced as the inspirational source for arguments of social policy as a market-supporting/correcting mechanism and likewise Polanyian ideas will be given under the heading of principle of social protectionism which is indeed a concept within the *double movement* conceptual framework also developed by Polanyi himself. Indeed, Polanyian *double movement* will also be better comprehended when analyzed within the Polanyian arguments as a whole.

*The Great Transformation* is such a comprehensive and rich work that any attempt to summarize it here would be nothing apart from a vain effort. Yet, the aim of this chapter is to raise the arguments of Polanyi within the scope of state-market relations and thus social policy matters. The very first lines of "The Great Transformation" reads as: "Nineteenth century civilization has collapsed. This book is concerned with the political and economic origins of this event, as well as with the great transformation which it ushered in."<sup>100</sup> Following this, Polanyi poses the main questions of his work: what are the reasons behind the collapse of "a hundred years of peace" (1815-1914) in Europe and why was it supplanted by an unprecedented economic collapse-Great Depression- and other catastrophic events signified by the two World Wars and the rise of fascism in Europe? Departing from a search for an answer to this question, "The Great Transformation" lays out Polanyi's comprehensive analysis and his response to the question. This response was a comprehensive account of history, tracing the answer back to early 19th Century, when the founding fathers of liberalism devised the intellectual foundations of market liberalism to address the negative repercussions originating from the English Industrial Revolution. Market liberalism, claiming that human society should be subordinated to self-regulating markets, became the dominant mode of economic management in the world, spreading from England. This is what Polanyi terms as the *first "great transformation": the rise of market liberalism*<sup>101</sup>. The transformation can not solely be expounded by the ascendancy of market liberalism, though. Rather, the detachment of self-regulating market from society in liberal order was the first transformation.

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<sup>100</sup> Polanyi, 1957, op.cit., p.3.

<sup>101</sup> Ibid., p.30.

Against this background, the crux of Polanyi's postulate and also his response to the question posed before may be put as follows: market liberalism never works as intended and the self-regulating market produces an inevitable response that is the concerted efforts to protect society from the market. Polanyi argues that the unintended consequences of the organization of the economy on the basis of self-regulating markets can be illustrated by the collapse of peace that resulted in World War I and the subsequent collapse of economic order, culminating in the Great Depression. As a result of the first great transformation, Polanyi argues, the second "great transformation" came about which is the rise of fascism<sup>102</sup>.

Perhaps one of the most influential contribution to social thought and the most 'topical' of Polanyi's concepts is, '*embeddedness*'. Polanyi argues that the economy is normally embedded in social relations. With the intent of proving his conceptualization, Polanyi argues that prior to the emergence of an unregulated market system towards the end of the 18<sup>th</sup> Century, markets (exchange relations) were governed by certain 'moral' principles so that the market could be seen as 'embedded' in the social and political order of the day. In his own words, "prior to the emergence of the modern market society, 'the economic system was submerged in general social relations and markets were merely an accessory feature of an institutional setting controlled and regulated more than ever by social authority'"<sup>103</sup>. In other words, the term "embeddedness" expresses the idea that the economy was not autonomous as it is generally described in liberal economic theory, but was subordinate to politics, religion, and social relations. Yet, with the advent of the 19<sup>th</sup> Century (as restarting in the late 20<sup>th</sup> Century), there were intense efforts to 'disembed' the market; namely to remove market processes from social, political or moral regulation. In describing the situation emerging as a result of the requirement of the system of self-regulating markets, which in turn leads to the subordination of society to the logic of the market, Polanyi argues that "...it means no less than the running of society as an adjunct to the market. Instead of economy being embedded in social relations, social relations are embedded in the economic system"<sup>104</sup>. Polanyi goes on to argue that despite efforts of the classical economists to ensure a self-regulating market, they did not and indeed could not achieve their goal. He recurrently asserts that the goal of a fully self-regulating market economy that is disembedded is a utopian project; it is something that cannot exist. In his own words: "...the idea of a self-adjusting market implied a stark utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man and transformed his surroundings into a

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<sup>102</sup> Ibid., p.237.

<sup>103</sup> Ibid, p.67.

<sup>104</sup> Ibid. ,p.57.

wilderness”<sup>105</sup>. Munck restates this sentence employing modern terminology by stating: “the self-regulating market was neither socially nor environmentally sustainable”<sup>106</sup>. To focus on the social sustainability issue, Polanyi asserts that the self-regulating market transforms the human and nature into pure commodities and thus the market destroys society and nature in this manner. Aside from putting forward a moral argument that it is wrong to perceive human and nature as a commodity, the price of which is determined by the market<sup>107</sup>; Polanyi also focuses on the role of the state to account for the self-regulating market. Neatly summarizing what the Polanyian approach envisages on the state role in the economy, Fred Block asserts that even in the case of a self-regulating market, Polanyi strongly insists that the state has to shift demand for employees by providing relief in periods of unemployment, provide training for workers, to manage migration. As for the agriculture, governments shall provide remedies for fluctuating harvests and volatile prices to protect farmers as well as to assure continuity in food production. The state shall also manage the use of lands via environmental and land use regulations rather than leaving human beings and the environment to the control of the market. Thus, in Polanyi’s view it is inconceivable to sustain the market liberal aspiration that the state is totally “outside” of the economy<sup>108</sup>. Polanyi further argues that if the self-regulating market becomes a reality, people living in that society would have to experience higher costs. To illustrate, employees become more vulnerable to the environment, farmers become more vulnerable to unfavorable harvests, etc. In such a case, there arises the need for the state not to intervene in the market but to concentrate its activities on another issue. That is, the state shall devote its efforts to elicit that the people, experiencing the negative repercussions of the disembedded self-regulating market, to stand for these increased repercussions and prevent these people from engaging in disruptive political actions.

It would be pertinent to quote here the very challenging assertion of Polanyi: “Laissez-faire was planned, planning was not”<sup>109</sup>. Namely, to sustain the liberal utopia of laissez faire economy, statecraft and repression is required to impose the logic of the market and its side effects on ordinary people.<sup>110</sup> This is a very challenging argument as it aims at refuting the liberal assertion that laissez faire is natural and the adverse arrangements as planned. Contrary to the claims of liberals, Polanyi demonstrates how laissez faire is realized via state acts

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<sup>105</sup> Ibid., p.3.

<sup>106</sup> Ronaldo Munck, *Globalization and Contestation: the new counter-movement*, (Oxon: Routledge, 2007), p.16.

<sup>107</sup> Polanyi, 1957-op.cit. pp.68-76.

<sup>108</sup> Fred Block, “Introduction” in *The Great Transformation: the political and economic origins of our time*, Karl Polanyi, (Boston: Beacon Press, 2001), 2nd Beacon Paperback ed., p.xxvi.

<sup>109</sup> Polanyi, 1957-op.cit. p.141.

<sup>110</sup> This is Polanyi’s central point in his account of the New Poor Law in England; the creation of a labor market required a dramatic increase in the state’s repressive powers.

through deliberate interventions of the state and how protective movements emerged in a spontaneous and uncontrolled manner since the 1860s. Polanyi argues that the efforts to disembed the economy from society inevitably lead to resistance. Thus, Polanyi asserts that expansion of the market leads to the protective countermovement that emerges to resist the disembedding of the economy and aims to protect those who suffer from the destructive effects of the free market operating without any restrictions. By the social protection principle, Polanyi meant protective legislation (social law; labor law; social security law) and the organizations to restrict economic liberalism (trade unions) and various intervention instruments<sup>111</sup>.

With the second part of the sentence: “Laissez-faire was planned, planning was not”, Polanyi argues that the manner of the creation of barriers was just a spontaneous and unplanned response by all groups in society against the impossible pressures of a self-regulating market system such as the disembedded market. The protective countermovement is required to preclude the disembedded economy. Polanyi suggests that the movement towards a laissez-faire economy needs the countermovement to create stability. Identifying the major characteristic of market society as disembeddedness; namely its rootless and detached nature from social and political institutions, Polanyi emphasizes that such a market creates a feeling of insecurity and social concerns on the part of society. Via counter-protectionist measures, created by either society or state; via state intervention or social legislation the total disembedding of the market from the social or political institutions or its total independence from them should be precluded<sup>112</sup>. Polanyi asserts that the major objective of social protection is to intervene in the law of demand-supply and to remove human labor from the orbit of market<sup>113</sup>.

Contrary to Hayek arguing that social justice is an empty concept, Polanyi emphasizes that the self-adjusting market notion is pure utopia, indicating that it is impossible for such an institution to go on for a long time without abating the “human and natural substance of society”. As a result, society takes preventive measures to protect itself. Hence, social policy emerges as a *spontaneous protective reaction* against the expansion of the market and social policies grow up in response to the shortcomings of market arrangements<sup>114</sup>. Although active social policy measures came to the agenda from time to time in the post-war period, social policy has kept this characteristic to a great extent. Again quite contrary to what Hayek argued,

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<sup>111</sup> Ibid., p.132.

<sup>112</sup> Ronaldo Munck, *Globalization and Labour the New Great Transformation*, (London: Zed Books, 2002), p. 176.

<sup>113</sup> Polanyi, 1957·op.cit., p.177.

<sup>114</sup> Ibid., pp.139-144.

Polanyi defended that the individual liberty/freedom could only be assured if capital is subject to social supervision.

To sum up, the critique of the market liberals constituted the central theoretical concern of Polanyi. Polanyi asserts that free market capitalism is indeed not a real choice because it is just a utopian vision. Yet, the Polanyian definition of socialism: "the tendency inherent in an industrial civilization to transcend the self-regulating market by consciously subordinating it to a democratic society"<sup>115</sup>, apparently allows for a continuing role for markets within socialist societies.

Despite being devised for the 19<sup>th</sup> century by Polanyi, the double movement concept still offers valuable insights to comprehend the essence of the market societies and the market-state/society relations as well as the social policy arrangements. The current contentions among the neoliberal globalization and attempts, by different groups within society, to regulate it via various social policy arrangements in both national context and also within the framework of European integration can be appraised as a new 'double movement'. Neoliberals, like their predecessors, espouse the same "stark utopia" that for everyone to better off the actors in the market, either individuals or firms, shall be given maximum freedom to pursue their economic self-interest in the framework of a self-regulating market. Bearing such a trust in the effectiveness of self-regulating markets, neoliberals have been devoting their efforts in a systematic manner to dismantle restraints on trade and capital flows and to reduce governmental interference in the organization of economic life and have been excluding any social policy arrangements in the market-enhancing character. On the other hand, there are also various attempts in the society to protect the society and also the environment from the negative side effects of the self-regulated market and ever increasing liberalization. And as part of this protective countermovement, pro-regulatory attempts focus on social policy arrangements in the market- supporting or market-correcting character. These opposing organizing principles are also evident in the context of European integration and the principles clashing within the framework of the new double movement determine the scope of the social and economic policies of the Community.

All in all, reiterating the arguments that the definition and assessment of social policy are very much related and even subordinate to views about economic policy and market; two polar views of social policy and state-market relations were outlined in the previous section within the framework of Polanyi's *double movement* concept. While Hayek's arguments were given

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<sup>115</sup> Polanyi, 1957, op.cit. , p. 234.

under the heading of principle of economic liberalism, Polanyi's arguments were given under the heading of principle of social protectionism for the sake of a systematic analysis of the ideas that had inspired the current clashing ideologies; one being neoliberal and the other being pro-regulationist approaches. In the next section, a number of scholarly approaches and models devised for European integration and which are indeed very similar in logic to the Polanyian double movement will be presented to outline the theoretical approach to be employed for the rest of the thesis.

Table 3.1: A Comparison between Hayek and Polanyi

NAME	FRIEDRICH VON HAYEK	KARL POLANYI
Arguments	“social justice is an empty concept”	“self-adjusting market notion is pure utopia”
	“market can not operate in case of obligations that are brought by any non-market authority in the name of social justice ”	“it is impossible for self-adjusting market to go on without abating the human and natural substance of society so the society takes preventive measures to protect itself”
	Function and the domain for intervention of state : establishing a legal order for sustaining competition	Even in the case of a self-regulating market, the state has to shift demand for employees by providing relief in periods of unemployment, provide training for workers, to manage migration and etc.
	Objects to state interventions, the welfare states, social protectionist regulations and to the existence of restrictive institutions as TUs	Argues for social protection: 1-the protective legislation (social law; labor law; social security law) 2- the organizations to restrict economic liberalism (e.g. TUs)
	“economic planning is totally dissonant with the individual liberties”	“individual liberty/freedom could only be assured if the capital is subject to social supervision”
	market is the promoter of human liberty and freedom	
	Intellectual influence on both Thatcher and Reagan	Influence on anti-globalization movements

NAME	FRIEDRICH VON HAYEK	KARL POLANYI
Arguments	“Forces of competition as the best method for guiding economic activity” because it protects people from “coercive or arbitrary intervention of authority”.	social protection to protect those suffering from the destructive effects of the free market
	Injustice/inequity may occur because of market failures. This is not a problem to be corrected rather it is just a part and parcel from the market mechanisms to be taken for granted. Even if the market order leads to unfairness, for the sake of liberty it should be endured.	Disembedded market creates a feeling of insecurity and social concerns on the part of society. Via counter-protectionist measures, created by either society or state; via state intervention or social legislation the total disembedding of market from the social or political institutions or its total independence from them should be precluded.
		Economy is not autonomous as it is devised in the economic theory, but it is subordinate to politics, religion, and social relations
	Even a modest amount of economic planning requires coercive machinery to force people to act in certain ways, according to the plans that are decided on.	"Laissez-faire was planned, planning was not". To sustain the liberal utopia of laissez faire economy, statecraft and repression is required to impose the logic of the market and its side effects on ordinary people.
	Via planning the moderate socialists find themselves drawn down a road which none of them wanted, and captivated by the whirl of planning they end up in totalitarianism.	Unintended consequences of organization of economy on the basis of self-regulating markets can be illustrated as the collapse of peace that resulted in the World War I and the collapse of economic order, culminating in the Great Depression and in the end the second <i>"great transformation": the rise of fascism</i>
		Laissez faire is realized via state acts through deliberate interventions of state “protective movements (social policy) emerged in a spontaneous and uncontrolled manner”



### 3.3 Accounting for the Evolution of European Social Dimension: Various Theoretical Models

European social dimension has always been subject to grave discussions among various social and political forces. Throughout time, the topical nature of social policy has been reinforced with the processes of globalization and the constraints created by the ever-deepening European economic governance itself. To employ the Polanyian conceptual framework, the tensions and a new form of “double movement” between the market and the measures to restrict it revived at the supranational level within the Community and the tensions of the relevant parties have been shaping the European social dimension. Below, various classification schemes that are devised for evaluating the evolution of European social dimension within the contentions among contending paradigms and alternative approaches will be introduced.

#### 3.3.1. Models for Evolution of European Social Dimension

The realization of the European single market and monetary union and the parallel onset of globalization created constraints on the social policy making, largely conducted within the welfare states to date. In the face of the changing circumstances, various questions came onto the European agenda. How should the relationships between social and economic governance be like? Are welfare states being undermined by the repercussions of the new global context and the ever-deepening economic and monetary integration in Europe? To what extent should the market be regulated at European-level or would EU be prominent in social policy making? If the EU would be prominent in European social governance, what should the method of social integration be like? Such questions were all about attempts to find out the most proper social-economic model for the EU in general. With a set off from such questions, various analyses have been conducted in academic circles and various classifications of the economic models of Europe came along. To quote some: Wilks' “neo-American model versus social democracy”<sup>116</sup>; Crouch and Streeck's “unfettered versus institutional capitalism”<sup>117</sup>; Soskice's “uncoordinated and coordinated regimes”<sup>118</sup> and Rhodes and van Apeldoorn's “Anglo-Saxon versus the Rhine social market economy”<sup>119</sup>,

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116 Wilks “Regulatory compliance and capitalist diversity in Europe” in *Journal of European Public Policy*, December 1996, pp. 536-59.

117 C. Crouch and W Streeck, “Institutional Capitalism: Diversity and Performance” in *Modern capitalism or modern capitalisms?* Crouch and Streeck (eds) (London: Sage, 1997).

118 David Soskice, “Divergent Production Regimes: Coordinated and Uncoordinated Market Economies in the 1980s and 1990s”, in *Continuity and Change in Contemporary Capitalism* Herbert Kitschelt, (et. al), (eds) . (Cambridge: Cambridge University Press, 1999), pp.101-135.

119 Martin Rhodes and Bastiaan van Apeldoorn, “Capitalism versus Capitalism in Western Europe”, in *Developments in West European Politics*, Martin Rhodes, Paul Heywood, and Vincent Wright (eds), (London: Macmillan, 1997), pp. 171-189.

Hall & Soskice's "liberal market economies", versus "coordinated market economies"<sup>120</sup> were the most famous of the scholarly works that typified the tensions between different economic models in Europe that strive to be the European model of capitalism in the end.

Apart from, but related to, these more general works on the future of the European capitalism, there were some other scholarly works, more specifically outlining analytical models to account for the evolution of European integration within such tensions. To be more precise, departing from the assertion that European integration in general and social policy in particular have evolved within the context of struggles among various actors and projects, a number of analyses have been conducted and various models were devised by scholars. The central theme in these models and analyses is the assertion that the European social policy has evolved within the context of struggles between a free-market/deregulation approach and a more interventionist approach envisaging the market to be complemented by various market-supporting measures.

### 3.3.1.a. Free Trade/ Alliance of Neoliberalism-Nationalism versus Supranational Welfare State Formation

In his article entitled "Public Power Beyond the Nation State: The Case of the European Community" Wolfgang Streeck outlines "a political economy perspective on European integration" in his own words<sup>121</sup>. Actually, Streeck does not claim to devise a model but his ideas and postulates will be systematically (and selectively by leaving his ideas related with foreign policy outside the scope of analysis) displayed here as a model.

Streeck views European integration as the product of a continuous conflict between two alternative political economic projects: a free trade project and a supranational welfare state-building project. The free trade project argues for common-market making via negative integration and through removal of trade barriers. The supranational welfare state-building project, on the other hand, bears the objective of positive reconstruction at a supranational level of the national welfare-state regimes which were made "obsolete" through economic integration. It would be useful to describe the terminology of negative versus positive integration, employed by Streeck. While the negative integration refers to "measures increasing market integration (by eliminating restraints on trade and distortions on

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120 P.A. Hall and D Soskice (eds.) *Varieties of capitalism: the institutional foundations of comparative advantage*, (Oxford: Oxford University Press, 2001).

121 Wolfgang Streeck, "Public Power Beyond the Nation State: The Case of the European Community" in *States Against Markets: The Limits of Globalization*, Robert Boyer and Daniel Drache (eds), (London: Routledge, 1998), pp.299-315.

competition)”, positive integration implies the establishment of “common European policies to shape the conditions under which markets operate”<sup>122</sup>.

Noting that throughout the history of European integration, the projects were endorsed not just by different class interests but also by different member states, Streeck speaks of two periods in his analysis of European integration: one being the first period between the Treaty of Rome and the 1980s, and the second being post-1980s. It is the second period, according to Streeck, when the alliance of neoliberalism and nationalism underwrote the free trade project. Though not explicitly put forward by Streeck, the antidote of the adherents behind free trade project was the alliance of supra-nationalism and pro-regulationism that constituted the advocates of the supranational welfare state formation project. The alliance of intergovernmentalism and neoliberalism endorsed an intergovernmental mode of decision-making with unanimity rule for the deregulatory market-making through negative integration-meaning the striking down barriers to the market<sup>123</sup>. On the other hand, to be able to sustain the far more demanding tasks of market-correcting social regulation and “redistributive market distortion”, the alliance of supra-nationalism and pro-regulationism endorsed QMV rule. That was done due to the fact that the positive integration- policies aiming to ‘correct’ the results of the market<sup>124</sup>- is more politically demanding and more contentious and in the unanimity rule even the veto of one member state may block the whole agenda of the project of supranational welfare state-building.

Overall, Streeck's analysis puts forward that the European social dimension has been framed by the interplay of two conflicting projects, the first being the free trade project with the main objective of market-making and deregulation via negative integration. Starting from the mid-1980s this project was endorsed by European actors who embraced neoliberalism and intergovernmentalism. The second party to the conflict was the supranational welfare state-building project that had the major objective of devising European-level social regulations to compensate for the national-level welfare state, made obsolete by economic integration. This project was embraced by a coalition of European actors that are pro-regulationists and supranationalists.

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122 Fritz Scharpf, “Negative and Positive Integration in the Political Economy of European Welfare States”, in *The Future of European Welfare: A New Social Contract?* Rhodes, Martin and Yves Mény (eds.), (Houndmills: Macmillan 1998), p.157.

123 J. Pinder ‘Positive integration and negative integration: some problems of economic union in the EEC’ in *The World Today* 24(3) 1968, 89-110 and F.W. Scharpf, *Governing in Europe: Effective and Democratic?*, (Oxford: Oxford University Press, 1999).

124 Ibid.

Table 3.2 Free Trade/ Alliance of Neoliberalism-Nationalism versus Supranational Welfare State Formation

Project name	Free Trade	Supranational welfare state-formation
Forces Behind	Neoliberalism Intergovernmentalists.	Pro-regulationists Supranationalists
Goals	common-market making deregulation removal of trade barriers	reconstruction of a Euro-level welfare-state regime institutionalization of European social policy
Instruments	negative integration unanimity	positive integration QMV

### 3.3.1.b. Neoliberal Project versus Regulated Capitalism Project

Liesbet Hooghe and Gary Marks developed a comprehensive model to account for the evolution of European integration within conflicts of alternative projects and actors embracing these projects. Despite being an approach purporting to explain not only the evolution of European social policy but European politics in general, here this approach will be introduced by focusing solely on social policy issues. To analyze European politics, Hooghe & Marks formulate an analytical scheme that perceives European politics as an interplay among two “overarching political designs or projects [which]...are coherent, comprehensive packages of institutional reforms around which broad coalitions of political actors at European, national and subnational level have [been] formed”<sup>125</sup>. In other words, they conceive EU decision making as a “conscious political struggle” among coalitions of political actors who have fundamental claims about how the European polity should be organized and what the relationship between market and state would be like in the polity. The two fundamental political projects that frame European politics, as put forward by Hooghe and Marks, are the neoliberal project and the regulated capitalism project. The primary concern of the project of neo-liberalism is the prevention of any sort of political interference to the market’s functioning. For this aim, the project endorses negative integration for the integration of European markets. However, it strictly opposes European scale regulations except those related to self-regulating markets (e.g. competition policy). Needless to mention, the project objects to a European-scale social policy which would, in their view, constrain the market. Further, the neoliberal project argues for the preservation of

<sup>125</sup> Liesbet Hooghe and Gary Marks, “The Making of a Polity: The Struggle over European Integration.” In *Continuity and Change in Contemporary Capitalism*, Herbert Kitschelt, Peter Lange, Gary Marks and John Stephens. (Cambridge: Cambridge University Press, 1999)p.75.

national decision-making processes and it opposes the strengthening of European-scale democratic institutions, which would be capable of regulating the market, such as European Parliament, at the expense of intergovernmental institutions such as the Council of Ministers. In the words of Hooghe, this project attracts those who want minimal political interference in economic decision making, market-liberals seeking selective European and national regulation of market forces, and, in part, nationalists intent on sustaining national sovereignty<sup>126</sup>.

Opposing the project of neoliberalism, there is the project of European regulated capitalism. This project attempts to enhance EU's capacity of regulation, through strengthening European institutions by augmenting the areas that falls under the exclusive competence of the EU; and strengthening pro-European institutions and groups. The adherents to this project do not oppose the market system, rather they argue for market-enhancing and market-supporting legislation. Namely, they acknowledge that markets are the venue for the allocation of investments, yet they argue for intervention in the market to ensure that the market works in a more efficient manner. Hooghe illustrates this as the provision of collective goods, such as European-wide transport and communications infrastructure; workforce skills; and research and development, which also gives way for positive regulation at European level<sup>127</sup>. For similar reasons the project endorses modest redistributive policies, which would empower poorer member states to compete in the market.

Hooghe and Marks identify two dimensions. While the first dimension is a left-right dimension leaning from social democracy/market intervention to market liberalism, the second dimension is the nationalism- supranationalism axis which ranges from the notion of restoration of nation-state sovereignty to support for further European integration and even to the arrival of a federal Europe. The regulated capitalism or market intervention project stems from the interception point of left and supranational approaches; whereas neoliberalism originates from the interception of right and intergovernmental axes.

To sum up, Hooghe and Marks identify two major projects that shape European politics in general and the European social dimension in particular through intense contentions among coalitions made up of political leaders, political parties, interest groups, social movements and, on some occasions, the wider public. The coalitions are organized under two grand

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126 Liesbet Hooghe, "Euro-Socialists or Euro-Marketeers? EU Top Officials on Capitalism" in *The Journal of Politics*, Vol. 62, No. 2, May, 2000, p.431.

127 Liesbet Hooghe, "EU Cohesion Policy and Competing Models of European capitalism" in *Journal of Common Market Studies*, December 1998, Vol 36, No 4, p.459.

projects: neoliberalism and regulated capitalism. The primary concern of the project of neoliberalism is the assurance of self-regulating markets via negative integration. For this aim, the project argues for the preservation of national decision-making processes and it opposes the strengthening of European institutions which would be capable of regulating the market. The opposing project; European regulated capitalism argues for augmenting the Community competence of regulation and defends positive integration for market-enhancing and market-supporting legislation through supranational decision-making procedures.

Table 3.3: Regulated capitalism project versus Neoliberal Project

NAME	REGULATED CAPITALISM	NEOLIBERALISM
ARGUMENTS	Supranational decision-making processes for social policy.	Decision-making processes for social policy at the national level
	Promotion of European-level social policies as market-enhancing and market-supporting mechanisms	Social policy to rest within the authority of nation states
	Strengthening of the pro-European institutions and groups: EP, TUs, NGOs	Preserving & strengthening of the power of intergovernmental institutions
	Intervention in the market to ensure more efficiency	Minimal political interference in economic decision making
	Positive regulation at European level: provision of collective goods such as European-wide transport & communications infrastructure, workforce skills; and research and development.	Negative integration at European level: integration of European market. Against European scale regulations except related with markets (e.g. competition policy).
	Deepening European authoritative decision making.	Constraining European authoritative decision making.

Writing in 1990s and accounting for the 1980s Streeck and Hooghe & Marks' analyses bear many common points. At the time of "subversive liberalism" that came after the collapse of the Bretton Woods System, the oil shocks and the stagflation pursuant to them, social rights within the context of the welfare states were started to be crippled. Late 1970s and early 1980s were also the years during which the European project entered into a bottleneck period. Against this background, the period in concern for both models can be interpreted as a period when the pro-regulationist groups were trying to frame a European level solution to the challenges towards the welfare states. In this regard, both models rest on the assertion that the struggles between two sets of broad projects and/or actors embrace conflicting

visions about the organization of the economy and the European social dimension. While one set of actors (free trade project and project of neoliberalism) are prone to ensure self-regulating markets without any restrictions similar to Polanyi's principle of economic liberalism, the others (supranational welfare state formation project and project of regulated capitalism) work to deepen Community competence as regards social policy as in the case of Polanyi's principle of social protectionism to compensate for the loss of power of welfare states. In a way, the contentious nature of evolution of European social dimension rehearses the Polanyian "double movement" between the market and the measures to restrict it.

Further in both accounts, there is an intergovernmental-supranational cleavage and a differentiation between the European and national level. Streeck's and Hooghe & Marks' models put forward similar coalition of forces that endorse the contending projects as Streeck's free trade project as an alliance of neoliberalism and intergovernmentalism is similar to the neoliberalism project of Hooghe & Marks comprising a coalition of the political right and intergovernmentalism. In a similar vein the forces behind Streeck's supranational welfare state formation project and Hooghe & Marks' regulated capitalism project is quite akin. In both accounts, the projects were devised in very clear-cut terms and the projects were devised in a way to reflect the tensions of the visions of Thatcher as representing project of neoliberalism/free trade project and Delors as representing supranational welfare state formation project/project of regulated capitalism.

In the next section Pochet's recent model of "Economists versus Social Group" will be laid down which was drafted within the first decade of the new millenium, thus better reflecting the state of play among alternative strategies and players in the face of the changing dynamics starting with the 1990s. As will be seen in Pochet's account, the inclusion of monetary union in the goals of Maastricht Treaty and the accompanying Maastricht criteria, further challenging the welfare states and European social policies as well as the advent of Blair's Third Way led to further cleavages within the pro-market/deregulation and the opposing pro-regulationist groups and these broad projects also underwent a substantial amendment in their strategies and visions.

### 3.3.1.c. Economists versus Social Group

The analysis of Philippe Pochet envisages that European-level changes in economic and social policies come about as a result of tensions between two main groups of players:

“economists” and “social group”, each group having two subgroups<sup>128</sup>. In identifying the groups, this model focuses on the level chosen for the activity and the goals pursued by each group respectively. Each of the four groups has their own economic vision, which yields overall coherence to their actions in the economic/social field in the level they choose.

Against this background, the “economists” group is subdivided into two, both choosing the national level as the principal level of action. Its first subgroup is the radical one, dubbed as “mainstream economists” which aims at deregulation at the national level. According to this group that is the main architect of the monetary union and the Maastricht criteria, the labor markets shall undergo a significant change and the labor markets would be devised as a genuine market with flexible employment contracts and flexible wages. Further, according to this group social security deductions shall be kept at minimum and social protection, which is deemed as a burden, shall be decreased. At European level, the aspiration of this group is the removal of all obstacles in market operations. The second subgroup of “economists” is the moderate one, dubbed as “the analysts of endogenous growth theory”, defending that national investments on research and education should be augmented to increase growth rates. In other words, moderate economists propose active labour market policies alongside R&D activities to boost economic development. So, they argue over the direction of the national budget but also the European budget to such sort of activities. Overall, the economists aim to principally alter the national level through both national and European level actions and the subgroups diverge in terms of the goals they pursue.

Table 3.4: Main arguments of the Group of Economists

	Mainstream Economists (Radical)	Analysts of Endogenous Growth (Moderate)
Action Level	National (Primary) European	National (Primary) European
Goals	Deregulation of markets Flexible labor markets Cutbacks in social protection	Active labour market policies Emphasis on research, training, life-long learning

The second umbrella group of Pochet's model is the “social” group which has also two subdivisions, both of which primarily act at the European level. In this respect, the first radical subgroup; named as “Traditional Keynesian Left” aims at establishing a European economic government in line with traditional Keynesian principles. This group, Pochet

128 Philippe Pochet “Debate around the social model: evolving players, strategies and dynamics”, *Social Developments in the European Union 2005*, Christophe Degryse and Pilippe Pochet (eds) (Brussels: ETUI-REHS, 2006), pp.79-99.



argues, defends a substantial amendment of the EMU and Maastricht Criteria and also endorses full employment as an overarching EU goal.

The second subgroup of “social” group is a more moderate one; the moderate Left which argues that political union at the EU level is a sine qua non for a true social union. The moderate left deem active demand-side policies important, however they also acknowledge the salience of the need to develop human capital via life-long learning. Thus, it is important to note that the group accepts globalization and the neoliberal imperative in the EU polity and attributes importance to the need for tempering adverse social affects stemming form them. In line with this vision, they focus on issues of poverty and social exclusion alongside the life-long learning. Overall, both subgroups of the social group primarily operate at the European level, while the moderate left also deems national level reforms indispensable to complement the European level acts. Arguing for similar lines of policies, the moderate left assumes a more pragmatic and realistic stance, while the radical left is marginalized within this process.

Table 3.5 Main arguments of the Social Group

	Traditional Keynesian Left (Radical)	The moderate Left (Moderate)
Action Level	European (Principal) National	European (Principal) National
Goals	Development of European economic government Demand-side management Substantial Amendment of EMU & Maastricht Criteria Full employment in European agenda	Necessity of European action for the market failures and globalization Demand-side + Supply-side management Focus on poverty and social exclusion Life-long learning

To sum up, the model of Pochet envisages two groups with two subdivisions for each; in each case one being more radical and the other being respectively moderate. Another issue worth raising concerns the levels of action. To be more precise, Pochet links the “economists” with the national level and the “social” group with the supranational/European level. While the group of economists ranging from the moderate ones aiming at active labor market policies to the radical economists who pursue deregulation of markets tend to operate at the national level primarily. On the other hand, advocates of social group believe in European-level action and regulations for the advance of social policy and tend to operate at the European level as the principal action level. Despite not being detailed by Pochet, the

reason lying beneath the preference of economists for the level of operation as national level stems from their desire for keeping unanimity rule for any social policy arrangement that would be capable of regulating the market. Likewise, social group's preference for European level can be linked to the desire for QMV to be employed in the social policy matters.

Pochet's analysis is vital as presenting a theoretical framework to account for the developments of the last fifteen years starting from the 1990s onwards. Compared with the other two accounts devised by Streeck and Hooghe&Marks which fit well into the 1980s, Pochet's analysis is different in giving an account of the transformations within the broad projects themselves via decomposing them into their respective subgroups. Though sharing the same assertion with the other two models via putting forward two main umbrella groups: the "economists" aiming at deregulation and self-regulating markets and the "social" group aiming at enhancing Community competence in social policy, Pochet's analysis puts forward subgroups within the groups that range from radicals to moderate ones. Further, it is useful to note that the moderate subgroups of each of the groups embrace similar strategies for European economic-social governance, as if meeting halfway at the ideas asserted by the "Third Way". Moreover, as will be seen in the next chapter the traditional left is ever more marginalized within the course of integration in the face of neoliberal imperative gaining more ground. Hence, it would be commented that the vision of the pro-regulationist group of the late 1990s and the 2000s was substantially different compared with the pre-Maastricht period.

### **3.4. Conclusion**

Arguing that the European social policy has always constituted a contentious arena witnessing the clashes between two general ideological positions; the theoretical approaches and the origins of these approaches have been sought in this chapter. Putting forward the definitions of social policy and European social policy with an emphasis on the contentious nature of the concepts, Polanyian "double movement" has been employed as the main conceptual framework to analyze the contentious nature of social policy making. Further, departing from the organizing principles of double movement; the principle of economic liberalism and principle of social protection, similar approaches that aim to account for the evolution of the European social dimension within the interplay of alternative approaches have been exposed. Among these, it has been argued that Streeck and Hooghe and Marks' analyses fit better into the reality of the 1980s, while Pochet's analysis give a more realistic account of the state of play that started to be moulded in 1990s onwards. In this regard,

Pochet's analysis has been deemed very important as reflecting the self-transformation of the projects in the face of ever-deepening integration and globalization.

In the next chapters of the thesis, the evolution of the European social dimension will be investigated according to the framework, set in this chapter. Dwelling on the main assertion of all the theoretical analyses and models, outlined in this chapter, the history of European social dimension will be surveyed in the interplay between two broad projects, each aiming to shape European politics through imposing their own vision. Tracing such interplays, the terminology that will be adopted to denote the alternative contending ideological stances will be "project of neoliberalism" and "project of regulated capitalism". So, in the next chapter the "double movement" between project of neoliberalism" and "project of regulated capitalism" will be sought in the constituent Treaties of the Community/Union and the IGCs preceding them as well as a number of other minutes of integration that is of salience to the analysis of the thesis. Within this context;

- the strategies, visions and the actors behind the projects
- the primary levels of action and the modes of decision-making preferred by the projects
- the self-transformation of and the cleavages emerging within the projects throughout the course of integration

will be put forward.

In discerning the actors behind the projects; the left-right cleavages raised in the analyses of Hooghe & Marks and Pochet will be considered. For all minutes of European integration under consideration, the political composition of the European Council, so to say the political parties of member state governments will be displayed. Yet, the left-right cleavage will be analyzed by considering Lange's classification, which scales the governments to place the governments of socialists/social democratic parties furthest to left, then Catholic parties with varying degrees of Catholic union movement and finally the governments composed of non-Catholic Christian conservative parties<sup>129</sup>. The rationale behind his classification is that the Catholic parties with significant links to working class movements have been close to the socialist parties in embracing the welfare states and social policy. Hence, in the analysis the Christian Democrat parties will be deemed closer to the left and it will be argued that the project for European regulated capitalism attracts Christian-democrats alongside the social-democrats, though they promote various versions of social democracy.

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<sup>129</sup> Peter Lange, "Maastricht and the Social Protocol: Why Did They Do It?" in *Politics and Society*, 21, 1993, pp.18-19.

Despite the overwhelming attention paid to member states as the intergovernmental bargains have always constituted the major input of the Treaty negotiations, in the analysis the roles of the trade unions, employers' organizations, the European institutions and NGOs in framing the European social dimension will also be laid out. The methodology to be employed in analyzing each case will be identifying the leading actors of the conflicting coalitions; the "faces of European integration" as denoted by Streeck<sup>130</sup> for the sake of a more systematical analysis. Following the identification of these leading actors of each project, the respective supporters of them will be identified. Displaying the discussions and deliberations in the IGCs and the contents of the Treaty provisions, Social Policy Agendas or Strategies, the respective gains/losses of each project will then be put forward. Another assumption of the analysis will be that the composition of coalitions behind these projects is neither fixed nor monolithic and the composition of the coalitions varies across time and issue area under consideration. That is why for each minute of integration and indeed for each issue area under consideration; a separate analysis will be conducted to identify the parties. Lastly, Pochet's subcategories will be employed to denote the divisions within the projects that come up 1990s onwards and also to display the changes in the visions and strategies of the projects, especially as for the regulated capitalism project.

All in all, via employing the above-described methodology, the next chapters will aim at discerning how the conflict between the projects of "neoliberalism" and "regulated capitalism" has framed the European social dimension, while also undergoing transformations within themselves. In doing so, the constitutional EU social policy that is the social policy provisions of Treaty Establishing the European Communities to the Constitutional Treaty will be outlined with a different angle from the common analyses of European integration in supranationalist-intergovernmentalist terms.

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130 Streeck, 1998, op.cit., p.302.

## **CHAPTER IV**

### **HISTORICAL EVOLUTION OF EUROPEAN SOCIAL POLICY**

Theoretically drawing on the conceptual framework of double movement and the interplay between projects of neoliberalism and regulated capitalism, in the fourth chapter the historical evolution of the EU social policy will be investigated. In the analysis of European social policy from the debates leading to the Treaty establishing the European Communities (TEC) to the review of Lisbon strategy in 2005, the emphasis will be given to the interplays between project of neoliberalism and the regulated capitalism in the construction of an “ever closer Union” and the developments will be analyzed in this line with due regard to the broader political economy developments and the self-transformation of the projects; the emerging cleavages and subgroups within the projects within the course of the integration.

It will be asserted that the European integration has always been shaped by an asymmetric relationship between economic governance and social governance. That is to say, while economic integration has always been the primary focus of the Community, integration in social sphere stood only as a secondary concern. It will also be argued that the unequal and hierarchical relationship between the economic governance and social governance has also been reflected in the widening “constitutional asymmetry” of economic and social governance and a full-fledged social dimension could not be established in the face of an ever-deepening economic and monetary integration that created constraints for the social governance at the welfare state itself. Accordingly, it will be argued that the social governance continued to bear a secondary and even a subservient position with regard to economic governance throughout the European integration history.

#### **4.1. The foundations of European Economic Community: the market ethos**

There is a marked consensus in the academic literature that the European social dimension at the Treaty establishing the European Economic Community is a highly non-interventionist and market-orientated document (Shanks, 1977; Brewster & Teague, 1989; Pollack, 1998; Bean, 1998; Hantrais, 2000; Adnett & Hardy, 2005; Jepsen & Pascual, 2006). The Treaty has even

been dubbed “a manifesto for capital” by a number of authors<sup>131</sup>. The central element of the Treaty was indisputably the common market and the prospect of social dimension of integration was tied to the market or, in other words, to the integration sustained at the economic dimension. After a successful economic integration process, the social integration would be spontaneously realized in the Community. To be more precise, the unspoken assumption underlying the Treaty was that only upon the removal of barriers before the free movement of goods, capital and labor, the enterprises would be able to compete on equal terms, which would in turn ensure the optimum distribution of resources, enabling economic growth and thus indirectly leading to the optimum social development of the European Community<sup>132</sup>.

For the majority of the founding Six (excluding a segment of French politicians and business), there was some sort of an implicit consensus that the integration should be restricted in scope and devoted to the economic dimension, abstaining from the social one<sup>133</sup>. This was a striking consensus on the part of the Six as at the time there were both left and right parties in rule in different European countries, which bear very different notions about social policies stemming from different conceptions about the state-market relations. To be sure, the reasons of embracing a European integration which lacks a social dimension were hardly the same for the left and the center-right parties of the time and they, in essence, met at a common base, motivated by very opposite ideas. The reasons of the center-right governments of the Six were more predictable. That is to say, the center-right was considering to contain the expansion of the welfare states through the creation of a liberal European market that was free of social policy. Although most of the ruling European Christian democratic parties were obliged to develop welfare states at home, they were not prone to reinforce it at the European level.

As for the left, the primary conception underlying their position was the consolidation of national welfare states. Their position can better be comprehended if it is considered that the social and welfare policies were regarded as the mainstay of the reassertion of the nation-state as the basic unit of political organization which also acted as the decisive factor in democratic re-legitimation<sup>134</sup>. The left was embracing a form of European integration, lacking social dimension because they believed that a strong common market in Europe that would be

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131 Allan M. Williams, *The European Community: The Contradictions of Integration*, (Oxford: Blackwell, 1994), p.181; See also Peter Cocks ‘Towards a Marxist theory of European integration’ in *International Organization*, 34 (1), 1980, pp.1-40.

132 See Michael Shanks, *European social policy, today and tomorrow*, (Oxford : Pergamon Press, 1977), p.1; Linda Hantrais, *Social Policy in the European Union*, (Basingstoke : Macmillan, 2000), p.1.

133 Despite being fragmented inside between the officials embracing regulated market and those arguing for a more liberal common market, there was a French objection to this limited scope, which would also be displayed in this chapter.

134 Alan S. Milward, *The European Rescue of the Nation State*, (London: Routledge, 2000) pp.27.

capable of bringing prosperity via integrating the member countries' economies and the same market would not pose any threat to the welfare states as the national sovereignty in social matters would be preserved in the transitional stage and would lead then to a progressive harmonization of social systems<sup>135</sup>. To sum up, the motto of the day calling upon all the governments of the Six, regardless of left or right was "Keynes at home and Smith abroad"<sup>136</sup>.

In line with this motto, a division of labor between the new polity and welfare states was realized as regards the economic-social governance when the European integration project was launched in the 1950s. The Community would concentrate on economic governance while the social governance was conducted within the national level at welfare states. Thus, the very foundations of the asymmetric relationship between economic policy and social policy were laid with the advent of the European Community as integration in economic sphere was put on the forefront of integration while integration in social sphere was deliberately kept away from Community sphere. So, with the aim of preserving the welfare states as the sole arbiter of social security and solidarity provision, thus keeping the comprehensive social protection schemes, high labor standards and full employment objectives intact through sustaining them at the core of domestic agendas, social policy-making was not determined as a domain of supranational interference. With the primary responsibility staying at the domestic welfare states, the European level arrangements in the sphere of social policy was very moderate with no genuine capacity of the Community to interfere in the social issues as a result of the division of labor between the Community and the nation state.

Having a glance at the governments of the founding European countries at the time of negotiations of TEC, one comes across the majority of the Christian democrat governments either ruling alone or in coalition. France was the only country with a socialist coalition under Prime Minister Guy Mollet. As also mentioned earlier in this chapter, majority of the governments were in favor of a Treaty that covered the economic dimension of integration, not the social one, yet being divided inside some segments of French politicians and business were against such a vision of integration. This led to a cleavage between the advocates of a liberal Europe with the priority of free trade on the one hand, and the French advocates of a less liberal, more regulated Europe on the other. However, a double movement among the principles of economic liberalism and social protection did not come into being at the European level at the negotiations of TEC. Although the "principle of economic liberalism" (of double movement) was prominent at the Community level aiming for the expansion of the

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<sup>135</sup> Giubboni, *op.cit.*, pp.15-16 (The arguments were suggested by Giubboni for different purposes, actually. But, they are also very appropriate for accounting for the reasons of the left for a form of European integration, limited to economic dimension only.)

<sup>136</sup> Robert Gilpin cited in *Ibid.*, p.18.

market, a genuine protective countermovement or the principle of social protection did not emerge as the social governance was deliberately being kept at the domestic level. The only party that argued for more regulation at the European level was French socialists who opposed to the common market proposal out of arguments that the French industry was not ready to stand the competition, to be brought by the common market because of the “high social charges imposed by the state in France on employers and employees in the best interests of the workforce”<sup>137</sup>. While the major proponent of a more regulated Europe vision was French socialists, the leading actors of the liberal approach to integration were liberal economists and lawyers of the German CDU<sup>138</sup> at the negotiation table for the TEC<sup>139</sup>.

Throughout the negotiations of TEC, after Spaak Report<sup>140</sup> proposed a common market for Europe, “the cleavage between market-oriented liberals and the dirigiste French establishment was evident”<sup>141</sup> with French delegation displaying reluctance over the centerpiece of the Treaty; the common market. French delegation put forward a long list of conditions for France’s entry to the Common Market on September 1956. The most notable of these conditions as revisions of Spaak Report were as follows: a unanimous vote in Council of Ministers after the first stage of trade liberalization for the establishment of second stage of the Common market and harmonization of social costs within the transitional stage as for the labor costs in all the member states would be equal<sup>142</sup>. The French demands which would give way to “a very regulated common market”, could not find acceptance at the Spaak committee which was heavily affected by the ideas of German liberals. To denote, Hans von der Groeben<sup>143</sup> was defined by Küsters as the man who managed to gain majority support of the experts for a “market economy structure for the Common Market” against more interventionist and regulatory French Common Market<sup>144</sup>. The German liberals, who embraced a free market

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137 Hantrais, op.cit. .p.2.

138 There was also an intra-party contention in CDU as the liberal Economics Minister Ludwig Erhard, was uncompromisingly argued for global free trade rather than a regional trading bloc. Thus, Erhard supported the British proposal of a European Free Trade Area rather the European customs union. However, he was overruled by Chancellor Adenauer who attached overriding importance to closer cooperation with France (See Sabine Lee, “German Decision-Making Elites and European Integration: German “Europapolitik” during the Years of the EEC and Free Trade Negotiations” in *Building Postwar Europe* Anne Deighton (ed), (Basingstoke: Macmillan, 1995) pp. 38–54.

139 David J. Gerber, “Constitutionalizing the Economy: German Neo-liberalism, Competition Law and the ‘New’ Europe” in *Journal of Comparative Law* 42, 1994, pp.71-72.

140 The Spaak report (Brussels Report on the General Common Market) was the report drafted by the Spaak Committee headed by Paul Henri Spaak in 1956. The Report formed the cornerstone of the Intergovernmental Conference on the Common Market and Euratom and led to the signature of the Treaties of Rome establishing a European Economic Community and the European Atomic Energy Community (Euratom).

141 Mark A. Pollack, “Beyond Left and Right? Neoliberalism and Regulated Capitalism in The Treaty of Amsterdam”, *Working Paper Series in European Studies*, Volume 2, Number 2, 1998, p.4. 09.07.2007. Available at: <http://uw-madison-ces.org/papers/pollack.pdf> , p.10.

142 Hanns-Jürgen Küsters, “The Origins of the EEC Treaty” in *The Relaunching of Europe and the Treaties of Rome* Enrico Serra (ed), (Milano: Giuffrè, 1989) pp. 224-225.

143 Hans von der Groeben was one of the authors of the Spaak report, the vice-chair of the German delegation at the 1956 Brussels Conference that led to the Treaty of Rome, and the chair of the “Common Market” committee.

144 Küsters, “The Origins...”, op.cit.,pp. 219,221.



ideal besides European integration, were conceiving the Common European Market as the best venue to secure the tough competition rules that they could not manage to enact at home.<sup>145</sup> Manow (et.al) reads this situation as “the struggle was not just about Europe versus the nation state but about what kind of economic order would be established in the interplay of both levels”<sup>146</sup>. Already back in 1950s the implications of domestic politics were very influential over the course of European integration.

While German liberals staunchly opposed any social policy measures that would unduly meddle into the operations of free market, the French socialists, who were already not comfortable with the Common Market, endorsed “*a social policy harmonization mandate*” to be enshrined into the TEC<sup>147</sup>. So, throughout the negotiations of TEC these contentions between pro-market Germans and dirigiste French led the conference on October 1956 to be broken off without achieving any result<sup>148</sup>. To detail these contending notions going over the Küsters’ list above; the most notable French arguments were as follows: Firstly, they argued for a vote in the Council of Ministers after the first stage of trade liberalization, and only after a unanimous vote, the second and final stage would be started. This demand was rejected by more liberal-minded governments of other member states and in the Treaty, the transition to the final stage of the common market, on 01.01.1969, was set automatic being free of any pause or any voting mechanism, contrary to demands of the French. The French demands were unacceptable for other negotiators as the requirement of the unanimous voting was meaning that the integration process was tied to the will of the member states and to the veto of even one member state. Moreover, in the Treaty the common market was characterized by the free movement of goods, services, labour and capital; which was also anathema to French delegation at the negotiations.

The second contentious issue area was surrounding the principle of equal pay for women and men and the equivalence of paid holiday schemes. The French argued that principle of equal pay for men and women and the paid holidays which were also written in The French Constitution, would put France at a competitive disadvantage<sup>149</sup>. Despite the objections of German delegation backed by the Benelux countries that these issues which were results of market operations could not be a matter to be regulated under EC Law, French government

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145 Hentschel quoted in Philip Manow (et.al), “European Social Policy and Europe’s Party-Political Center of Gravity”, 1957–2003” MPIfG Discussion Paper 04/6, Max Planck Institute for the Study of Societies Cologne, October 2004, p.20.

146 Ibid. , pp. 20-21.

147 Gerda Falkner, *EU Social Policy in the 1990s: Towards a Corporatist Policy Community* , (London: Routledge, 1998), p.57.

148 Hanns-Jürgen Küsters, “The Federal Republic of Germany and the EEC Treaty” in *The Relaunching of Europe and the Treaties of Rome* Enrico Serra (ed), (Milano: Giuffrè, 1989) p. 502.

149 Chris Brewster and Paul Teague, *European Community Social Policy: Its Impact on the UK*, (London : Institute of Personnel Management, 1989), p.55.

was also able to secure some regulations in these areas (*Article 119 on the application of the principle that men and women should receive equal pay for equal work*” and *Article 120 on the equivalence between paid holiday schemes*). Although not used immediately, from the late 1960s and 1970s onwards the equal pay for equal work provision led to substantial results via a number of ECJ rulings (Lawson & Reed, 1975, p. 49, Hoskyns 1996, Giubboni, 2006 p.53). A more controversial French demand led to a serious crisis in the negotiations. This demand was the harmonization of social costs within the transitional stage, so that the labour costs in all the member states would be equal. The reason lying beneath this was again the desire to mitigate or remove the competitive disadvantages which France would suffer in the common market as a result of her domestic social regulations which included high social charges imposed by the state. Yet, harmonization meaning that the total labour costs would be exactly the same in all countries was “utterly unjunctifiable from the economic point of view” of Germans<sup>150</sup>. In the German thesis, social charges were only one of the set of factors that determined the competitiveness of a market in open competition, thus “artificial” harmonization on one of the factors would mean nothing but deviation from the logic of the market and distortion of the competition. So, such clashing views led to an impasse, which was overcome by an agreement, reached thanks to the efforts and compromises of Adenauer. Because, Adenauer was eager to conclude the TEC not only for the sake of economic integration but more importantly for the improvement of German-French relations and the forging of a Western alliance against communism.

As moulded by the Adenauer-Mollet agreement, a section on social policy was enshrined into the Treaty, but in the words of Rhodes these social clauses “...were vague and repetitious and conferred no real powers upon the Community institutions...”<sup>151</sup>. To denote, Article 117 stipulated that the European economies shall “...promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained”. As seen from the Article, there was no explanation regarding instruments of intervention. As for the Article 118 of TEC, which envisaged “close cooperation” between the member states in training, employment, labour law and working conditions, social security and...so on, was an article lacking operability as it neither specified the form of cooperation nor transferred any powers to Community.

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150 Kusters, “The Federal Republic ..”, op.cit., p.502.

151 Martin Rhodes, “A Regulatory Conundrum: Institutional Relations and the Social Dimension” in *European Social Policy between Fragmentation and Integration* (eds) Stephan Pierson and Paul Leibfried, (Washington D.C: The Brookings Institution, 1995), p.94.

Apart from equal pay principle, there were also some arrangements for the European Social Fund (Articles 123-128). The primary mission of ESF was nothing but contributing to the creation of a common labour market in general and free movement of workers in particular via augmenting their geographical and occupational mobility through financing the cost of vocational training and resettlement allowances.

Overall, the market ethos clearly dominated the Treaty establishing the EEC as the crux of the Treaty was constituted by the common market and as the supranational competences were solely granted to those provisions of the Treaty which were favored by the liberals to create a liberal, free-trading area, signified by the policies of competition and external trade. Further, looking from the perspective of Europeans, the only substantial social rights, emanating from the TEC were the freedom of movement for workers and freedom of establishment which were in essence social rights guaranteed for market-making purposes rather than the social rights per se. In other words the social policy clauses were “supplements to the Common Market” rather than constituting an “autonomous social policy at the European level”<sup>152</sup>. In numerical terms, the market-social policy imbalance is more apparent as only 12 of 248 articles (117-128) were the explicit articles on social policy in the EEC Treaty<sup>153</sup>. Interpreting the social policy clauses of the Treaty, Brewster and Teague also assert that the social clauses were subordinated to the market orientation of the Treaty<sup>154</sup>. However, as have been exposed above, the secondary and market-making nature of social policy arrangements at European level were due to the division of labor between the Community and member states which envisaged the social policy-making to stay at the welfare states. In other words, the compromise was envisaging the market-making to be at the EC while the market-correcting to stay at the national level. So to say, the founding treaty of the EC “...had no subversive intention at all” as regards social governance, but it was indeed aiming at preserving sovereignty of state in the realm of social policy making<sup>155</sup>. However, this division of labor, this compromise of 1950s was soon to turn into an “unstable chemical compound”<sup>156</sup> with the global and intra-Community developments that started to constrain social policy making at the welfare states.

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<sup>152</sup> Manow, *op.cit.*, p.22.

<sup>153</sup> Hantrais, *op.cit.*, p.2.

<sup>154</sup> Brewster&Teague, *op.cit.*, p.54.

<sup>155</sup> Ferrara, *op.cit.*, p.94

<sup>156</sup> Giubboni quoted in *Ibid.*, p.95

#### 4.2. 1970s and 1980s: neoliberal outlook gaining ground

It had almost been 30 Years after the signature of the Treaty establishing the EEC in Rome, when the negotiations of a new Treaty came high on the European agenda. This new Treaty was the Single European Act, which “faithfully reflect(ed) the aims of the neoliberal project”<sup>157</sup>. To be able to comprehend the reasons lying beneath this neoliberal outlook, the developments preceding the Treaty negotiations shall be investigated. Indeed, in the three decades between the signature of TEC and the start of negotiations culminating in the Single European Act much had changed in both internal and global arena. To start with the intra-Community changes; the borders of the Community widened with the accession of two Anglo-Saxon states: the United Kingdom and Ireland; a Scandinavian country: Denmark; and three Mediterranean countries: Greece acceding to the EC in 1981; and Spain and Portugal in 1986. So, the EEC of the original Six gave way to a grander and more heterogeneous EEC of “12” by mid-1980s.

Secondly, the low profile Community social policies were supplanted by a more active and interventionist social policy by the 1960s, at a time when the common market yielded an economic boom of unprecedented dimensions. Convening under the motto of giving Community more of “a human face”, European leaders aimed at ensuring a sustainable integration with social reform for spreading the fruits of growth more equitably and addressing any social frictions<sup>158</sup>. Against this background, the communiqué of the 1972 Paris Summit stated that the Heads of Government of the member states “attached as much importance to vigorous action in the social field as to achievement of economic union .... (and deemed) it essential to ensure the increasing involvement of labour and management in the economic and social decisions of the Community”. Paris Summit was then followed by the Social Action Programme 1974-1976<sup>159</sup>. The Social Action Program, issued by the Commission, was setting out three broad principles which should guide Community action in the social field: full and better employment; the improvement of living and working conditions; and greater participation in the economic and social decisions of the Community. Under the three titles 36 separate proposals were put forward for Community action, were approved by the Council of Ministers in January 1974. Further, European Regional Development Fund was created in 1975. Lastly and perhaps most saliently, there started a

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<sup>157</sup> Pollack, 1998, op.cit., p.14.

<sup>158</sup> See Shanks, op.cit., pp.3-9 and Brewster & Teague, op.cit., pp.65-68; Doreen Collins, *The European Communities: The Social Policy of the First Phase*, (London, Martin Robertson, 1975), pp.212 ff. for more details.

<sup>159</sup> For a detailed analysis about the social policy in the late 60s and early 70s, the book of Michael Shanks, the head of social Affairs Directorate General for most of the 70s. For more details, see Shanks, op.cit.

new approach as regards health and safety. Hence, there were some attempts at the European level to complement the comprehensive social policy-making at the national level within the period economic boom, brought by the common market.

However, this pro-social policy attitude of the EEC was paralyzed by changed global economic circumstances and thus the European social policy faltered. Collapse of the Bretton Woods fixed exchange rates; oil shocks and the stagflation pursuant to them dragged Europe, embracing the Keynesian macro economic policies, into a structural crisis. Economic stagnation, accompanied by high unemployment besides the fear among European firms of becoming irreversibly left behind by the U.S.-Japanese competition in high technology led to pressures for a resurgence of European integration<sup>160</sup>. In the words of Ferrara, “the breakdown of Bretton Woods uncoupled the liberal logic of the international economy from established institutional constraints and traditional practices, and unleashed a new dynamic of escalating capital mobility and acute monetary instability at the global level”<sup>161</sup>. It is this new global context which started to jeopardize the viability of Keynesian welfare state and which also led to a major change in the relations between the laws of economics and social policies-the so called parties of the Polanyian double movement. The new paradigm was putting low inflation over growth and employment levels alongside the discourse of flexibility replacing the prevailing interventionist policies of full employment<sup>162</sup>.

The first responses in Europe came at European level with the establishment of European Monetary System (EMS) with an aim of reestablishing some degree of monetary stability, at domestic level with recourse to classical tools of Keynesian management tools as enhancing unemployment subsidies to facilitate industrial adjustment to the new price conditions<sup>163</sup>. Also within the context of Social Action Programme, various directives were issued to ease the social affects in the face of industrial restructuring. However, approaching the end of the decade of 1970s such initiatives proved to be useless in the face of the crisis. The most evident instance of such ill-designed initiatives was the French experiment. In the face of stagnation, French government employed Keynesian policies which included but not limited to nationalizations, increase in minimum wages, creation of solidarity tax on wealth and increase of social benefits to boost the economy. Yet, unemployment went on to soar and successive devaluations of franc followed. The failure of the French experiment that employed the

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160 See Wayne Sandholtz and John Zysman, “1992: Recasting the European Bargain” in *World Politics*, vol 42, October 1989, p.110.

161 Ferrara, op.cit., p.111.

162 Kathleen R. McNamara, “Consensus and Constraint: Ideas and capital Mobility in European Monetary Integration” in *Journal of Common Market Studies*, Vol 37, no.3 September 1999, p.456.

163 Ferrara, op.cit., p.112.

traditional expansive policy denoted that “Keynesianism in one country alone” was not possible any more and it indeed denoted “the end of an era and also symbolically marked its closure”<sup>164</sup>. Thus, the traditional responses to crisis were started to be considered wrong within the new neoliberal outlook. Further, due to the global changes and the advent of a new economic paradigm, displayed above; beginning in mid-1970s and strengthening in the 1980s there was a “neoliberal economic policy convergence” that occurred across the majority of European governments, also comprising the socialists (Moravcsik, 1991; Ross, 1995; Rhodes, 1995; McNamara, 1999; Giubboni, 2006).

In line with the dominant global paradigm, 1980`s Europe hosted the weakening of left either in the form of left governments replaced by the centre-right or alternatively communists supplanted by moderate market-socialist left<sup>165</sup>. In Britain and Germany, the Labour and Social Democratic parties had definitely lost power. In Germany Helmut Kohl of CDU succeeded the social democrat Helmut Schmidt in 1982. As for Britain, the change was even more acute in that the labour government of Leonard James Callaghan was succeeded by the decade-long rule of Conservative Baroness Thatcher who introduced Thatcherism, characterized by decreased state intervention via the free market economy, monetarist economic policy, privatization of state-owned industries, opposition to trade unions and a reduction of the size of the welfare state. In Mediterranean Europe, the era of Eurocommunism was on the wane as the Spanish and Italian communist parties almost disappeared. In Spain, the lengthy government of socialist Felipe González Márquez started in 1982 with his dedication for entry into common market and unexpected economic reforms that included liberalization, deregulation and privatization of public companies. Likewise, in France, the triumph of Socialist Mitterrand abated the communists’ power substantially.

To sum up, the old institutional compromise of the 1950s; the division of labor that envisaged economic governance and market-making to be given to the EC and social policy-making and market-correcting to stay at the member states faltered in the face of changing global economic paradigm and the ever-deepening economic union in the Community. Hence, as the post-war consensus on welfare states started to be challenged, strict European economic governance created direct or indirect constraints on the social governance not only at the European level but also at the national level. Within such an environment of cutting benefits and overturning trade union rights in order to encourage stronger economic growth,

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164 Giubboni, *op.cit.*, p.18

165 Sandholtz & Zysman, *op.cit.*, p.111.

scholars commented that “Polanyi’s great transformation was over”<sup>166</sup>. The failure of the French experiment via upgrading welfare state and reflation confirmed this. In other words, the postulates of the new international economic order profoundly remoulded the Community and the “embedded liberalism”<sup>167</sup> of the post-World war Europe came under the attack of “subversive liberalism”<sup>168</sup>. So, analyzing the 1980s and the negotiations of Single European Act this background shall be borne in mind for a reliable account. The strategy and vision of the project of regulated capitalism shall also be considered in this line as their main aim was re-embedding the European market into a supranational framework of social regulation by using the European Community to maintain the welfare states. That is why, the discussions on whether the EU should be more prominent in the sphere of social policy making came to the ground and debates on strengthening European level social policy making as a counterweight to the European economic governance came to the agenda.

#### 4.3. Single European Act: “subversive liberalism”

Beginning in mid-1970s and strengthening at the time of Single European Act negotiations, there was a “neoliberal economic policy convergence” that occurred across the majority of European governments (Moravcsik, 1991; Ross, 1995; Rhodes, 1995; McNamara, 1999; Giubboni, 2006). As exposed in the previous chapter, 1980s were the years in which Keynesian economic policies and the social consensus originating from those policies were attacked and came under great strain. This was not solely the decay of a set of macroeconomic policies, but rather it was the inadequacy of a policy style dependent on nation-state. In other words, the nation state was no more the entity that had the capacity to control the national fate, (with) the logical answer seemed to be a pooling of sovereignties<sup>169</sup>. To employ the words of Hooghe and Marks again, the Single European Act was signifying “a double shift of decision making away from national states to the market and to the European level”<sup>170</sup>.

In his intergovernmentalist account, downplaying any supranational factors in the emergence of SEA, Moravcsik puts forward that beneath the SEA, lies the “convergence of policy preferences” of the key member states of the Community in the way of endorsing the goal of a

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166 P. Cerny, “The dynamics of financial globalization: technology, market structure and policy response” in *Policy Sciences*, 27,1994, p.339.

167 John Gerard Ruggie, “International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order” in *International Organization*, 1982, vol 36, no.2,pp. 379-415.

168 Martin Rhodes, “Subversive Liberalism”: Market Integration, Globalisation and the European Welfare State”, in *Journal of European Public Policy*, 1995, pp.384-407.

169 Wolfgang Streeck, “From Market Making to State Building? Reflections on the Political Economy of European Social Policy” in *European Social Policy: Between Fragmentation and Integration* Stephan Leibfried & Paul Pierson (eds). (Washington, DC: The Brookings Institution, 1995) p.390.

170 Hooghe& Marks, op.cit., pp.70-71

single European market, that would provide Europe with the economies of scale necessary to compete against the rival economies of the United States and Japan<sup>171</sup>. While the consensus on the creation of single European market was robust throughout Europe, there were divergent notions about whether to complement the single market with a social policy or not. As happened in the negotiations of TEC, the negotiations of SEA came to be the arena of the tensions and struggles between two projects: neo-liberal project and regulated capitalism project. Yet the forces of the projects were far from being commensurate, this time. On the one hand, there was the project of neoliberalism led by Thatcher accompanied by a significant number of European governments, the large European business, hostile to welfare states, state intervention in the economy and even to trade unions. Opposing them was a loose, fluctuating, coalition supporting European regulated capitalism in terms of social policy, led by Mitterrand and Delors at times, depending on the subject matter in concern. The regulated capitalism project lost even more blood after Mitterrand's France made a liberal turn in 1983 after the disastrous reflation experiment<sup>172</sup> as France embraced a more market-oriented approach, with priority given to the struggle against inflation in order to remain competitive in the European Monetary System<sup>173</sup>. However, a parallel change in French position from the quest for economic autonomy in favor of an advocate of increased European cooperation was a gain on the part of regulated capitalism project.

The new global context and the intra-Community neoliberal economic convergence provided a setting in which the new appointed Delors Commission could exercise policy entrepreneurship to boost the stalled European integration. As the President of the Commission, Delors consciously sought a springboard undertaking that would gather from the European leaders as well as the business, and other important interest groups. The White Paper on completing the internal market acted as this springboard. The White Paper was setting out a program and a timetable for the completion of the fully unified internal market via eliminating barriers to the movement of persons, goods, and capital. The timetable envisaged for the realization of the technical measures for the internal market was the year "1992". Endorsement of the "1992" program led the member states to call an IGC to revise the TEC to take into account the "1992 program", which culminated in the SEA. As can be expected, the centerpiece of the Single Act was the commitment to adopt the 300 Directives outlined in the Commission White Paper, "Completing the Internal Market" and thus the completion of the internal market by the end of

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171 Andrew Moravcsik. "Negotiating the Single European Act," in *The New European Community*, Keohane and Hoffmann (eds), (Boulder: Westview Press, 1991), pp. 41-84.

172 See Loukas Tsoukalis & Martin Rhodes, "Economic Integration and the Nation-State" in *Developments in West European Politics* Martin Rhodes (et.al.) (eds), (Basingstoke: Macmillan Press, 1997), pp.26-27 and Streeck, 1995, op.cit. p.390.

173 The liberal turn of France became more definite when Jacques Chirac who adopted deregulation as a central policy, assumed power on March 1986.



1992 (Article 18 [8A]). In order to facilitate the rapid adoption of the Commission's proposed Directives; the SEA also opened space for some institutional reform. Probably "the shrewdest move" of the Community was "to link the single market to a change in EC decision-making" to facilitate the rapid adoption of the proposed Directives, so that the Luxembourg compromise could also be "liquidated".<sup>174</sup> In other words, the national vetoes over Community decisions in the unanimity rule were limited this way via qualified majority voting.

A further remarkable change brought by SEA was the Article 100A, introducing majority voting for measures essential for the single market. These developments would have been a clear victory on the part of the regulated capitalism project if it was also applied to social policy matters. Yet, given the overwhelming neoliberal outlook, it was not astonishing to see almost no social policy issue within the areas where QMV was applied in the area of harmonization envisaged by Article 100A. As Moravcsik lays out, the QMV in the SEA was largely limited to the internal market provisions of the Treaty<sup>175</sup>. Actually, SEA was excluding solely two single-market areas for the application of majority voting within the context of Article 100a: these being provisions relating to free movement of persons and to the rights and interests of employed persons<sup>176</sup>.

Within the context of predominance of neoliberal outlook in the SEA, there were calls for a 'Social Dimension' and a 'Social Europe' that resulted largely from concern within the Commission that a one-sided focus on market liberalization could have some negative consequences for labour and social welfare<sup>177</sup>. Actually, Jacques Delors had signaled his stance as regards social policy concerns as early as his first program speech to the European Parliament in January 1985. He put forward that "Europe will not modernize its structures of production solely by establishing a Single Market"<sup>178</sup>. Yet given the dominant neoliberal outlook of the time and the need for the endorsement of governments and business in any move regarding European integration, he did not substantiate the policy areas "other than single market" that was to be modernized. Yet, in the preface he wrote for a book on European social policy, Delors was clearly making a commitment to the social dimension of Community via indicating that "...European social dimension is what allows competition to flourish

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174 George Ross, "The Delors Era and Social Policy" in *European Social Policy. Between Fragmentation and Integration* Stephan Leibfried & Paul Pierson (eds) (Washington, DC: The Brookings Institution, 1995) p. 362.

175 Moravcsik, op.cit.

176 Rhodes, "A Regulatory..." op.cit. p. 98.

177 Peo Hansen, "Still a European Social Model? From a Vision of a 'Social Europe' to the EU Reality of Embedded Neo-liberalism", Center for Ethnic and Urban Studies, occasional papers and reprints on ethnic studies, 2005. p.12. See also Simon Hix, *The Political System of the European Union*, (Houndmills: Palgrave 1999), p. 227.

178 Delors quoted in Ross, "The Delors Era ..." op.cit. ,p.362.

between undertakings and individuals on a reasonable and fair basis...any attempt to give depth to the common market which neglected this social dimension would be doomed to failure”<sup>179</sup>.

Delors had plans to advance the European social dimension, yet to be able to realize such plans, he first had to overcome two sets of conundrums surrounding the Community social dimension: The first among these was how to convince the Member States to give Community new social policy latitude in the midst of economic crisis and while the neoliberal outlook urged them to become ever more hostile to social policies, viewing them as stumbling blocks before the economic success. The second conundrum was also formidable. If the Commission kept on to work for developing a Community social dimension via the legislative route, there was the great risk of being vetoed by the member states who were mindful of sovereignty in this field. Yet if the Community did not legislate on social dimension, the EC social policy would be solely a bunch of non-binding guidelines<sup>180</sup>. For resolving the first conundrum, Delors initiated the “1992” program as a launch pad which would strengthen the Commission and have spillover effects on the social dimension. As for the latter conundrum, Delors sought to build the concept of *l’espace organisé/sociale*, borrowing the term from the French government, that put forward the concept in 1981<sup>181</sup>. Via *l’espace sociale*, Delors envisaged to establish some sort of equivalence of social standards inside the Community, and he aimed at devising this space around social policy, employment policy, and cohesion policy to counter-balance the single market. The real substantial steps for the realization of social space were made in the second half of the 1980s, yet there were also some provisions inserted into the SEA. The mentioned social provisions of the SEA can be analyzed in three headlines.

The first and indeed the most prominent of these were the new provisions for a Community cohesion policy, signifying a much stronger commitment to economic and social cohesion. (Article 130). Liesbet Hooghe argues that the SEA provisions on cohesion policy gains more salience considering that the “cohesion policy has always been the flagship of the regulated capitalism”<sup>182</sup>. So, SEA made a step in line with the postulates of the regulated capitalism project via its provisions on cohesion policy. The cohesion and solidarity among the member states became more topical upon the Mediterranean enlargement, augmenting the number of relatively poorer member states. As in most social policy issues, the negotiations of the cohesion policy provisions were not smooth. Rather, there was a clear divergence between

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179 Jacques Delors, “Preface” in *New Dimensions in European Social Policy*, Jacques Vandamme (ed), (London: Croom Helm, 1985), pp.xviii.

180 Brewster & Teague, op.cit. p.95.

181 See Ibid and Hantrais, op.cit. , p.5.

182 Liesbet Hooghe, 1998, op.cit., p.474.

those countries “likely to benefit” and others “likely to have to contribute”<sup>183</sup>. So, the advocates of regulatory and neoliberal outlooks were poor versus rich member states respectively rather than left/social democrats versus right/liberals or supranationalists versus nationalists regarding the arrangements on cohesion policy. While the demanders argued that the social fund was indispensable for cohesion and solidarity, the contributors were arguing that the best way for the assurance of cohesion was the provision of same economic conditions to all via the common market and that the convergence of economic policies would lead to cohesion itself. To name the demanding parties; there were socialist governments of Greece, Spain and Portugal supported by Christian democratic government of Italy and centrist government of Ireland. In this group, there was also the Commission who displayed the cohesion policy as a shelter against social dumping. Opposing them was a big coalition of both the right- and the left-wing governments of northern Europe, which would become net contributors to any enlarged Structural Funds<sup>184</sup>. Upon contentions, a compromise was ensured on the Article 130, providing for Community action with the aims of promotion of economic cohesion and reduction of regional diversity. A Commission proposal making also reference to social working and employment conditions were rejected and dropped meanwhile. The new Articles called for the integration of the cohesion policy into other Community policies, specifically mentioned and defined the Structural Funds including the ERDF. Further, it was stipulated that a unanimous decision was to be taken on the basis of a Commission proposal for a reform of the Structural Funds (Agricultural Guidance Fund ; Regional Fund and Social Fund), which gave way for the comprehensive 1988 reform of cohesion policy, to be accounted for below<sup>185</sup>.

Further, Articles 118a and 118b were also advances in social policy, brought about by SEA. Article 118b was introducing the “social dialogue” and entrusting the Commission with the task of developing dialogue between management and labour at European level– echoing the Social Action Program’s demand in the 1970s. With the aim of making the trade unions and employers act as the initiators of social policy, a series of discussions on socio-economic issues was organized at Val Duchesse, Belgium in order to assure a dialogue among both sides of industry. The participants were European Trade Union Confederation (ETUC), the Union of Industries of the European Communities (UNICE) and the European Centre of Public Enterprises (CEEP). Yet, the meetings did not bring the expected fruits due to different opinions of the parties. Despite not bearing results, introduction of social dialogue in

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183 Richard Corbett, “The 1985 Intergovernmental Conference and the Single European Act” in *The Dynamics of European Union*, Roy Price (ed), (London: Routledge, 1993), p.248.

184 Pollack, 1998, op.cit., p.16.

185 See also Emile Noel, “The European Community Today” in *Government and Opposition*, Vol 22, no1 (Winter 1987) pp. 9-10 for an account of the cohesion policy in SEA.

Community law is still praiseworthy. The importance of the introduction of social dialogue would be better comprehended if it is considered that in the 1980s the European corporatism - management of economy through direct negotiations among social groups and the government- no longer seemed to work given that the neoliberal outlook became also dominant among the social democrats. Sandholtz and Zysman describe the situation as follows: “As the 1992 movement progressed, unions in most countries became wary that the European "competitive imperative" might be used to justify policies that would restrict their influence and unwind their positions and gains”<sup>186</sup>.

As for the 118a, it rendered QMV possible on Directives regarding “the working environment, as regards the health and safety of workers.”The Article 118a was based on the Danish proposal for outlining minimum criteria on the working environment and for the protection of safety and health of workers<sup>187</sup>. In doing so, Council would act with QMV. There were also discussions surrounding the content of this Article as the UK pressed hard for unanimity until the very end before accepting the article with the addition of an extra paragraph indicating that the Community would not place unjustified burdens on small undertakings<sup>188</sup>. Rhodes describes the role of Commission in this process of these contentions as “an entrepreneurial Commission (via tactical maneuvering) sought to outwit the British government by playing the “treaty-base game” attempting to...push its legal competence to the limit by a skillful interpretation of treaty provisions”<sup>189</sup>. To illustrate, after negotiations Commission managed to secure QMV on a directive on the daily and weekly rest periods during work time, using Article 118a despite the challenges of British employment minister Gillian Shephard who argued that the regulation placed financial burden on employers.

Overall, the neoliberal outlook apparent in almost all member states reflected itself in the provisions of the SEA. Bearing the primary aim of reigniting the European integration, the crux of the SEA was the commitment to complete the internal market via adopting the Directives, proposed by the Commission White Paper “Completing the Internal Market”. “The White Paper...never mentioned social policy apart from the need to provide for free movement of workers and professionals inside the Community...”notes Bernd Henningsen<sup>190</sup> denoting the continuance of market-making character of social policy in the mid-1980s. Yet, despite the

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<sup>186</sup> Sandholtz & Zysman, op.cit., p.112.

<sup>187</sup> The Danish proposal was more comprehensive also comprising of a proposal for an article that gives way for the Council, on basis of a Commission proposal, to modify the economic policies of member states if the unemployment increased above some percentage, to be determined in the IGC. Yet, it was dropped.

<sup>188</sup> See Corbett, op.cit. p.251..

<sup>189</sup> Rhodes , “A Regulatory Conundrum...”, op.cit., pp.99-100.

<sup>190</sup> Bernd Henningsen quoted in Wolfgang Streeck, 1995,op.cit., p.401.

existence of a very strong coalition of neoliberal project, elements of regulated capitalism managed to find their way in the SEA, though being very limited compared to the neoliberal elements. Attempting to enlist the European actors, who are advocates of these respective projects, one come across a variety of actors that affect the negotiations of the Act. Unlike the negotiations of TEC which were mainly intergovernmentalist bargains without the contribution of supranational institutions or interest groups, the SEA negotiations were moulded by a number of actors, although the intergovernmental bargains still held a privileged power. Firstly, there were the European institutions, greatly affecting the SEA. In particular the role of Commission as the main architect of the White Paper, triggering the SEA can not be neglected. Further, European business was also in the play, being the major actors that suffered and had to confront the changes in the international environment. Indeed, business in general and the newly founded Roundtable of European Industrialists (ERT) in particular were really influential<sup>191</sup>. Talking about the ERT that became a powerful lobby vis-à-vis the national governments, a member of the Delors cabinet in Brussels stated that "These men are very powerful and dynamic ... when necessary they can ring up their own prime ministers and make their case."<sup>192</sup> Unfortunately, the trade unions were not much of a part of the negotiations as the main two pillars of neoliberalism namely the competitive imperative and the deregulationist forces restricted the influence of collective labor.

All in all, it is possible to see the full applicability of the models of Streeck and Hooghe & Marks in the negotiations of the Single European Act. It is possible to see two pivotal actors for each of the projects of neoliberalism and regulated capitalism, Thatcher being the undisputed leader of neoliberalism, Delors being the head of regulated capitalism. Thus, the vision of regulated capitalism at the time was re-embedding the European market into a supranational framework of social regulation as the post-war consensus on welfare states started to be challenged. So, the regulated capitalism's attempts were directed to use the European Community to maintain the welfare states by ensuring social and redistributive policies for market-correction and cohesion alongside the promotion of market liberalization for economic growth<sup>193</sup>.

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191 See Maria Green Cowles, "The 'Business' of Agenda-Setting in the European Union", Paper presented at the Fourth Biennial International Conference of the European Community Studies Association, May 1995, 23.07.2007. Available at: [http://aei.pitt.edu/6916/01/cowles\\_maria\\_green2.pdf](http://aei.pitt.edu/6916/01/cowles_maria_green2.pdf).

192 Rob van Tulder and Gerd Junne, *European Multinationals in Core Technologies* (Chichester : Wiley, 1988), p.215.

193 Ross, "Jacques Delors ...", op.cit., pp. 45-46.

#### 4.4. Post-SEA period: intensifying contentions<sup>194</sup>

The Post-SEA period witnessed a number of topical issues regarding social policy at EU level. In time sequence, the first topical issue came up in the form of two alternative proposals: labour market flexibility versus Community social regulation. In the aftermath of the signature of SEA in Luxembourg on February 1986, the uncontested leader of the neoliberal project of the time; Thatcher's UK government came up with a proposal which can be regarded as an alternative to Delors l'espace sociale project revolving around employment and cohesion policies. Raised during its presidency in the second half of 1986, UK proposal was entitled as "Action Programme for Employment Growth". The crux of the action programme was the postulate of necessity of removal of labour market rigidities for any employment growth<sup>195</sup>. Besides having some proposals overlapping with the Commission initiatives as concentration on the needs of the long-term unemployed and training in particular skills needed in market place; improvement of management and entrepreneurship training, help for the self-employed and entrepreneurs, the Action Programme also had clauses that championed the cause of labour market deregulation against Commission's social protectionist approach. The latter proposals were the promotion of flexible employment patterns including ways of increasing part-time and other flexible working patterns to improve the workings of the labour market. It is also noteworthy that the social dialogue was not mentioned in the Action Programme.

Discussed in December 1986 European Council, the proposal met some criticism as for the lack of social dialogue and overplaying of flexibility, yet being also staunchly endorsed by Italian and Irish governments, it was adopted with very minor amendments incorporating the social dialogue principle, bringing an ostensible victory for Thatcher government<sup>196</sup>. However, the proposal was not welcomed either by the Commission nor the European Parliament (excluding British conservatives). Even though the Action programme was adopted in its entirety, the Commission as "the helmsman of policy development" approached the Action Programme selectively, prioritizing those elements corresponding with the previous policies while downplaying the ones, which are indeed the key objectives

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194 Although the primary focus of this thesis is the constituent Treaties of the Community/ Union to account for the development of social policy, the developments in the late 1980s are worthy of analysis as they present a set of crystal-clear contentions among the projects of neoliberalism and regulated capitalism.

195 See London European Council, Reproduced from the Bulletin of the European Communities, No. 12/1986 for details of Action programme. 23.07.2007. Available at: [http://aei.pitt.edu/1409/01/London\\_dec\\_1986.pdf](http://aei.pitt.edu/1409/01/London_dec_1986.pdf) .

196 Laura Cram, *Policy-making in the EU*, (London: Routledge, 1997) p.41.

of the U.K.<sup>197</sup>. As the Commission was blocking the pro-deregulation clauses behind the scenes, more apparent moves were coming from the European Parliament in reaction.

The proposals of Parliament were calling for a European social area and a framework directive regarding the basic rights of citizens throughout the Community<sup>198</sup>. Another response to British government's free-market oriented Action programme came from the Belgian government that succeeded UK as bearing the Presidency for the first half of the 1987. Elaborated by the Belgian Employment Minister Alan Hansenne, the Belgian proposal was revolving around the theme of adaptability<sup>199</sup>. To be more precise, initiative set out that the flexibility should not be used as a device to obtain general social deregulation and proposed the establishment of a plinth of fundamental community social rights. These rights were trade union freedom and the right of organization and collective bargaining; a ban on excessive renewals of fixed term contracts; the right for workers in various types of atypical work to social security benefits and protection as regards working hours;...and so on. Despite being defeated at the European Council, the proposal was salient as the predecessor of the European agenda of the following years.

The second big issue for the late 1980s' Community social policy was the reform of the cohesion policy, which is regarded as "...the bedrock of the anti-neoliberal programme" by Liesbet Hooghe<sup>200</sup>. Until 1988 there was only a minimal European policy on cohesion with few sources, few common priorities and no uniform institutional design. But, the comprehensive 1988 reform made a substantial leap forward regarding the cohesion policy in particular and regulated capitalism project in general. The funds were doubled in 1988 (to be further increased by 50% in 1993). Further; institutional design was amended requiring the national governments to elaborate and implement multi-annual EU-funded programmes in partnership with the EC, which would in turn assure partnership. The solidarity principle was also upheld with the 1988 reform. Most important of all, the cohesion policy was implying some kind of redistributive activity on the part of Community that is anathema to the advocates of neoliberal project. But, the purpose of the Structural Funds was not to replace the market forces to compensate for the losers, to be sure. Rather, the policy had modest aims as upgrading the potential of lagging regions for economic growth and in turn precluding social dumping.

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197 Brewster & Teague, op.cit., pp.98-99.

198 See Martin Rhodes, "The Social Dimension of the Single Market: national versus transnational regulation" in *European Journal of Political Research*, 19: No2&3, March-April 1991, p.256.

199 See Robert Geyer, *Exploring European Social Policy*, (Cambridge: Polity Press, 2000), pp.45-46; Brewster & Teague, op.cit., p.99; Rhodes, 1991, op.cit., pp.256-257.

200 Hooghe, 1998, op.cit., p.459.

What was lying beneath the doubling of the structural funds was again a set of contentions. The major actors behind this victory on the part of regulated capitalism project were the Southern European States acceded to the Community with the Mediterranean enlargement plus Ireland and Italy. These mentioned countries, pivoted by the Spanish government linked the issue of structural financing to the completion of the internal market program, which gave the way for the 1988 reform<sup>201</sup>. To be more precise, the triumph came as the respectively poorer member states of the south plus Ireland, regardless of their political ideology pressed for an increase in the Community funds and as they posed a threat of blocking the neoliberal objective of the internal market. Yet, the advocacy of Delors, and majority of the Commission members as well as the EP shall not be neglected either. The Commission exploited the opportunity created by the Southern European initiative well and this paved the way for the reform of funds.

The last and perhaps the most salient development for social policy in 1980s was the 'Community Charter of the Fundamental Social Rights'. In May 1988, in a speech to ETUC, Jacques Delors stressed the need for a revival of social policy, promising that the Commission would address the social aspects of the new barrier free Community through a minimum platform of guaranteed social rights<sup>202</sup>. The following year in May 1989, the preliminary draft of 'Community Charter of the Fundamental Social Rights of Workers' was published by the Commission (COM(89)248final). The second draft of the Charter came on October 1989 entitled as "Community Charter of the Fundamental Social Rights for Workers"(COM(89)471 final). Among others, there was a vital amendment in the second draft of the Charter in that the scope of the Charter was narrowed down to the words of "of the workers" and with parallel changes of the substitution of "worker" to "citizen" in a number of other places<sup>203</sup>. On December 9<sup>th</sup>, 1989 the Heads of States or Government of 11 of the 12 member States, excluding UK) adopted the text as a "Declaration constituting the Community Charter of the Fundamental Social Rights for Workers". So, it could not go beyond being a solemn declaration of the European Council, lacking legal status and thus being non-binding even on the signatories. The decisions on implementation procedures were being totally left to the member states with the paragraph (added to the draft in the European Council deliberations) asserting that "It is more particularly the responsibility of the Member States in accordance with national practices... to guarantee the fundamental

201 Mark A. Pollack, "Regional Actors in an Intergovernmental Play: The Making and Implementation of EC Structural Policy," in *The State of the European Union*, Sonia Mazey and Carolyn Rhodes (eds), Vol. III (Boston: Lynne Rienner, 1995. ), pp. 361-90.

202 J.P. Soisson, "Observations on the Community Charter of basic Social Rights for Workers" in *Social Europe*, 1/90,1990 p.10 and A. Byre, *EC Social Policy and 1992: Laws, Cases and Materials*, (Deventer: Kluwer, 1992), p.4.

203 See Peter Levin, *The Making of European Social Policy Or Academic Concepts versus Political Realities*, (London: LSE Research Paper, 1993), pp.9-10; Hantrais op.cit., p.8.; Streeck, 1995,op.cit., 403).



social rights in this Charter and to implement the social measures”. As for the Commission, it was only to submit initiatives falling within its powers. Hence, the very beginning of the principle of subsidiarity<sup>204</sup> was being presented with the declaration.

The Declaration constituting the Community Charter of the Fundamental Social Rights for Workers was comprising a number of sub-headings: freedom of movement; employment and remuneration; improvement of living and working conditions; social protection; freedom of association and collective bargaining; vocational training; equal treatment for men and women; information, consultation and participation of workers; health protection and safety at the workplace; and protection of children and adolescents, elderly persons, and disabled persons.

To investigate the evolution of the Charter and the stances of the European actors, the Social Charter which was initially “heralded” by the regulated capitalism project as the social dimension of SEA, became the major field of struggle between the free-market oriented Euro-liberalist coalition of the British government, European employers, signified by UNICE and the multinationals versus the regulation-oriented Euro-corporatist coalition consisting of the Commission, EP, labor movement and a number of member states. Actually, despite being the most visible member of the liberal coalition, the UK was not the sole opponent of labour market regulations, rather governments presided by “...the Irish, Portuguese and Spanish (were) hid(ing) behind its (UK’s) coat-tails while maintaining a more communautaire image in public”<sup>205</sup>. As for France, she assumed an accommodating line on the Charter, having the Presidency in second half of 1989. Despite lacking the activity of France, a number of strong actors were in the regulationist coalition during the Charter process, all out of different reasons. First among them was Kohl’s Germany. Being pressurized by the lobbying activities of powerful west German unions, Kohl called for a stronger Charter before Strasbourg Summit to prevent social dumping<sup>206</sup>. Secondly the European trade unions who had been mostly defensive throughout the 1980s due to the dominant deregulatory policies participated in the regulated capitalism coalition at this

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204 European Glossary defines subsidiarity as “ the principle whereby the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principles of proportionality and necessity, which require that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaty”. Europa Glossary, [http://europa.eu/scadplus/glossary/subsidiarity\\_en.htm](http://europa.eu/scadplus/glossary/subsidiarity_en.htm)

205 Rhodes, 1991, op.cit, p.260

206 Rhodes, 1991, op.cit, p.246.

minute of European integration. They realized that they had to be committed to the EU and play a bigger role in its development<sup>207</sup>.

The regulated capitalism project also had the support of the EP that intensified its activities by 1989. On March 1989, voted by 238 to 34 for a European workers' statute which had the binding force of law and which ensured minimum rights including minimum salary for a decent life through Community regulation. Besides, EP was endorsing the elaboration of basic rights for all citizens, not solely workers. Yet, the EP and its Social Affairs Committee were left outside of the elaboration and discussions of the text of Charter. As for the other side of discussions, from the outset, the UK had opposed the notion of Charter indicating the rights fearing mainly from another Commission entrepreneurship linking the social proposals of the charter to Article 100a of the SEA that allowed for the QMV. UNICE was also bearing similar fears<sup>208</sup>. Actually, their fears were not rootless as Vasso Papandreou-the then Social Affairs Commissioner- had also declared that the Commission would use Article 118a (providing for QMV) as widely as possible in the implementation of the Charter.

UK's objections to the Charter continued throughout the drafting process. Besides its other objections, the British government opposed to the clauses specifying the working time limits for the young workers. Further, the UK together with UNICE gave strong support to the governments of Ireland and Portugal who opposed to a minimum wage for decent life. In the end, these two clauses were extracted from the Charter. This time the opposing coalition of the governments of the West Germany, Belgium, the Netherlands, Italy and Luxembourg and the Trade Unions elaborated a text of minimum rights as an Annex to the Charter<sup>209</sup>. Commission excluded this list of minimum rights from the Charter to be considered for the following action programme. In the end as a result of the contentions of the two opposing coalitions enmeshed both in the drafting and discussion phases, culminated in the non-ratification of the Charter by the UK. Indeed, the attempts at developing a plinth of social rights was frustrated by the UK resistance which led not only to a nonbinding Charter but also a Charter with its scope limited only to workers rather than citizens. Indeed, in the aftermath of the signature of the Charter the British oppositions went on within the context

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207 Geyer, op.cit., p.48; Kevin Featherstone, *Socialist parties and European Integration: A Comparative History*. (Manchester: Manchester University Press, 1988).

208 Cram, op.cit., p.43.

209 The minimum rights programme was made up of concrete rights as a minimum of fourweeks holiday per annum, 14 weeks paid pregnancy leave, a minimum full time working age of 15...and etc. For a full list of these rights, see Rhodes, 1991,op.cit., p.263.

of the Social Action Programme<sup>210</sup> against the Delors Commission that included initiatives aiming at enhancing the social dimension of the Community. Thus, the clashes between the proponents of regulated capitalism and neoliberalism gave way in the end to a new two-track Europe as for the social dimension of Community which was only rectified with the signing of Social Protocol by the UK after the election of Blair.

To sum up, there are two lines of thought regarding the period in concern. While a first line of thought puts forward that the minor advances of the regulated capitalism project in the second half of the 1980s, shall not be overestimated given that the social dimension of the EC was even not a whit compared with the internal market, the banner of the neoliberal project. Further, the social dimension of the Community was still locked in a market-making mode, with no market-braking policies aiming to correct market failures and a very embryonic form of market correcting policies embodied in the form of cohesion policy as aiming at policies of redistribution<sup>211</sup>. Whereas, a second line of argument puts forward that the purpose of European regulated capitalism project is not to emulate the traditional national social policies at the European level, but is to formulate an alternative to European neoliberal project. Following this argument, achievements of regulated capitalism project of the second half of 1980s is commented as regulated capitalism gaining ground given the existence of a Community Charter indicating the fundamental rights of workers (though being not legally binding); a strengthened Community cohesion policy with doubling funds and lastly the broadening regulationist coalition with the participation of the EC institutions and trade unions.

Overall, this section analyzed the 1980s in two parts, one encompassing the “1992” programme, the deliberations and signing of Single European Act and the second part comprising the developments in the aftermath of the Single European Act. Apart from the concern for a time sequence, the parts also diverged in terms of their credentials as regards the social dimension of the Community. Negotiated starting from the early 1980s and signed in 1986, the SEA was surrounded by European pessimism stemming from the grave economic problems. Further, the liberal market notions of flexibility and deregulation were dominating the discourse as well as the content of the European policy-making. There was little resistance to an ever liberalizing initiative at the European level given the pragmatic shift of the European governments towards market priorities. Hence, it is barely weird that a

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210 Social Action Programme (COM(89)568). The Social Action program was bearing 47 proposals, almost half of them was involving binding Directives or Regulations. For details of Social Action Programme see Stephen Dearden, “Social Policy in European Economic Integration” in *European Economic Integration*. Frank MacDonald and Stephen Dearden (London: Longman, 1992), pp.152-153.

211 Terminology adopted, was devised by Streeck.

strong current of neoliberalism flows through the SEA Articles against limited social provisions of the SEA. Yet, the second half of the 1980s witnessed the enthusiastic entrepreneurship of the Commission regarding the social matters. What is more, this time there were also some other advocates of more regulation at the European level. To simplify and personalize, as of 1980s there were “two faces of European integration”: the supranational-welfare state building project of French-Socialist Commission President; Delors with his *espace sociale* and neoliberal Thatcher arguing for Europe as a large free-trade zone, deregulated markets (especially labour markets) <sup>212</sup>. To be sure, there were adherents of these two pivotal actors; employer organizations: UNICE, ERT, some member states regarding the issue area as for the neoliberal coalition and the EC institutions, labour movement, and a number of other member states arguing for more regulation as regards the issue area in concern, for the regulated capitalism project.

#### **4.5. Treaty Establishing the European Union: two-tracks in Community social dimension**

##### **4.5.1. TEU and the economic governance**

The expectations were high when the Heads of States or Governments of the Twelve, in company with the High-level Commission officials led by the President Delors met in Maastricht Summit of December 1991 with an agenda of comprehensive reforms. The new Treaty not only transformed the existing European Communities to a new “European Union” encompassing three pillars<sup>213</sup>, but it also signified the most profound transfer of power the European nation-states had ever granted to the European polity. In line with the dominant global neoliberal discourse, European “subversive liberalism” that commenced to gain ground with the SEA and its neoliberal project for internal market, was casted in stone by the Maastricht Treaty and its economic and monetary union project.

The predecessor of economic and monetary union the European Monetary System had been regarded as a failure for most of the 1970s and early 1980s. However, starting with the mid-1980s the currencies within the EMS increasingly stabilized and upon the success of the SEA and its internal market strategy, the Hanover Summit (June 1988) witnessed debates on the

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<sup>212</sup> Wolfgang Streeck, “Public Power Beyond The Nation-State” in *States Against Markets: the limits of globalization*, Robert Boyer & Daniel Drache (eds), (London: Routledge, 1998), p.302.

<sup>213</sup> In the three pillar structure of EU, the existing EC would constitute the first pillar, while the second and third pillars would be intergovernmental cooperation in Common Foreign and Security Policy and Justice and Home Affairs, respectively. The focus, here will be on the EC pillar, given the scope of this thesis.

relaunch of monetary system. Following the summit, an ad hoc committee chaired by Delors himself issued a plan for European monetary union (Delors Report, 1989). Delors Report was proposing a gradual process with a clear timetable for creating an economic and monetary union. The plan was setting out creation of independent supranational institutions like the European System of Central Banks (ESCB), that would become responsible for formulating and implementing monetary policy; introduction of Euro to replace national currencies and application of strict convergence criteria (or Maastricht criteria) for member states to be able to adopt the Euro.

Triggered by the Delors Report, TEU was the result of separate negotiations on economic monetary union and on European Political Union (EPU). TEU is a milestone in the EU integration not only for establishing the European Union and signifying the grandest transfer of sovereignty with the creation of EMU, but also for solidifying the unequal relationship between European economic and social governance. Discussed in different IGCs, economic and monetary matters in the IGC on EMU and the social issues in the IGC on EPU, there were very asymmetric results for the economic and social governance in the EU. In the face of the huge transfer of power in the economic domain that resulted in the institutionalization of economic governance at the EU level- eliminating the monetary sovereignty of the member states, as for the social policy domain there were only very modest results. EMU was mainly based on “price stability”. TEU envisaged establishment of European Central Bank (ECB) that would elaborate and implement the single monetary policy and stipulated price stability as the primary objective of the European System of Central Banks (ESCB) to secure a sound and stable single currency. Deeming national budgetary policies vital for achieving the price stability, TEU devised a number of mechanisms that affected the design and implementation of national budgetary policies. Further, in line with the Delors Plan, TEU brought strict, restrictive requirements to govern the transition period for joining EMU, known as the Maastricht convergence criteria<sup>214</sup>. The mentioned strict criteria acted as restrictive parameters for the macroeconomic policies of the member states to adopt Euro. Actually, the restrictive framework was not solely peculiar to the transition stage, but also to the whole

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214 According to the criteria, member states who are to adopt the euro need to meet the following criteria:

1. Inflation rate: No more than 1.5 percentage points higher than the 3 best-performing member states of the EU (based on inflation).
2. Government finance: The ratio of the annual government deficit to GDP must not exceed 3% at the end of the preceding fiscal year. If not, it is at least required to reach a level close to 3%. Only exceptional and temporary excesses would be granted for exceptional cases. The ratio of gross government debt to GDP must not exceed 60% at the end of the preceding fiscal year. Even if the target cannot be achieved due to the specific conditions, the ratio must have sufficiently diminished and must be approaching the reference value at a satisfactory
3. Exchange rate: Applicant countries should have joined the Exchange-Rate Mechanism under the European Monetary System for 2 consecutive years and should not have devaluated its currency during the period.
4. Long-term interest rates: The nominal long-term interest rate must not be more than 2 percentage points higher than the 3 best-performing member states (based on inflation).

process with the Stability and Growth Pact (SGP) making commitment to fiscal rules permanent.

For an account of the social credentials of the TEU, the context of the social-policy making that has been significantly affected via the provisions of Maastricht regarding economic governance shall be displayed. The constraining implications of EMU on the social policy making at both national and European levels and the changing vision of regulated capitalism project will be exposed from now on. Through the Maastricht convergence criteria and the Stability and Growth Pact, EMU was limiting the macroeconomic policy options on the part of the member states. Hence, the EMU was creating direct pressures and pressing constraints on European welfare states<sup>215</sup>. Comments on the nature of these constraints were diverse. Some scholars argued that the EMU, by constraining public expenditures, would diminish the resources for welfare states as the social security programs made up the bulk of the public expenditures<sup>216</sup>. Another line of thought argued that the EMU institutionalized a 'neoliberal' paradigm that left space only for minimalist welfare states as the competitiveness was prioritized more than ever. Thus, the member states with the high social standards would have problems in meeting the criteria of either the convergence criteria or the Stability and Growth Pact, so the welfare states would witness diminishing social protection for the sake of competitiveness<sup>217</sup>. All in all, the loss of member states' policy autonomy in economy and the restrictions on budgetary policies led to a vital constraint on member states' ability to provide high levels of social protection. So, a further problem comes into being. The national level social policy-making is constrained by the European level economic governance, yet the loss of national policy autonomy in economic and social domains were not compensated by social governance at European level. In the words of Scharpf, this came to mean losing control at domestic level without gaining any leverage at the EU level<sup>218</sup>.

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215 See J. Grahl and P. Teague, "Is the European Social Model Fragmenting?" in *New Political Economy*, 2 (3), 1997; M. Rhodes, "Globalization and West European Welfare States", *Journal of European Social Policy*, (4), 1996; L. Tsoukalis and M. Rhodes "Economic Integration and the Nation-state" in *Developments in West European Politics*. M. Rhodes, P. Heywood and V. Wright (eds), (London: Macmillan, 1997); P. Pierson, "Social Policy and European Integration" in *Centralization or Fragmentation: Europe Facing the Challenges of Deepening, Diversity, and Democracy* A. Moravcsik (ed), (Council on Foreign Relations Press, 1999).

216 Rhodes, 1996, op.cit; Fritz Scharpf, "The Viability of Advanced Welfare States in the International Economy: Vulnerabilities and Options", *Journal of European Public Policy*, 7 (2), 2000; Paul Pierson, and Stephen Leibfried, "Social Policy: Left to Courts and Markets" in *Policy-Making in the European Union* H. Wallace and W. Wallace (eds.), (Oxford: Oxford University Press, 2000).

217 Tsoukalis and Rhodes, 1997, op.cit.; P. Pierson, "Irresistible forces, immovable objects: post-industrial welfare states confront permanent austerity", *Journal of European Public Policy*, 5 (4), 1998.

218 See Scharpf, 2002, op.cit.; Streeck, 1995, op.cit.

#### 4.5.2. TEU and the social governance

Having outlined the stipulations of TEU on economic governance and the pressing constraints of economic governance on the social governance at both domestic and EU levels, the social credentials of the TEU will be analyzed in this section. Before, analyzing either the content of the social provisions or the struggles surrounding the negotiations of these provisions, it would be pertinent first to have a look at the political composition of European governments and the leaders that played vital roles in embodying the last version of the Treaty. In 1991, three member states were governed by conservative parties; these being Denmark, Ireland, and the UK (with John Major succeeded Thatcher as the leader of the Conservative Party and as the new Prime Minister). Another 6 member states had Christian democratic prime ministers; these being Belgium, Greece, Italy, Luxembourg, the Netherlands (with Lubbers); and Germany (with Kohl being the Prime Minister). The remaining three member states were governed by socialists/ social democrats: Portugal, Spain (still with the Gonzalez as the Prime Minister) and France (with Mitterrand as the President and Rocard and Cresson as consequent prime ministers). Another influential actor in the Community politics, the Commission continued to be headed by Jacques Delors during the deliberations of the Treaty of Maastricht. Hence, the political composition was an appropriate one, with the majority made up of pro-integrationist Christian democrats and socialists in company with the Commission and also the European Parliament. The majority of the Parliament was in favor of further integration encompassing deepening in both economic and social dimensions of the Community.

It was apparent that such a degree of monetary and fiscal restraint would overstrain the economies of (especially some) member states and would lead to a grave disruption in certain regions of the Community<sup>219</sup>. Out of such concerns, social policy measures to complement the EMU and indeed to realize a stronger Community social dimension, inaugurated with the post-SEA initiatives were high on the agendas of regulationist-oriented member states as well as the pro-social Europe Delors Commission. To illustrate, the Spanish Presidency under the chairmanship of Prime Minister Gonzalez had set a high priority on clear decisions on monetary union but also on social policy at the Madrid European Council on June 1989<sup>220</sup>. However, Madrid Summit rather became a venue for dealing with the British problem as Thatcher was not prepared to compromise on either of

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219 Geyer, op.cit., p.53.

220 *Le Figaro*, "L'avenir de l'Espagne depend de son integration a l'Europe", 8 June 1989.

the issue areas<sup>221</sup>. Taking over the mission embraced by Spanish Presidency, the French Presidency also made EMU and social policy essential dossiers of its Council Presidency<sup>222</sup>. Further, given the success of the SEA as reviving the European integration, Delors was shifting the Community's agenda from the internal market to the social dimension and the EMU.

In his speech before European Parliament, Delors asserted that “In 10 Years, 80 per cent of economic legislation, perhaps even tax and social will come from the EC”<sup>223</sup>. Pressures to proceed further on social issues intensified in 1991 as the intergovernmental conferences on political reform and monetary union were close to end. It was argued that the political reform should encompass an expansion of the social issues with QMV procedures. Indeed as for the implementation of the Action Program all member states, but UK “...was willing, even anxious to proceed with the social dimension”, but the continually obstructionist behavior of the British government allowed only a very limited number of measures to pass by the time of Maastricht Summit<sup>224</sup>. Against this background and considering the concerns of pro-regulationist member states, the Commission submitted draft treaty articles that aimed at enhancing the social dimension of the Community. But, things did not go that smooth and Maastricht Summit again became the arena for contentions over the social matters and even the entire process was threatened by the debate over the social issue.

Going into Maastricht, the stances of the member states, EU institutions and interest groups were more or less evident as illustrated by the discussions over the Charter of the Fundamental Social Rights for Workers. In this context, the Commission proposal for a revised social chapter providing the EC with the competence to adopt harmonized social regulations in a wide range of areas, mostly by qualified majority vote met exactly the expected reactions from the interested parties. Following the foot steps of Thatcher, the new UK Prime Minister Major was of the opinion that this initiative would only “foster unnecessary EU intervention in social affairs”<sup>225</sup>. As for France, one of the main issues on which the French concentrated at the IGC was the establishment of a genuine Community social policy. Especially, after Edith Cresson assumed the post of Prime Ministry, a Community industrial policy was added to the French agenda<sup>226</sup>. The French position on

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221 Peter Ludlow (ed), *The Broad Lines of Policy in 1989* in The annual review of European Community affairs, (London : Brassey's for Centre for European Policy Studies, 1990), p. 44.

222 Colette Mazzucelli, *France and Germany at Maastricht*, (London: Gerland Publishing, 1997), p.44.

223 Charles Grant, *Delors : inside the house that Jacques built* , (London : Brealey Publishing, 1994), p.88.

224 Peter Lange, “Maastricht and the Social Protocol: Why Did They Do It?” in *Politics and Society*, 21, 1993, p.8.

225 Bean, op.cit. , p.8.

226 Mazzucelli, op.cit., p.137.



Community social policy was also backed especially by the governments of Belgium and Germany, believing that the progress in social area should accompany the monetary integration<sup>227</sup>.

Perhaps the most controversial issue of the IGC on political union was the agreement on the social chapter that led to a months-long deadlock as a result of the debate between the Conservative UK government of John Major as the flagman of neoliberal project on the one side and the other eleven member states, advocated a social chapter with qualified majority voting in varying degrees, in company with the Commission, on the other side. Not surprisingly, among the nine agenda issues that were left for the European leaders to settle at the Maastricht European Council (9-10 December, 1991) there was also the issue of social policy alongside the related issue area of cohesion policy<sup>228</sup>. Most of these issues were discussed and indeed settled in the first day of negotiations. In the night between December 9<sup>th</sup> and December 10<sup>th</sup> the Presidency redrafted the amended Treaty Articles and sought for compromises in tête-à-tête talks with the leaders. The most outstanding obstacle before agreement was social policy. So, the second day was devoted to attempts at finalizing negotiations on political union which was a very tough business given the adamant opposition of the UK delegation<sup>229</sup>. Towards the very end of the first day discussions when the social policy came on the agenda Major put forward that the British position on the Community social policy was often misunderstood and he illustrated his intransigence on the matter by asserting that “the social chapter is not an attractive proposition anyway as the gainers would be the industries of Japan and America, not the workers of Europe”<sup>230</sup>.

Besides, being ideologically committed to the neoliberal outlook that was hostile to any Community regulation in labour market and social policies, had Major also another domestic reason for his intransigence in the Maastricht negotiations<sup>231</sup>. The elections were very close and in this pre-election setting he had to be nothing but responsive to the Conservative constituencies of his party. Thus, a compromise in social policy in Maastricht would cost him the elections. Conscious of these concerns on the part of the Conservative Prime Minister of UK, the chairman of the Dutch Presidency, Prime Minister Ruud Lubbers

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227 Lange, op.cit., p.8.

228 The other 7 of the 9 agenda issues were: the transition to final stage of EMU; decisionmaking on the CFSP; the defense dimension of the CFSP; the powers of European Parliament; the inclusion of the term “federal vocation” in general provisions of the Treaty, new Community competences, some interior and justice affairs. See, Baudoin Bollaert, “Les neuf mines qui peuvent faire toute exploser”, *Le Figaro*, 9 December 1991, p.6.

229 Mazzucelli, op.cit., p.174; Corbett, op.cit.,

230 Major quoted in Mazucelli, op.cit., p.183.

231 See Philip Stephens, “Major Approaches Moment of Truth on British Concessions to Partners”, *Financial Times*, 10 December 1991. Lange, op.cit., pp.25-27 and Mazucelli, op.cit., pp.183-184.

stepped in with a proposal of watering down the social policy proposal by shifting some areas proposed to be decided via QMV to unanimity voting. David Buchan expounds the reasons lying beneath the Dutch proposal as the belief of Lubbers that such concessions on social policy would entrust Major with a deal which he could sell in turn to his Conservative party as well as the House of Commons. Further this way Mitterrand who straightforwardly declared that he would not sign the Treaty lacking social policy provisions, would be appeased<sup>232</sup>. Yet, Lubbers' expectations did not come true and Major rejected this version as well, telling his colleagues that: "Just as for you, signing this Treaty without the social provisions creates problems, for me it is the other way round. I would not get the support of the British parliament or business"<sup>233</sup>. So, the risk of failure of the entire process was very imminent when Delors presented the outcome of a new Commission entrepreneurship: the plan for eleven member opt-in. The Major delegation who had opposed the opt-out idea, accepted the idea of opt-in after a series of bilateral and trilateral meetings with Delors, Lubbers and Kohl who intervened to avoid the possible failure of the IGC<sup>234</sup>.

The deal was as follows: the eleven, excluding the UK, would go ahead with the social proposals that were originally outlined by the Commission (rather than the watered down Dutch proposal to make UK compromise). The social chapter was to be extracted from the main body of the Treaty and was to be called as an agreement to be signed by the governments of the eleven member states. Further a binding protocol would be appended to the Treaty indicating that the eleven would adopt social regulations within the framework of the EC institutions and procedures according to the rules of the agreement but without British participation. At the same time, subsidiarity principle that was adopted at the deliberations preceding the Treaty provided the legal basis for confining control of social policies to the national level, thus precluding coordinated European social policy arrangements.

To assess the social credentials of TEU, the Treaty and the Social Policy Agreement annexed to it represented a modest leap forward on Community social dimension as it extended the reach of Community social competence, despite lagging far behind the economic governance. The Social Protocol brought a shift from unanimity to a qualified majority voting rule on a number of issues. By Article 2, paragraphs 1 and 2 of the Agreement, the Council was authorized to proceed by QMV to "adopt by means of directives, minimum requirements for gradual implementation" in the following five fields: improvement of the

<sup>232</sup> David Buchan, "Lubbers Puts Faith in Social Policy Compromise" in *Financial Times*, 10 December 1991.

<sup>233</sup> Major quoted in Pollack, 1998, op.cit., p.20.

<sup>234</sup> For details of the meetings, see Grant, op.cit., pp.200-201.

working environment to protect workers' health and safety; working conditions; information and consultation of workers; equality between men and women with regard to labour market opportunities and treatment at work; and the integration of persons excluded from the labour market. Hence, in the mentioned areas the Community would proceed even where one or more member states were opposed, as the QMV would be employed. On the other hand, some salient policy areas of labour policy were still to be decided via unanimity (Article 2(3) of the Agreement). These areas were: social security and social protection of workers; protection of workers where their employment is terminated; representation and collective defense of the interests of workers and employers including co-determination; conditions of employment for third-country nationals legally residing in Community territory; and financial contributions for promotion of employment and job-creation. Lastly, certain collective labour rights were explicitly excluded from the Community competence (Article 2(6) of the Agreement, these being wages; right of association; and right to strike/lockout. Having a general glance at the categorization of the issues, one comes across with the fact that the areas falling under the QMV procedure were not the ones that imposed direct fiscal burdens, rather those leading to such effect were either subject to unanimity (e.g. subsidies for job creation and social security) or excluded from Community regulation (e.g. wage)<sup>235</sup>. Still, the provisions were very important for the Community social dimension as entrusting Community with explicit competence in a number of new areas.

Secondly, the Protocol boosted the role of the social partners as allowing for the possibility for European employers and unions to negotiate European collective agreements directly through the social dialogue, subject to the approval of the Council of Ministers. Further, the social partners would assume responsibility for national transposition if they wished so. Lastly, under the new procedures the Commission was obliged to formally consult management and labour "on the possible direction of the Community action" before submitting proposals and on the content of the actions as well. (Article 4, Social Agreement). It would be useful to lay out here the stances of the social partners during the Treaty negotiations and indeed the roles they assumed within the contentions between neoliberal outlook versus the regulationist vision for Europe. To start with ETUC, the Confederation pressed for the social chapter. Indeed, two weeks before the Maastricht Summit, the ETUC displayed its endorsement of the social chapter apparently by way of threatening the Community leaders with a campaign of industrial action if they watered down the draft to accommodate British opposition. Further claimed ETUC that the Unions would be prepared

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<sup>235</sup> Indeed, the effect of those issue areas falling under the QMV were limited by the paragraph of the protocol which indicated that the harmonization would be carried out gradually and with special sensitivity to SMEs. See

to pressure national parliaments to throw out a “diluted treaty”<sup>236</sup>. As for the employer side who had always been very suspicious of the Community competence and procedures in social policy, they were skillfully dragged by the Commission to negotiations<sup>237</sup>. Through these negotiations, the final form and the substance of the Social Agreement provisions concerning the role of social partners were determined by the peak organizations of employers and workers at the European level<sup>238</sup>.

Apart from the Social Protocol that was binding on the eleven signatory member states, there was also another set of social policy provisions that were binding all twelve. In the words of the European Commission, after the Maastricht Treaty, EU social policy was “subject to two free standing but complementary legal frames of reference”<sup>239</sup>. Thus, alongside the Social Chapter appended to the Treaty of Maastricht, there were also the social policy provisions within the main body of the Treaty. The previous Title III on Social Policy was supplanted by the Title VIII of Part Three of the Treaty entitled as “Social Policy, Vocational Training and Youth”. Yet, the changes in the provisions of this Part were not comparable to the innovations brought by the Protocol. One of them was strengthening of the vocational training (Article 127)<sup>240</sup>.

Another reform which had more profound implications for the social dimension of the Community was concerning the cohesion policy. Repeating the pattern of contention occurred at the previous enlargement of the cohesion policy, the coalition of poor member states of the Community was again on stage demanding major redistributive transfers as side payments for accepting potentially costly new neoliberal step of the European integration towards monetary union. The pivotal actor of this coalition was the Gonzalez government of Spain. Gonzalez had a long list of demands as regards cohesion policy at the 1991 IGC. Spain demanded the introduction of a new fund for the then less prosperous states to prepare for the monetary union; a revision of the Community’s own-resources system, to ensure that the EC budget was duly supplied by taxation levied according to the relative prosperity of member states. Gonzalez was in view that “the cohesion policy did not only mean to give a certain amount of money...the notion of cohesion is much deeper...cohesion is a policy not

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236 Rhodes, “The Regulatory Conundrum”, op.cit., p.111.

237 Jepsen & Pascual, op.cit., 2006, p.54.

238 Brian Bercusson, “Social Policy at the Crossroads: the European Labour law after Maastricht” in *Europe After Maastricht: An Ever Closer Union?* Renaud Dehousse (ed), (Munchen: Beck 1994), p.149. For details of the provisions, also see Philippa Watson, “Social Policy After Maastricht” in *Common Market Law Review*, 30, 1993, pp.505 ff.

239 COM (93) 600 Final:9.

240 Cram, op.cit., pp.43-44.

an act of charity...”<sup>241</sup>. Yet, the contributor northern member states were not of the same opinion. Hence, apart from some minor changes regarding the cohesion policy, the Spanish demands were ignored in the proposals outlined by the Dutch Presidency. However, Spanish government would not seem to be easily discarding its demands for nothing as it was well aware of the leverage it had as being a potential obstacle before the final agreement on EMU, the core neoliberal project of the Community. So, Gonzalez repeated the demands of Spain as regards cohesion policy to the European Council on December. It was again Delors who stepped in and tried to convince Kohl as the Prime Minister of the largest net contributor to the EC budget. Prioritizing trans-European networks and environment as the main two areas the new Cohesion Fund was established to address and help the less prosperous member states to implement relevant Community policies, Delors sought to forge a compromise<sup>242</sup>. After some discussions of whether the cohesion issue would be included in a non-binding declaration or in a legally binding protocol, Kohl and the other leaders accepted a legally binding protocol to be attached to the Treaty committing the Union to augment already existing structural fund resources and to create a new cohesion fund to aid the poor member states (with a GNP per head of less than 90 per cent of the EC average) in the areas of environment and transport infrastructure<sup>243</sup>. All in all, the Maastricht Treaty reiterated the commitment of the Union to economic and social cohesion, yet as happened to be during the previous enlargement of the fund, the coalition that put forward a goal of regulated capitalism project was composed of the poor members of the Union, pressing hard for side payments for acknowledging the costly initiative of neoliberal project.

This section will be concluded with a summary of the analysis regarding how the contentions between the projects of neoliberalism and regulated capitalism moulded the Treaty of Maastricht. Looking at the leaders of the European States, British Conservative Prime Minister John Major and Socialist President Mitterrand and the socialist Prime Minister Rocard/Cresson were ideological antipodes. The British Conservatives were quite intransigent in the negotiations of Social Chapter opposing to any provision for social policy in the Treaty, whereas the French socialists were straightforwardly declaring that a Treaty lacking social provisions would not be signed by France. In the political spectrum there were socialist/social democratic Southern Europeans siding with the French regulationist position and also demanding some side payments for accepting the neoliberal project of EMU. Also there were

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241 Gonzalez quoted in Alberto Gil Ibanez, “Spain and the Ratification of the Maastricht Treaty” in *The Ratification of the Maastricht Treaty: Issues, Debates and Future Implications* Finn Laursen and Sophie Vanhoonacker (eds), (Dordrecht: Martinus Mijhoff Publishers, 1994), p.139.

242 David Gardner, “Cohesion Becomes Less of a Sticking Point” in *Financial Times*, 10 December 1991, p.2.

243 See Alan B. Philip “Old Policies and New Competences” in *Maastricht and Beyond: Building the European Union* Andrew Duff, John Pinder and Roy Pryce (eds) (London: Routledge, 1995), p.135 and Ross “ Jacques Delors...” op.cit., p.190.

the Christian democratic parties in government, which took a middle position between British Conservatives and French socialists bore a strong pro-Community ideology. While their priority was the quest for monetary union, they were as well willing to extend QMV in social matters and to include social policy into the Treaty<sup>244</sup>. Further, the existence of Commission with the Presidency of Delors was again indispensable for the compromise between the neoliberal and regulated capitalism projects with a great policy entrepreneurship and via also convincing the social partners to participate in the drafting of the Treaty. In such a way, by including the European employers into the Treaty-making, what Commission planned was curtailing the opposition of the neoliberal coalition and securing a better compromise. In the end, as a direct result of the dominant neoliberal outlook and sound money paradigm endorsed by all Europeans, the Treaty of Maastricht was imprinted by the neoliberal elements.

To make an overall assessment regarding TEU in terms of its social credentials, the modest social achievements of the Treaty were modest steps at best in the face of EMU which constituted direct and pressing constraints on the already limited European social policy. Economic and monetary integration led to a loss of regulatory capacity in social policy and there was no increase at the European level to compensate for this loss<sup>245</sup>. Thus, the unequal relationship between the economic governance and social governance at EU level was solidified via the TEU as the far-reaching deepening in the economic field lacked its counterpart in the social field as “the social policy was almost relegated to a separate protocol, from which the UK dissociated itself”<sup>246</sup>. Hence, the real progress written into the new social policy chapter (QMV and the role of social partners) was barred by the opt-out that made the social dimension a protocol containing the Agreement of 11.

Immune from a genuine debate on the repercussions of the EMU on Europe’s welfare states and the loss of policy autonomy resulting from EMU, the social policy arrangements that came out of TEU continued to be market-making in character rather than market-correcting nature. What is more; commenting on this character of European social policy being secondary and even subservient to the integration at the economic domain, Pierson argued that the efforts of the Union as for the social governance were far from taking “the form of what Karl Polanyi famously called ‘protective reaction’ against expansion of market relations”<sup>247</sup>. In a similar vein it is pertinent to comment on the TEU as Dolor’s vision that

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244 Karl Magnus Johansson, “Another Road to Maastricht: The Christian Democrat Coalition and the Quest for European Union” in *Journal of Common Market Studies*, 40, 2002, pp.886-887.

245 Leibfried, op.cit., 2000, pp 287–288.

246 Ferrara, op.cit., p.117.

247 Pierson, 1999, op.cit, p.146.

have imprinted the regulated capitalism was defeated by the constitutional revision at Maastricht and the regulated capitalism underwent a significant revision in its vision and strategy duly. It is within this context that the vision of Pochet's "moderate Left" that embraced the necessity of supply-side policies in the form of investment to human capital, gained prominence within the regulated capitalism Project at the expense of the "traditional Keynesian Left". The "moderate Left" that started to stamp its vision on the regulated capitalism 1992 onwards focused on the issues of poverty and social exclusion as the adverse affects of the ever-deepening economic and monetary integration rather than arguing for radical changes within the established economic governance of the Community.

#### **4.6. Treaty of Amsterdam: left versus left**

##### **4.6.1. The context of the negotiations of Treaty of Amsterdam**

Five years had passed over the signing of TEU in Dutch city Maastricht when a new Treaty amending the TEC and TEU was signed again in the Netherlands, Amsterdam on October 2, 1997. The intergovernmental conference that preceded the Amsterdam Treaty was quite different from its predecessors as being a conference that was not convened on an ad hoc basis, but planned in advance as a follow-up conference to make amendments in the Maastricht Treaty itself<sup>248</sup>. Being born with a pre-set mandate, the Treaty was not called for launching a major economic project as did the SEA and TEU but it was rather called for dealing with "the problems posed by...the transferal of these economic projects into day-to-day politics and policy-making ..."<sup>249</sup>. To put it in a different way, the main mandate of Treaty of Amsterdam was to take the required measures to assure the sustainability of the integration process itself. Out of such a mandate lacking a new thrust for economic governance and having sustainability concerns, Amsterdam Treaty brought an advance (though its degree is very contentious) as regards the Community social policy, through a new employment chapter, inclusion of the Social Protocol into the main body of the Treaty and some other amendments in social provisions.

Accounting this tide towards social dimension, regarded either as slight or remarkable it is generally argued that the social content of the Treaty was moulded as a result of the fortunate

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<sup>248</sup> Maastricht Treaty was calling for to "examine the provisions of this treaty (TEU)...with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community" (Article N2).

<sup>249</sup> Antje Wiener & Karlheinz Neunreither, "Introduction: Amsterdam and Beyond" in *European Integration After Amsterdam: Institutional Dynamics and Prospects for Democracy*, Wiener & Neunreither(eds), (Oxford : Oxford University Press, 2000).

coincidence of leftist governments in most European countries<sup>250</sup>. Before looking at the then political composition of the European governments, it shall be noted that in the short time interval between the Maastricht Treaty and the deliberations preceding Amsterdam, the Union underwent a new enlargement round in 1995. The three new member states; Austria, Sweden, and Finland all had strong social democratic traditions with advanced social policies well above the EU average and they were strong proponents of EU social policy. Indeed despite being a new comer the Swedish delegation to IGC was very influential in shaping the social content of the Treaty as the report of Allan Larsson (former Swedish Finance Minister and future Head of DG Employment and Social Affairs) played an agenda-setting role for the IGC. Thus, the accession of these three pro-social policy member states can be heralded as a tangible gain on the part of the regulated capitalism. Secondly, looking at the political composition of Europe during the last months of deliberations and at the time of the signature of the Treaty, one comes across the dominance of socialist/social democratic parties in European governments for the first time in the history of European integration. Eight out of fifteen European governments had socialist or social democratic prime ministers in the first months of 1997; Austria, Denmark, Finland, Greece, Italy, the Netherlands, Portugal, and Sweden. Then, British and French elections also gave way to Labour government under the Prime Ministry of Tony Blair in May 1997 and Socialist government of Lionel Jospin in June 1997 respectively. So, when the Treaty was signed at the Amsterdam Summit, there was the overwhelming dominance of the left with 10 out of 15. As for the rest of the European states; there was Christian democratic Chancellor Kohl in Germany whereas in Belgium and Luxembourg, there were grand coalitions headed by Christian democratic prime ministers. Lastly, Ireland, and Spain had center-right coalitions. Looking at the political composition, it would be fairly argued that the European agenda was being set by the left in the second half of the 1990s.

Apart from the composition of European governments, there were also some other parties that were eager to push up the social issues to the European agenda. First among them was the Party of European Socialists (PES). Founded in the Hague in November 1992, PES served as a mechanism to involve social democratic party leaders in debates on European issues to a degree that had never occurred before<sup>251</sup>. The proposals for a social democratic response to EMU and elevating employment to one of the missions of the EU were raised during these meetings and the existence of PES was vital as part of the story in Amsterdam Treaty. ETUC was also a sine qua non actor in setting the stage for the Treaty of Amsterdam.

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250 See Pollack, 1998, op.cit., p.20

251 Robert Ladrech, "The Left and the European Union" in *Parliamentary Affairs*, 56, 2003, pp.118-119



In the aftermath of the Maastricht Treaty not only the United Kingdom and Germany, but also the traditional pro-regulation member state: France had a right-wing government, which rendered even debating of social concerns difficult. Within this environ, ETUC's role in pushing the social concerns and employment to the fore and keeping them on the agenda was praiseworthy<sup>252</sup>. The importance of the attempts of the Confederation can be better comprehended, considering the threats posed by the EMU and its convergence criteria to the wage level and employee rights all over the Europe. To be more precise, the legal constraints brought by EMU substantially reduced the competences of national governments to influence growth and employment as rendering the conventional demand-side responses impossible, thus leaving the governments with solely supply-side strategies of further deregulation, flexibilisation, wage differentiation and welfare cutbacks<sup>253</sup>. Out of a fear that the governments would lower the wages and reduce the social protection in the name of competitiveness, ETUC followed a meticulous strategy of pushing for an advance in Community social policy also comprising of employment provisions, yet it did so avoiding the possible enragement of the right-wing governments. So, despite opposing the EMU in principle, ETUC seemed to endorse EMU and argued for "...more attention to employment, less mechanical application of the convergence criteria, and recognition of the real economic difficulties that the European economies faced in the mid to late 1990s..."<sup>254</sup> as supplements to the monetary union.

The Commission was also among the key actors of the Amsterdam Treaty, despite being relatively less active this time compared with the past minutes of integration. This passivity on the part of the Commission can be regarded as the outcome of the end of the two terms of the Delors Commission in 1995 and the inaugurating Presidency of Christian democratic ex-Luxembourg Prime Minister Jacques Santer. However, before leaving office, Delors Commission's DG V (current Directorate-General Employment, Social Affairs and Equal Opportunities) had put forward a Green Paper on EU Social Policy and a White Paper on Growth, Competitiveness and Employment, signifying the necessity of a social initiative as a response to monetary union<sup>255</sup>. Departing from this base, during the term of Santer

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252 Jane Jenson & Philippe Pochet, "Employment and Social Policy since Maastricht: Standing up to the European Monetary Union" prepared for "The Year of the Euro," Nanovic Institute for European Studies, University of Notre Dame, December 5–8, 2002; Christophe Degryse & Philippe Pochet, "European employment policy in 1999" in *Social policy developments in the European Union in 1999*, (Brussels, ETUI, 2000) and European Trade Union yearbook, p.3.

253 Fritz Scharpf, "European Governance: Common Concerns Vs the Challenges of Diversity", *Jean Monnet Working Paper*, No.6/01 2001, 30.07.2007, Available at: <http://www.jeanmonnetprogram.org/papers/01/010701.rtf>, European Trade Union Book; Goetschy, "The European.....", op.cit. p.60.

254 J&P, Martin and Ross, 1999: 349)

255 The Green Paper was a consultative document including areas covered by the included employment improvement, convergence of social policies, strategies for fighting poverty and social exclusion, policies on the young and elderly, free movement policy, sex equality policy, promotion of the social dialogue, and the role of the European Social Fund. The White Paper, on the other hand, was describing the vitality of social policy in the process of change

Commission DG V laid out the 1995-7 Medium Term Social Action Programme, which was more or less a repetition of the White Paper. The main objective of the Commission in outlining such initiatives was definitely demonstrating that the issue of European social policy would remain firm on the agenda alongside the monetary union. Not only the Commission's DG V but also the majority of the European Parliament was also endorsing a considerable advance in social dimension of the Union. Further, as Petite states the role of the European Parliament was significant and far exceeded that had been the case in previous Intergovernmental Conferences as it took part as a full partner at ministerial sessions by its President (first Mr. Hänsch, then Mr Gil-Robles) and at meetings of the Group of Representatives by Ms Guigou (as representative of socialists) and Mr Brok (as representative of PPE)<sup>256</sup>. Via such participation, the European Parliament found a chance to engage in bilateral dialogues and express its views and expectations, which had also a stake in the crafting of the social provisions of the Amsterdam Treaty. What is more, throughout the 1990s European social policy NGOs were also rapidly emerging and establishing themselves, with direct and extensive support from the Commission<sup>257</sup>. Pressing hard for a more social Europe, the existence of these NGOs were important during the negotiations of the Treaty.

While there was such a coalition that endorsed a more social content for the Treaty of Amsterdam, the neoliberal group also had to confront the concerns surrounding the sharp rise in unemployment from 1992 onwards. So, the public support on the neoliberal course of European integration which had been underwritten by the neoliberal project was on the wane triggered by the soaring unemployment and other negative repercussions of the EMU-induced austerity measures. Hence; in the midst of such an environment and given the composition of the actors around the two major Euro-wide projects, it was very obvious that the European mood was for social dimension, regulation and an emphasis on employment and social protection.

It is never an easy task to assess the Amsterdam Treaty and the preceding IGC, looking from a social policy stand. There is a wide spectrum of views on the Treaty and as expounded by Kari “there is no simple answer as to whether the IGC solved the problems of developing EU social

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and it was arguing for new proposals for the people of Europe to benefit from “the unique blend of economic well-being, social cohesiveness and high overall quality of life”. Hence, it was summarising the responses to calling for employment to be at the top of the European agenda. See Commission 1993, 1994...also Hantrais, op.cit pp. 13-14 and Geyer, op.cit, pp. 55-56.

256 Michel Petite, “The Treaty of Amsterdam”, Harvard Jean Monnet Chair Working Papers Series No. 2/98, 30.07.2007 Available at: <http://www.law.harvard.edu/Programs/JeanMonnet/>

257 J. Greenwood, *Representing Interests in the European Union*, (London: Macmillan, 1997), chapters 7 & 8.

policy or not”<sup>258</sup>. Some commentators, as Giubboni, state that the IGC and the Treaty of Amsterdam “...heralded a new phase of Community integration characterized by an attempt to regain a more appropriate and even balance between the necessity of constructing a totally unified market and the need to reaffirm the essential values of the European social policy”<sup>259</sup>. Further, another scholar Venturini was asserting that once the Treaty was ratified, “...the Community (would) possess the necessary tools to develop a coherent and effective social policy”<sup>260</sup>. Yet, controversial arguments also abounded: Kari evaluating the IGC as a failure in terms of Community social dimension “...compared to the pitch of demands and expectations directed at it”<sup>261</sup>. Harsher criticisms were by no means lacking as Blanpain was arguing that the Treaty of Amsterdam whose “added social value (was) negative should be rejected” as “it render(ed) a proper European social policy impossible for the future”<sup>262</sup>. Against this background, the social policy credentials of the Treaty provisions will be sought now on. In terms of social policy, the most notable results of the Amsterdam Treaty were the emergence of a new chapter on employment, integration of the Social Agreement into the main body of the Treaty, and other slight amendments increasing the social competence of the Community.

#### 4.6.2. Employment Chapter in the Treaty of Amsterdam

Concerning the employment issue, the new French Prime Minister Lionel Jospin can be prioritized as the main architect of the Employment Chapter in the Treaty of Amsterdam. Reiterating the Pochet’s groups, Jospin was indisputably the head of the “traditional Keynesian Left” within the regulated capitalism project. Tracing back the emergence of the notion of an employment chapter, it had been on the agenda for the European socialists/social democrats as well as ETUC and the Commission ever since the early 1990. Already in 1993, before the Brussels summit the PES leaders had set up a working group on state-economy relations in Europe under the chairmanship of Allan Larsson which culminated in the Larsson Report on the European Employment Initiative, mainly arguing that Europe’s project of monetary and economic convergence must include the type of active labour market policies<sup>263</sup>. The Report further had a detailed list of EU interventionist measures<sup>264</sup>. In response, the EPP leaders were advocating a mixture of free market economics with the use of some limited state intervention

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258 Matti Kari, *Meeting with EU Social Policy* (Antwerpen: Maklu, 1998) p. 209.

259 Giubboni, op.cit., p.96.

260 P. Venturini, *The Prospects for European Social Policy : Some Reflections*, in *Social Challenges of Economic and Monetary Union* Pochet & B. Vanhercke (eds), Series Work & Society, n° 18, (European Inter university Press, 1998), p.106.

261 Kari, op.cit., p.209.

262 Blanpain, quoted in *European trade union Yearbook*

263 PES declarations 1993.

264 Simon Hix and Christopher Lord, *Political parties in the European Union* (Basingstoke : Macmillan, 1997), p.192.

to facilitate economic recovery<sup>265</sup>. So, again the swords were drawn by the two polar views to impose their own vision into the European polity as regards the social policy. The struggles led to the adoption of Essen Employment procedures which called for a new employment policy coordination of a soft policy making kind, relying on common goals, benchmarking, and peer review. Despite being legally non-binding, adoption of anything on employment, being one of the most controversial social policy matters, was a gain on the part of pro-social policy group. But, the neoliberal coalition led by the right-wing governments actually acquiesced the Essen Employment procedures with a pragmatic objective of fending off more ambitious proposals of the ascending majority of left in the European Council<sup>266</sup>.

The matter of a more firm Community policy on employment came up again in the 1996-7 IGC. Two weeks before the Amsterdam European Council, the French elections gave way to a new socialist government of Lionel Jospin whose election can be traced back to a wave of French protests against EMU-induced austerity measures<sup>267</sup>. Sent by the French public to the Amsterdam Summit with an implicit mandate of rasping the austerity measures, Jospin government immediately took the lead of the regulated capitalism project -backed by some other socialist/social democratic member states and ETUC- arguing for a renegotiation of the Stability Pact<sup>268</sup> with special emphases on the importance of growth and employment and the need for an “economic government” alongside the new European Central Bank. The other major party to this round of contention was German Chancellor Helmut Kohl who was intransigent concerning any renegotiation given that the SGP was modeled on the German model and indeed proposed by German delegation itself in the Maastricht Treaty. Some member states also supported Kohl and the SGP that is a product of the neoliberal vision. Out of such clashes of two visions, the neoliberal coalition settled for a non-binding Resolution on Growth and Employment, a proposed European summit on unemployment to be held the following November and finally an Employment Chapter in exchange for an unaltered SGP.

However, after this point onwards another actor stepped in, setting the limits of the contents of Employment Title in particular and Community social dimension in general. Colliding with the socialist vision of Jospin and siding more with the neoliberal outlook of Kohl, Blair's New

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265 Ibid., p.192

266 Manow, op.cit., p.30

267 Pollack, 1998, op.cit., p.25

268 Growth and Stability Pact: The Stability and Growth Pact (SGP) is an agreement by European Union member states related to their conduct of fiscal policy, to facilitate and maintain Economic and Monetary Union of the European Union. It is based on Articles 99 and 104 of the EC Treaty (with the amendments adopted in 1993 in Maastricht), and related decisions. It consists of fiscal monitoring, and sanctions against offending members.

Way /Third Way imposed its vision into the Amsterdam Treaty<sup>269</sup>. Again looking back the groups of Pochet, Blair's Third Way vision overlaps with the "moderate Left". In the words of Manow, while "...the existence of an Employment Title was Jospin's victory; its vagueness was Blair's (allying with Kohl)"<sup>270</sup>. Blair had straightforwardly declared that the UK would only sign the Amsterdam Treaty on condition that the theme of flexibility would be clearly inserted and over-regulation of the European labour market would be precluded. Describing his position, Blair was indicating that "We must make sure that in taking action to create jobs we do not do anything which would damage Europe's competitiveness...The risk that the employment chapter might backfire, putting in jeopardy more jobs than it creates, is not one that I am prepared to take"<sup>271</sup>. Prioritizing flexibility and non-intervention, and rejecting any additional expenditure of EU funds to deal with unemployment, Blair's position was antipode of that of Jospin's who was for an explicit EU commitment to growth and employment, even encompassing the redirection of EU funds to stimulate job creation<sup>272</sup>. As a result of the eventual resolution of the contentions within the left and also the traditional left (socialist/social democrats) against the right wing alliance of Kohl and Aznar, the new "Employment" title came up comprising six articles (Articles 125-130 [109n-109s]), which in essence formalized the existing Essen procedures. The new employment provisions bore the major objective of contributing to the achievement of a "high level of employment" in the EU, focused on cooperation of member states for raising coordinated strategies for employment via guidelines, and devised an advisory committee on employment. The Treaty, thus, was imprinted by the Blair's vision, which even led the Treaty to be named as "a Blairite Treaty" after Pollack's influential work<sup>273</sup>.

In line with Blair's outlook, the Treaty incorporated a new employment title making employment a matter of common concern; yet at the same time it avoided any harmonization in the field via the new procedure of guidelines. Secondly the concerns of Blair's New Labour for employability and adaptability also found their places in the Treaty in Article 109n of the Employment Title which put forward that the principal aim of the employment strategy is promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change. Lastly, his concern for precluding any further direction of EU funding for alleviating unemployment was reflected in the Treaty which stipulated that any pilot projects must be financed from within the existing budget. All these mentioned

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269 See Pollack, 1998, op.cit., 38-39.

270 Manow, op.cit, p.30.

271 Blair quoted in Pollack, op.cit, p.31.

272 Lara Marlowe, "Jospin Government Lays Down Conditions Likely to Delay EMU," *The Irish Times*, 7 June.1997.

273 Mark A.Pollack, "A Blairite Treaty: Neo-Liberalism and Regulated Capitalism in the Treaty of Amsterdam" in *European Integration After Amsterdam: Institutional Dynamics and Prospects for Democracy*, Wiener & Neunreither (eds), (Oxford : Oxford University Press, 2000)

concerns of Blair were shared also by the adherents of the neoliberal project comprising of conservative governments either in government or opposition and the European business.

While the ratification process of Amsterdam Treaty lasted for two years, the European leaders did not wait in the meanwhile to implement the employment chapter. In November 1997, as enshrined in the Amsterdam Treaty an Extraordinary European Council on Employment took place in Luxembourg in November 1997 for launching the process envisioned by the employment chapter. As a result, European Employment Strategy (EES) has also been known as Luxembourg process. Following the debates in the IGC, Luxembourg also hosted a heated debate on the scope of the guidelines. While the Commission proposed a set of comprehensive and detailed guidelines that were also endorsed by the socialist/social democratic governments of the member states and the ETUC, some other Member states especially UK, Germany and Spain objected to the proposal. In the end, as did the Employment Chapter, the Luxembourg Process was also born, bearing the traces of the compromise between social democratic views and Blair's third way<sup>274</sup>. To be more precise, the EES was rejecting the radical deregulatory approaches, yet it was stressing flexibility and entrepreneurship in creating jobs<sup>275</sup>. The EES was also detailed in the Luxembourg Summit. The procedure would be started by the Commission who would develop general ideas about the best employment strategy for EU member states to pursue in discussions with the Council of Ministers, member states and relevant social actors (unions, employers organizations). Then the ideas would be detailed in annual guidelines which were approved by the Council of Ministers (social affairs and Ecofin) via QMV on proposal from the Commission. In response to these guidelines, each member state would elaborate National Action Plans (NAPs). Then, the Commission and Council would publish the Joint Employment Report, assessing member states' NAPs and policies as well as proposing recommendations<sup>276</sup>. In this process, the role of social partners was determined by the member state itself. All in all, the moderate left also underwrote the content and procedure of the EES, fixed at the Luxembourg Summit. Hence, Blair's New Labour was altering the rules

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274 David M. Trubek & James S. Mosher, "New Governance, Employment Policy, and the European Social Model," in *Governing Work and Welfare in a New Economy: European and American Experiments* Jonathan Zeitlin & David Trubek (eds.), (Oxford: Oxford University Press, 2003), p.42. See also J. Kenner, "The EC Employment Title and the Third Way: 'Making Soft Law Work?'" in *The International Journal of Comparative Labour Law and Industrial Relations*, 15/1, 1999, pp 33-60.

275 In the Luxembourg Council 19 guidelines organised into 4 pillars were approved. These pillars were employability (policies to make unemployment systems more active and increase worker skills); entrepreneurship and job creation (policies to encourage new smaller and more innovative businesses and make tax systems more employment-friendly); adaptability (policies to increase the flexibility of workers and work organization arrangements); and equal opportunity (policies to promote gender equality).

276 See Janine Goetschy, "The European Employment Strategy, Multi-Level Governance, and Policy Coordination: Past, Present and Future" in *Governing Work and Welfare in a New Economy: European and American Experiments* Jonathan Zeitlin & David Trubek (eds.), (Oxford: Oxford University Press, 2003), pp. 64-65 and Trubek & Mosher, op.cit.,p. 39.

of the game by embracing aims that are closer to the neoliberal project and thus colliding with the adherents of the regulated capitalism project which it “presumably” belonged to.

#### 4.6.3. Social Policy in the Treaty of Amsterdam

One of the most tangible achievements of the Amsterdam Treaty was the incorporation of Social Protocol into the main body of the Treaty which restored the coherence of the Community's social policy by putting an end to the two-track social policy emerged in the Strasbourg Summit and solidified in the Maastricht Treaty. As mentioned before, British elections led Blair to succeed the Conservative Prime Minister Major who blocked the incorporation of the Charter into the Treaty via abstaining from signing the Maastricht Social Protocol. Soon after assuming power Blair announced that UK would also “opt-in” via signing the Social Protocol. Thanks to the end of UK's isolation, the Protocol was incorporated into the EC Treaty as Articles 136-143 [117-120] and became binding on all the member states. However, Blair was sensitive on the contents of the text to be incorporated. To be more precise, Blair signed the Protocol with a prerequisite indicating that the Protocol would be incorporated essentially as it stood; maintaining the unanimity requirement in a number of areas and excluding further some others from the Community competence. Further, German Chancellor Kohl was also adamantly opposing to any far-reaching extension of QMV rule<sup>277</sup>. As a result of the stances of the UK and Germany, protection of workers in the event of termination of their employment contract and representation and collective defense of workers' and employers' interests were kept being subject to unanimity rule, where many other delegations presided by the French delegation preferred decision-making by qualified majority<sup>278</sup>.

Still, out of bargains a slightly amended social chapter which would also reflect some minor concerns of the pro-regulationists came up. One Article that underwent a revision was the one on the principle of equality between men and women (Article 141 [119]), in line with the case law of the European Court of Justice. The mentioned article was strengthened as the principle of equal pay for equal work was reaffirmed as “work of comparable value” for the equal treatment and equal opportunities of men and women in the workplace. Perhaps, more important than this Article which actually codified the Court decisions into a more coherent form of provisions, Amsterdam Treaty introduced new Community competence in combating social exclusion (Article 118) which is generally regarded as representing “a wholly new step

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<sup>277</sup> Derek Beach, *Bringing negotiations back into the study of European integration*, (Denmark: University Press of Southern Denmark, 2003), p.292.

<sup>278</sup> Petite, *op.cit.*

forward”<sup>279</sup>. Further, it shall also be noted that with the Amsterdam Treaty, co-decision would apply in qualified majority areas. This was promising for the social policy as Amsterdam Treaty led to an increase in the legislative powers of the pro-social policy European Parliament through the extension of the co-decision procedure to twenty-three new areas, including equal opportunities, equal treatment, incentive measures for employment and combating social exclusion, and some other areas of social policy. So, the Treaty allowed the Parliament to participate as a co-equal legislator in most areas of substantive social regulation and thus allowing the adoption of a substantial portion of social measures to be decided by qualified majority and with co-decision.

All in all, given the dominance of left in European governments and support from NGOs, majority of European Institutions and ETUC; it was heralded that the Union social policy would be substantially strengthened with the Amsterdam Treaty to have a full-fledged employment chapter as a counterweight to the neoliberal monetary union and the austerity measures brought by its convergence criteria. However, despite such ambitious expectations, little binding law was created; instead, employment policy became a soft law procedure of “governance by objectives”<sup>280</sup> as an alternative to the traditional legislative approach based on directives and regulations. Actually, the use of this instrument was “revealing the attempt to find a ‘third way’ in the middle between interventionism and liberalism in employment issues”<sup>281</sup> as in line with the Blair’s Third Way or the moderate left. The project of neoliberalism, or to be more precise the “mainstream economists” within it secured the adoption of the Stability Pact which set in stone the criteria for monetary union. The attempts of both subgroups of the regulated capitalism; the traditional Keynesian left and the moderate left to alter the Stability Pact was frustrated with their only achievement being the addition of “Growth” for the sake of form rather than the substance<sup>282</sup>. The most substantial achievement of the regulated capitalism project in the negotiations of Amsterdam was the new title on employment. However, as exposed above the fractions within the regulated capitalism project contended over the substance of the title. Within the context, set by the overriding neoliberal paradigm that came with the EMU the struggle was within the left itself; between a traditional socialist vision of a regulatory Europe, pivoted by the French Prime Minister Lionel Jospin (the traditional Keynesian Left), and the more market-oriented, center-left vision of British Prime Minister Tony Blair (the moderate Left ).

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279 Kari, op.cit., p.209.

280 Ekengren & Jacobsson, *Explaining the Constitutionalization of EU Governance-the Case of European Employment Cooperation* (Stockholm: Stockholm Center for Organizational Research), 8/2000.

281 Marco Biagi, “The Impact of the European Employment Strategy on the Role of Labour Law and Industrial Relations” in *The International Journal of Comparative Labour Law and Industrial Relations*, 16, 2000.

282 Pochet, 2006,op.cit., p.85.



In this round of contentions, the moderate left gained the upper hand, imposing its vision over the employment title by avoiding any harmonization in the field through the new procedure of guidelines; by enshrining their concerns of employability and adaptability in the relevant Articles and via putting forward the principal aim of the employment strategy as to overlap with the vision of moderate left as promotion of a skilled, trained and adaptable workforce and labour markets responsive to economic change. However, the employment title bears importance for triggering the European Employment Strategy (EES) and for constituting the beginnings of the open method of cooperation. To make an overall assessment of the Treaty in terms of the unequal relationship between economic and social governance of the Union, the provisions of social policy in general and the Employment Title in particular no way redressed the imbalance between the neoliberal economic governance that deepened through the Stability Pact adopted within the context of the EMU, and the secondary and even subservient social dimension of the Union.

#### **4.7. Social Policy towards the new millennium**

Following the eventful 1990s which witnessed the Treaty of European Union and introduction of EMU, Amsterdam Treaty and its employment title, Luxembourg Process and finally the adoption of Euro by 1999, at the first year of the new millennium European agenda was again bulky. The so-called Amsterdam leftovers, namely the issue of institutional reform in the face of pending Eastern Enlargement had already set the mandate for a new IGC, to precede the Nice Treaty. Besides, the Cologne Summit of 1999 had set up a Convention to elaborate a draft Charter of Fundamental Rights upon the initiative of Germany. Last but not least, the Portuguese Presidency in the first half of the year 2000 was to give way to a new opening in terms of European social dimension via adopting the comprehensive Lisbon Agenda.

To have a general look at the composition of the European Council in the new millennium the majority of the governments of Euro-15 was made up again by the social democrat/socialist parties/coalitions as in the case of the deliberations of the Amsterdam Treaty. Belgium, Ireland, Spain had right wing governments, in Austria and Luxembourg there were Christian Democratic governments and so excluding the mentioned ones; at Lisbon Summit in ten out of 15 member states there were center-left coalitions which rendered it possible for left to determine the agenda and the content of the reforms to some

extent. As at the time of Amsterdam Treaty, Blairite Third way was influential in setting the content of the European decisions.

#### 4.7.1. Nice Treaty: social policy overshadowed by institutional bargains

The signing of Treaty of Nice marked the completion of another renovation IGC in the European Union. Designed to prepare the European polity for the grandest enlargement of its history via institutional changes, Nice Treaty had a pre-set mandate as in the case of Amsterdam Treaty<sup>283</sup>. Having been entrusted with the tough and delicate issue of a comprehensive institutional reform in the face of the pending accession of the 10 new states, the Nice Summit was recorded to be the longest IGC in the history of European integration to date, taking 41 hours over five days<sup>284</sup>. Actually, the IGC preceding the Nice Treaty was not only the longest conference, but it was also the conference which was often woven by individual bargaining of the member states without engaging in coalitions with fellow states as the issue at stake was defense of own institutional interests rather than the pursuit of a deepening Union. Indeed, describing the diversity of national positions on a wide range of issues in the table, Jones calls the Nice Summit “messy”<sup>285</sup>. Given the crux of the summit as revisions to the decision-making procedures via rearranging the national weights in the Council and settling the representation in the Commission and EP, it was not astonishing that the social dimension of the Union did not lie at the heart of the Treaty. Yet, the Treaty was not totally immune from amendments regarding social dimension as the institutional alterations had direct implications for the social policy development. Further, the Treaty adopted the Social Action programme that came out of the Lisbon Summit (both of which will be exposed in the next section) and lastly declared the Charter of Fundamental Rights, though as a solemn one.

##### 4.7.1.a. Implications of alterations in decision-making procedures:

First institutional change brought by Nice Treaty which was related with social policy was the creation of a Social Protection Committee which would reinforce the role of Commission in social affairs (Article 144)<sup>286</sup>. The tasks of this Committee which had an advisory status were to monitor the social situation, promote exchange of information and prepare reports

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283 See Beach, op.cit., p.292, Richard Baldwin (et.al) (eds) *Nice Try: Should the Treaty of Nice be Ratified?*, (London: Centre for Economic Policy Research, 2001), p.7, Pierre Vimont, “Misunderstanding Nice: A French Assessment of the Results” in *The Treaty of Nice explained* Martyn Bond & Kim Feus (eds), (London: Federal Trust, 2001), pp.160-161.

284 Robert Jones, *The politics and economics of the European Union : an introductory text*, (Cheltenham : Edward Elgar, 2001), p. 89.

285 Jones, op.cit., p 89.

286 Hantrais, 2007 op.cit. , p.17.

and opinions. The Social Protection committee was indeed the product of soft governance notion as promotion of exchange of info and good practice between the member states and Commission was aimed at. Being an advisory committee, it was not subject of a tangible debate.

Second amendment in decision-making procedures which had a direct affect on the social policy was the extension of Qualified Majority Voting as to replace unanimity. Yet, neither the provisions on social policy nor ones on social protection were endowed with amendments by the Treaty of Nice. Coming into Nice Summit, 75 treaty provisions were subject to unanimity voting, much of them being in the areas of social policy, especially the social security matters alongside the institutional balance, common foreign and security policy, police and judicial cooperation and taxation<sup>287</sup>. Qualified Majority Voting was undoubtedly the issue in which the Conference invested most time and effort throughout the IGC preceding Nice Summit as both Commission and French Presidency tried hard for persuading other member states to extend QMV to a range of issue areas including social policy and social protection. No matter how hard the Commission and France pressed and a majority of the member states endorsed a major shift to QMV before the EU-27 in which unanimity would be a big obstacle before decision-making, the issues were politically sensitive matters. Thus, very limited achievement was recorded by the Treaty of Nice as regards this issue.

The French presidency was keen to promote a radical social agenda in the IGC via proposing a blanket extension of QMV to social and cohesion policies. However, some member states had already their red-lines concerning such a shift in decision-making procedures. Before the IGC, Blair made it clear that the UK would not accept the extension of QMV to include social policy (especially social protection) and taxation<sup>288</sup>. This stance on the part of the UK was not surprising at all given the fact that the QMV had always constituted “a bogey word” for successive UK conservative groups and New Labour government<sup>289</sup>. Due to the adamant opposition of the UK government, and the support of Spain, Ireland and Denmark at the backstage<sup>290</sup>, much time and energy was spent trying to redraft the legal bases of social policy (Article 137) and social security coordination (Article 42) in the Nice Treaty to allow some extension of QMV for less sensitive aspects.

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287 A. Yataganas, “The Treaty of Nice the Sharing of Power and the Institutional balance in the European Union-A Continental Perspective” in Harvard Jean Monnet Working Paper, 01/01, 01.08.2007. Available at: [www.jeanmonnetprogram.org/papers/01/010101.html](http://www.jeanmonnetprogram.org/papers/01/010101.html) - 9k.

288 Beach, op.cit. , p.300.

289 David Galloway, *The Treaty of Nice and Beyond: Realities and Illusions of Power in the EU*, (Sheffield: Sheffield Academic Press, 2001), pp. 94-95.

290 Andreas Maurer, “Qualified Majority Voting: A Joint but Failed Search for Efficiency Building” in *The Treaty of Nice: Actor Preferences, Bargaining and Institutional Choice*, Finn Laursen (ed), (Leiden: Martinus Nijhoff Publishers, 2006), p.443.

The contentions surrounded Article 42, providing a treaty basis for coordination of social security schemes to the extent necessary to ensure freedom of movement of workers. The importance of such coordination appears if it is considered that some minimum measures are necessary to ensure in a single market that the workers moving from one member state to the other would not be disadvantaged in terms of social security entitlements. Although the wording of the Article made no stipulations for harmonization of different social security systems in the Union, even coordination was unacceptable for the UK government backed by the European business, especially the British Business CBI<sup>291</sup>. Thus, although almost all member states declared that they were open to contemplating a solution which would allow QMV for limited coordination, the UK delegation was uneasy about accepting the issue which had been declared as its red-line.

As for Article 137 which provided the legal basis for Community action in the field of social policy, it did not undergo a substantial amendment, either. Rather, the amendments to this Article were “cosmetic and more worthy of note for what they did not accomplish than for what they did”<sup>292</sup>. The proposals for shifting the issues which had been covered by unanimity to QMV encountered strong resistance primarily by the UK. Thus, a general move to QMV for the adoption of minimum requirements, although favored by many member states proved impossible and thus the more sensitive policy areas remained subject to unanimity<sup>293</sup>. Nevertheless, Article’s wording was changed for an easier read. Modernization of social protection systems was added to Article 137 (1) as a new area of activity in which cooperation between member states was to be encouraged. Further a new Article 137(2) was added stipulating that a Council decision by unanimity would render QMV and co-decision procedure to be applicable to protection of workers where their employment contract is terminated, to the representation and collective defense of the interests of workers and employers and to the employment conditions for third-country nationals. However, a further safeguard was inserted into the Treaty envisaging that the provision shall not affect the rights of member states to define the fundamental principles of their social security systems. All in all, the amendments barely marked an advance as regards social policy given that the provisions of the Nice Treaty did not go further than reaffirming the status quo, with most sensitive issues of social policy still either remained under unanimity voting or excluded.

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291 Galloway, op.cit. .p.103.

292 Haris Kountouros, “The Treaty of Nice and Social Policy: The Amendments to Article 137” in *The Treaty of Nice and Beyond: Enlargement and Constitutional Reform* Mads Andenas & John Usher (eds), (Oxford: Hart Publishing, 2003), p.275.

293 Kim Feus, “Substantive Amendments-The Treaty of Nice Explained” in *The Treaty of Nice explained* Martyn Bond & Kim Feus (eds), (London: Federal Trust, 2001), p.34.

Another issue area on which contentions arose regarding the shift for QMV was cohesion (Article 161). In this area Spain backed by Greece and Portugal sought and indeed won national vetoes over the provision of subsidies to poorer countries which would continue to 2007. To be more precise, cohesion policy was moved to QMV but only after the financial perspective (2007-2013) -which would be decided by unanimity- started to be applicable from January 1 2007<sup>294</sup>. So, this delay in the shift to QMV was sustained again by the government of Spain who traditionally led more supranational regulation and Community commitment regarding the cohesion policy. National interest paramount, this time Spain did just the opposite.

#### 4.7.1.b. Charter of Fundamental Rights of the European Union:

Cologne European Council (June 1999) set up an ad hoc body to be known as Convention to draw up a draft Charter of Fundamental Rights, triggered by an initiative of the German Presidency. The Convention composing of representatives from governments of member states, MEPs, members from national parliaments, Commission plus observers from ECJ and Council of Europe was engaged in drawing up the Charter of Fundamental Rights of the European Union in parallel with the IGC. Charter was finalized during the Nice Summit and it was proclaimed as a political document without being given legal status by being incorporated or alluded to in the Nice Treaty. To be sure, the status and the content of the Charter was highly controversial during the deliberations and the final form and status of Charter came up as a result of intense contentions among the coalition of nationals and neoliberals on the one hand and those embracing supranationalism and more regulation as regards the social dimension of the Union on the other hand.

The status issue concerned whether it should be adopted as a declaration in the form of “a showcase of existing rights” or whether it should be incorporated into the Treaty to enshrine new, legally enforceable rights<sup>295</sup>. As for the content one set of specific concerns on the part of both proponents and opponents of the Charter was whether social and economic rights should be included alongside the civil and political rights. The second related issue was if the social and economic rights were to be included in the Charter whether they would be justiciable, meaning capable to be decided by the courts. So, a cleavage came up between coalition of governments of Ireland, Denmark which had concerns of a European Union on

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294 Felipe Basabe Llorens, “The Need to Sell a Victory” in *The Treaty of Nice: Actor Preferences, Bargaining and Institutional Choice*, Finn Laursen (ed), (Leiden: Martinus Nijhoff Publishers, 2006) p.272

295 Jones, op.cit.,p.87

the way to federalism in company with the Blair government that was under the pressure of UK conservatives and Eurosceptics versus consecutive socialist governments of D'Alema and Amato in Italy, social democratic government in Germany under the Chancellorship of Gerhard Schröder and socialist Jospin government in France. Other member states supported the Charter to varying degrees, though not opposing it at all. The first group was made up of Eurosceptics and neoliberals who were joined by the business and employers groups led by the CBI in the UK<sup>296</sup>.

Irish and Danish delegations were concerned with the reason of existence of the Charter claiming that the EU should not have such a Charter as it was not a state and the constitutions of the member states already had the rights enshrined. Apart from such broad notions questioning the existence of Charter, another concern on the part of the opponents of the Charter was that the European Court of Justice would employ it as a source of inspiration in its ruling to enhance the competence of the Community in very sensitive social policy issues as it had done so via “playing a socially activist role throughout the past decades”<sup>297</sup>. British representative Lord Goldsmith acted as the spokesman of the opponents. On the other side, Portugal, Spain, Germany, Italy and France had expressed their support for a legally binding Charter, encompassing the economic and social rights<sup>298</sup>. Further, European Parliament and the Commission were endorsing the adoption of the Charter not only for per se, but also considering that the rejection of the Charter would be regarded as a major setback for the European social dimension and “the confirmation of the primacy of...deregulated markets”<sup>299</sup>. The spokesman of this group was the French representative Guy Braibant, who strongly underlined the significance of economic and social rights. Hence, as a result of the heated discussions among the two groups; the compromise solution was found in a solemn declaration of the Charter as largely codification of existing rights.

The Charter contained a preamble and 54 articles divided into seven chapters, these being Dignity, Freedoms, Equality, Solidarity, Citizens Rights, Justice and General Provisions. One vital implication of the Charter was the signification of “indivisibility” of the fundamental rights via insertion of economic and social rights, the so called “second generation rights” alongside the civil and political rights; the first generation rights. So, the

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296 See CBI submission to the Convention on the Charter-12 April 2000, CHARTE 4226/00 CONTRIB 101. A lso See Scott, p.411.

297 Bruno de Witte, “The Trajectory of Fundamental Social rights in the European Union” in *Social Rights in Europe* Grainne de Burca & Bruno de Witte (eds), (Oxford: Oxford University Press, 2005), p.155.

298 Christina Pineda Polo & Monica Den Boer, “The Charter of Fundamental Rights: Novel Method on the Way to the Nice Treaty” in *The Treaty of Nice: Actor Preferences, Bargaining and Institutional Choice*, Finn Laursen (ed), (Leiden: Martinus Nijhoff Publishers, 2006), pp.512-513.

299 Brian Bercusson, “Social and labour Rights under the EU Constitution” in *Social Rights in Europe* Grainne de Burca & Bruno de Witte (eds), (Oxford: Oxford University Press, 2005), p.171.

Charter happened to transcend the dichotomy between social and economic rights on the one hand and civil and political rights on the other<sup>300</sup>. The problematic nature of the second generation rights stem from the fact that “they are believed to necessitate more extensive and immediate expenditure and intervention than traditional civil and political liberties”<sup>301</sup>. Further according to this view, as explicated by Lord Goldsmith a friend of Blair and his Personal Representative to the Convention for the European Charter of Fundamental Rights, the economic and social rights require judgments to be made regarding the allocation of “scarce” national resources, and thus which are “decisions (to be) made by governments not judges”<sup>302</sup>.

As a result of deliberations between the recalcitrant UK delegation backed by the business, and the pro-regulation governments and trade unions backed by the Commission and the EP at the back stage, the Chapter IV included a long list of social rights. Yet, many of them were “opaquely drafted” and avoided creating new rights and competences to the existing ones<sup>303</sup>. As a means to overcome the intransigence of the UK concerning the social and economic rights, special wording and techniques had to be devised. One among these was the distinction between “rights” and “principles”. The socio-economic rights deemed sensitive by the UK government were named as principles explicitly (e.g. equality between men and women). Also the expression “Union recognizes and respects...” was employed a number of times to appease the UK to denote that the Union would not intervene in such cases. To denote, Article 34 of the Charter stipulated that “the Union recognizes and respects the entitlement to social security benefits and social services...” Lord Goldsmith, the UK representative, was interpreting this Article as not entrusting the Union with any kind of competence for legislating or imposing any requirement on member states. Rather, he was saying “it means that the Union should not violate the principle of entitlement to benefits and social services by a side-wind in some other legislation within its competence”<sup>304</sup>. Lastly, some more Articles in the Charter were stipulating that the rights in concern, conferred by the Charter would only take effect “in accordance with national law and practices”. To illustrate; workers` right to information and consultation(Article 27 ), right of collective bargaining and action (Article 28) , protection in the event of unjustified dismissal (Article

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300 Bruno de Witte, *op.cit.*,p.159

301 Grainne de Burca, “ The Future of Social Rights Protection in Europe” in *Social Rights in Europe* Grainne de Burca & Bruno de Witte (eds), (Oxford: Oxford University Press, 2005)p.3.

302 Lord Goldsmith, “A Charter of Rights, Freedoms and Principles” in *The Treaty of Nice and Beyond: Enlargement and Constitutional Reform* Mads Andenas & John Usher (eds), (Oxford: Hart Publishing, 2003), p. 392.

303 Sionaidh Douglas Scott, “The EU Charter of Rights: A Poor Attempt to Strengthen Democracy and Citizenship?” in *The Treaty of Nice and Beyond: Enlargement and Constitutional Reform* Mads Andenas & John Usher (eds), (Oxford: Hart Publishing, 2003), 400.

304 Goldsmith, *op.cit.*, 395.

30), social security (Article 34). The Commentary of the mentioned articles was making the limitation of the Charter more obvious as denoting that the national legislation in those mentioned areas would not be intervened by the Charter. Lastly, there was the Article 52 which applied to all rights, including the ones in Chapter IV, indicating that the Community acts related with the Charter would be subject to the principle of proportionality.

All in all, though not being incorporated into the Treaty and not enhancing the competence of the Union in new areas, the Charter was symbolically important as providing a catalogue of rights comprising also the economic and social rights, thus signifying the indivisible nature of the fundamental rights. Further, as to some commentators the Charter's contents can easily be absorbed into the existing category of general principles of Community law which were legally binding and enforceable by the ECJ and constitute a source of inspiration for the Court which would come to mean a substantial advance as for the Community social dimension<sup>305</sup>. But, there were also many commentators asserting that the status of the Charter at Nice caused not only legal uncertainty but also political confusion as Commission and Parliament regarded it as binding upon them, while the Council did not<sup>306</sup>. Nevertheless, setting the post-Nice mandate in European Council's Declaration on the Future of the Union, the leaders called for the convening of a new IGC in 2004 and several preparatory steps preceding the IGC 2004, one being "the status of the Charter of Fundamental Rights of the European Union proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne". Overall, despite not dealing primarily with deepening of economic governance or the social governance, preoccupied by the institutional concerns, Nice Summit once again became the arena of contentions between the two regulating forces in Europe as the status and content of the Charter led to tensions among the projects. While the victory belonged to the project of neoliberalism as regards the status of the Charter; concerning the content that comprised economic and social rights and rights of citizens rather than only workers; the victory belonged to the regulated capitalism project. However, given the dominance of the moderate left within the regulated capitalism project the social rights were opaquely drafted and avoided creating new rights and competences. In the end, the Treaty refrained from bringing much innovation in the *acquis* on social policy too and the unequal relationship between economic governance and social governance continued.

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305 De Witte, *op.cit.*, p.161.

306 Andrew Duff, "Constitution or Bust: The Laeken Declaration" in *The Treaty of Nice explained* (eds) Martyn Bond & Kim Feus, (London: Federal Trust, 2001), p.233.



#### 4.7.2 Period between Lisbon I and Lisbon II (2000-2005)

##### 4.7.2.a. Lisbon European Council and Social Policy Agenda for 2000-2005

Assuming Presidency in the first half of the 2000, Portugal had the tough task of initiating the IGC 2000. Yet, the Portuguese Presidency, led by the Social Democrat Prime Minister Antonio Guterres also set out to stimulate a broader debate on the substance and process of European economic and social policy-making in the context of globalization. Embarking on a campaign to sponsor an academic and political debate, the Presidency called for a series of papers; both from academicians and EU institutions on a wide range of subjects encompassing information society, economic governance, employment policy, European Social Model, reform of the welfare state, modernization of public services, social inclusion...etc<sup>307</sup>. Under the direction of the Portuguese Presidency, a Special European Council was held in March 2000, in Lisbon with the aim of “deepening dialogue among the member states on the themes of employment, economic relations and social cohesion” as part of a knowledge-based economy<sup>308</sup>. The Lisbon Strategy that came out of the Lisbon Summit, not only was setting the objective before the EU economy to be the most competitive, knowledge based economy in the world by 2010, but it was also signifying new substantial changes for the relationship of economic and social governance in Europe and also for the social policy-making of the Union both in substance and procedures.

Lisbon European Council of 2000 stood as a symbol of change in European social policy. Contrary to the previous moments of integration which focused on deepening of economic governance at the expense of social governance that was isolated from the European level, Lisbon strategy handled both of them and rested on both economic and social pillars. The Lisbon strategy was determined in a context of majority of social democrat governments and the changing vision of regulated capitalism project with the predominance of moderate Left within it. Indeed, Pochet argues that the Lisbon vision was the result of an alignment between the moderate subgroups of neoliberalism and regulated capitalism projects; the ones embracing the endogenous growth theory and the moderate left respectively<sup>309</sup>. In the words of Maria Rogrigues, the former Portuguese Minister of Social Affairs; “The Lisbon strategy launched by the European Council...was precisely the elaboration of a European comprehensive strategy for economic and social development in the face of new challenges: globalization, ageing, faster technological change. Its central idea is to recognize that, in

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307 “The Lisbon European Council and the Future of European Economic Governance”, ECSA Review (13: 3), Summer 2000.

308 Portuguese Presidency of the Council of the European Union 2000.

309 Pochet, op.cit., 2006, pp.86-7

order to sustain the European social model, we need to renew it as well as renew its economic basis by focusing on knowledge and innovation”<sup>310</sup>. Hence, the alignment of the moderate groups of the two historically contending projects was sustained via focusing on investment in a knowledge-based society.

Against this background, Lisbon’s economic pillar bore the objective of preparing the ground for the transition to a competitive, dynamic, knowledge-based economy with the emphasis on adaptability in the face of constant changes in the information society. As for the social pillar; it aimed at modernizing the European social model by investing in human resources and combating social exclusion. According to the social pillar of Lisbon, the Member States were expected to invest in education and training, and to conduct an active policy for employment so as to making it easier to move to a knowledge economy. Thus, as consolidating the EES and Luxembourg Process, Lisbon was aiming at sustaining a European form of a trend towards 'active' welfare policies<sup>311</sup>. Indeed, Lisbon European Council emphasized the need for creating an "active welfare state" via a "positive strategy combining competitiveness with social cohesion".<sup>312</sup> Departing from this trend, a closer look into the elements of the new social policy setting adopted at the Lisbon reveals that the consensus of moderate subgroups of project of neoliberalism and regulated capitalism which was embodied in Blair's Third Way was prevalent in the Lisbon stipulations for the social policy. So, the self-transformation of the regulated capitalism project became even more evident at the Lisbon Summit. Rhodes argues that the content of Lisbon social policy as a culmination of the quest for a new line of Union social policy “reconciling flexibility and security in labour markets, and solidarity and sustainability in broader welfare programs”<sup>313</sup>. Hence, despite shifting the European policy agenda and debate towards a greater concern with growth, employment and social integration<sup>314</sup>, Lisbon strategy was also proposing Blairite panacea to European social problems; these being adaptability, training...and so on.

Apart from its content, indicating a middle way between traditional social democratic and neoliberal concerns, Lisbon Strategy was also signifying and consolidating another middle path as regards EU social policy-making instruments which had always been an overriding concern on the part of the member states. While pro-regulationist group, encompassing the proponents of regulated capitalism as well as supranationalists had been endorsing traditional

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310 M.J. Rodrigues, *The New Knowledge Economy in Europe. A Strategy for International Competitiveness and Social Cohesion*, (Cheltenham: Edward Elgar Publishing, 2002).

311 Daniel Wincott, “Beyond Social Regulation? Social Policy at Lisbon: New Instruments or a New Agenda?” in *Public Administration* 81.p. 550.

312 Lisbon European Council

313 Martin Rhodes, “Lisbon: Europe's 'Maastricht for Welfare?'”, *ECSA Review* (13: 3), Summer 2000.

314 K Dyson, *The politics of the euro-zone: stability or breakdown*, (Oxford: Oxford University Press, 2000), p. 15.

Community regulation through harmonization of directives, the pro-deregulationist group, composing of neoliberals besides the intergovernmentalists, had rather been arguing for a loose Community coordination of the social policies or even for the necessity of Commission staying aloof from the social policy issues, which should be governed at national domain. Hence, for overcoming the contentions of these irreconcilable groups, Lisbon Summit came up with the “Open Method of Coordination (OMC)”<sup>315</sup> as the “Third Way” for Community level social policy making. Indeed, the introduction of OMC can be heralded as the achievement and creativity of the moderate left for sustaining some degree of social convergence at the European level.

OMC was marking the transformation of the procedures introduced by the European Employment Strategy; comprising of European guidelines, NAPs, peer review, and peer pressure, into a policy-making tool of its own right<sup>316</sup>. Limited to EU employment policy as a result of the Amsterdam Treaty, at the Lisbon European Council the OMC was officialized, revised, and generalized as to cover social policy. “The OMC constitutes ‘a method of policy delivery’, ‘an instrument improving EU governance’ in politically tricky areas where supranational competence and harmonization have not been forthcoming”<sup>317</sup>. In the words of Wincott, the Open Method has “its core domain ... in precisely those areas of employment and social policy in which the European Union has not traditionally proven able to legislate under the Community method”<sup>318</sup>. The moderate left prioritized OMC as a means of creating a social Europe by adding a genuine European dimension to the social policy-making. The European dimension was enshrined via the adoption of joint European indicators, even amounting to 150 for the EES at one stage, and via standardisation of the national data put forward in the national action plans of the member states<sup>319</sup>. While the “poverty and social exclusion OMC” constituted the priority of moderate left, they were also approved by both

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315 As defined by the European Council, OMC was comprising 1 “fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms; 2 establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice; 3 translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences; 4 periodic monitoring, evaluation and peer review organized as mutual learning processes” (European Council 2000: §37). For a detailed analysis of OMC, see Lars Magnusson, Philippe Pochet and Jonathan Zeitlin, *The open method of co-ordination in action : the European employment and social inclusion strategies*, (Brussels: Peter Lang, 2005) and Stijn Smismans, “How to Be Fundamental with Soft Procedures? *The Open Method of Coordination and Fundamental Social Rights*” in *Social Rights in Europe* Grainne de Burca & Bruno de Witte (eds), (Oxford: Oxford University Press, 2005), pp. 217-241.

316 D. Hodson and Maher, “The open method as a new mode of governance: The case of soft economic policy co-ordination” in *Journal of Common Market Studies*, 39, 2001, p. 724).

317 Peo Hansen, op.cit., p.33.

318 Daniel Wincott, “The Idea of the European Social Model: Limits and Paradoxes of Europeanization”, in *The Politics of Europeanization* Featherstone, Kevin and Claudio M. Radaelli (eds.), (Oxford: Oxford University Press 2003), p.296.

319 Pochet, op.cit., 2006, p.87

subgroups within the project of neoliberalism. On the other hand, pensions OMC created grave contentions among the mainstream economists and traditional Keynesian left<sup>320</sup>.

The objectives and the procedures to realize them as came out of the Lisbon Summit framed also the Social Policy Agenda for 2000-2005. That is to say, the actions planned for 2000-2005 focused on the three topics central to the Lisbon strategy: “realizing Europe's full employment potential by creating more and better jobs with emphasis on mobility”; “modernizing social protection systems to promote social inclusion”; and “the promotion of social dialogue”. Further, the statements of Commission's communication on the social policy agenda were denoting the vision of Community as an amalgamation of the moderate left and supporters of endogenous growth theory, as it was straightforwardly asserted that the agenda was not seeking to harmonize social policies and did not require additional funding, rather it was aiming to increase coordination of social policies in the context of the internal market and the single currency while seeking the redirection of public expenditure to improve efficiency and investment in people<sup>321</sup>.

As mentioned above, Lisbon strategy and the following Social Policy Agenda for 2000-2005 signified a very important opening for the social policy making at the European level. Attempting to end the isolation of the social governance via handling economic governance and social governance together and presenting OMC as a means to achieve social convergence in Europe, Lisbon strategy became the child of an alignment of the moderate subgroups of the projects of neoliberalism and regulated capitalism. Another issue to be noted is the ongoing transformation of the regulated capitalism project with the ever-increasing predominance of moderate left within the regulated capitalism project and the marginalization of the traditional Keynesian left<sup>322</sup>.

#### 4.7.2.b. Broken alliance among moderates: post Lisbon developments

Only two years have passed since the Lisbon European Council when the Barcelona European Council dated 2002 denoted “the start of a new neoliberal offensive” following the end of the majority of social democrat governments<sup>323</sup>. In accounting for the evident signals of this new period underwritten by the “neoliberal offensive”, Philippe Pochet highlights the broken alliance among the moderate subgroups of the projects of neoliberalism and regulated

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<sup>320</sup> Ibid., p.87

<sup>321</sup> See Hantrais, *op.cit.*, p.20

<sup>322</sup> Pochet, 2006, *op.cit.*, pp.87-8.

<sup>323</sup> Ibid.

capitalism as a result of changing vision of the supporters of endogenous growth theory within the context of new neoliberal assault.

In the five-year period between the Lisbon strategy and its revision in 2005, dubbed as Lisbon II, it is possible to discern a number of issues that changed substantially. First among them is the content of the reports issued concerning the economic-social issues and the discourse on the OMC. “An Agenda for a Growing Europe” (also called the Sapir Report)<sup>324</sup> is a report issued on July 2003 and dwells on the economy of the EU focusing especially on the lack of growth in Europe. The report bears importance as it signified the changing vision since Lisbon. Proposing the organization of European budget around factors of competitiveness and growth and totally ignoring the social dimension, the Report denotes the radicalization of also the moderate group within the project of neoliberalism<sup>325</sup>. The Second Report drafted under the direction of André Sapir, the second Sapir Report or the “Globalization and the Reform of European Social Models”<sup>326</sup> was putting forward this change of vision more evidently. The report in concern put forward that “there is no such thing as a European social model, but only national social models and the Union must therefore concentrate mainly on structural reforms and on completing the internal market, especially in services”<sup>327</sup>. Apart from the Sapir Reports that ignored and even denied the European social dimension, there were also the reports devoted to the arguments that the OMC was ineffectual<sup>328</sup>.

The neoliberal offensive brought two further changes in the Lisbon vision which is of utmost importance for the European social governance. One of them is the relinquishing of the European dimension for social policy making. To be more precise, via curtailing the number of European indicators to give way to maximum flexibility, the member states started to be encouraged to include only the issues of greatest concern to them, thus the comparability of the national plans were to be decreased as the standardized national plans were supplanted

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324 André Sapir et.al., “An Agenda for a Growing Europe. Making the EU Economic System Deliver” Report of an Independent High-Level Study Group established at the initiative of the President of the European Commission, Brussels, July 2003. Available at: [http://www.europa.eu.int/comm/dgs/policy\\_advisers/experts\\_groups/ps2/docs/agenda\\_en.pdf](http://www.europa.eu.int/comm/dgs/policy_advisers/experts_groups/ps2/docs/agenda_en.pdf).

325 See Pochet, 2006, op.cit., pp.88-9.

326 André Sapir, “Globalisation and the Reform of European Social Models” background document for presentation at the initiative of the President of the European Commission, Brussels, July 2003. Available at: [http://www.bruegel.org/Repositories/Documents/publications/working\\_papers/EN\\_SapirPaper080905.pdf](http://www.bruegel.org/Repositories/Documents/publications/working_papers/EN_SapirPaper080905.pdf).

327 Pochet, 2006, op.cit., p.89.

328 See Wim Kok, “Jobs, Jobs, Jobs. Creating more employment in Europe. Report of the Employment Taskforce chaired by Wim Kok, Brussels, 2003, Available at: [http://ec.europa.eu/employment\\_social/employment\\_strategy/pdf/etf\\_en.pdf](http://ec.europa.eu/employment_social/employment_strategy/pdf/etf_en.pdf) and Wim Kok Facing the challenge. The Lisbon strategy for growth and employment Report from the High Level Group chaired by Wim Kok, Office for Official Publications of the European Communities, 2004, Available at: [http://ec.europa.eu/growthandjobs/pdf/kok\\_report\\_en.pdf](http://ec.europa.eu/growthandjobs/pdf/kok_report_en.pdf)

by the new ones<sup>329</sup>. Apart from attempts to sideline the OMC, the second change to Lisbon vision was the prioritization of competitiveness over knowledge-based society that constituted the mainstay of the Lisbon strategy. To denote this line of thinking Pochet quotes an internal Commission memorandum: “Ensuring a sufficient level of investment in developing (education, training), preserving (health) and activating (child and elderly care, employment measures) human capital” and argues that the social policies were commenced to be seen solely as a tool used in achieving economic performance; namely healthcare not as a basic right yet as a tool to produce healthy workers; investments in young people not as for equal opportunities but for reinforcing human capital and so on<sup>330</sup>.

The review of Lisbon strategy was realized in such an environment in the spring of 2005 with the publication of the Commission report: “Working together for growth and more jobs: A new start for the Lisbon strategy”, adopted by the Brussels Summit of the European Council. Within the context of the review of Lisbon, what was expected from Lisbon II was an analysis of the role of macroeconomic policymaking in achieving the Lisbon targets as “stimulating growth and employment” was stated as a goal of macroeconomic policies besides emphases on “preserving macro economic stability” and “contribution of fiscal policy to growth and employment” (reducing the tax burden on labour, raising public investment) in the Lisbon strategy<sup>331</sup>. Yet, such expectations were frustrated by Lisbon II which solely emphasized the continued pursuit of “stability oriented and sound macroeconomic policies”. Hence, lacking a discussion of monetary policy, SGP or fiscal policies, Lisbon II was far from exposing the failure of Community in attaining the Lisbon goals of growth and employment or revitalizing the strategy. Hence, the mentioned Commission report was also a continuation of the line of thinking that became prevalent since the Barcelona European Council of 2002.

All in all, the post-Lisbon period witnessed a new neoliberal offensive which also radicalized the moderate subgroup of supporters of endogenous growth theory. This radicalization led to the collapse of the alliance that was established among the advocates of endogenous growth theory and the moderate left which culminated in the Lisbon strategy. As a result of the changing vision of the moderate segments of the neoliberal project, the positive developments sustained by the Lisbon strategy for the European social governance were started to be downsized. The OMC started to be discredited with the claims that it had been an ineffectual policy making tool and there started attempts to abandon the European level

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329 See Pochet, 2006, *op.cit.*, pp.90-91.

330 *Ibid.* p.92.

331 See Andrew Watt, “European Economic Trends and Economic Policy” in *Ibid.*, pp.69-70.

for social governance and relocking it to the domestic level. The competitiveness started to be prioritized at the expense of knowledge-based society and the social policies were again relegated to its secondary and subservient position as a tool used in achieving economic performance.

#### **4.8. Conclusion**

In the analysis conducted in this chapter regarding the historical evolution of the EU social policy, the time period in concern was almost half-a century of European integration starting from the Treaty establishing the European Communities in 1957 to the review of Lisbon strategy in 2005. The assessment of European dimension of social policy was realized via considering the division of labor at the beginnings of the European integration which envisaged the economic governance to be handled at the European level and the social governance to be kept as the domestic welfare states. Arguing that this division of labor worked well up until late 1970s within the period of *Trente Glorieuses*, the embedded liberalism of the post-war period; it was asserted that the secondary and peripheral position of the social policy at European level did not constitute a problem. Excluding the tensions created by the French socialists who argued for more regulation at the European level out of national interests; there were no contentions similar to the principles of Polanyian double movement at the TEC negotiations due to the general notion of keeping the social policy-making mandate within the welfare states.

With the changing global conditions, signified by the collapse of Bretton Woods and the subsequent oil crises that gave way to “subservient liberalism” to supplant the “embedded liberalism”, there were parallel developments in the European polity. One was the stalled European integration project and the second was the attack on the Keynesian economic policies. For the resurgence of the integration and the European economy, the internal market project was of vital importance. However, the neoliberal imperative and the widening asymmetry between European economic governance and social governance started to be questioned. In this environment, the vision of regulated capitalism project was shaped as a countermovement to the neoliberal offensive as the Polanyian double movement envisaged . Against the project of neoliberalism that envisaged decreased state intervention to the free market economy, monetarist economic policy, privatization of state-owned industries, opposition to trade unions and a reduction of the size of the welfare state; the aim of the regulated capitalism of the 1980s was set as re-embedding the European market into a supranational framework of social regulation by using the European Community to maintain

the welfare states. In accounting for the tensions between the projects of neoliberalism and regulated capitalism in the 1980s, Streeck and Hooghe and Marks' models are of utmost importance. Their models envisaged struggles between two sets of broad projects and/or actors that embrace conflicting visions about the organization of the economy and the European social dimension. First is the free trade Project/project of neoliberalism which work for ensuring self-regulating markets without any restrictions similar to "principle of economic liberalism" (double movement). Second is the supranational welfare state formation project/ project of regulated capitalism that work to deepen Community competence as regards social policy as in the case of Polanyi's principle of social protectionism to compensate for the loss of power of welfare states. Adopting the terminology of Hooghe and Marks, the developments between 1970s up until the Maastricht Treaty were analyzed as to discern the contentions cleavages between the projects of neoliberalism and regulated capitalism.

The Maastricht Treaty intensified the neoliberal offensive and led to further disembedding of economic governance. Being the grandest deepening in the history of EU with the launch of EMU project and its attendant criteria of convergence, the neoliberalism was set in stone with the TEU. The initial compromise on the division of labor between the Community and domestic level thus faltered as the EMU created direct constraints on the social policy making at the domestic level. In this context, the European social governance that came out of TEU was not only secondary but also subservient to the integration at the economic domain. It was further argued that; Delors' vision that imprinted the regulated capitalism in the 1980s was defeated by the constitutional revision at Maastricht. The project of regulated capitalism which ceased to propose social policy arrangements in the form of a protective countermovement to the project of neoliberalism changed substantially in its vision and strategy. The vision of regulated capitalism project of the 1980s which aimed at re-embedding the European market into a supranational framework of social regulation by using the European Community to maintain the welfare states was supplanted by a new vision that envisaged tempering of adverse affects of the ever-deepening economic and monetary integration rather than arguing for radical changes within the established economic governance of the Community. In this self-transformation of the regulated capitalism project, the strengthening of the "moderate Left" at the expense of the "traditional Keynesian Left" was vital. Rather than proposing fundamental changes in the European economic governance architecture and working to secure the welfare states as the traditional Keynesian left envisaged, the moderate left embraced the necessity of supply-side policies in the form of investment to human capital and worked for sustaining beter functioning of the market. The



vision and strategy of regulated capitalism project altered substantially as the “moderate Left” stamped its vision on the regulated capitalism gradually in the post-Maastricht period.

The self-transformation in the vision of regulated capitalism became more apparent with the Treaty of Amsterdam as the moderate left gained upperhand within the project. Forging an alliance with the moderate subgroup of project of neoliberalism, the moderate left determined the content of the social policies against the traditional Keynesian left. This vision was evident in the employment title as any harmonization in the field was precluded through the new procedure of guidelines and the principal aim of the employment strategy was set as promotion of a skilled, trained and adaptable workforce and labour markets responsive to economic change. Overall, despite bearing importance for triggering the European Employment Strategy and the open method of cooperation, the social policy provisions and the employment title of Amsterdam no way redressed the imbalance between the neoliberal economic governance that deepened through the adoption of Stability Pact. The secondary and even subservient social dimension of the Union was maintained in the Treaty of Amsterdam.

The Nice Treaty, which was preoccupied with institutional changes in the face of enlargement, made no substantial change in the content of social policy provisions. Solely, the Charter of Fundamental Rights of the European Union that was declared as a solemn declaration had symbolic importance for European social governance. However, there were also positive developments for the European social governance in the new millennium. The Lisbon strategy is vital as an attempt to end the isolation of social governance and the disembedded nature of economic governance via shifting the European policy agenda and debate towards a greater concern with growth, employment and social integration. Further, OMC was presented by Lisbon strategy as a means to achieve social convergence in Europe as to overcome the strict harmonization-loose Community coordination dichotomy. Lisbon strategy became the child of an alliance between the moderate subgroups of the projects of neoliberalism and regulated capitalism; the ones embracing the endogeneous growth theory and the moderate left. Both arguing for the necessity of renewing the economic basis of the European social model by focusing on knowledge and innovation to sustain it in the age of globalization, the alliance of the moderate groups of the two historically contending projects was sustained via focusing on investment in a knowledge-based society. Lisbon strategy was also important as displaying the self-transformation of the regulated capitalism project with the predominance of moderate left and with the increasing radicalization of the traditional Keynesian left within the project.

The Lisbon vision that brought European level aspirations for social policy alongside national level and a renewed interest on social policy matters started to be challenged as early as 2002. Within the context of a new neoliberal offensive following the end of the majority of social democrat governments; the positive developments sustained by the Lisbon strategy for the European social governance were started to be downsized. The OMC was discredited as an ineffectual policy making tool alongside the abandonment of the European level for social governance and relocking it to the domestic level. Further, competitiveness was prioritized at the expense of knowledge-based society that constituted the mainstay of the Lisbon strategy and the social policies were again relegated to its secondary and subservient position as a tool used in achieving economic performance. Hence, the post-Lisbon period witnessed a new neoliberal offensive which radicalized the moderate subgroup of neoliberalism; the supporters of endogenous growth theory and led to the collapse of the alliance that was established among the advocates of endogenous growth theory and the moderate left. The review of Lisbon strategy was realized in such an environment in the spring of 2005 with the publication of the Commission report: "Working together for growth and more jobs: A new start for the Lisbon strategy". Lisbon II fell short of revitalizing the Lisbon strategy as it solely emphasized the continued pursuit of "stability oriented and sound macroeconomic policies" rather than the original Lisbon targets of "stimulating growth and employment. It was the background when the referenda on the Constitutional Treaty were realized in spring 2005.

## **CHAPTER V**

### **THE FAILED CONSTITUTIONAL TREATY AND THE LISBON TREATY: SOCIAL CREDENTIALS**

The Treaty establishing a Constitution for Europe (TCE) is now being recorded in the annals of European construction as an unimplemented international treaty intended to create a constitution for the European Union. Signed in Rome by representatives of the member states on 29 October 2004, the Treaty went through a long process of ratification and was rejected by the French and Dutch voters in the referenda. Upon the failure of the Treaty to win popular support in these two constituent countries of the EU, some other countries postponed or suspended their ratification procedures, and the European Council had to call a "period of reflection". Had it been ratified by all Member States, the Treaty would have come into force on 1 November 2006. The European Council meeting of June 2007 decided to start negotiations on a "Reform Treaty" as to replace the Constitutional Treaty and end the impasse. Given the unanimity clause for its ratification, although 18 member states ratified the Constitutional Treaty by June 2007, the Treaty was deemed to be failed. "Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community" was signed on December 13, 2007 as the intended Reform Treaty, carrying out not all but most of the reforms previously proposed in the failed Constitutional Treaty.

In this chapter, the TCE and Lisbon Treaty will be analyzed in terms of their social content. After outlining the background of the Constitutional Treaty it will be argued that the failed TCE was very contentious in terms of its social credentials and that the Treaty aroused deep suspicions concerning its effects among differing European points of view. Within this context the allegations that the proposed Constitutional Treaty was a sort of neoliberal Washington consensus for Europe and the fears that it may force upon European countries a neo-liberal economic framework which would threaten the European social model will be displayed. Then, the concerns to the contrary which were especially raised by the governments of the UK and Central and Eastern European countries as well as the business circles will also be put forward in the chapter. Hence the arguments of the mentioned parties that the Constitutional text was very threatening as the Charter incorporated to it enshrined

social rights such as the rights of workers' unions, and the right to strike and that it would unduly interfere in the domestic affairs will be displayed.

In the second part of the chapter, the Lisbon Treaty will be in focus. It will be argued that the social content of the Lisbon Treaty is not very different from the original Constitutional Treaty, despite some symbolic changes in the wording and scope. However, the changes between the Treaties as to the social policy will also be displayed. All in all, this chapter will argue that the failed TCE and the Lisbon Treaty retain the ongoing imbalance between the neoliberal economic governance and the social dimension of the Union. It will be argued that the texts of the Treaties are by no means adequate to redress this imbalance.

Before passing on the Treaties, to have a general look at the composition of the European Council during the second half of the first decade of millennium, it is apparent that the majority of the social democrat/socialist parties/coalitions in the European governments since the deliberations of the Amsterdam Treaty was lost. However, investigating the course of events and deliberations, it is also seen that the British Third Way is still very influential in moulding the content and scope of the Treaties alongside the neoliberal views.

### **5.1. Treaty establishing a Constitution for Europe (TCE)**

The already reigning debates concerning the future of Europe after the end of Cold War and in the era of globalization was spurred by the speech of the then German Foreign Minister Joschka Fischer entitled “Quo Vadis Europe?”<sup>332</sup> in Berlin Humboldt University in 2000, calling for a debate on the finality of European integration. The need to review the EU's constitutional framework, particularly in light of the impending accession of ten new member states in 2004, was highlighted in a declaration annexed to the Treaty of Nice. The agreements at Nice paved the way for further enlargement of the Union by reforming voting procedures, but the treaty was widely regarded as not having gone far enough. Departing from the declaration annexed to the Treaty of Nice, the Laeken Declaration of December 2001 committed the EU to improving democracy, transparency and efficiency, and set out the process by which a constitution could be established. Containing a number of statements such as “The Union needs to become more democratic, more transparent and more efficient” and that it should resolve “three basic challenges” which are “how to bring citizens...closer to the European design”, “how to organize...the European political area in an enlarged Union

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332 See <http://www.rewi.hu-berlin.de/WHI/english/fce/fcespez2/fischerengl.htm> for the full text of the “Quo Vadis Europe?” speech of Joschka Fischer on 12 May 2000.

and how to develop the Union into a stabilizing factor and a model in the new, multipolar world”.

The Laeken Declaration took the decision for the Convention on the Future of Europe as a preliminary for the IGC negotiations. The European Convention was established, presided over by former French President Valéry Giscard d'Estaing, and was given the task of consulting as widely as possible across Europe with the aim of producing a first draft of the Constitution. Then, the draft Constitution that came along with the Convention was submitted to the Thessaloniki European Council of June 2003 for negotiations and finally at the Brussels European Council in June 2004 political agreement on the Constitution; consolidating and simplifying the existing treaties and other legal texts, was declared. Having been agreed by heads of government from the 25 member states, the Constitutional Treaty was signed at a ceremony in Rome on October 2004. However, “the ink used by the Heads of State and Government to sign the draft Constitutional Treaty was barely dry”<sup>333</sup> when no camps were founded and the no votes came out of the ballot boxes in France and the Netherlands later on. In the next section, the would-be implications of the TCE on European social policy will be investigated. In doing so, the alterations brought by the TCE to the employment and social policies will be analyzed in comparison with the Nice Treaty. Meanwhile special attention will be devoted to the provisions and status of the Charter.

#### 5.1.1 Convention and elaboration of the social provisions of TCE: the contentions

The European Convention represents a novel method of preparing for the upcoming Intergovernmental Conference (IGC) that was tasked with the revision of the European Treaties. Instituted in February 2002, Convention was to draw up a “Constitutional Treaty”. The genuine business of the Convention was conducted by the working groups. Initially six thematic working groups were established: Group I “subsidiarity”, Group II “integration of the Charter of Fundamental Rights”, Group III “consequences of explicitly recognizing the legal personality of the Union”, Group IV “role of national parliaments”, Group V “complementary competences” and Group VI “economic governance”. These first six groups, each consisting of thirty or so members began work in June. Four more working groups were set up on the area of freedom, security and justice, on “simplification of legislative procedures and instruments”, on “external Action of the EU, and on defense. ETUC raised proposals for the establishment of working groups on “majority voting, social

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333 Christophe Degryse and Philippe Pochet “Foreword” in *Social Developments in the European Union* Christophe Degryse and Philippe Pochet (eds), 2005, (Brussels: ETUI,2006) p.13.

dimension of the Union and regions”<sup>334</sup>. None of these Working Groups which would exclusively work on the social content of the Treaty was set up upon this request.

The preliminary draft of the Treaty came up on October 2002. Discussions on the European social model were not absent from these initial debates on the Treaty. To denote, ETUC came up with a resolution to the Convention which argued for the necessity of incorporation of the Charter into the Treaty, insertion of full employment to the aims of Union, extension of QMV in social affairs, enhancement of social dialogue and an increased role for Europe in the face of globalization and enhanced powers for the European Parliament and social partners<sup>335</sup>. The representative of the business side, UNICE argued on the other hand for extension of QMV in the fields other than the social policy matters and taxation. Concerning the Charter of Fundamental Rights, UNICE argued that it should not be made a legally binding instrument as far as it bears aspects that is outside of Community competence<sup>336</sup>.

By the time of the appearance of the first draft of the Treaty, a specific working group on social affairs was still absent and the Working Group on Economic Governance was not very eager to discuss the amendments to Articles 2 and 3 on the European Union’s values and objectives. This situation was threatening the social values and objectives to be forgiven in the values and objectives in face of the economic and monetary objectives<sup>337</sup>. Despite the requests from the Convention members, Working Group on Economic Governance refrained from making assessments for the European social dimension. That is why; several members of the Convention submitted a motion that called for a debate and establishment of a specific Working Group on this topic<sup>338</sup> which eventually led for the establishment of the Working Group on Social Europe. So, the group founded at the session on 5-6 December, only after the conclusions reached by the Group on Economic Governance, being mandated for the determination of the values and objectives to be inserted to the Constitutional Treaty to properly address the social dimension. Giubboni defines the mandate of the Working Group as “remedying an embarrassing formal gap” between the economic governance and social governance in the Union<sup>339</sup>.

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334 ETUC, “A Constitutional Treaty for a Social and Citizen’s Europe”. ETUC Contribution to the European Convention, adopted by the ETUC Executive Committee, Brussels, 9-10 October 2002, p.10.

335 Ibid.

336 UNICE, “Les entreprises européennes pour une Europe forte et compétitive”, Pres Release, October 2002

337 Cecile Barbier, “The European Convention: establishment and initial results in the field of economic and social policy” in *Social Developments in the European Union 2002* Christophe Degryse and Philippe Pochet (eds), (Brussels: ETUI, 2003), p.26.

338 European Convention, “Motions to the Praesidium according to Article 2 and Article 15 of the Working Methods”, submitted by Ms. Anne Van Lancker, Mr. Johannes Voggenhuber and Ms. Sylvia-Yvonne Kaufmann, CONV 300/02, 28 October 2002.

339 Giubboni, op.cit., p. 129

The Social Europe Group, which was the largest group composing of 70 participants<sup>340</sup>, published its report on February 4. The agenda of the group was really loaded with the definition of social values, inclusion of social objectives in the Union's general objectives, definition of Union competence in social field, the definition of Open Method of Coordination and its insertion in the Treaty, extension of QMV in the social field and role of social partners. The discussions within the Working Group on Social Europe "brought to light the conflicts which regularly surface whenever the social dimension is on the agenda" says Barbier<sup>341</sup>. Discussions regarding the extension of QMV in social affairs and the incorporation of the OMC into the Treaty were just examples of contentious issues. As for the extension of QMV to cover social affairs, not only UNICE but also the representative of British government Peter Hain made strong objections as the pivotal actors of neoliberal project. On the incorporation of OMC into the Treaty, again UNICE-British government alliance opposed to making the Charter an integral part of the Constitutional Treaty.

The report of the Working Group on Social Europe<sup>342</sup> was moulded by contentions within the group and was published on February 4. To raise some vital conclusions of the group; the report recommended that the social values of the Union to be enshrined in Article 2 of the Treaty shall include social justice, solidarity and equality<sup>343</sup>. Inclusion of social objectives in Article 3 also consumed great energy and efforts of the group and a long list of social objectives that was recommended to be inserted came about: "full employment", "social justice and social peace", "economic, social and territorial cohesion", "social market economy", "sustainable development", "quality of work", "lifelong learning", "social inclusion", "a high degree of social protection and efficient and high quality social services" being the most prominent ones in the list<sup>344</sup>. As can be seen, the objectives in the list were a mixture of different perspectives within the group. While insertion of full employment was an achievement on the part of proponents of the traditional Keynesian left within regulated capitalism project, "lifelong learning" was a term continuously emphasized by the moderate left. As for the term "social market economy", a very dubious concept at best, it gave way to intense debates in the ratification process and was criticized heavily by the left. Concerning the competences of the Union within social field, "The Group considered that, in general, the range of competences available at European level is adequate. However, better clarification of the scope of European action could be envisaged which in turn might make it easier to

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340 Barbier, *op.cit.* (2002), p.41.

341 *Ibid.*, p.52.

342 For a detailed analysis of the Report see Barbier, *op.cit.*, (2003), pp.40-52.

343 European Convention "Final Report of the Working Group XI "Social Europe", CONV 516/1/03, February 2003.

344 CONV 516/1/03 REV 1:12

extend the use of QMV”<sup>345</sup>. In the related issue area of extension of QMV, the Group’s recommendation was shaped by a minority (British- Latvian-Portuguese representatives’ coalition) that pressed for the non-extension of the QMV in social affairs<sup>346</sup>.

Another draft of the Constitutional Treaty came up by the end of May 2003, considering some of the recommendations put forward by the Social Europe Working Group. Preceding the June session, several social policy demands were collected in a text being signed by a majority of Social Europe Working Group as well as a considerable number of Convention members plus the chairman of the European Parliament’s Committee on Social Affairs. These demands were mostly reiterating the conclusions and recommendations of the Social Europe Working Group<sup>347</sup>. Some other social aspects of the Treaty were further altered on June and July respectively. Meanwhile, it is important to note the pressure of UK for the insertion of a clause to the Treaty with the aim of narrowing down the scope of the Charter. The sentence added was to secure that “the Charter would only be interpreted by the courts of the Union and the Member states with due regard to explanations formulated under the authority of the Praesidium of the Convention which drafted the Charter”<sup>348</sup>.

#### 5.1.2. The IGCs and the signature of TCE

After the draft Treaty establishing a Constitution for Europe was submitted to the Italian Presidency, the Intergovernmental Conference (IGC) was officially launched on October 4. The text which was signed by a great majority of the Convention members, called the IGC to finalize the Treaty. Institutional issues dominated the negotiations in the IGC and the European Council collapsed in December 2003 with the following explication: “The European Council noted that it was not possible for the Intergovernmental Conference to reach an overall agreement on a draft constitutional treaty at this stage. The Irish presidency was requested on the basis of consultations to make an assessment of the prospect for progress and to report to the European Council in March<sup>349</sup>”. The impasse at the IGC was largely due to the discussions about the qualified majority voting. The final text of the Constitutional Treaty was then agreed upon at the summit meeting on 18–19 June 2004 under the presidency of Bertie Ahern during the Irish Presidency of European Council. The

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345 European Convention “Final Report of the Working Group XI “Social Europe”, CONV 516/1/03, February 2003, p.17.

346 Barbier, 2003, op.cit., p.50.

347 European Convention, “Text forwarded by Ms Anne Van Lancker and other members of Convention working group on “Social Europe”, CONV 780/03, 3 June 2003.

348 European Convention, “Draft Constitution, Volume II – Draft Revised text of Parts Two, Three and Four”, CONV 802/03, 12 June 2003

349 Barbier, “From the Convention to the IGC: a constitutional treaty in search of authors” in *Social Developments in the European Union 2003* Christophe Degryse and Philipee Pochet (eds), (Brussels: ETUI, 2004), p. 145.



final text of the European Constitution largely mirrored the conclusions of the Convention with its “prudent and cautious” approach to social issues<sup>350</sup>.

Then came the signature of the Constitutional Treaty on 29 October 2004 in Rome. Following its official signing, TCE entered into its most challenging phase: the very uncertain and risk-ridden ratification process. Had it been ratified by all Member States, the Treaty would have come into force on 1 November 2006, yet as explained in detail before, the Treaty failed to win popular support in France and the Netherlands first and then the ratification process was postponed in several countries. All in all, the no votes hampered the Constitutional Treaty and the Treaty was eventually shelved. Before passing on to the account of post-referenda period, the provisions of TCE regarding the economic, social governance of the EU will be investigated.

#### 5.1.3 TCE: The relationship between economic governance and social governance

The unequal relationship between economic and social governance that has been a continuous and unchallenged feature of European integration was also retained by the provisions of the Treaty establishing a Constitution for Europe. The European economic governance that has evolved as a result of the continuous deepening in integration history, was consolidated and in essence constitutionalized via the provisions of the TCE. As for the social governance, the secondary and subservient position of social governance with regards to economic governance could not be overcome via the provisions of the TCE. To be more precise, though there were some changes in the TCE as regards the social provisions, they were far from launching a full-fledged social dimension alongside the EMU, as the changes were most in form rather than substance and pertained to the sections on objectives and values of Union rather than the ones on the policies and competences.

##### 5.1.3.a. Economic governance in the TCE

The TCE did not bring alterations on the Maastricht architecture that has characterized the European economic governance with the following main constituent elements: the euro as the single currency; the European Central Bank (ECB) as the primary institution, the Stability and Growth Pact (SGP) as the legal mechanism alongside a single monetary policy and exchange rate policy. Keeping the economic governance architecture intact, TCE

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<sup>350</sup> Giubboni, op.cit, p. 129.

maintained the guiding principles of economic governance as “stable prices, sound public finances and monetary conditions and a stable balance of payments”.

The independence of ECB was consolidated in the TCE and the monetary policy was retained as an area of exclusive competence. Further, inclusion of “price stability” as one of the goals of the European Union was also noteworthy. In the words of Watt, “this substantially bolsters the position of the ECB, as it now also has its primary goal, namely stable prices, as part of its secondary goal; promoting the goals of the Union”<sup>351</sup>. Hence, the price stability was institutionalized as an EU objective (Article I-3(3)).

The rules of Stability and Growth Pact are also maintained in the TCE through a declaration annexed to the Treaty. The reference values that were introduced before were also maintained in the TCE. However, there have been intense debates on the SGP and the Pact was reformed to be more flexible in some areas, particularly the cases of excessive deficit.

#### 5.1.3.b. Social governance in the TCE:

Looking at the social credentials of the TCE the Treaty had a stronger social rhetoric with changes in objectives and values of the Union; however the changes in the social competences and policies of the Union are negligible in achieving progress regarding social Europe. Jo Shaw comments on the social credentials of TCE by saying that “there is a stronger social thread...in the Constitutional Treaty which offers a more coherent framework for policy-making in the future”<sup>352</sup>. Against this background, TCE introduces promotion of “social market economy” and “full employment” as the objectives of the Union. The counterparts of these terms that are employed in the still valid EC Treaty are “open market economy” and “high level of employment”. Further, TCE includes promotion of social justice and solidarity between generations and fight against social exclusion and discrimination as the other objectives of the Union (Art. I-3 Union’s objectives). A similar social contribution of TCE in terms of the values of the Union is the Article I-2 which stipulates “gender equality” as a value of the Union.

Apart from this progress of the European social policy in terms of values and objectives of the Union, there are some further alterations brought about by the TCE. Yet the innovatory character of the Treaty in values and objectives can not be found on competences and

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<sup>351</sup> Watt, *op.cit.*, p.71.

<sup>352</sup> Jo Shaw, “The Social Implications and Possibilities of the Constitutional Treaty”, Report prepared for Social Platform NGO Training Seminar, Brussels, 16 February 2005, p.2.

policies sections of the Treaty<sup>353</sup>. Article I-14 of TCE recognizes social policy as a “shared competence” rather than only a “complementary competence” which enhances the possibility for the Union to take initiatives to ensure the coordination of social policies in Member States (Art. I-14 2/b). Article III-210 details the issue stating that “the Union shall support and complement the activities of the Member States” in the areas of workers’ health and safety; working conditions; social security and social protection of workers; protection of terminated workers; consultation of workers; collective defense of the interests of workers and employers; employment conditions for third-country nationals; integration of excluded persons into the labour market; equality between men and women; combating social exclusion; and the modernization of protection systems. On the other hand, the right to strike and the use of lockout, the right to pay and the right of association were retained outside of Union competence in the TCE. Concerning the exclusion of these rights, Giubboni asserts that “the sharp contradiction of excluding issues...central to the very fabric of fundamental social rights as recognized in Part II of the TCE (the Charter) is...left unresolved”<sup>354</sup>. Thus, the Union would continue to lack powers that are vital for protection of the labour even in the existence of TCE.

Concerning the qualified majority voting in the social policy field, the TCE keeps the content of the old Article 137 of the EC Treaty and does not extend the policy areas with qualified majority voting. The only exception to this is the extension of the QMV to social services for migrant workers who move around the European Union. This provision makes it possible for migrant workers and their families to have all periods of work taken into account in order to receive the allocations they are entitled to. However, the efficiency of this provision is decreased at the same time by a safeguard provision for the member states which enables the member states to ask the Commission to draw up a new project or “appeal” to the European Council if they deem a respective measure to be contrary to “important aspects of (their) social security system”(Article III-136).

A novelty introduced by the Constitutional Treaty is the new “social clause” which acts as a horizontal clause for policy provision (Article III-117). To be more precise, the Treaty obliges the Union to take into account social requirements while defining and implementing the Union policies and actions. In a similar vein, social protection and the fight against social exclusion find their places in the TCE as issues to be considered in Union policies, alongside the education, training and health.

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<sup>353</sup> Ibid. p.6

<sup>354</sup> Giubboni, *op.cit.*, p. 133

Concerning the social dialogue, one of the essential aspects of the European social policy, “Article I-48 formally constitutionalizes the social dialogue between employer and the employee representatives -already firmly rooted in the EC Treaty- and adds a reference to tripartite summit”<sup>355</sup>. As for the Open Method of Coordination, Article III-213 constitutionalizes the Open Method of Coordination as stipulating that the Commission shall encourage cooperation between the member states and facilitate the coordination of their action. In a similar vein as for the very contentious social security provisions, TCE recognizes the Commission’s specific role in promoting the coordination of Member States’ social security provisions through the initiatives that have already been implemented under the Open-Method of Coordination. Yet, as already mentioned TCE abstains from altering the unanimity requirement in the Council of Ministers in the social security field as well as concerning the protection of workers where their employment contract is terminated. Regarding the field of employment, TCE reiterates all the previous elements, enshrined in the Nice Treaty. Upon these old elements, the Constitutional Treaty requires consistency between the broad economic policy guidelines and the employment guidelines in the spirit of Lisbon. Further, it opens the consultative process of the Employment Committee to management and labour.

With the TCE, the Charter of Fundamental Rights was inserted into the text of the Treaty. As mentioned in the previous chapter while examining the provisions of Charter as accepted in the Nice Summit, the main issue to be borne in mind is that the rights contained therein are not solely confined to the workers, but covers everyone and the rights comprise both the political and social-economic rights. The main question that came into the agenda considering the inclusion of Charter into the TCE is whether the Charter can extend the current Union competences. European Court of Justice has avoided making any direct use of the Charter till now, although there are recurrent suggestions of Advocates General in this direction<sup>356</sup>. So, it is important whether the Charter’s inclusion into the TCE would change the attitude of the Court to make direct use of the Charter. The Commission’s response to this question is Article II-111-2: “This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers or tasks defined in the other parts of the Constitution”. So, the Charter itself would not create novel competences for the Union which would authorize the development of new legislation concerning human rights. However, this would not prevent the possibility of Charter having a considerable indirect impact on the definition of

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<sup>355</sup> Shaw, *op.cit.*, p.10.

<sup>356</sup> Giubboni, *op.cit.*, p.140.

competences as well as the manner of implementation and interpretation of the competences in concern. Hence, as De Schutter asserts, if the Constitution was ratified it still remained to be seen how the social rights enshrined in the Charter “might help nudge the development of legislation in the direction of an EU social and human rights policy”<sup>357</sup>.

In assessing the social credentials of the TCE, there appear two stances put forward by the two subgroups of the regulated capitalism; the moderate left and the traditional Keynesian left respectively. The split between these subgroups of the regulated capitalism widened with the TCE and the post-rejection of the Treaty. The moderate left, presided by ETUC supported the Constitutional Treaty and after its failure in the referenda they worked for revitalizing Lisbon strategy in the TCE or the Treaty to supplant the TCE. Giubboni’s assertion that the Constitutional Treaty is “...stamped by a cautious consolidation of the *acquis* gradually built up in the social field from the Treaty of Amsterdam onwards”<sup>358</sup> reflects the line of thought embraced by the moderate left in assessing the TCE. They believe that, despite not bringing very challenging innovations to the current social governance of the Union, TCE aimed at reinforcing the social dimension of the Union at least in rhetoric. Via enshrining social objectives and values for the Union and inserting the Charter as a catalogue of rights for all persons rather than solely economic actors, the TCE had “innovations which effects to a normative and symbolic rebalancing of the EU’s overall mission and thus might prompt a gradual redress of the asymmetry between the economic and social dimensions of the integration process”<sup>359</sup>. Of course, this is not to deny that the social dimension of the Union was still conspicuously thin compared with the economic governance at the provisions of the TCE. Hence, the criticisms raised by the traditional Keynesian left, displayed in the first chapter of this work, towards the TCE’s allegedly neoliberal character shall also be borne in mind.

The advocates of the latter vision, who were not content with the social character of the Treaty, claimed that the Constitutional text would solely reinforce liberalism at the EU-level by creating an ultra-free market economy within the EU and eroding the social rights altogether. Likewise, another argument of this group was that the European competence in social policy was not promoted by the Treaty with market-enhancing and market-supporting mechanisms, although they were urgently needed at the face of globalization and the ever-deepening economic and monetary union and the increasing competition. To quote a

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357O. De Schutter and P. Nihoul (eds), « Une Constitution pour l’Europe. Reflexions sur les transformations du droit de l’Union européenne », cited in Christophe Degryse and Philippe Pochet, *Social Developments in the European Union*, 2004 (Brussels: ETUI, 2005), p. 161.

358 Giubboni, *op.cit.*, p. 129

359 Ferrara, *op.cit.*, p. 243.

proponent of this line of thought, Alain Lecourieux, a French no-camp activist state that out of a count of the words in the French text; “in 202 pages of the main text, there are 176 instances of the word “bank” and its derivatives; the word “market” appears 88 times, “trade” 38, “competition” 29, “capital” 23 and “commodity” 11 times”<sup>360</sup> and with its current form “..it reads (more) like a cut-and-paste copy of the statutes of the IMF and World Trade Organization”<sup>361</sup>. Further, arguments centered on Article I-3 which stresses the importance of “free and undistorted” competition in “a highly competitive social market economy”. The left arguments went on as the meaning of “social” was vacated even in the first page of the Treaty as there was just emphasis on the unobstructed competition and market. Another similar argument concerned the Charter of Fundamental Rights incorporated to the Treaty, which had been viewed by moderate left as the major achievement for the deepening of “regulated capitalism project” and which had been also viewed as the most threatening part by the neoliberals. As for the Charter, the critical left camp argued that the scope of application of the Charter was extremely limited and Member States would solely be bound by it “only when they were implementing Union law”, so that it was not a big achievement on the part of social Europe either.

#### 5.1.4. Post rejection and the alternative options for the Constitutional question

After the Treaty establishing a Constitution for Europe was rejected at the French and Dutch referenda respectively, alternative proposals came up for solving the constitutional question. The first option that came up immediately after the no votes, was a cooling-off period that would allow the dust to settle. However, as the length and scope of the constitutional question expanded new alternatives were put forward. The Austrian Presidency’s stance was among these alternatives. The Austrian plan was to keep the Treaty intact and to convince or urge the opponents to accept the TCE. However, given the negative attitude, it was not very plausible to expect this alternative to give fruits. Finally, the proposal of Chirac addressed to Merkel was found realistic and supportable. The proposal was to “cut the Treaty piece by piece” and submit it to approval that way rather than under the label of Constitutional Treaty. Further Italian Prime Minister Romano Prodi proposed that any novel initiative concerning the Treaty would be realized only after the French presidential election in 2007<sup>362</sup>.

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<sup>360</sup> Alain Lecourieux quoted in Bernard Cassen, “Europe: no is not a disaster”, *Le Monde diplomatique* (English Edition) April 2005, 01.06.2007. <<http://mondediplo.com/2005/04/12no>>

<sup>361</sup> Ibid.

<sup>362</sup> Romano Prodi, “Prodi comments on future of treaty”, Mainichi Japan, 13 June 2006. Available at: <http://mdn.mainichi-msn.co.jp/international/news/20060613p2g00m0in030000c.html>

The Amato Group which was led by Giuliano Amato, former Italian Prime Minister and the Vice-President of the European Convention was the major group of high-level European politicians, who unofficially worked for rewriting the Constitutional Treaty after the failed referenda. The proposals of the Amato Group formed the main basis for the Reform Treaty that replaced the Constitutional Treaty. Before passing on the Amato Group, two other amendment proposals that are related with the social issues are worth to be laid down here. The first of these proposals is the one suggested by the liberal democrat MEP Andrew Duff that called for the Charter to be excluded from the treaty and made into a separate annex, with a separate revision procedure<sup>363</sup>. Another proposal came from Segolene Royal, the socialist candidate for the French Presidential elections. Royal was suggesting a new social contract to be inserted into the Constitutional Treaty to appease the no voters who rejected the Treaty out of fears that the Constitution casted a neoliberal economic model into stone. In the end, while Duff's proposal was reflected in the new text that replaced the TCE, Royal's proposal was ignored.

Amato Group which was also backed by the Barosso Commission with two representatives from the Commission (Danuta Hubner- regional policy and Margot Wallstrom-communications) started working on TCE by September 2006 and released their proposed concise text on June 2007. The text proposed by the Amato Group was made up of two major texts and protocols instead of a single document. The proposed Treaty composed of a text that would replace the Treaty on the European Union (TEU), a second text that would replace the Treaty establishing the European Community (TEC); and several protocols. The proposed text to replace the TEU corresponded to Parts I and IV of the European Constitution while the text to replace TEC contained most of the provisions of Part III of TCE. Further the Amato Group's proposed Treaty was also including a *Protocol on the Functioning of the Union*, containing institutional changes and a *Protocol on the Development of the Union's Policies in Order to Meet the Challenges of the XXI Century*. Part II of the TCE namely the Charter is excluded from the Treaty in Amato Group's proposed Treaty. In other words, the Charter of Fundamental Rights was reduced to one legally binding article rather than a part of the Treaty. The sized down text of the Amato Group was also excluding the constitutional elements of the Treaty, including the article on the EU's symbols.

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363 Andrew Duff, Plan "B: How to Rescue the European Constitution", Notre Europe, 01.11.2006, p.6. Available at: [http://www.notre-europe.eu/uploads/tx\\_publication/Etud52-en\\_01.pdf](http://www.notre-europe.eu/uploads/tx_publication/Etud52-en_01.pdf)

## 5.2. The Reform Treaty: The Treaty of Lisbon

### 5.2.1. The background of the Reform Treaty

Germany assumed the EU Presidency by January 2007 and took the most significant initiative to reach a consensus on the fate of the European Constitution after the failed referenda. After declaring the period of reflection over, by March 2007 Germany led the member states to adopt the “*Declaration on the occasion of the 50th anniversary of the signature of the Treaty of Rome*” (Berlin Declaration) in the 50<sup>th</sup> anniversary of the Treaties of Rome. The Declaration put forward an expectation that it would be a new impetus to overcome the constitutional impasse. The declaration reads as: “...That is why today, 50 years after the signing of the Treaties of Rome, we are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009”<sup>364</sup>. Hence; despite not mentioning the Treaty by name, the Declaration was referring to it via providing “a “renewed common basis” before 2009 elections; so it was asserting the intention of member states to agree on a new treaty that would be ratified before mid-2009.

As has been explicated, Amato Group had already started working on the rewriting of the Constitutional Treaty before the Berlin Declaration. After the submission of the Amato proposal on June 4, European Council meeting took place in Brussels between June 21-23 that agreed for accepting a new Treaty as to replace the rejected Constitution. The fate of the Constitutional Treaty was thus moulded in the June Summit that took place under the chairmanship of Chancellor Angela Merkel. While member states raised their opinions and concerns as regards the future of the Constitutional Treaty, European institutions also displayed their viewpoints. Among them, the stance of European Parliament- one of the staunchest actors of regulated capitalism project- is worth of noting. MEPs threatened to vote down the intended new Treaty if it failed to keep the amendments that were introduced by the TCE. To illustrate, socialist MEP and chairman of the constitutional affairs committee Jo Leinen said:” We do not understand why some governments want to take some aspects out. It will not work, we will not accept it...We want a Treaty plus, not a Treaty minus. We will not accept an agreement at any price”<sup>365</sup>. In the end, out of Brussels European Council

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364 “Declaration on the Occasion of the Fiftieth Anniversary of the Signature of the Treaties of Rome”, Informal Meeting of the Heads of State and Government, Council of the European Union, 25 March 2007, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/misc/93282.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/93282.pdf) .

365 “Parliament pushes for ‘Treaty plus’” 7 June 2007 Updated: Monday 18 June 2007. Available at: <http://www.euractiv.com/en/future-eu/parliament-pushes-treaty-plus/article-164376>



meeting a compromise agreement on a mandate for an IGC came<sup>366</sup>. It was decided in line with the Amato Group's proposal to name the new Treaty "Reform Treaty" rather than Constitution; to have a Treaty that was not just one text and to take out the constitutional elements and the Charter from the Treaty. Further, the pressures from the United Kingdom and Poland led to the decision for addition of a protocol to the Charter which was intended to clarify that it would not extend the rights of the courts to overturn domestic law in Britain or Poland.

#### 5.2.1.a. July and October IGCs

After the June European Council which set the mandate for the Intergovernmental Conference, the IGC was initiated under the Presidency of Portugal on 23 July 2007. Portuguese Presidency presented and published a first draft of 145 pages - plus 132 pages of protocols and declarations- document entitled "Draft Treaty amending the Treaty on European Union and the Treaty establishing the European Community" on the Council of the European Union website as a starting point for the drafting process<sup>367</sup>. So, the IGC that was intended to "thrash out a final text by a summit in Lisbon in October" commenced<sup>368</sup>. In the drafting process, government representatives and legal scholars from each member state were also joined by three representatives of the European Parliament representing different political parties. Social democrat Enrique Baron Crespo, conservative Elmar Brok and liberal Andrew Duff were the three MEPs in the drafting process<sup>369</sup>.

During the drafting process, the Charter and the opt-outs from it were again high on the agenda. Alongside the UK, Poland and Ireland were eager to get opt-out of the Charter. Poland's Foreign Minister Anna Fotyga said "Poland reserved the right to join the UK in opting-out of the Charter of Fundamental Rights"<sup>370</sup>. As for Ireland, Irish plans for an opt-out were frustrated by the Irish Congress of Trade Unions (ICTU) declarations that they would campaign for a no vote in the referendum on the new EU Treaty if the government insisted

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366 "Presidency Conclusions", Brussels European Council, 21/22 June 2007, Brussels Available at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/94932.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf)

367 "Draft Reform Treaty – Projet de traité modificatif" Council of the European Union 24 July 2007. Available at: [http://www.consilium.europa.eu/cms3\\_fo/showPage.asp?id=1317](http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1317)

368 EU talks to thrash out new treaty, BBC News, 23 July 2007, Available at: <http://news.bbc.co.uk/1/hi/world/europe/6911172.stm>

369 "Parliament to give green light for IGC", 9 July 2007, updated: Friday 13 July 2007 Available at: <http://www.euractiv.com/en/future-eu/parliament-give-green-light-igc/article-165320>

370 "EU talks to thrash out new treaty", BBC News., op.cit.

on the opt-out from the EU Charter of Fundamental Rights<sup>371</sup>. In the end, Irish government retreated from the opt-out.

The Conference was closed at the Council meeting that started on October 18 under the chairmanship of Jose Socrates as the Prime Minister of Portugal, the Council President. The agreement on the Reform Treaty was secured on October 19 and the “Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community” (The Lisbon Treaty) was signed. Mid-December was set as the date to formally sign the Treaty that is designed to replace the European Constitution.

### 5.2.2 The Lisbon Treaty and social provisions

Officially signed on December 13, 2007 at a summit in Lisbon, Portugal, the Lisbon Treaty amends the existing treaties of the European Union. If successfully ratified by all European Union member states, Lisbon Treaty is expected to come into force in 2009.

Lisbon Treaty actually reintroduces most of the changes that were contained in the failed Constitutional Treaty via collecting them in the two existing treaties, the Treaty on European Union (TEU) and the Treaty Establishing the European Community (TEC). However, Lisbon Treaty renames the TEC as the Treaty on the Functioning of the European Union (TFEU). An analysis conducted for comparing the provisions of the Lisbon Treaty with the original Constitutional Treaty has found that “only 10 out of 250 proposals in the “new” treaty are different from the proposals in the original EU Constitution”, namely “...96% of the text is the same as the rejected Constitution”<sup>372</sup>. Yet, of course there are some items dropped from the text of the Treaty. First among them is the Constitution label. The Reform Treaty repeats the traditional method of Treaty change and so amends the EC and EU Treaties rather than replacing them. The new Treaty no longer mentions the symbols of the Union, like its flag and anthem. Further, there are changes related to the social issues. The term “free and undistorted competition” as the EU's objectives was taken out at France's request. French President Nicolas Sarkozy insisted that competition is not a philosophical objective, yet a means to reach the objective<sup>373</sup>. So, the new Article reads as: “The Union shall establish an internal market (~~where competition is free and undistorted~~). It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social

371 “ICTU threatens to oppose EU treaty”, 3 July 2007. Available at: <http://www.rte.ie/news/2007/0703/eu.html>

372 Open Europe, “A guide to the constitutional treaty”, London, August 2007, Available at: <http://www.openeurope.org.uk/research/guide.pdf>

373 EurActiv 27/06/07.

progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance”. The removal of “free and undistorted competition” from the objectives of the EU was a change in form, having symbolic value rather than a change in the content of the Treaty. Another amendment regards the Charter of Fundamental Rights. In Lisbon Treaty the full text of the Charter was replaced by a cross-reference with the same legal value. The issue will be analyzed in more detail below.

#### 5.2.2.a Lisbon Treaty and the Charter of Fundamental Rights

In the original Constitutional Treaty the 54-article Charter of Fundamental Rights, listing citizens' political, social and economic rights, was integrated into the text of the Treaty and was legally binding. However, the UK government later also joined by the Polish government had been very hesitant to make it legally binding. Actually at many occasions British authorities had declared and indeed promised that it would not be legally binding. To illustrate on December 2000, referring to the Charter Blair asserted that “Our case is that it should not have legal status and we do not intend it to”<sup>374</sup>. On another occasion, Peter Hain the British government’s representative to the Convention stated that “Well, in an ideal world, we would not have gone down the route of incorporating the Charter. We would have preferred it as a statement of declaratory rights<sup>375</sup>.” Further, as outlined elsewhere in this work the status of the Charter constituted the most contentious issue in the ratification process in the UK. So, the UK government continuously expressed its objections for the Charter to be legally binding over the domestic law. During the German Presidency, it was agreed on to have a reference to the Charter in the Treaty, yet also to maintain its legally binding status. This compromise solution at the background, Article 6 of the Lisbon Treaty gives the Charter legally binding status, endowing the Charter with the same status as the core Treaties. Article 6 states that: “The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties....”

Having compromised the Charter to be legally binding, the UK government and also the Polish government secured a protocol which they deem an opt-out from the Charter which would prevent the Charter from affecting domestic law. However, there are also opinions to

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374 Tony Blair quoted in *Open Europe*, op.cit., p.27.

375 Hansard, (House of Commons Daily Debates), 8 July 2003, Available at: <http://www.publications.parliament.uk/pa/cm/cmhansrd.htm>.

the contrary. To illustrate, Swedish Prime Minister Frederick Reinfeldt asserted very clearly that “It was important for the [Swedish] government to keep the Charter legally binding, which now is the case... the UK accepted this... It should be stressed that the UK was given a clarification, not an opt-out.”<sup>376</sup> Given the opposite views, it would be pertinent to look at the text of the protocol. Article 1 of the Protocol reads: I-*“The Charter does not extend the ability of the Court of Justice, or any Court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms”*. II- *In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or to the United Kingdom except in so far Poland or the United Kingdom has provided for such rights in its national law*. Further Article 2 of the Protocol 7 states that *“To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognized in the law or practices of Poland or of the United Kingdom”*<sup>377</sup>.

Whether the Protocol would protect the UK and Poland from the effects of the Charter is very dubious at best. While the UK and Polish governments argue for so, there is a majority view opposing them. To quote some; Jacques Ziller, a law professor at the European University Institute in Florence, says straightforwardly that the idea of a country opting out of the Charter is “nonsense” and would quickly be challenged in the Courts<sup>378</sup>. Another objection to the British opt-out comes from EU Commissioner Margot Wallstrom who says that “The Charter will be binding for the European institutions, and also for member states when they implement EU law, even if it does not apply to all of them<sup>379</sup>”. Thus, she emphasizes that the Charter will apply to large parts of British law. To analyze the bases of such claims, the Protocol mentions that Title IV would not create justiciable rights applicable to the United Kingdom. So, as the Protocol states that only one section can not be used to create new rights, it can be fairly understood that the other sections of the Charter will. Moreover, *“justiciable rights applicable to Poland or to the United Kingdom except in so far Poland or the United Kingdom has provided for such rights in its national law”* means that the Protocol opens the way for ECJ to “interpret the meaning of UK law in the light of the

<sup>376</sup> Frederick Reinfeldt speech in Swedish Parliament, 26 June 2007, quoted in Open Europe, op.cit., p.28.

<sup>377</sup> IGC 2007 (October 2007). Protocol (No 7) - On the Application of the Charter of Fundamental Rights to Poland and to the United Kingdom. Projet de traité modifiant le traité sur l'Union européenne et le traité instituant la Communauté européenne - Protocoles. European Union.

<sup>378</sup> Jacques Ziller quoted in European Voice, 31 May 2007.

<sup>379</sup> Margot Wallstrom quoted in “Rhetoric and Reality”, Available at: [www.democracy-international.org/fileadmin/pdfarchiv/di/2007-09-openeurope-rhetoric-reality.pdf](http://www.democracy-international.org/fileadmin/pdfarchiv/di/2007-09-openeurope-rhetoric-reality.pdf).

Charter”<sup>380</sup>. To sum up, although the British and Polish Protocols aim at providing some degree of protection against the ECJ ruling concerning Title IV, ECJ will still have more extensive new powers to review and change national laws in all countries. Even though it is not certain how ECJ would use these new powers, the historical pro-integration attitude of the Court gives a clue about the future.

### 5.2.3 Treaty of Lisbon: the way ahead

The timetable for the ratification of the Treaty of Lisbon was set at the June 2007 summit meeting. According to this timetable, the Treaty will be ratified by all member states by the end of 2008 and enter into force on January 1, 2009 before the Parliamentary elections. Having experienced the Constitutional impasse due to the referenda results, a general tendency to avoid having a referendum on the Lisbon Treaty came up among the member states. Except Ireland that is obliged to having a referendum on the Treaty, for the time being governments of most member states seem to be eager to ratify the Treaty via their parliaments. However, this is not to say that calls or considerations for having a referendum are totally absent in the member states. In the Netherlands and the United Kingdom, ratification of the Lisbon Treaty came on the agenda. Yet, the governments of both countries rejected calls for holding a referendum on the Treaty. Dutch Prime Minister Jan Peter Balkenende ruled out the referendum by saying it was unnecessary as the new EU treaty had "no constitutional aspirations".<sup>381</sup> As for the United Kingdom, Conservatives and the euro-skeptic UK Independence Party press for a referendum. However, Gordon Brown rejected such demands declaring that "the national interest is already being safeguarded "with "red line" opt-outs in key areas and that he wanted the "fullest possible Parliamentary debate" on the Treaty rather than a referendum<sup>382</sup>. The Parliaments of both the UK and the Netherlands may make a decision to hold a referendum in spite of governments' decision on the issue, but it seems not very likely given the majority of the anti-referendum parties in both Parliaments.

In Czech Republic and Denmark, it was also decided to ratify the treaty through the parliamentary route, rather than a referendum. Danish Prime Minister Anders Fogh Rasmussen declared that he would not submit the treaty to a referendum after the vote of Danish parliament against having a referendum on the Lisbon Treaty<sup>383</sup>. Likewise, the

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<sup>380</sup> Open Europe, op.cit., p.29.

<sup>381</sup> Katerina Ossanova, "Netherlands rejects EU reform treaty referendum", September 21, 2007, Available at: <http://jurist.law.pitt.edu/paperchase/2007/09/netherlands-rejects-eu-reform-treaty.php>.

<sup>382</sup> "Commons battle looms on EU treaty", BBC News, 19 October 2007, Available at: [http://news.bbc.co.uk/1/hi/uk\\_politics/7052180.stm](http://news.bbc.co.uk/1/hi/uk_politics/7052180.stm).

<sup>383</sup> "No Danish vote on Lisbon Treaty", BBC News, 11 December 2007. Available at: <http://news.bbc.co.uk/2/hi/europe/7138138.stm>.

Czech Republic voted on 30 October 2007 for the ratification of the treaty through the parliamentary route<sup>384</sup>. Lastly, on 9 January 2008 Portuguese Prime Minister José Socrates announced that the Lisbon Treaty will be ratified without referendum<sup>385</sup>.

After the signing of Treaty on December 13, The National Assembly of Hungary (Országgyűlés) ratified the Treaty of Lisbon on 17 December 2007, making Hungary the first member state ratifying the Treaty. Since then, the number of Member States that have completed ratification has risen to fifteen of the total twenty-seven; these being Austria, Bulgaria, Denmark, France, Germany, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

#### 5.2.4 Conclusion

To come out of the long impasse surrounding the Constitutional Treaty, Lisbon Treaty replaced the TCE. Despite some symbolic changes in the wording and scope, the social content of the Lisbon Treaty is not very different from the original Constitutional Treaty. The main differences between TCE and Lisbon Treaty in the social field concern the objectives of the Union and the Charter. As a result of France's insistence, the term "*free and undistorted competition*" was taken out from EU's objectives as to appease the Europeans who have concerns for the neoliberal character of the text. The removal of the term was more of a change in form, having a symbolic value rather than a change in substance. More important than this change, there is a more important alteration in the Lisbon Treaty concerning the Charter of Fundamental Rights. The Charter which constituted Part II of the TCE was replaced by a reference to the Charter in a single article in the Lisbon Treaty as a result of objections on the part of Britain and Poland. However, it is widely commented that this change does not prejudice the legally binding character of the Charter. Further "the Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom" which was added to Lisbon Treaty by the UK and Poland with the aim of preventing the full application of the Charter by the European Court of Justice in their countries is very contentious as many European jurists and technocrats questioned the legal basis for the British/Polish opt-out from the Charter of Fundamental Rights and claimed that it would not work<sup>386</sup>.

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384 "Czech lawmakers reject referendum over EU treaty", EU Business, 30 October 2007, Available at: <http://www.eubusiness.com/Institutions/1193764630.93>

385 "Portugal rules out referendum on EU Treaty", Euractiv, 10 January 2008, Available at: <http://www.euractiv.com/en/future-eu/portugal-rules-referendum-eu-treaty/article-169445>.

386 See Open Europe, "A guide to the Constitutional Treaty", August 2007, pp. 29-30. Available at: <http://www.openeurope.org.uk/research/guide.pdf>

To sum up, Lisbon Treaty retained the unequal relationship between economic and social governance that has been a continuous thread of reality throughout the European integration. Hence, to reiterate the words of Giubboni in describing the mission of TCE, the Lisbon Treaty also fell short of this mission which was “remedying an embarrassing formal gap” between the economic governance and social governance in the Union”<sup>387</sup>. This gap stood out at the Lisbon Treaty as the European economic governance that has evolved as a result of the continuous deepening in integration history, was consolidated as Lisbon provisions did not bring not bring any significant alterations on the Maastricht architecture. Likewise, social provisions of Lisbon were inadequate to overcome the unequal relationship in which the social governance had a secondary and subservient position with regard to economic governance. To be more precise, though there are some changes in the Lisbon Treaty as regards the social provisions, they were far from launching a full-fledged social dimension alongside the EMU. Because the changes were mostly in form rather than substance and pertained to the sections on objectives and values of Union rather than the ones on the policies and competences. However, acquisition of legal status of the Charter of Fundamental Rights which comprises political, social and economic rights shall be noted as a positive development for the social Europe which would be promising for the future. Hence, if ratified the Lisbon Treaty would not bring much for redressing the ongoing imbalance between the neoliberal economic governance and the social dimension of the Union although European competence in social policy were urgently needed at the face of globalization and the ever-deepening economic and monetary union.

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387 Giubboni, *op.cit.*, p.129

## **CHAPTER VI**

### **CONCLUSION**

Social policy in general and European social policy in particular have always been subject to tensions and clashes among two main ideological approaches that are evident in the market societies. Being given various names and going under some modifications in line with the dominant political and economic paradigm, the interplays between these two respective stances have moulded and determined the scope and content of the social policy arrangements. Broadly speaking, while the first of these stances is a pro-market ideology that aims at creating and extending the scope of the market, conceived as a self-regulating mechanism of resource allocation; the second is a pro-regulation ideology that aims at amelioration of the undesirable social consequences of the self-regulating market via social policy measures as a protection shield for the society and individuals alike. Departing from such arguments, the main argument of the thesis has been that the European social policy has always evolved within ideological struggles between two different notions disagreeing over Europe's direction regarding the best social-economic system applicable to Europe. Naming these contending parties as "project of neoliberalism" and "project of regulated capitalism", the evolution of European social policy has been analyzed within interplays between these contending projects in the construction of an "ever closer Union". In analyzing the historical evolution of European social dimension not only the tensions between these two broad projects, but also the intra-tensions and cleavages that emerged within these projects were investigated. It has been argued that especially since the 1990s, the cleavages among the advocates of these two projects have become more evident and there emerged two main subgroups in each of the projects. Within this new context, the advocates of project of neoliberalism was analyzed in two subgroups: the radical "mainstream economists" and the moderate "analysts of endogenous growth theory"; whereas the project of regulated capitalism was analyzed as composing of the radical "Traditional Keynesian Left" and "the moderate Left".

To better conceive the evolution of European social dimension within contentions among different visions of European social-economic governance, a theoretical analysis has been



conducted in the Chapter 3 to discern the theoretical predecessors of project of neoliberalism and project of regulated capitalism. Hence, the arguments of Friedrich von Hayek and Karl Polanyi were considered as the main sources of inspiration to the pro-market/neoliberal attitude; “project of neoliberalism” and pro-regulation ideology; “project of regulated capitalism” respectively. In doing so, the Polanyian concept of “double movement” was taken as the main conceptual framework that constituted the theoretical origins of the line of thought asserting the contentious nature of market societies. The double movement is made up conflict between two main organizing principles in society; the principle of economic liberalism that argue for the expansion of the market and principle of social protection that emerge as the protective countermovement. It is the conflict of these two main organizing principles that form the essence of the market societies and determine the social-economic policies within. Raising the question of whether it is possible to account for the evolution of European social dimension as the result of operation of a new double movement between projects of neoliberalism and the regulated capitalism as the new organizing principles of the society, the European integration history and its social dimension have been under consideration to outline the unfolding clashes between projects of neoliberalism and the regulated capitalism.

To be able to make a sound analysis of the evolution of European social policy, it is useful to look for the logic behind the European integration with regard to the economic and social governance and the division of labor as regards them between the national and European levels. On the basis of such an analysis it was found out that the history of European integration has always been conditioned by an asymmetric relationship between economic governance and social governance. While integration in economic sphere has always been the primary focus of the Community since the launch of the integration project, integration in social sphere stood only as a secondary concern. This unequal and indeed hierarchical relationship between European economic and social governance is reflected in the “separate tracks” solution at the European level which envisaged a path of continuous opening and supranational establishments for the economic governance while assuring insulation of social governance from the dynamic of economic integration and from supranational interference<sup>388</sup>. The mentioned “disembedded” nature of European economic governance and the very low profile social policy authority at the European level was not initially deemed a problem because the responsibility for social governance was deliberately maintained at the domestic level within the welfare states to preserve welfare states as the sole arbiter of social security and solidarity provision and to retain the comprehensive social protection schemes,

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388 Ferrera, *op.cit.*, p.2

high labor standards and full employment objectives intact. Hence, “the constitutional asymmetry”<sup>389</sup> of economic and social governance within the European polity stemmed from an initial division of labour within the Community confining social governance to domestic level while elevating economic governance to European level.

Against this background the evolution of European social policy was investigated in the thesis via focusing on:

- the unfolding clashes between projects of neoliberalism and the regulated capitalism;
- the self-transformation of the projects within the course of integration and
- the relationship between the economic and social governance.

The major findings of the thesis that came out of the analysis of European integration history with an eye on the mentioned points are given below:

The content and the provisions of the Treaty establishing the European Community were shaped by the above-mentioned consensus on the division of labor between the Community and the welfare states concerning the economic and social governance. So, as a result of the division of labor between the Community and the member states; the social governance was relegated to the secondary position at the European level and the foundations of European social governance were laid as follows: the primary responsibility for social governance was maintained at the domestic welfare states while the European level arrangements in the sphere of social policy was devised as to compose almost no genuine capacity of the Community to interfere in the social issues. Thus, at the negotiations of TEC, a double movement among the principles of economic liberalism and principle of social protection did not come into being at the European level. Although the “principle of economic liberalism” (of double movement) was prominent at the Community level aiming for the expansion of the market, a genuine protective countermovement or the principle of social protection did not emerge as the social governance was deliberately being kept at the domestic level. As argued in section 4.1., at the TEC negotiations the only party that argued for more regulation at the European level was French socialists who pressed for social policy harmonization at the European level with considerations of not losing competitive edge due to the high social charges in France. Despite some minor achievements of the French socialists to secure some of their demands bearing regulatory arrangements, the most substantial social rights, emanating from the TEC were the freedom of movement for workers and freedom of establishment which were in essence social rights guaranteed for market-making purposes rather than the social rights per se. Hence, the

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389 Scharpf, 2002, op.cit.

TEC emerged as a highly non-interventionist and market-orientated document with the common market as its central element.

In the post-TEC period, parallel with the economic boom brought by the common market the Community hosted active and interventionist social policy initiatives with an objective of ensuring a sustainable integration with social reform for spreading the fruits of growth more equitably and for preventing any social frictions. Against this background, the communiqué of the 1972 Paris Summit called for attaching more importance to action in the social field as to achievement of economic union and the Social Action Programme was introduced afterwards as an attempt to complement the comprehensive social policy-making at the national level via European level arrangements. Basing on three main principles to guide Community action in the social field: full and better employment; the improvement of living and working conditions; and greater participation in the economic and social decisions of the Community, the Social Action Programme was indeed the last evident Keynesian initiative at the European level. As argued in section 4.2; the changing global economic circumstances had paralyzed the pro-social policy attitude of the Community as the collapse of the Bretton Woods fixed exchange rates; oil shocks and the following stagflation led to a structural crisis which in turn brought a paradigm shift in Europe from “embedded liberalism” of the post-world war to a new paradigm of “subversive liberalism”. The subversive liberalism had put low inflation over growth and employment levels alongside the discourse of flexibility that replaced the prevailing interventionist policies of full employment.

In the face of “subversive liberalism” the Community responded by establishing the European Monetary System (EMS) at the European level and by recourse to classical tools of Keynesian management tools as enhancing unemployment subsidies at the domestic level. However, by the end of the decade of 1970s such initiatives proved to be useless in the face of the crisis. Perhaps, the most evident instance of such ill-designed initiatives was the French experiment which confirmed the end of the applicability of Keynesian panacea to the new economic problems. Within this framework, the old institutional compromise of the 1950s; the division of labor that envisaged economic governance and market-making to be given to the EC and social policy-making and market-correcting to stay at the member states started to be challenged in the face of changing global economic paradigm. As the post-war consensus on welfare states started to be challenged, an environment of cutting benefits and overturning trade union rights in order to encourage stronger economic growth came into existence. The new paradigm had deep implications over not only the European economic and social policy in the Single European Act, but also the strategy and vision of the project of regulated capitalism in the 1980s.

As argued in sections 4.2 and 4.3; beginning in mid-1970s and strengthening in the 1980s, there were parallel developments in the European polity. One was the stalled European integration project and the second was the attack on the Keynesian economic policies. The subversive liberalism obliged the European polity to launch a new economic project to adjust to the requirements of the new economic setting and for not being irreversibly left behind by the U.S.-Japanese competition. For the resurgence of the integration and the European economy, the internal market project acted as the major springboard. In this regard, there emerged calls for a genuine social dimension that resulted largely from concerns that a one-sided focus on market liberalization could have further negative consequences for labour and social welfare within the neoliberal economic policy context. Hence, the vision of regulated capitalism project was shaped as a countermovement to the neoliberal offensive as the Polanyian double movement envisaged. Against the project of neoliberalism that envisaged decreased state intervention to the free market economy, monetarist economic policy, privatization of state-owned industries, opposition to trade unions and a reduction of the size of the welfare state; the aim of the regulated capitalism of the 1980s was embodied as re-embedding the European market into a supranational framework of social regulation by using the European Community to maintain the welfare states.

In accounting for the tensions between the projects of neoliberalism and regulated capitalism at the negotiations of the Single European Act, it is possible to see the full applicability of the models of Streeck and Hooghe&Marks, introduced in Chapter 3, that envisaged struggles between two sets of broad projects and/or actors that embrace conflicting visions about the organization of the economy and the European social dimension. In these models, first notion (free trade project and project of neoliberalism) is prone to ensure self-regulating markets without any restrictions similar to “principle of economic liberalism” whereas the other (supranational welfare state formation project and project of regulated capitalism) works to deepen Community competence as regards social policy as in the case of “principle of social protectionism” to compensate for the loss of power of welfare states. Analyzed according to this theoretical framework it was found out that the neoliberal project emerged at the intersection point of nationalism and market liberalism, under the presidency of Thatcher and pressed for negative integration for the integration of European markets; prevention of any sort of political interference to the market’s functioning and the avoidance of any European scale regulations except those related to self-regulating markets as the competition policy. At the opposite front, the regulated capitalism was identified as emerging at the alliance of supranationalism and regulationism, headed by Delors. It was found out that the project aimed

at enhancing EU's capacity of regulation, through augmenting the areas that fall under the exclusive competence of the EU; and introduction of market-enhancing and market-supporting legislation. To put it another way, the vision of regulated capitalism at the time was directed to use the European Community to maintain the welfare states by ensuring social and redistributive policies for market-correction and cohesion alongside the promotion of market liberalization for economic growth.

Despite the attempts of the regulated capitalism project, in line with the dominant economic paradigm “subversive liberalism” and the “neoliberal economic policy convergence” that occurred across the majority of European governments, the SEA emerged as a Treaty that reflected the aims of the neoliberal project. The very modest achievements of the SEA regarding the social policy, secured by the regulated capitalism project are the new provisions for a Community cohesion policy; introduction of the social dialogue; and extension of Qualified Majority Voting into some limited areas of European social policy. However, looking in comparison with the deepening neoliberal economic governance through the establishment of internal market via wide-ranging negative integration, the social governance instituted by the SEA was feeble. In the post-SEA period which was analysed in section 4.4, the tensions and clashes between the projects of neoliberalism and regulated capitalism intensified as exemplified by the alternative proposals of the projects regarding social policy matters (proposal of the UK government versus proposals of EP and Belgian government) and the contentions over the Community Charter of the Fundamental Social Rights for Workers.

Coming to the decade of the 1990s, the unequal relationship between the European economic and social governance deteriorated as the social dimension of the Community was still locked in a market-making mode, with no market-braking policies aiming to correct market failures and a very embryonic form of market correcting policies embodied in the form of cohesion policy against an ever-deepening economic governance. The Treaty establishing the European Union that was negotiated at the Maastricht Summit of December 1991 was a milestone in the EU integration not only for establishing the European Union and signifying the grandest transfer of sovereignty to Community level with the creation of EMU, but also for solidifying the unequal relationship between European economic and social governance. In line with the dominant global neoliberal context, European “subversive liberalism” that commenced to gain ground with the SEA and its neoliberal project for internal market was casted in stone by the Maastricht Treaty and its economic and monetary union project. In the face of the huge transfer of power in the economic domain that resulted in the institutionalization of economic governance at the EU level and elimination of the monetary

sovereignty of the member states, as in the social policy domain there were only very limited progress. TEU with its main structure; European Central Bank; its attendant convergence criteria and its main principle of price stability greatly affected the design and implementation of national budgetary policies. Thus, as argued in section 4.5; the context of the social-policy making started to be significantly affected via the provisions of Maastricht due to the constraining and disciplining framework created by the EMU, founded by the TEU. The far-reaching deepening in the economic field lacked its counterpart in the social field as the social policy was almost relegated to a separate protocol, from which the UK dissociated itself. Hence, even the modest progress written into the new social policy chapter (qualified majority voting and the role of social partners) was barred by the opt-out that made the social dimension a protocol containing the Agreement of 11. Moreover, although the Social Protocol brought a shift from a unanimity to a qualified majority voting rule on a number of issues, salient policy areas of labour policy such as social security and social protection of workers were still to be decided via unanimity and certain collective labour rights composing of wages; right of association; and right to strike/lockout were explicitly excluded from the Community competence. Thus, it was concluded that the areas falling under the QMV procedure were not the ones that imposed direct fiscal burdens, rather those leading to such effect were either subject to unanimity or excluded from Community regulation.

The very modest social achievements of the TEU were again feeble in the face of EMU which constituted direct and pressing constraints on the already limited European social policy. Thus, the European social governance that came out of TEU was not only secondary but also subservient to the integration at the economic domain. It was further argued that; Delor's vision that imprinted the regulated capitalism in the 1980s was defeated by the constitutional revision at Maastricht and the project of regulated capitalism ceased to propose social policy arrangements as the protective countermovement to the very powerful project of neoliberalism that was strengthened by the neoliberal economic paradigm. In the post-Maastricht era, there arose the need for the regulated capitalism project to undergo a significant revision in its vision and strategy duly. As a result of concerns that the ever-deepening economic integration combined with the monetary integration would undermine national welfare states via enhancing the disembedded nature of market even more in the absence of a genuine European level social governance besides decreasing ability of welfare states to conduct social governance, the asymmetric relationship between economic governance and social governance became very topical. The initial compromise on the division of labor between the Community and domestic level thus faltered as the EMU created direct constraints on the social policy making at the domestic level. In the post-

Maastricht period, concerns on the direction of European integration in terms of social-economic policies intensified and the European social governance lagging behind and being constrained by the European economic governance commenced to be questioned alongside the increasing discussions on whether the EU should be more prominent in the social policy domain. It is within this context that the cleavages within the regulated capitalism increased and the vision of the regulated capitalism that was dominant in the 1980s altered gradually. The vision of regulated capitalism project of the 1980s which aimed at re-embedding the European market into a supranational framework of social regulation by using the European Community to maintain the welfare states was supplanted by a new vision that envisaged tempering of adverse affects of the ever-deepening economic and monetary integration rather than arguing for radical changes within the established economic governance of the Community. Thus to sustain better functioning of the market, the focus of the regulated capitalism project shifted towards the issues of poverty and social exclusion. In this self-transformation of the regulated capitalism project, the strengthening of “moderate Left” at the expense of the “traditional Keynesian Left” was vital. Rather than proposing fundamental changes in the European economic governance architecture and working to secure the welfare states as the traditional Keynesian left envisaged, the moderate left embraced the necessity of supply-side policies in the form of investment to human capital and worked for sustaining better functioning of the market. The vision and strategy of regulated capitalism project altered substantially as the “moderate Left” stamped its vision on the regulated capitalism gradually in the post-Maastricht period.

This change of vision in the regulated capitalism project shall be borne in mind to account for the social credentials of the Amsterdam Treaty. As argued in section 4.6., the Treaty brought an advance as regards the Community social policy, through a new employment chapter, inclusion of the Social Protocol into the main body of the Treaty and some other amendments in social provisions. However, the social content of the Treaty was flimsy compared with the expectations as there was the majority of left in governments for the first time in the history of European integration. In other words, given the dominance of left in European governments and support from NGOs, majority of European Institutions and ETUC; it was heralded that the Union social policy would be substantially strengthened with the Amsterdam Treaty to have full-fledged social and employment chapters as a counterweight to the neoliberal monetary union and the austerity measures brought by its convergence criteria. However, within the context set by the Maastricht architecture and the changing vision of regulated capitalism becoming ever more moderate by leaving the radical aspirations behind, little binding law was created at the Amsterdam.

In the Amsterdam deliberations the tensions among the projects were evident again. As a result of such contentions, the project of neoliberalism, and especially the radical “mainstream economists” within it secured the adoption of the Stability Pact which set in stone the criteria for monetary union. Thus, the attempts of both subgroups of the regulated capitalism; the traditional Keynesian left and the moderate left to alter the Stability Pact were frustrated. The most substantial achievement of the regulated capitalism project in the negotiations of Amsterdam came up as the new title on employment. However, the fractions within the regulated capitalism project clashed over the substance of the title leading to struggles between a traditional socialist vision of a regulatory Europe, pivoted by the French Prime Minister Lionel Jospin; the traditional Keynesian Left and the more market-oriented, center-left vision of British Prime Minister Tony Blair; the moderate Left. The arguments of the moderate left, which were introduced in section 3.3.1.c stamped the vision of regulated capitalism and the social provisions of Amsterdam Treaty in such a degree that the Treaty was even dubbed as a “Blairite Treaty”. This vision was evident in the employment title as any harmonization in the field was precluded through the new procedure of guidelines and the principal aim of the employment strategy was set as promotion of a skilled, trained and adaptable workforce and labour markets responsive to economic change. Overall, despite bearing importance for triggering the European Employment Strategy and the open method of coordination, the social policy provisions and the employment title of Amsterdam no way redressed the imbalance between the neoliberal economic governance that deepened through the adoption of Stability Pact. The secondary and even subservient social dimension of the Union was maintained in the Treaty of Amsterdam.

The following IGC preceding the Nice Treaty was preoccupied with institutional concerns rather than dealing with the deepening of economic governance or the social governance. Still, as argued in section 4.7.1, the Nice Treaty whereby the Charter of Fundamental Rights of the European Union was declared as a solemn declaration became the arena of contentions between projects of neoliberalism and regulated capitalism. While the status of Charter was shaped by the neoliberal project as a non-binding declaration; the content of the Charter was an achievement on the part of the regulated capitalism project as it comprised not only the workers but also the citizens and it provided a catalogue of rights economic and social rights alongside the political rights. The Charter was important bearing symbolical importance alongside constituting a source of inspiration for the Court. Thus, apart from the Charter, Nice Treaty also refrained from bringing a substantial innovation in the social policy acquis and the asymmetric relationship between the economic and social governance was



maintained via the first European Treaty of the new millennium. However, there were also positive developments for the European social governance. The Lisbon European Council of 2000 and the following Social Policy Agenda for 2000-2005 signified very important openings for the social policy making at the European level. Contrary to the previous moments of integration which focused on deepening of economic governance at the expense of social governance that was isolated from the European level, Lisbon strategy handled both and rested on both economic and social pillars. Further, OMC was presented by Lisbon strategy as a means to achieve social convergence in Europe as to overcome the strict harmonization-loose Community coordination dichotomy, proposed traditionally by regulated capitalism project and neoliberal project respectively.

The Lisbon strategy was determined in a context of majority of social democrat governments and the changing vision of regulated capitalism project with the predominance of moderate left within it. Lisbon strategy became the child of an alliance between the moderate subgroups of the projects of neoliberalism and regulated capitalism; the advocates of the endogenous growth theory and the moderate left. Both arguing for the necessity of renewing the economic basis of the European social model by focusing on knowledge and innovation to sustain it in the age of globalization, the alliance of the moderate groups of the two historically contending projects was sustained via focusing on investment in a knowledge-based society. As argued in section 4.7.2.a; Lisbon strategy aims at sustaining a European form of a trend towards 'active' welfare policies whereby the Member States were expected to invest in education and training and to conduct an active policy for employment to move to a knowledge economy. As a result of the alliance among the two moderates of the neoliberal and regulated capitalism projects, the Lisbon Strategy composed of amalgamation of the visions of the contending projects as seeking for a strategy combining competitiveness with social cohesion and flexibility with security in labour markets. Overall, Lisbon strategy is vital as an attempt to end the isolation of social governance and the disembedded nature of economic governance via shifting the European policy agenda and debate towards a greater concern with growth, employment and social integration. Starting in the 1990s, the new conceptual framework for social policy making comprising soft policy making mechanisms as the main method and the focus on social exclusion and adaptability to sustain better operation of market were evident in the Lisbon strategy. Lisbon strategy was also important as displaying the self-transformation of the regulated capitalism project with the predominance of moderate left and with the increasing radicalization of the traditional Keynesian left within the project.

The Lisbon vision that brought European level aspirations for social policy alongside national level and a renewed interest on social policy matters started to be challenged as early as 2002. As argued in section 4.7.2.b; the Barcelona European Council of 2002 denoted “the start of a new neoliberal offensive” following the end of the majority of social democrat governments. Indeed, in the five year period starting with the Lisbon European Council Of 2000 and ending with the revision of Lisbon in 2005, it is possible to discern the changing discourse at the EU level. The Sapir Report I and II signify this change. The first Sapir Report of 2003 which dwelt on the lack of growth in Europe proposed the organization of European budget around factors of competitiveness and growth; totally ignoring the social dimension. The second Sapir Report was more radical as it totally denied the European social dimension and called the Union to concentrate on structural reforms and on completing the internal market, especially in services. Thus, the reports denote the radicalization of the project of neoliberalism within the new context of neoliberal assault and the abandonment of the alliance among the moderate subgroups of the projects of neoliberalism and regulated capitalism that was behind the Lisbon strategy.

Within this changing discourse, the positive developments sustained by the Lisbon strategy for the European social governance were started to be downsized. Discrediting OMC as an ineffectual policy making tool the period witnessed a vision of abandonment of the European level for social governance and relocking it to the domestic level. Further, competitiveness started to be prioritized at the expense of knowledge-based society that constituted the mainstay of the Lisbon strategy and the social policies were again relegated to its secondary and subservient position as a tool used in achieving economic performance. In the words of Pochet who assessed the social policies in this period, social policies were commenced to be seen solely as a tool used in achieving economic performance rather than for the sake of rights or equal opportunities<sup>390</sup>. The review of Lisbon strategy was realized in such an environment in the spring of 2005 with the publication of the Commission report: “Working together for growth and more jobs: A new start for the Lisbon strategy”, adopted by the Brussels Summit of the European Council. Lisbon II fell behind of expectations as it solely emphasized the continued pursuit of “stability oriented and sound macroeconomic policies” rather than the original Lisbon targets of “stimulating growth and employment”. All in all, the post-Lisbon period witnessed a new neoliberal offensive which radicalized the moderate subgroup of supporters of endogenous growth theory and led to the collapse of the alliance that was established among the advocates of endogenous growth theory and the moderate left.

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390 Pochet, 2006, op.cit., p.92.

Concerns on the direction of European integration in terms of social-economic policies and asymmetric relationship between the economic and social governance intensified with the increasing problems exemplified by the augmenting unemployment levels gave way for politicization of the issue and questioning of the economic-social system of the Union. The most recent and major manifestation of this questioning was the ratification crisis of the Treaty establishing a Constitution for Europe in spring 2005. Analyzing the prolonged European Constitutional debate and the no votes that came out of the French and Dutch ballot boxes in the referenda process, it has been viewed that the debates in the no camps revolved around the social and economic issues alongside the allegations that the Constitutional Treaty would lead to a European superstate. The left “no camp” which constituted the major party in the “no camp” opposed to the TCE as they were expecting the establishment of some sort of a “constitutional parallelism” and a more equal relationship between social and economic governance. However, despite its stronger social rhetoric with changes in objectives and values of the Union, the changes in the social competences and policies of the Union and the incorporation of the Charter into the main body of the Treaty were only negligible in achieving progress regarding social Europe. Thus, the unequal relationship between economic and social governance that has been a continuous feature of European integration was also retained by the provisions of the Treaty establishing a Constitution for Europe.

To come out of the long impasse surrounding the Constitutional Treaty, Lisbon Treaty replaced the TCE. Despite some symbolic changes in the wording and scope, the social content of the Lisbon Treaty is not very different from the original Constitutional Treaty. Rather than remedying the “constitutional asymmetry” between economic and social governance, as did the TCE, the Lisbon Treaty consolidated the underlying institutional structure of EMU that has been under construction since the Maastricht Treaty. The social provisions of Lisbon were inadequate to launch a full-fledged social dimension alongside the EMU as the changes were mostly in form rather than substance. However, acquisition of legal status of the Charter of Fundamental Rights comprising political, social and economic rights shall be noted as a positive development for the social Europe which would be promising for the future. Hence, if ratified the Lisbon Treaty would not bring much for redressing the ongoing imbalance between the neoliberal economic governance and the social dimension of the Union although European competence in social policy were urgently needed in the face of globalization and the ever-deepening economic and monetary union.

Alongside the main findings of the thesis mentioned above, as a result of analyzing the whole European integration history with a perspective of discerning the main dynamics of evolution of social policy via focusing on the unfolding clashes between projects of neoliberalism and the regulated capitalism; the self-transformation of the regulated capitalism within the course of integration and the relationship between the economic and social governance, some other general conclusions have also been made. The first among them is indeed the main assertion of the thesis that has been repeated continuously throughout the thesis. That is to say, it has been concluded that the European integration has always witnessed cleavages and contentions among the groups that disagreed over Europe's direction regarding the best social-economic system applicable to Europe and the European social policy has always been shaped by the interplay of these two conflicting projects, named as projects of neoliberalism and regulated capitalism. Excluding the period of beginnings of European integration that envisaged a division of labor between the Community and domestic levels as regards the economic and social governance; for the rest of the integration history the following findings have been arrived at. It has been identified that the project of neoliberalism has embraced negative integration to enhance market integration by eliminating restraints on trade and distortions on competition. Bearing such an objective, project of neoliberalism endorsed an intergovernmental mode of decision-making with unanimity rule for the deregulatory market-making through negative integration-meaning the striking down barriers to the market. The regulated capitalism on the other hand, has employed positive integration methods with the aim of establishing European-level policies to shape or at least affect the conditions under which markets operate. So, it has been found out that concerning the social policy; the regulated capitalism project tended to defend operation at the European level and supranational decision-making mode as opposed to the project of neoliberalism that argued for operation at the national level and an intergovernmental decision-making mode.

It has also been concluded that the actors behind the projects of regulated capitalism and neoliberalism have diversified and increased within the course of integration. While the provisions of TEC were solely shaped by the governments of member states who made up the coalitions behind the projects, starting from the SEA onwards although intergovernmental bargains continued to constitute the major input of the Treaty negotiations, trade unions, employers' organizations, the European institutions and NGOs also commenced to be very influential in framing the European social dimension. Another point that has been found out is that the global political-economic context has been highly influential in determining the content of European social policies and the vision of projects of the neoliberalism and

regulated capitalism. Further, it has also been found out that the project of regulated capitalism has undergone a vital transformation within the course of the integration. The regulated capitalism project did not come into being as a substantial project in the TEC negotiations due to the initial compromise in the European polity envisaging a focus on the economic integration and a secondary role to the social integration. It was only the late 1970s and 1980s when a more substantial coalition rallied around the project of regulated capitalism and a new and a comprehensive vision was set for the project. The vision of the regulated capitalism project was determined in the face of new international economic order of “subversive liberalism” that supplanted “embedded liberalism” of the post-World war Europe. As the post-war consensus on welfare states started to be challenged, an environment of cutting benefits and overturning trade union rights in order to encourage stronger economic growth came into existence. In this regard, the project of neoliberalism primarily envisaged decreased state intervention to the market economy, opposition to trade unions and a reduction of the size of the welfare state at the national level as well as a comprehensive market liberalization to establish internal market at the European level. Against the project of neoliberalism; the vision of the regulated capitalism was embodied as re-embedding the European market into a supranational framework of social regulation through using the Community to preserve the welfare states by ensuring social and redistributive policies for market-correction and cohesion alongside the promotion of market liberalization for economic growth. Thus, the vision of regulated capitalism project was shaped as a protective countermovement to the neoliberal offensive as the Polanyian double movement envisaged.

Thereby, in the post-Maastricht era it was argued that there arose the need for the regulated capitalism project to undergo a significant revision in its vision and strategy. As the old vision of regulated capitalism project of the 1980s that aimed at re-embedding the European market into a supranational framework of social regulation proved to be useless within the context of the new economic paradigm, a new vision was determined gradually starting from the 1990s. This new vision envisaged tempering of adverse affects of the ever-deepening economic and monetary integration for a better functioning of market rather than arguing for radical changes within the established economic governance of the Community. Thus the focus of the regulated capitalism project shifted towards the issues of poverty and social exclusion to sustain better functioning of the market. In this self-transformation of the regulated capitalism project, the fractions within the project became more evident. In the late 1990s, the contentions among the fractions within the regulated capitalism project intensified as the traditional socialist vision of a regulatory Europe, headed by the French Prime Minister Lionel Jospin; the traditional Keynesian Left, and the more market-oriented, center-

left vision of British Prime Minister Tony Blair; the moderate Left clashed. The vision and strategy of regulated capitalism project altered substantially as the “moderate left” reshaped the regulated capitalism gradually. So, following the moderate left the regulated capitalism started to embrace the necessity of supply-side policies in the form of investment to human capital and worked for sustaining better functioning of the market. The change in the vision of the project is more evident when compared with the traditional Keynesian left that argued for fundamental changes in the European economic governance architecture and worked to secure the welfare states. The vision of moderate left, also allying with the moderate subgroup of the neoliberal project underwrote the content of the Amsterdam Treaty, the EES and Lisbon strategy.

Overall, upon analyzing the European social policy from the Treaty establishing the European Economic Community up until the very latest developments in the Lisbon Treaty, it has been found out that the integration history has always witnessed an unequal and hierarchical relationship between the economic governance and social governance. Rather than redressing the formal gap, also seen in the “constitutional asymmetry” between the economic governance and social governance in the Union, the constituent Treaties of EC/EU only enhanced this gap. A full-fledged social dimension could not be established in the face of an ever-deepening economic and monetary integration that created constraints for the social governance at the welfare state itself. As a result of this, the social governance continued to bear a secondary and even a subservient position with regard to economic governance. Further, given the substantial change in the vision of regulated capitalism in the post-Maastricht era, it is not possible to view the current regulated capitalism project similar to the Polanyian protective countermovement anymore. The new conceptual framework of soft policy making and the new vision of regulated capitalism that envisaged sustaining better functioning of the market through tempering the adverse effects of market such as poverty and social exclusion confirmed the subservient position and market-making character of social governance.

However, as the ratification crisis of the Constitutional Treaty denoted, there is an apparent dissatisfaction in the European public regarding the European construction that lagged a genuine social dimension. As argued in various parts of the thesis, majority of the “no camp” was made up of people who opposed to the Constitutional Treaty due to its liberal character. The anxieties of European citizens in the face of globalization were aggravated by the “liberal European Union” that has failed to protect them against the damage brought by the globalization. Hence, in the face of soaring unemployment, increases in levels of poverty and the attendant feeling of insecurity; the opposition to the Treaty and no votes denoted the protest

of European citizens towards the Union which failed to establish a full-fledged European social dimension to protect them. Against this background, there arises the questions of whether the regulated capitalism will undergo another revision in the face of this substantial dissatisfaction concerning the economic-social system of the Union and whether the regulated capitalism project can come up with proposals that would sustain a consensus on pushing the social issues up to the European level with a more equal standing to the economic governance. All in all, the future of the European social dimension and the fate of a full-fledged European social dimension will be framed dependant on this would-be transformation of the regulated capitalism project as to trigger another round of “double movement” that would effectuate the protective counter movement in the face of the project of neoliberalism.

## APPENDIX

### MAJOR AMENDMENTS CONTAINED IN THE FAILED CONSTITUTIONAL TREATY

- ❖ Under the Constitutional Treaty, the European Union obtains *legal personality* which means that it would be able to represent itself as a single body in certain circumstances under international law. (Art. I-7)
- ❖ The Constitutional Treaty includes the *Charter of Fundamental Rights of the European Union*. Hence, the debates regarding the legal status of the Charter would end and the infringement of rights would be case before the court. (Part II)
- ❖ “The co-decision procedure” is renamed as “*ordinary legislative procedure*” in the Constitution which leads the European Parliament to be the co-legislature; namely under the codecision procedure the European Parliament would acquire equal legislative power with the Council in a number of policy areas. (Art. I-34)
- ❖ The Constitution paves the way for a new role for the *member states' national parliaments* in scrutinizing proposed EU laws. Considering a proposal, they would be entitled to object to them.
- ❖ The new **solidarity** clause enshrined in the Constitution specifies that any member state which falls victim to a terrorist attack or other disaster would receive assistance from other member states, upon its request. (Art I-43)
- ❖ To simplify jargon and to reduce the number of *EU legal instruments*, the Constitution unifies legal instruments across pillars. To illustrate:
  - (a) “European laws” replace “European Regulations” of the Community pillar and 'Decisions' of the Police and Judicial Co-operation in Criminal Matters (PJC) pillar);
  - (b) “European framework laws” replace “European Directives” of the Community pillar and “Framework Decisions” of PJC pillar;
  - (c) Either “European laws” or “European framework laws” replace “Conventions” of the PJC pillar



(d) “Decisions” replace “Joint actions” and “Common positions” of Common Foreign and Security Policy Pillar (Art I-33).

❖ Via the provisions of the Constitution, more day-to-day decisions in the Council of Ministers would be taken by **qualified majority voting (QMV)**, requiring a 55% majority of member states representing a 65% majority of citizens. The unanimous agreement of all member states would only be required for decisions on more sensitive issues, such as tax, social security, foreign policy and defense. In this way, QMV which has become more prevalent with each Treaty since the Single European Act would become the major decision-making method in the Constitution. (Art I-25)

❖ Regarding the institutional structure; some new amendments are also being introduced with the Constitution. In this framework, a new form of Presidency for the European Council is introduced (Art. I-22). In this form of Presidency, the Presidency would be held by an individual to be elected by the Council rather than a member state as its current form. Further, the duration of the Presidency would change from six months to two and a half years.

❖ Another novelty brought about by the Constitution was the position of Union Minister for Foreign Affairs (Art. I-28). The present role of High Representative for the Common Foreign and Security Policy would be combined with the role of the Commissioner for External Relations and this would create a new Union Minister for Foreign Affairs who would also be a Vice President of the Commission. Union Minister for Foreign Affairs would be responsible for co-ordinating foreign policy across the Union and representing the EU abroad.

❖ The Commission would consider any proposal "on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution" which has the support of one million citizens (Popular Mandate) ( Art. I-47/4 ).

❖ The Constitution would allow for the withdrawal of any member state without renegotiation of the Constitution or violation of Treaty commitments (Art. I-60).

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