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**The European Community between Social Policy
and Social Regulation**

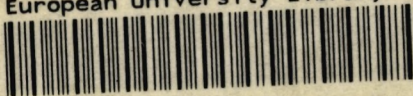
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**The European Community between Social Policy
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The European Community between Social Policy
and Social Regulation *

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1. The several dimensions of Europe's "social dimension"

Community policymakers but also many scholars speak of the "social dimension" of European integration as if the expression were sufficiently precise to be operationally or analytically useful. In fact, the expression is ambiguous since it encompasses a number of distinct and partly conflicting dimensions. For this reason opinions about the present state and future prospects of social Europe range from cautious optimism to outright pessimism.

There is considerable ambiguity about the meaning of a European social policy in the Treaty of Rome itself. The section on social policy -- Title III of Part Three of the Treaty -- enumerates a number of "social fields" (employment; labour law and working conditions; vocational training; social security; occupational health and safety; collective bargaining and right of association) where member states should closely cooperate (Art. 118, EEC). In the following Article, Member States are urged to "maintain the application of the principle that men and women should receive equal pay

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for equal work". The same Title III also establishes the European Social Fund with the goal of improving employment opportunities and facilitating the geographical and occupational mobility of workers.

What is arguably the most significant social policy provision of the Rome Treaty -- the social security regime for migrant workers -- appears not in the section on social policy but in the one on the free movement of persons, services and capital (Title III of Part Two, Art. 51, EEC). Finally, one of the objectives of the common agricultural policy is, according to Art. 39(b) of the Treaty, "to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture".

Thus, to the framers of the Treaty "social policy" included not only social security and interpersonal distribution of income, at least for certain groups of workers, but also interregional redistribution, elements of industrial and labour market policy (vocational training, measures to improve labour mobility) and social regulation (primarily occupational health and safety, and equal treatment for men and women).

However, the enumeration of matters relating to the social field in Art.118 and the limited role given to the EC Commission in Title III - to promote coordination of national

policies, to make studies, deliver opinions and arrange consultations - indicate that the social policy domain, with the exceptions noted above, was originally considered to be outside the supranational competence of the institutions of the Community (Vogel-Polski and Vogel, 1991). In fact, Commission activity in the area of social policy and social regulation was quite modest between 1958 and the end of the 1970s, with one notable exception: environmental policy. The terms "environment" or "environmental protection" do not even appear in the Treaty of Rome. Despite the lack of an explicit legal basis, a Community environmental policy has been growing vigorously, even if not harmoniously or systematically, since 1967. The significance of this development will become clear as we proceed with our argument.

The Single European Act (SEA) of 1986, assigns a number of new competences to the Community in the social field. The main lines of development of Community activities in this field are beginning to clearly emerge: they are regional development (new Title V, Economic and Social Cohesion), and social regulation (Art. 100A, Art. 118A, and the new Title VII, Environment). As noted above, prior to this the social policy belonged to the competence of the Member States with the power of initiative of the Commission essentially limited to promoting collaboration among those Member States. In particular, Art. 118 of the Rome Treaty did not give the

Community the power to regulate in the field of occupational health and safety. Hence the first directives in this area had to be based on Art. 100 (which deals with the approximation of laws directly affecting the functioning of the common market) and thus needed unanimity in the Council of Ministers. Under the new Art. 118A, directives in the field of occupational health and safety can be adopted by the Council by qualified majority and without the need of proving that they are requisite to the completion of the internal market.

Another innovation introduced by Art. 118A is the concept of the "working environment", which makes possible regulatory interventions beyond the traditional limits of health and safety at the workplace. Under the wide interpretation favoured by the European Parliament, the objective of improving the working environment would include all conditions which may affect the health and safety of workers: organization of the labour market, length of work, its organization and nature, as well as physical and psychological stress. Although such a broad interpretation is opposed by both the Council and the Commission, some recent directives (to be discussed in more detail in section 4) go beyond existing regulations in most Member States in taking into consideration ergonomic and other "soft" factors, within the spirit of Art. 118A.

To complete this picture of significant progress in social regulation at Community level, one should also make

mention of Art. 100(3) which states that the Commission will start from a high level of protection in matters relating to health, safety, and environmental and consumer protection. This implies that the reference to minimum requirements in Art. 118A ("the Council ... shall adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States") does not mean that Community health and safety standards should reflect the lowest level prevailing in the Member States. Rather, Community standards represent a lower threshold for national regulators who are free to maintain or adopt standards incorporating higher levels of safety.

The increasing importance of social regulation is also revealed by the action programme implementing the Community Social Charter adopted by the Member States, with the exception of the United Kingdom, on 9 December, 1989. Of the 20 directives/regulations listed in the programme, 10 are in the area of occupational health and safety, 3 deal with improvements in living and working conditions, 3 with equal treatment for men and women, disabled persons, and protection of children (COM (89) 568 final).

The Treaty of Maastricht confirms this trend. It contains a new section on consumer protection (Title XVIII); it introduces significant innovations in the area of occupational health and safety; it introduces qualified

majority voting for most environmental protection measures. It even adds transportation safety to the regulatory tasks of the Community (Art.75, 1(C)). But the Treaty is silent about most areas of traditional social policy.

These developments show that EC policies in the social field are evolving along quite different lines from those followed by the Member States. National historical traditions have yielded a dense web of welfare institutions covering most citizens "from cradle to grave", while the Community remains, and will very likely remain, a "welfare laggard". In the field of social regulation, however, the progress has been so remarkable that some recent EC directives surpass the most advanced national measures in the level of protection they afford. The aim of this paper is to clarify the reasons for these divergent patterns of policy development, thus providing a more accurate picture of the social Europe of the future.

2. What makes social regulation different

Since passage of the SEA an increasing number of EC directives dealing with quality-of-life issues no longer need to be justified by reference to the completion of the internal market. In this sense, social regulation has succeeded in acquiring a measure of autonomy with respect to other EC policies. But even if they no longer have to be

justified in functional terms, measures proposed by the Commission in the social field must be compatible with the "economic constitution" of the Community, that is, with the principles of a liberal economic order. This requirement creates an ideological climate quite unlike the one which made possible the development of the welfare state in the Member States.

At least until the late 1970s, few students and practitioners of social policy in Europe bothered to inquire whether the measures they advocated were in fact compatible with the logic of a competitive market economy. The English sociologist T.H.Marshall gave expression to widespread and long-held views, when he wrote that "social policy uses political power to supersede, supplement or modify operations of the economic system in order to achieve results which the economic system would not achieve on its own, and ... in doing so it is guided by values other than those determined by open market forces" (Marshall, 1975: 15).

Community social policy could not be justified in such terms. The economic liberalism that pervades the founding Treaty and its subsequent revisions gives priority to the allocation function of public policy over distributional objectives. Hence the best rationale for social initiatives at Community level is one which stresses the efficiency-improving aspects of the proposed measures. Welfare economics provides a theoretical foundation for such justifications. A

fundamental theorem of welfare economics states that under certain conditions, competitive markets lead to a Pareto-optimal allocation of resources, that is, to a situation where there is no rearrangement of resources (no possible change in production and consumption) such that someone can be made better off without, at the same time, making someone else worse off. Theoretical research in economics during the past few decades has identified six important conditions under which the market is not Pareto efficient (Stiglitz, 1988). These are referred to as "market failures". They provide a set of rationales for government interventions acceptable, in principle, even to the advocates of a liberal economic order. They are:

1. Failure of competition;
2. Public goods;
3. Externalities;
4. Incomplete markets;
5. Information failures;
6. Unemployment, inflation and disequilibrium.

Two further rationales for government intervention not related to market failure are:

7. Redistribution;
8. Merit goods.

These eight reasons fall into three groups which correspond to the three fiscal functions of government in the sense of Musgrave: the allocation function (1 to 5), the

stabilization function (6) and the distribution function (7 and 8). Thus an analytic distinction between social regulation and social policy may be drawn on the basis of the rationales for government intervention. Social regulation (health and safety, environment, consumer protection) attempts to solve problems created by specific types of market failure -- especially, public goods, negative externalities and information failures. Air and water pollution are prime examples of externalities, while a number of regulatory activities in the fields of safety and consumer protection are motivated by imperfect information and the belief that the market, by itself, will supply too little information. Examples are regulations requiring lenders to inform borrowers of the true rate of interest on their loans, regulations concerning labeling of food or medicinal products, disclosure of contents, etc.. To the extent that such regulations succeed in correcting the market failure they address, they not only increase consumer welfare but, as a consequence, also improve market efficiency.

If there are no market failures the economy is Pareto efficient and there is no economic justification for government intervention. But the fact that the economy is Pareto efficient says nothing about the distribution of income. A very unequal distribution of income may be unacceptable to a majority of citizens and this will

legitimize government intervention on political and moral grounds, even at some loss in economic efficiency.

The second argument for government intervention in a Pareto-efficient economy arises from concern that individuals may not act in their own best interest. Goods that the government compels individuals to consume, like elementary education and low-cost housing for the poor (instead of giving cash grants), are called merit goods. Of course, the paternalistic argument is plausible only if one assumes that government knows what is in the best interest of individuals better than they themselves do. It is important to note that the paternalistic argument for government activities is quite distinct from the externalities argument (Stiglitz, 1988:81). Smoking in public places imposes a cost on non-smokers and hence a ban can be justified by an externalities argument. Those who take a paternalistic view might argue that individuals should not be allowed to smoke even in the privacy of their homes and even if a tax, which makes the smokers take account of the external costs they impose on others, is levied.

While "social policy" is not a technical term with exact and uniform meaning, there is general agreement that its central core consists of social insurance, public assistance, the health and welfare services, housing policy. Richard Titmuss has identified three main models of social policy: the residual welfare model -- social welfare institutions

come into play only when an individual's needs are not adequately met by the private market and the family; the industrial achievement-performance model -- social needs should be met on the basis of merit, work performance and productivity; and the institutional redistributive models -- social policy should provide universalistic services outside the market on the principle of need (Titmuss, 1974: 30-31).

It should be clear from the preceding discussion that all three models of social policy, but especially the third one, are quite different from social regulation both in the range of government activities they include and in their underlying rationale: public goods, negative externalities and information failure in one case, redistribution and merit goods in the other. Of course, the distinction is not absolute. Thus, merit goods play a limited role also in social regulation, e.g., protective equipment for workers or seat belts for drivers. Even in these cases, however, the justifications tend to be different. For example, it is argued that, given incomplete consumer information, temporarily imposed consumer choice may be desirable as part of a learning process, so as to permit more intelligent free choice thereafter.

Naturally, market failures are not the only justifications for social regulation. There are important instances where there is widespread agreement that the desirability of a regulatory programme should be judged

within a broader range of social objectives. Community legislation on equal opportunity in employment for men and women is an example. Although regulatory interventions to protect "non-commodity values" (Stewart, 1983) like equal opportunity and civil rights cannot be justified in terms of welfare economics, they reveal another dimension of the distinction between traditional social policy and the new social regulation. The social policies of industrialized countries are the result of the social struggles of the past and reflect the values of societies in which the central issue was the distribution of the domestic product. Social regulation, both at the national and Community level, addresses primarily quality-of-life issues, and thus reflects the values and political culture of post-industrial societies.

Analytically distinct, social policy and social regulation are historically and institutionally related; they belong to the same "policy space". A policy space being a set of policies that are so interconnected that it is impossible to make useful descriptive or analytic statements about one of the policies without taking the other elements of the set into consideration (Majone, 1989a: 158-61).

* The most interesting aspect of a policy space is how its internal structure changes in time. As the number and importance of some elements grow relative to the size of the space (which is determined by the amount of financial and

political resources devoted to it), individual policies increasingly compete with each other for public support. Some policies may become so important that they form a distinct subspace within the original space. This is how social regulation has evolved within the social-policy space - a development most students of social policy have failed to notice because of their fixation on particular programmes and institutional arrangements. In thinking about the future shape of a European "social state", it is important to pay attention to the dynamics of the entire social-policy space. Nowadays quality of life depends at least as much on environmental and consumer protection as on traditional instruments of social policy (Kaufmann, 1985).

3. The infeasibility of a European welfare state

The idea of a European welfare state somehow emerging as a "transnational synthesis" (Offe, 1990:8) of national welfare systems has been discussed repeatedly in recent years. The advocates of this idea are generally motivated by a historical analogy, but particularly by concerns about the future of social entitlements in an integrated European market.

The analogy is with the integrative role of social policy in the formation of the nation state in XIXth century Europe. Historically, social policy has made an essential

contribution to the process of nation building by bridging the gap between state and society. National insurance, social security, public education, socialized medicine were, and to a large extent remain, powerful symbols of national solidarity. It is argued that a supranational welfare state would provide an equally strong demonstration of Europe-wide solidarity (Streeck, 1990; Offe, 1990; Leibfried, 1991; Leibfried and Pierson, forthcoming).

However, the very success of the national welfare state sets limits to an expanded social policy competence of the Community. Indeed, there is a striking difference between the scale and scope of national policies and the modest role of (traditional) social policy in the process of European integration. It is also possible that the development of welfare-state institutions at Community level, instead of generating a sense of supranational solidarity would reinforce popular feelings against centralization, bureaucratization and technocratic management. Finally, it should be remembered that, in Germany and elsewhere, acceptance of the social state by the entrepreneurs was bought with the promise of protection against foreign competition by tariffs and other means (De Swaan, 1988). Such a bargain would be hardly possible under present circumstances.

If the historical analogy is dubious, how well founded are the fears that competition among different national

welfare regimes in an integrated market would lead to regime shopping, social dumping and deregulation? To answer such a question one must rely on indirect empirical evidence. The level and direction of foreign investments in developing countries, for example, seem to indicate that firms do not invest in low social wage countries unless other factors like infrastructure and worker productivity justify such investments (Knödgen, 1979). High social wage countries like Germany continue to attract foreign investments precisely because of the advantages they offer in terms of superior infrastructure and high worker productivity. In fact, the ambiguous social consequences of integration "are revealed by the fact that northern Europe's concerns about "sunbelt effects" are mirrored by Southern Europe's concerns about "agglomeration effects" in which investment would flow towards the superior infrastructures and high-skilled workforces of Europe's most developed regions" (Leibfried and Pierson, forthcoming: 26).

Even in the United States well developed welfare regimes, like Wisconsin's or California's, coexist with more primitive ones. For example, California provided welfare recipients in 1990 with benefits nearly six times as large as those provided by Alabama. The maximum welfare benefit paid to a California family of three was \$694 a month, compared with \$118 paid to a similar family in Alabama (Peterson and Rom, 1990:7). As these authors point out, these policy

differences among the states are not just the peculiarities of a few states, nor are they gradually disappearing. Instead, the statistics show that benefits varied as much in 1990 as they did in 1940. Such disparities give rise to the phenomenon of "welfare magnets" - states with comparatively high benefits that attract the poor. However, because of linguistic and cultural barriers, and an increasing standard of living even in the poorer regions of the Community, this is not likely to become a problem in Europe, even after the completion of the internal market. If one also keeps in mind the relatively high level of Community standards of health and safety, it appears that fears of an erosion of the national welfare state as a consequence of European integration are exaggerated. If there is a crisis of the welfare state - a question about which opinions widely diverge - this is because of factors which have nothing to do with the process of integration: demographic trends, the mounting costs of health care, the world crisis in social security, taxpayers' revolts, excessive bureaucratization, and so on.

It is fortunate that the normative case for a European welfare state is not compelling, for the practical prospects are extremely poor. To begin with the most obvious difficulty, the Community does not have, and will not have in the foreseeable future, anything approaching the financial resources required by modern welfare states. The EC budget

amounts to about 1.2 percent of the total GDP of the Member States and to less than 4 percent of the central government spending of these countries (average government spending in OECD countries is 40 percent of GDP). The Common Agriculture Policy absorbs almost 70 percent of the budget; what remains is clearly insufficient to support a Community-wide social policy, even on a modest scale. It should be noted, however, that such limited resources are sufficient to set up ambitious programmes in social (and economic) regulation. In fact, an important characteristic of regulatory policymaking is the limited influence of budgetary limitations on the activities of regulators. The size of non-regulatory, direct-expenditure programmes is constrained by budgetary appropriations and, ultimately, by the size of government tax revenues. In contrast, the costs of most regulatory programmes are borne directly by the firms and individuals who have to comply with them. Compared to these costs, the resources needed to produce the regulations are trivial. This general feature of regulatory policymaking is even more pronounced in the case of the Community, since not only the economic, but also the political and administrative costs of enforcing EC regulations are borne by Member States (Majone, 1989b, 1991).

A second problem is the variety of welfare-state forms existing in Europe. At least four main types have been identified: a Scandinavian model, an Anglo-Saxon model, the

model of the "Bismarck countries", and the welfare systems of the countries of the southern rim of the Community (Leibfried, 1991). Each of these models and their numerous variants are rooted in peculiar historical and political traditions, and are deeply embedded in different socio-economic contexts. Any attempt to harmonize such varied systems is bound to fail, as EC policymakers clearly understand. Title XV of the Treaty of Maastricht explicitly excludes any harmonization of the laws and regulations of the Member States in the field of health policy. The 1989 Action Programme implementing the Community Social Charter (COM (89) 568 final) has this to say on social security:

The social security schemes vary greatly in nature from one Member State of the Community to another. They reflect the history, traditions and social and cultural practices proper to each Member State, which cannot be called into question. There can therefore be no question of harmonizing the systems existing in these fields.

For the same reasons, a well-known scholar has suggested that instead of aiming at supranationalism in the field of social policy, it would be better for the members of the EC to work within the framework offered by the Social Charter of the Council of Europe. A more flexible and less constraining approach based on multilateral agreements would provide an opportunity to learn from the best national experiences and thus stimulate changes in the national legislation (Kaufmann, 1986).

It could be argued that if a fully-fledged European welfare state is, at present, politically infeasible, it should at least be possible to develop certain of its elements. At a later stage these elements could be fitted together to obtain a comprehensive regime. Thus, the Common Agricultural Policy effects a considerable transfer of money from consumers and taxpayers to farmers, and in this sense it might be considered part of a "welfare state for farmers" (Leibfried and Pierson, forthcoming). However, the CAP represents not only an inefficient, but also a perverse type of social policy since it favours the well-to-do farmers of northern and central Europe rather than the poor hill farmers of the South. Only if the current system of price support is transformed to a direct income grant, will agricultural policy become a true social policy, though limited to a particular occupational group.

Another potential candidate is the social security regime for migrant workers. An interesting proposal in this area has been made by Danny Pieters (1991). The proposal attempts to go beyond mere coordination by creating a European Social Security System (ESSS) for migrant workers. The system would be optional: migrant workers could choose between the present framework of coordination and the possibility of an automatic transfer from the national system to ESSS. This is an imaginative application of Article 51 EEC, but it is doubtful that the system envisaged would

represent, if implemented, a first step in the direction of a comprehensive European welfare state. The historical development of the Community has shown again and again the limits of such functionalist logic.

Even if Member States were to endorse the plan, they would most likely oppose any extension beyond the case of migrant workers. In this instance, too, one should be skeptical of the analogy with the continuous expansion of national social security systems to cover ever broader groups of the population. Given the progressive loss of control over economic policy implied by economic and monetary union, social policy is, with foreign policy, one of the few remaining bulwarks of national sovereignty, and for this reason alone national governments will do their best to protect it.

Regional policy remains to be considered. Demands for regional redistribution within the EC have become pressing in recent years (Marks, 1992; Armstrong, 1989; Wallace, 1983), leading to a doubling in the expenditure of the structural funds - the European Social Fund and the European Fund for Regional Development - by 1992. This important growth in resources allocated to the poorer areas of the Community shows that regional disparities are increasingly seen as a serious barrier to further integration. Also, the recent reforms in structural policy have created new possibilities for EC decisionmakers to deal directly with political actors

in individual regions. Proponents of a "Europe of the regions" are eager to exploit these possibilities to implement their vision of a new European order in which increasing centralization of decisionmaking in Brussels is counterbalanced by the emergence of powerful regional institutions directly linked to the centre (Marks, 1992; Majone, 1990).

Despite these interesting political perspectives, regional redistribution must be considered a rather inefficient instrument of social policy. In their enthusiasm for "social cohesion", EC policymakers often seem to forget that there is an important distinction between reducing inequality among individuals and reducing disparities across regions. The problems of targeting regions to achieve a better individual state of distribution are well known (Musgrave and Musgrave, 1973). Since most regions contain a mix of poor and rich individuals, a programme aimed at redistributing resources to a region whose average income is low may simply result in a lowering of the tax rate. The main beneficiaries of the programme will thus be rich individuals within poor regions -- a phenomenon well-known in the Italian Mezzogiorno and which may be replicated in other regions of the Community as a result of the increases in the regional funds.

On the other hand, it is politically difficult to aim redistribution directly at individuals in a federal or quasi-

federal system. Even in the United States, where the federal government pays three-fourths of the cost of welfare assistance, the states set the benefit levels. States differ in their assessment of what a family needs to meet a reasonable standard of living, and in the percentage of that standard they are willing to pay to help that family meet its needs. States also differ in the requirements an applicant must satisfy in order to be eligible for welfare assistance. It was already mentioned that, as a consequence of these differences, the level of welfare assistance among the American states varies widely, more so than interstate disparities in wage rates or cost of living. Similarly in Europe, the governments of the countries of the southern periphery, foremost among them Spain, are at present advocating non-individualised transfers of Community funds.

In sum, it is difficult to see how a coherent and effective European social policy could emerge from such disparate elements as benefits for farmers, a social security regime for migrant workers, and some regional redistribution. The social dimension of European integration must mean something else.

4. The widening and deepening of social regulation

As we have seen, each successive revision of the Rome Treaty has expanded and strengthened the competences of the

Community in social regulation. The SEA provided an explicit legal basis for environmental protection, and established the principle that environmental protection requirements shall be a component of the Community's other policies (Art. 130r(2)). It also introduced the principle of qualified majority voting for occupational health and safety, and the notion of "working environment" which opens up the possibility of regulatory intervention in areas such as human-factors engineering (ergonomics), traditionally outside health and safety regulation. Finally, Art. 100a(3) of the SEA urges the Commission to take a high level of protection as a base in its proposals relating to health, safety, environmental protection and consumer protection. The Treaty of Maastricht continues this development by establishing consumer protection as a Community policy, defining a role for the Community in public health, especially in research and prevention (Title XV), and introducing qualified majority voting for most environmental legislation.

Even more indicative of the continuous growth of Community regulation is the fact that policies were developed prior to the existence of a clear legal basis. Thus, three Environment Action Programmes were approved before passage of the SEA. If it is true that the first Action Programme (1973-1976) lacked definite proposals, concentrating instead on general principles, subsequent documents became increasingly specific. The second programme (1977-1981) indicated four

main areas of intervention, while the third (1982-1986) stressed the importance of environmental impact assessments and of economic instruments for implementation of the polluter-pays-principle. Concrete actions followed. The number of environmental directives/decisions grew from 10 in 1975, to 13 in 1980, 20 in 1982, 23 in 1984, 24 in 1985, and 17 in the six months immediately preceding passage of the SEA.

Quantitative growth has been even more impressive in other areas of social regulation. For example, by the end of 1989 the Council had approved 215 directives concerning the quality, safety and packaging of goods, and more than 100 directives adapting technical standards. Scores of directives regulating the use of food additives, the naming and composition of food products, and the composition of materials and products likely to come into contact with foodstuffs were introduced in the same period.

More important than this quantitative expansion of Community regulation, however, has been its qualitative deepening. It is not possible to discuss here those advances made on so many fronts since the SEA, but a few examples will give an idea of the recent qualitative changes in EC regulatory policymaking.

1. Measures concerning health, safety, environmental protection and consumer protection no longer have to be

justified exclusively in terms of the free movement of goods and the completion of the internal market. Social regulation is still far from possessing the same political and institutional significance as, for example, competition policy, but it no longer occupies a peripheral position in European policymaking.

2. Less than ten years ago, two distinguished scholars described the environmental law of the Community as "no more than a kind of regulatory patchwork" (Rehbinder and Stewart, 1985: 203). To some extent this is still true, but in all areas of social regulation one can observe increasing efforts to produce comprehensive and coherent regulations by means of framework directives. Notable recent examples are the new directive on general product safety (COM (92) 267), the Safety and Health at Work Directive (89/391/EEC) and the Machinery Directive (89/392/EEC). I shall have more to say about the last two directives under point 5.
3. There are signs of a new willingness on the part of the Community institutions and the Member States to address the issue of implementation (House of Lords Select Committee, 1992). This issue, which is especially important for social regulation, was given a high political profile for the first time by the European

Council at its meeting in Dublin in June 1990. The Council, realizing that the credibility of Community policymaking was at stake, asked for periodic evaluations of existing directives to ensure that they are adapted to scientific and technical progress, and to resolve persistent implementation problems.

In October 1991 the Council of Environmental Ministers held an informal meeting on implementation, as a result of which the Commission was instructed to submit proposals concerning the further development of policy on compliance and enforcement. At the Maastricht summit the Member States again again the need for Community legislation to be accurately transposed into national law and effectively applied, while the Treaty on European Union (Maastricht Treaty) contains new powers for the European Court of Justice under which it may fine Member States who fail to comply with the judgments of the Court.

4. Concerns about implementation and a growing realization that "science and technology are advancing at such a rate that the Commission, with its current resources, cannot possibly keep up with collecting and objectively analysing all the new data available ... in order to identify new dangers and then to decide whether new proposals are required" (COM (90) 564 final:4), have

revived interest in European regulatory agencies and inspectorates. A European Environmental Agency was established by Council Regulation No.1210/90 of 7 May 1990. A proposal for the establishment of a European Agency for Evaluation of Medicinal Products was submitted by the Commission on 14 November, 1990 (COM (90) 283 final), and amended on 12 November 1991 (COM (91) 382 final). The proposal has not yet been accepted by the Council. Also under discussion is another proposal made by the Commission on 25 September 1991 for a European Agency for Safety and Health at Work (COM (90) 564 final).

The creation of European agencies faces not only legal problems concerning the separation of powers and the delegation of legislative powers in the Community (Lenaerts, 1992), but also the opposition of some Member States. This explains why the tasks of the European Environmental Agency - the only one so far to be formally approved by the Council so far - are essentially limited to research and data collection. However, knowledgeable observers inside and outside Community institutions, believe this to be only a first step in the direction of a fully-fledged regulatory agency. Suggestions have already been made that the agency could monitor compliance and the effectiveness of environmental regulations. In time, the agency could

also examine the extent to which directives have in fact resulted in substantive environmental improvements (House of Lords Select Committee, 1992:19).

5. Perhaps the most surprising qualitative change - surprising because it so clearly contradicts the received view of EC policymaking - is the innovative character of some recent policies. It used to be said that EC regulations, in order to be accepted by the Member States, had to represent a form of lowest common denominator solution. The fact that national interests are strongly represented at each stage of Community policymaking seemed to preclude the possibility of innovation, while giving a bargaining advantage those Member States which oppose high levels of protection (Dehousse, 1992). At best, the Community could hope "to generalize and diffuse solutions adopted in one or more Member States by introducing them throughout the Community. The solutions of these Member States normally set the framework for the Community solution" (Rehbinder and Stewart, 1985: 213).

There were in fact exceptions even prior to the SEA. By admission of these same authors, some earlier environmental directives represented significant policy innovations. Thus the PCB Directive (76/769/EEC) "had no parallel in existing

Member State regulations", while the Directive on sulphur dioxide limit values (80/779/EEC) established, on a Community-wide basis, ambient air quality standards, which most Member States did not previously employ as a control strategy (ib.:214).

However, the most striking examples of regulatory innovation were made possible by the SEA, in particular by the introduction of qualified majority voting not only for internal market legislation but also for key areas of social regulation. Leaving aside important cases of economic regulation like the second banking directive as being outside the scope of this paper, I shall briefly return to two framework directives mentioned above, see point 2. In many of its provisions, Directive 89/391 on health and safety at work goes beyond the regulatory philosophy and practice even of advanced Member States like Germany (Feldhoff, 1992). Only a careful reading of the full text can convey an adequate impression of the many elements of novelty introduced by the directive. By way of example, I shall only mention some of the general obligations imposed on employers by Article 6:

- adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view in particular to alleviating monotonous work and work at a

predetermined work-rate and to reduce their effect on health (Art.6(2)(d));

- developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment (Art.6(2)(g));
- giving collective protective measures priority over individual protective measures (Art.6(2)(h));
- giving appropriate instructions to the workers (Art.6(2)(i)).

Other notable features of the directive are its scope (it applies to all sectors of activity, both public and private, including service, educational, cultural and leisure activities), its requirements concerning worker information, and the emphasis on participation and training of workers.

Equally innovative are the Machinery Directive (89/392/EEC) and, in a more limited sphere, Directive 90/270 on health and safety for work with display screen equipment. Both directives rely on the concept of "working environment", and consider psychological factors like stress and fatigue important elements to be considered in a modern regulatory approach. It is difficult to find equally advanced principles in the legislation of any major industrialized country, inside or outside the EC. In order to explain such policy outputs we need new, more analytical theories of the policy

process in the Community. The new theories must include detailed models of the Commission as an actor enjoying more autonomy and discretion than has been assumed so far.

5. Conclusion: which social policy for the EC?

The "big trade-off" between economic efficiency and a more equal distribution of income and wealth has confronted every democracy since the dawn of industrialization. Today's social policies are the outcome of the struggles of the past over the division of the domestic product. Because those struggles have taken different forms in different countries, social policies differ widely even when they appear to use the same instruments and institutional arrangements. Moreover, the delicate value judgements about the appropriate balance of efficiency and equity which social policies express, can only be made legitimately and efficiently within homogeneous communities. The principle of subsidiarity, if it has any meaning, must imply that distributional decisions should be taken at national or even subnational level.

For these and the other reasons discussed in the preceding pages, a European welfare state seems undesirable as well as politically infeasible. Some will see in this conclusion another reason for castigating the insufficient democratic legitimation of the Community. I submit that this view is shaped by a somewhat dated model of state-society

relations. Even in national societies, traditional cleavages along class, party or religious lines are becoming less significant than new "transversal" divisions over cultural diversity, citizen participation, the environment, the risks of modern technology, and other quality-of-life issues.

It is a fact of great significance that for many of these issues the national dimension is essentially irrelevant: solutions must be found either at a local or at a supranational, even global, level. There is, in other words, a natural division of labour between local, national, Community and international institutions. The nature of the problem, rather than ideological preconceptions or historical analogies, should determine the level at which solutions are to be sought.

It is certainly true that the creation of a "common market" is not a goal capable of eliciting the loyalty and attachment of the people of Europe to their supranational institutions. A social dimension is also needed, but one must be clear about the meaning of this ambiguous expression. As I have tried to show, the European Community, rather than undermining the achievements of the welfare state, is in fact addressing many quality-of-life issues which traditional social policies have neglected -- consumer protection and equal treatment for men and women, for example. The evidence I have presented strongly suggests that the "Social Europe" of the future -- the outlines of which are beginning to

emerge clearly from the jurisprudence of the Court of Justice, from the European Single Act and from the Treaty of Maastricht, as well as from the pattern of Community policymaking -- will be, not a supranational welfare state, but an increasingly rich space of social-regulatory policies and institutions.

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