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## **SINGLE MARKET AND SOCIAL PROTECTION: A CONTRADICTIONARY RELATIONSHIP?**

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The aim of this short paper is to highlight the unequal pace at which the processes of *policy-making* and *polity-building* are advancing in the European Union. The former is fairly advanced, the latter little developed. No European space of collective political action or shared media/communications space has taken shape. As Adelantado, J. and Gomá, R. [2000, p.193] state: “*the Union is a policy-making state, but this State is not developing in the framework of any democratic polity*”.

This paper aims to highlight these processes by analysing the negative and positive integration processes in the EU and their limitations and possibilities, from the creation of the European Single Market (SEA, 1986) to the present. Finally, particular consideration is given to the process of democratic legitimation of the European construction process, with particular reference to the single market and the need for it to be counterbalanced by “European citizenship”.

## **1 - WHERE WE ARE AND WHERE WE ARE GOING**

In general, analysts agree that the social policies of the EU interact, in a pattern of relative dependence, with the process of nominal convergence. This, in turn, falls into the predominant model of liberal capitalist globalisation [Adelantado and Gomá, 2000; Fitoussi, J.P. and Le Cachease, J., *et al.*, 2002]. The content of this neo-liberal model is dominated by three basic principles (with a strong ideological component) that are remodelling the economic, political and social system of the countries around us. The triad of principles is: market liberalisation, deregulation of the economy and the privatisation of entire sectors of the economy [Lisbon Report, 1995; Petrella, R., 2001].

The consequence is that although the global capitalism and monetary union that actually exist do not exclude the social dimension of the EU, there is no dialogue of equals between them.

Equally, the part played by the various groups that act within the logic of the capitalist system, such as owners of capital, trades unions and governments, should not be forgotten. They all contribute to the production process in a mutually dependent manner that is assumed to be symmetrical: the owners of capital have to invest and create employment to obtain a profit and the trades unions and governments have to allow the owners of capital to make a profit in order to obtain employment and wages or tax revenues.

However, this mutual dependence is, in fact, asymmetrical. Whereas there are few options open to governments and trades unions, the owners of capital have a choice. If they consider that job-creating investment holds few attractions, they can opt for speculative financial assets, buy gold, invest in other more profitable places, etc. In

other words, governments and trades unions have no power to lower the rate of return on productive investments below those of the best alternative available to the owners of capital. This logic should not be forgotten as otherwise it is very difficult to understand the strategies of the various social actors.

Nonetheless, this neo-liberal globalisation model and its European correlate, regional integration, to which the European political and economic right has given its support, may find itself affected by a certain number of negative external factors of a social nature [Adelantado and Gomá, 200, p.190]. Specifically:

1. The spiral of disinvestment in vocational training, linked to the option of employing skilled personnel trained outside the country;
2. Social dumping as a factor that distorts competition;
3. The 'shopping around' system as a process whereby citizens move to countries with universal social transfers and its consequence for the receiving country in terms of greater pressure on social expenditure with no corresponding financial compensation;
4. The diversity of welfare systems in different countries, which restricts mobility because of the threat of reduced rights as a result of breaks in contributions records.

Again, a wide-ranging coalition formed by the Christian Democrat and Social Democrat majority in the European Parliament during the period when Delors and Sanders headed the Commission noted that although the Single Market produces net benefits, it also generates certain dualising dynamics between groups and between areas of the Union (apart from the distorting effect of the external social factors mentioned above). Hence the particular compensatory emphasis on developing and strengthening social and regional development policies within a cohesion strategy supported by the Union's structural funds.

Lastly, other groups such as the European Trades Union Confederation, political forces to the left of the Social Democrats in the European Parliament and a range of NGOs involved in social welfare work are questioning the economic globalisation model that concentrates strictly on increasing profits and pays no attention to their social distribution. They advocate constitutionalising social rights on an EU scale by creating a supranational sphere of social citizenship and strengthening redistribution through cohesion policies in order to tackle group and peripheral area imbalances [Adelantado and Gomá, 2000].

Nonetheless, the analysts conclude that the present European social policy responds to a combination of the neo-liberal approach and the cohesion approach, with a very weak element of universal social citizenship components [Liebfried, Pierson, 1995].

What this means is that the discourse of the relative subordination of European social policy to the prevailing models of globalisation and monetary union is being transferred into practice [Teague, 1998].

However, other analysts of the European construction process [Fitoussi, J.P. and Le Cacheux, J., *et al.*, 2000] are somewhat more cautious and optimistic, sensing that some things may be changing. According to these authors, for some years now social protection has been becoming a productive factor that must be put to work to boost the competitiveness of the European Union. The extraordinary summit meeting in Lisbon (March 2000), for instance, urged the member states to create an “active social State” so that the European Union could “become the most competitive and most dynamic knowledge-based economy in the world”. From an ideological and instrumental point of view, we are witnessing the move from a Keynesian welfare state to a Schumpeterian state in which education and training become important “social investments”.

Social protection thus becomes a competitive tool. Consequently, the Commission insists that “Europe must ensure that its social model is sufficiently flexible and robust to react effectively to these new challenges while progressing towards its objectives of greater competitiveness and cohesion”.

Nevertheless, all this shows that, on the one hand, social policy is considered to depend on the vicissitudes of the neo-liberal model, moving in step with the processes of liberalisation and deregulation of the market and the economy to such an extent that it appears as a sub-product of these, while, on the other hand, social protection can also become a valuable instrument of competitiveness in a Schumpeterian European state.

These approaches are not mutually contradictory, as Schumpeterian “creative destruction” is based on the neo-classical model, which is some distance from the neo-liberal model. In an attempt to define them more precisely, a practical, realistic incursion into how the construction of the European single market has been taking place through negative integration and the difficulties in European social construction through positive integration will now be attempted.

## **2 - NEGATIVE AND POSITIVE INTEGRATION PROCESSES**

Negative integration should be understood in the sense of removing customs duties and tariffs, quantitative restrictions and other barriers to trade or obstacles to free, undistorted competition. These measures are intended to allow the free movement of all goods, services, capital and labour throughout the integrated market of the European Union.

Positive integration, on the other hand, aims to reconstruct a system of economic regulation at the level of a wider economic unit (the EU).

Fundamentally, although not entirely, this distinction could be classed as policies that aim for “market creation” and ones that aim for “market correction”. Negative integration measures tend to create markets (for example, harmonising different national standards for products in order to remove non-tariff barriers to trade) whereas positive integration measures aim to correct the markets (for example, regulating the production processes in matters such as labour conditions, controlling pollution, social protection) [Scharpf, F., 2000].

Some years ago J. Weiler pointed out that the process of European integration is characterised by a fundamental asymmetry, a type of dualism, between European supranational law and European intergovernmental policy. He noted that political scientists have been too concerned with intergovernmental negotiations while ignoring (or not taking sufficiently seriously) the legislative constitution of a European legal order at a higher level than national law. This legal order stems from the Union treaties and takes precedence over – or at least must be interpreted in conjunction with – the legislation of each of the countries that have signed these treaties [Weiler, J., 1995].

Negative integration is precisely the main beneficiary of European supranational law. Since the Union was created – since the treaties of Rome – liberalisation has been able to spread, without attracting too much political attention, through the European Commission’s interventions concerning infringements of the Treaty and through the judgements and preliminary rulings of the European Court of Justice. The supranational efficacy of the European Commission and the European Court of Justice in furthering negative integration has been paradigmatic and this is surely due to the degree of autonomy of these two key bodies within the organisational hierarchy of the European Union.

The Commission has made the most of its power of initiative to develop regulatory policies for the European market, as shown by the 289 Single Market Directives. Certainly, it has been able to count on the support of the large multinational exporters, which have an interest in unifying the market rules of play in order to overcome the restrictions imposed by state protectionism [Majone, 1999].

Other authors indicate that *competition policy, based on a system of supranational regulation, shows the extent to which the Commission can play an active and, at times, independent rôle within the EU. It has become an example of how it can gradually increase the scope and extent of its jurisdiction, using its own resources and those of the European Court of Justice* [McGowan and Wilks, 2000].

Positive integration, on the other hand, depends on agreement between the national governments in the Council of Ministers and also, increasingly, on the European Parliament. Obviously, this process is subject to a combination of obstacles to formulating consensual, pluralist intergovernmental policies – this matter will be examined further below. It would seem clear that this fundamental institutional difference explains the frequently lamented asymmetry between negative and positive integration in the formulation of European Union policies.

### **3 - NEGATIVE INTEGRATION AND MAINTENANCE OF THE EUROPEAN MIXED ECONOMIES**

The European economies have always been described as mixed economies: a powerful private sector that produces goods and services subject to competition together with a public sector that also produces goods and services, directly or indirectly, as well as the infrastructure and social protection functions that are more or less exempt from market competition. Although the differences between the mixed economies of European countries is notable, ranging from the provision of services through public companies to regulating the provision of the service or to subsidising production or consumption, in general public intervention has encompassed the functions of education, basic research, radio and television, health, retirement pensions, telecommunications, rail, air and road transport, energy supplies, banking, stock markets and agriculture.

However, according to various descriptive and analytical studies of internal competition [Mayntz and Scharpf, 1995], although none of the member states of the European Union would have been able to launch a legal attack on the privileged status of State-related services or sectors on the grounds of European competition law the Commission and the Court of Justice have been able to do just that. The member states would probably not have been successful owing to their democratic control. In this sense, the transfer of regulatory jurisdiction to a central authority away from electoral pressures, such as the Commission, gives its decisions greater credibility.

However, this process did not begin until the mid-eighties, under the effect of the political will to complete the internal market and also because changes in technology and international competition were undermining the viability of the national public service monopolies.

At that moment, the Commission took legal action against countries that allowed their mail and telephone monopolies to exclude other parties from supplying terminal equipment and high added value services. The Commission even decided to employ its most effective weapon, the Directive (under article 90.3 of the TEC, these directives could be adopted by a majority of the commissioners without the agreement of the

Council. Nowadays they also have to be approved by the Parliament) in order to abolish the remaining mail and telephone monopolies in the terminals and added value services markets. To the consternation of some, the Court agreed [Smidt, S., 1998].

In this way, the Commission has managed to spur the liberalisation of one area after another of the public services, through telecommunications, air transport and airports to road transport, postal services, the energy market and other services. It is also true that certain rulings by the High Court in the early nineties and the Amsterdam agreements of 1997 have modulated the idea of national public services in the sense of avoiding the risks associated with the sole objective being maximisation of the free market (for instance, allowing the possibility of subsidising unprofitable services in rural areas).

Following the logic of these decisions, no area of public service is now beyond the challenge of European competition law. By applying this logic, private schools and universities could now demand to compete on an equal opportunities footing with the public education systems and the same is happening, or could happen, with commercial health organisations, which could challenge the public health system in any country of the European Union. Equally, private pension funds could raise the same objections to the pension systems financed by general tax revenues or by obligatory pension funds [Scharpf, F., 2000].

All this points to the powerful rôle played by the Commission and the Court of Justice in extending negative integration without needing to resort to any more specific or contemporary political legitimacy than the agreements contained in the texts of the treaties.

#### **4 - REGULATORY JURISDICTION AND NEGATIVE INTEGRATION**

Negative integration subjects national policies to a whole series of regulations that forbid or place conditions on anything that has the effect of protecting national producers from foreign competitors or in any way restricting the free movement of goods, services, capital and labour across national frontiers.

One result of this is the appearance, for economic reasons, of a form of “negative competition” between national states and trades unions and between social protection systems. This competition weakens the capacity to regulate and tax mobile production factors and to improve the distributive position of labour through collective bargaining [Sinn, S., 1993].

To the extent to which governments depend on retaining capital, companies and production within the country in order to provide jobs and sales and obtain tax revenues, they should also be concerned with the possibility that their own taxes and regulations (of all kinds, including product quality and environmental and social protection) could drive capital, companies and labour out of the country. Increasing international mobility thus creates a situation in which states are obliged to embark on a regulatory competition in order to attract or retain mobile production factors. So much so that to increase one country's competitiveness compared to another, under certain conditions taxation and social protection regulatory charges, for example, could come under pressure and generate a "race to the bottom" [Vogel, 1995]. However, in his environmental comparison study Vogel showed that this result is not inevitable.

Moreover, he affirms that regulatory competition can also produce what is known as the "California effect" (California's tougher regulations on air pollution led to a strong surge in technological advances in filters and new, less environmentally-damaging production methods), forcing states to raise their statutory requirements.

To solve these problems, Europe-wide re-regulation needs to be introduced. This is difficult to achieve due to the high degree of consensus required, which is blocked by the conflicting interests of the national governments (this subject will be examined below under positive integration). Moreover, at present the prerequisite Europe-wide redistributive collective bargaining institutions do not exist. As a result, in Europe as a whole, it is anticipated that the political capacity to intervene effectively will fall below the level achieved in the nation states during the post-war decades [Scharpf, F., 2000].

Precisely this lack of re-regulation at a European level due to the difficulties in reaching an agreement between the member states of the Union could generate new problems and conflicts between social protection and the movement of labour, if it is not already doing so. The *Rapport sur l'État de l'Union Européenne 2002* [Fitoussi and Le Cacheuse, 2002] indicates that although labour is almost immobile in the UE, from the moment it is accepted that in matters of social migration the movement of labour counts for less than the "marginal mobility" of certain categories of workers within Europe, a certain mobility could have serious consequences for social protection systems as a whole. The relatively mobile groups are active young people and the unskilled. Some of the theoretical premises are:

- a. *The question of retirement versus social competition to attract active young people.* Assuming that people tend to move less as they grow older, a certain (marginal) mobility of active young people compared to the immobility of retired people can be postulated. As young people are net contributors to the social security systems, if they move in relatively large numbers to countries with lower taxes they will endanger the pension systems by undermining inter-generation transfers (one of the

pillars of the system), particularly bearing in mind the context of an ageing European population. The problem is that once these processes are set in motion they become large-scale and reforms are very difficult to implement, particularly in the absence of a serious process of European coordination.

- b. *The question of universal benefits versus social competition to repel “undesirables”*. Assuming perfect mobility of workers and perfect immobility of unskilled workers, states with more redistributive social policies would be penalised. A redistributive policy involves better qualified and better off workers making a greater contribution to the national tax and social effort and less skilled and poorer workers making a smaller contribution. Any increase in the redistributive character of the social protection system will lead the “rich” to emigrate and the “poor” to immigrate.

Although there are no empirical studies on this subject for Europe, there are for the United States. It is theoretically and empirically feasible that North American states could compete to repel those who are most dependent on social assistance instead of competing to attract the most skilled workers. In short, they could compete to retain a high proportion of residents with high levels of income.

In the European Union, in view of the social competition models, the context of mobility associated with enlargement raises the question of the need to arbitrate between the positive effect of this process (the ability to pay pensions) and the negative effects (the need for greater social benefits).

It would appear that over the last decade both the unemployment protection and the general pension schemes of the member states of the European Union have been growing less “generous”.

## **5 - THE WEAKNESS OF POSITIVE INTEGRATION**

There is some evidence that as the legal limitations of negative integration and the economic limitations of competition in the internal market are reducing the range of national political options, the need is emerging to adopt positive integration measures aimed at correcting the markets and forestalling an erosion of the capacity to exert political control over the economy of one’s own country.

However, achieving this capacity to exert control is a difficult matter. Although the 1986 Single European Act reestablished qualified majority voting in the Council (at least on harmonisation decisions “which have as their object the establishment and operation of the internal market”), any country still has a right of veto when “very

important interests” are involved and unanimity is still required for a wide range of Council decisions.

Consensus would therefore seem necessary in order to develop positive integration measures.

It is undoubtedly not easy to agree on measures to regulate the negative aspects generated by the single market creation processes, even when the Council, the Commission and the Parliament are willing. One of various reasons is the possible opposition of the Competition DG to European-level re-regulation of a free market that, according to the economic constitution of the Treaty, must be protected against any type of political intervention, national or European.

Equally, nobody is unaware of the difficulties in negotiating or agreeing positive integration solutions as a result of three types of political conflict: some are ideological in nature, others are linked to economic interests and the last are due to the costs of institutional changes.

The ideological conflicts arise, basically, from the different concepts of the respective rôles of politics and market forces. The neo-liberal governments of Europe have collided with the Social Democrat governments, although mutedly, on this subject.

Another problem that causes confrontations is that of the respective rôles of European policy and the nation state (De Gaulle’s *Europe des patries*, federalism or confederalism, etc.).

The conflict of economic interests springs from the differences in levels of development. Since membership was extended to the south, the European Union has included members with some of the most efficient economies in the world and others that are still on the threshold of constituting developed economies. Denmark’s GDP, for instance, is slightly over three times that of Portugal and approximately the same ratio may be assumed for average labour productivity. This, in turn, means that Portugal’s per capita social policy spending is a sixth of that of Denmark and the same is found for environmental protection expenditure.

From this point of view, harmonisation of social protection and environmental standards to the Danish level, for example, would have devastating effects on the international competitiveness of the economies with lower productivity rates (massive de-industrialisation of the less developed countries within the Euro system? The union of the two Germanies is an example).

The third obstacle to agreement on common European policies is caused by the differences in administrative practices and political and institutional criteria. As has been shown by some studies of European social policy, the differences in national political styles and administrative practices are difficult to surmount, even when the required changes basically only affect administrative bodies under the direct control of the State. Moreover, there are differences between the Scandinavian and continental welfare models (for example, in 1993 Sweden and Denmark spent 6.4% and 4.4% of GDP on services for the elderly, the handicapped and families, against 1.3% in the Netherlands and France, 0.8% in Germany and 0.3% in Italy and Belgium) and between the various ways of financing the welfare state and different labour relations systems [Scharpf, 2000].

In conclusion, since positive integration, unlike negative integration, depends on a high level of agreement between member state governments, it is highly improbable that certain types of policy problems for which there may be politically viable solutions within each member state can be tackled in an effective manner at European level. If, at the same time, the national solutions are hindered by integration and the pressures of economic competition, the overall outcome may be a general loss of decision-taking capacity at the multiple levels of European policy and, consequently, a loss of democratic legitimacy through results.

## **6 - FINAL CONSIDERATIONS: THE SINGLE MARKET AND EUROPEAN CITIZENSHIP (A NEW FORM OF SOCIAL PROTECTION)**

The construction of the internal market is an evident success for negative integration. However, one of the main deficiencies of the process is the limited number of those that it has really benefited. It is the multinational companies, above all, that have reaped the greatest benefits from economic integration (which is primarily reflected by economic concentration, flows of capital and the strengthening of intra-community trade), although these free trade developments have certainly also had, and have, positive effects for the economies of the different countries and for their citizens.

However, it should be emphasised that the Union, as an economic integration project with a political dimension, must build a common market for all its citizens, including consumers, students, workers, professionals and small companies. This second phase is still far from being achieved and a large number of European citizens are thereby denied what should be the essence of their citizenship (citizenship of the market) [Maduro, M.P., 2002, p.99].

In the framework of the future of the Union, the “democratisation” of the single market needs to be tackled. For many analysts (including Weiler, Scharpf and Maduro), the single European market is probably suffering from a greater democratic deficit than the European political system. The difficulties in correcting the process through positive integration have already been mentioned. The next step is to take a closer look at the need for political integration in the European Union.

The intention here is not to debate what type of Constitution the Union should have or the problem of democratic legitimacy, emanating from the “demos” or “Volk” or legitimacy through results, in solving the shared problems of the citizens [for these questions see Weiler et al., 1995; Maduro, 2002 and Scharpf, 2000], but only to refer to a certain idea of European citizenship “which, if it were to gain ground, would complement the single market and could give it democratic legitimacy”. This would be an authentic act of positive integration.

The question is the creation of a citizen of Europe over and above the States. It will be difficult to achieve the social legitimation of a European political community while European citizens see that the rights they are conferred by the Union derive not from their individual position in relation to other European citizens but from their belonging or not belonging to a particular national community.

In the same way, it will be still more difficult to promote a policy of distribution if this is not based on criteria of distributive fairness but on the bargaining power of the different States. Distributive fairness is a necessary condition to guarantee the citizens’ loyalty to a political community (the European Political Union) and is a way of guaranteeing the necessary solidarity to compensate for the steadily increasing negative effects of the single market.

Along these lines, following Maduro [2002, p.96-97], public expenditure distribution and EU funding mechanisms would need to be modified in two ways.

Firstly, the present manner of distributing European policies and funds by states or national quotas must be modified in order to achieve a distribution based on the individual circumstances of each European citizen. In other words, these policies must be based on the rights conferred on the citizens of Europe and not on redistribution between states. This does not necessarily signify increasing the EU budget (although that could be appropriate) but it does mean remodelling the present policies (directly or indirectly redistributive) on the basis of the above mentioned principles of fairness.

Secondly, the same would have to be done for EU finances. A positive measure would be to initiate a process of replacing the current national taxes with a European tax. Although this tax would be marginal (for the present) compared to national taxation, given the limited community budget (around 1.5% of the EU GDP), it would give the

European funding system far greater transparency and distributive fairness. This would mean that redistribution would no longer go “from Germans to Greeks” but from the richest to the poorest irrespective of their nationality.

I believe that if the EU were to take the appropriate steps towards structuring this “European citizenship irrespective of the States” with the redistributive aim of attending to the negative social effects that the single market has generated, this would build firm foundations for the authentic political unity of the Union.

Putting this idea into practice may well involve many difficulties, as has already been mentioned when discussing positive integration. However, despite the difficulties, the explicit importance that all governments attach to maintaining their different welfare states certainly appears to be evident. It would not be far-fetched for the European governments to come to an explicit agreement whereby all the countries would avoid cuts in the welfare state that would take their social expenditure below a minimum threshold that could be defined by a line between the situations of Portugal and Luxembourg (Portugal had a per capita GDP of \$10,000 and social expenditure of 14% of its GDP in 1995; those of Luxembourg were \$45,000 and 30% respectively). It could even be slightly below this line [Scharpf, F., 2000, p.191].

The still rudimentary EU social policy is moving in this direction. It is performing its task particularly through legislation (poverty, work exclusion, immigration, social and health matters and the elderly), with a very small budget (EU social expenditure within the framework of the cohesion policies is only slightly over 10% of that of the States of the Union as a whole).

However, this European social policy, “with all its insufficiencies and weaknesses, is the expression of the only response that actually exists in progressive and supranational terms to the model of deregulated global capitalism that is nowadays in crisis ... finally taking a step towards a European social citizenship that includes each and every inhabitant of the EU irrespective of their place of origin” [Adelantado and Gomá, 2000, p.214].

European citizenship over and above the states: is this not a positive integration process that could counterbalance the social costs generated by the single market?

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