

## Social Cohesion and Development

Vol 1, No 2 (2006)

The European Welfare State



### The Europeanisation of social protection

Eberhard Eichenhofer

doi: [10.12681/scad.9011](https://doi.org/10.12681/scad.9011)

Copyright © 2016, Eberhard Eichenhofer



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0](https://creativecommons.org/licenses/by-nc-sa/4.0/).

### To cite this article:

Eichenhofer, E. (2016). The Europeanisation of social protection. *Social Cohesion and Development*, 1(2), 5–14.  
<https://doi.org/10.12681/scad.9011>

# The Europeanisation of social protection

by Eberhard Eichenhofer, *University of Jena*

## Ο εξευρωπαϊσμός της κοινωνικής πολιτικής

του Eberhard Eichenhofer, *Πανεπιστήμιο Ιένας*

### ABSTRACT

The present paper argues that the European integration process has eroded the competence of member states in the social policy field. This process is discerned both in primary and secondary legislation, as well as in growing impact of soft policy instruments, such as the open method of coordination (OMC). However, this influence will not result in the formation of a European welfare state, but will be based on strengthened action within a supranational organization.

**KEY WORDS:** Social policy, european integration, welfare state

### ΠΕΡΙΛΗΨΗ

Το παρόν άρθρο υποστηρίζει ότι η διαδικασία της ευρωπαϊκής ενοποίησης έχει επηρεάσει τις αρμοδιότητες των κρατών μελών στον τομέα της κοινωνικής πολιτικής. Το στοιχείο αυτό είναι εμφανές τόσο στο πρωτογενές, όσο και στο δευτερογενές Δίκαιο της Ε.Ε., καθώς και μέσω του αυξανόμενου ρόλου των εργαλείων ήπιου συντονισμού, όπως είναι η Ανοικτή Μέθοδος Συντονισμού (ΑΜΣ). Η επίδραση αυτή ωστόσο δεν αναμένεται να οδηγήσει στη διαμόρφωση ενός ευρωπαϊκού κοινωνικού κράτους, αλλά στην ενίσχυση της δράσης στα πλαίσια ενός υπερεθνικού οργανισμού.

**ΛΕΞΕΙΣ-ΚΛΕΙΔΙΑ:** Κοινωνική πολιτική, ευρωπαϊκή ενοποίηση, κράτος πρόνοιας

## 1. Introduction

**I**n August 2006, Germany enacted a law on Anti-discrimination in employment and supply similar to the British one. This was not however a case of policy learning. The law was enacted in order for Germany to comply with two EC directives (Dir. 2000/43/EC and 2000/78/EC) –constructed however in line with the British legislation– and thus avoid the heavy sanctions, imminent for every member state that failed to implement the directives in time.

This example illustrates the increasing impact of EC's legislation on member states' social policy. This influence is no longer restricted to matters pertaining to the Single Market, as it extends beyond the sphere of economic activities to issues such as environmental standards, consumers' rights, immigration rules, member states' budget rules and economic policies and public health. Social policy issues such as employment, health and safety at work, social protection, social security, health and long term care and the fight against social exclusion have also been inspired by acts of European legislation.

This is not easily accepted though. Labour and social welfare law emerged at the end of the 18th century as new branches of law related to nation state history. From the end of the 19th

century till the midst of the 20th century European countries followed different paths in labour relations and the development of their social protection systems. These different approaches (liberal, conservative or social democratic) can be detected in the choice of labor and welfare arrangements of each member state (Esping-Andersen, 1990). At the end of the process the nation state appeared as a community based on national and social solidarity.

Since the formation of the EEC, social policy has been an issue of European legislation. The very first piece of legislation pertained to the co-ordination of social security systems of the six founding member states (Reg. Nr. 3 and 4 /58). In the 1970s, the social policy agenda was set and following the advent in power of Tony Blair the Amsterdam Treaty (1997) was signed, thus turning the (incorporated) Social Protocol and the Agreement on a Joint EC social policy established in Maastricht into primary legislation.

Over the past decade many other initiatives have been undertaken, which will be elaborated and analysed further in the following paragraphs. More precisely, elements of social policy will be detected in primary (II) and secondary legislation (II), as well as the growing role of new soft law techniques (IV). We conclude with an analysis of the impact that the Europeanization of social protection has on Europe and social policy (V).

## 2. Social policy in primary legislation

### *Values and aims of EC and EU*

**T**he EC –or as it will be called after the enactment of the Constitution the EU– is committed to basic values and targets. The idea that values are both constructive and intrinsic elements of law stems from the continental legal thinking. It draws its inspiration on theories of natural law. By adopting these values into the Constitution as basic principles the EU illustrates the basic normative assumptions regarding its operation and direction (Korda-Schouskens, 2006).

According to the Constitution (Art I-2) the Union is founded –among others– on the values of equality, respect for human rights –including the protection of persons belonging to minorities– non-discrimination, justice, solidarity, equality between women and men. As to the Union's objectives (Art I-3) these relate to «a highly competitive social market economy, aiming at full employment and social progress». The Union shall also combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. In its relations with the wider world, the Union shall uphold and promote its values and its interests and shall contribute to the sustainable development of the Earth. These new provisions –not yet in force, but already accepted by the Council and the European Parliament and ratified by the majority of Member States (18 out of 27) and therefore already legally relevant as a possible future legal framework– put a much greater emphasis on social issues and social policy objectives, compared to the existing Treaties.

Social objectives are nonetheless also present in the founding Treaties. According to Art 2 of the EU Treaty, the EC aims at a «harmonic, balanced and sustainable development of economic life, a high level of employment and social protection, equality between women and men, a constant, non-inflationary growth, the increase in living conditions and the improvement of work and living standards».

These provisions do not have any direct legal effect, nor do they create specific rights or entitlement or give entitlements to individuals. Nevertheless, as constitutional or contractual principles they help interpret primary legislation. One can thus argue that social policy issues are acknowledged as top priority EU or EC matters in the framework of EU law.

## ***Human rights***

The Charter of Fundamental Rights was proclaimed in 2000. Even though it is not a piece of EC legislation, it can nonetheless be regarded as a reinstatement of the fundamental human rights enshrined in international as well as national legislation. Against this background, the Charter's principal aim can be seen as an attempt to systematise human rights, already accepted in the EC. The Charter will be incorporated in the Constitution, forming its second chapter.

Following the adoption of the Constitution, the Charter will become legally binding and is therefore expected to have an enormous influence on Member States' legislation. An impressive list of provisions has already been elaborated in an attempt to circumscribe and safeguard the huge variety of human rights, already formally and officially recognised.

According to the Charter, human dignity must be respected and protected (Art. II- 61 EU Constitution= Art. 21 Charter); no one shall be required to perform forced or compulsory labour (Art. II-65 EU Constitution = Art. 5 Charter); everyone has the right to education (Art. II-74 EU Constitution = Art. 14 Charter); any discrimination based on any ground shall be prohibited (Art. II-81-86 EU Constitution = Art. 21-26 Charter).

Provisions on solidarity can be found in Title IV (Art II – 87-98 EU Constitution = Art. 27-39 Charter). This part contains fundamental social rights –acknowledged world wide– such as:

- Workers' right to information and consultation within the undertaking (Art. II-87 EU-Constitution),
- Right of collective bargaining and action (Art. II-88 EU Constitution),
- Right of access to placement services (Art. II – 89 EU Constitution),
- Protection in the event of unjustified dismissal (Art. II-90 EU Constitution),
- Fair and just working conditions (Art. 91 EU Constitution),
- Prohibition of child labour and protection of young people at work (Art. II-92 EU Constitution),
- Family and professional life (Art. II – 93 EU Constitution),
- Social security and social assistance (Art. II- 94 EU Constitution)
- Health care (Art. II – 95 EU Constitution),
- Access to services of general economic interest (Art. II- 96 EU Constitution),
- Environmental and consumer protection (Art. II- 97, 98 EU- Constitution).

The provisions are addressed to EU-institutions such as the Commission, the European Parliament, the European Council and the European Court of Justice, which will have to respect and safeguard these rights. As most of them require the establishment of social and legal institutions, and given that this decision lies primarily in the legal competence of Member States, these provisions will ultimately have great an impact on the Member States' capacity to preserve and develop their own social policy institutions.

## ***Social policy competencies of the EC/EU***

The legislative competencies of the EC/EU are circumscribed by its primary legislation (i.e. the founding Treaties and the Constitution when adopted). Currently, the EC/EU can enact regulations or directives. Once the Constitution comes into force, European laws and European framework laws (Art. I-33 Constitution) requiring the support of the European Parliament and the European Council will replace regulations and directives. Given that the EC and EU are only allowed to enact laws within their ambit of competencies (Art. 1-11 Constitution), Member States cannot do so without the specific authorisation by the Treaties or the Constitution.

Regarding the relationship between the EC–or EU– and Member State legislation the new Constitution (Art. I-12) distinguishes three categories of competence; the exclusive, the shared and the supportive competence.

Single market issues fall within the exclusive competence of the EU (Art. I-13 Constitution), among which is the co-ordination of social security systems. This can be explained by the fact that the freedom of workers (Art. III-133 Constitution) along with other fundamental freedoms need to be accompanied by an international framework guaranteeing the acquired social protection rights of migrant workers. Provisions for the protection of workers' social rights were nonetheless already present in the Treaties (Art. 51 EEC Treaty, now Art. 12 EEC Treaty). In other words, the co-ordination of social protection will continue to fall within the exclusive competence of the EU (Eichenhofer, 2006, Pennings, 1998).

According to Art. I-14(2) of the Constitution, social policy is a matter of shared competence, whereas in the area of employment policies and of social protection systems the Union shall take measures to ensure their co-ordination (Art. I-15 (2), (3) of the Constitution). In the areas of health, education and vocational training, the Union shall also have the competence to carry out co-ordinating action (Art. I-17).

Besides these provisions, the Constitution –just like the Treaty– contains a separate chapter on «Employment and Social Policy» (Art. 125-130, 136-144 EC Treaty; Art. III- 203-208, 209-219 EU Constitution). Even though the EC/EU plays a supportive role, employment policy is no longer left to the exclusive competence of Member States. Employment policy currently forms part of the open method of co-ordination. The latter constitutes an instrument of EU governance, applied in areas ranging from fiscal and economic policies, to health and environmental policies. Over the past decade OMC has managed to acquire a key role in the formation and formulation of employment and social policy. In the context of employment policy, the EU Treaty or Constitution sets the overall framework, while action is taken at member state level. The common goals pursued are employment increase and increase of the adaptability of the work force.

In the genuine social policy chapter of the EC-Treaty (Art. 136 of the EC-Treaty) or the EU Constitution (Art. III – 209 of the EU Constitution) one can find many references of high relevance to social policy (de Burca, 2005,1). The EC/EU expresses its commitment to the principles established by the European Social Charter, enacted in 1961 by the Council of Europe (1999) and the EC Charter of Fundamental Social Rights, disapproved at the time of enactment in 1989 by the British Government of M. Thatcher but currently considered as an integral part of EC/EU law despite the fact that, due to the absence of unanimity, it has never been a formal act of EC legislation.

The improved living and working conditions, proper social protection, social dialogue and the combating of social exclusion are considered as key goals of the EC/EU. In all areas of social policy –besides wages– the EU has a supportive legislative role to play, especially regarding issues such as accidents at the workplace, health and safety at work, working conditions, social security and social protection, protection of workers where their employment contract is terminated, information and consultation of workers, collective bargaining and actions, conditions of employment of third country nationals (= Non EU citizens), vocational training and education, equality between women and men, the combating of social exclusion and the modernisation of social protection systems. However, whereas certain matters require unanimity (e.g. dismissals, social protection or collective bargaining) the rest are decided on the basis of majority.

A colourful picture emerges from the analysis above where the EC/EU has not only numerous legal competencies, but also safeguards basic social policy institutions – social protection or collective bargaining – as legal institutions fostering human rights. Seen from the elementary principles

—above all in the light of the EU Constitution— many social policy ideals are proclaimed and social values and targets are pointed out. Based on primary legislation the EC/EU is not only a single market project but also an important and demanding social one.

### 3. Secondary legislation

#### *Co-ordination of social security*

As one of its first pieces of legislation, the EEC accomplished the commitment to establish a system of co-ordination of member states' social protection systems or «social security systems» in the EC/EU vocabulary. The term «social security» is wider than the one used in the UK, where only benefits in cash are conceived as «social security», whereas benefits in kind —e.g. the treatment of a sick person by a physician of the NHS— are understood as social services. By contrast, in the EU context these benefits are also part of «social security». The EC notion of social security follows the definition of the ILO Convention No 102 on the minimum standards of social security (1952). According to the Convention, social security offers protection to a substantial part of the working or residing population of a country for the following nine social risks: sickness, maternity, old age, invalidity, death (of the breadwinner), unemployment, accident at work and professional diseases and family charges. This concept is also relevant for the EC/EU co-ordination of «social security».

The EEC enacted Regulations No 3/1958 and No 4/1958 on the co-ordination of social security. These were subsequently amended by other legislative acts, predominantly by Reg. 1408/71 which will also be replaced in the near future by Reg. 883/2004, passed in April 2004, but not yet in force because the member states could not agree so far on the administrative provisions (Mahrhold, 2005). Despite the existence of differences, the overall aims, rules and principles of co-ordination have been kept intact. The ECJ has given numerous judgements on this piece of legislation (Schulte, 2003). At least 500 judgements are relevant to this enormously important piece of EC/EU law. These judgements are extremely wide in their content and impose numerous commitments to the Member States' legislation on social protection and social welfare. The most important principles of these judgements are as follows: non-discrimination, rights based on occupational status and not citizenship, transferability of cash benefits (predominantly pensions, workers' compensation, sickness payments, and to certain extend unemployment benefits). The operation of such a system requires the co-operation of member states. The system is actually working very well, yet only a minority does notice it, mainly because of its smooth operation.

From a systematic point of view, the EC social security co-ordination regime can be interpreted as an Europeanised version of the International Social Security law of the Member States. In other words, EC legislation replaced the international contracts concluded by the states up to that point in order to co-ordinate their systems of social security. In terms of intra-state relations, the law was completely replaced by the EC legislation.

#### Directives

Since the 1970s, the EU has enacted many directives in order to establish new rules on key areas of labour and social policy (Fuchs-Marhold, 2006). The measures taken to guarantee the equal treatment of women and men in employment can be regarded as the first initiative. Further steps to foster equality in employment, work and pay and chances to develop their career had been taken. Directives against sexual harassment accompanied the legislation. Further accent was placed by

legislation regarding the protection of workers in cases of closure or transfer of plants. Directives on the information and consultation procedures, rules in the case of mass dismissals, protection of the wages lost or at least jeopardised by the insolvency of the employer or rules to protect the worker in cases of transfer of the undertaking should also be mentioned in this context. During the preparation and up to the completion of the Internal Market Project (i.e. from the end of 1980s until the middle of the 1990s) legislation on health and safety was unified through a plethora of highly technical regulations. One could thus argue that currently member states' legislation in that particular field is similar in substance, as it has to comply with European legislative acts. Further steps were taken in the context of social dialogue. The outcome was a social partner agreement on European work councils, parental leave and part time work. Anti-discrimination directives had to be implemented by the Member States so as to protect minorities, the elderly, the young or the disabled against all forms of explicit or implicit, formal or informal, direct or indirect discrimination based upon criteria identified as discriminatory ascription.

### ***Growing influence of the case law of the ECJ***

In the formation of EC law, a growing role had been played by the ECJ. In the UK, the Barber case is still remembered as a case where the ECJ held, that employee' pension should be conceived as payment. As a result, an employer is not allowed under the equal treatment clause of the EC Treaty (Art. 119) to provide for pensions, if the amount or the pension age depends on the beneficiary's gender. In France, the ECJ caused an outcry when it held in the Pinna (ECJ, 1986, 1 et sequ.) judgement that a reduction of family benefits in cases where the child is not residing in France constitutes a violation of EC legislation. The ECJ ruling was indeed unique. According to the Court's ruling there was no justification for such practice under EC legislation. In Germany a series of ECJ rulings launched a debate regarding the role of the EC in social matters in the early 1990s.

There was a highly controversial ruling in the case of «Christel Schmidt»( ECJ, 1994, I 1311 et sequ.) – a female cleaner who lost her job as a result of a reorganisation of the bank where she worked. The bank had originally employed her, but when they decided to outsource the cleaning service, Christel Schmidt was dismissed. Having addressed the Court, the ECJ finally ruled that her post had actually been transferred from the bank to the cleaning company, so ultimately Christel Schmidt's post had been preserved, based on the notion of transfer of undertakings. A transfer of undertakings takes place as long as the work performed by the employee is preserved. Another controversial issue was dealt with in the Paletta judgment (ECJ, 1992, I 3423 et sequ.). A Sicilian worker with his family –wife and children– was employed by a German. After their holidays, they all fell sick and presented a certificate by a Sicilian medical doctor, certifying the disease of all family members, valid for four more weeks. Under the German law, workers are entitled to their wages for a period of six weeks maximum a year in case of medically certified illness. Under the EC social security legislation, medical certifications of other Member States are to be accepted as if they were certificates of the competent state. If the content of the certificate seems doubtful, the public authorities should examine the worker's health status. In the Paletta case, this would mean a test of the worker by the Sicilian public authorities. The result was regarded as inappropriate. Nevertheless, the ECJ found that the employer's commitment to pay wages in case of sickness is a measure of social security in the understanding of the EC legislation, because it guarantees income security in case of social risk, irrespective of whether the protection is based on public or private guarantees.

The examples above are a strong indicator that EC's impacts on the sovereignty of member states is not limited to the economic sphere but extends to social policy issues as well! This observation has caused discomfort, as it puts a definite end to the prevailing idea, that the social policy sphere would still be a national reserve where each member state would be able to keep its own distinct social model, i.e. its institutions, principles, values, targets, guidelines and concepts. But above all, it has caused discomfort because ECJ rulings challenged traditional approaches. The French concept of transferability is now relevant for all member states as a result of its role in EU legislation. France has been the model for this directive. For the ECJ case law the national legislation has no relevance for analysis of EC law provisions. Privileges established under a generous national social policy approach, are now losing their legitimacy as a result of the co-ordination of member states' social security systems. Equal treatment is a widely used principle, which is to be interpreted in a very broad sense. Given the once restricted competencies of the EC, one could understand the broad interpretation the ECJ has given to the equal treatment of women and men.

The more competent and active the EC is in using its legislative power in the field of social policy, the more relevant the EC case law becomes for member states. In addition, the more the Member States' legislation is required to observe the ECJ case law, the less autonomy they will enjoy. Seen from a broader perspective, the ECJ case law represents the shared and common ground of the Member States' legal orders. In this sense, the ECJ's case law represents the common ground of social and labour legislation of EU's member states.

## 4. EU soft law on social policy issues

### *Employment policy*

**A**s already indicated, the open method of co-ordination (OMC) –initially pertaining to matters of fiscal and economic policy– is currently an important instrument of social policy (Geyer, 2000). Its first application was in the field of employment policy (Asgingbor, 2005, Szyszak, 2000, 122).

For over a decade –initially on an informal basis, currently on a well established legal fundament– a process of joint policy assessment, reform and evaluation takes place under the auspices of the EU through a process based on economic indicators, benchmarking, comparative analysis and identification of best practises. The OMC (de la Porte-Pochet, 2002) is not a hard law, but a soft law instrument. Member States are not therefore required to adopt the recommendations or the best practice examples, nor are they pressured to do well in this employment policy contest –which has some similarity to the «Olympic Games» or other highly appreciated sport event. The aim of the contest is not harmonisation of member state legislation. Its main emphasis is on the economic and social effects of national law. The OMC is therefore focusing on the way member states' different approaches on employment policy are capable of achieving jointly elaborated political targets. Under this assumption, the systematic approach does not matter! If the results are achieved, the ways to do so is of minor importance. In this sense, the OMC strives to implement systematically the economic analysis of social welfare and labour law. This is done with the intention to improve the functioning of given legal institutions, not by re-shaping them, but by outlining their social and economic function.



Within this context, one can detect the new imperatives of employment policy. The interactions of employment and social protection have emerged during the past two or three decades. Social protection is not for those able to work, but for those who have lost their capabilities. If the able-bodied are socially protected, then they are expected to make efforts to re-enter the labour market as quickly as possible. Hence, work must pay –work should be more attractive than no work! A social protection system placing a heavy burden on the worker suffers from self-destruction; it jeopardises the economic basis upon which all social protection systems are built. Therefore, the social protection system has to give incentives for work to everyone. It even has to do more than this; the better the social protection system, the less they will rely on it. Therefore, an increase in the workforce will be achieved by the creation of a labour market capable to attract as many «candidates» for the social protection system as possible. From a social protection aspect, it is also possible to detect elements having a market enhancing character. Initiatives of re-integration and improvement of qualifications, prevention and re-habilitation should help the unemployed, sick or disabled or even the elderly to take part in the economic life of society. Benefits in kind –child care facilities and income support for young parents– can alleviate the living conditions for women and minimise the factors that hinder female participation in the labour market. The European Employment Strategy has taught the Member States that the modernisation of their social protection systems depends on a dynamic and expanding labour market.

### ***Modernisation of social security systems - old age, invalidity and survivors' pensions***

The Social Protection Committee was established in 2000-2003. The European Council intervened in the process of the modernisation of Member States' social security systems. The first task was to elaborate a strategy for old age, invalidity and survivors' pensions. All Member States took part and were assessed. The results were very interesting; some were criticised severely (Austria, France and Italy) while others were praised (Sweden) as standard-setters. What was the outcome of this procedure and what are the consequences? The Committee pointed out those four elements that should be identified in each Member States' protection system (EC, 2003):

- A solid basic protection for all persons in old age, allowing people to maintain, to a reasonable degree, their living standard after retirement,
- An income related protection, which should be substantial enough to conserve a proportional share of the previously earned income,
- A second and third pillar, invalidity and survivors pensions, based on employee's benefits and personal saving,
- A pension legislation, which takes into account the changes in the relation between pensioners and the active population, in order to equalise and balance the benefits and burdens –in the sense of securing intergenerational fairness.

This small list of political priorities allows a solid assessment of the various Member States institutions – making obvious both their shortcomings and their achievements. A common core of priorities had been set as cornerstones of national pension policy and indicators for success. So, the modernisation of pension policy –located at the agenda in all the Member States– was driven by EC-coordinating measures.

## ***Modernisation of social security systems - health and long term care***

In recent years the OMC has also expanded to the area of health policy (EC, 2004). The indicators set in this policy field are those established in the EU Constitution and the Charter on Fundamental Human Rights. More precisely, every person is entitled to free access to high quality health care without restrictions, based on the principles of fairness and socially bearable costs. These targets are highly acceptable, but the difficulties –as the devil– lie in the details. Thus far, there are no reliable findings. Nonetheless, the existence of a common framework is expected to help reach consensus as to what a well established health and long term care system of supply should be built upon.

## **5. European welfare state or joint federal Europe of welfare states?**

**W**hen looking at the current state of European integration, it becomes quite evident that social policy (labour law, employment issues and social protection) are at least today central issues of the EU policy. The co-ordination of social security systems, a strong social policy commitment in the primary legislation, a growing role of secondary legislation for an increasing number of matters, accompanied by a leading influence of the ECJ combined with the OMC on central issues such as employment and social protection, old age security and health care, illustrate that not only is there a deep social commitment in the economic sphere of Europe, but that the EU is also playing an increasing role as a social policy actor. The EU's role in social policy is strong and on the way of becoming stronger. Thus, one might raise the following question: What is the implicit target of this development: is it the formation of a European welfare state or a joint federal Europe of welfare states?

A closer look at the competencies of the EU quite clearly illustrates that social policy is far from being a matter falling into the exclusive competence of the EU. This is only the case where the immediate functioning of the Single Market is concerned, i.e. the four fundamental freedoms and the accompanying legislation on international social security co-ordination. The EU is not interfering in the organisation, financing, or administration of social protection systems or the implementation of employment standards. The above are left to Member States on the basis of their national systems and their national social policy traditions – which are still strong, vivid and relevant. The major role of the EU lies in the setting of new programmatic elements. This was evident in all fields examined in this paper; discrimination based on gender, nationality, ethnic origin, disability, or age, the combination of economic freedom with social commitments, the interaction of employment and social protection and the priorities set in the different fields of social protection.

In all these contexts, the EU influence seems to me as the most advanced step deeply inspired by international tendencies, philosophical debates, sociological inquiries, political thoughts, moral principles and a whole range of practical experiences from different states based upon similar institutions, with similar values and views, bound by a joint economy, policy and even society. Europe is under way, and it will influence social policy even more than in the past. This is not something to be overlooked. On the contrary, this influence should be considered as substantial. Against this background, Europe is not about creating homogenous societies, but about integrating institutions existing in some countries to the legal system of others. Yet, this process is not taking place under a well-organised framework but instead in a non systemised manner. By accident, as one might say in English!

This integration process does not derive from a global legislative competence, which would allow the EU to act in the field of social policy. Up until today, member states are the sole competent institutions for law making in social policy issues. Nevertheless, the EC influence is present due to the twofold role of member states within the EU legal framework; as an element of the EU legislation and simultaneously as addressees of EU directives. A member state has therefore a double role: as an actor within the EU and as a separate legislator. If EC makes member states to enact in a certain direction, it is the consequence of decisions which had been taken by the member states themselves within an EC context. Scharpf (2002) refers to this dilemma as the joint-decision trap. EU legislation is based upon this interrelation of supranational integration and limited sovereignty, which characterises the status of each member state – being submitted to EU legislation and acting autonomously in line with principles agreed upon on the EU level. This is the way federalism operates: by making independent agencies dependent on one another and by creating double loyalty. This brings about national actions, on which the member state agreed to take as part of a supranational organisation.

## Bibliographical references

- Asgingbor D., (2005), *The European Employment Strategy*, Oxford: Oxford University Press.
- Council of Europe, (1999), *Social Protection in The European Social Charter*, Strasbourg.
- de Burca Gr., (2005), «Towards European Welfare?», in: *ibid* (ed.), *EU Law and the Welfare State in Search of Solidarity*, Oxford: Oxford University Press.
- de la Porte C., Pochet Ph., (eds) (2002), *Building Social Europe through the Open Method of Co-ordination*, Brussels: Peter Lang.
- EC, (2003), *Joint Report by the Commission and the Council on Adequate and Sustainable Pensions*, Brussels.
- EC, (2004), *Modernisierung des Sozialschutzes und die Entwicklung einer hochwertigen, zugänglichen und zukunftssträchtigen Gesundheitsversorgung und Langzeitpflege*, Mitteilung vom 20.4.2004, KOM(2004)304 endg.
- Eichenhofer E., (2006), *Sozialrecht der EU*, Berlin, 3. Auflage.
- Esping-Anderson G., (1990), *The Three Worlds of Welfare Capitalism*, Princeton: Princeton University Press.
- Fuchs M. - Marhold F., (2006), *Europäisches Arbeitsrecht*, Wien, 2. Auflage.
- Geyer R., ((2000), *Exploring European Social Policy*, Cambridge: Policy Press.
- Korda M. - Schoukens P., (2006), "The EU-Constitution: What went wrong for Social Protection?", *European Journal of Social Security*, 8 (2006), p.p. 7-34.
- Marhold Fr. (Hg.), (2005), *Das neue Sozialrecht der EU*, Wien.
- Pennings Fr., (1998), *European Law of Social Security*, The Hague/London/Berlin, 2nd edition.
- Scharpf Fr., (2002), "Regieren im europäischen Mehrebenensystem", *Leviathan*, 30, (2002), p.p.65-92.
- Schulte B., (2003), "Supranationales Recht", in: Bernd von Maydel/Franz Ruland (Hg.), *Sozialrechtshandbuch*, 3. Auflage, Tz. 32.
- Szysczak E., (2000), «The Evolving European Employment Strategy», in: Josephine Shaw (ed.), *Social Policy and Law in an Evolving European Union*, Oxford.