

Review Article

Assessing the Past and Future Development of EU and UK Social Policy

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This article examines both the place of the social dimension in past and on-going debates about the United Kingdom's membership of the European Union and the reciprocal influence of EU and UK institutions on developments in the social policy field. It explores fluctuations in the relationship between economic and social policy, the divisiveness within, between and across political parties, the role of key policy actors in shaping the social agenda, and the failure of attempts to harmonise social welfare systems as enlargement intensified their diversity. We argue that, although difficult to predict, the implications of Brexit for future social policy in the UK and EU may not be so far-reaching as in some other policy areas, due largely to the maintenance of unanimous voting and the subsidiarity principle in many social domains, combined with the shift towards soft law and the widespread resistance of member states to tighter social integration.

Keywords: UK social policy, EU social and employment law, European integration, open method of coordination, Brexit.

Introduction

The Founding Treaties of the European Economic Community (EEC) in 1957 were primarily market driven. When the UK joined the EEC, by approving the European Communities Act 1972, the UK Parliament agreed to give EEC law supremacy over national law. EEC membership enabled the UK to participate in the decision-making process as the social dimension became a more significant component of European integration and a necessary complement to economic policy. Under Jacques Delors's presidency of the European Commission (1985–92), proposals for developing social policy brought the UK into conflict with member states seeking to deepen social integration. The UK's opt-out from the Agreement on Social Policy in the 1992 Maastricht Treaty did not prevent the enlarging Union from adopting contentious social legislation as health and safety measures under qualified majority voting (QMV). When, under a Labour Government, the UK opted back into the Social Chapter in 1997, in accordance with the terms of the Treaty, social security legislation remained subject to national jurisdiction.

By the turn of the century, in the context of an ageing labour force and as the EU prepared for enlargement to the East on an unprecedented scale, employment law and the regulation of working conditions were high on the European social agenda. The open method of coordination, first introduced as a form of soft law in the 1998 Employment

Guidelines, was extended to other areas of social policy, providing a mechanism for a more cooperative approach to social integration. The 2007–8 financial and economic recession heralded a return to hard law in an attempt to assist failing and less advanced economies in eurozone countries. As the economic recovery began to take effect, the immigration and the refugee ‘crises’ created further challenges for member states and their welfare systems contributing, in no small measure, to the decision of a significant proportion of the British electorate to vote to leave the EU on 23 June 2016.

This article provides an historical analysis of the development of the European social dimension – broadly conceived to encompass education and training, health and safety at work, workers’ and women’s rights and poverty – over sixty years, with a view to gaining a fuller understanding of the reciprocal influence of EU and UK political institutions and the role played by prominent policy actors in the social policy field, the Brexit negotiations and the future of the European social integration process.

The UK joins the European (Economic) Community

The UK was not one of the six founder member states – Belgium, France, Italy, Luxembourg, the Netherlands and West Germany – of the EEC when it was established in 1957. Instead, with Austria, Denmark, Finland, Norway, Portugal, Sweden and Switzerland, in 1960 the UK formed the European Free Trade Association (EFTA), thereby displaying a commitment to European cooperation but not to European integration as provided for in the EEC Treaty. EFTA soon proved to be an unsatisfactory alternative owing to the marginal trading opportunities it afforded, whereas the EEC seemed to offer the pragmatic benefits of its liberal free trade rules within a much larger community (Wall, 2013: 48, 58). Accordingly, the UK first applied to join the EEC in 1961.

Britain’s special relationship with the United States combined with its Commonwealth commitments help explain its initial reluctance to join the EEC. This argument was also used by the French President Charles de Gaulle to veto the UK’s applications, both in 1963 under a Conservative Government and in 1967 under a Labour Government (Moravcsik, 2012; Wall, 2013: 10, 24). After ten years of protracted negotiations between the UK and the six founding member states, the UK was eventually welcomed into the EEC together with Denmark and Ireland in 1973.

When new members join the European Union (EU), they are obliged to adopt the accumulated body of Community legislation (the *acquis communautaire*) that they have had no hand in formulating. By approving the 1972 European Communities Act, the UK Parliament agreed to give EU law supremacy over UK national law, including any legislation previously enacted by the founding member states.

Although, from the outset, the EEC Treaty had a ‘social dimension’ (Hantrais, 2007: 1–24), social policy was, and has largely remained, subordinated to economic objectives, in practice if not in political discourse. Even in the negotiations leading up to the signing of the original treaty, different approaches and priorities had to be reconciled: for example, the French argued that the high social charges the state imposed on employers and employees in France in the best interests of the workforce, combined with the principle of equal pay for men and women, which was written into the French constitution, would put France at a competitive disadvantage in relation to the other founder members. The Germans countered the French case by contending that social charges were a result of the operation of market forces and should not be subject to regulation under EEC law. A

compromise solution was eventually reached whereby the 1957 EEC Treaty (Part Three Title III, articles 117–128) included a section on Social Policy, without stipulating how most of the provisions should be implemented.

The founding Treaty committed member states to raise standards of living while also promoting ‘closer relations’ between them, and creating a European Social Fund to support unemployed workers through grants for vocational training and resettlement (Part One Principles, articles 2, 3i). Obstacles to freedom of movement of persons, services and capital were to be removed (article 3c). Article 51 (Part Two Chapter 2) provided for measures to be adopted in the field of social security for workers and their dependants resident in other member states to enable them to acquire and retain the right to payment of benefits, the adoption of any such measures being subject to a unanimous vote by the Council of Ministers (see D’Angelo and Kofman, 2018). Related provisions included the ‘issue of directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications’ (article 57), again with the aim of facilitating mobility (Corbett, 2005: 114).

In the section of the Treaty devoted explicitly to Social Policy, the meaning of social provisions as ‘improved working conditions and an improved standard of living for workers’ was expanded by reiterating the belief that such development would result not only from the functioning of the common market, as advocated by the Germans thus favouring the harmonisation of social systems, but also ‘from the approximation of legislative and administrative provisions’ (article 117), as sought by the French, thereby opening the way for further development through legislation. Under the same chapter, the European Commission was tasked with the broad remit of promoting ‘close cooperation between Member States in the social field’, particularly with reference to employment, labour law and working conditions, basic and advanced vocational training, social security, prevention of occupational accidents and diseases, occupational hygiene and the right of association, and collective bargaining between employers and workers (article 118). The principle of equal pay without discrimination by sex was to be founded on work of equal value (article 119) (see Guerrina and Masselot, 2018; Fagan and Rubery, 2017).

Positioning the UK for EU social policy development

When the UK joined the EEC in 1973, and its leaders took their place at the table of the European Council and Council of Ministers, the legal parameters of the social dimension, as conceptualised by the EEC, were thus firmly laid down. The clear intention was to adopt a cooperative approach for developing social policy in support of the common market, thereby guaranteeing freedom of movement of goods, people, services and capital. Over forty volumes of pre-existing secondary legislation had to be accepted by the three new member states (Butler and Kitzinger, 1976: 23). At the same time, membership of the EEC put the UK in a position to influence future social policy development from the inside. Each time the UK held the rotating presidency of the European Council – in 1977, 1981, 1986, 1992, 1998 and 2005 – it could set the agenda for the Council of Ministers. With France, Germany and Italy, the UK was one of the member states with the largest number of votes in the Council of Ministers and could veto any decisions requiring unanimity. This ‘obstructive’ role had previously been attributed to the French, designated as ‘the recalcitrant of the Community’ (Butler and Kitzinger, 1976: 281).

The UK also took its place in the Committee of Permanent Representatives, Coreper I, where professional diplomats from each member state assume responsibility for preparing the Council agenda for their national ministers in areas concerning mainly social and economic policy. The Committee plays a critical role in linking Brussels with national governments, in ensuring consistency of the EU's policies and working out agreements and compromises, which are then submitted for adoption by the Council.

Under the terms of the EEC and subsequent Treaties, the European Commission has the sole right of initiative in bringing forward legislation. It represents the Community's interest and is responsible for seeing that the provisions of EU law are enforced. Commissioners and their Directorates therefore play a key role in social policy development. Although Commissioners are nominated by member states, significantly, according to the EEC Treaty (1957: article 157), they must perform their duties independently of any government or other body. The UK had the same number of Commissioners as France, Germany and Italy (two until 2004), with one Commissioner appointed from each of the two main political parties. Roy Jenkins, the pro-marketeer and advocate of political union, was appointed by Prime Minister Wilson. He became the only UK President of the Commission from 1977–81 at a time when social policy was low on the agenda. Prime Minister Thatcher appointed the British Labour politician and lawyer, Ivor Richard, as Commissioner for Employment, Social Affairs, Education and Training from 1981–5. Equally, if not more, importantly for social affairs in this period, albeit indirectly, was her appointment in 1984 of Lord Cockfield, a former Conservative politician, as Senior UK Commissioner and Vice-President of the Commission.

The UK acquired another, potentially independent, means of influencing social policy through its membership of the European Economic and Social Committee (EESC), which was established in the EEC Treaty (1957: articles 193–8) as a consultative body to the Commission, serving as a bridge between Europe and organised civil society in member states (Westlake, 2016: 3).

The shaping of EU social policy during UK membership

On their return to office in 1974, in an attempt to hold his party together and remain in office, the Labour Government under Harold Wilson sought to renegotiate the terms of the accession deal obtained by the Conservative Government (Cockfield, 1994: 13; Wall, 2013: 511). Like Conservative Eurosceptics, Harold Wilson feared the loss of economic sovereignty, but he also wanted to safeguard the freedom of governments to engage in industrial policies. The protection of national sovereignty and of the national interest, then and in later years, was closely associated with the refusal to be bound to the Treaty commitment to move towards greater European integration in the social field, albeit under the guise of closer cooperation.

Relative acquiescence in the social field during the 1970s

By 1973, when Denmark, Ireland and the UK, with their different approaches to the funding and organisation of social protection systems (Hantrais, 2007: 42), joined the EEC, social policy and the role of the social partners in promoting closer cooperation in the social field through the legislative process had yet to be developed. Adopting a cautious approach, in 1974 the Council of Ministers reiterated that economic expansion

was not to be seen as an end in itself but should result in an improvement of the quality of life, which might be achieved with support from social policy. Moving on from the text of the EEC Treaty, a social action programme provided for advances in three areas, primarily concerned with the working environment. The objective was 'to achieve full and better employment, the improvement of living and working conditions and increased involvement of management and labour in the economic and social decisions of the Community, and of workers in the life of undertakings' (European Council, 1974: 1).

Since the Community did not have direct powers of intervention in the social field, its responsibility being confined to promoting cooperation between member states, action had to be justified on political rather than legal grounds. The principles of free movement of labour and equalisation of competitive conditions between enterprises were stressed, and the importance of the European Social Fund was reiterated as a means of palliating the uneven effects of economic growth on weaker sectors of the population.

During a period of economic crises, the 1970s saw a spate of actions in the areas of education and training, health and safety at work, workers' and women's rights and poverty, leading to the establishment of a number of European networks, observatories and agencies designed to stimulate action and monitor progress in the social field. In taking forward the agreed action programme, and in subsequent years, the Commission relied heavily on British social policy specialists to coordinate the work of many of the European networks and observatories, particularly in the areas of family policy, parental leave, poverty and social exclusion, ageing and older people, and health.

Since they did not require any significant legislation, none of these social developments raised particular concerns for British governments during the period when Roy Jenkins was President of the European Commission. In his final months as Commissioner in 1980, in an attempt to counterbalance the burden of the Common Agricultural Policy, he proposed to extend Community activity into new areas, including social and regional policy, in which the UK could expect a more equitable return, but he left the Commission before initiating any effective action (Campbell, 2014: 535).

Resistance as social policy moves up the European agenda in the 1980s

By 1981, with Ivor Richard as Commissioner for Social Affairs, François Mitterrand as President in France, and Margaret Thatcher as Prime Minister in the UK, pressure was mounting, particularly from the French, for a more deliberative social policy as the means of strengthening social cohesion, on the same basis as economic, monetary and industrial policy. As the member states recovered from economic recession, employment moved to the heart of proposals for European social policy. The dialogue between management and labour intensified the role of the social partners, as the Commission strongly advocated cooperation and consultation on the social protection of workers. The European Commission (1982) prepared the ground for consultation with the social partners over greater flexibility in the use of manpower and the issuing of directives on part-time and temporary work, a shorter working life and flexible retirement. It fell to Ivor Richard (1983) to present a carefully balanced and consensual case for the reduction and reorganisation of working time as an instrument of employment policy.

Lord Cockfield (1994: 24) took up his appointment in Brussels at the stage in 1985 when Margaret Thatcher was celebrating her 'victory' at the Fontainebleau Summit, at which she finally obtained the UK's budget rebate (Moore, 2015: 381, 407). Jacques

Delors entrusted Lord Cockfield with the design, drafting and execution of the Single European Act (SEA), which was signed in 1986, with support from Margaret Thatcher's Conservative Government. Action in the regional and social field was to be taken 'in parallel with progress on the Internal Market' (Cockfield, 1994: 46, 48). In 1988, Council agreed to double the Structural Funds, and Hywel Ceri Jones, a European Commission civil servant since 1973, who had developed the Erasmus Programme (Corbett, 2005: 118–48), took charge of the Social Fund.

The SEA required revisions to the existing treaties, the introduction of new powers in the area of social policy, improvement of the decision-making capacity of the Council of Ministers, and the strengthening of the powers of the European Parliament. The SEA introduced QMV to replace many unanimous decision-making processes. In the negotiations leading up to the signing of the SEA, Margaret Thatcher had been concerned that, if QMV was allowed for health and safety issues, not only would it impose a heavy burden on small businesses, but it could subsequently also be extended to other policy areas, thereby further infringing national sovereignty (Moore, 2015: 406). As a compromise, member states agreed not to extend the competence to make legislation by QMV to the social field (SEA, 1986, article 18). By common accord, social security and social protection rights and interests of employed persons were to remain the preserve of national governments and subject to unanimity at EU level.

Opposition to Jacques Delors's conception of 'social Europe'

When Jacques Delors began the first of his three terms as President of the Commission in 1986, the stage was set for hardening attitudes to play out in the social field as he launched his concepts of 'social Europe' and the 'social dialogue', with support from British trade unions and the Labour Party, while the Conservative Government sought to stay his hand. An address by Delors to the British Trades Union Congress (TUC) in 1988 was instrumental in encouraging a more pro-European outlook on the British left. This action provoked Margaret Thatcher (1988) into making her Bruges speech, in which, according to Delors, 'she had unravelled the marriage contract' of the SEA (Drake, 2000: 116).

While the new provisions in the SEA were being negotiated, in 1989, the heads of all member states, with the exception of the UK, adopted the Community Charter of the Fundamental Social Rights of Workers (hereafter referred to as the Community Charter), embodying the foundations of a social Europe, as defined by the EESC (Westlake, 2016: 151). Margaret Thatcher refused to sign up to the Community Charter on grounds that it would lead to over-regulation of the labour market and discourage the creation of new jobs, arguing that national governments should control employment legislation. The Community Charter did not have force of law and was not binding on its signatories; any decisions on implementation procedures were left to individual member states. Most clauses in the Community Charter referred implicitly or explicitly to workers rather than citizens, reflecting the initial emphasis on employment as an integral component of social policy in line with the 'continental' welfare model, based on corporatist rights and income-related insurance contributions (Hantrais, 2007: 37–44; Booth *et al.*, 2011: 13).

Much of the debate at that time focused on whether the Community and its member states were aiming for a maximum or minimum level of social provision. States intent on defending what they considered a higher level feared that the internal market would result

in a downward alignment of social security allowances and benefits towards the lowest common denominator in a race to the bottom (Hantrais, 2007: 8). The principles set out in the Community Charter were reiterated in the negotiations leading up to the signing of the Treaty on European Union (TEU) in Maastricht in 1992. As Margaret Thatcher's successor, John Major negotiated an opt-out for the UK from the 'Social Chapter', which, on the UK's insistence, was removed from the body of the Treaty to an annex.

Blocking and unblocking of EU social measures

An important aim in the Community Charter was to bring about improvements in the duration and organisation of working time. Since directives concerning social security and social protection required unanimous voting by the Council of Ministers, they could be blocked by the UK, whereas legislation concerning health and safety at work could henceforth be adopted using QMV, as feared by Margaret Thatcher. The social partners took advantage of the temporary absence of the UK Government from the negotiating table and of their own new-found powers to bring forward framework agreements, requesting jointly that the Commission should propose, and that the Council should adopt, measures on part-time and fixed-term work, and parental leave.

A raft of measures concerning working time and working arrangement, which had been stalled since the early 1980s, in no small part as a result of opposition from within the UK, including from the trade unions (Johnson, 2016: 113), was tabled between 1989 and 1997 as health and safety measures under QMV (see also Guerrina and Masselot, 2018). Since it was no longer able to prevent acceptance of such measures, when the Council of Ministers adopted Directive 93/104/EC on Working Time (WTD) by QMV, the UK Conservative Government instituted proceedings before the Court of Justice of the European Union (CJEU) to challenge its validity on grounds that the wrong legal base had been used. The UK argued that the WTD went beyond the concept of the working environment and, thereby, constituted a misuse of the Council's powers (Burrows and Mair, 1996: 279–83). The CJEU rejected the UK's challenge, but the UK Conservative Government refused to accept the CJEU's ruling, and did not comply with the WTD.

The change of government in 1997 brought the ideological shift needed for the WTD to be implemented, and it was transposed into British law in 1998 when the Community Charter was also adopted, thereby legally endorsing the commitment of all member states, including the UK, to the development of the social dimension as an important component in the process of European integration.

Soft EU law and social mission creep

During the 1990s, the Commission added what was intended to be a less controversial instrument – the open method of coordination (OMC) – to the EU's toolkit in the social field, thereby indicating that it was seeking to circumvent confrontation with member states. The method was based on the principles of subsidiarity, convergence through concerted action, mutual learning, an integrated approach and management by objectives (Adnett and Hardy, 2005: 28). National governments were required to cooperate in agreeing guidelines, setting common targets based on indicators and benchmarks, developing national action plans and exchanging best practice. Regular monitoring of progress was instituted to ensure targets were met, allowing member states to compare

their efforts and learn from the experience of others, without incurring formal sanctions for non-compliance; naming and shaming were expected to be a sufficient incentive.

Having first been applied in the Employment Guidelines in 1998 (*OJ C30/01* 28.01.1998) as a means of strengthening social inclusion through employment, by 2006, a streamlined version of the OMC had been extended to social protection systems, social ex/inclusion, education, research, immigration, pensions, health and long-term care. The economic and financial crises of 2007–8 brought the eurozone member states under greater pressure to comply with EU hard law targets, which entailed financial sanctions for non-compliance. The Commission's country-specific recommendations, including those applying to the UK (European Council, 2016), progressively took on a mix of hard and soft legal bases, as for example in the area of pensions, potentially resulting in rivalry and the subordination of softer to harder sanctions (Bekker, 2015: 5, 6–7).

Although the OMC was broadly welcomed by the UK Government and industry as an alternative to hard law in the social policy field, since it was not legally enforceable and left detailed policy implementation to member states, the TUC subsequently criticised non-binding measures such as the OMC and recommendations on minimum standards as 'inadequate' (HMG, 2014d: 65).

Social policy consolidation through treaty reform

During the late 1990s and early 2000s with a seemingly more acquiescent government in power in the UK, the 2000 Treaty of Nice introduced further revisions to the EU's decision-making procedures that would have implications for social policy development in the UK. In paving the way for enlargement, the Nice Treaty proposed a re-weighting of votes to ensure that the influence of the smaller countries would not become disproportionate to their size. The Treaty extended QMV to anti-discrimination measures, mobility and specific actions for economic and social cohesion. In a section on the European Social Agenda (European Parliament, 2000: IV A.13), the Nice Presidency Conclusions stressed the 'indissoluble link between economic performance and social progress', seen at this time as 'a major step towards the reinforcement and modernisation of the European social model'.

Also in preparation for enlargement to the East, a Constitutional Treaty for Europe was drafted in 2001. The intention was to incorporate the Charter of Fundamental Rights (hereafter the Charter) of the European Union, which had been finalised during the Nice summit, thereby providing a clear statement of the rights of all Europeans, not only workers. With due regard to the principles of subsidiarity and proportionality and, in the case of social security and social assistance (article 34), 'in accordance with Community law and national laws and practices', the Charter extended the boundaries of social policy beyond the workplace to the reconciliation of family and professional life, the protection and care of children and older people, social and housing assistance, preventive health care, and religious belief and practice (Hantrais, 2007: 248). The aim was to consolidate the Union's commitment to the values of human dignity, freedom, equality and solidarity, while continuing to respect the diversity of cultures and traditions (HMG, 2014b).

Having been blocked when the French and the Dutch electorates failed to ratify it in referenda held in May and June 2005, the draft Constitutional Treaty was replaced by the Lisbon Treaty (initially known as the Reform Treaty), which entered into force in 2010. The 2000 Charter of Fundamental Rights was not removed from the Lisbon Treaty, thereby

enabling it to become legally binding. Among others, UK businesses strongly criticised the draft Treaty for being so heavily influenced by the 'anti-competitive European Social Market model', which was alien to the 'Anglo-Saxon entrepreneurial model' (Lea, 2003). Together with Poland, the UK secured a protocol to the Treaty limiting its application in their respective countries. Unlike the Agreement on Social Policy in the TEU, the Protocol to the Lisbon Treaty did not constitute an 'opt-out' from the application of the Charter (HMG, 2014d: 26).

Ever closer cooperation in the areas of social security and social protection

The term 'harmonisation', which had been used with reference to the social systems in the original EEC Treaty (1957: article 117), was deliberately excluded from the Lisbon Treaty indicating that binding legislation requiring member states to cede national sovereignty over social security was no longer on the table. By 2012, the closer cooperation promoted by the OMC appeared to have been 'left in abeyance', leading to the conclusion that 'the Lisbon Treaty had done little to bolster the EU's social policy toolkit' and that 'Europe 2020's social dimension will lose out in the competition for political time and attention' (Armstrong, 2012: 296, 298).

Gradual progress was, however, being made, after more than fifty years, in developing, amending and implementing what were the EEC's earliest regulations, and the most binding form of secondary legislation available to member states, on social security arrangements for migrant workers. In 1973 when the UK joined the EC, five regulations had already been adopted on social security provisions. Unrelenting efforts have since been pursued to 'coordinate' existing national rules, but always with the caveat that 'This regulation on the coordination of social security systems does not replace national systems by a single European system' (Eur-lex, 2004). In 2016, yet further amendments were proposed to the already extraordinarily detailed and complex regulations on social security coordination, by updating EU rules in the areas of unemployment benefits, long-term care benefits, access of economically inactive citizens to social benefits and the social security coordination of posted workers (FreSsco, 2016) (see D'Angelo and Kofman, 2018).

Although EU legislation had encroached into most areas of social policy, and despite the avowed intention in the original EEC Treaty to 'harmonise' social protection provisions, by 2016 the EU could still not be categorised as a 'social superstate' in that it does not have a centralised regulatory authority and dedicated budget for social protection covering all risks for all EU citizens. The coordination of social security systems through EU regulations for mobile workers means, however, that member states can no longer limit most social benefits to their citizens. Nor can they decide exclusively who provides social services or benefits. Since the 1960s, it is estimated that the CJEU has delivered more than a thousand decisions on social policy topics, with free movement for persons and their social security systems accounting for about two-thirds of the total. Social policy is second only to agriculture for the number of cases brought before the courts for treaty violations. The UK arrives in fourth place after Germany, Belgium and the Netherlands, mainly due to its particularly heavy caseload on workers' protection and equal treatment. Arguably, CJEU rulings can be said to have resulted in 'an incremental, rights-based homogenization of social policy', which sets precedents for all member states and their national courts (Leibfried, 2015: 265, 274, 281, 283).

EU social policy as an area of contested competence

From the outset, the social dimension has been a contested area of EU policy. Even the founding member states disagreed about the relationship between economic and social objectives, the means of achieving them and their relative importance. Arguably, the arrival in each wave of enlargement of member states with very different legal and social protection systems, and diverse conceptions of welfare, has acted as a brake on closer economic, political and, especially, social union (Rinaldi, 2016: 77) and made the EU 'more politically and ideologically heterogeneous' (Nugent, 1994: 333).

When, in 2014, the House of Lords European Union Committee (2015: 5) undertook a review for the coalition government of the balance of competences between the UK and the EU, the overall aim was to 'ensure that there is no further transfer of sovereignty or powers over the course of the next Parliament'. Among the areas in the social field where both the EU and the member states may act together (shared competence), and where action by the EU does not prevent member states from acting of their own accord (supporting competence), social and employment policy were found to be one of the most controversial within the UK (HMG, 2014d: 9–10, 39).

The attitude of governments to EU social policy developments, and the UK is no exception, is ambivalent; they seek trade-offs and compromise solutions to limit the EU's competences. Whereas most national governments have openly advertised their commitment to national, if not EU, social policy by designating a government department with responsibility for social affairs, the UK has more often been characterised by a 'hands-off' or 'low-profile' approach to government intervention in social life, which may help explain why it has been especially averse to taking instructions from the CJEU. The UK case study in the European Parliament's (2010) report on the progress of the Lisbon Strategy concludes that, unlike some other EU member states, 'euro-skepticism among voters in the UK makes it less likely that politicians [particularly Labour] will announce economic or social policies and highlight the fact that they are part of a European process of reform' (Pond, 2010: 263). It has been argued that, whereas Margaret Thatcher saw the EU primarily as a threat to national sovereignty, not least in the social area, Tony Blair and Gordon Brown used Europe and the OMC during their mandates to legitimise their own social and employment policies by 'uploading' Labour's flexibility agenda and welfare-to-work programme to European level, rather than evoking the European Employment Strategy to justify their own third-way reform agenda and strategy (Hopkin and van Wijnbergen, 2011: 275–6).

The implications of Brexit for EU and UK social policy

Sixty years of subordination of social policy to economic policy within the EU make it difficult to assess the impact of Brexit for both EU and UK social policy for various reasons. Firstly, the number of exclusions and protocols annexed to the treaties and secondary social legislation by different member states, combined with their support for the principle of subsidiarity with respect to national social protection systems, reflects the widespread hostility to a uniform concept of social Europe (Jones, 1997: 1–2; Hantrais, 2017: 18). Secondly, much of EU social law has been passed under other titles (health and safety) or as soft law, often leaving governments to decide how it should be implemented. Thirdly, as in other member states, it is not easy 'to unravel the impact

of European level governance from that of domestic policy-making' (Guyomarch *et al.*, 1998: 241).

As far as EU institutions are concerned, the departure of the UK, would remove one of the more powerful obdurate members, with formidable negotiating and blocking powers. Brexit would also mean losses for the remaining member states, since the UK is a net contributor to the EU budget, an advocate of enlargement, regional development and administrative reform to reduce bureaucracy (Hix *et al.*, 2016: 12–13). While it is difficult to gauge the strength of support across the EU for developing a European social union, this overview of social policy suggests that Brexit is unlikely to result in a rush of new EU social legislation. Rather than precipitating a domino effect and resulting in social 'dis-integration' across the union, Brexit could stimulate a more flexible approach to social legislation, building on the strengths of the OMC and the notion of mutual policy learning (see also Fagan and Rubery, 2017). Brexit could provide further momentum to the concept of a multi-speed or variable geometry EU. For Jean-Claude Juncker, the President of the European Commission (2017a), the time had come to establish his 'European Pillar of Social Rights', structured around equal opportunities and the labour market access, fair working conditions, and social protection and inclusion (see Plomien, 2018). Conceding that not all member states would want to pursue his objectives at the same pace, two of his five scenarios referred to 'social' standards or policy, proposing that 'Those who want more do more . . . [by deepening] cooperation in areas such as taxation and social standards'. Others, he admitted, were 'Doing less more efficiently . . . [in] some parts of employment and social policy', thereby indicating a willingness to operate several degrees of social regulation in the absence of the UK (European Commission, 2017b: 26, 28–9).

Among the most compelling arguments in support of the case for the UK leaving the EU during the referendum campaign was that UK business would no longer be bound by EU law, leading to substantial reductions in the costs of social legislation to industry (Lilico, 2016). However, according to the British Chambers of Commerce (2017: 13), if stability is to be ensured: 'All existing EU regulations, where businesses have already incurred the costs of adjustment and adaptation, should be maintained for a minimum period before major changes are suggested – even if the object of change is deregulation and lowering of costs.'

Irrespective of the financial gains and losses associated with different policy areas of the UK when it leaves the EU, the Government's 2017 White Paper on *The United Kingdom's Exit from and New Partnership with the European Union* (HMG, 2017) confirmed the intention to seek a 'clean break' in an attempt to give back to the UK control of its own statute book and bring an end to the jurisdiction of the CJEU. The 'Protection of Workers' Rights', one of the Government's twelve 'guiding principles', gave assurances that existing rights would be safeguarded, citing the parental leave arrangements and holiday entitlement as examples where 'UK employment law already goes further than many of the standards set out in EU legislation' (HMG, 2017: 5, 7). A similar argument could be made for race relations, where an existing British policy framework was 'uploaded' to EU level (Geddes and Guiraudon, 2007: 126, 129). Only in the case of Free Movement (HMG, 2017: article 5.4) did the Government unambiguously state that the Directive would no longer apply, and that the migration of EU nationals would henceforth be subject to UK law (see D'Angelo and Kofman, 2018).

Conclusion

This article has shown how UK governments have sought to influence the development of the social dimension in EU law, while themselves being affected by the growing body of EU legislation and other actions in the social field. The relationship between governments in member states and EU-level institutions is interactive, requiring constant adaptation, consensus and compromise, and varying according to the government in power, its internal dynamics, domestic politics and public opinion (Wall, 2013: 2).

The many interviews across the socio-economic and political spectrum in the UK two years before the referendum (HMG, 2014a–d), and the innumerable debates, hearings and blogs during and following the referendum campaign showed that opinion within the UK remained deeply divided, both horizontally and vertically, concerning the most effective balance between EU and member state competence, and between economic and social objectives (see also Bachtler and Begg, 2017). These divisions add to the difficulty of predicting to what extent social legislation implemented since the UK joined the EEC will be removed or amended, and whether the remaining EU member states will seek to develop binding social legislation. As in any divorce settlement, each party established its red lines, as it sought to maximise gains, reduce burdens and limit losses. In such an unprecedented situation, national interests are likely to prevail, shaped in no small measure by individual politicians seeking to consolidate their national power base, with their stances on Brexit determined by their own political provenance and ambitions, the coalitions that have been built within and between countries, or the alliances they will seek to build in future.

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