



EU Enlargement, The Barroso Commission and a Shift to the Right? The Uncertain Future of the European Social Model in a Post 2004 Union

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This paper explores the current problems within the European Social Model debate which are identified as an absence of a clear definition and a denial of its existence. In an attempt to solve these two problems, this paper defines the ESM as a mixture of hard law, soft law and underlying norms and values. The fundamental difference between the ESM and the Single Market is that the ESM is comprised of two-thirds soft-law and underlying norms and values. A result of this is that ESM is more vulnerable to political change than the Single Market. Its current situation is uncertain as a result of the impact of EU enlargement, the neoliberal preferences of the Barroso Commission and a shift to the right in EU governments.

Introduction

The European Social Model debate is characterised by two fundamental problems, definitional issues and a debate on whether or not the ESM exists. In the first section of this paper, it is argued there to be currently four different methods of defining the ESM. As a result, arguments in which the existence of the ESM is denied are much easier to make. To overcome such a problem, it is argued that a coherent approach to defining the ESM is necessary and that it is possible to define the ESM by an approach which combines all four of the current possible definitions. Section two of the paper defines the ESM by dividing it into three components. The first of these components is the hard law of the ESM which is to be found in the EU Treaties and Directives. The second component of the ESM is that of the soft law, which is associated with the European Employment Strategy and the Lisbon Agenda. Finally, the third component of the ESM is that of norms and values which are to be found at both the EU and member state level. By defining the ESM as such, it is argued that the case for its existence is strong. Yet there remains a fundamental difference between the ESM and the Single Market and this is the concern of the third section of the paper. Compared to the Single Market, the ESM is predominately comprised of soft acquis and underlying norms and values. The result is that the ESM is more dependent on favourable political constellations for the continuation of its existence and future consolidation. The third section argues that the 2004 EU enlargement, the neoliberal position of the Barroso

Commission and the shift to the right in the governments of the EU are currently stalling developments within the ESM.

Section I: Two fundamental problems with the European Social Model

Debate

The ESM debate is characterised by two fundamental problems: firstly, the lack of an official definition of what the European Social Model actually is; and secondly, an intense debate on whether or not the European Social Model can or does exist. Concerning the definitional problems of the ESM, historically the European Commission has been reluctant in providing an official definition, yet has continually made reference to its existence in its various documents. The European Commission seemingly assumes that the European Social Model is understood and any reference to it is superfluous. What also adds to further confusion in the European Commission's use of the term the European Social Model is that it has, on a number of occasions, made reference to both the European Social Model and the European Social Models: the two are clearly different. Generally speaking, to make reference to the European Social Models would be to identify the contrasting models of welfare capitalism which exist at the member state level and to ignore developments at the EU level. Europe is a mixture of Continental, British, Nordic and Mediterranean welfare states (Nystrup-Rasmussen and Delors 2007) which have seemingly irreconcilable differences for any fundamental EU level developments. While to make reference to a European Social Model would be to imply that the various models at the

member state level were of much less significance, that they shared fundamental common features; and that member states had converged at the EU level on a number of issues.

While the Commission's approach has certainly not helped in providing a clear understanding of the contents of the European Social Model, the academic literature which has concerned the topic has also created confusion. At present Jepsen and Amparo-Serrano (2005) argue there to be three methods of defining the European Social Model within the current academic literature. The first method in which the ESM is defined is that it exists as an entity, of common institutions, values or forms of regulation. Under this heading, definitions range from the quite vague to rather detailed and they tend, by and large, to suggest a normative approach (ibid: 234). Grahl and Teague (1997: 406) refer to the ESM as being a general agreement across EU [welfare] states and populations regarding the appropriate scope and content of European welfare. This means that although there is no European welfare state, there is a European social policy (Leibfield 1992) which is coherent in terms of its ideological direction, language and policy preferences and amounts therefore to a distinct regime. At the other end of the scale is the work of Vaughan-Whitehead (2003) who is given credit for undertaking the most comprehensive attempt to define the contents of the ESM. The uniqueness of Vaughan-Whitehead's approach is that he explores the various constituents of EU social policy which include both hard

and soft (voluntaristic) law and creates a relatively coherent definition which adds substance to the concept of the ESM.

The second method identified by Jespen and Amparo-Serrano (2005) of defining the ESM is the ESM as an ideal model. According to Jespen and Amparo-Serrano (ibid: 235) specific models of welfare capitalism are identified with the UK, Sweden and Germany put forward as paradigm cases as certain countries are pinpointed as showing the way towards economic efficiency and social justice; this approach is endorsed by Esping-Andersen (1999). The third method identified by Jespen and Amparo-Serrano (2005: 235) is the ESM as a European project with this method having a considerable overlap with the former two. The focus on this approach is on the development of a distinctive transnational model and Jespen and Amparo-Serrano (2005) believe that the work of Vaughan-Whitehead could also fall into this category. The argument here is that EU member states are unable to make independent social policy decisions due to the already significant body of hard and soft *acquis* which member states are obliged to follow. As a result, member states have already committed themselves to a minimum level of welfare provision which will only develop and strengthen over time. To the three methods offered by Jespen and Amparo-Serrano (2005) in defining the ESM, we can also add a fourth approach which uses international comparisons to argue there to be something unique about the various welfare states of the EU. Jespen and Amparo-Serrano maintain that such an approach is a common characteristic of the three different

methods which they identify, but in reality, a number of academics have used this perspective for a simple definitional purpose (Pontusson 2005 and Wickman 2002). The fundamental characteristic of this fourth approach is the construction of a dichotomy between the EU and the US. Within this dichotomy, academics focus upon the empirical data of welfare spending in both the EU and the US and illustrate the benefits and distinctiveness of the welfare states in Europe vis-à-vis the American system.

With approximately four possible approaches to defining the ESM, it is little wonder that the second problematic characteristic of the topic persists: the contested existence of the ESM. The debate has been polarised not just between those who maintain that the ESM exists and those who do not, but between those who maintain that the ESM exists but are unable to agree on an actual definition, versus those who deny its existence. The absence of a unified group of academics who are able to defend the existence of the ESM gives a greater weight to the arguments of those who believe it not to exist. As a result, the overall existence of any ESM is highly contested; since no pan-European welfare state has been created, it is often disputed whether we can really talk of an EU social policy. For Kleinman (2002: 58), the idea of a ESM should be considered as a 'myth' which helps to create (not defend) the concept and reality of Europeanism and a politically integrated Europe. Schmidt argues (2002: 50) 'in the absence of common policies and the difficulty instituting them because of tremendous diversity in the concepts, priorities, policy instruments

and funding social security systems, European member states have been left to cope largely on their own.' There is no European welfare law granting individual entitlements vis-à-vis Brussels; there are no direct taxes or contributions, and no funding of a social budget to back such entitlements; and there is no Brussels welfare bureaucracy to speak of (Leibfried 2005: 244).

European integration has often been characterised by the tension between economic and social objectives with the former considered to have taken precedence over the later. European economies have historically formed varieties of capitalism which had their own models of capitalism and complementary model of welfare capitalism; hence the organisation of production and social policy has been inextricably linked. The passing of the Single European Act in 1986, its spillover effects and the creation of EMU have all been market making exercises which have concerned the reconfiguration of models of capitalism, not their models of welfare capitalism. Although it should be noted that the Stability and Growth Pact, which relates to the creation of EMU, has forced some member states to make cuts in welfare spending in order to adhere to the criteria (Annesley 2003: 153). As a result, the EU remains home to four rather distinct models of welfare capitalism with different features and different performance in terms of efficiency and equity. There are such contrasting differences between the four distinct varieties of welfare capitalism, that the creation of a supranational ESM is simply not possible (Kleinman 2002). Furthermore, member state social policy is considered to be a

much more sensitive area than that associated with the Single Market and as a result, it has been desirable for member states to maintain sovereignty in this domain.

But 'to understand European integration exclusively as a deregulation project would be to overlook its actively structuring elements; it is forming 'best practice capitalism' or 'third way' (Tidow 2003: 78). The EU maybe home to four varieties of welfare capitalism, but the differences between the contrasting models is not as great of an obstacle as is often assumed. With the advent of EMU and with many common problems to confront, the EU countries have good reasons to adopt a common approach to social policy, even if implementation remains at the national level (Begg and Berghman 2002). Furthermore, there is something of a parallel between the Internal Market and EU social policy which is often completely ignored or conveniently forgotten. The EU is considered to be a Single Market, albeit one which is comprised of different models of capitalism. The realisation of the internal market has been done by negative integration and the rise of the regulatory state at both the EU and member state level (Hix 1999, Majone 1996). This has enabled national particularities to remain, as member states have been able to inject their preferences into the regulatory design of the reconfiguration of their national capitalisms. Hence EU policy in the Internal Market has not necessarily been the constraining factor that is often assumed and as a result, the realisation of a ESM is not an impossible task.

What gives a denial of the a ESM much greater weighting is that unlike the creation of the Internal Market, the development of EU social policy is not associated with big bang treaties and dates, but a slow and evolutionary development with low levels of publicity. The passing of the Single European Act in 1986, which came into force in 1987 and was to be completed by 1992, is considered a turning point in the EC/EU by both theorists and empiricists. The same can also be said for EMU, and both episodes have attracted a considerable amount of academic attention which helps to reinforce their existence as both a concept and reality. Furthermore, such high profile episodes are discussed in the media and are communicated to the general public, even if that publicity may not always be positive. Contrast such a procedure with that which EU social policy has undertaken; the development of EU social policy has more than often been the result of efforts in between such big bang Treaties and events, or as a spillover of their realisation. There have been few deadlines imposed on member states for the achievement of goals in EU social policy. Added to which the lack of a definition of the ESM restricts academic discussion to simply identifying what the constituents of it would be, rather than much more detailed academic discussions. Within the media, the lack of high profile events at the EU level have resulted in little, if any, communication of the ESM to the general public.

Section II: Defining the European Social Model

Hence the ESM debate is characterised by two fundamental problems: a definitional problem and a problem concerning the existence of the model itself. Over the last decade academic attention has focused upon these two issues and the debate itself has failed to advance the discussion beyond the current set of problems. What is also particularly obvious within the debate is that the two inherent problems reinforce each other. The lack of a clearly defined ESM enables those who wish to deny its existence to make a much stronger case, whilst in defending the existence of a ESM, those who attempt to define it tend to scramble to a particular definitional approach depending on the context of the debate. We can attempt to at least partially overcome these two inherent problems by defining the contents of the ESM, but by attempting to include aspects of all four definitions. In doing so, we can create a definition which is able to deflect the criticism for a lack of existence of the ESM, whilst at the same time create a coherent understanding of the contents of the ESM. Whilst the definition may in many respects appear to be original, it is original in its aims and approach as it utilises and advances the existing literature discussed previously in the paper. Vaughan-Whitehead (2003) provides one of the most comprehensive attempts to define the contents of the ESM and his work is given credit for the foundations of the approach. However, the paper advances his approach by updating the contents and including the three other definitional approaches to make it more encompassing.

The Hard Acquis Components of the European Social Model

We can define the ESM by dividing its contents into the three distinct categories: the hard acquis which is found in the Treaties and EU Directives; the soft acquis which is to be found in the European Employment Strategy (EES), the Lisbon Agenda and through such tools as the Open Method of Coordination; and within the structures of norms and values which exist at the member state and EU level. By far the smallest component of the three subsections of the ESM is that of the hard acquis. The hard acquis in the ESM has been responsible for the convergence of member state social policies in areas so as to create a level playing field in order to ensure 'the creation of the Single Market did not lead to a lowering of labour standards or the distortion of competition' (DG EMPL 2007). Within the hard acquis category of the ESM is the area of health and safety which has resulted in convergence of a minimum standards across the EU. The main Directive in this field has been Directive 89/391/EEC of 12th June 1989 on the introduction of measures to encourage improvements in the health and safety of workers. From this Directive 17 daughter Directives have been adopted to establish minimum requirements of health and safety for workers in general, for specific dangerous substances, materials, media and equipment used at the typical workplace, for specific workplaces and for specific categories of workers. The success of the impact of EU Directives in health and safety are well documented and the legislation is

considered to be some of the best in the world (ibid). We need also to highlight that the Working Time Directive falls into the EU health and safety legislation.

The hard acquis component of the ESM also includes the Directives which concern equal opportunities and anti discrimination which have resulted in gender mainstreaming in order to promote equal opportunities in all community policies, as well as the fight against all forms of discrimination in accordance with Article 13 of the Treaty (Vaughan-Whitehead 2003). In accordance with the overall objectives of the EEC Treaty, the attention paid to women in the Union has been primarily, and almost exclusively, in their capacity as workers (Hantrais 2000: 115). In the 1957 EEC Treaty under the chapter on social provisions, Article 119 referred explicitly to the right of women to equal pay with men. Throughout the various Treaty revisions the Commission was able to prepare Directives not just on equal pay, but also on equal treatment. Thus the 1989 Community Charter of the Fundamental Social Rights of Workers, the agreement on Social Policy appended to the Maastricht Treaty, the Treaty of Amsterdam and the Lisbon Agenda have all strengthened the rights of women. A number of secondary legislative achievements have been constructed to include such issues as access to benefits, parental leave, access to childcare and maternity pay.

Labour mobility was included in the EEC Treaty, Articles 48-51 contained the main clauses establishing the right to the freedom of movement of workers. Article 48 reiterated the principle of non-discrimination set out in Article 7,

employment discrimination on the basis on nationality was prohibited although the main of the Treaty was to eliminate the administrative barriers which prevented the free movement of labour between the member states. Council regulation 118/97 provided for the equal treatment of workers in the matters of social security. This enabled workers to transfer their social security entitlements, including pensions and unemployment benefits, to another member state. As Hantrais (2000: 196) has noted, 'by the end of the 1990s, member states were legally bound to observe the principle that workers should be free to move from one country to another without prejudicing their right to employment and to employment-related benefits'.

Social partner recognition and social dialogue at the EU level forms a cornerstone of the ESM. EU level social dialogue was attempted in 1985 with the Val Duchesse discussions between the social partners. The discussions broke down due to the unwillingness of the Union of Industries of the European Communities (UNICE) to participate. By 1993 the Delor's Commission had strengthened the European Trade Union Confederation (ETUC) (Martin and Ross 1999) and made it clear that unless UNICE was prepared to negotiate, then the legislation would go ahead without them. From 1993 onwards EU social dialogue was incorporated into the Social Protocol and has become a significant tool within the development of EU social policy. According to Vaughan-Whitehead (2002:18) at the European level, 'social dialogue has become one of the driving forces of European Social policy'. Since 1985,

sectoral social dialogue committees have been set up in 33 different industrial sectors. The European social partners have adopted over 40 cross-industry and 300 sectoral joint texts (ETUC 2007). The final hard law component of the ESM is that of the European Structural Funds (ESF) which was created in 1957 and grants financial assistance to resolve structural economic and social problems. The ESF is comprised of four main components, but as far as the ESM is concerned, the European Regional Development Funds (ERDF) and the European Social Fund (ESF) are the most significant. The principle of the ERDF is to promote economic and social cohesion within the EU through the reduction of imbalances between regions and social groups (DG REGIO 2007). The ESF concerns itself with reducing unemployment as well as developing human resources and promoting integration in the labour market (ibid). In short, the structural funds redistribute financial aid to the poorer regions of the Union in order to reduce regional disparities.

The Soft Acquis components of the European Social Model

The soft acquis associated with the ESM represents a much wider range of policy areas than the hard acquis component. Throughout the 1980s and the early 1990s it had become clear that the realisation of a coherent body of EU social legislation would not be possible in many areas with the use of Directives; social policy was too politically sensitive for member states and budget restrictions limited the expansion of the Brussels administration. As a result, EU social policy began to take a rather different method in that it used

soft law. Throughout the 1980s and the early 1990s the Commission had engineered the ESFs so as to alleviate poverty and to reduce unemployment. During that period the Commission also introduced some less binding decisions, recommendations, resolutions and proposals which were concerned with tackling the problem of social exclusion. A Council resolution in September 1989 established an Observatory on National Policies to Combat Social Exclusion (Hantrais 2000: 172). One of the most explicit statements of European policy in relation to poverty can be found in the Council recommendation issued in 1992 'on common criteria concerning sufficient resources and social assistance in social protection systems' (ibid). The Council stated that the fight against social exclusion was an important dimension of the internal market. In 1993 the Commission launched a medium term action programme to combat social exclusion and to promote solidarity. The Commission called for a greater cooperation in alleviating social exclusion, but maintained the view that it was the responsibility of the individual member states to design and implement the objective of achieving such goals. The Commission proposed a new action programme which was eventually opposed by Germany and the UK (ibid: 173). As a result the new action programme on combating social exclusion was not agreed upon.

Although the new action programme failed to make any progress, the issue of social exclusion / inclusion was picked up in the European Employment Strategy launched in 1997. In many respects, the aim of combating social

exclusion was to be achieved via the employment route. The inclusion of the Social Protocol into the Amsterdam Treaty and the creation of a title on employment resulted in the goal of a high level of employment becoming legally binding for the first time. Unlike previous attempts to create social policy legislation, the specifics of the achievements were left to the member states and there was no EU blueprint. As a consequence, the Union became explicitly engaged in the 'promotion of their employment policies of the member states with the view to the reinforcement of their effectiveness through the development of a coordinated employment strategy' (Tidow 2003: 86). In Article 128, the Council and the Commission were assigned the tasks of reporting on the employment situation, drawing up guidelines and examining the measures taken by national governments as well as their implementation. At the Luxembourg jobs summit in November 1997, a Common European Employment Strategy (EES) was agreed with specific targets being transposed annually into policies by each member state (Adnett 2002). The Luxembourg process gave priority to three objectives: raising overall employment rates; extending lifelong learning and strengthening social partnership. Benchmarking and peer review were introduced within the three policy areas whereby member states were required to achieve certain targets. Member states are required to transform the EES guidelines annually into medium-term National Action Plans (NAPs). The NAPs are submitted for the Scrutiny of the Council and Commission and the Commission produces an annual report reviewing labour

market trends, adjusting guidelines if appropriate and assessing individual NAPs (ibid: 358-359).

The EES marks a radical departure from the policy developments of the past in at least two ways. First, it moves beyond the traditional preoccupation with employment protection to the issue of creating new employment. This implied the involvement of 'Europe' in areas of national sovereignty that had previously been jealously guarded from intervention. The second innovation was the elaboration of a strategy and instruments that would simultaneously target the issue of job creation – in terms of both quantity and quality – while also allaying fears in the member states of unwarranted intrusion into their domestic social, employment, and broader economic policies. What emerged from the EES was a broad, multifaceted job creation strategy, based on non-binding, soft law instruments of peer review, benchmarking and persuasion (Rhodes 2005: 290). Throughout the EU, the current emphasis has been on a range of 'third way' measures derived often from Scandinavian experience: activating passive policies; targeting of long-term unemployed and socially excluded; increasing incentives to re-enter and remain in paid work; reducing tax burdens on employers; increasing working time flexibility; active ageing policies, and promoting lifelong learning (Adnett 2001: 359). The EES had been a reflection of such policies and furthermore, it has tackled the difficult question of creating an EU social policy which respects national diversity. The creation of the EES

has enabled national particularities to persist but in doing so, aims for convergence and the spread of best practice in the area of employment policy.

By the turn of the 21st century EU member states were struggling to tackle the problems posed by the post-Keynesian welfare state. Furthermore, the constraints imposed by the move to a Single Currency and the Growth and Stability Pact 'constitutes a significant change in the macro-economic policy environment' (Begg and Berghman 2002: 187) and had further narrowed the social policy options of the member states. At the same time, the Commission and subsequently the Council became aware of Europe's competitive lag and a coordinated European effort seemed best at combating the problems posed by neoliberal globalisation and the shift to create a knowledge based economy. Hence in March 2000 following a meeting of the European Council, the Lisbon Agenda was launched with the aim of making the EU 'the most competitive and dynamic knowledge based economy in the world capable of sustainable economic growth and with more and better jobs and greater social cohesion' (Presidency Conclusions March 2000: 5). At the Lisbon Summit (March 2000), the method of national coordination and inter-institutional cooperation by the EES was renamed the Open Method of Coordination. The general consensus which the EES had found across the various delegations of the member states indicated that such a soft law approach would be a valuable tool in constructing and modernising the ESM. The OMC takes the specific features of the EES – Commission-proposed and Council-approved guidelines, national reporting, a

joint Commission-Council report, and Commission proposed recommendations – and identifies them as a mode of governance to that may be used in other areas (Johanson 2005).

The fundamental aspect of the Lisbon Agenda was that economic growth and employment were to be combined with social cohesion and a modernisation of welfare state structures. In this respect, EU social policy kept within the EU tradition and represents a clear alternative at the EU and member state level to the policies offered by neoliberal globalisation. Benchmarking and peer review, which had been introduced as part of the EES, was enhanced and renamed the Open Method of Coordination (OMC). Furthermore, the policy areas which the OMC covered were far wider than the EES and extended to the economic and social policy domains. According to the definition at the Lisbon European Council, OMC aims to put member states into their own policy development tracks by: fixing guidelines for the Union with specific timetables for achieving the goals; establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different member states; translating European guidelines into national and regional policies; and periodic monitoring, evaluation and peer review, organised as mutual learning processes (de la Porte and Pochet 2002a). A key ingredient of the OMC approach is its use of a decentralised method of coordination in which various actors – the Commission, the member states, the local and regional collectivities, as well as the partners and civil society – play

an active role in respect of the principle of subsidiarity (de la Porte and Pochet 2002b: 28-29). It is the Commission that holds the overall responsibility for co-ordination, in order to set out an appropriate evaluation method (ibid: 29).

The Lisbon Summit conclusions of 23-24 March 2000 endorsed the OMC as the key method to guide various policies on employment, social exclusion, and including such issues as poverty, long-term unemployment, social protection, pensions and the reconciliation of work and family life (Council 2000). Most academic studies of the OMC remain 'sceptical' (Annesley 2007, Zeitlin and Pochet 2005) as the impact of this soft law approach is difficult to assess. Nevertheless, the OMC represents a new European project in the social sphere and is 'yet another attempt to give social Europe a consistent content, with a tool that in principle respects national diversity' (de la Porte and Pochet 2002b: 32). For Begg and Berghman (2002: 191) the OMC constitutes a post-modern, flexible policy making laboratory that we need in a period of far-reaching societal transition. The mid-term review of the Lisbon Agenda in the form of the Kok report (November 2004) highlights its mixed success. In some policy areas there had been little progress (for example employment) while others were showing signs of improvement. The Commission considered it necessary to re-launch the Lisbon Agenda early 2005 in order to give the process a greater momentum and it reduced the number of policy areas covered along with quantitative targets.

The underlying Norms and Values of the European Social Model

The final component of the ESM is that of its underlying norms and values structure which exists across the EU member states and at the EU level. The ESM is underpinned by roughly four models of welfare capitalism and to deny such would be simply misleading. The fundamental point however, is that the differences are not as great as it might first appear. While the various models of capitalism have different policy mixes and in some respects different policy objectives, they all create structures of norms and values which are supportive of government involvement in social policy. That is, there is a general consensus across the EU as to where the boundaries of acceptable state involvement in the creation of social policy lie. This boundary is usually identified via an international comparison of the EU with that of the USA. The empirical information concerning social policy is used to identify the general trends of EU society which are contrasted with those of the US to argue that American levels of poverty, social protection and healthcare contrast significantly to those in the EU. From such comparisons it is then argued that there is something unique about the welfare states which exist across the EU which converge at the EU level to the existence of the ESM. The objectives and outcomes of a neoliberal welfare state are simply unacceptable to the European electorate with there being a general consensus against the externalities that it creates.

The problem with such an argument is that the EU is considered to be home to the neoliberal welfare states of the UK and Ireland and hence it is not possible

to talk of EU norms and values as then being distinct from those of the USA. Yet the UK and Ireland are considered to be neoliberal welfare states with certain qualifications. In Ireland the recent economic success is considered to be the result of its neo-corporatist arrangements and active labour market policies which had been heavily influenced by EU policies (Boucher and Collins 2003). Similar to Ireland, the UK also spends less than the EU average on welfare spending but again has a number of policies which result in its categorisation as a neoliberal welfare state having some qualifications. The British systems of inclusive free healthcare contrasts heavily with that of the US, while the recent policies of the New Labour Government which have included active labour market policies, have been inspired by the Scandinavian experiences. Britain and Ireland are liberal welfare states in the EU, but what is evident is that there are fundamental differences between them and the US.

Hence what is particularly distinctive about EU society is the belief that economic growth should be combined with social cohesion and that the state has an active part to play within the provision of welfare. Such beliefs may be transposed at the member state level into different structures, yet fundamentally the existence of a welfare state which attempts to overcome the externalities associated with neoliberalism is to be found across the EU member states. Furthermore, there is a general consensus that the state should provide public services, or at least guarantee them as well as services of general interest. Despite the wave of deregulation which has occurred, and is occurring, across

the EU as a result of the Internal Market, such sectors have been re-regulated at both the member state level and at the EU. Sectors such as public utilities and telecommunications which have been liberalise, deregulated and subsequently re-regulated prove themselves to be examples of an approach to policy which is distinctively European.

| The Different Elements of the European Social Model |
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| <p>Hard Acquis –Found in Treaties and EU Directives</p> <p>Health and Safety legislation (including working time) Equal opportunities and anti–discrimination legislation The mobility of labour including social security rights Social Partner recognition and Social Dialogue at the EU level The European Structural funds which includes the European Regional Development Funds (ERDF) and the European Social Fund (ESF)</p> |
| <p>Soft Acquis – Associated with the Lisbon Agenda and the Open Method of Coordination (OMC).</p> <p>Social Exclusion / inclusion and the alleviation of poverty Raising overall employment rates with specific targets for women Extending Lifelong Learning Strengthening social partnership to achieve the objectives of the EES / Lisbon Creating long-term sustainable pension systems Ensuring adequate social protection systems Improving the reconciliation of work and family life with improved access to childcare provisions</p> |
| <p>Norms and Values</p> <p>Belief that economic growth should be combined with social cohesion Comparison of the EU with that of the US Belief that a ESM is underpinned by a variety of welfare systems Belief that the state should provide or at least guarantee public services and services of general interest.</p> |

Reviewing the European Social Model

If we define the ESM by its three categories of hard law, soft law and its underlying structure of norms and values, it becomes much more obvious as to what we are referring to. Furthermore, the approach has attempted to combine the four identifiable definitional approaches which currently characterise the topic in an attempt to create an all-encompassing robust definition of the ESM. Firstly, the approach has been inspired by the work of Vaughan-Whitehead (2003) who is one of the first academics to provide us with a coherent definition of the ESM. The approach taken by this paper differs from Vaughan-Whitehead in that the definition distinguishes between the hard law, soft law and the norms and values components of the ESM; the approach also updates Vaughan-Whitehead's definition to include the OMC. Secondly, the definitional approach includes an acknowledgement that the ESM is underpinned by different models of welfare capitalism, although the differences between them are not as great as is often assumed. The EU's varieties of welfare capitalism have been confronted with a similar set of problems during the last 20 years and as a result they have sort common solutions at the EU level to a common set of problems. In contrast to the work of Esping-Andersen (1999), the definitional approach of this paper does not identify an ideal model of capitalism and accepts that the ESM is a convergence of their existence and will allow diversity to persist.

The third approach to defining the ESM is that of it being identified as a transnational model. This is an entirely subjective aspect of the ESM and depends upon a personal opinion of whether the ESM can be considered to be a transnational model. The third approach can also be used to illustrate that the ESM in its current form, does not have an end point as such and is constantly evolving to which its supporters desire it to be a comprehensive transnational model. In defining the ESM, it is believed that the approach also illustrates elements of the third definitional approach, although it should be noted that there is an element of subjectivity to this which is beyond the control of the paper. Finally, the definition includes the approach that compares the EU with that of the USA which illustrates EU society to be supportive of a welfare state which reduces the externalities associated with neoliberalism and creates economic growth combined with social cohesion. The international comparison approach has therefore been placed under the norms and values component of the ESM, as this is what it is intended to illustrate when used in isolation of the other approaches.

Section III: The European Social Model, the Single Market and the Uncertain Future

The approach taken by this paper argues the ESM to be comprised of three components: the hard law; soft law; and the structure of norms and values. Both the hard law and soft law components of the model have been influential in the reconfiguration of the models of welfare capitalism across the EU as well as creating convergence in policy areas. The ESM does hold some striking similarities with the Single Market; the creation of the Single Market has

ultimately been a process of negative integration, that is, the removal of barriers to trade and the harmonisation of laws. There have been relatively few areas in which the Single Market has been associated with the pooling of sovereignty, that is, positive integration (Majone 1996). Liberalisation, deregulation and re-regulation have been the fundamental characteristics of the creation of the Single Market and according to Majone (1996) have given rise to the existence of the regulatory state at both the nation state and the EU level. Complementary to the Single Market, the ESM also displays the characteristics of the regulatory state in that it does not tax and spend, but regulates and activates the labour market and social policy more generally. The ESM therefore appears to be complementary to developments within the Single Market which is of little surprise if we take the assumption by Hall and Soskice (2001) that varieties of capitalism create their own complementary social policies.

Similarities aside, there is a fundamental difference between the Internal Market and the ESM. The Internal Market forms the bulk of the *acquis communautaire* which is backed by the ECJ which imposes penalties for member states who do not comply. Yet only a small component of the ESM is hard law, with the majority comprised of soft law and underlying norms and values. Relative to the Single Market the integration capacity of the ESM is therefore more vulnerable to political change. Should member states therefore not implement the soft law or for there to be a radical shift in the structure of norms and values in some member states or at the EU level, then the future of the ESM is jeopardised in a

manner which the Internal Market cannot be. The ESM can therefore be inconsistent over time and vulnerable to changing political constellations. The EU institutions, in particular the EU Commission, play a key role in the circulation and the dissemination of the concept of the ESM and, therefore, in framing the terms of the debates on employment policies at the European level (Jepsen and Amparo-Serrano 2005). A shift in the attitudes of the Commission, and / or in the Council and the member states could undermine the ESM because of its reliance on soft law and norms and values. Since 2004, the ESM has been undergoing a process of erosion both at the EU and member state level. The process of EU enlargement which has resulted in the accession of predominantly former state-socialist countries into the EU, the neoliberal preferences of the Barroso Commission and the shift to the right in most member states are currently undermining the strength of the ESM.

EU enlargement and the undermining of the ESM

2004 witnessed the accession of 10 predominantly former state-socialist countries into the EU. During their transition from state-socialism to capitalist democracies, the World Bank and the IMF have been active players in the transitional process of the region. Known as the Washington consensus, the condition for IMF and World Bank loans was the implementation of a strict neoliberal orthodoxy which consisted of establishing a free market with a minimal state management or institutions (Nyrup Rasmussen and Delors 2007). There is relatively little evidence to suggest that the international institutions set

tough conditions for the countries of East Central Europe, discursive dominance seems to have had a much greater impact. As Shields (2003: 232) has noted in discussing Poland, the World Bank and the IMF's staunchest supporter in the region, Polish Shock Therapy was not forced, but based upon to a large extent upon domestic preferences. We do have to be careful in categorising all of the new member states as representing a neoliberal bloc of countries as the work of Keune (2006) points us to the contrasting differences of their welfare states which combined elements of neoliberalism, continental structures (German) and state-socialist legacies. Furthermore, the discursive influence of neoliberalism has varied from country to country in the new member states. The Polish transition, which was spearheaded by Balcerowicz and his team, launched the programme of Shock Therapy and was inspired by the World Bank and the IMF. The programme itself has created a lasting legacy of neoliberal policies in Poland for at least a generation. By contrast, successive Hungarian governments maintained a more distant relationship than their Polish counterparts, although in 1997 the government of the Alliance of Free Democrats (SZDSZ) introduced an austerity package with the guidance of the World Bank and the IMF.

The impact of neoliberalism has varied from country to country in the new member states, with Poland often considered to be a leader of such policies in the region. Whilst Keune (2006) certainly has a point in that there are certain differences between the political economies of the new member states, the

point is that they are much more inclined to prefer neoliberal inspired policies than anything else. The work of Vaughan-Whitehead (2003) is particularly good at informing of the general trend towards neoliberalism in the new member states. The trend towards neoliberalism in the region has actually been reinforced by the preparations for EU accession and the transposition and implementation of the *acquis communautaire*. In 2002 formal negotiations between the EU and the new member states were concluded and on 1 May 2004 the ten, predominantly former communist countries, became full members. Entry into the EU was conditional upon the implementation the *acquis communautaire*, but the laws do not provide policy blueprints for member states. In preparation for accession the 'EU is a confusing model as political actors can point to the very different examples of how different member states run their affairs and implementation of EU policies' (Grabbe 2003: 259). The EU's own diversity thus undermines its efforts to export a single mode of governance and the accession process itself represents conflicting demands. The Commission launched the PHARE programme and associated twinning exercises to help prepare the new member states for the implementation of the *acquis communautaire* (see Papadimitriou and Phinnemore 2003). There were also strict conditions for the development of regional institutions in order for the new member states to receive the European Structural Funds. Yet the Prodi Commission placed an overwhelming emphasis on the economic objectives of the accession preparations with those of the ESM taking second place

(interview 1, interview 3 and interview 20)¹. In fact, up until 2001 the Commission only considered the hard acquis of the ESM to be important in the accession preparations. The launching of the Lisbon Agenda combined with the persistent lobbying of the Commission by DG EMPL resulted in the soft acquis forming part of the accession requirements post 2001 (interview 9)². The annual country progress reports published by the Commission are further indicative of the unequal status which social policy was given. Out of 31 chapters which make up the reports, only one chapter concerns itself with the implementation of EU social policy. Finally, it should also be noted that during the negotiations the social chapter was one of the first chapters to be closed as it was considered to be one of the easiest. The rationale for such was that the more chapters which were closed, the better it looked for those involved (interview 2)³.

For the new accession states then, European integration has been felt more strongly in the economic sphere of their political economies, rather than in the area of social policy. As a result, European integration has been considered to be a predominantly market-making process in the region rather than one which is balanced by EU social policy. The Commission has attached a greater importance to the Internal Market which has been interpreted as the most

¹ Interview 1, Representative from ETUC 13/11/2006; Interview 3, Representative from Hungarian Permanent Representation to the EU 16/11/2006; Interview 20, Representative from the Polish Permanent Representation to the EU 8/12/2006.

² Interview 9, Representative from the Directorate General for Employment, Social Affairs and Equal Opportunities 23/11/2006.

³ Interview 2, Polish Permanent Representation to the EU 14/11/2006.

important aspect of European integration by the new member states. Hence the approach of the Commission during EU enlargement has clearly undermined the continuation of the ESM. By placing a greater emphasis on the Internal market, the Commission creates new EU member states who regard European integration as a purely market making exercise. Combined with the influence of the World Bank and the IMF in the region, the structure of norms and values within the new member states and the understanding that the soft *acquis* is not particularly important, threatens the ESM.

The centre-right tendencies of the Barroso Commission

The Barroso Commission took office in November 2004 and cannot be attributed to the accession preparations of the new member states, this is the result of the Prodi Commission. However, the Barroso Commission appears to be much more right-leaning than even the Prodi Commission. Hyman (2005: 5) argued that the Barroso Commission 'looked set to be the most neoliberal in the history of the EU' and the recent evidence suggests that he was correct. The first indications of the preferences of the Barroso Commission came with the re-launching of the Lisbon Agenda in 2005. In 2004 the Kok Report argued that the member states were failing to achieve their targets for the Lisbon Agenda and called for a new impetus for the strategy and a re-launching of the agenda. Although the report acknowledged that the EU had created a rather distinctive economic and social model that has combined productivity, social cohesion and a commitment to environmental sustainability, the preservation of the ESM was

to be achieved through a growing emphasis upon jobs and economic growth (Kok 2004: 7). That is, the re-launching of the Lisbon Agenda was to place the growth and jobs indicators at the centre of its focus with those of social policy to be given a much lower priority. As a result, the re-launching of the Lisbon Agenda by the Commission in 2005 simplified the targets and removed the indicators that were associated with the ESM. In effect, the Commission had moved from a strategy of combining economic growth and social cohesion to one in which economic growth would create social cohesion: the two are clearly different.

There has also been relatively few, if any, real developments within the ESM since the Barroso Commission took office. A review of the recent debates reveals there to be nothing new on the table for discussion within social Europe and this has been the result of the preferences of the Commission. An ongoing debate within the Council has been the revision of the Working Time Directive (WTD). The original 1993 Directive contained a revision clause which required the opt-out of the 48 hour week and the calculation of the reference period to be reviewed by 23 November 2003. Historically, the opt-out clause has been the most controversial aspect of the Directive and had been included upon the informal assumption that it would be eliminated during the review process. The Prodi Commission released an amended first proposal of the WTD in September 2004 which revealed itself to be a market friendly solution. The Commission defended its proposal and argued that it had found the best

solution which 'ensur[ed] a high level of protection of worker's health and safety, whilst allowing companies flexibility in managing working time' (Commission 2004: 4). In short, the opt-out remained and the reference period was extended from four to twelve months. Under the co-decision procedure the proposal was sent to the European Parliament and the Council for amendments and voting. The continuation of the opt-out in the proposal came as a surprise to many supports of the ESM as its original inclusion in 1993 was considered to be temporary.

That the Prodi Commission issued a revised proposal which maintained the use of the opt-out signified that the climate and support around the ESM had changed. Once the Barroso Commission took office, there was little change in the direction of policy. Both the Council and the Parliament attempted to reach agreements on the draft, but only the Parliament managed to get an agreement on the proposal. The Parliament agreed on its amendments to the proposal in May 2005 which included a twelve month phasing-out of the opt-out, but a retention of the Commission's proposal to calculate the reference period over twelve months. The amendments received an absolute majority of fifty-eight per cent which suggested that Europe was in favour of abolishing the opt-out. Under the co-decision procedure Parliament's amendments are then submitted to the Council, but the Barroso Commission intervened to release a second draft of the first proposal. The Commission argued that the removal of the opt-out was not an option for the EU, as it would remove the flexibility required by

member states to achieve the levels of employment aimed for in the Lisbon Agenda. Furthermore, the Commission also argued that the parliamentary amendments would not pass through the Council as there remained a general support for the opt-out. Therefore, the Council never received Parliament's amendments which clearly supported the continuation of the opt-out and the ESM.

That the Barroso Commission intervened in the amendments made by the Parliament is further indicative of its neoliberal position. The second draft of the first proposal included the opt-out and was sent to the Council for approval. Successive Presidencies which included the Luxembourg, British, Austrian and Finnish, failed to reach any agreement on the revision of the WTD and by the beginning of 2007, divisions within the Council resulted in the German and Portuguese Presidencies leaving the WTD off the agenda. As a result, the original 1993 WTD remains in place and the Commission has illustrated that in the name of jobs and growth, flexibility and the continuation of the opt-out are necessary. Had the Commission supported Parliament's amendments, then the outcome of the negotiations in the Council may have turned out differently. The fundamental problem with the continuation of the 1993 WTD is that it enables the use of the opt-out to continue and to spread to member states who have not previously used it; this is particularly true for countries such as the Netherlands and Poland. As the use of the opt-out spreads, so it becomes more difficult to

reach an agreement in the Council which eliminates its use and further undermines the future of the ESM.

A shift to the right?

That the Barroso Commission felt it necessary to intervene in the parliamentary amendments of the WTD is not only indicative of the preferences of the Commission, but also of the cognitive shift across the EU to right-leaning governments. If we analyse the European political landscape, it becomes relatively clear that it is currently dominated by right-wing governments who have neoliberal platforms and policy reforms. As a result, there is a lack of political will to create further developments within the ESM and combined with the process of enlargement and the preferences of the Barroso Commission, the future of the ESM is uncertain. Despite the rhetoric which surrounded the British New Labour government in 1997, its policies towards European integration have remained the same as the previous Conservative government. Its approach has been one in which it has favoured widening European integration rather than a deepening of the process. The government changes in both Germany and France have witnessed the election of right-leaning governments gaining power. In the case of Germany, the Christian Democratic Union under Angela Merkel has formed a grand coalition with the main opposition the German Social Democrats. As a result, Angela Merkel's neoliberal inspired policies will certainly be constrained and the recent evidence suggests this to be the case (Economist 2006).

The recent election of Nicolas Sarkozy as the President of France, with his party of the Union for Popular Movement (UMP) winning a majority in the national assembly, is yet another example of a right-leaning government gaining control in a member state. Nicolas Sarkozy has promised a break with the past in economic policy and aims to introduce reform to the public sector, welfare spending as well as reducing unemployment and allowing employees to work much longer hours than the current French law permits (Economist 2007). There are also right-leaning governments installed across Scandinavia and within the majority of the new member states. The only real exceptions are in the Mediterranean countries of Spain and Portugal, as well as Ireland and Austria. The point is that the majority of governments across the Union are much more sympathetic to the politics of neoliberalism than those of the left, which would favour the continuous strengthening of the ESM. Therefore from the Council there will be little, if any, political effort to push the agenda of the ESM as the majority of the member states have become much more market oriented. It is also worth noting that the European Parliament has a majority of the right-leaning European People's Party (EPP) which is not particularly sympathetic to the ESM.

Conclusion

The ESM debate has two inherent problems: that of a coherent single definition; and that of a denial of its existence. There are approximately four approaches

to a definition of the ESM which gives arguments that deny its existence a much greater weighting. In an attempt to overcome the two problems, this paper has defined the ESM by combining the four current approaches. The ESM is divided into three components, that of the hard law, the soft law and the underlying norms and values. The fundamental difference between the ESM and the Single Market is that it is comprised of a majority of soft law and norms and values, rather than hard acquis. A result of this is that the future of the ESM is much more uncertain than that of the Single Market. At present there are three forces which are operating to erode the ESM. Firstly the process of EU enlargement has been particularly detrimental to the ESM. The accession of predominantly former communist states who have constructed capitalism during the Washington Consensus and have hence been more susceptible to the policies of neoliberalism, has brought into the EU policy making arena actors with a greater preference for the market. The strategy of the Commission during the accession preparations has further hindered the sustainability of the ESM because it placed a much greater emphasis upon the economic dimension of the preparations vis-à-vis EU social policy.

Secondly, the neoliberal preferences of the Barroso Commission are further undermining the longevity of the ESM. The re-launching of the Lisbon Agenda in 2005 which removed the social policy indicators witnessed a re-orientation of the Commission from a policy which combines economic growth with social cohesion, to one in which economic growth creates social cohesion. The

behaviour of the Commission over the WTD is further indicative of its neoliberal preferences. That it intervened in the amendments made by the parliament and re-inserted the opt-out before the draft went to the Council is further evidence of its position. Thirdly and finally, the shift to the right in the majority of EU governments has resulted in there being little driving force behind the sustainability of the ESM or its future development. At present the ESM is facing an uncertain future. This is not to say that the ESM will collapse or be continuously eroded, for a change in the political constellations of the Commission or the governments of the member states could create a very different set of circumstances for the ESM in the future.

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