European social dynamics: a quantitative approach

Christophe Degryse and Philippe Pochet

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Introduction

Social Europe has been the subject of many analytical works, which can be grouped into four main categories. Firstly, there are the critical studies along the lines of the work done by Scharpf (1999) and Streeck (1995) which emphasise the structural imbalances of the European construction. They show the dominance of the ‘economic’ and go as far as to question whether the ‘Social Europe’ is not in fact an oxymoron (Salais 2013, Crespy and Menz 2015, Lechevalier and Wielgohs 2015)?

A second category comprises academic authors specialising in certain social policy areas at the national and comparative level, who analyse European developments in these areas and underline the weakness of European action. The conclusions offered by this body of literature for the most part are that the Social Europe has no system worthy of the name of collective bargaining (Keller 2003), that its actions on the right to housing is weak, or that due to national diversities a European welfare state is not possible as such (Barbier 2008).

A third approach is that of legal scholars (Barnard 2012, Bercusson 2009) who analyse in detail the developments of different areas of European action, notably with particular emphasis on gender equality or free movement (Adnett and Hardy 2005). Basing their analysis on an abundant case law of the Court of Justice of the European Union (CJEU), they most often conclude that there is an important impact at the national level, although limited to certain specific domains (Voogsgeerd 2016). In these analyses, the possible impacts of soft methods of governance and soft law are generally less considered.

Finally, the last category are works written by senior European officials (Degimbe 1999, Favarel and Quintin 2007). They review the major phases of European integration and are essentially descriptive but cover the development of all European policies as defined by the Treaties (TFEU and TEU), showing what the institutions did – or tried to do – to implement these policies. We can also add to this category other stakeholders who directly experienced certain episodes of this European social construction (Moreno and Gabaglio 2006, Lapeyre 2017).

All of these contributions, although offering interesting policy area or disciplinary perspectives, often fall short due to the fact that they fail to precisely define the outlines of the ‘social Europe’ that they intend to study.

The approach that we propose here is different, offering another perspective. As authors we have contributed a great deal to the public and academic debate,
publishing many articles on the different aspects of social Europe, its history, its different instruments and its actors. However, a critical reflection on our academic work has led us to realise that we, as others, have contributed to an analysis tied to the fashions of the time. The interest in a quantitative approach was inspired by the book of Gerda Falkner and colleagues (2005) which showed a persistence, in the early 2000s, in the number of social directives adopted. This contradicted the discourse of advocates of the 'open method of coordination' (OMC, or ‘soft law’) which claimed that ‘hard’ legislation in the European social domain would no longer be practicable. Following the publication of these findings, Philippe Pochet verified and updated the data and was able to show that until 2005 there was no reduction in social legislative activity (Pochet 2008, 2011).

In this paper, we try to understand, through the cross-analysis of two databases, the gradual evolution of Social Europe in terms of processes and results. The Observatory of European Institutions (OEI) set up within Sciences Po Paris and the European Trade Union Institute (ETUI) have each developed a specific database of European legislative acts in the social policy area. This approach, principally, but not solely, quantitative in nature, runs into numerous difficulties as quantitative analysis depends on sometimes fluctuating definitions of the boundaries of Social Europe and on the quality of its results.

After a first section dedicated to the explanation of the methodology and the difficulties encountered, we examine, in the second part, the OEI database and then, in Part Three, that of the ETUI. In the conclusion, we examine what lessons can be drawn from the cross-analysis of the two databases; an analysis which shows the phases of acceleration and slowdown, or even stagnation, of Social Europe, as well as its particularities and similarities in comparison to other areas of European policy.
1. The different kinds of methodological approaches to analysing Social Europe

One of the ways to carry out an assessment of ‘Social Europe’ is to examine the evolution of the legislative output in the social domain. For example, over a given chronological period, did the European Union (EU) adopt more or less directives and regulations, particularly in the areas of labour law, health and safety, and non-discrimination?

For our analysis, a first observation to make is that the OEI and the ETUI each have a specific definition of what is considered as being the social dimension of the EU. This point is important because, as we will show in more detail, this can lead to differing results.

The general database of the OEI is much bigger than that of the ETUI because it contains all of the sectors covered by European legislation (social, but also agriculture, industrial policy, etc.). The data here starts in 1996, which allows us to operate systematic comparisons with all the other European policies. Moreover, this database contains specific data on, for example, the duration of adoption procedures of legislative acts, the number of amendments, the length of adopted texts (in terms of words), etc. More particularly, in the database the domain of ‘social affairs’ is defined in quite a broad way and is based on what the European Commission considers as ‘social’. 1

For its part, the ETUI has adopted a restrictive approach, based primarily on the social acquis narrowly construed. The ETUI’s database only covers the area of social law (including labour law and social protection law) and does not contain any data relating to the adoption procedures of texts. On the other hand, it does include the agreements of the European Social Dialogue that are based on Articles 151-156 of the Treaty on the Functioning of the European Union (TFUE) and covers a longer time period, beginning with the creation of the European Economic Community in 1958. These methodological differences are explained more fully below.

1. We note that the Commission’s own approach does not seem to be completely devoid of ambiguity. Thus the ‘social’ is sometimes envisaged in terms of the ‘social acquis’, in a rather restrictive sense (‘The largest part of the EU social acquis consists of secondary legislation, mostly in the form of directives’, European Commission, 2016). However, sometimes the Commission refers to the ‘social dimension’ of the European Union in a much broader definition, including not only the social directives, but also political recommendations, support for reforms, funding, cooperation (notably the dialogue with the social partners), etc. (European Commission 2017a).

2. As we will see below (page 24), it includes acts adopted on a social policy legal basis, but also those covering social security for moving workers.
We use these two databases to outline and analyse the legislative output. In so doing, we maintain a completely agnostic approach regarding the existence, or lack thereof, of certain qualitative attributes of ‘Social Europe’. This allows us to quantify the data in a comparative way. To take one example, there are 55 directives on workplace health and safety, making up about 40% of the social legislative output. However, this area of social policy is hardly ever analysed in social policy studies.

Our participation in the collective project of the OEI and the analysis of the database allowed us to deepen this quantitative approach in three ways.

The first was to put the social dimension into a more general context. The OEI data being standardised, there are enough grounds to make comparisons between different areas of European policy (number of legislative texts adopted sorted by area, length of the procedure, etc.). We can estimate that, overall, the margins of inaccuracies in each area offset each other and do not lead to significant errors. What seems, in the policy area studies, to be specific to the area can in fact be analysed in a comparative manner. For example, what is the average length for the adoption of a legislative act in the social domain? Is this average particular to this political field or can it perhaps be considered in relation to other comparative data?

Secondly, our participation in this collective project allowed us to do more in-depth work on the question of outlining the object of study. What sort of acts should be taken into account and should only ‘hard’ law be considered or also soft law? What areas should be covered; where does the ‘social’ begin and where does it end? How should we consider certain acts which make ‘only’ technical modifications to already existing acts? Should the consolidations of legislative texts be taken into consideration or not? Very technical choices sometimes have a strong influence on the results.

The respective options chosen by the OEI and by the ETUI provide two different approaches. In their approach, the OEI considers that the classification made by actors (here the Commission) can serve to define the field. If the Commission classifies as relevant to social policy a legislative act, this act will be included as such (except in the case of obvious error). However, the ETUI starts by defining the perimeter of the social field by including the categories of social law — labour law and social protection law — proposed by, among others, Lyon-Caen since 1969.

Finally, this approach allows us to break down social policy into general and comparative sequences. For example, does a reduction in the social legislative output correlate with an equivalent reduction (proportionally) in other areas?
1.1 Methodological limitations

However, while the number of legislative texts adopted over a certain period can effectively give an interesting indication of political activity in this area, it would be foolish to only trust one quantitative indicator. A closer analysis also showed that the quality of adopted texts did not decline (Pochet 2008, 2011) until at least 2005. It is therefore worth complementing this approach with other types of more qualitative analysis, for example concerning the scale of impact of certain directives on national social legislation (see, for example, Falkner et al. 2005, Jagodzinski 2015) or the role of the CJEU in the interpretation of social directives (on this point, see Martinsen 2015).

In this article, we limit ourselves mainly to the quantitative analysis of European social legislation, which is nevertheless informed by numerous policy area-specific and qualitative works on the different aspects treated.

The questions tackled include: how has the quantity of social texts produced by the European institutions evolved chronologically? What exactly do we understand by ‘social affairs’? What legislative domain(s) must be taken into consideration in order evaluate them? Must we, for example, consider that the addition of new dangerous substances in the annex of a directive protecting workers against exposure to chemical products represents an advance for Social Europe, or is it a simple adaptation to new risks regarding workplace health and safety? The answers to certain questions are rarely straightforward and we therefore need to make choices in the way we approach the research.

The comparison between the data and these two tools that have been developed in parallel allow us to identify key common trends, but also sometimes divergences related to the research choice. Graph 1, below, shows, for example, differences in the quantitative results which result from differences in the research methods. For instance, the OEI takes into account the decisions, as legislative acts, but also the acts pertaining (for example) to European social statistics, to the open method of coordination (such as employment guidelines), to committees (such as the Employment Committee), or to the ‘European Years’ (for example, the Year for Combating Poverty), which the ETUI database does not do. Conversely, as already mentioned above, the ETUI includes European Social Dialogue (ESD) texts when they fall under the provisions of the Treaty (Article 155 TFUE), meaning the cross-industry and sectoral framework agreements converted into directives as well as the autonomous agreements (total of 16 texts).

The Graph 1 (p. 10) shows clearly the wider definition of the social area adopted by the OEI compared to the ETUI. But it also shows, in an interesting way, that common key trends are emerging, particularly the post-financial crisis ‘lull’ in activity following 2008.
Graph 1  Total number of ‘social’ regulations, directives and decisions adopted by the EU between 1996 and 2014 (comparison between the OEI and ETUI databases)

Source: Ch. Degryse, data OEI and ETUI

We will now present the results of the quantitative analyses, first explaining in more detail the methodology used and then the most significant results. We do this consecutively, because each sheds light on an aspect of European social policy.
2. The OEI and the Centre for European Studies databases

2.1 Initial findings

The OEI database contains 129 legislative acts, including 72 directives, 43 regulations and 14 decisions (Graph 2). From 2005 onwards, we witness a fall in the number of adopted directives which becomes more pronounced in the 2010s (with the exception of 2014). On the other hand, the number of regulations remains relatively stable until 2009.

Graph 2  The OEI database

One initial observation that we can make on the key trends of the European legislative output is that the social policy area, compared to other areas, is relatively ‘small’ (although not the smallest). It comes in eleventh position among the 20 areas considered, between the freedom of establishment and external relations. The most important areas in terms of the number of legislative acts are agriculture, the internal market, industrial policy, the environment, and freedom, security and justice. We can therefore see that despite the whole debate on subsidiarity – that began with the Treaty of
Maastricht in 1993 and which has been particularly aimed at the social domain – this area is not negligible in terms of legislative acts.

This observation applies, of course, to the examined data, the beginning of which is marked by the completion of the internal market in 1993. According to the ETUI data, the period which precedes this completion saw a more intense social legislative activity, particularly in the areas of workers’ health and safety and the free movement of workers (we will explore this in more detail below).
b. ...that is relatively conflictual...

While it may be a small policy area, it nevertheless seems to be relatively conflictual or, at the very least, split (on the methodology, see Dehousse and Novak, forthcoming). This can be gleaned from two distinctive pieces of information which emerge from the database:

1. The legislative acts in the social domain generally require adoption procedures far longer than the average. The length of the procedure is almost always greater in the social domain than in all the other policy areas (except in 1997 when it was the same). A social act takes about two years to be adopted. The length of these procedures comes in at third place, behind the areas of corporate law and the freedom of establishment and to provide services (see graph 4). On the other hand, if we only look at the acts voted on by qualified majority, for eight out of the fifteen years the length is very close to, equal to or even less than the average, while for the other seven it is mainly greater. The thesis that the issue of unanimity is the main problem in decision-making is here unsurprisingly confirmed; however, even the qualified majority does not make it possible to have simple adoption procedures.

The analysis of individual acts shows strong temporal differences in the adoption procedure. Seventeen texts, for example, took less than six months to be adopted. These mainly concerned: the extension of the directives to the United Kingdom after the end of its social ‘opt-out’, or to Bulgaria and Romania; decisions; or technical regulations. On the other hand, it took four years for fourteen texts to be adopted and five texts even took ten years or more. These mainly concerned directives on health and safety (adopted by qualified majority) or related to information/consultation, and the revision of regulations on freedom of movement for workers within the EU (adopted unanimously).

The data collected by the OEI therefore confirms and even reinforces (for the areas mentioned above) the conflictual character of the area. It is interesting to highlight that the four texts which took the most time to be adopted are texts related to health and safety (including REACH3). The health and safety area renowned for being consensual is becoming less so (see also ETUI, below).

2. The legislative acts in the social domain are those that required the most debate between Member States for their adoption at the Council. It is in this procedural step where the most acts have at least one ‘B’ point noted down in the agenda, which means, contrary to ‘A’ points, that their

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3. REACH is the Regulation (EC) 1907/2006 that concerns the registration, evaluation and authorisation of chemical substances in the EU, as well as the restrictions applicable to these substances, and which established the European Chemicals Agency.
adoption still requires Council deliberations.\(^4\) This does not necessarily reflect opposition, but rather the desire to have (at least) a political discussion between ministers.

Almost 57\% of the acts in the social domain require such deliberations for their adoption, which is much more than in other areas, including those generally considered as difficult, such as taxation (see graph 5). There are not a lot of abstentions if the procedure is unanimous, showing the will to go very far with compromises in order to satisfy everyone. In contrast, there are many more abstentions in qualified majority procedures. This obviously only applies to the acts which we have information about.

Graph 4  Procedure duration (days), by sector (1996-2014)

Here also the data reinforces the social policy analyses which underline the opposition amongst Member States (the United Kingdom in particular) but also certain new member countries and Luxembourg regarding the revision of the Regulation on the coordination of social security systems; or the opposition

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\(^4\) The proposals included in point A on the Council’s agenda are those which, in theory, are adopted without debate (the Committee of Permanent Representatives having managed to finalise the discussions): on average, this concerns around two thirds of the issues included in the Council’s agenda. On the other hand, section B of the agenda includes points that are on hold, which have not been the subject of an agreement at the Coreper (Committee of the Permanent Representatives of the Governments of the Member States to the European Union) level or those that are too sensitive from a political point of view to be regulated at a lower level.
As regards the legislative process before the European Parliament, the data are more fragmented. Nevertheless, the available data show a broad consensus between the main groups (the European People’s Party (PPE), the Progressive Alliance of Socialists and Democrats (S&D) and the Liberals), on the one hand, and a growing opposition from the European United Left (GUE), on the other hand.

c. ...a policy area which has been contracting over the past decade

A third observation is that this small/average and relatively conflictual policy area has been undergoing a process of contraction for the past ten years. This can be explained by different factors. The first is linked to the enlargement of the European Union to central and eastern European countries in 2004. Although the information is unofficial, European Commission senior officials, notably Jean Degimbe, previous Director General of the DG V (Employment, Social Affairs and Industrial Relations) (interview, October 2003), had said they expected a ten-year ‘freeze’ period in the European social legislative activity, in order to give new members the time to transpose the Community acquis in this area (however, as we have already highlighted, the decline only begins in 2007).
To this first element, other factors can be added. The 2008 financial and economic crisis had very important impacts in terms of unemployment. From April 2008 to April 2010, unemployment in Europe rose from 16 to 23 million people. Instead of quantitative and qualitative improvement of work and social cohesion, in 2010 ‘the EU and its Member States [were] struggling to get over the worst financial, economic, social and budgetary crisis they have ever experienced.’ (Degryse 2010). This context, which could have been favourable for a rebound of Social Europe, in the end had opposite consequences. After 2010, we witnessed not only a drastic reduction in legislative proposals in the social domain, but also deregulatory tendencies at the national level (Degryse et al. 2013). The social dialogue was not relaunched at the cross-sectoral level and there was no attempt to sign an ambitious social pact, neither at the European level nor in the Member States (contrary to what happened in the 1990s, Pochet et al. 2010).

In addition to this is the fact that the Barroso European Commissions I and II were dominated by commissioners of the centre-right. They promoted the REFIT agenda which was particularly aimed at the social domain (Van den Abeele 2015, Vogel 2010).

These elements, it seems to us, help to explain why Social Europe has been contracting over the past ten years, although of course we must also bear in mind the dynamics of the actors and the political balance of power: the years 2005-2015 were characterised by overwhelming majorities of the right and centre-right in the EU, with European institutions (the European Council, the Barroso Commissions and the European Parliament) and national governments entirely dominated by parties of this political leaning. The enlargement of the EU to central and eastern European countries, as much as the management of the financial crisis, were carried out with the widely shared political conviction that the self-regulating markets were going to solve all problems.

However, in a comparative sense this contraction is relative, because in the recent period it is the total amount of European legislative acts which has decreased; in particular, but not only, in the agricultural sector. Technically, this is due in large part to the Lisbon Treaty (2007) which changed the classification of acts and introduced delegated acts which will be used for the technical modifications of the directives. The delegated acts have not been used, to date, in the social domain, but health and safety is the main area where this type of act could be implemented in the future (see also below).


6. Article 290 of the TFEU allows the European Parliament and the Council to delegate to the Commission the power to adopt non-legislative acts of a general scope which complete or modify certain non-essential elements of a legislative act.
The graph below shows that after the 2008-2010 drop there was a small recovery, but this did not show for the social acts (quite the contrary in fact).

Here also, the fact that there is only a very limited number of social texts of a legislative nature linked to longer average procedures can be misleading, as this conceals important variations (from a few months to more than four years). The increase of texts in 2014, for example, could indicate either a general recovery or an economic recovery, or even be linked to which texts, in preparation for different lengths of time, ended up being technically adopted that year (and therefore does not reflect any particular political will).

Graph 6  **Legislative output each year (gross)**

![Graph showing legislative output each year](image)

Source: The EU’s legislative output, 1996-2014 (database). The Socio-Political Data Centre (Centre de données socio-politiques: CDSP, CNRS – Sciences Po) and The European Studies Centre (Centre d'études européennes: CEE, CNRS – Sciences Po) (producers); the Socio-Political Data Centre (distributors)

The ETUI database examined in the third part of this article shows that after an initial period of increase in the European legislative activity over the years 1970-1990, a second period of stabilisation of this activity established itself after 1995/1996. Then, from 2005-2006 onwards, a third period of slowdown and contraction of the legislative activity in the social domain began, which is corroborated by the OEI database. For the last two periods, the two databases therefore clearly point to the same conclusion; Social Europe has been slowing down and contracting over the past ten years.
3. The ETUI database: method and lessons

3.1 Methodology

To build a database, the ETUI made the following methodological choices. It was decided to only take into consideration the legislative acts that aim at a type of harmonisation of legislative and regulatory provisions of the Member States, meaning the directives and the regulations. Therefore, neither decisions nor elements linked to ‘soft law’ were taken into consideration.

The scope of our analysis is therefore limited, in the strict sense, to ‘European social law’, including labour law on the one hand, and social security law on the other (following Lyon-Caen 1969). This choice leads us to not take into account a certain number of social themes which are not directly linked to the world of work:

— asylum and immigration issues (except when they concern workers, i.e. the conditions of entry and residence of workers from third countries, for example Blue Card or seasonal workers);
— issues linked to education (Erasmus exchange programmes, etc.);
— public health issues, cross-border healthcare, etc.

Table 1 Overview of the categories included in the ETUI database

<table>
<thead>
<tr>
<th>Areas</th>
<th>... categorised under</th>
</tr>
</thead>
<tbody>
<tr>
<td>The coordination of social security systems</td>
<td>Social security law</td>
</tr>
<tr>
<td>Free movement of workers</td>
<td>Free movement</td>
</tr>
<tr>
<td>The improvement of the world of work to protect the health and safety of workers (not including working time)</td>
<td>Health and safety</td>
</tr>
<tr>
<td>Gender equality in the labour market, and non-discrimination</td>
<td>Gender equality and non-discrimination</td>
</tr>
<tr>
<td>Working conditions</td>
<td></td>
</tr>
<tr>
<td>The protection of workers in the case of termination of employment contract</td>
<td>Work and employment conditions</td>
</tr>
<tr>
<td>Information and consultation of workers</td>
<td></td>
</tr>
<tr>
<td>The collective representation and defence of workers' and employers' interests, including joint management</td>
<td></td>
</tr>
<tr>
<td>Working time</td>
<td>Working time</td>
</tr>
<tr>
<td>Training</td>
<td>Training</td>
</tr>
<tr>
<td>Working conditions of third-country nationals legally residing in EU territory</td>
<td>Immigration</td>
</tr>
<tr>
<td>Entry and residence conditions of third-country nationals</td>
<td></td>
</tr>
</tbody>
</table>
As always, particular situations exist that can be subject to different interpretations. For example, the REACH regulation was the result of a considerable amount of legislative work in 2005 and 2006, particularly in the European Parliament where many amendments were adopted (which are reflected in the annual data of the OEI table, not included in this article). The OEI database considers REACH as relevant to the social because the Commission partly classified it as such, while our methodology does not allow us to include it.

We have chosen to divide the category of health and safety into two, adding a sub-category, ‘working time’, because while the directives on working time were adopted on the legal basis of health and safety (before the Amsterdam Treaty, it was the only possibility of having a legal basis requiring a qualified majority), it seems to us that they constitute a very specific sub-category for the analysis. In the following analysis, therefore, we have on the one hand the health and safety directives, including exposure to chemical agents, to risks of accidents or injuries, etc., and, on the other, those on working time.

We have included the directives which result from a negotiated agreement in the framework of the European cross-industry or sectoral social dialogue. This includes directives on parental leave in 1995 (and its revision in 2010), on part-time work in 1997 and fixed-term work in 1999, on working time in different sectors, as well as the so-called ‘autonomous’ agreements of the European Social Dialogue (on teleworking in 2002, on stress at work in 2004, on harassment and violence in 2007, and on inclusive labour markets in 2010). These last ones have not been converted into directives; however, they fall within the scope the Treaty even though they lack generally (across EU) binding legal force (Article 155 §2). These directives and autonomous agreements are not included in the OEI database, but make up almost 10% of our sample.

Concerning the regulations, we have only retained those that have an impact at the national level, and therefore we do not include:

- regulations establishing or modifying European Committees (of employment, etc.);
- regulations linked to systems of social statistics and surveys;
- regulations on the Structural Funds, cohesion policy, etc.

Finally, all legislative modifications aiming to integrate the United Kingdom or new Member States into existing social policies have not been taken into account.

To summarise and simplify, we can say that the OEI database focuses on European social policy, and that of the ETUI on European social law (or on the social legislative acquis).

7. Regulation (EC) number 1907/2006 of the European Parliament and the Council of 18 December 2006 concerns the registration, evaluation and authorisation of chemical substances in the EU, as well as the restrictions to be applied to these substances (REACH).
3.2 The main findings from the ETUI database

The ETUI database comprises a total of 135 texts for the period of 1958-2014. Amongst these texts we count 111 directives (four of which include an agreement on the cross-industry social dialogue, and seven include an agreement on the sectoral social dialogue), 19 regulations, and 5 social dialogue autonomous agreements. The following graph provides a first overview.

The texts represented in this graph are not all ‘new’ regulations or directives; they can be revisions, recasts or amendments of existing regulations or directives. For example, amongst the 19 regulations listed, 17 concern the coordination of national social security systems. These regulations have the same purpose but have been amended or modified very regularly (often lightly, sometimes significantly; see below). Likewise, the area of workplace health and safety has seen a significant amount of revisions/amendments, due to the necessity of updating lists of physical, chemical (etc.) agents, annexed to the original directives.

The following graph does not take account of all these revisions/amendments of existing legal texts, and only includes the new themes. For instance, the Parental Leave Directive of 1996 is included, but not the revision of this directive in 2010. We therefore arrive at a much lower total of 76 texts (as

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8. To the four cross-industry autonomous agreements mentioned below, we add the multi-sectoral autonomous agreement on ‘Workers’ Health Protection through the Good Handling and Use of Crystalline Silica and Products Containing It’ (25 April 2006). This agreement concerns the chemical, metallurgical and mining sectors.
opposed to 135). Some texts also only apply to certain sectors, for example those that are an output of the sectoral social dialogue, or those applying the provisions on working time to particular groups. There are 16 of this type out of the total 76. If we remove them, there are only 60 general texts which have been adopted over a period of 50 years, 35 of these were between 1988 and 2004.

Graph 8 Comparison between new general directives and new sectoral directives

We develop our quantitative analysis of these acts in attempting to draw out the political sequences and the particular social dynamics in the different sub-areas. As we see, the sub-categories of social policy have different dynamics and moments of development and slowdown.

3.3 Results by thematic sequence

We successively analyse the areas of social security, free movement, health and safety, equality and non-discrimination, working and employment conditions, working time, and finally training and immigration.
3.3.1 Social security law (coordination of social security systems) (20)

Social security law covers all of the regulations and directives aimed at assuring a coordination of national social security systems for Community workers moving within the European Union as well as for their families. After 1958 two regulations were adopted aimed at organising the social security of migrant workers in the European Union. These regulations were replaced by the Regulation 1408 in 1971, which was itself then amended 12 times between 1997 and 2008. How to treat these amendments is a question which illustrates well the impact of choices on the overall evaluation. If these amendments are not taken into account, we have a total of eight acts; if we include them all, we have 20, which is more than double. One intermediate solution would be to only consider some of the more significant ones. To settle the matter we questioned two experts, Gaby Clotuche (previous Director General of the Belgian Ministry of Social Protection and Head of the Social Protection Unit at the European Commission) and Andrea Pontiroli (Policy Officer at the European Commission). The question was to know if each amendment of the basic regulation involved “substantial” amendments, meaning aimed at improving the content of this coordination of social security systems and, as such, do these 12 amendments “deserve” to feature in our quantitative analysis? The answer was affirmative in both cases. These amendments led in the end to the replacement of Regulation 1408/71, with the new Regulation 883/2004 adopted in 2004 and entered into force on 1 May 2010.

To these regulations can be added directives on the safeguarding of supplementary pension rights of salaried and non-salaried workers who move within the European Community (1998 and 2014), as well as the supervision of institutions for occupational retirement (2003).
3.3.2 Free movement (8)

Free movement is one of the four ‘fundamental freedoms’ guaranteed by the EU. It developed in the 1960s and 1970s as an element of social policy with the intention behind it of favouring the mobility of workers within the common market, then still under construction. The eight directives adopted in this framework therefore principally concern the abolition of restrictions on the movement of intra-Community workers (68/360/EEC), the right of staying in another Member State than one’s own and seeking employment there (73/148/EEC), the right to remain in the territory of another Member State after having pursued a salaried activity there (75/34/EEC), and Directive 2004/38/CE on the right of all EU citizens and their family members to move and reside freely within the territory of the Member States (which amended and repealed the preceding directives). On these subjects, there is a significant case law of the Court of Justice (Menghi and Quéré 2016). This first period of development ended with the directive on the mutual recognition of diplomas, in the context of the completion of the Single Market in 1993, a recognition which aimed to facilitate access to the labour market in other Member States than the one in which the diploma was obtained. Finally, after a lull in activity, a new directive was adopted in 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.  

9. It should be noted here that events after 2014 relaunched the issue of free movement in the European Union, even calling it into question notably in the context of Brexit.
European policy on workplace health and safety has undergone a very particular evolution. After several specific directives made a start on this theme (health protection for workers exposed to vinyl chloride monomer, protection against the risks related to exposure to chemical, physical and biological agents at work, etc.), this aspect of European social policy really took off in 1989 with the adoption of the Framework Directive (89/391/EEC), immediately followed by the adoption, between 1989 and 1994, of a series of so-called ‘individual’ directives (Vogel 2015) which are listed in the Commission’s 1989 Social Action Programme. Altogether, some 55 directives were adopted in this area alone.

These individual directives concern minimum requirements on work equipment, individual protective equipment, manual handling of loads that present risks of back injury, display screen equipment, ionising radiation risks, exposure to biological, chemical and physical agents, etc.

This momentum in European policy on occupational health and safety only lasted five years however. The dynamic died down after 1995, with only modifications or amendments to existing directives observable from then on, as well as updates of exposure limit values for different risks. Some directives took almost ten years to be adopted (see above the OEI database).

Only two really new texts on health and safety were adopted, both, interestingly enough, the initiatives of sectoral social partners.\textsuperscript{10} These were an autonomous

\textsuperscript{10}. A third text from the sectoral social partners concerns the health and safety of workers in the hairdressing sector (2012). It is not included here because, under pressure from certain Member States, the European Commission refused to propose that it be converted into a
agreement between the social partners on the protection of workers in the chemical, metallurgical and mining sectors against the dangers of crystalline silica (2006); and the agreement between sectoral social partners in the hospital sector on preventing injuries caused by sharp objects and needle pricks (the agreement was converted into Directive 2010/32/EU) (see graph 12). This sector has been subject to a REFIT procedure in the 2010s, aiming to simplify and update the directives. At present, six directives are being reviewed for a technical update (annex) and, eventually, content changes (Commission européenne 2017b).

Graph 12  **Evolution of new and revised health and safety directives**

It is interesting to note that some key trade union actors of this period who we interviewed believe that one of the factors that contributed to the abrupt extinguishment of this dynamic was the adoption of the Directive on working time in 1993. Proposed by the Commission and adopted by the Council on the legal basis of the health and safety provisions, with the aim of circumventing the British veto\(^1\), it also constituted a ‘step too far’ in the eyes of the employers’ organisations, which were afraid that health and safety would be used as a Trojan horse for developing a general harmonisation of labour law, going well beyond health and safety in the workplace in the strict sense of the term (we develop our analysis of these ‘working time’ directives below).

\(^{11}\) The health and safety directives can be adopted by qualified majority, meaning, in this case, in spite of the opposition of the Conservative British government which vigorously opposed a European legislation on working time.
In any case, it is striking to observe how sudden the development of European health and safety policy was in 1989, as much so as its near- extinguishment after 1995. As for the most recent directives, their adoption has been an extremely difficult process.

3.3.4 Gender equality and non-discrimination (13)

The 13 adopted directives cover two distinct (although complementary) policies: the first on gender equality in the workplace and the second on non-discrimination.

In the first category, we find the directives on equal pay (75/117/EEC), equal treatment of men and women as regards access to employment, vocational training and promotion, and working conditions (76/207/EEC), equal treatment regarding social security (86/378/EEC), and equal treatment between men and women engaged in a self-employed activity, and regarding maternity protection (86/613/EEC). Except for the last one, all of these directives were adopted in the 1970s and 1980s and consolidated in the 2000s.

In the second category, the directives began to be adopted at the end of the 1990s, following the entry into force of the Amsterdam Treaty which laid down new provisions for fighting against discriminations based on sex, race or ethnic origin, religion or beliefs, disability, age or sexual orientation (see Guiraudon 2009). These concerned the burden of proof in cases of discrimination based on sex (97/80/EC), equal treatment of persons irrespective of racial or ethnic origin (2000/43/EC), equal treatment in the access to and supply of goods and services (2004/113/EC). As Sophie Jacquot shows (2014), there has been a progressive development at the European level from one policy to another.
3.3.5 Work and employment conditions (18)

The category of directives assuring individual and collective rights for workers is one area which developed at a relatively slow, but continuous pace. From 1975 to 2014, 18 directives were adopted; on average, one every two years.

A first series of directives was adopted in the second half of the 1970s. These concerned the standards of protection of workers in the event of collective redundancies (75/129/EEC), in the event of transfers of undertakings (77/187/EEC), and in the event of the insolvency of their employer (80/987/EEC). They were directly linked to the economic crisis and the restructuring measures of the 1970s.

A second series was adopted during the 1990s. There were two engines driving this development: firstly, the completion of the internal market and the debates on its social counterpart which contributed, notably, to the adoption of the Directive on European Works Councils (94/45/EC) and that on the posting of workers (96/71/EC). There was also, secondly, the social dialogue, which in the 1990s produced three cross-industry agreements that were converted into directives: on parental leave (96/34/EC), on part-time working (97/81/EC) and on fixed-term work (99/70/EC). In five years, the European social partners therefore added three directives to the list of European social directives.

This dynamic continued but grew increasingly weaker between 2000 and 2014. The Directives on the involvement of employees in a European company (2001/86/EC) and on a general framework for information and consultation (2002/14/EC) constituted its last truly innovative elements. However, their adoption was long and laborious (see above OEI). Finally, the other directives adopted during this period were really just revisions of existing directives.

3.3.6 Working time (10)

The logic which underlies the adoption of the (general) Working Time Directive (93/104/EC) is very clear. The legal basis could have either been the social protocol of the Maastricht Treaty (working conditions) — but then without the participation of the United Kingdom which excluded itself — or the ‘health and safety’ legal basis of the Treaty (Art. 118A). It was on the latter, the ‘health and safety’ legal basis, that the General Directive on Working Time was proposed and then adopted in 1993 (93/104/EC). The UK contested the legal basis for the adopted directive without success in the Court of Justice. This directive regulated the minimum periods of daily and weekly rest and annual holiday, as well as break time and maximum weekly working time (48 hours), and contained different regulations on night work, posted work and patterns of work. However, some sectors, particularly the transport sector, had emphasised the specificity of the activity of their workers. This is why the 1993 Directive excluded from its scope some professions which, moreover, had been called upon to negotiate (in the framework of the sectoral social dialogue) a sector-specific measure regulating working time. Sectoral collective agreements converted into directives were therefore adopted several years later.

12. Here we note that the 1985 text which appears on the graph is the Regulation (EEC) number 3820/85 of the Council of 20 December 1985 on the harmonisation of certain social legislation relating to road transport. This is therefore a sectoral text.


### 3.3.7 Training (7) and labour immigration (3)

We will now tackle the last two areas. Concerning training, we must specify that this category does not fall under the title ‘Education and Vocational Training’ of the Lisbon Treaty, but rather the provisions concerning European transport policy (Art. 100 §2). All of the European directives concerning training in fact relate to transport policy, with the first being adopted in 1994. It concerned the minimum level of training of seafarers (94/58/EC), and was amended in 2001 and then again in 2003, 2008 and 2012 (meaning that of the seven ‘training’ directives, five concerned seafarers). In 2003 a Directive on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (2003/59/EC) was adopted. In 2007 a Directive partly based on an agreement between social partners in the railway sector was adopted on the “certification of train drivers operating locomotives and trains on the railway system in the Community” (2007/59/EC).

The theme of immigration in relation to labour markets has only appeared more recently at the European level and there are just three directives on this subject. The first was the ‘Blue Card’ Directive (2009/50/EC) adopted in 2009, which aimed to establish entry and residence conditions of third-country nationals for the purposes of highly qualified employment. It was followed in 2014 by the Directive establishing the entry and residence conditions of third-country nationals for the purpose of employment as seasonal workers (2014/36/EU). Finally, there was the Directive establishing the entry and residence conditions of third-country nationals in the framework of an intra-corporate transfer (2014/66/EU). In other words, the recent action of the EU has been concentrated on the mobility of either highly or low-qualified workers from third countries.

### 3.4 Some initial findings from the ETUI database

The bulk of European social law concerns health and safety; a theme which, however, rarely gets much attention in analyses of European social policy. Furthermore, the majority of these texts were adopted during a short period between 1989 and 1995.

The social dialogue, and in particular the sectoral social dialogue, contributes around 10% of European social law. Its dynamic continued to develop throughout the 2000s and into 2010, even if in a sometimes unequal manner, depending on the sector (Degryse 2015). More recently, there has been a certain stabilisation of this sectoral social dialogue (Degryse 2017). This was also a blind spot in the majority of European social policy analyses.
The Regulation on the coordination of social security systems has been subject to regular revisions since 1997, with its most important reform in 2004. This area contributed to the stability in the production of social legislation in the 2000s, but there is very little literature on this issue.

Gender equality, the flagship policy of the 1970s and 1980s, was progressively replaced by a policy of fighting discrimination. We have already highlighted elsewhere in our work (Pochet 2008, 2011) the small number of academic authors looking at anti-discrimination directives.

Free movement, on the other hand, is a policy whose outlines were defined in the first two decades of European integration and which have since hardly been modified (which could change against the backdrop of Brexit, terrorist attacks, and migration).
Conclusion

As we have highlighted many times in this paper, a quantitative analysis of ‘Social Europe’ requires making methodological choices that are likely to influence the results. It is therefore important to clarify these choices so that the results can be contextualised. The quantitative approach allows us to show the common points that exist between our work and more general analyses of Social Europe, but also the specificities: not least the fact that the most important areas from a quantitative perspective are also those which are least studied.

With these points in mind, we can use the OEI database to draw out three main elements of ‘Social Europe’. The first concerns the dimension relating to the social policy area at the level of European policies in general. This area is part of the ‘average/small’ group of legislative areas, at least according to a quantitative review, but it is nowhere near being the smallest area.

Secondly, there is the element of conflict. The area of European social policy appears to be a particularly (politically) divisive one for EU Member States. The explanation for this is twofold: the diversity of models and the difficulty of reaching an agreement on a common model. The differences between national social models due to how they have been constructed historically cannot be easily adapted to a legislative work of integration or even harmonisation that would be at the heart of a ‘European social model’. Building a ‘Social Europe’ is a political choice that often ensues from a positive approach to European integration, something which today seems to be less and less supported by the Member States. This view is largely found in the literature on national diversities and the difficulties of positive integration that we cited in the introduction.

The third element concerns the fact that the European social domain has been undergoing a phase of contraction over the last ten years. However, to a lesser extent this has also been the case for European policies on average and for most sectoral policies (particularly agriculture). Here our data partly contradicts the literature which often identifies the end of the legislative social dimension with the end of the Delors Commission.

This data is complemented by an ETUI internal analysis of the various sub-areas of European social policy. Besides the developments that have occurred at various speeds and moments in different sub-areas (Pochet 2005), the ETUI data leads us to identify three historical phases in the construction of social Europe.
First of all, European social law developed at a slow and very gradual rate from the 1960s up until the 1990s. It essentially concerned on the issues of free movement of workers, coordination of social security systems (as well as, in a very embryonic sense, health and safety, employment and work conditions, and gender equality). In this sense, it accompanied, from the sidelines, the bigger project of creating a single market.

The second distinctive phase can be identified in the 1990s, just up to the beginning of the 2000s, when there was quite a dynamic development in terms of the number of legislative acts and social policies implemented. This quantitative acceleration essentially concerned four areas: health and safety at work, work and employment conditions, gender equality, and working time. Politically, this phase coincided with the completion of the European internal market, the preparation and then the creation of the Economic and Monetary Union (the single currency), and the preparation – then the failure in 2005 – of the European Constitutional Treaty project which aimed to give the EU more political ambition. This phase transpired within a fifteen-year period that was characterised by a political will to deepen European integration 14, in the context, notably, of the fall of the Soviet Union and the preparation for the EU membership of the central and eastern European countries and Baltic states.

The third phase began in 2007-2008 and was characterised by a decline in European legislative activity in the social domain. From then on, all the social themes from the 1990s (health and safety, working time, gender equality, individual and collective rights) advanced at only a very slow rate. Two new themes gradually emerged: training in cross-border transport jobs, and immigration of high- or low-skilled labour (senior managers in multinationals on the one hand, seasonal workers on the other). These are themes which cannot be considered core issues in the general analysis of social policy. However, what could be observed during this phase of contraction of social legislative activity, was a strengthening of the dynamic of the European Social Dialogue at the sectoral level (railway, heavy industry, maritime transport, services, hospitals, etc.), even while the cross-industry social dialogue entered a period of lethargy. Nevertheless, this strengthening at the sectoral level was in no way strong enough to offset the legislative ‘breakdown’. The European Council and, to a lesser extent, the European Commission did not seem ready to convert the results of this social dialogue into legislation. 15 This period was certainly one of significant slowdown for social Europe.

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14. See for example the number of revisions of European treaties in this period: the Single European Act (first revision of the Treaty of Rome) signed in 1986 (before the fall of the Berlin Wall), was followed by the Maastricht Treaty (1992), the Amsterdam Treaty (1997), the Treaty of Nice (2001) and finally the failure of the Constitutional Treaty (2004), which ‘closed’ this period of (attempted) increased political integration.

15. For example, the European Commission refused to convert the agreement between the social partners of the services sector into a directive (Bandasz 2014).
Politically, this third phase coincided principally with the aftermath of the failure of the Constitutional Treaty (which marked the end of a greater political ambition for Europe), the enlargement to central and eastern European countries\textsuperscript{16}, the social weakness or negligence of the two Barroso Commissions (2004-2009 and 2009-2014), as well as, of course, the 2008 financial crisis and its many consequences: the debt crisis, the explosion of unemployment, the euro crisis, etc.

Besides the slowdown of legislative activity in the social domain, we can observe two other impacts of the crisis/recession on social policy: firstly, it led to the implementation of budgetary austerity policies and structural reforms, the majority of which have contributed to the weakening of social policies and solidarity mechanisms at the national level (Clauwaert and Schömann 2012, Degryse \textit{et al.} 2013). Secondly, it reduced the scope of the ‘social’ domain, mainly with regard to issues concerning the movement of workers: entry and residence conditions for foreign workers, portability of rights, posting, temporary transfers, etc. These effects resulted in political choices which aimed to restore competitiveness to the European economy by means of different forms of social devaluation.

With the European Commission presided over by Jean-Claude Juncker since 2014, the ‘social’ seems to be making a tentative comeback to the agenda. The elaboration of a European ‘pillar’ of social rights provides for the adoption of different directives (Rasnača 2017) and six health and safety directives have entered into a review process. These recent developments will perhaps pave the way for a new dynamic for the ‘Social Europe’.

\textsuperscript{16.} Which particularly slowed down this area of European policy, in the name of granting a period of ‘social catch-up’ for the new members.
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