The novelty of the place of social protection in the European agenda in 1999 through “soft law”

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**Introduction**

Traditionally, social protection has clearly not been a priority in the European agenda, and the diverse actors involved in the area are more often than not frustrated by the relative standstill of advancement of European social policy. The focus of this article will be on the steps taken in 1999 through the soft law¹ instrument in the puzzle of European social protection. Compared to the political climate at the beginning of the last decade of the millennium, several factors have led to a heightened will to set out, in a more substantive manner, a socio-economic and political identity for European social protection. It is to be taken into account that social protection issues are not merely discussed among actors prioritising action in that area, but also among actors with a traditionally rather inflexible attitude — regarding the development of European social protection. In order for the higher place of European social protection on the European agenda to be advantageous to the quality of life of European citizens, a particularly prudent approach and careful monitoring of the positions and actions of different actors should be adopted.

The first part of this article will be devoted to analysing the milestones - and the critical development of the political climate - of the European social protection strategy in the 1990s, with a particular focus on the developments in 1999.

The second part will shed light upon the position of the diverse players – social partners, European Parliament and the European Anti-Poverty Network - involved in the process of conferring European social protection with a socio-economic and political identity.

**Background**

It is to be kept in mind that when the legal basis of the European Community was first established, by the means of the Treaty of Rome of 1957, the competency of the Union in the area of social security had to be linked to the project of economic unification. The contours of a European social policy started appearing in the 1970s. In 1971, the Commission had already presented outlines for a Community “social action programme”, partly resulting from the emergent elaborate plans for implementing EMU in the Werner report, where it was emphasised that EMU was of such eminence and would not be possible to successfully realise without bringing together the social and economic spheres. The Paris summit of October 1972 called upon the Community institutions to draw up a social action programme with concrete measures when the second stage of EMU was foreseen. In 1974, the Council

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¹ It is of interest to note that “soft law” became a recognised instrument in the social policy area following the Maastricht Treaty, after which the green (COM (93) 551) and white (COM (94) 333) papers on social policy successively came out. The ground was thus set for the approach to gain momentum, and in 1995, when A. Larsson became the Commissioner of DG V, the Social Affairs, Employment and Industrial Relations Directorate General, the actions in the social policy area were pursued through this instrument. “Soft law” refers to all non-legally binding provisions - that in a more indirect and soft manner, lead to changes among EU member states - including communications, recommendations, opinions, memorandum, communiqués, codes of conduct, internal rules. (Pathways for Social Protection in Europe, Pieters, D., and Nickless, J., for the Ministry of Social Affairs and Health of Finland, October 1998, pp. 10-12.)
approved the first social action programme\(^2\), which focused on the re-enforcement of equal treatment between men and women, minimum standards with regard to employment, and the social dialogue. Many commentators saw the 1974 social action programme as a turning point in European politico-economic and ideological identity, where the social dimension of Europe was not merely seen as being subordinated to the economic dimension, but was instead conceived as being on an equal footing. However, this optimistic interpretation holds more for the discourse than the practice regarding the *essence* of social protection. It must nevertheless be mentioned that during the decade that followed the first social action programme, the legally binding harmonisation was initiated, and a majority of the directives regarding protection of employment, health and safety at work, and equal treatment. During the 1980s, opposition towards the “monolithic harmonisation” strategy and the ‘legalistic orientation’ started emerging\(^3\), and the softer approach slowly began to surface.

The 1986 European Single Act represents an attempt to re-enforce the legal basis for the intervention of the European Community in social affairs, but it was highlighted that social security strictly remained an area of national competency. In 1989, the Charter of Fundamental Social Rights of Workers recognised the importance of the possibility for the European Community to intervene in social security. Article 10 of the Charter highlights that all workers have the right to adequate social protection. The social action programme adopted following and in relation to the Charter set out for the elaboration of two instruments that were to be adopted as recommendations in 1992\(^4\).

The two Council recommendations adopted in 1992 acted as pillars for social convergence:
- The first recommendation was explicitly on the convergence of objectives and policies of social protection (92/442);
- The second recommendation pertained to the definition of common criteria to assure sufficient resources and social assistance in the social protection systems of the EU member states (92/441).

Although these two documents were rather significant symbolically, they have, when it comes down to it, been ineffective. They were however eye-openers and precursors for the future in the recognition that the social security systems of member states - despite their different traditions, ranging from the Anglo-Saxon minimal type of social policy to the more universalistic Nordic social policy - are confronted with common challenges. However, these documents did not *in essence* contribute to a common European social protection philosophy and ethos and the political climate at the time did not incite the diverse actors’ will to follow-through on the opportunity provided by the 1992 convergence strategy.

The 1993 green and 1994 white papers on social policy were, like the 1992 recommendations, documents of figurative policy. The former emphasised that social and economic progress should be conceived in tandem, and the latter continued along the same lines, setting for a balance to be achieved between economic and social policies. The European hypothesis that was to be the core and justification of the discourses formulated during the rest of the 1990s – social protection is a productive factor and sustainable social and economic growth are mutually reinforcing rather than conflicting – emerged in the white paper\(^5\). In 1995, the Commission published a communication “The future of social protection, a framework for a European debate” (COM (95) 466) which, further to the recognition of common objectives of EU member states, identified the necessity of EU member states to -


\(^4\) Antoons, J., “Politiques européennes de sécurité sociale”, *Courrier Hebdomadaire CRISP* (Centre de Recherche et d’Informations socio-politiques), no. 1472, 1995, pp. 5 - 6.

\(^5\) Pakaslahti, J., op. cit., p. 40.
Social policy developments in the European Union in 1999

while maintaining their particular social protection arrangements – adapt their systems to respond jointly to common challenges, as they would necessarily increasingly interact through the internal market and the economic and monetary union. It was recognised that social protection - defined as collective transfer systems designed to protect a country’s inhabitants against social risks - was an essential part of the European model of society. However, the discourse was more affirmative than the actions, limited to the submission of bi-annual social protection reports indicating progress that had been made in the diverse sectors. The communication made explicit reference to problematic issues, which would be taken up at a later stage, particularly in the 1999 communication on social protection. These issues include the problems of the decreasing proportion of the working population compared to the increasing proportion of pensioners, the need to tailor social protection in a more employment-friendly manner, the need to somewhat rearrange the financing of social protection systems, the necessity to reform the health-care systems.

The communication “Modernising and Improving social protection” (COM (97) 102) was the next milestone in the progressive development of European social protection. The “mainstreaming” route, consisting of a horizontal integration of social protection issues within other European policies, was the guiding principle of the communication. Mainstreaming, through a more integrative approach, aims to mobilise as many actors as possible in the debate on social protection to raise awareness of the challenges confronting the system.

The 1995 and 1997 communications, although touching upon important issues, remained rather vague and did not set out strong guiding principles for European social protection.

In 1998, as a follow-up to recommendation 92/441, the Commission presented a report on the social assistance systems in the EU member states, which took into account the European context and policies of the latter part of the 1990s. It particularly made reference to the European Employment Strategy and the modernisation and improvement of social protection in Europe (COM (97) 102). The report is focused around three axes in the fight against poverty, namely, the position of minimum income schemes in social protection systems and an overview of the recent trends in the use of the schemes, how to actively promote employment among those receiving the minimum income, and the increasingly clear development of an individualised approach to social integration. The report is an interesting comparative document, but unfortunately lacks development of a European response to social assistance. The main findings are that since the end of the 1980s, the number of European citizens benefiting from and dependent on minimum income has increased, attributed to two main factors: the higher and persistent level of unemployment in many European countries, and a rise in the numbers who have experienced social disruptions in their lives. It also appeared that, despite different trends across the EU member states, minimum income schemes do not act in isolation, but are part of a range of various social benefits, social services and aid in kind. It was pointed out that “availability for work” criterion included in national provisions of social assistance schemes took on a renewed significance with the economic and budgetary constraints the Member States were facing since the end of the 1980s. Overall, many efforts still need to be made to make beneficiaries (especially long-term) more employable, and to integrate active employment measures in social assistance schemes. The policy prescriptions are three-fold: firstly, to optimise the social protection, focusing on increased consistency between social minima and other social benefits, as well as assuring better coverage of essential needs, secondly, and in line with

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7 Social disruptions are phenomena often resulting from the increasingly “risky” society, in A. Giddens' understanding of the term, where individuals have to face increasingly risky phenomena, including family breakdowns, forced migration, homelessness, delinquency, prison, over-indebtedness.
the European Employment Guidelines, to create mechanisms to increase access to employment, and lastly, to develop social and economic integration criteria.

Overall, it appears that social protection initiatives through soft law during the 1990s were not discursively strong or influential and European social protection remained a “taboo” issue.

1. Adoption of Communications of the Commission in the area of social protection in 1999

It is above all important to take into account the environment in 1999 that led to a more generalised interest in social protection issues. Firstly, there were increasing concerns about what has become a structurally high level of unemployment and social exclusion, as well as the changing demographic structure of the population, with an ageing population and in an increasingly affirmative manner, a new gender balance. Secondly, the transformation of the macro-economic environment, with the build up to and the ongoing adaptation to the EMU has led to a revival of interest in the politico-ideological aim to assure a good quality of life for all citizens. Moreover, the interdependence and interaction between the countries participating in EMU is increasing continuously. Thirdly, the extension of the enlargement strategy to all candidate countries, including Turkey, on an equal footing has led the actors involved in EU social policy to perceive the clear-cut difference between social protection among the EU member states and among the candidate countries. There has thus been a realisation that the social element as a productive factor that the Europeans are so proud of and the existing particular balance between economic growth and social protection can not be maintained if no actions are taken to confer a substantive socio-political identity to it. Finally, the culmination of the impact of soft law, through the so-called “process of Luxembourg”, refers to a re-enforced co-operation between member states and the EU institutions that led to the formulation and application of the European Employment Guidelines. The process has proved to be a powerful political instrument in that it has led to a common European Employment Strategy.

It is interesting to keep in mind that – particularly since the adoption of the European Employment Guidelines in 1997 – social protection is more often than not linked to employment. The discourse favours a shift from passive to active protection policies and the issues of prevention and rehabilitation are filtering into the core of the European social protection discourse. This manner of making social protection more employment-friendly is complementary to the priorities of the employment strategy centred around functional flexibility, the continuous development of human capital and skills upgrading. Security is thus drawn from being employable through adaptation to new circumstances rather than on having the same lifelong job. The 1998 Employment Guidelines classify the trend in the European social protection and employment policy as a “new culture of employability”, which is more specifically defined as the capacity for people to be employed, entailing “not only the adequacy of their skills but also incentives and opportunities offered to individuals who seek employment”. Employability is the political buzzword that defines the responsibility of public policy, in terms of the creation of equal opportunities for commodification, rather than in

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8 The “employment guidelines” are defined as “common lines of approach for both objectives and means” and draw in the experience of multi-lateral surveillance of economic policies and its success in fostering convergence. (Tronti, L., “Benchmarking employment performance and labour market policies: the results of the Research project”, European Employment Observatory, 1999, p. 1).


terms of decommodification of individuals, which was one of the motors to Esping-Anderson’s evaluation of the extent of coverage and fairness of welfare states in Three Worlds of Welfare Capitalism. It is interesting to note that political commitment to “employability” more often than not in tandem with pressures on educational institutions to improve their efficiency and adjust their output to market demands. Moreover, this is combined with a tendency to decentralise responsibility for human capital development to the individuals, who are its owners11.

In 1999, diverse players – European Commission, the member states by the means of the European Council, the social partners, the European Parliament - increased activities in European social protection. The underlying aim of the European social protection strategy is to ensure a good quality of life to all European citizens, not only to the privileged, healthy and young working population, but equally to the socially excluded, the elderly and persons suffering from health problems. The President of the new Commission, Romano Prodi, has insisted on the fact that it is more efficient to seek solutions to challenges through concerted European strategies, rather than acting only at national level.

“Non-traditional” actors with diverging aims, have also, rather suddenly, illustrated interest in and taken initiatives in social protection. The Economic Policy Committee is going to set up a working group responsible for examining whether pension and health care systems are financed soundly. No details are disclosed on criteria to be used to this effect. Broad economic policy guidelines (COM (99) 143 final) encourage member states to reform pension and health care systems in order to be able to face the financial burden due to the ageing population and to cater to the future active population. Concerning employment, member states are on the one hand invited to adapt tax and benefit systems to ensure that they effectively support employability and job creation, and are also encouraged to financially plan for investment in human capital and other active labour market policies. They are also fostered to reduce the overall tax burden and particularly the tax wedge on low paid labour via reduced spending or shifts to environmental, energy and consumption taxes12. The European Round Table of Industrialists (ERT13) has published a report encouraging the players concerned to set out a common set of principles for reform and to enact a co-ordinated pension reform strategy14. Opening up a market for private pensions and stimulating greater competition between private pension providers, encouraging individuals to take responsibility for saving for their retirement, providing tax incentives for employee contributions to company-sponsored schemes and removing fiscal barriers to private pension investment are among the recommendations the ERT makes to EU Member States15. The diverse aims of the players could conflict with the initiatives by the more traditional social protection actors.

During 1999, the rather peculiar context and conjuncture partly explain the significant progress that was made in European Social Policy. Altogether, three communications were adopted: the first - “Towards a Single Market for Supplementary Pensions16” COM (99) 134,
11 May 1999 - was of technical nature and did not in substance contribute to European social protection\textsuperscript{17}.

The second communication “Towards a Europe for All Ages promoting prosperity and intergenerational solidarity” COM (99) 221 is of more essential policy substance than the one on supplementary pensions in that solidarity and equity between generations is the underlying principle. In response to the challenges of the relative decline of the population of working age and the ageing of the workforce, the pressure on pension systems and public finances, the growing need for old age care and health care, the growing diversity among older people in terms of resources and needs, and the relative risk of poverty of women that were not traditionally bread-winners, various policy conclusions have been formulated.

The policy priorities in the framework of the communication are taken up in the communication – “A concerted strategy for modernising social protection” COM (99) 347 - indicating coherency of the European social policy discourse.

The third communication adopted on 14 July 1999 by the soon-to-resign European Commission was the most surprising paper of the three in terms of the policies set out. The pivotal Communication sets out a strategy for social protection around four axes that can be considered as the core of the European social model promoting quality of life for all citizens. The four pillars and their respective aims are:

- **Employment\textsuperscript{18}**: To make work more profitable and assure a steady income. The new increasingly complex context with the emergence of new working arrangements and the constantly developing technological progress requiring constant up-dating of skills have led to a response prescribing a balance between security and flexibility as well as between rights and responsibilities. In order to make work pay, tax and benefit systems should be redesigned to incite workers to take up a job and to encourage employers and entrepreneurs to create jobs and opportunities. The legislative systems should integrate temporary and part-time work contracts effectively, and the social protection systems should be adapted to assure replacement incomes when necessary, to allow reconciliation of working and family life.

- **Old age\textsuperscript{19}**: To ensure pensions in the framework of viable pension schemes. The pension systems are to guarantee a decent replacement income for pensioners, and to promote active ageing, namely through life-long learning and flexibility in retirement arrangements. Attention needs to be paid to groups that risk exclusion, notably older women, who are faced with the problem of poverty resulting from their low participation in employment.

- **Social Inclusion\textsuperscript{20}**: To promote social integration of underprivileged groups. Social protection systems should ensure that all persons are able to live in dignity, and necessary attention must be paid to the groups that do not have the tools to assure for their own well-being, through the provision of minimum income benefits, access to housing and health services, and participation in society. Particular efforts should be made to activate

\textsuperscript{17} With regard to the free movement of worker in the EC, the Council has already adopted a directive in June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community space. The directive will come into force in June 2001.

\textsuperscript{18} In December 1999, the registered EU unemployment rate was 8.8%, Eurostat news release, 1 February 2000.

\textsuperscript{19} Of total social protection expenditure across the EU, 39.2% is spent on pension systems. (EUROSTAT, Social Protection Data 1996).

\textsuperscript{20} 1.5% of social protection expenditure across the EU is for social inclusion. (EUROSTAT, Social Protection Data 1996).
appropriate measures and incentives for integration into the labour market, in line with the employment guidelines.

- **Health Care**\(^{21}\) : To guarantee a high and sustainable level of health care. Accessibility to health care services and the enhancement of preventive policies in view of improving health are priorities. It was highlighted that it would be important to take into consideration the increasing proportion of elderly persons, and the corresponding need for health care. The high cost of innovation in medical technology, in spite of its positive contribution to health care, was pointed out as a factor to monitor careful.

In the light of enlargement towards the East, the development of social protection systems in the candidate countries, to reach the level of social policy in the EU member states, is crucial. The communication indeed presents the current state of affairs – that poverty and deprivation have become widespread, that unemployment is high, that accession to the single market means that the candidate countries will be exposed to strong competitive pressures that will increase social exclusion, unemployment and poverty – but does not set out specific steps to take to reform the social protection systems, aside from making reference to two of the legal acquis: equal treatment, co-ordination of social security systems.

A specific section is devoted to health care, which is complex in several different aspects (see “A Focus on the Health Care Aspect of Social Protection”).

The context of the reality of the changing world of work, new family structures and dramatic demographic changes have definitely influenced, to some extent, the necessity to propose a strategy for the future. Moreover, the increased interdependence between Member States’ economies through EMU affects all areas, including social protection. Through the communication, the aim was to confer European social protection with a political identity, and it appears, contrary to the non-resolute process over the past decade, that in 1999 the political will to raise the profile of social protection emerged successfully. Nevertheless, the consequent actions must be monitored closely, alongside the action of other non-traditional actors, which could backfire on what seems, at a first glance, to be a rather positive development.

### 2. Effective political support for raising social protection in the European agenda

In the area of social affairs, one of the political priorities of the Finnish Presidency\(^{22}\) (July – December 1999) was to adopt, at Council level, an agreement to pursue actions, through a high-level working group, in regard to the July 1999 communication. On 29 November 1999, the EU Council for Labour and Social Affairs decided to set up a group of high-level officials from the 15 EU member states, to operationalise the objectives set out in the Commission’s July Communication on social protection. The follow-through to the communication by the means of political action is an essential step, further illustrating that the context in 1999 was unusual, and led to more interest for social protection among different actors. At European level, there is to be enhanced dialogue in the area of social protection, and where necessary, member states will be supported to improve their social protection systems, tailored of

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\(^{21}\) 27% of social protection expenditure across the EU is for health care. (EUROSTAT, Social Protection Data 1996).

\(^{22}\) It is to be noted that the role of the Presidency Chairman for the Council for Labour and Social Affairs - by emphasising national priorities - is to a certain extent influential on the development of the social protection process. (Kari, M., “EU:n Sosiaalipolitiikka uuden vuosituhannen alkaessa”, 6 February 2000).
course to their national socio-economic context. The interdependency of economic and social development has been central in European discourses on social policy during the 1990s. This was equally highlighted by the Council as the cornerstone for an economically and socially viable Union. The Council concluded that the improvement and modernisation of social protection “should be a coherent action, parallel to and interactive with the European employment strategy as well as to the macro-economic dialogue”\(^23\). In addition to the four axes of social protection - employment, old-age income, social inclusion, health care - set out in the Commission’s Communication, equal opportunities and constructive use of new technologies in the dialogue and development of social protection are emphasised. Moreover, the role of social partners is perceived as essential in the modernisation of the social protection process, as well as association of the European Parliament, the Economic and Social Committee, the Committee of the Regions and social security institutions. Concerning the external dimension of social protection, in particular the enlargement strategy of the European Union, the Council highlighted the importance of paying attention to assuring a balance between economic and social development in the applicant countries. The ultimate aim is to set out guiding principles in social protection, reminiscent of the European Employment Guidelines that resulted from the Luxembourg process. A preliminary conclusion on the development of European social protection in 1999 appears to be quite remarkable. From July to November 1999, not only was a remarkable and more political consequent document published by the Commission in the area of social protection, but also, the EU member states agreed to pursue actions through a high-level working group. The political priorities of the Portuguese Presidency (January – June 2000) will now partly direct the actions that will be taken by the group. In its document “Employment, Economic Reforms and Social Cohesion – towards a Europe based on innovation and knowledge” of January 2000, the Portuguese Presidency of the EU set out the cornerstones of the strategy to be pursued throughout its Presidency which hints at the manner in which the modernisation of social protection will be tackled. The aim of achieving a sustainable social protection is integrated into the ambitious goal of creating “the world’s most dynamic and competitive area\(^24\)” in the transition to what has been identified as a new innovation and knowledge-based paradigm. The approach of the strategic document of the Portuguese Presidency corresponds to the “3-key areas triangle” at the heart of the approach of the Directorate General of Social Affairs and Employment: growing macro-economic interdependence (through the broad guidelines of economic policy), deepening co-operation on employment (through the European Employment Strategy), increased investment in the social policy of the European Union (through the concerted strategy for its modernisation)\(^25\).

The European Employment Strategy, focusing around combating unemployment and increasing the employment rate, is perceived as complementary to the modernisation of social protection. Compared to the four axes of the July 14 communication, as well as the enhancement of equal opportunities, use of new technologies in the organisation of social protection, the role of the social partners, and assuring social policy development in the enlargement towards the East, prioritised by the Council under the Finnish Presidency, suit has been followed in some respects. Regarding the employment axis, the cornerstones are the creation of jobs in the services sector, the inversion of the trend towards early retirement from the labour market, an increase in the rate of female employment, encouraging equal opportunities. Moreover, employability, adaptability, active employment policies and lifelong learning are fundamental elements to the employment policy. The sustainability of pensions – on average about 40% of expenses in social security among the EU countries – is an


\(^{25}\) Speaking note, Commissioner Diamontopoulou, ETUC Executive Committee, Brussels, 3 December 1999.
important stake, and, through the high-level working group set out to modernise social protection, the priority will be to carry out a forecast study on the sustainability of pensions for 2010 – 2020. The Presidency recognises that social exclusion may emerge in different forms, and in a preventive light would like to develop integrated, targeted programmes for vulnerable or excluded social groups, with a particular priority for the eradication of child poverty by 2010. The aforementioned high-level working group is also charged with the task of preparing a monitoring panel with indicators for monitoring the social situation, in order to set clearer policy objectives in the long-term. In addition, the objective of social inclusion is to be mainstreamed in education, training, employment and social protection systems.

It is however worrying that the Portuguese Presidency has omitted certain areas - health care, social protection policies with regard to the East and alternative methods of financing social protection – which are likely to affect the overall quality of life of Europeans. At the dawn of the new millennium, the working group set out to meet monthly. One of the factors highlighted as essential by a number of Member States in the group is the importance of the Presidency’s approach in establishing social protection as a subject in its own right beside economic discussions. It must be taken into account that although the group will hopefully raise the political profile of social protection, the means to achieve this will principally be the exchange of information and best practices, which has in the past proved not to be the most effective means.

As health care is an area with rather vaguely defined borders, in which there are rather alarming emergent patterns, a more detailed examination of the actions in that area has been made. Following the focus on health care, and in order to foresee and to understand the active dimension of the social protection strategy, to identify the place, strategy and competency of the diverse actors – ETUC, FERPA, UNICE, EP, EAPN - in the process. Their positions with regard to the four priorities of the Commission, the mechanism for monitoring and developing the European social protection strategy, and social protection in the context of an enlarged Union will be set out. Any additional specific positions and the thread identifying each position will be clarified.

3. A focus on the health care aspect of social protection

Health care is essential for the successful operationalisation of an employment-friendly European social protection, but health care issues are often left on the side-line, although they account for 27% of social protection expenditure across the 15 members of the European Union, representing between 5 and 10% of GDP among the EU member states. Below, the recent steps taken will be explicated, and a presentation of the problematic issues concerning health care will be made.

Health care issues are hesitantly making their way into the social protection area although it is more on the discursive than the active dimension. The Communication “The future of social protection, a framework for a European debate” (COM (95) 466) 95 underlined the importance of maintaining equitable access for all to health care, coupled with efficient cost-management. Member states were encouraged to co-ordinate their respective specialised health services and complementarily develop them. In the 1997 Communication “Modernising and Improving social protection” (COM (97/102), the same guiding principle of equitable access to health care and cost control was pursued, with the ultimate aim of improving the efficiency and the quality of health care systems, in order to be able to respond

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27 Special thanks to Rita Baeten (OSE) for clarifying elements with regard to health care policies.
28 EUROSTAT, Social Protection Data 1996.
29 “Modernising and Improving social protection”, COM (97)102, p. 15.
to growing demands, especially in the light of the ageing of the population. The 1997 document further developed the question of the extent to which and the conditions under which health care systems could help saving costs while fostering a better quality of services and ensuring access for all.

In the 1999 Communication on a concerted strategy for the modernisation of social protection, one of the four priorities was “to ensure high quality and sustainable health care”. The guiding principle acting as the backbone for the two previous communications was pursued. Moreover, a particular emphasis was put on preventive policies, through the promotion of healthier lifestyles. For political reasons, a cost-saving link had to be made with prevention in order to include such policies in the communication, but the argumentation of the causal effect of preventive policies on the reduction of costs must be approached with caution, as the link cannot automatically be made. The need to control the high cost of health care - linked partly to the ageing of the population and partly to expensive medical technology – was underlined. Regarding medical knowledge and technology, for the “efficiency and effectiveness” of health systems, the communication promotes strengthening co-operation between Member States on evaluation of policies and techniques.

The tasks of the high-level working group that was set up on 29 November 1999 by the Council under the Finnish Presidency to activate the four axes in the 1999 Commission communication on social protection included working towards the improvement of health care. However, in the Council conclusions it was explicitly set out for public health issues to be tackled separately. There is therefore a danger for health care not to receive the attention it deserves as there is a problem of definition of health care issues in relation to social protection and public health. Both at member state and EU level, health policies are decided upon by different players in separate entities – each having their own specific priorities - which explains the difficulty of a clear-cut delimitation of health care issues in the framework of social protection.

The working group began its work during the Portuguese Presidency30, in January 2000, and the risk of health care being cast on the sideline has been materialised as there are no plans to deepen the strategic aims around that axis. This is partly due to the fact that the strategy of the Portuguese Presidency, with the overall aim of making Europe the most dynamic and competitive area, is focused around employment. It is easy to integrate social inclusion policies into employment, as it is a means to integrate excluded persons. The same goes for assuring good quality of life to the elderly bracket of the population, where the aim of the policies sets out for an extension of their productive contribution. However, for health care, the link with productivity and employment is less evident.

Although health is a policy area for which competencies are divided and sometimes overlapping, it is important to underline that health is a stake for which EU member states would like to retain decision-making power. Increasingly, this aim is being threatened by the European Court of Justice – through the Kohll (C-158/96 of 28 April 1998) and Decker (C-120/95 of 28 April 1998) cases - emerging as a potentially influential political actor. For the ruling of both instances - the Kohll case dealing with a dental consultation in another Member State, and the Decker case concerning the coverage of a purchase of glasses in another member state – the decision was not in conformity with the dispositions in Regulation 1408/71, which sets out for coverage in another Member State, as long as there is a preliminary agreement between the mutual insurance companies. In both cases, provision of health care services had been sought in another Member State, without the preliminary agreement of the mutual insurance company in the country of origin, from which full

30 In the strategic document of the Portuguese Presidency, “Employment, Economic Reforms and Social Cohesion – towards a Europe based on innovation and knowledge”, the areas of focus and actions planned are set out.
coverage of costs was then demanded. The implication of the ruling is that Member States would lose control over the management of their health care systems if EU residents would increasingly have recourse to medical services – particularly costly hospitalisations - in another Member State, without the agreement or implication of the mutual insurance players. Indeed, new cases concerning the coverage of health care costs are now on the table, which could reconfirm the increasing decision-making role of the Court of Justice in health care issues across the Union. In the Smits (C-157/99) case, the plaintiff argues that no preliminary authorisation should be required from the mutual insurance company of the EU national for 'unusual' or 'adequate' treatments in another member state. The VanBraekel (C-368/98) case concerns the reimbursement of hospital fees in a member state where the mutual insurance company is not located. In the Ferlini case, the plaintiff is arguing that the double-rates practiced by the Luxembourg hospital centre – one for persons that are covered by a mutual insurance that is located in Luxembourg and one for persons not covered by the system – are unfair.

If the stake of the political power of the Court of Justice in the financing of health care is being avoided, it is partially because more specifications may have to be included in the Treaties in the area of free movement of goods and services. Specific circumstances for coverage of health care and social protection goods and services would have to be set out and this would be difficult. However, if the member states and the Commission take the backseat they will increasingly be policy-takers rather than policy-makers.

4. Position of different players with regard to European social protection

European Trade Union Confederation (ETUC)

Overall, the ETUC welcomes the Commission’s July 1999 Communication on a concerted strategy for modernising social protection, and notably the principles and the enhanced collaborative elements to set out a true social protection strategy. The ETUC considered the will to activate a deeper co-operation among the actors concerned - based on the four pillars (see above) - as an important step forward, but insisted on the fact that “modernisation” of the social protection systems should not reduce social coverage or the solidarity-based motor common to the EU member states, in favour of a more loosely tied together system. The ETUC is particularly concerned about the gaps and the somewhat superficial, unrealistic or ambiguous aspects of the communication, as it seems that some of the activities proposed had not been thought through in terms of practical implementation. Firstly, the task of tackling alternative funding had not been touched upon, and the ETUC proposes enhanced actions in that area as it would not be able to accept a reduction in resources in favour of employment. Secondly, the formulation of a European strategy through the mechanism of the exchange of good practices in the high-level group was conceived as an ineffective instrument if the aim were to achieve substantive change. The diverse European social protection systems are considered by the ETUC as so strongly rooted that no real benefits could be obtained from an exchange of experiences. Instead, the ETUC proposes setting “social convergence guidelines”, according to the logic of the employment guidelines, catering to diverse systems and leaving the implementation modalities up to the EU member states³¹. The ETUC finds

³¹ ETUC’s promotion of the drawing up social convergence guidelines at European level was already decided upon during its 9th Congress, held in Helsinki on 29 June to 2 July 1999. ETUC had stated that the binding guidelines should be set out on the basis of the proposals made in the 1992 recommendation on the convergence of objectives and policies of social protection. During the Congress, ETUC prioritised the development of actions around five axes:
1. financing of social security (shifting the burden of taxation towards other productive factors);
the high-level group of EU member state officials incomplete as the social partners are
excluded from it. Alternatively, the setting up of a “Social Protection Committee” is proposed,
which could be modelled after other committees, such as the “Employment Committee”, and
participation of the social partners, in addition to the high-level civil servants, should be
assured through the committee. Finally, the ambiguous elements and terms of the
communication that were identified by ETUC indicated that the terminology used could
favour funded systems at the expense of PAYG ones. Moreover, a mere minimum
coverage, through the non-clarity of expressions such as a “decent replacement income”;
“encouraging flexibility in retirement arrangements”, “providing incentives (in the promotion of
social inclusion)” rather than a more complete coverage could arise.

In regard to the external dimension of social protection, the ETUC criticised the Commission
for encouraging the candidate countries to “work towards the development of efficient,
effective and sustainable social protection systems” without providing elements to
operationalise the rather global but empty aim. This was underlined in the context of the
enhanced enlargement strategy. The ETUC encourages the Commission to set out social
protection guidelines targeted at the candidate countries.

**European Federation of Retired and Older People (FERPA)**

The FERPA’s position with regard to the Commission’s communication to a great extent
followed suit of the ETUC opinion.

Elements highlighted include the necessity to review the financing of social protection
systems and to implement alternative methods.

The setting out of social protection guidelines by the high-level working group should include:
- shifting the financial burden of financing social protection from work to other productive
  factors;
- adapt the social security systems to the changing world of work;
- set out a percentage of the GDP for financing social security;
- minimum standards for salaries, pensions, and social assistance.
FERPA believed it would be important to draw up social protection guidelines for the
candidate countries.

**Union of Industrial and Employers’ Confederations of Europe (UNICE)**

The UNICE has, compared to the ETUC, a more sceptical view of the Commission’s
communication. Its line of criticism is centred on the necessity to develop European social
protection systems towards an insurance-based motor. In this regard, a reduction of the

2. set a requirement for a minimum level of GDP expenditure for social protection on the basis of
   the average of the three countries with the highest expenditure level;
3. guarantee adequate health care for all;
4. adapt social security systems to the changes in the labour market and make it possible to
   reconcile professional and family responsibilities;
5. create some minimum standards for social protection across the Union.


32 ETUC, Projet de résolution de la CES sur la Communication de la Commission “Une stratégie
33 UNICE Position Paper on the Commission Communication: “A concerted strategy for modernising
overall tax and contribution burden is proposed, and is characterised as a condition for optimal employment creation. Moreover, the place of employment and the employment guidelines are prioritised by the UNICE, and are considered as the core of social protection reform. The four priorities of the Commission's communication are conceived in a positive light, with a particular emphasis on employment. It is of interest to note that employment is mentioned in different respects throughout the UNICE position paper, whereas the other objectives - to make pensions safe and the pensions systems sustainable, to promote social inclusion, to ensure a high quality and sustainable health care – are elaborated upon only with reference to the problem of their financing, towards more individual coverage.

Regarding the instrument set out to achieve the aims, UNICE agreed with the approach proposed by the Commission: structured exchanges of experience between member states to monitor policy developments in social protection systems. UNICE highlighted that social protection reform should not be carried out in parallel to the employment policy. Instead, the two approaches should be fully integrated, clearly according the spotlight to employment. Social protection systems should on the one hand promote worker employability and adaptability, and on the other hand, employers should be provided with appropriate conditions for the creation of jobs.

As for the financing of social protections systems, the UNICE, like ETUC, notes that the Commission has failed to touch upon the issue in the communication. The means proposed to finance social protection systems is private insurance arrangements, although maintaining a (minimum) social safety net to those in need is mentioned. In sum, the UNICE's view with regard to the four poles of the Commission's “concerted strategy” – referring to guaranteeing a good quality of life to diverse social groups: the active population, pensioners, socially excluded, and persons with health problems - is that employment and private insurance arrangements are to be the core of the future social protection systems. The mechanism for monitoring and developing the European social protection systems, mainly through the exchange of experiences, in a high-level group, is seen as appropriate.

European Parliament (EP)

It must be taken into account that the EP's position is a draft report of the perspective from the Committee on Employment and Social Affairs, and can not be taken as representing the whole of the EP. The EP recognises the advancement that has been made since the 1992 social convergence recommendation, and perceives the July 1999 communication as a crucial step providing for the materialisation of social convergence through an analysis of common challenges and formulation of common objectives for modernising the Member States' social security systems. The European social convergence strategy is defined by the Parliament as “an instrument for promoting macroeconomic objectives for sustainable growth and structural changes on the labour market to increase the level of employment, improve competitiveness and increase productivity.” Among the four objectives, emphasis is put on social inclusion and care of diverse categories of citizens, including the vulnerable groups and the elderly. The fundamental right to high-quality health care is supported, while mentioning the segregative risk that could arise by privatising social risks. The EP also emphasises the need to ensure social security rights for atypical workers.

34 Andersson J. of the Committee on Employment and Social Affairs, prepared the EP's position in regard to the Commission's communication, COM (99) 347.

It is interesting to note that Parliament’s position goes into considerable detail regarding the mechanisms to carry out to reach the four objectives set out in the communication. The Parliament encourages the Commission to develop three instruments to monitor and to assure a reform-oriented development of the EU social security systems at national level: benchmarking criteria, evaluation systems, and guidelines. Other means suggested to pursue social convergence were the drawing up of a separate report on poverty, particularly targeting the situation of underprivileged groups, the setting out of guidelines for the establishment of an acceptable minimum subsistence level in EU member states, and the drawing up of statistical indicators for targeting the situation of social exclusion and poverty.

The process of operationalising the modernisation, through a high-level group responsible for the yearly social protection report, was considered as appropriate, but the Parliament made it clear that it would like to partake in the group from the outset. The Parliament highlighted the importance of including various actors in the process: Ecofin Council, Councils responsible for social affairs and employment, social partners, applicant countries for EU membership, NGOs, social security institutions, the Economic and Social Committee, and the Committee of the Regions. The model to be formed for social protection monitoring and reform along the lines of the Luxembourg process, was perceived as appropriate. The alternative methods of financing suggested by the Parliament include different taxes, rather than the heavy tax on labour: taxes on environment, energy and consumption, and on capital. The Parliament expressed concern about the fact that the issue of financing had not been tackled in the Communication.

With regard to the candidate countries for EU membership, the Parliament suggests drawing up a separate social action programme in the specific context on enlargement. Moreover, in the yearly report on social protection, the Parliament expects detailed information on the situations in the applicant countries, particularly regarding the vulnerable groups – poorly educated women, the disabled, orphans, ethnic minorities. A developmental approach is also encouraged in the analysis of the situation in the applicant countries through setting out the modalities for the applicant countries to follow to modernise their social security systems in line with the European social protection reform.

**European Anti-Poverty Network (EAPN)**

EAPN did not publish an official position paper on the Commission’s “Concerted strategy for Modernising Social Protection”, but rather, a broader opinion on their view of the future of social protection. In general, the paper indicates that they are in favour of the European-level approach of social protection adopted in the communication COM (99/347) and focusing around increased flexibility of the solidarity-based welfare systems to cater to different lifestyles and age-groups. With regard to the four axes, focus was on individualised support for socially excluded people, which is logical considering the nature of activities of EAPN.

EAPN expressed the wish to participate in a debate implicating actors concerned.

With regard to the mechanisms to enhance the social dimension of Europe, EAPN favoured the adoption of social protection guidelines based on the model of the employment guidelines, the setting up of centres to monitor poverty, and the establishment of mechanisms to measure the impact of policies on poverty and social exclusion.

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36 “Social Protection or Exclusion: A Choice for Europe”, EAPN, September 1999, EAPN website (www.eapn.org). It is to be kept in mind that the paper was published based on a seminar organised in March 1999, and that the communication (COM (99) 347) was not taken into account.
With regard to the financing of social protection, EAPN highlighted the non-correspondence of the current system, based on the “traditional” job market, and encouraged taxation to shift from earned income to all forms of revenue.

**Conclusion**

Upon a brief analysis of the development of the place of social protection in the European agenda, with a particular focus on 1999, it appears that significant progress has been made on the discursive and active levels during the last year of the millennium. It now has a higher political profile, and many players, some of them not traditionally involved in the area, are attempting to shape its political, economic and social identity. It is essential for the high-level working group to focus on actions in the four priority areas – employment, pensions, social inclusion, health care – and to carefully study the potential effect of the diverse initiatives, in order for the boomerang effect not to be counter-active. An exhaustive and careful analysis should be made on the effectiveness and appropriateness of different paths, including the establishment of minimal norms, monitoring social protection development in member states according to the recommendations made, and benchmarking.

Although it is clear that the political profile of social protection has been raised on the European agenda, it is to be kept in mind that it is principally through the soft law mechanism, in particular through the exchange of best practices and information. Some authors refer to the soft law mechanism as the “information guidance” axis of policy-making. According to this type of classification, the other types of policy instruments, or “sets of guidance” are financial guidance (financial support through the structural funds as well as the often-avoided issue of the financing of social protection) and legal guidance (legal instruments that must be integrated by member states into their treaties). Optimally, the three should be used in conjunction to optimise policy-making\(^ {37}\). In the social protection area, information guidance has developed positively. However, financial guidance, as has been highlighted by diverse actors, can no longer be left on the sideline. The financing needs to be reformed so as to on the one hand respond to common challenges in Europe - the ageing of the population, the high unemployment rate, the increasing number of socially excluded - and on the other hand to adapt the system to integrate individuals with diverse lifestyles into the social protection systems. Concerning legal guidance, the Maastricht Treaty sketched the aim of the Community Social Policy as a high level of employment and of social protection, a high standard and quality of living, and economic and social cohesion\(^ {38}\). In May 1999, the Amsterdam Treaty was ratified, providing the opportunity for more action on the legal axis to take place in social policy. However, because of the crisis of the Commission no initiatives have been taken yet to pursue actions in that area, and it is too soon to evaluate the effects of the Treaty. To conclude, it is important to emphasise that actions need to be taken in all three axes of European social policy – the information, financial and legal guidance, with a focus on the first two axes. The emergence of a European social protection is *en route* and is taking its own specific form\(^ {39}\).

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37 Pakaslahti, J., op cit., p. 82.
38 Pakaslahti, J., op cit., p. 36.
39 Pakaslahti, J., op cit., p. 80.