Trade unions for a change of course in Europe

The end of a cosy relationship

Edited by Wolfgang Kowalsky and Peter Scherrer
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European Trade Union Institute (ETUI)
John Monks, General Secretary of the ETUC (2003-2011), managed to keep the trade union ship on course even during stormy weather. Thanks to his early warnings against capitulation to the financial markets and protests against interference in wage bargaining, the trade union movement had a clear orientation. Our cooperation with him induced a sense of optimism and heightened determination. Keep up the good work, John.

The authors
Foreword

Wolfgang Kowalsky and Peter Scherrer

This book project was born out of common concern and challenge, that of taking a fresh look, in this turbulent period of crisis, at the relationship between the trade unions and Europe, and where necessary make suggestions for a readjustment. To do this we need first to look back. For decades, the European trade unions remained 'true' to Europe, in a kind of unquestioning loyalty born of the idea that, after two world wars, it was time to institutionalize the process of peace. This project has been successful. But this success alone is not enough to carry us into the future. For the youth of today, which has grown up in peace, freedom and relative prosperity, this - now fulfilled - demand is not enough if they are to commit to European politics. 'Official' Europe, embodied in the European Commission, European Parliament and governments meeting in the Council, no longer inspires enthusiasm. On the contrary, Europe's institutions have a certain deterrent effect, standing as they do for bureaucracy, aloofness, even arrogance of power. The mobilization of enthusiastic populations to tear down national barriers and border posts in favour of the construction of Europe is now past history. Has the capacity for mobilization, commitment, enthusiasm and excitement changed sides? The memory of the ‘no’ vote in France, the Netherlands and Ireland seems to suggest this, as does the new upsurge of populist movements on the political right in France, Finland and elsewhere in Europe.

Where do the trade unions stand in all this? Increasingly the scant regard paid to its positions in the European policy-making process is forcing the trade union movement to conclude that, on an ever greater number of points, official Europe is turning its back on core union concerns. Disappointment and anger are spreading in union circles. Union demands - for a Social Progress Clause, for a revision of the Posting of Workers Directive, in short, for the restoration of the primacy of fundamental rights over economic efficiency - are being slapped down with general references to the Internal Market rules.
Many an astonished trade unionist is rubbing his eyes and wondering if this is still the Europe for which the unions have been campaigning since the fifties of last century? A neo-liberal policy of forced-march liberalization, a number of rulings of the Court of Justice of the European Union (CJEU) which rein in fundamental rights, repeated attempts by the Commission to overturn the working time directive, the long-term stagnation of European social policy in response to the employers’ demand for a ‘social moratorium’, the absence of any comprehensive European industry and employment policy, the lack of strategies for sustainable job creation - what overall picture does all this add up to? Increasingly, the answer comes: Europe is or is becoming ‘antisocial’. Additional pieces of the jigsaw include the fact that, since 1999, no new agreement between the social partners has made it to the statute books, because the employer side and the Commission together are blocking them. At the same time the Bolkestein deregulation project has pinned down and exhausted a lot of energy in defensive battles, while the ‘colonization’ of Greece in the financial crisis has given Europe the ugly face of the strict International Monetary Fund (IMF) and added impetus to anti-European movements. Is this Europe worth defending for trade unions? Do we need ‘another Europe’, to borrow the title of the 2010 European Social Forum, co-organised by the European Trade Union Confederation (ETUC).

How much longer are trade unions going to remain on the defensive? Are critics right in following Fritz Scharpf, former director of the Max Planck Institute for the Studies of Society, who argues that ‘negative integration’, unanimity requirements and the lack of competences and decision-making structures make any ‘social Europe’ a non-starter in the era of a 27-member European Union (EU)? A key feature of the welfare state, its redistributive function, has developed in only rudimentary fashion at European level and can only marginally mitigate social impacts; in fact the brunt of welfare provision is still borne by the nation state, but with its wings clipped by the competition rules. Tax harmonization is not taking place. Instead, a race to the lowest tax rates is being tolerated, if not encouraged, with social and public service budgets coming under such pressure as to make income redistribution in favour of the less affluent inoperable. Is Europeanisation in today’s ‘negative integration’ form not only taking its toll, but also creating its victims? There have always been losers and winners, but if the unions are increasingly on the losing side, the European project can find itself in troubled waters. If unions disappear as a social pillar of European
integration, there is no one ready and waiting to take their place. These issues go to the heart of the matter, and fundamental questions need to be raised in order to find answers to them.

For many years now, Europe has relied on expansion, without any deepening. The enlargement of the European Economic Area has made great strides over the last 20 years. This contrasts strongly with the lack of deepening of the European social area. The financial crisis could set in motion the process of deepening. Like earlier crises, it could spark a push towards Europeanisation: since the financial crisis, ‘economic governance’ and economic policy coordination are again under discussion. However, what is actually being implemented points more in the direction of a coordinated Europe-wide austerity policy rather than a ‘new social deal’, as proposed by the unions. While one can again talk about ‘economic governance’, a financial transactions tax and Eurobonds without being immediately dismissed as a crackpot - a few years ago that was another story - these projects, which have the backing of the European trade unions, are making little headway. Europe seems to be at a crossroads, the unions also.

Europe is threatening to become a source of division within the union movement: lined up on one side are the supporters of the European Constitution, on the other its opponents. On the one side those who give preference to global solutions (climate change, financial market regulation ...), on the other those who want to see Europe moving forward. Those who only want to move forward all 27 together, against those who are comfortable with pioneering groups moving out ahead of the rest the pack. Those who want to criticize more sharply the neoliberal orientation of the Barroso Commission, against those who uphold the Community method. The list continues: Lisbon strategy, macroeconomic dialogue, social dialogue, the EU 2020 - all superb topics of argument.

The standard repertoire of European trade unions has until now included the position that a common, community European solution needs to be found to emerging problems, whether financial market regulation, climate change, minimum social standards, etc. That national exceptions such as the UK ’opt out’ for the Working Time Directive are undesired. Since its enlargement to 27, the EU has been
increasingly confronted with individual Member States blocking, delaying or diluting agreement out of national self-interest.

At the same time Barroso is continuing his deregulation agenda under the banner of ‘smart regulation’. Behind the technical term ‘flexicurity’ lurks an agenda of deregulation and increased labour market precariousness. The Green Paper on pensions calls for upping the retirement age, despite a dearth of jobs for older workers. The growing numbers of ‘working poor’, of workers caught permanently in the poverty trap, of unemployed persons, particularly the dramatic rise in youth unemployment, weigh increasingly heavy and make it pointless to trivialize these problems and scandals with reference to the other side of the coin, that of ‘social Europe’.

Europe is dead as a political project, the radical left French philosopher Etienne Balibar said recently. The authors of the present publication are not ready to go that far.

The following pages shed light on the Euro-political constellation of the trade unions, viewed from different vantage points.

Wolfgang Kowalsky, who is advisor at the ETUC, examines why a readjustment of the relationship between Europe and the trade unions is necessary. What has changed since the beginnings of the European project, which has always sought and found support in the unions? What influence has the European approach to the financial crisis had? Is Europe in the process of becoming the Europe of capital and banks, as one bank rescue package follows another? Why is the internal market drifting away from its original starting point and what role does globalization play in this? Are unions the transmission belt of the European institutions or are they increasingly taking on the role of an opposition force in society?

Reiner Hoffmann tackles the theme of the ‘Europeanisation of industrial relations and trade unions’. As a long-time Deputy General Secretary of the ETUC he has an excellent insight into the shortcomings of a national approach and explains how the unions and the European Works Councils can operate better within Europe. Without underestimating the successes of European integration, he unambiguously takes aim at the existing imbalances and deficits. Not in order to nourish Euro scepticism, but rather
Norbert Kluge begins by sketching out the present situation of European employee participation. He goes looking for signs of support for worker participation in both the European institutions and the Commission, in the practice of European Works Councils and in the practice of co-determination when business decisions have to be taken at the European level. He concludes his contribution with a surprising and optimistic future scenario, ‘Workers Participation 2030’.

Peter Scherrer, General Secretary of the European Metalworkers Federation (EMF) till June 2011, examines the issue of the impact of the changing relationship of trade unions to the development of Europe at the practical and concrete level. His article deals among others with cooperation between trade unions and European Works Councils. He also examines the changing cooperation and relationship of European trade union federations with their parent body, the European Trade Union Confederation (ETUC).

This book is not intended to participate in the interpretation of ‘EU2020’ or similar Commission documents. We will, however, be looking very closely at the form and manner of ex-cathedra pronouncement, and the way old wine (the so-called ‘Lisbon strategy’), is being poured into new skins (‘EU 2020’). The legitimacy of the Commission’s initiatives derives less and less from a process of solid argumentation; instead initiatives are being put forward on a ‘no alternative’ basis, a phrase that releases its user from the need to give explanations and justifications.

Recent national parliamentary elections have increasingly strengthened Europe-critical and anti-European parties. Right-wing, openly nationalist parties are gaining political ground. Commentators are giving Marine Le Pen a good chance of (at minimum) a respectable vote in the French presidential elections. The riots in Greece and elsewhere can be interpreted as a harbinger - also articulating itself in violence - of alienation between citizens and elites. Many people at the top of financial and business corporations move in such lofty circles that they fail to recognise the strength of the rising tide of anger at ground level.
Introduction

Wolfgang Kowalsky and Peter Scherrer

Europe = progress or regression? Incorrigible Euro-romantics point to recent progress: the Charter of Fundamental Rights has become legally binding, some improvements have been achieved in the revision of the European Works Council Directive, in particular the informing of EWCs prior to important decisions. The directive on temporary agency workers has been adopted that helps enforce equal pay for a category of disadvantaged workers. The maternity directive brings an extension of maternity leave, but is still mired in the Council owing to the exaggerated demands of the European Parliament .... However the Charter is disappointing the expectations placed in it, i.e. that it would block the latest series of CJEU rulings and introduce a change of course. This has unfortunately turned out to be wishful thinking. A first opportunity for a Treaty amendment and the adding of the Social Progress Protocol has passed, since Ireland had to be fobbed off with a non-binding declaration as a result of an intervention by the British Labour government. Another opportunity came in theory with the 'small' Treaty amendment that Merkel pushed through the European Council of 29 October 2010. The ETUC reminded those concerned in good time of the need for a social progress protocol, but the Socialist Group in the EP closed ranks and nodded through the Treaty amendment and did not break ranks with the consensus of the proponents. The Working Time Directive will be back on the table in 2011, and the Commission has no intention of abolishing the opt-out, but wants to soften the ‘rigid’ rules.

In parallel, attempts are being made to introduce or strengthen ‘circular migration’. A proposal for a directive is intended to prepare the ground for importing highly qualified third countries nationals into Europe in order to take up jobs - here the world’s best knowledge-based society appears to exhibit significant gaps and the proposal is likely to increase these gaps, being aimed at the temporary migration of cheap workers.
Also on the table is a directive intended to introduce circular migration beyond existing collective agreements in the form of proposals to facilitate seasonal work which open the door for employers to employ migrants at low wages. The debate about demographic developments and pensions aims not at inter-generational solidarity but at opening the ‘pay-as-you-go’ pension systems to financial markets. Because of opposition from the City and the financial world, the Robin Hood or financial transaction tax is not moving forward, which means that to this day speculators and financial markets have not had to pay an appropriate share of the consequences of the crisis caused by them. The Commission lacks the will to prohibit harmful activities on financial markets that led to the near-collapse: unhedged short-selling will continue to be possible.

Protest movements – 29. September – 15 December 2010 – Spring 2011. The financial crisis was a turning point - but the Commission is talking down the crisis into a ‘normal’ debt crisis, not requiring any extraordinary activities. Despite these setbacks and shortcomings, the European project still holds positive potential that needs to be tapped. The unavoidable question is, however, how to exert pressure in the right direction? On the one hand certainly by calling members out onto the streets, as on 29 September 2010 when a major anti-austerity demonstration by the ETUC brought 100,000 people to Brussels, supported by numerous actions in Lisbon, Prague, Bucharest, Italy and other countries - and the Spanish trade unions organised a general strike. The harsh austerity programmes are arousing violent protests and will lead to social upheavals. The press coverage was enormous, but not unanimous, with parts of the German press suggesting that populist movements were at work, based more on emotion than on rational analysis.

The proposals for reform of the Stability and Growth Pact presented by the Commission on the very same 29 September 2010 (on the one hand a proposal on ‘speeding up and clarifying the implementation of the excessive deficit procedure’, and on the other on ‘the strengthening of budgetary surveillance and the surveillance and coordination of

1. The Handelsblatt commented that ‘The wave of fury is rolling’ and the Spiegel spoke of ‘Anti-savings fury’.
economic policies’) do not contain anywhere a reference to unemployment or the goal of full employment.

EU finance ministers adopted in November 2010 an 85 billion euro rescue package for Ireland without bringing private creditors into the bailout. The European Council of 17.12.2010 confirmed the decisions of the previous Euro Group of 28.11.2010 to establish a European Stability Mechanism from 2013 onwards, with the Treaties amended accordingly. At the European Council the German Chancellor vetoed the idea of Eurobonds, although a renewed push by Luxembourg Prime Minister Jean-Claude Juncker and Italian Finance Minister Giulio Tremonti2 won increasing support.

Is a change of course possible? On the eve of the European Summit of 16-17 December 2010, another general strike was held in Greece, and symbolic actions took place in many other European cities: in Prague, Lisbon, Madrid, Paris, Strasbourg, London, Bucharest and in Brussels with a symbolic human chain around the European Commission building. John Monks warned against a ‘desperate Europe’. Only the trade unions have a message of hope to offer. The Greek Parliament had just passed legislation capping wages in state-owned enterprises, and enabling employers to replace negotiated collective agreements by wages negotiated at company level. The day before, on 15 December 2010, the ETUC met Jean-Claude Juncker, who shares many of the ETUC’s concerns about the lack of recovery, about the power of financial markets, the lack of a convincing and effective response to the crisis, and the need to find European solutions that alleviate rather than increase the problems. The Economic Governance Package that the Commission is presenting will entitle it to both propose and decide on economic sanctions. A Commission proposal can be rejected only within 10 days by a qualified majority in the Council of Finance Ministers - a procedure of a quasi-automatic minority decision by a public authority that can scarcely be described as democratic. This would give Europe a sanctions regime that does away with collective bargaining and rules on minimum wages and fair working conditions, in so far as the European Parliament agrees to this.

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The values of solidarity, social justice and fairness play a role in particular in European rhetoric. Employees did not cause the crisis, but it is they who are being required to bear the burden of adjustment, particularly through wage cuts. The effects of austerity are becoming more noticeable and it is no wonder that increasingly violent riots are taking place. Cohorts of the ‘lost generation’ (in the words of the ILO) are resorting to violence in order to attract attention to their concerns, as for example on 5 May 2010, in Athens, when masked figures hurled an incendiary device into a bank and killed three people, or on 23 February 2011 - are these the harbinger of future conflicts? On 9 April 2011 a demonstration in Budapest exceeded the organisers’ and ETUC’s expectations with 50,000 participants.

Has the EU changed, during and through the financial crisis, into a plutocracy, into a regime for banks and the finance industry? Francis Fukuyama has applied the concept to the U.S. and observed the excessive influence of the wealthy and rich on major decisions. For him ‘an unholy alliance’ is at work ‘between financial markets and academic economic science’ based on four strategies: lobbying to shift costs from large corporations to taxpayers, lobbying for tax relief for the rich, lobbying to allow unlimited financing of political parties and election campaigning, and lobbying for as few limits as possible. These strategies have been highly successful: Between 1978 and 2007 in the U.S., the income share of the top 1 per cent of earners rose from 9% to 23.5%, while the real income of employees has been decreasing since the ’70s. If Fukuyama finds a plutocracy in the U.S., why would the answer in the EU have been significantly different? Similar developments can be observed and John Monks did not hesitate to apply the concept to Europe.

The gap between union demands and the real action of official Europe is widening. The ‘elites’ on the one hand and populations on the other, guided more strongly by national interests and weighing up the situation

4. In Germany this concept has been avoided since the time of Goebbels, and it should certainly be used with caution.
more clearly in terms of national profit and loss, are drifting apart. This gap is not without impact on trade unions, political parties, NGOs and writers. Interesting in this context is the Commission's new communication strategy, which attempts to give its action a social ‘spin’. Even the 'Economist' notes with surprise the way Barroso is seeking to sell his austerity policy with social arguments.\(^6\)

Where could we go from here? Are we moving towards increased cooperation between willing Member States, towards greater political unity, fiscal and social harmonisation, in other words towards a political union? Is it logical that all Commissioners and MEPs have a say in these projects, including those of Member States that do not want to participate, and moreover by a simple majority? Can progress be expected within the Eurogroup? Or are rejection of and indifference to Europe on the increase?

Quite unspectacularly and away from view, the rescue aid grew to colossal proportions. In December 2010 the Commission published, in its capacity as a clear-sighted and invincible Cerberus against state interference, the following message: the total amount of approved rescue aid between October 2008 and October 2010 amounted to € 4.5 trillion.\(^7\) The list is led by Britain, followed by Ireland, Denmark, Germany and France. The cost of the bailout has been transferred to the public budgets, and public debt has increased by leaps and bounds. Rapid deficit reduction became the order of the day, the categorical imperative. Within a short time, the mood at the European governments turned to panic, following years of lax attitude to debt. Totally forgotten was the fact that, following the Second World War, the USA gradually brought down its deficit from 250% of GDP over 10-15 years. John Monks points out to the fact that Britain took 52 years to pay off its war debts. Germany repaid its last debts from the First World War in

\(^6\) The Economist, ‘Barnier’s bust-up’, 25 October 2010 (http://www.economist.com/blogs/charlemagne/2010/10/eu_and_single_market); ‘Charlemagne: Europe’s need for e-freedom’, The Economist, 30 October, p. 36, speaks of a covering layer of ‘social rhetoric’ and a ‘ritual’ confirmation of the Charter of Fundamental Rights (‘He [Barnier] has tried to sugar the pill with a layer of “social” policies and rhetoric. Some have been removed from the text. In any case, ritual reaffirmation of the European charter of fundamental rights, including workers’ right to take ‘collective action’, will not convince those who dislike the single market.’).

October 2010. The widespread assertion in Germany that Member States have not done enough to reduce the deficit is, with the exception of Greece, incorrect, because before the crisis, the deficits in the Eurozone were low or close to zero. Both Ireland and Spain still had budget surpluses before the crisis (2007).

The Stability Pact and, related to it, the rapid debt reduction have, according to Jürgen Habermas, become a ‘fetish’ - not coincidentally, the Commission presented in May 2010 proposals for strengthening the pact. The combination of certain medicines is worsening the patient’s state: incontinent banks, nursed by government aid and the ECB, rigid austerity and inappropriate declarations on Economic Governance by the decision-makers of some Member States.

Throughout the years in which the Commission placed its money, with its better regulation agenda, on deregulation, and was keen to leave the financial markets as unregulated as possible, a financial crisis was brewing on a gigantic scale, in the wake of which - if only for reasons of intellectual credibility - a self-critique of previous failed policy and a redefinition of the market-state relationship would have been appropriate. How is it possible that, two years after the outbreak of the global financial crisis, precisely those players that caused this crisis are now being taken seriously as experts on issues of creditworthiness of entire countries? Why is far more attention being paid to national debts than to balance of payments imbalances and imbalances of competitiveness? The issue of debt is no longer seen as that of the causal link between financial crisis and rescue of the financial system on the one hand, and the socialization of debt in government hands on the other side, but independently, with the financial crisis appearing to be ticked off as dealt with, as a timid recovery comes into sight and bonuses start flowing again, and the privatisation of profits continues, while the government debt crisis makes it possible to continue the dispossession of taxpayers. The fact that the counter-productive save-till-we-drop of

8. La Tribune, 1.10.2010.
9. In 1999 the European Commission set the direction, with its Financial Services Action Plan, in the direction of liberalisation and financial market deregulation, under the then Commissioner Bolkestein.
10. John Monks: 'The Commission’s proposals for the contribution of the financial sector ... are unambitious in dismissing the proven feasibility of Financial Transaction Taxes
the public sector can cause a slide into recession is a fact that is being consistently ignored.

Member States appear to have become hostages of the rating agencies. The immense power of the same financial markets that ironically were previously saved by the governments has turned itself against government debt. In the days of the construction boom, the rating agencies upped their assessments of unsafe risky mortgages, so-called sub-prime loans, and other highly speculative financial products. When - as in the case of Spain - the state took over the debts, the banks did not enter into any commitments and were not held accountable. To remain liquid, governments have been forced to sell additional bonds. At this stage the rating agencies returned to the scene and downgraded the credit ratings of the governments for their unwillingness to take an axe to social gains. The impact on the relatively new democracies in the affected countries Greece, Spain, Portugal is unforeseeable. The crisis is a stress test for the euro: Without a euro, the DM could have been expected to rise sharply in value, accompanied by devaluations on Europe’s southern flank.

More ‘Versailles’ than ‘Marshall’: enforced austerity in Europe. The economic crisis has, in combination with high and rising unemployment, substantially weakened the bargaining power of organised labour. Wages have been cut in Ireland, Greece and several Central and Eastern European countries, including the Baltic States and Romania. On the front line it is the industrial and public sectors that have lost feathers and suffered job losses, wage cuts and wage stagnation.11 According to John Monks, the plans have more in common with the punitive spirit of the 1919 Versailles Treaty than the Marshall Plan, which organised a European recovery. Just as ‘Versailles’ destabilised the conditions of its day, the enforced savings programme is today destabilising the social landscape of Greece and the political situation in

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Ireland. The conditions of the European rescue package for Greece were stricter than those of the IMF to other countries, they contained a punitive component. In the euro area, Europe acts like an 'IMF-plus'.

The financial crisis caused a tectonic shift, a reduction of the weight of Europe. This inevitably raises the question: does Europe still form a critical mass, economically, politically and socially? Does Europe still have sufficient weight on the political, economic and social stage? A consequence of the financial crisis was the shift of power from Europe to the emerging markets, as sealed by the IMF reform, adopted by the G20 in October 2010 in Gyeongju, with Europe giving up two seats on the IMF Board and China, Brazil, Russia, and India (6%) gaining more influence. As a result, China is in third place after the U.S. and Japan, while the U.S. maintains its veto position, as decisions are made with 85% of the vote, and the U.S. has 17.5%. New lines of conflict are arising: the industrialised countries have in recent decades pushed forward the liberalisation of financial and product markets, but many emerging economies favour a strong government influence on the economy.

Europe on the wrong path. Why does Europe not pave the way to a better-regulated financial system and not take the leading role in extricating the world from the crisis but wait for the decisions of the United States? The unions are not alone in their criticism. The fragile European recovery can cause irreparable damage through the wave of austerity that is sweeping over Europe - according to former World Bank chief economist and Nobel Prize winner Joseph Stiglitz.\textsuperscript{12} The risk of a further financial crisis has not been averted, but the prospects for a 'double-dip' recession are realistic. Barry Eichengreen has insisted on stimulating demand in order to counteract deflationary trends.\textsuperscript{13} According to Stephany Griffith-Jones, anti-cyclical measures offer a way out of the crisis, and she points to the Keynesianism of the 1930s,\textsuperscript{14} warning insistently of the danger of a 'Catch-22' situation, in which Europe waits for the USA to act, and vice versa. In saying this she is alluding to the new enthusiasm for global solutions: both in the debate

\textsuperscript{12} Sunday Telegraph, 2.10.2010.
\textsuperscript{13} Eichengreen, Barry: 'Die Griechen sind eure Lehman Brothers', in: Frankfurter Allgemeine Sonntagszeitung, 2.5.2010, p. 43.
\textsuperscript{14} On 15 April 2010 in front of the European Parliament Crisis Committee. See also: http://www.stephanygj.net/papers.html (4.5.2010).
on the introduction of a financial transaction tax as in the fight against climate change a faction of the opposition - but not it alone - is no longer taking a position of total opposition, but is making any progress conditional on global agreement. Such critical voices from observers encounter no response from the Commission or Council.

In Ireland, the bailout is 100% taxpayer-funded\textsuperscript{15}, without any opposition from the Commission - on the contrary it has placed its veto against the participation of shareholders, thereby giving rise to anger and rage, as Kevin O’Rourke noted. The roles here appear to have been reversed as follows: the much-maligned IMF seems to have been in favour of the participation of the bondholders, but was unable to prevail against the Commission, ECB and the Bundesbank.

The political establishment accepts pushing workers into misery, while bankers go home with seven-figure bonuses. But this problem affects not only Ireland: all European governments are afraid of having bondholders participate in financing the costs. This injustice in the distribution of the burden will not remain without consequences and is already leading to the growing popularity of right-wing populist and extremist political parties.

The tragedy of a ‘lost generation’ is in the offing. Former IMF Director Dominique Strauss-Kahn pointed out that the recovery was one thing, but another was the question of how many jobs it was creating. He warned against ‘jobless recovery’, i.e. an economic upturn that does not create new jobs. An economic union without coordinated tax policy will not work. Strauss-Kahn warned of anaemic and plodding growth in Europe. He referred to calculations that global growth would increase by 2.5 points and 30 million additional jobs would be created if governments did not give preference to national solutions, but coordinated their decisions.\textsuperscript{16}

In September 2010 the Commission presented a package of six legislative proposals to be discussed in the European Parliament. With

\textsuperscript{15} Eurointelligence, 8.10.2010.

the Annual Growth Report (12.1.2011) the Commission rang in the so-called first European Semester, i.e. the ex ante coordination of fiscal and economic policies, but in another way than expected by the ETUC: the economic priorities for the three areas of macroeconomics, structural reforms and growth promotion are presented. Essentially Member States are to work through a whole palette of proposals: increasing indirect taxation, encouraging longer working hours, raising the retirement age, further privatising pension systems, reducing employment protection, paring back unemployment benefits, and further liberalising the public sector. The causes of the crisis and subsequent structural distortions are simply ignored. As if such structural reforms, carried out before the start of the euro in 1999, would have prevented the current financial crisis. In Ireland, a constitutionally-anchored debt prohibition would have made no difference. Nor would the abolition of indexation in Luxembourg and Belgium, neither of which were at the epicentre of the crisis, have changed the financial crisis one iota.

Despite these facts, the annual growth report considers wages as an important factor in correcting macroeconomic imbalances, attacks the 'inflexibility' of wage formation systems, in its concern for competitiveness targets short-term working as 'labour hoarding' and reducing productivity in its wake. Short-time working, it argues, leads to periods of jobless growth and a decline in productivity per worker. While wages have generally 'adapted' well to falling demand, there are adjustment problems because of 'long-term collective contracts' which prevent rapid adjustment to the business cycle. Also on the shortlist are greater flexibility and the elimination of 'excessive' employment protection.

The idea is to increase competitiveness and to 'frontload' structural reforms in order to close the gap between Europe's labour productivity and that of its competitors. Threadbare OECD recipes of the mid-1990s are repeated: 'making work more attractive', 'getting the unemployed back to work', 'active labour market policies', 'providing incentives to work', 'rewards the return to work' and the like. In order to reduce imbalances, the simple recipe is: force deficit countries into austerity and wage deflation, revive weak domestic demand in surplus countries by extending shop opening hours ('disproportionate limitations on opening hours and zoning') and reduce barriers in services ('further opening of the service sector'). Employment protection is described as
'creating labour market rigidity', with reforms needed ‘to reduce over-protection of workers on permanent contracts’, and to ‘alter employment protection legislation’. Also to be strengthened are ‘internal’ and ‘flexible working arrangements’ and the ‘responsiveness of wage setting processes to market developments’. The until recently vaunted ‘automatic stabilizers’ have now fallen from grace: Member States should keep the growth in public spending below that of GDP. Coordination should take place only on the state expenditure side (‘lower public spending on social transfers’), competition is the only thing that now counts when it comes to taxes and the labour market. Competition should prevail everywhere except at banks and financial institutions. The anti-crisis recipe of the ’30s was: cut wages, cut spending and reduce personnel. Does that sound familiar? The Commission sticks fast to the recipes from the pre-crisis period and in particular the false belief in efficient markets.

On a collision course with democracy? The Commission’s ideas of economic governance can be summarised as constituting an attack on social Europe, in contrast to the non-intervention pact on bonus payments, top salaries and financial participation of the financial industry. The proposals connect competitiveness and labour costs and give the EU Finance Ministers in association with the Directorate-General ECFIN (Economic and Financial Affairs) of the Commission the power to intervene in areas that are beyond the competence of the EU Treaties (Article 153, par. 5): collective bargaining, labour market institutions, public services. In other words: the Commission is introducing budget and pay commissioners.

The reality matches this: the Romanian government amended in January 2011 its labour law and its legislation on social dialogue. Social partners are placed under considerable time pressure: if they do not agree, the Minister of Labour will reform labour law unilaterally, without any consultation with the social partners. In Ireland the minimum wage was reduced from 1 February 2011 by €1 to €7.65, thus cutting at a stroke the wages of 50,000 low-wage workers. The agreement between the Irish Government, the EU and the IMF set out in the Memorandum of Understanding provides for such a reduction that is automatically and immediately applicable to new hires. Actions derived from the memorandum need to be approved by Brussels. Some people are using the word ‘diktat’.
If the Commission’s Economic Governance proposals go through unchanged, then Europe will be taking over new competences from the Member States: that is the essentials of budget management with sanctions for Eurozone members and wage policy. It is unclear where the social partners fit into the new system and what role, if any, is still allotted to them.

**Competition pact for Europe.** At the beginning of February 2011 Merkel and Sarkozy announced a competition pact for the Eurozone. This met with considerable resistance, particularly the demands to abolish wage indexation, to realign the retirement age and introduce debt brakes on the German model. The crisis perception of the German establishment is peculiar to it and has xenophobic traits: it is all about is fiscal irresponsibility and lack of competitiveness of the South - the financial crisis is not centre-stage. According to this logic what we have is a fiscal crisis, and austerity policy has to make good the damage. The competition pact revealed the German instruments of torture and sparked a revolt in the Council. Since then the line has been to demand debt brakes across the board. The argument that a debt brake would by no means have prevented the financial crisis is ignored. The portrait of the southern countries as excessive deficit makers serves to absolve Germany completely from responsibility\(^\text{17}\) and divert attention from the problems of the banks. Ever since trillions of dollars of private loans have been converted into public debt, politicians have been vehemently against any debt restructuring. The ECB too wants to avoid a debt cut, because it would itself bear the largest devaluations.

A few weeks later, Council President Van Rompuy presented his own weaker proposal. But all the competition packages are on the same line - the Commission has imposed the blueprint in its annual growth report. Permission to intervene in wage-setting systems was a core element of these proposals. Even a counter-proposal by Guy Verhofstadt, Jacques

\(^{17}\) George Soros too argues: ‘How Germany can avoid a two-speed Europe’, Financial Times 22.3.2011: ‘Germany bears a major share of responsibility for those crises. ... Germany has been bailing out the heavily indebted countries as a way of protecting its own banking system. ... They also put all the burden of adjustment on the debtor countries. ’The only way to restore a ‘level playing field’ is the conversion of debts into Eurobonds. Germany is unilaterally loading the total burden of adaptation onto the periphery.
Delors and Romani Prodi is no different in this point from the other proposals: wage levels, wage-to-productivity ratios, pension reforms and tax rates should be more closely aligned, coordinated and monitored by the Commission, which should also be given the power to exert pressure and impose sanctions for non-compliance. As a bonus is added that social dialogue should be strengthened, but the recommendations should ultimately come from the Commission. Again, the mock battle is being fought against the intergovernmental method, although, content-wise, there are only slight shifts in emphasis. On 11 March 2011 the heads of government of the euro group decided on a ‘Pact for the Euro’. In the light of the protests it undertakes a number of corrections. The pact focuses on areas that fall ‘under national competence’. Assurances are given that the social partners will be involved. Compliance with the objectives will be ‘politically monitored’ by governments. Of the substance not much has changed: it is about monitoring of wage and productivity development, of unit labour costs (ULC), both macro-economically and by individual industry sector. Reform of the wage-setting system, of the degree of centralisation are to be tackled, as well as a removal of obstacles in retailing and services by regulated professions, along with the demand for ‘flexicurity’. The European Council of 24-25 March 2011 finally adopted a ‘Euro plus pact’. This is based on the existing instruments, the Stability Pact, EU2020, the European Semester, and macro-economic monitoring. To a large extent it repeats the conclusions of 11 March 2011. However, a response to the movement of protest from the European trade union movement is unmistakable: the Council shifts the instruments back onto the shoulders of the national governments, while the formulations on flexicurity and reforms are expressed in more diplomatic terms or weakened. Wage standards are to be adopted, but implementation is left to the national social partners. The autonomy of the social partners takes on a different hue. Even so certain some MEPs felt they needed to make the case for the Commission, given the non-binding nature of Council decisions and their intergovernmental character. From the trade union perspective, the question of whether Community method or not is secondary in this context. The real question is whether a Brussels wage police is being set up or Member States leave intact the autonomy of

18. ‘Europa must plan a reform, not a pact’. By Guy Verhofstadt, Jacques Delors and Romano Prodi; Financial Times, 2.3.2011.
social partners. The cases of Greece and Ireland have shown that the austerity programmes do not work.

The social costs of the crisis are not yet clear. These were the findings of the International Monetary Fund (IMF) and the International Labour Organisation (ILO), which on 13 September 2010 organised in Oslo the first joint meeting of the two organisations. The ILO report points out that a worker who finds work again after a recession will, even 15-20 years on, suffer an average 20% loss of income. He can expect a reduced life expectancy (1-1½ years loss), with a higher risk of heart attack and stress-related illnesses, higher mortality, with poorer school results of his children with a 15% higher probability of his children having to repeat school classes and going on themselves to have lower incomes. Dual labour market systems that have been introduced to make labour markets more flexible have sharply driven up the human costs, as can be observed in particular in Spain. On the other hand, short-time work programmes, as in Germany, Italy and Japan, and an extension of unemployment insurance can dampen the rise in unemployment and protect human capital.

The main objective of trade unions remains, apart from the creation of new and sustainable jobs, job security. An instrument for securing employment is the working time policy, which includes instruments such as working time accounts, short-time work, part-time work, temporary employment, further education and shorter working hours. In Germany, an essential element for this is statutory short-time working, supplemented by collectively agreed short-time working, which supplements the legal regulations where statutory instruments have no grip. The cost of job security is borne in the first place by workers, who by short-time working give up part of their income, and in the second place by employers and the state. Evidence for anti-worker-bias is the fact that the Commission is attacking short-time working rather than propagating it as a best practice.

An important question is how new jobs can be created and sustainable growth generated in post-crisis Europe. To place one’s money on internal market-oriented growth and higher wages would make more
sense than mutually undercutting each other. Wage policy is only one factor among others; monetary union must be supplemented by fiscal union in the form of a more substantial budget and joint Eurobonds. The prevailing opinion in the Commission has for quite some time now been unilaterally on the side of greater competitiveness. What are needed are a European bond market, plus the introduction of a financial transaction tax plus a social level playing field, which would preclude unfair competition in the internal market in the form of precarious employment and of wage dumping in order to encourage competitiveness.

Employment must take a leading place on the European agenda: A one million person decrease in the 15-64 year old working population can be expected by 2020. By 2040 this figure will have risen to 15 million. The percentage of the population in employment needs to rise, especially that of women (which is already 6% lower in comparison), of young people (29.4% lower), of older workers (20% lower), of employees with lower education levels (double the average unemployment). At the same time, integration of migrants (6% lower) needs to be strengthened. The austerity policy is based on the mantra of orthodox economists: for the proponents of a ‘lean’ stage, a budget consolidation can by definition not be ‘too early’. Nor does German budget orthodoxy stand alone: the French Court of Accounts under the Socialist Migaud issued a call, right in time for the debate on fiscal consolidation, for a systematic reduction in government spending. What is overlooked is that sustainable debt reduction without growth is difficult if not impossible.

Earlier contributions have tackled the ‘big issues’ of European and global policy (Kowalsky), employee participation (Kluge) – a key factor in the way trade unions represent their members’ interests – and the Europeanisation of trade unions and industrial relations (Hoffmann). My contribution offers a broad-brush picture of the current position of European trade unions, focusing on a number of aspects that I feel are particularly important. My contribution will also present the demands and challenges and some ideas on how to successfully shape trade union work in future. As you might all expect, I shall be tackling this from a metalworkers’ trade union perspective.

The union landscape: umbrella associations and sector organisations

Europe’s trade union architecture essentially is made up of the member organisations of the ETUC and its own institutions. The ETUC comprises national umbrella associations and the European trade union federations1, along with the European Trade Union Institute (ETUI), itself comprising Research, Education, and Health and Safety departments. Many national umbrella organisations have European or liaison offices in Brussels. The Nordic unions, the UK’s TUC, Germany’s DGB, Austria’s ÖGB, and the Italian and Spanish confederations, among others, have national contact points in various parts of Brussels.

The importance of the European trade union federations has increased markedly, and over the past few years, they have, in many cases, been able to develop their own form of European social dialogue, geared to

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1. The ETUC website provides an overview: www.etuc.org
their specific sectoral interests. By specifically targeting promotion of and collaboration with European Works Councils (EWCs), they have strengthened their scope for action within companies. A significant change in the structure of industry, leading to a tangible drop in manufacturing employment, called for concrete, practical action from Europe’s trade union federations. Similarly, national unions were increasingly forced to become involved in cross-border and European issues. These almost always involved job cuts, relocation of production, and plant closures, but the unions’ goals of keeping plants open were not always met, and they were not, for example, able to prevent the closure of Opel plants in Azambuja and Antwerp, the Siemens factory in Prague, or AEG Electrolux’s Nuremberg plant. In many other cases, however, unions and EWCs campaigned very successfully against plant closures and mass redundancies. The European Metalworkers’ Federation seeks, through its concept of ‘trade union coordination groups’, to get EWC members working together with representatives of national and local unions to develop joint responses to management and joint bargaining positions.

Collective bargaining policy

European collective bargaining policy has made substantial progress by means of actively co-ordinating national bargaining policy; Eucob@n has developed into a sophisticated information-sharing network. The work on implementing joint, Europe-wide bargaining claims by metalworking unions has quickly become established and can already claim some successes. So there is no doubt that European bargaining policy has evolved, but it is still a long way from being a binding, co-ordinated approach. Agreements can be made in Brussels about common goals, but these still have to be implemented ‘back home’, and the extent to which that can be done depends on the unions’ strength and profile at plant level and their ability to mobilise

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2. See http://ec.europa.eu/social/main.jsp?catId=480&langId=en (Commission website); there are currently 36 social dialogue committees.
3. www.EMF-FEM.org; www.industrialpolicy.eu
their members in support of their demands. The societal setting – the media and politics – is as important here as the economic situation. Is it feasible to secure a substantial pay increase during a time of crisis, when hundreds of thousands of workers are on short time or have lost their jobs? Can unions that cannot afford to give their members long-term strike pay effectively and sustainably mount resistance against blackmail attempts by multinationals seeking to undermine existing collective agreements? Or when those multinationals breach national labour laws?

Industrial policy

European industrial policy found its way onto the agenda of the EU Commission, the Council of Ministers, and the European Parliament in the early years of the new millennium. There was intense media coverage of the debate about measures to tackle climate change, such as efforts to reduce CO₂ emissions from private cars, emissions trading, and energy taxes. The EU’s REACH Regulation on the use of chemicals also attracted attention. The impact of bilateral free trade agreements on European production and, hence, on employment also stimulated lively and heated comment. And it was not just a political clash between Greens and conservatives: it also often proved difficult – sometimes even impossible – to coordinate joint positions between European federations at sector level and the umbrella body, the ETUC. In sectoral trade unions, the possible consequences of European Directives on those employed in a particular industry directly impact on their policy and take centre stage in it. But that is a necessary consequence of taking representation of interests seriously. Growing unemployment (from an already high level), the ongoing dismantling of social security systems, and the relocation of industrial production to other continents all go to make up a socio-political environment in which workers react extremely sensitively to any threat of job losses. Little sympathy is shown when these threats appear to be the result of decisions taken in ‘remote’ Brussels, and promises of newly created jobs in electric vehicle manufacturing do not go far in helping those workers in the automotive

sector who are threatened with, or actually affected by, cuts in the workforce. In this context it is immaterial whether European legislation really is to blame for the job losses or not: the media and employers' associations ensure that the finger of blame is pointed firmly at the 'Eurocrats'.

It is therefore vital that the unions organise debate and actively involve all those with any influence on what goes on in a company. And it must be the sectoral bodies that provide the platform for this. The debate must be led by experts and union representatives within the company, as well as works councils, rather than trade union leaders on the conference circuit. Those involved on the ground have to explain how new technology and low-emission, energy-saving innovations can have both a quantitative and a qualitative impact on employment. The competence thus generated must, moreover, determine the policy of the European umbrella association, the European Trade Union Confederation. It is not guaranteed by the assembly of international secretaries of the umbrella associations; the structures within the ETUC must reflect these changed processes of opinion-forming and must be modernised so that they are fit for purpose.

Alongside refocusing co-operation between European sectoral associations and their umbrella organisation, it is also important that resources are bundled at sector level. Three European associations of sectoral unions are currently working towards establishing a new joint association of unions representing workers in manufacturing. The aim is to increase their influence on policy by putting political lobbying on a broader basis through a wider brief. The new association is also intended to provide more effective support to European Works Councils and others representing employees' interests at company level. It was noticeable that the jobs lost during the recent credit crunch and subsequent recession – many of them lost for good – came predominantly from the manufacturing sector. Industrial unions have to be able to react quickly to new challenges such as industrial over-capacity, access to raw materials, energy supply, environmental protection, or climate

6. They are: the European Mine, Chemical and Energy Workers' Federation; the European Trade Union Federation - Textiles Clothing and Leather; and the European Metalworkers' Federation.
change. The unions cannot afford the ‘luxury’ of long drawn-out debates on insignificant details of the new orientation of the associations, any more than they can afford unproductive demarcation disputes.

Trade unions’ European industrial policy urgently needs input from, and the tangible influence of, union members working in industry. Being based on the ground in a company means reflecting the real world of the workers whose interests the unions are representing. If national unions want to Europeanise their policy, they must involve the workers on the ground. They are more than able to do so – but do they really want to?

Trade unions and their staff

The European trade union associations have not been systematic in their approach to staffing down the years. The executive boards and other bodies like, for example, the secretariats of the European trade union organisations are still dominated by a mixture of national quotas and random appointments; the only modernisation has been quotas of seats for women, a very recent change. There is frequently a shortage of candidates with adequate linguistic skills – mainly amongst men. At the 2003 Congress of the European Metalworkers’ Federation (EMF) in Prague, the member organisations passed a resolution on achieving a rapid improvement in linguistic and intercultural skills. Methodologies were devised and bodies based on the predominance of English as the language in which federation business was to be done. Some progress was made, but the unions are still a long way from any systematic promotion of linguistic competence. There is still a marked north-south divide, and inadequate knowledge of English is frequently the reason why the staff of these bodies do not accurately reflect the geographical spread of member organisations.

The Europeanisation of the trade unions begins ‘at home’, within the membership organisations, and it is here that the foundations for European action are laid and built upon. It is a misconception that all European trade union action goes on in Brussels; Brussels is simply the place where joint action is discussed and agreed. Trade union work, whether it is local, regional, national, European or global, starts within the factory, the office or the company. The German metalworking union’s (IG Metall) ‘Project 2009’ rightly put recruitment and direct
action at company or plant level at the very heart of its work. Its assumption was that close involvement on the ground and an immediate impact for trade union work would lead to greater recruitment of union members.

That is the right approach, though one should add that in most companies or groups, reality is determined by European and global contexts. Union activists working at company level frequently have experience garnered from many years of working with EWCs. As a result, they have a markedly more European perspective than the key officers at union headquarters can often imagine. It is precisely those who represent workers at company level who expect direct support from the unions for their cross-border and European work.

There is precious little training for the work and scope of cross-border co-operation between companies and trade unions. My view is that European Works Councils in particular should be supported much more proactively and sustainably. We cannot leave this work to the self-appointed consultancy companies or freelance consultants; EWCs are key agents and multipliers in the campaign to put company-level union work on a long-term European footing. Some European federations, including the EMF, are trying to provide this support by deploying ‘coordinators’, who are usually the trade union officers of the union with the greatest number of members at the company’s headquarters. However, these ‘coordinators’ need know-how and have to learn how to deal with other ‘union cultures’. European work is also always an add-on to their daily work. The ‘EWC coordinator’ role has, therefore, been only partly effective.

I would argue that we need to develop a comprehensive European consultancy organisation for European Works Councils. It must come under the umbrella of the ETUC and be managed by the ETUI. In terms of its focus, this body must be supported by the union federations – that is, by the sectoral unions – since they work directly with company-level employee representatives. It must be able to provide basic expertise in the way EWCs operate and give technical and legal assistance with the setting-up of EWCs, since the number of existing EWCs is still only just over half the total number possible. It must also be able to provide advice on legal matters and on restructuring measures; individual associations cannot shoulder this role alone without support.
A further, pressing area for co-operation between unions and EWCs is European-level negotiation. The European Metalworkers’ Federation has recently concluded a large number of European framework agreements with multinational companies, and the impetus has frequently originated from company management. For these agreements, the EMF was given a bargaining mandate by its member organisations, but in virtually all cases, EWCs were involved in the negotiations, and this cooperation proved effective and successful as well as pointing the way to future work. In those cases where EWCs sought to negotiate alone, without the unions, the result was a clash between them and the unions. The reason for this ‘demarcation dispute’ lay in the different types of employee representation at company level. In the Nordic countries, Austria and Germany, works councils have a relatively broad mandate to bargain and the powers to do so. In the UK and south-western Europe, by contrast, the unions alone have bargaining rights. If bargaining is left solely to the works council, the role of the unions is weakened. If, however, the unions bargain without involving other company-level employee representatives (something that management would only accept in the most exceptional cases), then there is a lack of the crucial detailed knowledge of company reality on the ground.

Unnecessary showdowns between trade unions and company-level employee representatives, such as works councils, do not make for successful negotiations. The only way of ensuring that agreements are actually put into action is for EWCs, company-level employee representatives and trade unions to negotiate them jointly. In future, negotiations must focus on strengthening the close co-operation between unions and EWCs.

National interests and individual issues

Are trade unions forced by reason of their organisational responsibilities to give priority to representing national and local or company interests? Is
European unions face many different challenges. The increasing momentum of political and economic Europeanisation has both changed them and strengthened them. The process of European Union has seen the Commission and the European Parliament systematically widen their powers. This is why we increasingly need unions to serve as lobbyists for the interests of working people. If they are to exert influence, they have no choice but to Europeanise – in depth and sustainably. To do anything else would mean excluding themselves from any part in the shaping of Europe.

So how far has the Europeanisation of the unions progressed? Let us look at the current struggle by the European trade union movement against the draconian austerity policies being promoted by the EU Commission and the Council of Ministers. The Council, the Commission and the European Parliament have received many representations from the ETUC, sectoral associations and national trade union organisations, but it is clear that political lobbying has not changed anything. The Commission is continuing to apply sustained pressure on social security systems. In such situations, unions have to mobilise their members to protect their interests. Over the past two years, the ETUC has organised demonstrations in rapid succession, centrally, decentrally or both together. Several hundred thousand demonstrators have demonstrated here, thousands more engaged in a general strike there\(^8\). And what we call ‘union mobilisation’ is, in fact, a patchwork of often uncoordinated action. There is no thought-through strategic plan for getting mass support to bring down the plans of the Commission or other protagonists. Virtually right across Europe, ‘reforms’ are being set in train with the declared aim of modernising pensions systems. Virtually right across Europe, what this actually means is that people have to work for longer and take out private pensions to compensate for the inability of public pension providers to meet their obligations. That may be good news for private insurance companies, but it imposes an extra burden on workers, assuming they are even able to make ‘private provision’ from their income. The European Commission vigorously

\(^8\) See Wolfgang Kowalsky’s contribution to this volume for details of these demonstrations.
Unions still a long way from a truly European position

supports this policy. The reforms it has proposed have been equally vigorously opposed by the unions virtually everywhere. In many European countries, but especially in France, Spain and Italy, there have been mass protests and strikes against what national governments were proposing.

So why did we not see a coordinated Europe-wide protest? It would be too simplistic to say that the ETUC had taken its eye off the ball. The problems are, on the one hand, a lack of political planning by the ETUC and, on the other, a lack of willingness on the part of national organisations to synchronise their specific demands to their own government with the European trade union movement’s – more general – agenda. Just imagine what political clout the unions would have if they joined forces and really worked for a European outcome!

The interests of the national associations are integrated into European trade union policy in two ways. The first is directly, via involvement in the ETUC, its many committees or its executive. The second is via the liaison offices, although these contact points are also there to provide the ‘home organisation’ with information relevant to its own European policy. The question is whether the objective could also be achieved by means of having a greater presence within the ETUC. My experience has been that the debates about subscription rates for the European associations have regularly reflected the need to cut costs, yet many organisations find the means to have their own – supposedly ‘special’ – interests represented.

The amount spent on boosting European trade union structures seems to me to be a good indicator of how ‘Europeanised’ the work of any association is. National bodies that have adequate membership subscription income put significant amounts of money into maintaining their national liaison offices but turn out to be real ‘penny-pinchers’ when it comes to paying subscriptions to the ETUC.

Another indicator of Europeanisation is the support that well-trained and skilled employees and experts give to European trade union policy. Unfortunately, it is still rare for unions to develop their policy officers in any targeted way. They need good skills in the areas of Europe policy,

10. See above.
industrial relations in Europe and cross-cultural communication – but also language skills. The ways this can be done include the occasional two- to three-week placements or internships at European trade union institutions that form part of the training for the next generation of policy-makers. But this is far from adequate: knowledge of the practice of European trade union associations must form a key part of the training that paid union officers receive.

I know from my own experience that meetings, conferences, and committee sessions in Brussels are frequently criticised for being pointless talking-shops, a waste of time. No association can afford to be so negative if it wants to secure a global future. But here, as in other domains, it is true that we get out only what we put in. European trade union work can develop as an effective counter-force only if confident and assertive associations are actively involved. It is precisely the large and influential unions that must help to ensure that policy developed in Europe is also adopted on the ground. Yes, we need a different view both of Europe and in Europe. But this change can happen only if the unions also commit themselves to Europe clearly, sustainably and energetically.
Employee participation and trade unions in Europe – quo vadis?

Norbert Kluge

Introduction

Not only were vast areas of Japan devastated by an earthquake and tsunami on 13th March 2011 – the subsequent explosions at nuclear power stations also brought home to us very clearly that there were man-made elements in this disaster. The long-term consequences may still be unclear, but one thing is already certain: we cannot return to ‘business as usual’ with the way we live and work in industrial societies. The events in Japan also demonstrated what happens when you put blind faith in market forces. The private company operating the nuclear power stations was obviously mainly focused on its bottom line and profit margins and was clearly not prepared for a type of accident that common sense should have suggested would always be a possibility. Its reaction was both helpless and haphazard (notwithstanding the heroism of those who risked their lives). The Japanese government was also clearly out of its depth and incapable of providing the population with adequate protection.

Even before the Japanese disaster, the events of September 11 in New York had already dissipated any naïve belief that democratic freedoms and the scope to exercise civil rights can be taken for granted. It confirmed our conviction that democracy is not just a matter for governments – it also requires the active involvement of citizens all over the world. And it is not just through parliament that they articulate their interests. As employees, for example, they join trade unions and use statutory representative bodies to make their voice heard at the workplace. By doing so, they show that employees can also fulfil a civic role, strengthening and breathing life into democratic structures.
This scope for direct political involvement in opinion-forming processes is growing in importance because we are witnessing a growing and insidious loss of all trust in the course taken so far by industrial development. The ability of traditional political structures to act effectively is at stake. All too often there is a gap between the reality of those who decide on the measures to combat a crisis and those who have to cope with the social consequences of those measures. In Europe, too, recent events seem to have further undermined public acceptance of traditional (large-scale) industrial projects. People are now looking at how to use resources more sparingly and how to devise new ways of creating better, more socially useful output rather than just ‘conquering’ markets as quickly as possible and maximising shareholder profits.

Where do European employees and their trade unions come into all this? Where can we start – what tools are available for influencing what our workplaces will look like in the future?

The answer that we provide in this article is that we should focus on our rights and our scope to bring influence to bear not just on the changes occurring in our workplaces but also on the strategic orientation and monitoring of companies. We should regard realisation of our basic European rights to information and consultation (as laid down in Article 27 of the European Charter of Fundamental Rights annexed to the new Lisbon Treaty of 2010) as our contribution to active participatory democracy. In this way, employee representatives and trade unions could contribute to discussing solutions to current crises and threats and how to pave the way for sustainable, stable ways of living and working in the future. It goes without saying that this will need to be flanked by appropriate social policies and macroeconomic measures – and this is above all a task for parliaments and governments in Europe. While we welcome any proposed legislation aimed at enhancing the ability of economic and social players to solve the problems for themselves, we will resist any attempt to restrict or undermine employees’ rights, particularly at transnational level. In the year 2011, for example, it is singularly unhelpful to make transparent attempts to reduce established social rights in the name of so-called ‘simplification’ of European legislation – or as EU Commission President Barroso puts it ‘smart regulation’. Regulations on employee involvement in corporate decision-making and supervising of companies
are regarded as an unnecessary financial burden for small and medium-sized companies; employee participation is seen as a cost factor and a bureaucratic burden that needs to be reduced.

Are the trade unions taking these threats to employees' fundamental rights seriously enough? To what extent do they recognise the potential for employees to support the unions' role in shaping a better and more sustainable Europe in social, economic and environmental terms? These are critical issues. As collective representational organisations, the trade unions still have difficulty when it comes to the direct involvement of their own (potential) members. Thus, for example, unions in many countries still regard works councils as competitors rather than as an additional source of support.

What is the current state of employee rights at European level?

Even though the European Union is still essentially seen as an economic project – an internal market for more than 500 million people – workers' participation rights do form an essential part of Europe's basic social capital. After all, the forerunner of the European project was the European Coal and Steel Community (ECSC). In the aftermath of the Second World War, the treaty setting up the ECSC created a framework that for the first time provided for transnational co-ordination of key industries such as coal and steel – which was seen as an important social and peacekeeping task. The trade unions, which had emerged from the Nazi period and the war with their political reputation unscathed, were granted an institutionalised influence on the framing of industrial policy.1

In the course of time, the concept of employee workplace representation by works councils or trade union representatives started to become as important as company co-determination. Whereas the question of co-determination in supervisory or administrative boards

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1. For more information on the significance of the ECSC Treaty from the employee perspective, see 'Europe has a future. The contribution of the European Coal and Steel Community (ECSC) to a social, peaceful and democratic Europe.' Brussels/Bochum, 1994.
was ultimately not resolved satisfactorily – not even by legislation on the European Company (SE) in 2001 – a breakthrough was achieved with the directive setting up European Works Councils in transnational companies (1994).

Nowadays, employee workplace and company representation is complemented by a third level. As a result of frequent disagreements as to when and at what level they had to inform the workforce of planned changes, European employers created the so-called General Framework for Informing and Consulting Employees in the European Community in 2002, which set standards for the national level (EU Directive 2002/14/EC).

Prior to that, the case of the Renault factory in the Belgian town of Vilvoorde had caused a scandal. This had been closed down virtually overnight without any prior warning being given, either to the employee representatives at the Belgian plant or to the European Works Council.

The so-called European Framework Directive played an important role for employee rights when it came to the accession of countries in Central and Eastern Europe to the EU. Transfer of the directive into national law forced the introduction of statutory standards for employee participation – though not always to the delight of the domestic trade unions.

Apart from a number of further laws, for example on collective redundancies and transfers of undertakings – and more recently on cross-border mergers and occupational health and safety – the three laws mentioned above still provide the basis for European-level employee representation and participation in workplace-related economic activity.

But there is one thing they do not – or no longer – contain: when the ECSC Treaty expired in 2002, this possibility for employees to exert influence at the transnational level of social policy was also lost. Perhaps the reason why nobody at the time – not even the European trade unions – seriously called for the ECSC mechanism to be transferred to other industrial sectors lies in the declining importance of the coal and steel industry. But more importantly it can also be explained by the structural changes taking place at the time – which
were perceived as a move from traditional industries towards a service-oriented ‘knowledge-based society’.

Even the legislation setting up the European Company (SE) did not create a new standard for co-determination in companies operating at the European level, despite the fact that the existing system of employee representation was preserved on the supervisory and administrative boards of the newly-created companies. The original intention to come up with a universal, Europe-wide solution for co-determination, as documented in the draft of the so-called 5th Directive on European company law, has still not been realised. Instead, SE legislation offers, at most, optional application in cases where companies themselves decide to change their legal structure.

At transnational level there are no legal powers for employee representatives to conclude company or collective agreements, even when these would only cover immaterial matters. The EWC Directive as revised in 2009 (2009/38/EC) contains no binding obligation for employers to take into account suggestions put forward by the employees in consultations, although such a possibility was frequently discussed and even supported by the EU Commission out of a desire to make measures for coping with or paving the way for structural change more effective by systematically involving EWCs. Nevertheless it has become customary for some companies operating on a pan-European basis to conclude agreements on basic matters of social policy with European (or international) trade unions. These so-called international or European framework agreements usually contain provisions to ensure that the basic rights of employees at the workplace are respected. Transnational companies see such agreements as demonstrating their voluntary commitment to their particular social responsibility, but apart from the innovative form these agreements take, they tend to have a greater impact on the non-European branches of European companies.

From all this one can reach the positive conclusion that – so far – the vast majority of European policies have not had any impact on the established consensus that information, consultation – and, in certain cases, even co-determination of corporate decisions – are a core element of European identity. In particular the activities of the EWCs are increasingly producing negotiated agreements on specific issues.
To what extent are there currently transnational employee rights in Europe, and how effective are they?

**The future of industrial jobs: an examination of the EU Commission’s policies**

It is an encouraging sign that – after years of neglect of manufacturing industry and excessive emphasis on the ‘knowledge-based society’ – significant political importance is once again being attached to the former. It has been recognised that 25% of jobs and 80% of all private R&D expenditure is to be found in manufacturing industry. It also accounts for 75% of all exports. The European Commission, in its Communication of October 2010 on industrial policy, recognised this fact. The Communication describes one of the many so-called ‘flagship initiatives’ with which the objectives of the Lisbon Treaty are to be implemented. In it, the Commission sets out a ‘new approach’ for industrial policy that includes the intention to develop co-ordinated European policy ideas and introduce regular reporting on the progress of European industrial policy.

From the employee perspective, however welcome the general thrust of this initiative may be, certain criticisms have to be made. The trade unions remain particularly well organised in the manufacturing sectors of the economy, with employee representation and co-determination largely intact and operating efficiently. Many of the functioning EWCs are also found in manufacturing companies. But against all expectations, European politicians have not allocated any active policymaking role to works councils, co-determination players or trade unions. There are, at any rate, no signs of this in any of the official documents. Employees, trade unions or co-determination hardly feature at all in this new European policy initiative. According to the text of the Communication, they are supposed to ‘have confidence in the Single Market’. As relevant players they are supposed to focus on ensuring a ‘proper match’ between their labour and the needs of the market or, in the case of company restructuring, to play an active role in the process right down ‘to definite market exit’. One cannot avoid having the impression that employees and their representatives are not perceived

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as having any active role to play in actually shaping policy. As in the case of restructuring, they are always called on when corporate decisions have already been made and the social mess resulting from these decisions has to be cleared up as quietly as possible. Nowhere in the text of the Commission’s Communication is there any mention of involving employees or social partners in areas such as innovation, standardisation, trade or international regulation – or over such important issues as access to raw materials, levels of energy prices or industry in an era of climate change (‘sustainable industrial policy’).

It is little consolation that the EU Commission expresses its concern for ‘social responsibility’, when it clearly regards the safeguarding of the interests of employees and the public in general under the title of ‘corporate social responsibility’ as being exclusively a task for management. In contrast to the Commission Communication on CSR, the fact is not even recognised that companies with EWCs actually possess a body that plays a constructive role in ensuring compliance with CSR.3

As the Communication on industrial policy makes no reference to the possibility of employee representatives and trade unions playing an active role, it goes little further than impressive-sounding descriptions of policy measures. Suggestions on implementation are aimed exclusively at politicians – either that, or companies will take voluntary action of their own initiative. This bloodless and unimaginative approach fails to take account of current achievements in terms of employee rights at European level and the experience already gathered with their implementation.

Interim conclusion: one has to search hard to find any reference to an organised role for employees in this document on implementing European policies of such crucial relevance to them and their jobs. Has the resource represented by their continued mandatory participation, at least at European level, been entirely forgotten? And if so, what could the possible reasons be?

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An examination of the activities of European Works Councils in practice

Following a tough political struggle, the first European Directive on the establishment of European Works Councils came into being in 1994. It is well known that when it was recast in 2009 (EU Directive 2009/38/EC), the Directive – as happened when it was first introduced – met with sustained resistance from European employers’ associations. The Directive grants employees the right to form a body at transnational level that is informed and consulted by the employer over matters of cross-border relevance. However not all employees enjoy this right – it only applies to companies with a workforce of more than 1,000 in one country and sites with more than 150 employees in two further EU member states. Some 900 transnational companies in Europe have signed agreements setting up EWCs. We have estimated that more than 12,000 employees all over Europe are now members of an EWC and, to that extent, enjoy participation rights at European level.

The Directive setting up European Works Councils is an expression of the political will to give a strong social backbone to the European Union by involving employees at transnational level. But one of the reasons given for its creation is also economic efficiency. An example here is the response of the European Economic and Social Committee (EESC) to revision of the EWC Directive, which leaves no doubt that for Europe’s success there is seen to be a direct link between the social and the economic dimensions. This is noteworthy because the EESC, more than any other body, relies for its effectiveness in European policy on having as broad a level of support as possible amongst all the groups it represents – including the representatives of employers and of ‘various interests’ such as consumer associations, NGOs or mutual associations. The EESC’s position paper on the new version of the EWC Directive states: ‘The EESC is convinced that such an improvement in Community legislation on employee participation would not only be a major contribution to ensuring good and therefore socially responsible management in Europe, but would also strengthen the competitive advantage of Europe’s economy and at the same time would be a key component of the European social model.’

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4. According to information supplied by the European Trade Union Institute (ETUI) www.etui.org (March 2011)
In practice there was frequent disagreement in European Works Councils over the question of when an EWC should be involved and what its powers were. It was only with the revised regulations contained in the amended Directive that it became clear that decisions made by company headquarters in the country of origin – even if they affect only jobs in one other country, are a relevant issue for the European Works Council. That, at least, represents progress. However, even with the new regulations, there will still be no standard on the basis of which social dialogue between employers and employee representatives at transnational level will end with an agreement that is binding on both parties. This competence is not explicitly provided for, even in the new EWC Directive.

Some trade unionists still have difficulty in accepting European Works Councils as bodies representing employees – even if supporting and supervising them is increasingly recognised as a necessary task, particularly by the European trade union federations. The reason for this reticence can be found in the architecture of the EWC, which has an in-built gap between the elected representatives of the employees in a company and the trade unions. Depending on the particular national system of representation, the composition of an EWC is often not something the trade unions have any influence over. They can only bring their influence to bear if national legislation provides for this. This does not, for example, apply to a German or an Austrian EWC, which according to law can decide independently on employee representation in the EWC. But as most works council members are members of a union, EWC representation of employees in these countries by a non-union member is likely to be an exception rather than the rule. Under UK, French, Italian or Spanish law however, trade unions can play a role in selecting EWC representatives. This is because the method by which people are selected for EWCs is exclusively a matter for national implementation of the European Directive. And this usually bases EWC representation on the particular national system of works council representation. The trade unions are also not entirely happy with the legal structure of the EWC and the fact that it is closely

Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees' of 4.12.2008, (COM(2008) 419 – 2008/041 (C)D)).
based on the company involved rather than, for example, on the supra-
company level of a particular industrial sector. This means EWCs could
develop a role for themselves as representatives of the particular
interests of ‘their’ company. Thus the EWC is, initially, ill suited to serve
as a platform for trade union policy. And finally, it is the company
management and the company employees who sign the agreement
setting up an EWC and have to work together on a daily basis. The task
of shaping this body thus lies largely in the hands of these players and
would seem, at first glance, to be removed from trade union influence.
For this reason, the trade union reticence has to be taken seriously in
those cases where clever employers try to use the EWC to keep the trade
unions out of the game.

In practice, however, this distance between the two has proved to be
pretty academic. Where the trade unions played a role in a company
prior to the setting up of an EWC, they have been able to improve their
influence, even across national borders. And in those cases where there
are EWCs without any trade union links, the trade union presence was
sparse even before. In these cases EWCs have often for the first time
opened up an opportunity for the trade unions to approach potential
members. The new Directive also retained joint responsibility of the
European social partners for the start-up phase of an EWC. This means
that the European social partners have to be informed when a European
Works Council is to be created in a company. This regulation potentially
means that as soon as an EWC is created, the unions have an
opportunity to demonstrate their ability to provide support – at a time
when the need for information and uncertainty about the upcoming
negotiations on an EWC agreement are at their greatest.

On the whole, the trade unions have learnt to appreciate the advantages
of EWCs for reproduction of their organisations via practical
collaboration. There are many EWC agreements in which representatives
of the European trade unions are explicitly granted the right to attend
the regular meetings of the EWC as guests. In the European Trade
Union Institute (ETUI), the European Trade Union Confederation
(ETUC), together with its sectoral associations, has its own agency for
training European works council members. The European Commission
also offers support programmes for this purpose, and the ETUC
provides advice on how to tap into this funding.
A further indicator of the growing importance of EWCs for the European trade unions is the fact that the content and orientation of European policy increasingly features on the agenda of EWCs. The link between transnational representation in companies and European policy initiatives is obvious. One can find examples of where the European Works Council puts certain issues on its agenda such as industrial policy in Europe, the future of industrial jobs or transnational staff development.

Let us return to the idea mentioned at the outset – the active employee exercising his or her civic rights within the company. In contrast to the initial distance – indeed ignorance – EWCs have proved in practice to be valuable bodies for trade union policy, including offering an opportunity to rethink and renew their own practices. In the example mentioned, a statutory body like the EWC proved to be an opportunity to draw in more individuals and get them involved in aspects of European policy that closely impinge on their real workplace interests. Those responsible for formulating European initiatives are forced to engage directly and without any filter with the interests of working people. This helps give greater depth to the entire European project. At the same time the European Works Council strengthens its image as a relevant political player in the company involved.

An examination of European co-determination in corporate decision-making

When it comes to the monitoring and strategic orientation of companies via their supervisory and administrative boards, European co-determination rights for employee representatives are an unavoidable political compromise and as such represent a less substantial social achievement. European efforts in the field of company law are focused on promoting cross-border company mobility, and the idea is that major differences in systems of representation should not constitute a barrier to this. As national legislation on the substantial involvement of employee representatives in company bodies such as co-determination in Germany and Austria cannot simply be ‘overwritten’ by European legislation, they had to be incorporated into European legislation. This was achieved because the SE legislation also adapted the principle of negotiation and agreement from EWC legislation. The substance and form of employee representation can be freely agreed between employer and employees, but must occur on the basis of protecting any existing co-determination
rights in one of the EU member states involved (through the so-called ‘subsidiary regulation’ and the ‘before-after principle’).

The significance of such regulations for the partial obligatory participation of employees in business decisions becomes clear when one considers the current status of the European project. The European Single Market has increasingly become a reality for companies. Underpinned by European fundamental rights, in particular freedom of establishment, European company law promotes mobility and sets standards for the comparability of market-relevant processes such as corporate transparency. With the European Company (SE) – and the European Association and European Co-operative Society (SCE) – companies have European structures available to them. With the statute of a European Private Company, a further form is to be added that is explicitly presented as being an example of directly applicable, genuinely European company law.

While one can expect more and more companies to apply European company law (or its national implementation), employees in such companies still have to rely largely on their national rights. Unlike companies and their investors, they are not given any comparable European status. If their employers decide to set up an SE, undertake a cross-border merger or even to transfer headquarters from one EU member state to another, they can only expect to have their concerns taken into account at company level if they already have such rights at national level. There is, in other words, no European legal standard for participation in and monitoring of company decisions by employee representatives.

When the legislation setting up the European Company came into effect in October 2004, this at least went some way towards opening the door for a new era of obligatory employee participation in company boardrooms at transnational level. By March 2011 the European Trade Union Institute (ETUI) had counted 173 operational SE’s with employees, some 30 of them known to have a supervisory or administrative board

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6. This also applies to the field of collective agreement policy. Here, too, there is no common European legal basis. Accordingly, decisions by the ECJ – as in the recent Viking and Laval cases – give priority to protecting freedom of establishment rather than existing national social protection provisions.
with seats for employee representatives. SE flagships such as Allianz SE, Fresenius SE, BASF SE or MAN SE are managed on the basis of employee participation. What is new is that their seats are now filled on a European basis, including by employee representatives who do not have this right in their own country – for example in Belgium, Italy or the UK. In this way, application of European company law has resulted in more employees than before becoming involved in this form of obligatory representation at company level. But this is only the beginning of the story for transnational co-determination.

Co-determination is by no means confined to Germany. If it is defined as the mandatory involvement of employee representatives at all levels – from the workplace right up to the company’s management and supervisory organs – in as broad as possible a range of public and private companies in the country, then at least 12 of the 28 states in the EU and the EEA (EEA: Liechtenstein, Iceland, Norway) have such an arrangement. Irrespective of the particular form it takes in each country, obligatory boardroom participation of employees (‘co-determination’ is the German term for this type of participation, which is different to the understanding of the Scandinavians, who also have a strong legal position in this regard) is understood everywhere to be the legal right to have one’s social interests represented in economic affairs. This means that company management is obliged to systematically take into account the social impact of its decisions. Such decisions have to be justified according to social criteria in the meetings of the supervisory or administrative board in the presence of representatives of the shareholders of the company, and management has to be prepared to respond to questioning. Usually they find themselves dealing with representatives who are well versed in internal operations and work processes. Viewed in this light, the involvement of employee representatives in the top supervisory and administrative bodies of companies in EU member states with many years of experience is rightly regarded as an integral element of their corporate governance systems.

7. For further information on employee representation at company level, on the European Company (SE) and European company law from the perspective of the employees, see www.worker-participation.eu
Back in 2006, the European Trade Union Confederation (ETUC) had already responded to the growing volume of social legislation in the EU single market by drawing an analogy between social and corporate policy aspects. An ETUC resolution states: ‘Not just shareholders, but also workers, other citizens and the community at large have an interest in good corporate governance.’ In its conclusion to the resolution, the ETUC calls for the creation of a European model of corporate governance that includes employee participation as an essential element. Since then it has been a leading principle for the trade unions to support this form of ‘good corporate governance’ at European level, with the aim of achieving greater sustainability of economic activity.

Given that empirical data suggests that strong, mandatory employee participation has a positive impact, it is rather surprising how little importance is attached to participation as a ‘resource’ in European policymaking. The economies of EU member states in which employees have a mandatory right to exert a high degree of influence, are in many respects in a rather better state than those in which there is less scope for representation of employees’ interests. This is demonstrated by the ‘European Participation Indicator’, the latest results of which were published at the EU Social Summit in March 2011. Even though it came from an unexpected source, it is significant that the CEO of investment company Blackstone used the opportunity of the 2011 World Economic Forum in Davos to make a positive appraisal of German supervisory board co-determination. It had, he said, helped the companies involved to weather the economic crisis more rapidly. And this is not just an insider view: employee representatives and their trade unions have demonstrated in countless cases that they are able and willing to respond responsibly and rapidly to companies in crisis. Thousands of elected employee representatives in supervisory and administrative boards throughout Europe – more than 100 of them in European Companies (SEs) are currently working on securing and modernising jobs. At the same time they also give managers an opportunity to ensure that corporate decisions are more secure and

8. ETUC resolution ‘Corporate Governance at European level’, adopted on 14/15.3.2006; http://etuc.org/a/2250
socially legitimised, to the benefit of the public as a whole and not just the shareholders.

At this point we can state, as an interim conclusion, that the possibility of involvement in important corporate decision-making processes opens the way for greater democratic participation and makes it possible to reach compromises on the future of work and economic activity. One wonders whether the European trade unions appreciate the opportunities offered by such mandatory, strong participation in transnational companies to proactively strengthen a social Europe and thereby avoid making the same mistakes as were made back in the days when EWCs were first introduced. Back then, there was considerable resistance, and employee representatives had to turn to other, commercial advisors for help and support. This time round, there is an opportunity to take a different route. At an early point the European trade unions agreed to set up a European Worker Participation Competence Centre (EWPCC) to provide expertise and training to employee representatives and trade unions in their new task of co-determination at transnational level.

Quo vadis? Trade unions and employee participation in Europe – a scenario

To return to the starting point of this paper, and to make it easier to assess the future of co-determination and employee participation and stimulate further discussion, let us describe the following scenario ‘Worker Participation 2030’ as though we were looking back on the past twenty years from some point in the future.

The crisis, combined with increasing doubts about traditional models of growth in the market economy have led to a change in the approach to corporate governance. The aim is now the sustainable European

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10. For more information on this European Worker Participation Competence Centre (EWPCC) and the European Worker Participation Fund (EWPF), see www.worker-participation.eu

11. This scenario is inspired by the results produced as part of the 2009/2010 ETUI scenario project with the same title. The four scenarios described their and details of the methodology used can be found in: Stollt, Michael and Sascha Meinert (2010): Worker Participation 2030. Four Scenarios. Brussels: ETUI.
company, which bases its success on innovations in products and services that are in demand as a result of demographic developments in Europe (ageing society). Good corporate governance is now regulated in such a way that those involved – including the shareholders – are obliged to systematically consider social, ecological and economic objectives. The necessary dynamism of the markets thus becomes a project that is actively controlled by employees at their place of work.

The structure is based on a reinterpretation of the tried-and-tested platform of company co-determination that has involved rediscovering and promoting its potential.

The progressive practice of EWCs has really breathed new life into the formal and legal structures of representation, and this has changed European trade unions’ attitude towards EWCs. EWCs have increasingly become a platform for the work-related policies pursued by the trade unions. For example the European Metalworkers’ Federation (EMF) has involved European Works Councils in important issues such as industrial or health and safety policy and in this way the EWCs have become political players. They have also become involved in converting policy measures on climate change into company practice – which has opened up a further route for the unions to pursue their interests in addition to their traditional task of co-ordinating collective-bargaining policy.

Initial scepticism about works councils and disagreement within the trade unions about the importance of employee participation in supervisory and administrative boards has now been overcome. The trade unions affiliated to the ETUC have been largely divested of their ideological orientation, and this has paved the way for them to proactively lobby for Europeanisation of industrial relations and introduction of participation rights for employees. With the Charter of Fundamental Rights forming part of the European Treaty, their political importance has been significantly upgraded. Participation and co-determination are now universally acknowledged by the trade unions to be core elements of the European social model.

The European trade unions recognise the important role of companies, their employees but also their investors in safeguarding work and living standards in Europe. A series of directives on employee participation and consultation rights have prepared the way for Europeanisation of
company co-determination. The bodies thus created have effectively become platforms for union activity in plants and companies.

Achievements that are taken for granted in the year 2030 were – and still are – highly controversial in political and internal trade union discussions in Europe. The core question has always been the extent to which workforce representatives should be allowed (or have the right) to influence the management of companies. Whenever there were suggestions to introduce improved participation rights at transnational level, even the most passionate advocates of Europe amongst the trade unions immediately started to try to limit the impact on national structures and draw a line around them. This reaction was understandable, for the rules on industrial relations and employee representation remained a national matter – or to put it from a European point of view, a matter for subsidiarity over which the EU, in contrast to its role in shaping the Single Market, has no legislative powers. And because traditions and legislation in the field of industrial relations were a national matter, and any possible deviations in the form of European legislation were regarded by the players as an interference in sensitive matters, they were hostile to change.

It was not until the cross-border activities of transnational companies gained momentum and began to impact on the workplace that a rethink became necessary. These companies now have their own international human resources policies aimed at recruiting and providing professional development for a labour force that is dwindling as a result of demographic trends. Internal regulations have been introduced in an attempt to achieve international compatibility of job descriptions and evaluations (though this has not been reflected in harmonisation of wages). Employees were involved in these developments in particular via their EWCs. They made a significant contribution towards ensuring that the advantages gradually being exploited by companies – operating in a single market with roughly comparable regulations from Spitsbergen to Palermo and Bucharest to Brest – did not just remain an employee dream of a social Europe.

It is clear that in the aftermath of the nuclear disaster in Japan, industry and companies have realised that it is in their own interests to change course. Economic and social developments are taking place against a background of financial market globalisation, households coping with scarce resources that are increasingly subject to speculation (especially energy), and divergent demographic developments on the various
continents. Changes in companies and in the workplace have become a leitmotif for the workforce as well. Many of these changes are far-reaching and unsettling, but they are – and have been – easier to accept because people have been actively involved in determining the planning and implementation process.

Greater individualisation on the one hand, but increased social insecurity as a result of change, have led trade unions in Europe to conclude that they should work to strengthen the position of the individual employee in an increasingly Europeanised labour market. They have swallowed any misgivings that the levels of protection they enjoy at home might be watered down by weaker regulation at European level and are now in favour of a ‘European Employee Statute’, because even in 2030, if they have to – or wish to – move from one EU member state to another, they come up against very different legal provisions in the fields of labour and social legislation. They do not know what the personal consequences will be of transferring to a different system of health, unemployment and pension insurance. The conditions laid down in employment contracts are also very different. Even their trade unions tend to regard such internationally mobile employees more as special-status immigrants than as perfectly normal European colleagues. The trade unions still do not issue any European membership cards and they have not even started to create collectively agreed working conditions, for example regarding health and safety or employee data protection.

More and more employees are experiencing this situation on a day-to-day basis, especially since the European Services Directive that came into force in 2011. If action is not taken soon, many professional opportunities will remain unused – to the disadvantage not just of employees but also of companies and industry.

For this reason, the role of trade unions has undergone radical change in many places. Unions have developed into living platforms that enable everyone involved to draw up, discuss and implement complex projects in the field of European social and labour policy. The new role for trade unions consists of ‘connecting people’ and acting as a ‘watchdog’ vis-à-vis governments and politicians. It wasn’t an easy task to reorient trade union structures to fulfil these new functions, but they were eventually successful. And it was worth the effort – in the year 2030 trade unions are really very different to what they used to be.
In its early stages, European integration was primarily about the economy and markets. In purely economic terms, the integration process can be judged to have been a success – as was demonstrated by the successful introduction of the Single Market and Monetary Union and the competitiveness of European companies on world markets. By contrast, the social dimension remains relatively neglected. There is only limited evidence to support the claim that economic progress automatically leads also to social progress. But whatever its faults, the European Union is (still!) more than just a ‘neo-liberal free-trade zone’ and it does have political institutions and instruments that have enabled the process of European integration – even following the completion of Eastern enlargement – to continue. The European Union has a genuine social basis that represents more than just wishful thinking on the part of naive Euro-optimists. It also constitutes a response to globalisation – a challenge that has long since been beyond the capabilities of national strategies alone. The trade unions affiliated to the ETUC have frequently pointed out that the EU – for all its shortcomings and internal differences – can serve as a model for other developing economic regions around the world\(^2\). In view of the rapid rise of the so-called emerging countries to the status of powerful global competitors (the Asian ‘Tigers’ and above all the People’s Republic of China) – often without stable industrial relations

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1. This article is a revised and updated version of parts of an essay published jointly with my friend and long standing colleague Jürgen Hoffmann, who died at the age of 65 on 29th September 2009 after a serious illness. Hoffmann, J. and Hoffmann, R. (2009): Prospects for European industrial relations and trade unions in the midst of modernisation, Europeanisation and globalisation, in: Transfer – European Review of Labour and Research, >Volume 15 Number 3, Brussels, ETUI

2. For example in the policy resolution approved by the ETUC at its 9th Ordinary Congress in 1999 in Helsinki.
and in some cases with massive infringements of basic social and trade union rights – there is a need to strengthen the social dimension of the European Union if it is to remain a model for the globalisation process. This must be in the interests of the trade unions, for otherwise the opportunities of globalisation in terms of greater democracy and prosperity will be lost and all we will be left with are the risks (Hoffmann, J., Hoffmann, R. 1997). So this means the European trade unions must continue to fight for a social Europe, as otherwise there is not only a danger of a downwards spiral of wage competition within the Single Market, but also an uncontrolled race to the bottom at international level.

We should not underestimate the success of European integration since the Second World War – and the trade unions have every reason to stress the role they have played in it. But we cannot assume that this success story will continue. At the latest since the start of the 21st century, social Europe has been increasingly running into trouble, and the condition of the EU has begun to look decidedly dubious. The scope for influencing the globalisation process has been hardly exploited at all, and the EU has lost much if its attraction as a social model. What has happened instead is that employee rights have been curtailed and social achievements restricted under the pretext of responding to ‘pressure from world markets’. The burden of coping with the international financial and economic crisis has been passed on to working people and the public in general and those who were actual responsible have not been effectively called to account. Instead, austerity programs are putting at risk the basic – albeit not unconditional – support of the trade unions for the European integration project (see Wolfgang Kowalsky in this volume).

In the year 2000, when the European heads of state and government agreed on the Lisbon Strategy, with its (at least intended) ambitious objectives, they enjoyed the widespread support of the European trade unions. The vision was not just one of improved competitiveness – the threefold strategy ‘economy/work/environment’ was also intended to make a major contribution towards creating more and better jobs and strengthening social cohesion in the EU. Looking back over the period since then, the achievements of the Lisbon Strategy have been modest, and many of its goals have still not been reached. Activity rates may have increased, in particular amongst older employees and women, but at the same time the idea that social cohesion would be strengthened
has proved largely illusory. The number of better jobs has not increased – on the contrary, the proportion of precarious jobs has risen dramatically in some member states. Other benchmarks are also regularly missed, as the annual reports of the European Trade Union Institute demonstrate. Without doubt there are complex reasons for this. The altered political geography of the EU resulted in a clear change of course and changed the political configuration of the EU Council of Ministers. When the Lisbon strategy was passed, social democratic parties were in power in ten of the twelve member states – either on their own or in coalition. But EU enlargement and the resulting differences in economic performance also contributed to a failure to achieve central objectives. Parallel to this change in the EU political landscape there was also a distinct shift in the composition of the EU Commission towards the centre right under President Manuel Barroso. Social Democratic attempts to pursue a strategy of promoting international competitiveness, environmental sustainability and social cohesion were replaced by a neo-liberal strategy aimed at boosting competitiveness, improving the economic climate for businesses and promoting ‘entrepreneurism’. Ever since then, the focus of the Barroso Commission has been on deregulation and flexibilisation of labour markets and the creation of a single market for services on the basis of the ‘country of origin’ principle.

However it is not just the Lisbon Strategy that has failed – the European Constitutional Treaty, which had enjoyed the support of the European trade unions, has also got into deep water. All that remains is the Lisbon Treaty itself – and it was only by exerting considerable pressure and organising widespread protests that the European Trade Union Confederation (ETUC) succeeded in rescuing fundamental social rights. These may no longer make up the first part of the Treaty but at least they have become legally binding.

Even if social Europe has been in a parlous state for more than a decade, it would be disastrous if the trade unions were to become demoralised and give up the fight – as Wolfgang Kowalsky in his contribution fears.

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3. A comprehensive analysis and assessment of the Lisbon strategy can be found in the annual report entitled 'Benchmarking working Europe' published by ETUI Brussels. See also Wolfgang Kowalsky in this volume.
may happen. Neither is it helpful merely to brand the European Union as a neo-liberal project dedicated exclusively to the interests of capital. However justified specific criticisms may be, there is a need for comprehensive Europeanisation of industrial relations and trade union representation rather than just a simplistic criticism of capitalism. This means that trade unions face other challenges than merely complaining about the dominance of neo-liberal ideology.

Europeanisation of industrial relations – modest results

Though the results so far are still modest, and developments in this sphere are very gradual, Europeanisation nonetheless represents a central opportunity for furthering trade union interests in the future. It is not a question of abolishing or replacing the various, and extremely heterogeneous, national industrial relations structures that have developed along very different lines since World War II (Hoffmann, J., 2006). What is much more appropriate and relevant is to understand Europeanisation as a complementary aspect of national industrial relations, consisting essentially of social dialogue, co-ordination of national – and still autonomous – collective bargaining, and company level interest representation in transnational undertakings (including their globalised supplier networks). Nor is it a question of simply adding a new layer above the national trade unions or of expecting them to forfeit, or be deprived of, any of their sovereignty. The complex task to be performed consists much more in finding ways of establishing links between the national levels, each with their own different system, in order to create an efficient European multi-level system for the development of European labour market standards, further participation and co-determination rights, improvement of working conditions (occupational health and safety, working time), and protection of wage levels and earnings. For the trade unions this could actually represent an opportunity to claw back some of the sovereignty they have lost as a result of globalisation and Europeanisation. Already today, member states of the European Union no longer have any sovereignty in monetary or competition policy. The power of individual countries to legislate is restricted or at least exercised in conformity with EU rules. And for decades transnational companies have been conducting their operations across national frontiers.
With the formation of a European trade union umbrella organisation – the European Trade Union Confederation (ETUC) – in 1973, the political and organisational basis for Europeanisation of the trade unions was created. In the years following its founding, however, the ETUC was not much more than a ‘paper tiger’ (Franz Steinkühler) and its activities were confined largely to lobbying the European institutions (initially the Commission and Council and subsequently also, increasingly, the European Parliament), while its staffing and financial resources were extremely modest (Dolvik 1997 and Hoffmann, Gabaglio 1998). As the number of companies operating transnationally (‘global players’) increased, cross-border representation of workers in transnational companies – via European Works Councils – initially became more important, even though it took a full thirty years to achieve any binding European legislation in this matter (Hoffmann, R. 1997). The internal market project (Single European Act 1987) developed by former Commission President Jacques Delors promoted social dialogue between employers and trade unions, thereby successfully involving them in the project. And the establishment of European Monetary Union (Maastricht 1992) necessarily led to greater co-ordination among trade unions in the field of collective bargaining policy. These developments fostered a process whereby the ETUC became an increasingly important social player (development of cross-border solidarity actions and campaigns, co-ordination of workplace and collective bargaining policy campaigns, cooperation in border regions and Europe-wide – largely pro-European – demonstrations) and played an increasingly central role in devising and conducting aspects of the Europeanisation of industrial relations.

The general outline of the programme to be followed in this direction was more sharply defined in the resolution ‘Towards a European system of industrial relations’ (ETUC 1999) adopted at the 9th ETUC Congress in Helsinki. This text stressed the need for social regulation and recognised the progress already achieved at European level in terms of social and labour legislation. Important components of any Europeanisation of industrial relations were, in the view of the ETUC, a European corpus of social and labour legislation, social dialogue, co-ordination of collective bargaining policy, and European Works Councils, by means of which the European social model could be strengthened and further developed. A strengthening of social dialogue was called for and the European employers’ confederation UNICE (now BusinessEurope since its change
of name in 2007) was urged to relinquish its reluctant stance that was blocking the scope for using the full possibilities of social dialogue. Reference was made also to the potential role of ‘autonomous’ social dialogue, i.e. independent negotiations between the social partners without reference to specific legislative initiatives launched by the Commission. At the same time, the role of sectoral social dialogue and the need for European-level conflict resolution mechanisms were stressed. The co-ordination of collective bargaining was regarded as an instrument for combating wage dumping in the eurozone. Such co-ordination was to be complemented by a bottom-up strategy for which the European industry federations were responsible. Any European collective bargaining strategy developed along these lines should, however, also be more proactive – not just confined to resisting wage dumping – with the inclusion of more qualitative aspects such as training, lifelong learning, or working conditions.

A key role in Europeanisation is played by the European Works Councils (EWCs) which are in a good position, amongst other things, to promote social dialogue at sectoral level. For years there were calls for the EWC Directive to be revised in order to improve the operating conditions for EWCs and ensure a timely flow of information and consultation. Effective sanctions in the case of infringement of EWC rights are also required. The need for Europeanisation of the trade unions is recognised as being a prerequisite for successful Europeanisation of industrial relations.

Twelve years on from the ETUC Helsinki Congress, the progress made by Europeanisation is somewhat patchy. In current political but also academic discussions, the existence of a European social model is regularly called into question, particularly following recent judgements by the European Court of Justice (see below). Fritz W. Scharpf – a leading analyst of European integration – even goes so far as to describe the European social model as a product of self-delusion on the part of the trade unions (Scharpf 2008). Notwithstanding the justified criticism of European social and labour policy and the fact that

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4. The question of whether a European social model exists is correctly answered by Blanke, Hoffmann (2006) as follows: ‘Definitely not at present, if you understand it to be a closed system of socio-economic regulation of the market along traditional welfare state lines.’
Proactive Europeanisation of industrial relations and trade unions!

By comparison, material social policy (using tools like the European Social Fund (ESF), the European Regional Development Fund (ERDF) and the European Globalisation Adjustment Fund (EGF) is completely underdeveloped as a genuine instrument for redistribution in the EU.

The legally binding nature of the European Charter of Fundamental Rights may also provide some momentum for Europeanisation of industrial relations (Bercusson 2006), now that the difficult process of ratifying the Lisbon EU Reform Treaty has finally been concluded.

What follows is a brief assessment of the development and results of the main elements in the process of Europeanising industrial relations outlined in the ETUC resolution at the 1999 Helsinki Congress.
Strengthening the effectiveness of social dialogue

Social dialogue is not, as such, a new achievement. The first beginnings of social dialogue came with the creation of the so-called ‘joint committees’, the purpose of which was to serve as an information and consultation forum between the social partners and the European Commission. A joint committee of this type for the coal and steel sector was first set up in 1955 in the context of the ECSC and, even then its tasks included contributing to the development of a European industrial relations system and promotion of autonomous collective bargaining (Hoffmann, R. 2001). But the first real breakthrough in terms of institutionalisation of social dialogue came with the Social Policy Agreement annexed to the Maastricht Treaty that was fully incorporated into the EU Treaty by the Amsterdam Ministerial Conference. The first social partners’ agreement – on the subject of parental leave – was signed in December 1995. This was followed by successful social dialogue negotiations on part-time work (1997) and fixed-term employment (1999). All three agreements were adopted by the Council in the form of directives, thereby acquiring legal status. The negotiations on agency working failed in May 2001, and it was not until eight years later, following heated discussions, that a compromise between the Council of Ministers and the European Parliament was concluded. In addition, the European social partners have concluded three autonomous framework agreements which are not based on legislative proposals from the Commission – on teleworking (2002), workplace stress (2004) and violence and harassment in the workplace (2007). Their implementation at national level also takes place in accordance with autonomous social partner practices and is not subject to legislation. Since 2002, the European social partners have become more autonomous and during this period have drawn up three multi-annual work programmes within the framework of which numerous action programmes and position papers have been adopted on subjects including restructuring and a

6. A detailed description of the development of social dialogue can be found in Dolvik (1997) and in Bercusson (1992). At this point the importance should be underlined of the European social partners (UNICE, CEEP und ETUC), who signed an agreement in October 1991 that formed the basis for the articles in the Social Protocol and were incorporated unchanged in the Amsterdam Treaty (Articles 136 to 139).
joint analysis of European labour market trends (European labour markets – a joint analysis of European social partners). The most recent success was achieved in June 2009 with the revision of the agreement on parental leave.

Sectoral social dialogue has gained considerably in importance. For years it led a shadowy existence, since the employers in several sectors refused to come together at European level to form an employer federation endowed with negotiating powers. Up till 1998 there were only nine joint committees, but following the reform of sectoral social dialogue in May 1998, the number of sectoral social dialogue committees could be increased to the current total of 36. A first binding framework agreement on working time was successfully concluded between the Association of European Shipbuilders and the European Transport Workers’ Federation. Five additional binding social partner agreements and around 40 autonomous agreements (soft law) and sectoral codes of behaviour have in the meantime been concluded.

There can be no doubt that, in the course of the last ten years, social dialogue has gained in both strength and importance. This applies to autonomous inter-sectoral dialogue as well as to sectoral dialogue. Its results provide at least the beginnings of a contribution towards further Europeanisation of industrial relations. It can also contribute to a process of re-embedding, by providing answers to a developing European labour market and responding to the challenges of cross-border working for example by adopting agreements on part-time working or fixed-term contracts. And yet the limited results so far have also prompted a degree of scepticism and considerable criticism. It has not ultimately proved possible to break down the reservations and opposition of the employers. Their behaviour in relation to social dialogue remains predominantly tactical – their foremost concern being to prevent the adoption of further legislative measures. If any concessions have to be made, then voluntary solutions are seen as preferable to statutory regulation. This stance has been greatly facilitated in

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7. The background to this was the fact that the EU Working Time Directive (1993) had excluded certain sectors, in particular transport, from its scope.
8. A good overview can be found in the report ‘Benchmarking Working Europe’ published annually by the ETUI
recent years by the European Commission, whose task may be to promote social dialogue but which, for the past ten years and more, has displayed a high degree of abstinence regarding legislative measures, coupled with considerable regard for voluntarism. If they are to raise the level of commitment of the European employer federations, the trade unions will need to strengthen their ability to act within the European system of multi-level governance, overcoming their ongoing scepticism about European solutions and exerting greater pressure on the national employer federations that ultimately decide on the negotiating stance taken by BusinessEurope. In addition to this, it appears necessary for the trade unions to achieve a better degree of understanding among themselves in relation to European-level negotiating topics. This means that topics for negotiation on the European stage should be simultaneously prioritised within the member states (Hoffmann, R. 2006) so as to facilitate close co-ordination between the national and European levels. The capacity of social dialogue to achieve results would also be strengthened by closer co-ordination between inter-sectoral and sectoral dialogue. To date, the European employers have successfully barred the way to any such development – but neither has the ETUC pursued it with sufficient vigour.

**Co-ordinated collective bargaining policy instead of policing of wages from Brussels**

The need for European co-ordination of national collective bargaining policies under the conditions of European Economic and Monetary Union (EMU) is not in the least new. Although the trade unions – unlike some political parties – basically supported the creation of the European Economic and Monetary Union, they were well aware of the associated risks, which lay above all in the danger of wage and social dumping, inasmuch as the disappearance of exchange rates within the Monetary Union meant a substantial increase in the pressure on labour costs. This does not mean that it would be appropriate to seek to achieve a centralised European wage policy or that efforts should be channelled in the direction of European collective agreements. Given the extent of the differences in collective bargaining systems within the EU, any such undertaking would indeed be quite impossible. What the co-ordination strategy basically sets out to do is to develop a network
that will achieve fruitful co-ordination of the multiple regional and international, economic and social, structures and traditions rather than seeking to harmonise them along the lines of the procedures favoured in the past (Hoffmann, J. and Hoffmann, R. 1997).

As early as the beginning of the 1990s there was discussion within the ETUC about the prospects and strategies for co-ordinating collective bargaining policy, the idea being firstly to strengthen the position of trade unions in national bargaining by means of an exchange of information and co-ordination at European level and, secondly, to complement national bargaining by cross-border bargaining (Hoffmann, R. 2001). In spite of all the differences among collective bargaining systems within the EU and the undeniable decentralisation tendencies, the sectoral level is (at least in the EU-15) central to the negotiation of collective agreements. For this reason a crucial role in the co-ordination has fallen, from the outset, to the European industry federations. Whereas at the end of the 1990s only four European industry federations had structures for co-ordinating collective bargaining, today most of them have developed collective bargaining committees or comparable networks. Cooperation under the ETUC umbrella has also continued to develop. The European metalworkers’ unions were forerunners in setting up a collective bargaining information system and putting in place arrangements for increasing the binding force of the co-ordination. The ‘co-ordination rule’ devised by them is geared to the ‘cost-neutral scope for distribution’ (without so-called ‘redistributio nal components’) – which is made up of national inflation and productivity gains. This formula is in response to the differing economic conditions in Europe and at the same time able to prevent any deliberate undercutting of wage levels. But in spite of all the efforts made, the results have been limited. It has not been possible to prevent a clear drift in functional income distribution (between labour and capital income, i.e. the share of wages and salaries in gross domestic product), though this is not a product of collective bargaining alone; on the other hand, the much feared ‘downward spirals’ have not so far materialised, even though the increase in the number of working poor cannot be ignored (though once again this is not a result of collective bargaining alone).

Greater efforts have been made to achieve more qualitative co-ordination, for example to limit annual working hours (EFFAT and EMF) and to include topics such as continuing vocational training in national
collective bargaining (EMF). Altogether, however, co-ordination has not moved much beyond statements of political intent. On the other hand, one positive aspect not to be underestimated is the fact that the beginnings of co-ordination have contributed to a systematic exchange of information, and a not insignificant level of networking among bargaining practitioners, as well as the development of structures of trust. Given the extremely heterogeneous structures and practices in the collective bargaining field, these are important prerequisites for putting in place more substantive collective bargaining initiatives. It may be added that in the field of transnational undertakings there are increasing signs of the development of a transnational bargaining practice in which the European Works Councils, and also the European industry federations play a key role (Warneck 2008). The potential dangers represented by the trend towards company-based unions in transnational undertakings have admittedly not been removed as a result of all this, especially as many companies are far from keen to allow the trade unions into the game. On the other hand, the conclusion of such company-level transnational agreements, inasmuch as the trade unions are party to them, can extend the prospects for sectoral dialogue.

Academic researchers widely regard co-ordination of wage policy with scepticism. Klaus Busch (2010) reaches the devastating conclusion that implementation of the co-ordination strategy has so far failed because of a combination of employers’ interests and trade union weakness. On the other hand, Toralf Pusch gives a considerably more positive assessment in his study on the effects of wage co-ordination by the metalworking trade unions in North-Rhine Westphalia, Belgium and the Netherlands. He rightly examines and evaluates two lengthy periods – 1989 to 1998 and 1999 to 2008 – in other words before and after the EMF developed its formula for co-ordination (utilizing the scope for distribution). It is both necessary and helpful to look at longer periods of time, as any comparison of individual bargaining rounds can only lead to distorted results. For the period 1999 to 2008 Pusch identifies a largely positive development resulting from adherence to the co-ordination formula.

9. An assessment that can also be found in documents from two major German trade unions. In 2009 IG Metall and ver.di both published position papers on European policy in which it was critically admitted that greater effort would be required to achieve the goals they had set themselves in the field of co-ordination of collective bargaining policy.
ordination formula, and this contributes towards limiting wage competition in the eurozone. He specifically highlights the fact that the cumulative rise in wages between 1999 and 2008 in Germany, at 33%, was very close to the actual available scope for distribution (35%), whereas in the previous decade, wage rises were 15% below the available scope (Pusch 2011, p. 7).

Pusch rightly points out that it is not so much wage trends in German industry that have contributed to the foreign trade imbalances that are seen as one of the many causes of the international financial crisis. Very low wage rises in the private services sector in Germany in recent years have, according to his analysis, also contributed to the imbalances (ibid).

The most recent proposals from the EU Commission represent a danger for wages and collective-bargaining autonomy. In the aftermath of the international financial and economic crisis, many member states have found themselves facing massive problems. Following the large-scale bail-out of the banks and the introduction of growth programs to counter the collapse of domestic markets, working people and the public in general are now expected to foot the bill. In the name of ‘economic governance’, deeply indebted member states are now supposed to pursue a policy of austerity, with reduced wages, higher unemployment and social security cuts.

As part of their attempts to cope with the financial market crisis and the ensuing crisis of the euro, the heads of state and government have agreed on a pact for the euro that is essentially a wage restraint pact. In addition to closer monitoring of debt, the pact aims above all at improving the competitiveness of member states. The main focus is on a comparison of unit labour costs, whose development is to be monitored by the Commission and the European Finance and Economic Affairs Council (ECOFIN). In future, the wage-setting process in individual countries is to be monitored and, if appropriate, negotiations are to be decentralized to prevent wages from rising too quickly. In addition, member states are to make sure that public sector wages ‘support efforts to improve competitiveness’. What this means becomes clear from the examples of Greece and Ireland, where there has been massive intervention by the EU Commission together with the International Monetary Fund (IMF). As part of the national rescue
package in Ireland, the minimum wage as been reduced by one euro to EUR 7.56 with effect from 1 February 2011. In Greece and Romania, public sector wages have been cut and massive pressure applied for deregulation of labour law. This means that in those countries with deficits, the EU Commission has taken on the role of policing wages.

This was not what the ETUC and its affiliated trade unions imagined ‘economic governance’ to be. For years they have been pointing to the shortcomings of European economic and monetary union and calling for European economic governance in order, amongst other things, to have better co-ordination of fiscal policy and harmonisation of taxation. But this makes impossible the type of solidarity-based wage policy that the unions aspire to with their co-ordination of collective-bargaining policy. On the contrary, disparities between wages and incomes will further increase. The ETUC has announced its determination to resist such diktats from Brussels. In a letter sent in mid-February to members of the European Parliament, John Monks, General Secretary of the ETUC, expressed unusually sharp criticism of the EU Commission and rejected out of hand the proposed revision of the EU treaties intended to improve the ‘functionality’ of the EU. Instead of holding working people responsible for the crisis, the Commission, he said, should at last fulfil its duty to promote social progress, full employment, a high level of social protection and comprehensive social and regional cohesion.

Despite various obstacles, the European trade unions, especially their European umbrella organizations, have tried in recent years to coordinate wages policy with a view to preventing a downwards spiral. Instead of slipping into the role of ‘policing’ wages, it is high time for the EU Commission to draw the right conclusion from the financial market crisis and contribute towards Europeanisation of industrial relations. A logical response would be to strengthen social dialogue and employee rights (working time directive, posted workers directive) and create a European space for collective bargaining.

Upgrading the work of the European Works Councils

An important catalyst for the Europeanisation of industrial relations is represented by the European Works Councils and the opportunities for employee participation in European Companies. Adoption
of the EWC Directive in 1994 released a momentum that has led to the creation of almost 1,000 European Works Councils. The total membership of these bodies is around 18,000 and these representatives are important players in the further development of a European industrial relations system. More than 2,400 companies in Europe fall within the scope of the EWC Directive and a highly urgent task for the trade unions will be to ensure the creation of European Works Councils in the 1,400 or more companies where they do not yet exist. It should also be stressed that without legally binding European legislation this development would never have taken place. Prior to adoption of the Directive, fewer than 40 such bodies had been set up on a voluntary basis. Developments in this area provide a clear argument in favour of the need for European ‘hard law’. The Directive served to create for the first time an institution vested in collective labour law at European level (Blanke 2006).

The practice of EWCs has developed in an extremely varied fashion. One reason for this is that it is not a question of following standard legislative requirements, insofar as each agreement has to be individually negotiated with the management (negotiated Europeanisation). This regulatory model (‘negotiated co-determination’) is justified by the wide-ranging traditions, organisational forms and legal structures of industrial relations in the EU Member States (Blanke 2006: 1306). The same model was subsequently used for the co-determination regulations enshrined in the European Company Statute (see also Norbert Kluge in this volume).

As such, the number of EWC agreements does not necessarily supply any information on the actual operation of EWCs. No EWC is quite the same as any other. A not insignificant number of these bodies continue to enjoy little more than symbolic status, whereas others have developed a highly resilient form of cross-border interest representation. Empirical research has shown that EWCs have a positive effect on company performance, that employee interests are taken much more into consideration, and that positive welfare effects generally ensue (Vitols 2009). This overall positive evaluation cannot, however, conceal the

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10. For a comprehensive overview, see the ETUI database of EWCs at www.etui.org. A good overview can also be found in Kerckhofs (2006).
inadequate legal framework that restricts the opportunities for action and adversely affects working methods. The main shortcoming of the 1994 Directive is the lack of any definition of consultation and information, and this has contributed to a situation in which most company developments and restructuring operations are decided and implemented without the participation of employee representatives. The Directive also displays many additional shortcomings that detract from the operational possibilities of the EWCs (number of meetings, training of EWC members, involvement of external advisors, etc.) and make it harder to set them up in the first place. Their effectiveness is further restricted by the inadequate recognition of the role of trade unions.¹¹

In order to remedy the legal shortcomings, the trade unions have for years been demanding a revision of the EWC Directive – a procedure for which the original directive itself contained provision (Article 15) and which was to take place in 1999. Adoption of the EWC Directive in 1994 was a hard-fought compromise after employers’ federations had held out for decades against a legally binding instrument as a basis for industrial relations in transnational companies. For years they have also contributed to preventing the revision that is so long overdue. At the same time, numerous employers have by now actually learned that EWCs constitute a constructive element for successful corporate policy, and around 40% of companies have agreements that go beyond the requirements laid down by law (for example in terms of recognition of trade unions, frequency of meetings, training measures, etc).¹²

It was not until the spring of 2008 that the European Commission launched a revision process and requested the European social partners to negotiate on this in the framework of social dialogue. Surprisingly, the employers expressed a readiness to embark on such negotiations, even though BusinessEurope had for years been refusing any kind of revision. However by this time the ETUC was of the opinion that no breakthrough could be achieved within the framework of social dialogue.

¹¹ In a memorandum a group of academics made a large number of suggestions for amending the EWC Directive based on extensive empirical research (Jagodzinski, Kluge, Waddington 2008).
¹² Extensive information can be found at: http://www.ewcdb.eu
and it accordingly placed its hopes in a solution to be pushed through by the EU Council Presidency. Unusually but understandably, therefore, the ETUC, for the first time ever, declined the negotiating option. In December 2008, following a period of tough wrangling, the recast Directive was approved by the Council and by the European Parliament in a first reading; it now has to be transposed and implemented by the Member States by May 2011\(^\text{13}\). Given the substantial improvements that have been incorporated into the text, there is a chance that the new Directive will serve to improve the EWCs’ capacity for effective action in the future – and collective European labour law will at least have been successfully extended in the process.

With the EWC Directive and at least 15 European directives on the information and consultation rights of workers, the European Union has at its disposal a considerable corpus of employee participation legislation (Warneck 2008). The scope of the various directives ranges between specific situations (collective redundancies and company transfers) and – probably the most important directive – the general right to information and consultation, as a result of which all Member States have been required to introduce into their national legislation new provisions to ensure observance of this right. A crucial factor for the further development of worker participation and co-determination in the context of Europeanisation of industrial relations will be the extent to which it is possible to enshrine these issues in European company law. A feature of co-determination at company level in Europe is its high degree of diversity. Company level co-determination is by no means a specifically German path: on the contrary, it is found in 18 of the 27 Member States and in some of these is compulsory in companies with as few as 25 (Denmark) or 50 (Sweden) employees, whereas the thresholds in Germany are distinctly higher (500/2,000 employees). It is true that controversies in the trade unions over the idea of co-determination, played out against the background of different cultures and traditions, have not been completely resolved. Yet among the trade unions affiliated to the ETUC this question has been very much divested

\(^\text{13}\). On the background see http://www.etuc.org An in-depth commentary can be found in Picard (2009). In Germany the Directive was amended in April 2011 in the form of the Zweites Gesetz zur Änderung des Europäische Betriebsräte-Gesetzes – Umsetzung der Richtlinie 2009/38/EG über Europäische Betriebsräte (2. EBRG-ÄndG).
of its ideological content in a manner that has opened up the way for some highly pragmatic solutions. It was possible to lay the foundations for a Europeanisation of co-determination with the European Company Statute (SE) and the related directives on employee participation in the SE (Gold, Nikolopoulos, Kluge 2009). More than 120 SEs are now known to have been set up throughout Europe, with a total of some 400,000 employees (see http://www.worker-participation.eu). No single Europe-wide solution will be applicable in the case of the SE either, and the practice of 'negotiated co-determination' will give rise to highly company-specific solutions. It is, however, not clear whether in the long-term the flight from national co-determination systems can be prevented by the system of 'negotiated co-determination'. One of the reasons why the European Private Company Statute (Societas Privata Europaea) has not yet been passed is because there is no solution regarding company co-determination. Neither can the possibility be excluded that the Barroso Commission – in the name of 'better regulation' – will try to drop the co-determination compromise in the course of a revision of the SE Statute. The trade unions should develop an active strategy to counter this, and call for co-determination to be enshrined as a constitutive principle in European company law, for example in the form of a framework directive (on this, see Norbert Kluge in this volume).

**European Court of Justice weakens employee rights and undermines the Europeanisation of industrial relations**

At this interim stage we can say that in the field of collective labour law it has proved possible, where information and consultation rights and co-determination arrangements are concerned, to counter 'negative integration' with significant elements of 'positive integration'. Moreover, the European Charter of Fundamental Rights, if it becomes legally binding under the Lisbon Treaty, will offer opportunities for taking the Europeanisation of industrial relations even further. In it, the right to information and consultation of the individual employee, as well as a collective right of worker representatives, is enshrined as a general principle of European social law. The right to collective bargaining and collective measures, including strikes, at the appropriate levels (including the European level!) is also guaranteed. The substantive legal content of this article is possibly broader than in some individual
national constitutions and legislative provisions (Bercusson 2006). With this Charter – comprising a total of 54 articles – fundamental social rights are for the first time enshrined in European primary law. This could be accompanied by participation rights for European trade unions, if they made consistent use of these and were not just content to rely on rhetorical demands for a ‘different Europe’.

In recent decades the European Court of Justice has become an increasingly important player in the context of the further development of European labour law and hence of the foundations for a European industrial relations system. With its judgements delivered in recent decades it has certainly played a part in shaping the social dimension and thus also the positive integration of the European Union. It suffices to remember the numerous progressive judgements on equal treatment, information and consultation rights or the judgement on the European Working Time Directive. With its most recent judgements, however, the ECJ has evidently veered in a new direction, according priority to basic economic freedoms (movements of goods, services, capital and persons) over fundamental social rights. With its decisions in the Viking and Laval cases the ECJ gave priority to basic economic freedoms, namely freedom of establishment and freedom to provide services, over trade union freedom of action, in particular the right to strike. It is true that the freedom of assembly and the right to strike have been stated by the ECJ to constitute guaranteed principles of the EU, but they have been subordinated to economic freedoms. In the Rüffert case the ECJ delivered the opinion that the freedom to provide services was adversely affected by the legal obligation on contractors, contained in public procurement law, to pay workers collectively agreed rates. The European Commission subsequently opened proceedings against Luxembourg because, in the Commission’s opinion, the ‘far-reaching’ provisions of the Luxembourg law on the posting of workers represented an infringement of the freedom to provide services. This opinion was confirmed by the ECJ judgement. The most recent decisions are problematic in numerous respects and have been subject to wide-ranging scrutiny and discussion by politicians and academics. The judgements weaken national industrial relations and collective

14. A comprehensive overview of the ECJ judgements, together with a large number of political and academic contributions on the subject, can be found at: http://www.etui.org
bargaining systems, undermining the trade unions’ ability to take industrial action and resulting in minimum standards being redefined as maximum standards. Following the Viking judgment, the ECJ even went as far as to state that human dignity should be harmonised with freedom of establishment! These judgements have succeeded in radicalizing the process of integration of the Single Market and created an obstacle to ‘social ring-fencing of market freedoms’ (Höppner 2008), thereby hindering the Europeanisation of industrial relations. In the aftermath of the ECJ judgments the ETUC called for a social progress protocol that would ensure that primary EU law did not designate fundamental social rights as being subsidiary to fundamental economic rights. Whether or not such a social progress protocol can be achieved in a revision of the EU treaties is by no means certain. What is clear is that the ECJ judgments have triggered a heated debate about social aspects of Europe (see Wolfgang Kowalsky in this volume).

More determined Europeanisation of the trade unions

The unions, too, have realized that European policy is tantamount to domestic policy from the point of view of the member states of the EU. European issues are now handled by virtually all specialist departments at trade union headquarters and the topic of Europe is also well established in the field of union education activities. However, European themes are understandably dealt with from a national perspective. But this has nothing to do with Europeanisation – only when trade unionists become aware of the problems of unions in neighbouring European countries will a genuinely European trade union strategy be developed. Thus the results of social dialogue, which clearly have a positive impact on countries with lower standards, are criticized or rejected (as happened in the case of the social partners’ agreement on part-time working) because they are only judged in terms of trade unionists’ own national standards. But one way of preventing a race to the bottom in the field of social standards is to raise the lower standards in other countries through European agreements, rather than taking the highest standards in a few member states as the starting point.

In the case of the revised EWC Directive it was possible to observe a similar assessment based on a national perspective. Thus there was every good reason to call for the introduction of tangible sanctions for
infringements of the rights of European Works Councils. But the sanctions were to significantly exceed national standards. What was overlooked was the fact that in the highly complex process of revising the EWC Directive it is unlikely that demands will be met that have not hitherto been achieved at national level. In other words – anyone wishing to increase the sanctions for infringement of the German Works Constitution Act will not be able to do this via the EWC Directive.

One central shortcoming in terms of Europeanisation of the trade unions is the poor intercultural competence of the players involved – whether we are talking about honorary or full-time trade unionists. Inadequate knowledge of industrial relations in neighbouring European countries, their historical roots and national structures and institutions – as well as their culture – regularly hampers attempts to operate at European level. The problem is partly a question of how to realise what are the common interests at European level despite all the differences (Hyman 2011). These are problems that could be solved without any recourse to European or national legislatures. Both trade union education activities and initial and further training offer scope for promoting intercultural competence. Placements in European trade union organisations should become compulsory for full-time trade unionists. Rotation of staff between the European and the national level should be expanded. Part of the justification for amending the ETUC statutes at the Prague Congress in 2003 and restricting federal secretaries to a maximum of two years in office was in order to encourage a greater exchange between the two levels. As part of their medium-term staff planning the national unions should agree to second colleagues to Brussels and then later offer them career prospects at national level. This would be a practical – and highly effective – contribution towards Europeanisation of the trade unions.

Strengthening European trade union structures involves more than just improving levels of funding and staffing. Much could be achieved through a greater degree of commitment – for example through consistent implementation of decisions made under the umbrella of the ETUC. Not only is there a need for closer enmeshing with the national agenda – European campaigns also need to become more effective by increasing consistency of implementation. There is, for example, little point in launching a European petition on ensuring the future of services of general interest (2007) if this loses all momentum because
the same unions that voted for it at European level relegate it to item 32 on their national agenda as soon as they return home.

Neither has the creation of duplicate structures proved particularly helpful for the cause of Europeisation and the strengthening of the ETUC that is always called for. There are currently 24 national umbrella organizations with their own offices on the European Commission’s doorstep in Brussels. Could one not consider alternative ways of maintaining a presence in Europe that would genuinely serve to strengthen the ETUC? The causes and reasons for trade unions’ presence in Brussels are – understandably – very diverse. Thus, for example, the TUC office in International Trade Union House was set up mainly for ‘domestic political reasons’, partly to back up the British trade unions’ change of course over Europe in the early 1990s. It is also understandable that the Scandinavian and southern European unions opened offices in Brussels in order to minimize the cost of long flights to the Belgian capital. Happily the last few years have seen highly constructive developments in terms of co-operation between the ‘permanent representations’ and the ETUC. But could one not also conceive of other forms that would ultimately represent a distinct added value for the ETUC? One possibility would be the approach taken by national governments, which temporarily post their civil servants to the European Commission for specific projects. This strengthens their capacity to work at European level and at the same time helps to Europeanise work at national level when the employees return to their ‘national’ area of work with newly-acquired European expertise. Why shouldn’t the trade unions learn from transnational companies that for decades have been sending employees to work abroad for limited periods?

The fact that Europeanisation of the unions has to take place not just centrally but also regionally and decentrally can be seen from the increasing importance of the inter-regional trade union councils. In line with the motto ‘think globally – act locally’, regional trade union organizations have joined forces in almost 80 border regions. In German border regions alone there are 13 such inter-regional trade union councils. Intercultural learning takes place on a practical, virtually day-to-day basis in these cross-border forms of trade union activity.
In addition to this, the trade unions will not be able to avoid stepping up their financial support for European structures. In an era of dwindling membership and the resultant loss of subscription income, this will not be easy. But over recent years some progress had been made – often following heated debate. ETUC subscriptions have risen steadily since the early 1990s. Back then, 7 cents per member went to the ETUC, whereas this had more than doubled to 16 cents by 2011. Payments are, however, made not monthly but annually – which means they represent a tiny proportion of just over 1 cent of the average union subscription in Germany of around EUR 20. Given the differing subscription rules of trade unions in Europe this means that while some contribute up to 10 per cent of their national budget to the European level, the better-off unions often give less than one per cent.

It is not just financial resources that are crucial for European trade union bodies – the ETUC and the European trade union associations – to be capable of functioning. This section is intended to show that there is a raft of possible measures that can support the effectiveness and Europeanisation of the unions. It is not enough to have an ambitious European program that has developed substantially over recent years. One does not make the European Union and/or its policies any more just and socially responsible just by directing justified demands or criticism at it. The trade union’s policies on Europe were always most successful – vis a vis both transnational companies and European institutions – when they were consistent and determined and backed up by adequate financial and staff resources.

Résumé

Some important successes have already been achieved on the road to Europeanisation of industrial relations. These include the various directives on information and consultation rights for employees and – above all – on European Works Councils, even though their rights are restricted to cross-border information and consultation. There have, however, been some improvements to the context in which they operate as a result of the recasting of the EWC Directive. This is, incidentally, also the view of those who, back in autumn 2008, were highly critical of or dismissed out of hand the results of the revision of the Directive. The EU directives on occupational health and safety also created far-
reaching standards at European level. And the agreements resulting from inter-professional and sectoral dialogue also created important minimum standards, especially for member states that had no or only weak regulatory structures (parental leave, part-time working, short-term contracts). However the failure of the Barroso-led Commission to be active in the sphere of social policy has brought the inter-professional dialogue on legally binding regulations to a standstill and resulted merely in joint position papers being produced by the social partners or voluntary agreements being concluded (workplace stress etc.).

The importance of these successes should not be underestimated – through ongoing communication and consultation a European trade union policy culture has grown up that can, in the longer term, be passed on to the national trade unions as well. But this will take time and will involve an ongoing learning process! However vital it may be to activate Europe as a solution, European policy or the policy of the European institutions in the form of ‘negative integration’ (implementation of market freedoms) is not only part of the solution but above all part of the problem itself.

Europe will only cease to represent a threat to the national industrial relations systems (Dolvik 2008) if the trade unions behave as ‘learning organisations’ in the context of the need for modernisation and succeed in further developing and becoming more European. Given the trends towards erosion and the increasing pressures of competition, together with the associated danger of a downward spiralling of wages and working conditions, any defence of the status quo within the boundaries of the nation state appears an option devoid of prospects. Recognition of this situation by trade union organisations and political cultures is thereby a prerequisite for Europeanisation and – given the developing pan-European labour market – for effective interest representation geared to the production of social cohesion in the European internal market.

In the course of this development, the importance of the nation state as a sphere for action will inevitably continue to wane. The future organisational frontiers of trade union action are those of the European internal market. More than 150 years ago, trade unions first developed on a local and regional scale during the process of industrialisation
before they were able to set up powerful national organisations. The next level is the European one. Companies have long since shed their ‘national clothes’ but have only just started to develop a European capability as employers’ associations. Europeanisation of industrial relations will not succeed without European employer associations with strong negotiating powers. The trade unions acted as midwives at the birth of national employers’ associations. As the former ETUC General Secretary, Emilio Gabaglio, put it in an interview with the German trade union publication ‘Die Quelle’ in 1997: if they now want to play this role at European level, they will have to considerably raise their game.

Bibliography:

European Trade Union Confederation (ETUC) (1999) Towards a European System of Industrial Relations, specific resolution at the 9th ETUC Congress, Helsinki
Warneck, W. et al (2008) Challenges to a ‘European’ industrial relations system, Background paper for the ETUC/ETUI top-level summer school, Brussels, ETUI
Unions for a change of course in Europe
Unions and Europe – an imminent parting of the ways?

Wolfgang Kowalsky

Why revisit the terrain? ................................................................. 86

1. Financial crisis and dictated cost savings – the end of social Europe? ........ 104

2. Internal market, economic governance and industrial policy –
where are we heading? ................................................................. 129

3. Is the Court of Justice of the EU against fundamental social rights? ........ 155

4. Unions at the Crossroads – mainstays and guardians of official Europe or
counter-power for a fundamental change of direction and a different kind
of Europe? Has the European bicycle tipped over? .......................... 183
Why revisit the terrain?

The unions are increasingly turning their backs on Europe, primarily because Europe has turned its back on them. John Monks, General Secretary of the European Trade Union Confederation (2003-2011), commented as follows on the European competition pact, in the context of a major demonstration in Brussels: 'What people out there see is that Europe is becoming a Big Brother who controls their wages and salaries.'

In league with neo-liberal economists, the financial world, has successfully re-profiled the financial and banking crisis which broke out in September 2008 as a result of its excesses into a sovereign debt and euro crisis. This all-dominating interpretation has, since 2010, served to officially legitimise the austerity policy. Pushed into oblivion have been both the turning point that created the financial crisis, and the socialization of the risks of private investors that has taken place since then.

The European Commission's proposals for economic coordination all point in a single direction: Europe-wide austerity and rigorous belt-tightening, automatic penalties and reverse majority voting, competition pacts, Economic Governance, turbo-flexibility, pension cuts and top-down intervention in collective agreements. Austerity programmes on the one hand and indulgence towards banks and the financial industry plus failure to criticise questionable rulings of the European Court of Justice on the other hand add up to a far-reaching and multi-faceted change of course. There is of course a hail of criticism: talk of a new Inquisition, quasi-colonial status and the creation of protectorates. The 'austerity delusion' (Paul Krugman) is like a medicine that does not work, bringing with it dire social consequences and an unsustainable debt burden. Taxpayers will bear 100% of the cost of a financial crisis that was caused in the first instance.

When we speak below of Europe, we are speaking as a rule of the politics of the European Union, that is 'official Europe', and neither of Europe as a whole nor of its historically grown social, political, economic, cultural and historical variety. Given their monopoly of initiative, the spotlight is here on the European Commission and right now the Barroso II Commission, which has been in office since 2009, and in particular the austerity policies, the Economic Governance proposals and the annual growth report. Of course the Commission is not a monolithic block and other views exist, but the approach being criticised here is the official position.

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3. ‘The recipe has nothing new about it; Socialisation of losses, privatisation of profits.’ So says Hans Magnus Enzensberger, in ‘Sanftes Monster Brüssel oder die Entmündigung Europas’, Berlin 2011, p. 49.
by others. The legitimacy deficit of the EU is increasing. Jürgen Habermas criticises the fact that Europe's political elites are continuing unassailed their elitist project and the disenfranchisement of European citizens, but with no social movement for Europe in the air.4

Social Europe is not just on the defensive5, it is retreating, not primarily at legislative level, but in reality: interference with free collective bargaining is on the agenda as soon as it comes to enforcing the austerity programmes.6 Is Europe in the process of transforming into a plutocracy, a ruling structure for the rich as defined by U.S. political scientist Francis Fukuyama, who sees this as happening in the U.S.? The cost of the financial crisis is being borne mainly by the working population and by public services, which are bearing the main burden of adjustment to the crisis and which must one-sidedly pay the bill for the bailout of the banks, in the form of mass unemployment, wage cuts, reduced public services, etc. The polluter pays principle does not apply here.

The reactions were not slow in coming, on the one hand protest movements by the European trade unions, on the other hand, shifts in the electoral landscape. It is no accident that in 2010-11 extreme right and nationalist parties have sprung up like mushrooms from the European soil. A rise of right-wing extremism, xenophobia and Islamophobia can be observed in various forms in the Netherlands, France, Belgium, Austria, Hungary, Denmark, Finland, Norway and Sweden. These parties can be interpreted as the expression of a widespread social malaise that is seeking a pernicious way out in the absence of convincing alternatives. In the inter-war period, the hydra of a tacit or explicit entente between the right and the extreme right led to the rise of Mussolini and Hitler. The risk of such an entente is right now visible only in France but destabilisation trends are commonplace. Ireland's government imploded,

4. Jürgen Habermas, ‘Ein Pakt für oder gegen Europa?’ in: Süddeutsche Zeitung, 7.4.2011, p.11. It is no accident that he chooses the same words as Enzensberger: ‘Brussels monster’ and ‘Disenfranchisement of European citizens’.
6. Austerity refers to the cost-saving programmes that the EU has imposed on certain countries in the wake of the financial crisis.
the Portuguese government was the second to fall as a result of the crisis (March 2011), in Belgium the time being taken to form a new government is beating all records, in Zagreb European flags are burned. The citizens of Iceland also voted in a second referendum (April 2011) against compensating foreign savers of the bankrupt Icesave bank: taxpayers are refusing to stump up for the failures of private banks. How long will it be before the Greek, Irish and Portuguese taxpayers refuse the constant use of tax money to pick up the losses of speculators in government bonds?

Europe has always stood for a civilisational product, which for decades has prevented wars between states. But the 'veneer of civilization' (Norbert Elias) is thin. The damage that would occur if one of the most important political and economic projects of the post-war period were to be rolled back, would be enormous and beyond imagination. Even so, one cannot ignore the loss of popularity of the European project. A major cause is the constraint-mentality of those at its helm, with no alternative on offer. Greece, Ireland and Portugal are placed under guardianship, whole regions are impoverished. Demonstrations express the rage and the collective revolt. In the absence of convincing alternatives the prospects are not rosy. The Commission believes it can ignore the fact that many citizens feel no longer represented by the European institutions. But governments can be voted out, and were the Eurosceptics to come to power, everything would change. For a long time the legitimation of Europe lay in the prevention of further wars, but today a new 'raison d’être' is needed. Many citizens are opposed to the direction that Europe is taking and are demanding a change of course - but what would happen if a majority in a country decided to quit the EU? To prevent this from happening, it is necessary to think through the consequences of the current Commission policy and the trade union response.

In the past, the unions were loyal supporters of European integration. Even if they took to the streets, the message was ‘For a social Europe’. One of the basic principles guiding trade union action was ‘more Europe’ and indeed this confession became the slogan of demonstrations (‘More

7. Thus Italian interior minister Roberto Maroni on 11.4.2011, calling for European solidarity in the face of the North African immigration (Le Figaro 12.4.2011).
Europe, 13.12.2001). Europe used to be considered a ‘friendly force’. And with good reason: despite a disastrous prehistory, marked by two world wars and imperialist-colonialist adventures, a peaceful unification of Europe had succeeded, often advanced by crises. Once again Europe is in crisis, besieged by a climate crisis and – more recently – a financial crisis. Will it survive this crisis, will it emerge stronger from this crisis or will it remain frozen in inaction? And in which direction should it go?

The risk of paralysis on the outside is real: Did Europe’s marginalization at the Copenhagen climate summit in late 2009 and the loss of European leadership herald a bleak future, bleak for European industry and jobs? It is worrying that the Commission takes only marginal notice of the inexorable rise of Chinese economic power in the wake of the financial crisis, which is announcing a geopolitical tectonic shift of the first order. European support of strict regulation of the financial sector and the introduction of a financial transaction tax was so restrained and hesitant that it left no deep impression, and people could doubt its sincerity. It is no coincidence that the offices of the first Council President and EU foreign minister were left to pale candidates in an election that reflected the intention of the most influential member states, which exhibited provincialism in order to keep the reins in their own hands.

The danger of internal paralysis is no less great: despite the collapse of the unregulated financial system, the Barroso II Commission is fundamentally holding fast to the deregulation agenda of ‘better regulation’ and continuing the liberalisation policy, with the reinforcement of the policy of public-private partnerships, inaction on the issue of improvement of public services, and confirming the primacy of markets over social and fundamental rights in general. Not coincidentally, many unions are responding with dismay. Some are preparing, demoralised and resigned, to withdraw from or downgrade their European efforts. Others are advocating more radical approaches. Can Europe still be regarded as a friendly force at a time when penal regimes are being

8. Responsibility in the DGB passed after the 2010 Federal Congress from Chairman Michael Sommer to Annelie Buntenbach, a member of the Federal Executive Board of the DGB. The reason given was the need for Mr Sommer to concentrate on his international duties.
introduced in Greece and Ireland? Greece lies at the epicentre of the quake, and appears to be serving as a laboratory. Until recently, Ireland was celebrated as an economic miracle country and Celtic Tiger (due to high growth rates between 1993 and 2008 and in spite of low taxation and low public investment). What we now see is an ultra-rapid collapse with cuts in minimum wages and interference in the collective bargaining systems. This does not end the debt spiral, but only really unleashes it, as the more successfully costs and wages are reduced, the heavier the debt burden. The least privileged are required to bear a disproportionately high burden, resulting in emigration, collapsing demand and eroding public services.\(^9\) No wonder that the Irish government performed miserably in the February 2011 elections and the Portuguese government was forced to resign in March 2011 and to call new elections.

The problems identified by European trade unions meet with a deaf ear to social matters and the intransigence of the Barroso Commission II, set exclusively on bilateral dialogue or negotiated solutions, knowing that any pro-social initiative will fall foul of 'BusinessEurope', the voice of the business community, that is willingly playing the role of veto player assigned to it by the European Commission. Instead of falling into despair and resignation, it would be more appropriate to grasp the current crisis as a window of opportunity, opening up perspectives which until recently seemed unthinkable. The slogan ‘For another Europe’, long the hobbyhorse of alternative globalisation (‘altermondialiste’) movements, has been picked up, but quickly dropped for fear of contamination.

In this situation, concepts for European Economic Governance have stormed to the top of the European Agenda. ‘Governance’ points, first of all, in the direction of de-politicisation and de-democratization, of an independent body as opposed to government. At monetary policy level, such ‘governance’ exists via the ECB. In designing Economic Governance, the finance ministers intentionally kept labour ministers out of the process, despite its involving not only economic coordination and monitoring, but also unit labour costs, unemployment, public sector wage cuts and productivity development. Certain labour ministers tried

hard to get on board. But is defensive action enough? Is it not time to launch an offensive in the direction of 'Social Governance' or 'Employment Governance'? The concept of Economic Governance is not quite met with the terms 'European economic government' or its official German equivalent 'wirtschaftspolitische Steuerung' (literally 'economic-policy control'). What it is really all about is austerity governance - which we will come back to (Chapter 2). In public debate, economic governance is happily linked with the rescue of the euro: 'The euro is Europe, and Europe is 60 years of peace. We will never abandon this. The consequences of the disappearance of the euro would be so cataclysmic [a disaster carrying all with it] that the idea should not be toyed with' said Sarkozy in Davos in January 2011. When U.S. bank Morgan Chase warned in Davos against over-regulation, Sarkozy's reaction was not long in coming: 'If a country guarantees the equivalent of 700% of GDP, we are no longer in a market economy, but in a madhouse!' This is the situation the Icelandic banks were in.

The popular, but unbalanced rhetoric of the 'eurocrisis' misses the reality, because the real crisis continues to be a financial market crisis. The core problem is the growing fears of many investors and the failure of financial markets in the face of the high budget deficits of certain Eurozone countries. In Germany especially it is popularly assumed that the debt states Greece, Ireland, Portugal and Spain have lived extravagantly and beyond their means and should now rightly tighten their belts. This overlooks both that austerity policies are the wrong response to the financial crisis, and that they tend to augment the debt. Ultimately Greece cannot dig its way out of the hole it is in without rescheduling.

In Europe a thunderstorm atmosphere has been gathering, announcing an internal erosion process. How far this erosion will go is impossible to say. Many predictions are unfavourable. Ever since the demand for economic coordination was implemented in the deviant form of a

11. 'Europe has already survived very different attempts to uniformise the continent. Common to all of them was hubris, and none of them was a permanent success. ... All empires in history have blossomed only for limited half-lives, before collapsing from over-expansion and their internal contradictions.' (Enzensberger 2011, p. 61)
coordinated Europe-wide enforcement of austerity policy, the trade unions have been opposing this policy and voicing their criticism through mobilisation across Europe. Is this opposition without real prospects? Unlike in the ‘90s, the pressure of circumstances could lead to monetary union being unsustainable without political and social union, with a new institutional framework being necessary to permit the quantum leap to a sustainable and socio-political integration of Europe. Criticism can be a valuable driver of change in this crisis context in which the old order is passing away and a new order is coming into being.

The question of how far criticism is necessary and permissible cannot be dismissed, with several pitfalls to be avoided. There is a long tradition of intellectual criticism of Europe from both the left and the right.\textsuperscript{12} Stated in a rather oversimplified form, criticism of Europe from the left generally has internationalism as its vanishing point, criticism of European from the right the nation state. The criticism from the right aims to keep Europe on a deregulation course and to nip any social progress in the bud. The criticism from the left has attempted to maintain a virulent general criticism of capitalism and imperialism. To give some examples of the intellectual criticism from the left: the SPD rejected the Schuman Plan and the European Coal and Steel Community (ECSC), just as the majority of left-wing intellectuals were cool towards the European idea and politics in the initial phase of the European Economic Community (EEC). The programme announced by Chancellor Willy Brandt to expand the EEC into a ‘social union’ fell into immediate oblivion in the SPD. The Marburg school around Frank Deppe took up arms against the alleged ‘Euro-enthusiasm’ of those intellectuals who did not join in the crude criticism of ‘imperialist alliances’. The slogan of ‘Capitalist/Corporate Europe’ was born and ideological criticism was given the combat mission of storming this ‘fortress Europe’, which was supposedly transforming itself into a


\textsuperscript{13} Together with IG Metall, while the DGB came out in favour of the plan, see: several contributions in the newsletter (Mitteilungsblatt) of the Institut für soziale Bewegungen 42/2009
globally active military power. The European United Left party (GUE/NGL) is rooted in this tradition.

New is the expansion of critical thinking from the pro-European side: the sanctuary of 'social Europe' seems to be crumbling and the 'permissive consensus' of the post-war era to be fraying at the edges. Especially in the unions there is growing dissatisfaction and indignation over the direction that the European integration project has taken. Are unionists swinging en masse into the camp of the critics? Or are they already in opposition - as in the debate on the Services Directive and on the issues of migration policy, austerity policy, economic governance and treaty revision? The European Trade Union Confederation has urged the Commission to withdraw its proposals for directives on seasonal work and intra-group detachment, because the discrimination between different categories of employees enshrined in it and the consequent further fragmentation of the labour market are in danger of pouring oil on the flames of xenophobia. The ETUC has called on the European Parliament to make fundamental changes to Economic Governance and to reject the treaty revision.

The erosion of the 'permissive consensus' since Maastricht is also discussed as a crisis of legitimacy. Unlike in other states, 'European integration' has never in Germany been put to the test of general elections or referendums. It has been waved through with no demand for a vote or a decision, with any incipient political resistance pushed into the right-wing, nationalist corner. It is time to say goodbye to the naked consensus of the elite and to democratise the European project, so as to avoid a situation in which democratic process becomes effectively replaced by the rulings of the CJEU or the German Constitutional Court. Habermas puts it in a nutshell: 'The European Union will be unable to be democratic, as long as political parties anxiously avoid any discussion on alternatives to decisions of great and lasting significance.'

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14. This term is used in the political science debate to refer to affirmative attitudinal patterns, in this case, a general diffuse attitude of support among the populations of the EU, which has accompanied the European project since its inception.
15. Jürgen Habermas, 'Ein Pakt für oder gegen Europa?' Süddeutsche Zeitung, 7.4.2011, p.11.
Europe and the unions - a pending (consensual) divorce? Although it was not fully clear to many of them what was the adventure they had embarked on, numerous players took part in shaping the European project - including the (German) trade unions, most of them 'pro-European' and 'supportive', as Hans-Jürgen Urban, a Board Member of IG Metall, observes in a discussion paper with a critical undertone.\(^\text{16}\)

In fact, the unions, particularly the German ones, have fundamentally supported European integration from the outset, but with heated debate about the Europe of corporations, capital and banks. To assert an 'unconditional pro-Europeanism' of the unions is at least partly a construct. In matters of co-determination, the unions have undertaken from the beginning a very successful policy of obstruction against decades of attempts to negotiate down the standards of co-determination to an 'intermediate' level and to create loopholes to escape it. The approval of the Single Market project had to be organised by the then Commission President Jacques Delors (1985–95) with promises and commitments made at the Congress of the undecided ETUC (Stockholm on 12 May 1988) and the Euro-sceptic British TUC (Bournemouth on 8 September 1988. In return Delors gave the green light for the development of the internal market, leading Margaret Thatcher to accept the social dimension as part of the bargain.

Structurally, with the founding of the ETUC in 1973, an answer was found to a fundamental and growing problem, namely the relationship of the trade unions to European integration. Although programmatic weaknesses frequently led in the early years of the ETUC to very general, vague and not always politically solid positions, nonetheless over the years its statements became more precise and more concrete, often in the form of work in progress as in the Services Directive, which in a first diplomatic position was still 'welcomed', but then criticised with increasing severity. Among the trade unions, action was guided for a long time by a subliminal, but effective philosophy of trade union federalism (following the motto: more Europe, for a strong, supra-national Community Europe), but the limits of that federalism were drawn with the acceptance of the subsidiarity principle: existing

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formats of industrial relations (including co-determination) that have been achieved and shaped nationally in protracted struggles are seen as national assets to be protected against European intervention. Always out of the question were a position of European passivity or a populist anti-Europeanism. It was always a matter of developing alternatives which were both emancipatory in their effect and able to win majority support.

In general, in the early decades the trade unions reacted to Europe and the EU rather than proactively shaping it - only in recent decades have they increasingly demonstrated their desire to be creatively involved in this process. It has to be said here that the general situation since the mid-'90s has not been favourable to socio-political progress. This stalemate has led, among other things, to an atmosphere of growing scepticism within the union movement, with a widening gap between the optimistic expectations placed in Europe\textsuperscript{17} and the reality of the shifts in the direction of liberalisation.

\textit{Increasing criticism of the direction of European integration.} The largest public response was achieved by the European trade unions with their campaign against the Services Directive - readers are reminded of the many demonstrations under the slogan 'No to Bolkestein'. This gave momentum to the trade union debate about Europe, as also happened with the ETUC petition in favour of public services, which collected half a million signatures for a European legislative initiative,\textsuperscript{18} and even more during the referenda on the European Constitution and the EU Reform Treaty in France, the Netherlands and Ireland, which expressed a general European 'malaise'. Since then there has been a rift in the

\textsuperscript{17} Wolfgang Kowalsky, Focus on European Social Policy. Countering Europessimism; Brussels 2000. – The author took issue at the time with the Euro-pessimistic tendencies, which often argued in a deterministic fashion, but – looking back with hindsight a decade later – extrapolated and annotated with justified scepticism the trends of European integration.

trade union movement, between supporters of the Constitution and the Lisbon Treaty and their opponents. The former first went on the offensive with the Bill of Fundamental Rights, then returning to the defensive with the formula ‘Better than Nice’; while the latter pointed to the neo-liberal tendencies, deregulation and privatisation that are attributed to Brussels, to the large-scale dominance of negative over positive integration, to an asymmetry between economic and political social deepening, to a ‘radicalization of internal market integration’ which has subordinated the social dimension to itself, and to the ‘competitive thinking’ overlaying everything else.

How did this rift come about? The advocates had argued for the European Constitution because it introduced a hierarchy of norms: Part I of the Constitution set out the definition, the objectives of the European Union, the values, competences, institutions; in Part II followed the complete text of the Charter of Fundamental Rights, and only in Part III the policy rules, i.e. the rules governing the internal market, competition, etc. From the viewpoint of the ETUC, the Charter of Fundamental Rights was of such fundamental significance as to justify a positive assessment of the overall text: For the first time social rights were treated equally and at the same level, as it were eye-to-eye with the so-called ‘noble’ rights. Enshrined in the charter were the rights to the formation of trade unions, to conclude collective agreements, to carry out industrial action including strikes, and to information and consultation - which had been won at national level years before.

The strong mobilization by the ETUC in the French referendum campaign ultimately proved futile, but nonetheless highlighted the strong coherence between positioning and actions. Logically, in a public statement in June 2007, the ETUC cautiously welcomed the subsequent ‘rescue’ by the German Presidency of the Council of the constitution that had been rejected in France and the Netherlands, since the legal binding force of the Charter flowed into the new Treaty. This provision was in the view of the ETUC a condition sine qua non - otherwise it would for the first time in its history have come out against, or at least taken a neutral stance against, a treaty revision, whereas previously to that it had supported all Treaty revisions, mostly due to the socio-political progress they represented. (At least until 2011, when ETUC General Secretary John Monks publicly announced that the ETUC did
not support the Treaty amendment for the introduction of Economic Governance.) In internal discussions, the agreement was characterised by the formula 'better than Nice, worse than the Constitution'. The yardstick of evaluation remained the Constitution, which symbolized the act of 'symbolic compaction' demanded by Habermas, 'which only a political constituent document can have'.\(^\text{19}\) The major political parties have buried this demand, with only a few voices still insisting - like Vaclav Havel, who is incessantly calling for a short, easily understandable, readable European Constitution, the first chapter of which should be the Charter of Fundamental Rights\(^\text{20}\).

It is in the context of a new constitutional debate that fundamental questions can be raised about the meaning of European integration and its rules, about whether citizens want to be ruled forever by commissioners, whether this institution is not a transitional form on the way to a European government or the question of whether the internal market rules are actually to be treated at the same level as fundamental rights, as suggested by the most recent rulings by the Court of Justice of the European Union (CJEU).

After nine years of wrangling over the Treaty revision, its supporters were tired and exhausted, after which the recent series of controversial rulings by the European Court then tore away the ground from under their feet. In the wake of these rulings, the debate deepened, encountering a broader resonance within the trade union movement\(^\text{21}\), but also opposition from certain of the 'guardians of the grail'. Fritz W. Scharpf rightly criticises that fact that even left-tending specialists view the legal decisions as business as usual.\(^\text{22}\) (We come back to this in Chapter 3.) The rift in the union movement has since then grown together again.


\(^{20}\) 'Europe is the home of our homes'; speech in the EP, 11.11.2009.


End of the fundamental support for the European integration project?

From a trade union perspective, the criticism of Europe was sparked primarily by the imbalance between the social and economic aspects. European integration is recognised as an epoch-making historical performance. This assessment excludes a fundamentally anti-European stance, but not criticism of the current alignment, with most of the criticism is directed at market and competitive fundamentalism and the primacy of the economy. Trade union criticism grew sharper, the more Europe struck out on the path of rigid budget cuts at the expense of employees. Serving as a negative foil to the criticism is the danger on the one hand of regression to an advanced free-trade zone, and on the other to a resurgence of nationalistic-intergovernmental currents. Criticism was expressed at the lack of simultaneous expansion and deepening, which has made the enlargement process problematic owing to its being used by certain forces to advance the liberalisation agenda. The 2004/06 expansion occurred at the expense of deepening, with not a trace of simultaneity.

The simple fact is that, without state intervention, the financial system would have collapsed and the recession would have been far worse. But the current generation of politicians had no experience in dealing with global economic crises and cobbled together the rescue packages hastily, without in return compelling the rescued banking community to repay the rescue costs and forcing it to undertake a fundamental reform in order to avoid a repeat performance. It was in response to this reluctant attitude to the financial crisis that in May 2009 the ETUC called demonstrations in Prague, Brussels, Madrid and Berlin. In these, 350,000 demonstrators demanded a new course for a more social Europe, and spoke out against a unilateral distribution of the costs of financial crisis. The financial crisis has shown how much the EU is actually needed - namely in order to ensure that Member States do not fall into protectionism and nationalist unilateralism, as they did in the Great Depression of 1929.

Challenges for unions: Criticising EU policy while supporting the European project. Globalisation has brought with it increasing depoliticisation, as decision-making shifts from politicians to technical expert committees (so-called ‘comitology’), thereby delegitimising the European democratic process. In the process of the institutionalization of the EU, specific EU elites have emerged which mainly take an
affirmative position on European integration, while the peoples of Europe, after a long period of a 'permissive consensus', are increasingly taking a predominantly critical position. The gap between the support of the elite for European integration and the scepticism of the non-elite is widening. From the perspective of the EU elites, Europe is - in the same way as globalisation - a positive sum game, a win-win situation in which everyone benefits, and is presented as progressive and with no alternative.

Gathering pace are not only criticism of (neo-) liberalism and of a fundamentalist orientation of the internal market, but also broader Euro-sceptic currents. This was demonstrated at the 2009 European elections, in which Euro-sceptics were among the winners. In this context, we cannot avoid the question: should the European trade unions be sparing with their criticism, and become uncritical yes-men and women, so as to avoid applause from the wrong side? Against the background of these tectonic shifts, accompanied by rulings of the German Constitutional Court limiting the European openness of the German Constitution, it is not surprising that the unions do not want to be the ones that snatch the coal from the fire. All the more so given the fact that European social democracy is - to put it diplomatically - keeping in the background and maintaining an eloquent silence on this sensitive issue, unable to bring itself to express a clear position apropos amendment of the Treaty ('Social Progress Protocol'), remaining ambiguously multi-facetted on the question of austerity policy and the wages issue, and vague with respect to the 'immigration' directives on single permit and seasonal workers and intra-corporate transfers.

It is true that in the union movement and on the political left in general we still find strong currents for which an immutable corpus of pro-
European convictions is still an article of faith (culminating at times in a naive ‘Europe-optimism’)26 and is considered part of the founding consensus of post-war European societies. This European-romantic trend considers ‘too much’ criticism of Europe as impermissible and attempts to block it. A certain degree of embellishment in the situation analysis is part of the daily diet of this current: ‘the macroeconomic dialogue is successful, as is social dialogue’27, ‘the original Lisbon Strategy was a social-democratic (read: good, worth supporting) project’, ‘the main thing is that the Social Commissioner is a socialist’, and for this reason criticism is out of place, etc., etc. In these circles a certain degree of ‘advertising for Europe’ is deemed legitimate. This position is explicable, because just as national actors tend to prefer a national framework, so European players sometimes develop an affinity with the European action framework. This affinity is institutionalised in the Brussels ‘Economic and Social Committee’, in which the national, but not the European social partners28 are present. Also for certain people, proximity to a Europe-romantic social democracy29 is sacrosanct and not open to question, regardless of this movement’s political tactics and direction at any point in time.

Trade union criticism of Europe has long been growing and has reached massive dimensions under the common ETUC roof. With the Services Directive, underestimated by the entire Commission of the time, the EU stood at a socio-political parting of the ways: further liberalisation and market domination were to be unleashed and to be used systematically to undermine existing fiscal, social and collective standards, as summed

27. Other assessments of the situation are only exceptionally deemed worthy of discussion, although put forth from serious quarters, like the recent comment that cross-sector social dialogue brings at best soft law - agreement without any binding nature, and can ‘safely be viewed as having reached the end of the road’, according to Florian Rödl, ‘Arbeitskämpfe um europäische Tarifverträge. Ein neues Handlungsfeld gewerkschaftlicher Europapolitik?’ In: Dieter Scholz et al. (ed.), ‘Europa sind wir’ – Gewerkschaftspolitik für ein anderes Europa’; Münster 2009, pp. 155-166, here: p. 158.
28. The concept of social partner has found its way into the treaties, though it would be more correct to speak of social parties, by analogy with the concept of negotiating parties.
29. European social democracy is not a monolithic block, because in addition to this European-romantic trend, that is strongly represented in particular in the European parties and the EP, there is a Europe-critical trend and a wider mainstream of Euro-political indifference (as in the trade union movement).
up in the phrase 'social dumping'. Within a short time of its publication the ETUC launched a broad-based campaign against the Services Directive - the first in its history against a single, though extremely far-reaching proposal for a directive from the Commission - bringing its extensive European-coordinated campaign to a successful conclusion with a mass rally in front of the European Parliament in Strasbourg on the eve of the vote. This campaign took a central place in a forward defence of the social dimension. The ETUC was to follow an opposition strategy and played the role of socio-political corrective.\footnote{Wolfgang Kowalsky: 'The logic of the internal market versus social standards – from a defensive to an offensive', in: Otto Jacobi/Maria Jepsen/Berndt Keller/Manfred Weiss (eds.) (2007): Social Embedding and the Integration of Markets - An Opportunity for Transnational Trade Union Action or an Impossible Task? Düsseldorf: Hans-Böckler-Stiftung, p. 101-120.}

For and against Europe. To perform the balancing act of taking critical positions and yet not abandoning the project of European institutional unification calls for both intellectual and political expertise, and critical reflectivity. This can be an important strategy component in the future. Europe is no longer the fragile plant that could wither in the storm of criticism. We must take an offensive stand against the continuation of ‘business as usual’ in the midst of the worst crisis since the ‘30s. The threat is that of a redistribution of enormous scale, a further increase in unemployment and growing economic precariousness\footnote{Precariousness through slipping down into the low wage sector, or into atypical and precarious labour relationships.} for large swathes of the population, inevitably accompanied by deepening resentment.

Does European integration offer in the future the opportunity to defend the European social model or is the model is threatened by the economically-dominated process of integration? A few decades ago the answer would still have been clearly optimistic; today it now comes with many question marks attached. At the time of the Delors Commission, the unions recognised a heavy weighting of the social agenda. Meanwhile people are adopting a pragmatic relationship to the Commission, with only convinced Euro-romantics still viewing it as an ally. In trade union circles it has become difficult to draw up or put forward positive demands. As late as 2000 the ETUC organised a large demonstration under the slogan ‘For a real social Europe’ (‘Ensemble
pour une vraie Europe sociale’, 6.12.2000 in Nice) and a year later, ‘More Europe’ and ‘Europe - that’s us’ (13.12.2001 in Brussels). Since then the positive message has been replaced by negative slogans such as ‘Stop Bolkestein’ (19.3.2005 in Brussels), or ‘No to austerity’ (29.9.2010 in Brussels). The view that European integration and social progress run in parallel guided trade union action for a long time, especially in the days of ETUC General Secretary Emilio Gabaglio from the seventh ETUC Congress in 1991 to the Prague Congress in 2003. Since then, the trends have reversed: the forward movement of Europeanization such as the mincing steps towards Economic Governance in the form of Europe-wide austerity policy or the latest CJEU judgments run counter to concepts of social progress. This analysis is not shared by many protagonists of the present time and is moreover deemed politically incorrect by many Euro-romantics.

In preparing the 12th ETUC Congress in 2011, for the first time a position paper entitled ‘For another Europe’ was proposed – an indication of the degree to which alienation against the official European project had progressed. A demonstration called by the ETUC in Brussels on 24.3.2011 was directed against the current Europe, calling for ‘another Europe’.32 Bad experiences with the Commission, which is visibly seeking to meet the demand of BusinessEurope for a social moratorium,33 are stifling any hope of improvement. The most recent Social Commissioners have been a disappointment for many, especially the unambitious Vladimír Spidla, but also his successor, László Andor. In recent years the experience with the European Parliament has been better, particularly with the Services Directive (2006) and the Working Time Directive (2009), but because of its monopoly of initiative, the Commission remains a central, and in many respects unavoidable player. Recently, the EP has moved closer to the Commission’s position and has not taken account of union demands (for example in the migration issue, voted on 24.3.2011, in the matter of

32. ‘La FGTB est pour l’Europe, mais une autre Europe que celle qu’on nous prépare’: www.fgtb.be
33. ‘We are calling for a moratorium until progress on implementing existing rules is made on the EU’s competitiveness agenda,’ so Thérèse de Liedekerke, the director of UNICE’s social directorate (European Voice, 23.9.2004: ‘Freeze social laws, UNICE tells Commission’); UNICE Press release 9 September 2004: Policy priority: ‘Improve the functioning of labour markets: call for a moratorium on social legislation that imposes additional constraints on companies’. 
unions for a change of course in Europe

the Treaty amendment, voted on 24.3.2011, in which no political party systematically supported the ETUC line).

The number of voices is growing that are calling for a radical change, a change of course. ‘Another Europe’ became the banner and brand mark of EU-critical movements of the left gathered round the European Social Forums, the globalisation-critical ATTAC network, the French Human Rights League, Trotskyist and Maoist parties, unemployment initiatives and other organisations, in order to maintain a distance from ‘official’ Europe - embodied by the Commission, Parliament, Council - and to keep open the possibility of a real alternative to Europe. From this condensed perspective, the ‘No’ to the 2005 draft constitution served as proof of the possibility of ‘another Europe’ and was intended as a clear warning to the ‘rulers’. This view was not shared by the unions.

‘Criticism of Europe’ out of concern for Europe. The situation has worsened since the recent series of CJEU judgements and the European reaction to the financial crisis. If unions uncritically welcome steps towards Europeanization regardless of this real context, they are in danger of alienating themselves from their own membership. Europeanization was long considered a progressive ideal to be strived for. From this logic, it made sense for Europeanization measures to be considered as small steps towards social progress. This idea continues to be represented only by the very Euro-romantic, in the union landscape especially by the French CFDT and Nordic trade unions.

Trade union positions range from overt Euro-scepticism in some sectoral trade unions (civil service, construction,...) to large-scale indifference to affirmative support for certain European organisations which for more than a decade now have incorporated increasingly critical voices in their positions. Even so trade unionists reject certain discourses - nationalist rhetoric in general and the net contributor debate in particular - and uphold ‘European solidarity’, something that is increasingly fading in the discourse of the German elite (as in that of the Commission in the ‘Work Programme 2011’ or ‘EU 2020’).

In this situation it is totally legitimate for the unions to express their criticism more openly and aggressively put forward their counter-proposals. A softly-softly approach is no longer what is required: Euro-criticism has to go on the offensive. It needs to press for a rapid change
in Commission behaviour. It is important that Commission understand that greater restraint in the field of market integration could paradoxically produce more political integration, while too much emphasis on competitiveness and internal market rules is increasingly endangering the political integration project. \(^{34}\)

How can things go from here? Europe has always been a project of forerunners and elites, but nonetheless supported by youthful élan (‘tearing down the border fences ...’) and by ‘permissive consensus’ in the general population, not least from workers. In the 70s it was fashionable to criticise the European institutions as bureaucratic and technocratic institutions. And like a self-fulfilling prophecy this characteristic can today no longer be denied (see the latest Eurobarometer surveys on how the EU is viewed by its citizens). Is it because of this dual trend of de-politicisation and bureaucratisation that the social responsiveness of the Commission is diminishing? Or are political reasons decisive? What is the picture?

1. Financial crisis and dictated cost savings – the end of social Europe?

1.1 The financial crisis

The financial system, rendered dysfunctional by excessive liberalisation, produced in 2007-2009 a severe global financial and economic crisis, the worst since 1929. This financial crisis led to a sharp increase in lay-offs, plummeting recruiting and in this way to higher unemployment, which is continuing into 2010-11. In September 2010 the unemployment rate in the Eurozone passed for the first time above the 10 per cent mark.\(^{35}\) The crisis has made 34 million people redundant worldwide since 2007. In Germany alone, three years' production have been lost, while Greece is in recession. Unemployment has reached a new high of over 210 million people, or 7\% of the active world.


population.\textsuperscript{36} Surprisingly, three-quarters of this increase in unemployment has taken place in developed countries, hitting particularly hard the U.S. and, in Europe, Spain, whereas in Germany or Norway, the unemployment rate has hardly changed. Youth unemployment stands even higher than general unemployment, at 13% or 81 million, rising in France from 20% to 25%, and in Spain doubling from 20% to 40%. In Europe there are 23 million unemployed in 2011 - an increase of 46% or 7.3 million since March 2008.

The consequences are long-lasting and can be life-long among young workers unable to find a first job. The Damocles sword of ‘jobless growth’ now hovers over Europe and this growth without new jobs is in part already reality. Ideological blinkers so far prevent the Commission, the ECB and the Council of Finance Ministers from recognising that austerity is no way out, but rather exacerbates the crisis. The aim of the International Labour Organisation (ILO), re-established in May 1944, as stated in the Declaration of Philadelphia, to achieve full employment and a rising standard of living, seems a distant memory. The lessons of the Great Depression of the ’30s are falling on deaf ears in the Great Recession of 2007-2011.

Since May 2009 the ETUC’s proposal for a European social ‘new deal’\textsuperscript{37} has been on the table. This includes several elements. The first of these is a European investment programme. This needs to be coordinated and not targeted at premature withdrawal before unemployment has peaked. Second, effective regulation of the activity of financial institutions, including banks, private equity and hedge funds: ‘never again’ should greed and speculation be allowed to cause a recession. Third, strengthening employees’ rights through the adoption of the Social Progress Protocol and a revision of the Posting of Workers Directive (PWD) to correct the recent CJEU series and reassert fundamental rights. Furthermore, lessons should be drawn from the European Coal and Steel Community (ECSC), with the setting up of a


committee to oversee the restructuring of the automotive industry, with equal representation of employers and trade unions as in the old ECSC, which helped pave the smooth transitions. Finally, Europe needs to move towards a European social union with the coordination of tax policies, a fair deal on working hours, better protection for precarious workers, a new European industrial policy, a fair and expeditious transition to a low carbon economy and new initiatives on the equal footing and promotion of public services. The right to collective bargaining must be protected by a new legal framework for collective bargaining systems, which could be complemented by a framework law for workplace democracy and an annual European conference on labour standards.

EU Savings Commissioners for orthodoxy plus austerity. But official Europe took a different course. Considerable pressure was built up to urge all Member States to adopt a streamlined and brutal austerity policy, as if the financial crisis were over. At the same time, deregulation of labour markets is being called for. Democratically elected governments in Greece and elsewhere are being forced to enforce a policy that threatens the recovery, jobs and social Europe. Austerity started in Greece and overran like a tsunami Portugal, Spain, Italy, France, Germany, Romania, Latvia, Iceland, Great Britain, that takes top spot with a brutal austerity programme in the amount of 93 billion euros and the reduction of 490,000 jobs in the public service, after Gordon Brown had supported the banks with over 100 billion. Greece served as a social laboratory, with the packages of measures for the austerity countries always pointing in the one direction: pay cuts in the civil service, raising of the retirement age, extending the contribution period, cuts in social budgets.

The relationship between the bank bailout and the subsequent explosion of budget deficits is made light of and denied. There is a danger of sliding into recession with permanent deflation in the peripheral countries: the savings policy is reducing domestic demand and setting in motion a

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38. Instead of this the Commission has put its money on high level groups. The ‘CARS 21’ group met for the first time on 10 November 2010. It has called into being four working sub-groups, each of which will prepare a report by 2012.
downward spiral with anaemic growth of between 0 and 2 per cent. Obama and Krugman warned in unison against the over-hasty withdrawal of economic stimuli, as an early exit strategy would repeat the mistakes of the past, associated with the names of Hoover and Brüning. The austerity measures exacerbate the imbalances between those Member States which can export themselves out of the morass of the financial crisis and those whose industrial fabric is already seriously thinned and exhausted.

Criticism of globalisation and anti-protectionism. The European trade unions have in general refrained from either demonising or trivialising the phenomenon of globalisation. But official Europe hung on to an uncritical globalisation theory and insisted on a whitewash. Its proponents refused to hear any arguments against the excesses of globalisation. Representatives of the political class, in unison from right to left, surpassed themselves with the knee-jerk assertion that globalisation is inevitable, that protectionism is of the devil and that ‘more Europe’ is the only solution. Since the financial crisis, and with the rapid increase in income inequality and unemployment, the transformation of Economic Governance into a general austerity policy has been raising more questions than ever before. The issue of equitable distribution and fairness is conjured away. None of the defenders of the fiction that the ‘Lisbon strategy’ will of itself, i.e. without a European industrial policy, lead to full employment, was publicly ready to correct his or her irritating error. Many convinced Europeans have migrated to the institutions and many of them now live high-profile lives as management experts in the protected world of the senior bureaucracy.

No wonder that, in the wake of the financial crisis, the ‘socialization of losses’ running into billions was defended as irrefutable, without weighing up the social costs, and according to the classic maxim of ‘privatisation of profits’. The banks have long since again become winners from the crisis, benefiting from the high yields on government bonds of the risk countries and taking no risks, because the rescue ‘umbrella’ guarantees against this. When talk turns to public services, or the broader challenge of reversing the total commodification of the social area and the rolling back of the market, the Commission is at a loss for answers and moves only in response to immense public pressure.
Globalisation euphoria. Who is calling for a countervailing power against the St. Vitus' dance of globalisation, deregulation and privatisation? It is politically correct to speak of the losers and winners from modernisation, but not of the losers and winners from globalisation. One reason may be that the financial industry and banks have garnered the highest gains from globalisation and have at the same time developed the most deadly weapons of destruction, with the result that in the financial crisis the whole shop nearly collapsed round their ears. If this fact were to be openly acknowledged, it would be more difficult to simply taboo the issues of social justice, distributive injustice and fairness. The rise of 'modern living conditions' such as unemployment, working poor, the low-paid sector and precarious employment is not regarded as a phenomenon of proletarianisation, as the result of increasing distributive injustice, but as just one aspect of modernisation and globalisation, offset by many good aspects. If the affected layers turn their backs on social democracy and turn to the self-appointed advocates for the losers-out of modernisation and resort to protest parties, is this turning away not ultimately due to the fact that established parties react to these phenomena helplessly or with denial? The agenda-setting is left to right-wing populists that address the downsides of globalisation and Europeanisation and call stridently for a political accountability which it is no longer possible to pin down. The usual pro-globalisation reflex of drawing a cordon sanitaire around the protest movement and ruling out cooperation is not enough. This mishmash has led in many areas of Europe to an upsurge in right-wing populist parties. The costs or negative aspects of globalisation - financial market chaos, growing instability, unrest, disorder, imbalance, increase in the number of socially marginalised people in the highly developed industrial countries, etc. - must no longer be taboo, but taken into account. The indication, recited mantra-like, that globalisation is an old phenomenon, that there is no alternative and that a return to protectionism of the '30s would be disastrous, does not advance the discussion. There is no denying that globalisation accelerates centrifugal forces and weakens the forces holding society together. Integration is always accompanied by disintegration processes, with insufficient light shed on the dangers of social disintegration and its negative consequences.

Protectionism - demonisation. The debate about protectionism has taken on quasi-religious, theological traits, and is not being conducted
in economic terms. Anyone who doubts that neo-liberal, largely unregulated globalisation benefits everyone and does not require any significant sacrifice is excluded from the politically correct debate and becomes taboo. In trade union circles, criticism of globalisation was long held to be politically incorrect. Ultimately, it was to be believed, globalisation, based on free trade, would serve the increase of prosperity. Anyone who spoke up for compliance with environmental norms or reciprocity had to reckon with the accusation of protectionism. Time has shown that these social differences and distributional injustice have increased rapidly, even within the EU and in Germany. For this reason it is time to rethink. The crude distinction between free trade on the one hand and protectionism on the other never reflected reality, in which many shades and mixing ratios co-existed. There is no reason why unregulated financial markets should be considered as compatible with globalisation, while respect of the environment and social standards immediately brings down suspicion of protectionism on their proponents. Chinese companies are buying up European companies to gain access to key technologies, while China is demanding technology transfer from European companies going to China. Reciprocity would need to include such aspects. Less naivety with respect to ‘free trade’ would also be welcome in the EU institutions. No one is calling for the reintroduction of protectionism, and yet people are feeling constantly constrained to insist they do not have it in mind. Protectionism does not mean closing the borders, but it does represent a negotiating tool for reaching agreements with the new emerging powers of China, India and Brazil. It would be more appropriate to talk about fair trade. *Fair trade* instead of *free trade* would be the new slogan.

*Globalisation gains and losses between ideology and reality.* The idea appears prevalent in certain circles that Europe’s scope for action has largely dissolved and that Europe has become a powerless player in the vortex of cosmopolitan globalisation, having almost to go begging for international agreements. The globalisation of the banking and finance industry was made possible by political choices, unaccompanied by a globalisation of regulation and regulatory institutions and enforcement tools. Modern information technologies and political initiatives contributed to numerous innovations in financial instruments that were so opaque that neither politicians nor bank managers had a clear overview of how the system worked. Governments could have avoided...
coming to the rescue only on pain of the collapse of their economies. Midway through 2009 the conservative FAZ calculated the 'damage by bank rescue' at € 1.8 trillion or about 14% of annual GDP, while the finance ministers at the time had already totted up the agreed rescue packages to 3.7 trillion euros, or almost 32% of GDP. A study by the European Parliament, entitled 'The Cost of Non-Europe in the Crisis' (May 2010) calculated the cost of lack of prevention, continued fragmentation and poor coordination at a 'lost decade': According to this study, only in 2017 will the economy have recovered from the financial turmoil that began in 2007. With a workforce of around 250 million in 2020, the crisis will have cost 10 million jobs compared to a no-crisis scenario, a loss that cannot be absorbed before 2025, according to a CEDEFOP study.

'My name is Bond. Eurobond.' Eurobonds to finance European infrastructure projects were proposed by Jacques Delors back in 1993, by Guy Verhofstadt in 2009, and a year later Barroso no longer excluded such a possibility. Jean-Claude Juncker took up this demand at the summit in December 2010. On 25 January 2011 the rescue fund named 'European Financial Stability Facility' (EFSF), formed to support Ireland, had in fifteen minutes gathered 5 billion euros, being nine times oversubscribed. The difference with the original Eurobond idea lay in the fact that these amounts are not intended for future investment, but for the repayment of public debt.

1.2 From 'Lisbon Strategy' to 'EU 2020'

Barroso II in 2010 imposed Lisbon II under the title 'EU 2020' - with largely the same goals. The Lisbon summit in March 2000 adopted the Lisbon strategy with ambitious targets for 2010. These were missed. Employment in the EU27 has fallen from 65.4% before the crisis (2007)
to 64.6% in 2009. Employment in the 55 to 64 years bracket stood in 2009 at 46%, at 60.6% in the USA and at 65.5% in Japan. The proportion of part-time employment is 18.1%. In Sweden it is 26%, in Germany 25.4%, in Britain 25%, and the share of temporary employment in the EU27 was 13.5% in 2009, in Poland 26.5%, Spain 25.4% and Portugal 22%.44

Self-criticism? No, thank you! The Commission refuses to admit the failure of the Lisbon strategy. Which means that no lessons can be learned. Hidden in the document EU2020 is the basic direction of continuing the liberalisation policy, with fiscal consolidation and shifting the costs of education, health, water and waste disposal more heavily onto the private sector. A paradigm shift is what should really have been called for. Even the regulation of the financial sector - Marx spoke less neutrally of ‘financial aristocracy’ - has no prominent place in the document. By contrast, the ‘better regulation’ agenda (now recast as ‘smart regulation’) is continuing, aimed at limiting the regulatory capacities of public authorities,45 although regulatory failure was one reason for the financial crisis and it is time for a rethinking of the relationship between market and state. Without a fundamental reflection on these issues, the agenda is a house built on sand. The Agenda 2020 leaves public services largely out of account, although the ‘Mapping’ study shows that they provide more than 25% of GDP and 30% of jobs.

The objectives of the previous Lisbon strategy are being simply taken over and continued into the future: 3% for research, 75% employment rate, etc. French labour rights expert Alain Supiot feels himself justifiably reminded of the Gosplan, the central element of Soviet planning, which prescribed the goals in the Soviet Union.46 European bureaucracy is not immune to mistakes and Kafkaesque approaches. For some time now, public research expenditure in the U.S., Japan and Europe has run at

about equal levels - with the European deficit in total expenditure being due to low private investment. The question of how this should be increased is not raised, let alone answered. The growth in employment rates up to the outbreak of the financial crisis is cited as evidence of the wisdom of the Lisbon strategy. This increase in the employment rate before the financial crisis, however, was almost entirely attributable to an increase in atypical and precarious working conditions.\textsuperscript{47} But this problem of the growing low-wage sector and the increase of precarious employment is swept under the table, with no consideration of job quality. Adequate measures against fictitious self-employment and tax competition between Member States need to be discussed.

The unions are taking a critical view of the debate initiated by the Commission on 'Europe 2020', which is enlightening in many respects. Lessons from the crisis one looks for here in vain. Instead, the Commission places itself rigidly on the side of those who propose to rigorously apply the stability pact and restore public finances - without raising the question of how the causers of the crisis are to be made to pay for it, and how to combat further rising employment. The conflict of objectives and the underlying dilemma, of on the one hand forcing the public sector into fiscal consolidation and austerity and on the other hand raising funds to stimulate the economy and combat climate change, is not reflected.

Nicholas Stern, former chief economist of the World Bank, concludes in his report that 1% of gross national product is needed to halt climate change. The difficulties of the transition to a low carbon industry, calling for investment of the order of 1% of GDP requires, are being soft-talked by the Commission. The question of social inequality is reduced to poverty alleviation, which is efficient only by extensive redistribution measures, but is being tackled by the Commission through 'good practice' and establishing a 'platform'. The issue of the primacy being given to fundamental economic freedoms over social rights is being pushed to one side. The Commission is inviting citizens to adopt this 'EU 2020 agenda' as its own and to help work towards it, but 'ownership' can come into being only through broad-based public discussion, which the Commission in turn avoids - its timetable does not even make room for a broad debate with reporting in the European

\textsuperscript{47} Philippe Pochet: 'What’s wrong with EU2020?', ETUI Policy Brief 2/2010, 3.
Parliament. This leaves 'EU 2020' as an issue of Brussels circles. The cosmetic use of marketing jargon ('smart' growth, 'flagship' initiative ...) does not bring the strategy any closer to citizens, but brings them into the proximity of propaganda and European newspeak.

*Globalisation of labour.* The economic, social, political and ideological balance of power of the post-war period has shifted dramatically in the wake of the financial crisis and has pushed unions onto the defensive. Even before the financial crisis, through the adoption of capitalist economic practices in Russia and China and the end of the auto-centric, local preference experiments in emerging countries like Brazil and India, workers of the Western Hemisphere were set in competition with 1.5 billion workers from these BRIC countries. The economic centre of gravity is shifting to Asia. In parallel, economic liberalism is marching back in. The right has organised an energetic 'aggiornamento', in reaction to which social democracy has been searching for 'new paths' (including 'New Labour' and the 'Blair-Schröder paper', etc.) and has been ready to accept a deregulation of the goods, services, capital and labour markets and a reconfiguration of core functions of the state.

At the beginning of the new millennium the consequences of this policy started to become visible in a degradation of public services, increasing insecurity, cuts in social security systems, stagnation and the lower purchasing power of wage earners. Numerous social democratic governments were voted out of office. The new social democracy had entered the lists to regulate and master globalisation, but the globalised financial world succeeded in hamstrung governments' regulatory capacity and dramatically changing the rules of the game. Core social standards such as solidarity, justice and fairness were pushed aside in the maelstrom of unregulated globalisation, threatening social cohesion. Neo-social democratic strategies remained essentially nationally oriented, with only the beginnings of Europeanisation or genuine European cooperation. The Lisbon strategy of 2000 was the European placebo, which was to replace the missing social democratic European project. But its failure was predictable, given the lack of instruments, even if the death blow came only with the financial crisis.

Studiously overlooked was the reverse side of the European Council of Lisbon, which decided the Lisbon Strategy, but also the 'better regulation agenda', the consequences of which outweighed these of Lisbon strategy itself. The ambitious goals such as full employment or research expenditure of 3% in order to catch up with the U.S. and Japan were not achieved.

1.3. Premature abandonment of economic programmes

Growth that is not fair is not sustainable - that is the lesson of the crisis, said ILO Director-General Juan Somavia. Whether globalisation is positive overall is an open question\(^49\), but the collateral damage is significant, and it must be channelled in the right direction. This collateral damage includes the pressure on natural resources and the climate, as well as the rapid rise of social inequalities and income disparities in the EU, and not least the hypertrophy of the financial industry.

\textit{A new stability pact to reduce unemployment?} According to the Commission’s proposals of 29 September 2010, the new stability pact would contain preventive and automatic sanctions, with only finance ministers having any say in the matter. Once a Member State exceeds the deficit criterion of 3% or its national debt exceeds 60%, the penalty system will automatically kick in. Criticism of this 'new inquisition' of public finances was of course not slow in coming, as the rigour of the new stability rules is evocative of the Inquisition.\(^50\) Only two of the 27 Member States - Sweden and Estonia - are in 2011 in a position to meet the draconian standards...

A whole range of penalties and sanctions is provided for, from deposits of 0.2% of GDP to annual penalty payments of 0.1% of GDP, which can be stopped only by a qualified majority. In addition, Member States can

\(^{49}\) Michael Sommer, ‘Wo steht die internationale Gewerkschaftsbewegung heute?’ in: IPG 2, 2011, p. 21, the ITUC president answers with disarming openness not from the ITUC viewpoint, but from a German perspective: Germany has specific interests - ‘not least we confess ourselves in every second sentence in favour of globalisation because with our strong export orientation we profit strongly from this.’

\(^{50}\) John Monks, L’Agefi hebdo, 7-13.10.2010, S. 16.
find their access to European social, regional and cohesion funds reduced or blocked. Economic and Monetary Affairs Commissioner Olli Rehn calls, in addition to making sanctions automatic, to a commitment to accelerate reforms: pension reform, reform of collective bargaining systems, reducing protection against dismissal as part of the flexicurity and better regulation agenda. The Commission is prescribing compulsory pro-cyclical measures and is forcing Member States to undertake a coordinated reduction in domestic demand. The effect is to pass on the costs of the crisis to employees. Pushed out of sight is the fact that public finances are the victims of the crisis and not the cause: it is the debt of the private sector and not that of the public sector that exploded, thanks to bad investment, including in the housing market. This paved the path to depression and to wage cuts, which serve to organise deflation to promote competitiveness (‘competitive deflation’), i.e. wages are to take over the role of currency devaluation. The ETUC characterised the new Commission policy as ‘anti-labour, anti-state, anti-fiscal policy’.  

As a ‘new momentum’ for strengthening flexicurity and as a solution to the modernisation of the labour market, especially for the ‘reduction of labour market segmentation’, the Commission is recommending a ‘decentralization of collective bargaining or revision of existing contractual arrangements’ and an ‘extension’ of ‘open-ended contracts with a sufficiently long probation period and a gradual increase of protection rights’, which would ‘aim at reducing the existing divisions between those holding temporary and permanent contracts’. In other words, a worker does not have the same rights from day one, but only earns them over time. More paternalistic than that you cannot get! Decentralization of wage setting leads to wage differentiation not only between industries but also between individual enterprises. Consistent with this approach is the idea of wage moderation, of collective bargaining autonomy only within the framework of the productivity increase determined by the Commission, with no inflation compensation.

Europe coordinated in 2010 a rapid entry into austerity. First, a fragile recovery was evident in some countries. The youth unemployment rate

52. ‘Agenda für neue Kompetenzen und neue Beschäftigungsmöglichkeiten’, 23.11.2010, p. 5
was at 15% before the crisis and has jumped to 20% in 2010 to 40% in Spain, Estonia and Latvia, 30% in Italy, 25% in France and Sweden. The generation of 15 to 24 year olds is particularly affected - the number of unemployed young people has risen between 2007 and 2009 by 7.8 million, compared with an annual increase of just 191,000 a year in the decade 1996-2006 (source: ILO). The unemployment rate in June 2010 was 17.3% in Lithuania, 19% in Estonia, 20% in Latvia and Spain, compared with just at 4 to 5% in Austria, the Netherlands and Luxembourg. In Greece it rose to over 12% and the IMF is forecasting a rise to 15%, while Greek experts are putting their money on 20%. At particular risk are school leavers and young workers in the service sector and the civil service. One consequence of the financial crisis is that Europe is in the process of drifting apart and splitting into a group of high unemployment countries such as Spain and the Baltic States and a group of low unemployment countries like Germany, Austria and the Netherlands. This polarization is increasing, as are the unequal distribution of income, which increases the risk of poverty and the widening of wage gaps. Since the financial crisis we have been facing a divided Europe - poor areas, that are becoming pauperised, and richer areas that are scarcely feeling the crisis, if at all. 8.4% of workers in Europe are 'working poor', and in Spain and Greece their number is increasing. This orthodox obsession makes recovery more difficult, for example, for Spain, which had a balanced budget before the crisis. Orthodox economists defend the austerity measures by pointing to market pressure, to the nervousness of financial markets (thereby involuntarily confirming the fetishist character of the markets), and promise themselves growth from the austerity policy, spurred by the low euro rate. What they fail to see is that only 15% of GDP in the euro countries is derived from exports, 85% is European domestic demand (in Germany the ratio is 35% to 65%). The euro needs to significantly reduce in value relative to the dollar\textsuperscript{53} for 'EU-external' exports to stimulate growth in such a situation. In 2000, imports and exports between Germany and the other euro countries were in balance, in

\textsuperscript{53} In the initial years of its existence, one euro cost around 0.85 dollars. In 2008 it rose to over 1.55, whereas on a purchasing power parity basis it ought to fluctuate around 1.15-1.20.
recent years the export surplus has risen to more than 100 billion euros, while German domestic demand has stagnated.

1.4 Exports, imports and wages

Before the introduction of the euro, the instruments of revaluation and devaluation served to offset growing imbalances. Their disappearance left a gap. A country that pursues a policy of export-led growth pushes other countries into deficit. When simultaneously domestic demand is dampened too much by reducing labour costs and cutting back on social welfare, consumption falls as part of GDP. Austerity policy and restrictive fiscal and budgetary policy reduce domestic demand further. As a result, imports reduce and the euro is weakened.

*The other side of the deficit coin*. Deficits on one side go hand in hand with surpluses on the other. Exports and imports have to add up globally to zero. Keynes pointed out that the surplus countries are just as responsible for imbalances as are deficit countries, so there is a co-responsibility and it would be irresponsible to leave Greece alone with its financial problems. The debt is a symptom of a crisis, not the cause. Debt rose sharply because the rescue operations – which, incidentally, had the side effect of subsequently showing the previous consolidation measures to have been meaningless – were so costly. Most of the debt of Spain, Greece, Portugal, Italy – no less than 2 trillion dollars – is held by the banks of Germany, France and Great Britain.54 For a long time the ECB kept interest rates at a historically low level, still too high for Germany and too low for countries such as Spain, Portugal, Italy and Ireland, in which the engine was running hot. Countries outside the Euro-group seem less a target for loss of trust by the financial markets, despite having higher debt levels, because they have their own currency.

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54. ‘German banks have a $200bn exposure to Spain, $175bn to Ireland, and $50bn, respectively, to Greece and Portugal, making a total exposure to the four countries of almost $500bn, more than 20% of German GDP. French banks have a $250bn exposure to Spain, $80bn to Ireland, $100bn to Greece, and $50bn to Portugal, also almost $500bn in exposures, but more than 25% of French GDP. Total foreign bank exposures are well over $1100bn to Spain and $800bn to Ireland. Add the four countries together, and you arrive at more than $2 trillion.’ (Wolfgang München, ‘Why this crisis will go all the way’, Eurointelligence, 17.06.2010)
**Bringing exports and imports into balance.** The German economic model relies on export surpluses, but trade imbalances necessarily imply the creation of debt positions in the deficit countries. Germany has pursued a policy of export promotion and, by a series of moderate wage settlements and the resultant export surpluses, improved its position at the expense of its European neighbours. The downside of this has been the decreased competitiveness of southern European euro countries, without the devaluation option as an adaptation instrument. Out of this dilemma arises the growing displeasure with German export surpluses on the one hand and the penal component in the rescue package for Greece on the other. Initially, the G20 did not address the issue of global economic imbalances, only later did the U.S. current account deficit and the surpluses of China and Germany come into focus.

**Wage dumping, wage moderation, wage formulas.** In proposing implicit wage dumping as a recipe for improving competitiveness, the Commission remains the prisoner of the ideology that lower wages create more jobs. If all Member States take this path, it opens the door to deflation. More slowly rising or even falling wages mean directly lower domestic demand and lower imports. The savings policy mandated by the Commission in Greece will exacerbate the recession, just as in Ireland and the Baltic States. If some countries gain permanent market shares by wage dumping, other countries will find themselves condemned to a never-ending position of economic underdog. The crisis in Greece was a gift for Germany’s export industry, as the euro rate fell sharply, leading to a favourable market for German exporters. Is it a coincidence that the four major recipients of structural funds - Ireland, Spain, Portugal, Greece - are precisely those countries that, thanks to the financial crisis, are threatening to choke on their high debt levels?

Wage moderation has helped divide the euro countries into a high debt region and a high savings region. Heiner Flassbeck, chief economist at the United Nations Organisation for Trade and Development UNCTAD, and Friederike Spiecker try to answer the question: ‘Do the EMU’s objectives correspond rather to constant or rising unit labour costs? To this there is a surprisingly clear answer. The EMU has an inflation target of slightly under two per cent a year. Such an inflation target can support unit labour cost growth of slightly under two per cent, say 1.9 per cent. If we cumulate this over ten years we arrive, according to Adam Riese, to an almost 21 per cent increase. 21 per cent, then, is the...
standard which everyone ought to have kept to. Greece lands at 26, Germany at 8; the EMU without Germany arrives at 27 per cent, the EMU, including Germany, is right on target with 20.5. Who has lived more contrary to the rules of the Treaty, the one who has lived five percentage points above his means, or the one who has lived thirteen per cent points under it? On the other hand, the Commission insists that debts are the expression of a lack of competitiveness. Barroso declared on 23 June 2010 that sustainable growth is possible only once public finances are in order. He is seeking to legitimize an 'ex-ante budget control' and a 'sanctions regime'; and considers 'bubbles' as an indicator of lack of competitiveness.

In other words, the EU is now interfering in the field of competence of the Member States and monitoring expenditure on social security, health, pensions, education and training, which until now have lain outside the EU's competencies.

IG Metall is refusing to allow collective bargaining and wage policy to bear the full brunt of the correction of macroeconomic imbalances, as this would totally overwhelm it. Several working networks are reviewing the operation of the wage coordination rule of the European Metalworkers Federation (EMF). Taking the ECB inflation target as an indicator poses all sorts of problems. Mechanistic control by taking over economic principles set from outside is something IG Metall does not accept. The application of the inflation target as a benchmark for wage increases in the deficit countries leads to lower wages and further weakens purchasing power, and can at worst unleash a deflation which will further exacerbate existing imbalances. It is wrong to assume that there is only one adjustment screw.

The European Council of 17 June 2010 suggested that failure to adhere to recommendations should be threatened not only with 'peer pressure', but with financial penalties and the withdrawal of voting rights. The whole is reminiscent of medieval doctors, who first bled their patients, so putting them in a worse state. This new penalty regime would create a new legitimacy deficit for the EU and raises many questions: is, for

55. FTD, 11.12.2009
56. Speech 10/334.
example, standardization of the retirement age a goal worth pursuing? This age is related to the contribution period, which is generally 40 years, varying life expectancy, the type of work and other factors. The current discussion on the shift of retirement age is largely ideological; the fact is that many older workers no longer work and their employment rate is well below 50%.

The Commission is continuing its policy of flexibilisation, calling for extreme wage flexibility as an alternative to the no longer possible devaluation and greater flexibility of supposedly rigidified labour markets. If now 'competitive deflation' is defended and recommended by the ECB, then the way is clear to trigger a downward trend in nominal wages and prices. This change in approach is a paradox: price stability has been recommended for decades, now falling prices are seen as beneficial in order to improve competitiveness. This strategy is doomed to failure because falling wages and prices destroy domestic demand and undermine confidence: Why buy now if the same product will be cheaper next week?

**Fragmentation of the European labour market.** The single market is becoming transformed into a deregulation regime for the European labour market. This is creating a two or three-tier labour market - an official labour market, which is largely covered by labour law and collective agreements, a second 'lightly regulated' labour market consisting mainly of precarious employment conditions and which can be complemented at will with 'circular migration', and finally a black market without any regulation at all, a labour army in the shadows. The shadow economy in Bulgaria, for example, represents 40 per cent of gross domestic product. Generally we are seeing an increasing trend of relying on temporary workers, who are generally cheaper than regular workers. The use of temporary labour offers a wage discount of 15-25%. In Sweden it is 44%. The principle of 'equal pay for equal work' seems no longer to apply anywhere, any time. The use of temporary employment has the effect of significantly reducing purchasing power, as temporary workers tend to consume less and save more. Added to this is the threat to those in work, now that borders are being opened to hire workers, especially skilled workers from abroad.

**New European wage policy.** In Germany, wage policy was used for years as an adjusting screw to improve competitiveness, creating EU-
A coordinated productivity-oriented wage policy, in which nominal wages are adjusted in line with the sum of national productivity growth and national inflation, would ensure that no country lives either above or below its own means. IG Metall acknowledges a European responsibility of German wage policy. It confirms that the German unit labour cost advantages have translated into a relative competitive price advantage in the euro area, because the export prices of other countries have increased compared with the rest of the euro area: Germany has undertaken a de facto depreciation against the other countries. The differences in the development of unit labour costs has brought competitive disadvantages to the deficit countries and brought Germany competitive advantages in export markets. It is precisely in Germany that domestic demand needs to be strengthened. After criticism from the mouth of the French Industry Minister Christine Lagarde, who called for an increase in German domestic demand, Jean-Claude Juncker went on to attest to ‘a failure of the German economy and the collective bargaining landscape’ and openly criticised the government for ‘wage and social dumping’. While German workers have enjoyed pay increases of 12 per cent since the start of Monetary Union in 1999, the corresponding figure in Luxembourg was 41 per cent. When inflation is factored in, Juncker said, the real income of German employees has deteriorated.

The massive reduction in public sector salaries was carried out in many countries in a pretty unilateral fashion, without respecting the autonomy of social partners. In countries such as Ireland, Greece, Portugal, Spain, Italy and Great Britain the state intervened, circumventing the collective bargaining systems, to freeze or reduce wages. The European Commission took over the argument that wage cuts in

60. Luxemburger Wort, 11.8.2010.
the public service are a tool for improving competitiveness. These wage cuts by unilateral state intervention in the wake of the crisis mark a turning point in the tradition of wage setting in the public sector. They represent no less than a paradigm shift, making 2010 an *annus horribilis* for the European trade union movement. As part of the austerity policy, cutting public service spending was even one of the major consolidation measures.

1.5 Fairness during and after the financial crisis

Economic orthodoxy has been stood on its head during the financial crisis. Youth unemployment has scarcely increased in countries like Germany and Norway which have strong unions and a long tradition of collective bargaining. The British Labour government opted against direct wage subsidies, which in Germany held the employment rate stable. The social legacy of the crisis will be medium and long term. The austerity policies exacerbate social inequalities and protect not those who are most at risk, but those who are already protected and prosperous. Social inequality was - according to the ILO - a root of the financial crisis, leading to growing indebtedness, especially in the U.S., and played a large part in causing the sub-prime crisis. In the past 30 years, the distribution of the national product between capital and labour has shifted in favour of capital. The accumulation of wealth at the top of society, the attacks on the trade unions and the erosion of the welfare state have made their contribution to greater inequality and greater instability. For this reason the fetish of austerity must be toppled from its pedestal.

*Unfair burden sharing.* When austerity is necessary, it is important that it should at least be equitably shared. The distribution of the load should be undertaken in such a way as not to damage social cohesion. But despite this, all savings programmes rely more on restraining spending than on increasing income. Sweden opted some time ago for a 50/50 ratio, that is 50% is recovered through taxes on the wealthy and better off, and 50% through public spending cuts. Meanwhile we see a

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different ratio - in the UK, for example, it is 80/20, or 80% cuts in public budgets, 20% additional revenue through taxes, and not always on those who can afford it, by hiking up value-added tax instead of income or corporate taxes. The impact of this unfair sharing of the burden on the employment situation is serious. A solution must be based on two principles: The principle that he that causes the financial crisis should pay needs to be honoured. A financial transaction tax should be a cornerstone of an equitable burden sharing. A form of eco-tax needs to furnish the means to combat climate change effectively. Both the carbon tax and the transaction tax are being attacked with the same argument of the threat of relocation: introducing such taxes is impossible, as either heavy industry or the financial industry will relocate... Google keeps its corporate tax rate at 2.4 percent (Bloomberg Businessweek, 21 October 2010).

Budget egoism versus budget solidarity. The Europe of the single currency needs a common budget worthy of the name. European budget solidarity is needed. Whereas in Italy, the North, to the accompaniment of much political groaning, transfers a portion of its wealth to the Mezzogiorno or West Germany to East Germany, there is no such solidarity in Europe. The premises of a common fiscal policy are not clear.

Policy union. A common political structure is needed to format the economy, with the introduction of a European fiscal system, for example in the form of a European financial transaction and an environmental tax. A start could be made by means of fiscal coordination, as called for by Mario Monti in his report and picked up by Barnier in his proposals for a 'Single Market Act'. The obsession with deficit reduction would need to make way for a discussion on sustainable ways out of the crisis and thinking about sustainable, employment-intensive future growth regimes. Only in this way can a solution be found for Member States that are left behind in any competitive thrust and can see a way out only through pressure on wages (like Trichet63) – such a state will become Europe’s pole of depression. And, if it has to file for bankruptcy, the euro will be threatened with disintegration. As the U.S. issues joint savings bonds,
so the EU must establish Eurobonds to finance investment and pay debts.64

**Applying the causer pays principle: Introduction of financial transaction and environmental taxes.** The financial crisis has displaced climate change from its number 1 position on the agenda. But the problems of climate change have not reduced for all this. On the contrary, one can argue that both the ecological and the economic crisis confront the capitalist system with its largest challenge yet. The concentration of CO₂ in the atmosphere is higher than ever before. It has risen, owing to the burning of fossil fuels, by 30% since the start of the industrial era. An energetic new start is urgently needed following the Copenhagen failure of 2009 and the only modest step forward in Cancun in December 2010. An eco-tax in the form of a carbon tax could, if introduced at European level, stimulate ecological innovations (e.g. in renewable energy), and alter the European industrial fabric in such a way that future investments will be diverted to less energy-consuming sectors that can stimulate sustainable growth. The price per tonne of carbon needs to increase over time and the revenue be targeted at reducing non-wage labour costs. The Commission energetically coordinates budgetary control, but there is no such coordination on the revenue side. This would require the termination of tax competition, an end to flat taxes (as in Ireland or Hungary: despite the crisis Ireland holds to the sacrosanct tiny corporation tax of 12.5%, Hungary to its flat tax of 16 %,...), closure of tax loopholes (which exist even within the euro area: right now French millionaires can avoid any wealth tax by moving their place of residence to Belgium...) as well as minimum rates for the wealthy and for corporate taxation.

**European financial transaction tax?** A financial transaction tax would send an important signal and help mitigate the brutality of the austerity measures. This tax can meet several objectives: First, more than € 200 billion would be mobilised. The tax rate can be variable, with complex opaque financial products being taxed more because of the higher systemic risks. In the event of market overheating the tax can be increased so as to develop a counter-cyclical effect. The tax can reduce

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64. Thus also after much hesitation Frank-Walter Steinmeier and Peer Steinbrück, in FT 15.12.2010, 11.
tax evasion and speculation. Brazil and India have used the information gathered through transaction taxation to combat tax evasion and China has formally proposed using transaction taxes to identify speculators. In addition, the information gathered in this way would enable the supervisory authorities to monitor risks better. Finally, the financial transaction tax would make trading for seconds and minutes only uneconomical. The financial industry will groan, and will put forward the propaganda argument that small savers are being fleeced - but it would be easy to exclude amounts of less than 50,000 euros from the tax or refund the tax on these amounts. Important areas for the regulation of financial markets include, apart from re-regulation, curbing speculation and the influence of rating agencies, as well as the introduction of a financial transactions tax. But deliberate procrastination by the European Commission and the Council has prevented rapid progress here.

1.6 The ‘Euro’ crisis

_Euro or not Euro – is that the question?_ The euro is the product of political voluntarism – it would never have seen the light of day without the decisive action of convinced politicians. National currency and monetary policy certainly number among Member States’ core competences, but despite this they agreed on the creation of the euro. From today’s perspective it was a birth defect to assume that a monetary union can function without political union, without any coordination of the 17 different economic, fiscal, labour market and wage policies of the euro group, that continue to exist, in not always in peaceful coexistence, but with many areas of friction. Actually, a lot of unfinished work remains to be done, but with no agreement among the protagonists as to direction and goals. There was no forward thinking, rather the crisis forced people to react. But even so the 750 billion rescue package put together over the weekend of 8-9 May 2010 shows that the political leaders are aware that the euro is more than a common

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Trade unions for a change of course in Europe – The end of a cosy relationship
currency – it is one of the EU’s flagship projects – and that an abandonment or withdrawal would not have left undamaged the joint development of Europe. Despite marked national self-interest, an edge-of-the abyss situation demonstrated that a solidarity mechanism exists in the euro area and a crash could be avoided. The hesitation and vacillation of European players and the German government has driven up the costs and has strengthened Euro-scepticism. Merkel failed to heed the fact that discussion on the possibility of excluding a country from the euro area already undermines the area’s stability. In the U.S., such a discussion would be unthinkable: there exists in the U.S. an automatic redistribution between the federal states, whereas such a mechanism does not exist in the EU; and many do not want it. Germany, the Netherlands, Austria and Finland are against a so-called ‘transfer union’, although the EU has always been within a certain framework, a community of solidarity.

Between fiscal dumping and fiscal union. No single country on its own has a chance against the financial markets, but greater financial solidarity between Member States could contribute to a solution before the crisis intensifies and the situation becomes uncontrollable. Flanking this, a coordinated fiscal policy is necessary, replacing the brutal austerity policy. A European agreement on a financial transaction tax would be possible. Whether in the field of climate change or that of financial market regulation, the international intergovernmental approach – both global and European – is becoming synonymous with paralysis and inaction. Until now it has proved impossible to agree on a harmonisation or coordination of fiscal policies, with the result that tax shelters (no property tax, for example) exist even within the euro area, and tax competition is actually promoted (or at least no effort is made to curb it), resulting in a mutual race to the bottom. An appropriate instrument against such fiscal dumping would be tax harmonisation, for example by agreeing on minimum corporate tax rates, higher taxation of high incomes and the introduction of a financial transaction tax, in short, the creation of a fiscal union. Another conceivable instrument would be the establishment of a European

67. It is no accident that the British trade union federation, the TUC, which also seeks to unionise City employees, regularly insists on not losing view of the global perspective, in most cases supported by Scandinavian trade unions, with their large pension funds.
financial compensation system - as it exists in federal states such as the U.S. (16% of GDP) and acts as an automatic stabilizer. The current EU budget (1% of GDP) does not permit such efficient financial compensation, which would also require amendments to the Treaty. As mentioned: a rapidly achievable first step in the direction of a strengthening of European solidarity would be Eurobonds, so that financial players can no longer exact additional profits from individual Member States.

It is also noteworthy that the financial markets act as if they had never brought the system almost to collapse - even opening a new ‘commodity markets’ casino. The contraction in domestic demand, combined with deflation, can trigger the same spiral as in the ‘30s. Wages cannot and should not therefore be the only adjustment instrument. Rather, fiscal and tax policies need to make their contribution. If not, Europe will soon be sitting on a powder keg.

Europe has thrown itself with new-found enthusiasm into coordinated austerity, which has already created social unrest in many parts of Europe. Citizens may well accept that savings measures are necessary, but they are furious that the financial sector, which is responsible for the misery, has got away scot free. Thanks to state guarantees and low interest rates, the financial sector is again making record profits, privatised in the form of rocketing bonuses, while states are required to continue to keep faltering banks above water and the losses are thus socialised. Even the FAZ demanded: ‘Never again should banks be allowed to blackmail States, never again should the cost of rescuing the financial system be passed on to taxpayers, while previous and subsequent profits are collected into their private purses by a small number of individuals.’

Citizens are increasingly concerned at the ability and willingness of their rulers to make the financial sector contribute to the cost of repairing the damage. The reform of financial markets has fallen short of expectations in scientific, political and public circles. Worse: the new regulations are disappointing. The threats of financial market experts and their horror scenarios of bottlenecks in the granting of credit, job losses and the stalling of the economy have been extremely effective and have contributed to weakening the proposed regulatory intentions.

68. 23.1.2010; Editorial, ‘Im Kern der Krise’, Holger Steltzner.
1.7 Anti-European populism

The worsening social situation, which has led to widespread protests and the rise of right-wing and/or nationalist parties in Hungary, Austria, France, Italy, Sweden, Belgium, the Netherlands and Finland, is creating a breeding ground for further protest waves, and not only against the prevailing austerity policy. The rise of right-wing movements and nationalism does not appear on the radar screens of official Europe. For some time now prominent right-wingers have been represented in the European Parliament and are networking there, like Alessandra Mussolini (2004-2008) of the Mussolini list, Marine Le Pen (since 2004) and Jean-Marie Le Pen (since 1984) from the Front National, two Members of the British National Party ('British jobs for British workers') and 'True Finns', the Slovak National Party, the FPÖ, Vlaams Belang, the Greater Romania Party and the Lega Nord, which have doubled their votes over the past decade to 10 per cent in the 2009 European elections. Right-wing populists reached double-digit voting scores in 2009 in eight Member States and in five others reached between 5 and 10 per cent. Since the '90s the right-wing populists have been attacking Europe as an agent of globalisation.

The chairman of the French right-wing extremists and MEPs Marine Le Pen, daughter of Jean-Marie Le Pen, is a prototype for a modern, reformatted, right-wing populism. She is aiming her message in particular at poorly qualified wage-earners, signalling that she takes their fears seriously: their anxiety in the face of globalisation, their anger at banks, corporations and those politicians who move in the mainstream and preach capitalist competition, the euro and neoliberalism. She now has the support of a quarter of the country's workers. Marine Le Pen is gathering to herself 'increasingly also ordinary workers who see their jobs threatened by immigrants and foreign competition'.

Le Pen shows no hesitation in picking up arguments from the Left, attacking the financial system and big business, with the message that the social state needs defending against globalisation. At the same time she attacks trade unions, which have turned into 'conveyor belts of ultra-liberal ideology and Europaistic nonsense ('folie européiste'), exposing

69 FAZ Kommentar 'Was Populisten Auftrieb gibt' 20.1.2011, p. 1.
workers to low wage competition'.70 Marine Le Pen is also feminising the anti-Islamic discourse - another novelty.

In Greece, the radicalisation is already palpable, with wage losses, thinning public services and growing unemployment, combined with uncontrolled immigration, in the process of turning Athens into a third world city. Social unrest, increasing tensions, declining social cohesion, protest movements and growing dissatisfaction with the EU will intensify the legitimacy deficits, particularly on the periphery. At the latest the next European elections in 2014 will show whether the record abstention rate in June 2009 is exceeded, whether the participation of only 43% falls further, indicating that citizens have lost interest in this kind of Europe: a bureaucratic juggernaut that views citizens as objects rather than subjects, alienating them, with no opposition in sight. Hans Magnus Enzensberger describes Brussels as a ‘gentle monster’. In Poland, Romania, Lithuania, Slovenia, Slovakia and the Czech Republic, the abstention rate has already oscillated between 71-79%. The ETUC, the only organisation to come out decisively against the end of the welfare state, against precariousness, and for public services and for work, appeared increasingly as an alternative - the Social Democrats were nowhere to be seen. Also at work are movements (like les indignés/los indignados) which are critical of both globalisation and the EU.

2. Internal market, economic governance and industrial policy – where are we heading?

What is the state of health of the EU’s core economic project, the single market, in the midst of the worst crisis since 1929? Some people, its proponents from the Commission and EP, hold up the market as the most effective weapon against a relapse into protectionism and nationalism. Others, particularly the European trade unions, are increasingly critical of a neo-liberal and unilateral orientation and interpretation of the internal market by the Commission and the CJEU that places the internal market higher than the fundamental rights or objectives of the EU, and are demanding a strategic realignment. Still others, on both the far left and the

far right, are against the EU in principle, viewing the internal market as an aggressor and demanding a cutback in European competences. The range of reactions, from unconditional support to total opposition, finds expression in the European elections, and can be expected to further shake up the political landscape with the advent of Euro-sceptic and right-wing populist parties, calling for a reduction in EU powers. The crisis will have an as yet unforeseeable impact on voting behaviour, and may well strengthen abstentionism caused by disillusionment and indifference. What role does the internal market play in this context?

2.1. Internal market and social inequalities

The benefits of the internal market are being systematically ’creamed off’ by the highest income earners. These are using competition within the internal market to extract additional concessions from employees and taxpayers. Capital has long since moved freely in Europe, seeking the locations with the lowest tax rates and most favourable treatment, using the cheapest labour and encouraging circular migration. Employers and the Commission preach to employees that flexibility and precarious employment are important in order to remain globally competitive. The better regulation operated by the Commission was a source of paring back the regulation of financial markets until the date when the financial weapons of mass destruction triggered the worst global crisis since 1929. Governments saw themselves obliged to save the unregulated financial system, but the rating agencies, which had previously top-rated toxic products, at once turned against the weakest members of the euro. Instead of rescheduling, with the financial participation of the banks, they agreed on bank rescue packages, making the question of who pays the bill that much more urgent and central. Demands for fairness, social justice and social cohesion became all the more pressing.

Growing social inequalities. Over the last three decades social inequalities have increased sharply in many countries. Several factors have played a role here, especially the falling share of wages in national income and income distribution inequalities. Growing inequalities together with weak employment growth have contributed to national and global imbalances. The imbalances caused by growing inequality and the extreme concentration of income have led to growing household indebtedness and are an important explanatory factor in the sub-prime mortgage crisis. The
pressure of intensified global competition has widened income differentials and eroded the central 'middle income' region, with the intervention capability of labour market institutions being weakened simultaneously. Globalisation needs to be shaped more fairly so that the 'fruits of progress' are justly distributed and extreme income disparities are again reduced. At a time when many people have suffered harm through no fault of their own, fairness is more than ever an imperative.

One effect of the political backing for tax competition and the absence of tax harmonisation has been the highest disparity in income, wealth distribution and social inequality ever seen in Europe. The functional distribution of income between wages and profits in the EU has been deteriorating for some time. The wage quota in the Eurozone sank from 68% in the 1970s to 57% in 2006. The income relationship of the wealthiest fifth (quintile) of the population to that of the poorest 20% has worsened: in 2000 the ratio was 4.5x and in 2008 it was 4.8x for the EU27 (whereby the official figures, being based on averages, considerably underestimate the real inequality). In other words, the gap between the richest and poorest sections of the population is growing. Moreover Eurostat also compares not the richest to the poorest fifth, but the sum of the richest to the sum of the poorest fifth of all Member States. If the inequality in the EU is measured in euro terms, it is for the EU27 significantly higher than in India, China, USA and Russia.71 Greater wage differentiation is part and parcel of the new inequality. The EU2020 agenda still includes pro forma the reduction of poverty, but the original target of reducing income inequality has been largely lost in the process.

2.2 From Agenda EU 2020 to the Monti Report on the Single Market72

The EU2020 Agenda is very much *business as usual*: the Commission had set in Lisbon in 2000 the goal of becoming by 2010 the most

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72. W. Kowalsky, ‘Past and future of the EU single market – the Monti Report’, in: *Transfer* 16 (3), p. 437-441. Terminologically, Monti suggests talking of the 'single market' rather than 'internal market' in order to avoid misunderstandings, as 'internal market' can refer both to the individual national markets and to the single European market.
competitive knowledge economy in the world. Without getting any
closer to this target, Barroso has repeated the same goal for the next
decade, well knowing that Europe's growth rates are below those of its
competitors, with an ageing and shrinking population. Against this
background appeared in May 2010 the Monti report on a new strategy
for the internal market ('A new strategy for the single market.
At the
service of Europe's economy and society^73). Written at the request of
Commission President Barroso, it is not just the usual collection of
relevant challenges (in contrast to the Gonzalez report^74), but goes
beyond it by proposing a package deal, thereby linking back to the days
of Jacques Delors, since when both context and times have changed
radically. Monti sees the internal market at a crossroads, with 'integration fatigue' and 'market fatigue' reinforcing each other, eroding
political and social support for the project and making way for countless
fears and open rejection. Confidence is severely shaken and Monti
raises the question of how it could be rebuilt.

Monti starts with a review of the Delors strategy of 1985, noting that the
common market is 'less popular than ever', and seeks to fathom the
reasons for the growing scepticism. His intention is to convince critics
and especially to bring home to the market's protagonists the fact that
critics' objections are to be taken seriously. The second chapter is an
exhaustive and exhausting review of current initiatives and shows that
Monti remains a fervent advocate of the common market. Only in
individual cases and in detailed questions does he depart from the
Commission's view. In the third chapter Monti explains how to address
the problems. First of all he suggests a political initiative to reconcile
fundamental freedoms and workers' rights following the recent CJEU
series, so as to avoid further alienation. Monti mentions important
topics: the issue of social services, the integration of EU policy
objectives into public procurement, fiscal coordination to ensure
national tax sovereignty, the potential for active industrial policy, the
external dimension vis-à-vis global competitors. Advocates would arrive
at the wrong conclusions by noting Chapter 2 only, as would critics who
study only Chapter 3: Monti stresses that the new strategy should be

based on a 'package deal', in which Member States of different political sensitivities, socio-economic interests, traditions and structures can find items that justify their making concessions with regard to previously taken positions. Only when such a political initiative is successful can the common market start to move forward again. Monti’s efforts to pick up the challenges thrown down by the black CJEU series represent a step forward against the backdrop of a Commission agenda that avoids any socio-political progress.

A central message of the Monti report is that a solution needs to be found to the tensions between market integration and social objectives. This insight is no accident: Monti is the author of the so-called Monti clause of 1999 (No. 2679/98), which protects the right to strike against the free movement of goods, and which served as the basis for the ETUC’s proposal for a Social Progress Protocol.

In summary, we can mention the following positive aspects of the report:

— the effort to identify and understand real, existing fears,
— recognition of the problems that the ETUC has defined in detail, such as precisely the tensions between the market and labour standards,
— emphasis on the need to make markets and the social aspects mutually compatible,
— identification of the need for political activity in the areas of worker deployment, social services, public procurement, industrial policy, fiscal policy coordination and regional policy,
— correction of the anti-labour effects of tax competition in the EU,
— the desire to put together a 'package deal' in order to bring about a 'win-win situation'.

The main weaknesses are:

— that most of the suggestions can already be found in existing Commission documents,
— problems related to the liberalisation of public services such as the replacement of public monopolies by private oligopolies are not picked up,
— the assumption that the 'better (or smart) regulation' agenda for the reduction of regulation remains valid even after the financial crisis,
certain proposals are not ambitious enough, e.g. to protect public services and in particular on the question of fiscal coordination, with the harmonisation of corporate and environmental taxes specifically excluded,

— issues of tax evasion, tax havens, increasing property tax and financial transactions tax are not touched on.

The outcome of Monti’s stakeholder consultations is a fresh look without blinders at the advantages and disadvantages of the common market. Monti has recognised that an ideologically overloaded approach runs onto a reef. He avoids the ideological assumption that it is sufficient to be market advocates. He navigates between the cliffs of proponents and opponents and, unlike the Commission, takes as his starting point those problems that are induced by the fundamentalist market approach, which constantly invokes the ‘completion’ of the market and would like to introduce even more market compatibility testing. He stresses that the market cannot be a final end but only a means to an end. Monti is trying to convince both the sceptics on the one hand, by taking up their objections, and on the other hand the supporters, to whom he recommends a broader horizon. He is convinced that the market will run into serious opposition if no answers are found to the criticisms. Infallible apologists can produce counter-productive effects in this context. Consensus-building is therefore an essential part of Monti’s strategy.

Monti recommended the proactive option of addressing concerns and adapting the internal market rules to make them sustainable and compatible with fundamental rights. The Monti report could either form the basis of a political realignment or it be shelved. The ETUC considered the Monti report as a step in the right direction, but noted that further steps are essential:

— The report does not raise the question whether the posting of workers issue does not require a revision of the Directive in the light of the latest CJEU rulings.

— The report comes out abruptly against a Social Progress Protocol, saying that the time is not ripe for treaty revisions, even though the next accession treaties were already visible on the horizon.
The first semi-official response from the Commission left readers sceptical: Philippe Herzog, who in his capacity as special advisor to the Commission had the task of preparing its communication, released a trial balloon in the magazine ‘Confrontations’, in which he sets out his own view: This position was viewed as a blueprint of the subsequent Commission communication, signalling that the Monti report was being laid aside and that it would be *business as usual*. While the Monti report recognised that hostile reactions to the internal market are based on real developments, including the recent CJEU rulings, and proposes solutions, Herzog’s text is based on the traditional market approach, pushing for completion, as the market in itself is designed ‘for workers’ and is therefore ‘social’ and all that is needed therefore is more work to persuade. If there are problems, one should simply expand the European competences. In the social sector Herzog proposes a revival of social dialogue, without explaining how and without specifying the Commission’s role in this. On the posting issue Herzog declares bluntly that ‘equal pay’ is not feasible: payment based on host country rates is not feasible, but rather a ‘compromise’ is needed. Not a word about the social progress clause, and a revision of the PWD is not deemed necessary.

The Commission presented its opinion in October 2010, with 50 proposals. Its position was disappointing and defensive, failing to pick up the recommendation of a ‘package deal’ and thereby opening the way for a further alienation between Europe and workers, previously a reliable pillar of the European project. If the common market is perceived as a means of reducing social rights, for social dumping and unfair competition, erosion of the permissive consensus on European integration will accelerate.

On 13.4.2011 Internal Market Commissioner Barnier arrived with the ‘Single Market Act’. This at least takes social cohesion seriously as a goal and announces a legislative initiative to improve the implementation of the PWD and to clarify the relationships between internal market freedoms and fundamental social rights, with reference to the Monti I Regulation of 1998. The ETUC commented on this change of approach

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75. ‘Un grand marché européen : le socle d’une nouvelle croissance’ by Philippe Herzog (Confrontations Europe, July-September 2010).
as being a step in the right direction, but criticised the failure to address the revision of the posting directive.

2.3 Economic Governance, a new architecture for policy coordination?

*Commission lets the cat out the bag.* The Commission is pursuing its own agenda by promoting Economic Governance: that is the *ex ante* monitoring of national budgets and economic policies of the Member States. For the Member States, this means early submission of budgets and the reform programmes demanded of them for examination by the Commission and for peer review by experts of other Member States, six months before the budgets and programmes are presented to national parliaments. Whether national parliaments will accept such a castration, and such a transfer of power to the Commission, is to be seen. In any case, this ushers in the so-called 'European semester', a strange name indeed for a serious matter. The first case of political meltdown was Ireland in January 2011, where the government did not survive this kind of 'governance' and public discontent led to a dismissal of the government party. The Commission eagerly pressed to take command of the 'Ship of Fools' (Fintan O'Toole). On 24 January John Monks met with Commissioner Rehn to complain about the interference with collective bargaining systems in Ireland and Greece. He accused the Commission of ignoring the Treaties, of exceeding its powers, violating social partners' autonomy and driving forward a micro-management to increase flexibility and liberalisation. The new European policy process for the prevention and correction of macroeconomic imbalances expanded the powers of the Commission. From now on it can analyse wages, issue policy recommendations to and impose penalties against Member States for failing to follow the recommendations. This raises the question of whether the Commission will use its growing power in a way that is fair, fair that is to workers? The Commission has proposed a REER (real effective exchange rate) mechanism as an indicator. This is badly lop-sided, showing massive wage problems in the majority of Member States: in Denmark and the Netherlands these are stated to be excessive. This instrument allows the Commission to exert pressure on

76. Notes on European Solidarity and the Jobs Crisis, in: www.etuc.org/a/8190
wages across Europe.\(^\text{77}\) The reference period used for the REER is precisely the period of German wage moderation, which becomes the reference point for all of Europe (1995-2008) - while another, longer frame of reference such as 1975-2009 would yield a different result. If the euro exchange rate rises, the REER is used to point the finger at wages and unions. The REER indicator puts the burden of adjustment on wages and organises a ‘beggar thy neighbour’ policy, and a profound deregulation of labour market institutions that protect wage stability. The idea of an Economic Governance that pushes forward austerity policy and seeks to introduce compulsory regimes with automatic sanctions and reversed majority decision-making, i.e. decision-making by a minority, seems to be prevailing. On one side tax harmonisation and minimum taxation is blocked by reference to a requirement for unanimity, on the other side faith in majority voting is being lost: if anything is to be effectively enforced, not even a simple majority counts but a minority.

**Market requirements as a policy guideline.** In a speech at the second Brussels Forum ‘Think Tank Dialogue 2011’ on 25 January 2011 Barroso admitted who is the driving force for economic governance, namely the markets: ‘The markets ask for economic governance’. His message: It is important to use the crisis as a lever to enforce more European integration. And it is necessary to maintain the momentum in order to create new tools. Barroso has reiterated that view since, for example, on 15 February 2011 in front of the European Parliament. The financial markets are indeed forcing a further move towards integration, but is it for them to set policy guidelines? If so, then it is not surprising that the main purpose of economic governance is the transformation of wages into the primary or a major adjustment tool in the monetary union.\(^\text{78}\)

From the Commission’s viewpoint, European Economic Governance is all about the prevention or correction of macroeconomic imbalances. Behind this laudable goal lurks another agenda: In reality it is all about the Commission setting up a financial-economic directorate in conjunction with the finance ministers, with the power to intervene in

\(^{77}\) Ronald Janssen, ‘Wages and Competitiveness under the Alert Mechanism of European Economic Governance’, ETUC Economics Discussion Paper 2011/2

collective bargaining (and wage negotiation processes in general) and to force employees to enter into wage competition with one another. 79 The Commission plans to control the process with a 'scoreboard' of indicators and to propose automatic sanctions and to almost automatically impose them where its policy recommendations are not followed.

The European Council of 17 June 2010 claimed that it was laying the foundations for economic governance in order to 'reinforce' economic policy coordination. The primary objective is stated as strengthening competitiveness and fiscal adjustment. Is it essential, for the coordination of economic policies, to create a further, perhaps non-democratic or only insufficiently democratically legitimate regulator? Should a Brussels 'economic government' intervene in the domain of the Member States and control budgetary, fiscal and even wage policies? Do we not already have a 'European economic government', which is currently imposing austerity? To what extent does a common monetary policy require a common labour market, fiscal and wage coordination - and who should be in the driving seat?

Commission-driven governance. Today's Europe provides numerous starting points for criticism. Economic Governance, originally an employment-friendly approach and also a demand of trade unions, is in the process to turning into a tool for squeezing workers and reducing wages and income. The proposals for a Commission-driven Economic Governance that are currently on the table are an undisguised declaration of war, a call to replace the former instrument of devaluation through a strategy of wage depreciation. A European law on competitive wages with wage indicators, and recommendations for pay cuts and sanctions to be made effective by reversed majority voting are in the works and will equate to a straitjacket for unions and wage bargaining.

From the perspective of the EU establishment, economic governance is based on the three pillars of price stability, fiscal discipline and structural reform (including flexible labour markets). This simplified revision procedure allows the European Council to amend Part III of the Treaty unanimously in so far as the new provision does not extend competences – despite this ratification is of course required, and some

Member States could organise a referendum. The ETUC had called on the Council, in the case of a treaty amendment, to insert also the social progress protocol into the treaty, but in vain. Meanwhile, the ETUC has sharpened its position and rejected the treaty amendment, as in a letter to all MEPs in February 2011.

**Hidden agenda?** Economic Governance has been redefined as the coordination of austerity policies. This runs contrary to the original meaning. The nature of Economic Governance can easily deliver a fatal blow to what little Euro-enthusiasm remains - only Estonia and Sweden will be able to meet the conditions and to avoid the penalties. In this form of Economic Governance the democratic principle of majority voting is to be reversed: only a qualified majority against sanctions can prevent these being applied. The very feasibility of suspending voting rights needs to be examined - there can be hardly any clearer violation of citizens' democratic rights than the withdrawal of voting rights and minority decision. Does this not serve to abet the estrangement from Europe?

Questions and more questions: Is it compatible with traditional notions of democracy that countries be placed under supervision, in a quasi-colonial status, and exposed to turbo-flexibility with the goal of pushing unions out of the circle of well-meaning Europeans and baiting them towards an anti-European course, in order to better segregate them out? Is this a hidden agenda of the Commission? Even Wolfgang Münchau, writing in the Financial Times, suspects a 'hidden agenda' behind the proposals. The FAZ raises the question: 'Why did they want at all costs an economic government? Perhaps the answer is found in their strategy to defame the critics of current policy as 'anti-Europeans'. The exclusion from the circle of well-meaning Europeans, however, can also backfire. It could be that institutional Europe thinks it can do without trade unions.

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80. ‘This stability pact obsession is not helpful’; by Wolfgang Münchau; published: 24.10.2010.
82. The ‘anti’ or ‘un-European’ label is reminiscent of the rhetoric of the Soviet Communist Party Politburo and Senator McCarthy’s ‘Un-American Activities Committee’, as Enzensberger remarks.
2.4 European industrial policy and the transition to a low-carbon economy

Among the most important current challenges in the post-financial crisis era are the new international division of labour with emerging economies such as Brazil, Russia, India and China (the BRIC states), climate change, which is calling for a shift to production methods that are as carbon-free as possible, and finally, demographic changes. European industry represents one third of the world’s value added, three-quarters of its exports and one third of employment.

A European industrial policy is long overdue, but the topic has been reprehensibly neglected by the Commission for years. The Commission Communication on Industrial Policy of October 2010 contains a whole series of measures, but no proposals for effective tools to achieve the targeted goals. The result is not yet a coherent whole. In addition, the Communication exhibits a significant imbalance, because of the priority given to freeing enterprises from costs, charges and regulations. Workers are perceived only in terms of their qualifications and as cost factors, with trade unions and works councils mentioned only in passing. The reduced understanding of competitiveness focuses on technology-centric and capital-intensive sectors and less on social, structural and organisational innovation. Competitiveness as such creates no growth and no jobs. Steps towards the democratisation of the economy at European level are not formulated. The Commission fails to understand the quality of work as a productivity factor. IG Metall criticised that industrial policy should be geared to the interests of employees and that government aid should be made conditional on a company forgoing compulsory redundancies, paying living wages, complying with collective bargaining agreements, creating permanent jobs and taking on trainees.83 The Commission ignores the labour environment, with its major social and human components.84 A trade
Beyond the crisis, Europe needs an active European industrial policy that strengthens core industries, innovation and exports. Without industrial policy, manufacturing industry will continue to lose importance. Active industrial policy means making structural changes. But the neo-liberal forces are now back with the demand for government restraint. They want the state to create more favourable economic conditions with lower taxes and reduced bureaucracy. The world economic crisis has reshuffled the cards, and it is questionable whether Europe will emerge strengthened or weakened. The auto industry is ill-prepared for the transition to electric vehicles, shipbuilding is struggling with the consequences of the crisis and with its own survival, the German engineering industry is coping. The forced-pace promotion of research and development activities and an increase in education would be useful. There is an urgent need for a coordinated European industrial policy directed at a low carbon economy and at this point we are a beginning to see a cautious rethinking by the Commission and Parliament. At the same time we observe that China is stepping into the breach. How does Europe react to this new challenge?

**Europe with or without industrial policy?** Good examples of successful European industrial policy, despite many day-to-day difficulties, are Airbus and EADS. The lack of a European industrial policy can be illustrated by the example of Volvo. For a long time the Commission limited itself to controlling mergers: we can speculate about what would have happened if the attempted merger of Volvo and Renault in 1993 and the attempted mergers with Saab and Audi had gone ahead. In March 2000 the European Commission forbade Volvo from taking over its main competitor Scania and also ruled in the Volvo/Renault case. Other hand, China is pursuing less merger control than an ambitious industrial policy: Chinese car maker Geely in early August 2010 transferred the purchase price of 1.8 billion dollars to Volvo's previous owner Ford. In this way Swedish car manufacturer Volvo has finally fallen into Chinese hands and China has for the first time purchased Western technology, especially

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85. China’s Shanghai Automotive Industry Corporation (SAIC) has joint ventures with VW and General Motors – and today holds 51% of GM.
security technology, on a large scale, and in so doing heralding increased competition in the auto market. Production capacity is exported to China and other emerging countries, thereby pushing down production costs. It is to be expected that in the coming decades, China’s business interests will intensify their presence on European soil.

While European aid to Greece took on neo-colonial traits, China seized the opportunity and invested not only in Greek government bonds, which produce a 10% rate of return and are fail-safe thanks to the 750 billion rescue package, but spoke of a ‘strategic partnership’ between Athens and Beijing, and promised to expand the Greek port of Piraeus into the main trans-shipment point for Chinese deliveries to the region. This hub for China’s exports to south-east and eastern Europe will be accompanied by an trans-shipment warehouse near the port city of Eleusis west of Athens, and by activities in the port of Thessaloniki in the north of the country. Moreover, China is interested in buying parts of the Greek Railways OSE. Transport company Cosco Pacific already in 2008 acquired the container handling concession in Piraeus for 3 ½ decades, and will invest 3 billion euros. A Chinese credit facility will allow Greek shipping companies to finance the purchase of container ships made in China. From the Chinese point of view, this investment in the old Europe is as consistent as its involvement in resource-rich African countries: Greece is the gateway to Europe. Meanwhile, Portugal and Spain have been flattered and honoured with Chinese investment. Chinese Vice-Premier Li Keqiang has negotiated bilateral agreements with Spain, Germany and Great Britain.

China is increasing its economic policy space as an economic super-power and is adhering to the guiding principle of divide et impera. Evil tongues say that the Europeans themselves are submissively dividing themselves, and are placing their money on bilateral relations with the superpowers. Europe could achieve more if it stood united.

China’s economic power overtook that of Japan in 2010 and ranks second behind the U.S. (measured in GDP). In the solar industry, China has overtaken the long leading German producers: of the ten largest solar module manufacturers, four are from China, one from Germany. The largest manufacturer of solar installations, Suntech Power, is the world number two behind First Solar in the USA. Suntech generates 95% of its sales outside of China, nearly 40% of them in Germany. Chinese wind turbine manufacturers like Goldwind and Sinovel and solar specialists Suntech, Yingli and JA Solar are among the top names; in photovoltaics
Suntech and Yingli offer Western quality at cheaper prices, while Chinese companies control more than half of the photovoltaic world market. In battery technology, Chinese companies are among the world leaders. In short: China is in the process of becoming the world leader in clean technologies - in the production of wind turbines, solar panels, batteries for electric vehicles, with both Western and Chinese companies gearing up their production in China. These sectors have in front of them the fate of the European electronics industry, the production of which has migrated to Asia. A theme of European industrial policy should be how European industry can move forward without being overwhelmed by China’s industrial power. A European industrial policy needs to find the answer to several challenges: access to raw materials, energy supply, mobility, climate change, waste management.

2.5 The crisis and the perception of Europe

The financial crisis has done away with the belief in self-regulating market forces and exposed neo-liberal orthodoxy as a great illusion. The idea of a leaderless Europe, united by the euro and the beneficent effect of the internal market and the necessary deregulation zeal, has led to an ad absurdum situation.

The unions have lined up across Europe against the austerity policy. The position of the Party of European Socialists (PES), on the other hand is something of a will-o’-the-wisp. ‘No to austerity’ was the main slogan of the ETUC Action Day of 29 September 2010. The PES jumped onto the train and turned the slogan into ‘Against the Conservatives’ Austerity Policy’... Perhaps this head-in-the-sand policy helps explain the desolate position of European social democracy. Contrary to the expectation that the financial crisis would push voters to the left, comrade trend is coming out against social democracy. Several reasons are decisive: the Conservatives, in conjunction with the financial industry, have succeeded in imposing their (re)interpretation of the financial crisis as a debt crisis, thus achieving the effect of papering over a fundamental
‘before’ and ‘after’ situation (like 1929) and diverting attention from the financial industry’s responsibility for the disaster. This interpretation has become all-pervasive, pushing Social Democrats and trade unions onto the defensive. The crisis has paradoxically strengthened the dogma that has caused the crisis, the obsession with competitiveness.

Essayist Raffaele Simone explains this development not only by the multi-facetted reactions to the financial crisis, but points to a variety of factors. First, Social Democracy has rejected out of hand the green-ecological criticism of productivism, denied an ethnic factor in politics, refused to discuss legal and clandestine immigration and integration, reacted laxly to the rise of signs of religious identification, urban violence, insecurity and social delinquency, with offenders often seen as victims, with continuously reference to root causes rather than combating the impact of these phenomena, exhibiting philanthropy and condescension in the process, neglecting the social ageing processes, leaving the trade unions to defend the workers, and underestimating the rise of new powers such as China, India and Brazil. In short: it has left it to others to grab the nettle of the fears and anxieties caused by globalisation and modernity. In addition it has cast the cloak of silence over its own government participations: in Germany the red-green coalition opened the door to financial capitalism, especially hedge funds and private equity, and allowed social inequality to grow, despite writing its reduction on their banners. A ‘light’ left established itself, that quickly lost its electoral appeal. Simone’s diagnosis certainly goes over the top, generalising in an improper manner, simplifying social trends or treating them only superficially. But in this context there is something else at stake: the European trade union movement is again slipping into an opposition role, as with the Bolkestein directive.

European loss of confidence and reputation. The loss of trust in and reputation of Europe can be observed not only within the union movement. Eurobarometer 73 of spring of 2010 was the first to show that more people mistrust Europe than trust it. Confidence in the EU fell from 48% in 2009 to 42% in 2010 and in that year a majority of Europeans lost confidence: 47%. Eurobarometer 74 confirms this trend: 45% distrust, 43% express confidence. Distrust of the EU prevails now in Greece, Austria, Germany,
France and Ireland. About 40% of respondents believe that Europe is moving in the wrong direction, only 30% that it moving in the right direction. For the first also, the ‘neutral’ opinion exceeds the positive image of Europe. 47% view the EU as technocratic (within the Eurozone even 50%) and 42% think the EU is inefficient. The majority have a clear vision of how the crisis should be combatted: 88% call for tougher measures against tax evasion and tax havens, 82% are for new rules for financial markets, 81% are for the introduction of a tax on speculative profits, 80% for a regulation of bonuses. To the question of how the EU has tackled the crisis, 45% answer effectively and 44% ‘ineffectively’.

The obvious question is whether Europe is becoming more popular as a result of the coordinated austerity. Europe used for long to enjoy a particularly high reputation in Greece - 71% considered EU membership as positive. Since Europe has profiled itself as a shock troop for bitter austerity programmes, these top results are now a thing of the past. Two-thirds of Greeks now believe that insufficient account is taken of their interests in the EU.89

The gap between what people expect of Europe and the assessment of European reality is widening: The number 1 challenge is unemployment - over 80% of Europeans consider the employment situation as bad (according to Eurobarometer 73). The economic situation remains the primary concern in Greece, Ireland and Spain. Support for EU membership has fallen further to 49%, the lowest level in the last decade. Worrying for the EU is the fact that the EU is associated less with democracy and more with bureaucracy, less with economic prosperity, more with unemployment. In this context it is of concern that some large member states are flirting with the re-nationalization of certain policies or already executing them. Germany is not the only country to base its commitment to Europe on cost-benefit calculations.

Growing European abstentionism. The trend of regularly declining turnouts ever since the first general elections to the European Parliament

89. Eurobarometer, February/March 2004; Eurobarometer 68, Spring 2008, National report Greece; Eurobarometer 72, 73, 74. In Germany an Allensbach poll has shown that only 20 per cent of Germans polled still see more advantages than disadvantages in membership, while before the crisis 57 per cent still held this opinion – ‘Anschwellender Euro-Schmerz’, Nikolaus Busse, in: FAZ 20.05.2010.
in 1979 is further cause for concern. These have fallen from 63.0% in 1979 to 56.8% in 1994 to 45.6% in 2004 to 43.0% in 2009, a decline of 20 percentage points within 30 years (by comparison: for the last U.S. presidential election, the turnout was over 60%). It seems paradoxical at first glance that the powers of the European Parliament are increasing, but that voter turnout is not keeping step. From this we can conclude an absence of direct relationship between the growth in power and hence of importance of the European Parliament on the one hand and electoral participation on the other. Several reasons can be adduced for this phenomenon, starting with the insufficient Europeanization of the elections.

These are not European elections as such, but 27 national elections, each following its own laws. The two main political groupings, the European People’s Party and the Progressive Alliance of Socialists and Democrats, have historically dominated EP politics, but without either party ever having a clear majority. Many votes are conducted consensually, many decisions concerning social regulation along the classic left-right dimension, with pro- and anti-European positions playing an increasing role. European elections have so far offered no clear choice between competing political agendas for the EU. The European party formations do not organise a vote between alternative European platforms, but following national decision logics. It is not the European party groups that control the political campaigns, but national party formations that push national issues and personalities to the forefront and fail to organise any authentic supranational controversy. In electoral programmes, the chapters on Europe take up only marginal space. In so doing the main players are pursuing a de-politicisation of European decisions, so that citizens have no political choice - with the result of declining turnouts. Another factor is that European elections are considered as second-class elections. In this mixed situation it is difficult to maintain that the EP has a clear electoral mandate.

Only an authentic European politicisation of the elections could change this situation. The politicisation of the debate about Europe, about economic interests, about identity and sovereignty is currently left more to the Euro-sceptic parties on the extreme left and right. The extreme right is mobilising its voters against the EU on issues of national identity and national sovereignty, especially immigration, the far left with the fear of a neo-liberal Europe, economic uncertainty and globalisation. It
becomes increasingly less sufficient for the mainstream centre parties to express general and undifferentiated support for Europe.

Jürgen Habermas criticises the ‘new intransigence’ of the heads of government, ‘a generation disarmed of norms’, without ambitious political designs, resulting in a ‘new indifference’ towards a project such as European unification. In no country have decisions been taken at European elections about anything other than national issues, with the ‘blinkered nation-state approach of the left’ not helping to ‘shape public opinion through an offensive campaign of enlightenment’. European elections are dominated ‘by themes and persons that are not up for voting on’ (Habermas). European elections could be used to strengthen the European idea, to promote a European openness and in so doing European democracy. In fact, referendums on European integration issues frequently serve to express scepticism about the official European policy path. The common interpretation that the French or the Dutch were not voting at all on the draft European Constitution, but sending out internal national messages to their respective governments, is certainly just as short of the mark as the opposite view. In fact several messages overlapped in this vote, including criticism of national governments, discontent with the direction taken by official Europe and rejection of a difficult-to-understand treaty apparatus which appeared overly market-friendly and insufficiently social. Many regretted the lack of social progress and were not ready to be ‘fobbed off’ with the binding nature of the Charter of Fundamental Rights.

*Debate-less Europe.* The real problem in Europe is the almost complete absence of debate and policy alternatives to European issues. Europe is largely removed from the dispute and kept out of political controversies, making it impossible for political competition for Europe to emerge. This lack of controversy is preparing the ground for specific opposition and protest to develop under cover into general opposition to Europe. A new discussion of the approach to Europe is urgently needed. In addition, parties that exhibit internal dissension mobilize

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fewer followers than parties that present voters with united fronts. The often diverse positions and rich discussions within the socialist parties redound to their glory, but seal their electoral failures.

The 2009 European elections gave the following results:

<table>
<thead>
<tr>
<th>Political parties</th>
<th>Seats</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPP</td>
<td>265</td>
<td>36</td>
</tr>
<tr>
<td>S&amp;D</td>
<td>184</td>
<td>25</td>
</tr>
<tr>
<td>ALDE</td>
<td>84</td>
<td>11.4</td>
</tr>
<tr>
<td>GREENS/EFA</td>
<td>55</td>
<td>7.5</td>
</tr>
<tr>
<td>ECR</td>
<td>54</td>
<td>7.3</td>
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<tr>
<td>GUE/ NGL</td>
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<td>NA</td>
<td>27</td>
<td>3.7</td>
</tr>
</tbody>
</table>

The plurality of parties is tending to lead to a shrinkage of the major parties. This ought to make the grab for key offices more difficult and bring more vitality to the processes. The European elections do not follow the strict equality rule of 'one man - one vote' because the states are weighted differently, with seats allocated in fact following a descending proportionality rule.

2.6 Change of course or reprogramming of Europe?

A change of course for and in Europe is needed. Some Euro-pessimists will counter laconically that they have always said so. But they are wrong with this argument. Europe was for a long time a friendly force and the unions cooperated to the benefit of the working population, putting forward demands out of enlightened self-interest and getting them accepted, sometimes more, sometimes less. Right now official Europe is turning away and is in the process of turning into an underhand plutocracy as Fukuyama defines it. Indications for this can be found in the blanket imposition of rigid austerity programmes, the kid glove treatment of the 'financial aristocracy' and the official attacks on social Europe, on collective bargaining, on existing systems of industrial relations and wages - these developments together pointing to a new approach. How do the critics respond to this new situation? Let us take as a recent example an article by Hans-Jürgen Urban, a member of the board of IG Metall.
Recently, Urban presented a contribution on the reconfiguration of the European trade union movement, which starts ambitiously, but not without certain distortions of perspective, blurred edges and inconsistencies. If the author’s system of references points on the one hand in the direction of ‘pro-Europeanism’\(^{91}\), the other direction ought logically to point towards ‘anti-Europeanism’ and ‘rejection of Europe’. Urban tries to identify the reasons for the pro-European approach and sees a certain naivety at work. This diagnosis is not totally wrong. Urban recommends that the unions be more critical, but fears applause from the wrong side. At this point, a first narrowing of vision comes into play: Urban sees a determined ‘rejection of Europe’ coming solely from the ‘right wing’ and studiously ignores the fact that ‘rejection of Europe’ is also becoming apparent from the ‘left of the spectrum’. Urban’s apparent failure to locate criticism of the integration project on the political left, seeing it coming only from the right, is a dubious thesis that is denied by the recent debates on ‘co-determination’ or the research and opinions issuing from the Max Planck Institute for Social Research in Cologne (MPIfG).

The traditional distinction along the left-right axis somehow does not seem to fit in Europe - apart from simple party political attributions that are only rarely really based on stand-alone features. Urban uses the clusters of ‘Europe-friendliness’ and ‘Euro-scepticism’, ‘support’ and ‘opposition’ to meet the need for rough orientation. There are no objections in principle to this. However, what irritates - and we arrive at the second narrowing of vision - is Urban’s consistently negative connotation of pro-Europeanism or ‘Europe-friendliness’, as if friendliness were something objectionable. Brecht talked mostly positively of ‘friendliness’, as in the poem to the later generations, ‘Oh, we/Who wanted to prepare the ground for friendliness/Could not be friendly ourselves’. Many Brecht heroes fail because of the friendliness they show towards a world that has itself not improved. Urban overlooks the fact that friendliness can be used as a category on both sides. By analogy one should ask, not whether trade unions are Europe-friendly, but also, how friendliness is doing in general in Europe. Only the relationship of both to each other can answer the question of whether the trade union positions are ‘adequate to the problem’ or not. Crudely simplified it can be said that Europe has long been a

\(^{91}\) Urban, p. 11- 22.
friendly power, but no longer is, and that unions used to be Europe-friendly but are in the process of questioning this friendliness.

What alternative does Urban suggest? His stated aim is the ‘re-programming of the integration process’. This language, taken from the repertoire of computer technology, points to a technical programming process: programmers in the form of a technocratic elite (or is he thinking more of a programming avant-garde) give and maintain the socio-economic direction. If Urban diagnoses a ‘general design flaw of the EU’, he is using a terminology that suggests and calls for rebuilding. Talking of ‘rebuilding’ is similar to speaking of ‘another Europe’, but Urban does not go so far. This reserve is not quite understandable, as the slogan of another Europe makes clear, on the one hand, that the battlefield of Europe is not abandoned, on the other hand, that a retreat into the national realm is not the solution. Furthermore, this slogan makes the unions capable of connecting to and joining up with the globalisation-critical and EU-critical social movements.

For Urban, the unions have reacted ‘relatively powerlessly’ to the recent series of CJEU judgements; furthermore their ‘Europe-friendliness’ is more and more obviously colliding with the ‘growing Euroscepticism’ within the population at large. The trade unions are thereby faced with the task of ‘facing the new drama of the situation’ - nothing less than this is called for by the author following Scharpf's contribution: ‘No more covering up the scandal!”

Multi-level strategy and path dependence. Urban concludes from his observations that ‘naive Europe-friendliness’ needs to give way to a ‘reflected European realism’ and calls for ‘revitalization’ and a ‘political multilevel strategy’. With this conclusion we have reached a commonplace of political analysis, namely that the EU is a multilevel system and that the only way forward is with a multi-level strategy. ‘Revitalization’ will remain an empty slogan until it is backed with a strategy that is properly fleshed out, at least in its main elements. The critics who accuse the unions of excessive pro-Europeanism are pleading for a new European path of development to replace the
previous policy of ‘social rhetoric’ and ‘normative appeals’\textsuperscript{93}, in short, a ‘restart’. But the idea of ‘path dependence’ does justice neither to the process-driven and dynamic, conflictual character of development and counter-movements,\textsuperscript{94} nor to the way the present situation has developed in the course of history and historical contingency. Politicians like to talk of ‘adjustment screws’, a metaphor that, just as ‘path dependence’, points to an underlying mechanistic world view.

\textit{Reactive – proactive – negative integration}. One danger for European trade union players is to ‘stick’ too closely to the line set by the Commission instead of insisting on their own agenda.\textsuperscript{95} The fundamental question is whether ‘negative integration’ and the structures and procedures of the integration process leave sufficient freedom of manoeuvre for a reorientation, or whether a narrowing of political – and with it also trade union – freedom of action is firmly inscribed in the integration project.\textsuperscript{96} The answer to this question is disputed: some see enough leeway and no fundamental difference to the situation at national level, others see a progressive narrowing of options in the European context. Against a structuralist or deterministic view, which seems to emerge from many of Scharpf’s writings, it is important to note that European initiatives that induce conflict offer significant potential for politicisation and thus for change. Structuralist-deterministic approaches tend to empty political action of any meaning and disqualify as a basis for policy making, but nonetheless impose a duty of utmost vigilance against any narrowings of the scope of action. This narrowing of options increases the sensitivity of the unions to the CJEU’s rulings.

Furthermore, it is becoming increasingly clear (see Chapter 3) that CJEU case law – regardless of its intentions – is not ‘politically neutral’: It is able

\textsuperscript{93} For example: Urban 2009, pp. 17, 19.
\textsuperscript{95} Helmut Wiesenthal falls into this trap by adopting uncritically the Commission’s position on ‘flexicurity’ and accusing both trade unions and Greens of ‘guarding the status quo and their own position in it’ and calling instead for a ‘re-calibration of social security mechanisms in favour of the socially excluded’ as well as the demolition of ‘highly developed insider protection’, i.e. weakening protection against dismissal in favour of ‘labour market outsiders’, and at the same time denouncing the trade unions as ‘market apologists’ since the signing of the Treaties of Rome (‘Das ‘soziale Europa’. Zwischen Erwartungsillusion und Paradigmenstreit’, in: kommune 4/2009).
\textsuperscript{96} Urban’s idea of a ‘restart’ exhibits idealistic wishful thinking.
to subject national market-correcting institutions to the sphere of fundamental economic freedoms and European competition rules and thus have a liberalising effect, whereas court rulings cannot serve to create market-correcting institutions, thus pointing to the dominance of a distortion in the direction of political liberalisation. 97 On the one hand remarkably high obstacles are placed in the way of member states taking market-correcting action - for example with European co-determination rules and a European collective bargaining system or minimum European taxation, while only low obstacles are placed in the way of the continuing development of law by the CJEU. Even so, historically it is possible to look back on a generally relevant performance in the field of social legislation,98 in particular in the field of employment protection. This development shows that social progress in the EU is not excluded, provided that the political framework conditions are right.

‘Social Europe’ as a guideline. The European trade union movement maintains its call for a strong ‘social Europe’ against an uncritical rubber stamping of the prevailing Commission agenda. ‘Social Europe’ is regularly at the centre of political debates with the goal of giving another direction to a ‘market’-oriented Europe that sacrifices social progress on the altar of the economy. The main driving force of these debates is the European trade unions and, regularly shortly before European elections, almost all political parties. In particular, European social democracy fails to see, when regularly adding social colouring to its own discourse prior to the European elections, that other parties are using the exact same tactics and are relying increasingly on social rhetoric. Committed action for a social Europe requires the recognition of European integration as a key terrain or as the field for this battle. In European trade union models, concepts such as ‘social Europe’, ‘social dimension’ and ‘European social model’ are of central importance, whereas for most other players their use is only decorative.

Although there have been isolated social initiatives ever since 1958, it was three decades before the term ‘social dimension’ was incorporated

Unions for a change of course in Europe

into the official title of the so-called 'Marin Report' on the development of the social dimension of the internal market (1988). For a long time now there has been a discussion about what the term 'social Europe' means and what it should embrace. Interpretations range from a fully differentiated European society model to the construction of a 'social union' or a European welfare state, while leaving in the dark whether this is conceived of in terms of a unification or harmonisation of social security systems or labour and social law, or in terms of a number of minimum social policy standards.

All in all, the dominant view today – both in the social scientific debate and in trade union circles99 – is that integration has been largely negative, focusing on the elimination of internal market barriers, and not on the key issue of the construction of a European social space based on independent standards and rights. For years, the social dimension has been stalled, and most recently the CJEU, significantly incited by the European Commission, has contributed with its rulings for the first time in the history of the EU to a process of social regression. The CJEU appears not to view 'prosperity for all' and social peace as legitimate objectives in comparison with the primacy of freedom of services and economic 'fundamental freedoms'. Even more: the fact that it is abetting 'standards-shopping', that is the ability to choose between different regulatory areas, threatens to undermine the principle of the rule of law. 100 On which side the European Parliament will line up remains an open question.

Against a Europe-pessimistic variant, which always invokes the threat of social or socio-political crises, it should be noted that the EP has so far in general not made any 'anti-social' decisions when faced with a unified union campaign101, although this is no guarantee for the future. With the vote on 24 March 2011 on a legal framework for migration, which blatantly violated the principle of equal treatment and provided something more like a Swiss cheese with many exceptions than a

101. The latest example was the vote on the Directive on Working Time in the Transport Sector in the EP on 16 June 2010, when the EP turned down the Commission’s wishes to give leave self-employed truckers unregulated.
general framework to be respected, the EP did not follow the calls of the ETUC to provide for equal treatment. With regard to the revision of the European Works Councils, the Euro-pessimistic doubters within the unions have for years blocked any progress, and are threatening to do the same with the necessary revision of the PWD. If the sole concern is not to take any risks, the only remaining perspective is to hibernate and wait for better times. As long as unions remain in the realm of mere opposition, rather than working on concrete alternatives, there will be no mobilization for social-ecological modernisation in Europe.

What do critics like Urban actually have to offer? What is the alternative sketched out for the trade union movement - on the assumption that neither ‘re-nationalization’ and ‘protectionism’ offer a way out? Urban calls for ‘promises to guarantee further existence’ (Bestandszusagen) from the EU, as if there were in the socio-political area untouchable safe areas, removed from any conflict, placed, so to speak, outside the range of power relations. A social order is, however, not something that automatically continues to exist, but a product of social interests, and thus dynamic and unstable, conflictual and embedded in the double capitalist movement of ‘market expansion and market containment’ (Polanyi) with the state as guarantor and organiser of (capitalist) production relationships. Urban refers to the DGB’s ‘social progress clause’ (i.e. a treaty change) - while failing to notice that the ETUC had already March 2008 proposed the ‘social progress clause’ as an element of a solution. Urban calls for a ‘strengthening’ of the EP. This has already taken place with the Lisbon Treaty, which has been in force since 1 December 2009. He points to numerous other demands that are totally correct - for a regulation of the financial sector, for a ‘new deal’, for an economic stimulus programme, for a European industrial policy, for an end to liberalisation policies, etc., all of which have long since been on the common list of demands of the European trade unions. Thus, it remains unclear what actually is missing.

102. A position paper of the Swiss Federation of Trade Unions SGB/USS dated 27.5.2010, which served as the basis for a ver.di/SGB seminar in Berlin on 27.8.2010, criticised the fact that the building unions had become so demoralised that they failed to call for a revision of the Posting Directive. This position is found in the document ‘A joint position on posting and the posting of workers directive’, that was also supported by certain Scandinavian trade unionists.


104. For example in the ‘Paris Declaration’ of May 2009: http://www.etuc.org/r/1378
One cannot duck the question of why Urban ignores the advocacy that the unions themselves have created at European level in the form of the ETUC, which has recently given impetus to the criticism of the CJEU rulings, followed in this by the scientific and legal profession. The desire that Urban eagerly advances for a strategic re-orientation in order to ‘work on a new well-reflected Euro-realism along the path of a pro-European criticism of Europe’, would have fallen less on deaf ears if Urban had not only called for this ‘new realism’ but also applied this requirement as a yardstick to his own contribution. A logical next step would be to organise controversial, focused Euro-debates, to bring out common features in the analysis of the situation and to make productive use of differences, for example in the pro-left and in particular trade union press.

3. **Is the Court of Justice of the EU against fundamental social rights?**

‘Social Europe’ – *nothing but a bumper sticker.* Ever since the first days of European integration, the issue of the EU’s social dimension has been the subject of controversial debate. In particular during Jacques Delors’ term of office as President of the Commission, the Commission was a frequent contributor to the debate, coming up with a series of recommendations intended to strengthen the social dimension. In the face of the imbalance between economic and monetary integration and social integration, this was no easy task. These efforts petered out under Delors’ successors, with Barroso in particular developing no real understanding for social concerns. He appointed very weak commissioners for social affairs, ironically both social democrats. The recent rulings of the Court of Justice of the EU (CJEU) gave the debate fresh momentum, with a focus being put on:

- the relationship between the European Single Market and the social dimension
- the relationship between national and European competences

Though the following section is mainly based on a contribution written together with Katharina Erdmenger, Stefan Gran and Ursula Polzer for the IPA (‘Die soziale Dimension der EU’; FES July 2009), the responsibility for this revised version lies solely with the author.
the limits of Member States’ room for manoeuvre in industrial relations issues
— the relationship between the so-called ‘market freedoms’ and fundamental (social) rights, whereby the language used already points to the direction taken: this official terminology suggests that the entity ‘market’ possesses freedom rights, thereby confirming fetish character of the market
— the negative effects on the rights to collective bargaining and strike
— the interpretation of the Posted Workers Directive (PWD)
— the legitimation of competition in the area of labour and wages
— CJEU case law and the admissibility of criticism of it as an institution
— potential solutions.

The following section attempts to start discussing some of the controversial aspects of the rulings and their interpretation in the political and academic debate. On the basis of various contributions fuelling the controversy about the above-mentioned aspects, a number of potential solutions are briefly looked into.

The objective is to examine the political implications of the recent series of CJEU rulings – beginning with ‘Laval’, ‘Viking’, ‘Rüffert’ and ‘Luxemburg’ – for a social Europe and to develop possible solutions to this problem. The focus is not so much on providing an in-depth analysis of the rulings themselves, but on positioning them within the process of building Europe and on outlining which social problems arise through giving market freedoms primacy over social rights and longstanding national industrial relations systems.

106 Inter alia: Franz C. Mayer, “Der EuGH und das soziale Europa’, in: Der EuGH und das soziale Europa, IPA, FES Mai 2009, S. 7-25; Martin Höpner, “Usurpation statt Delegation. Wie der EuGH die Binnenmarktintegration radikalisiert und warum er politischer Kontrolle bedarf”, MPRG Discussion Paper 08/12; Fritz W. Scharpf, The Double Asymmetry of European Integration, in: MPRG Paper 09/12; Fritz W. Scharpf, “Legitimacy in the Multilevel European Polity”, in: MPRG Working Paper 09/1. We omit from this list Roman Herzog’s contribution, “Stoppt den Europäischen Gerichtshof” (FAZ 9.8.2008), which, though opposing the CJEU jurisprudence, does not actually deal with the specific rulings debated here. A number of critics expressed their disapproval that Herzog, as a former German President and for many years a judge at Germany’s Federal Constitutional Court, had blatantly called for the Federal Constitutional Court to toe the CJEU’s line.

A certain amount of leeway in the interpretation of legislation can be seen as normal. Decades ago, Franz Kafka\textsuperscript{108} was already pointing to the ‘various potential interpretations and the potential disadvantages of only allowing a handful of people and not the whole nation to take part in the interpretation’. Though many parties are allowed to take part in the interpretation, the Commission has no interest in letting itself be negatively influenced in its interpretation by the working population. Kafka was referring back then not to the Commission but to nobility.

3.1. The framework conditions of European social policy

With regard to social affairs, the EU has its own competence and room for manoeuvre. Starting with the Treaties of Rome (1957/58), these have been steadily expanded. The Treaties of Rome contained provisions enabling workers’ freedom of movement and setting down the basic principle of ‘equal pay for equal work’. The 1987 Single European Act both marked the achievement of a Single Market and introduced social dialogue and targets for improving the working environment and workplace safety. The 1992/93 Maastricht Treaty went on to introduce majority voting for social policy decisions. The Social Protocol annexed to the Treaty extended the EU’s social policy competences. The 1997/98 Amsterdam Treaty integrated the Social Protocol into the Treaties, adding a section on employment. The European Constitution signed in 2004 contained the Charter of Fundamental Rights. Unfortunately the Constitution never came into effect. The 2007/09 Lisbon Treaty made the Charter legally binding, without however modifying the social regulations. European social policy progressed from workers’ freedom of movement and the social security of migrant workers, via equal rights and equal pay for men and women (from 1975 onwards), the European Social Fund, the Directives on Health and Safety at Work (in particular 1980, 1989), up to minimum social standards (e.g. with regard to mass redundancies (1975) or working time (1994)), social dialogue, the Directive on European Works Councils (1994) and the Posted Workers Directive (1996) and finally the Open Method of Coordination (OMC), the Lisbon Strategy and the Charter of Fundamental Rights. It is not correct to say, as often stated by the Commission in recent times, that the
competences for social policy lie exclusively with the Member States and that this is the reason for the Commission's reticence in social policy.

The development of European social policy was always dependent on socio-political constellations and the status of economic integration, and was, right from the very start, always trapped between diverging concepts for Europe's future development: merely economic integration or a more comprehensive political and social integration. For many years, progress in integration through greater economic ties did not mean that this had to be achieved under neo-liberal premises. Commission President Delors was able to push through the concept of perfecting the Single Market, while at the same time establishing social dialogue as a further way – alongside the extension of other legislative competences – of arriving at legally-binding European social standards. When problems arose in connection with the accession of the Mediterranean states, *inter alia* at the Barcelona Olympics construction site in 1988/89, a debate started on the adequacy of existing instruments, leading to the Commission presenting a proposal for a Posted Workers Directive in 1991.

A process of political and judicial liberalisation, accompanied by a number of deregulation decisions, characterised not just the West from 1989 onwards. Liberalisation and deregulation were supposed to strengthen competition, increasingly seen as one of the core drivers of economic development. A geopolitical milestone, the collapse of the Communist regime in 1989 seemed to confirm the neo-liberal point of view. A strengthening of the exit options for capital had the effect of increasing the taxation of earned income and limiting redistribution. The balance of power between labour and capital shifted, with the call for an alignment of the trinity of liberalisation, flexibilisation and deregulation with solidarity requirements being seen as obsolete. Neo-liberal ideas led to a re-assessment of the relationship between the state and markets: ‘Rolling back the state’ to its core functions became the goal. This shift towards neo-liberal mainstream policy in many national governments and the European Commission saw economic integration being understood primarily as monetary integration, liberalisation, unfettered markets and deregulation. These were soon to become fundamental European economic principles and instruments. Whereas previous EU expansion (the 1973 accession of the Nordic countries and the 1981/86 accession of the Mediterranean countries) remained
unlinked to any decisions about the ‘right model’, this was no longer the case with the accession of the East European countries in 2004 and 2007. The accession of Greece in 1981, of Spain and Portugal in 1986, of Finland, Sweden and Austria in 1995 all had no major effect on the relationship between the economy and social affairs. By contrast, the accession of the East European countries led to competition between the different social systems of the Member States and their company legislation. Right from the start, liberal governments (such as the UK) were calling for EU expansion to be given priority over further internal development, as they saw here the chance of cementing the neo-liberal policy model in Europe. With the former communist states of East Europe having perverted the concepts of social justice, turning them into repression and exploitation, a radical restructuring of their economic and social systems in line with fundamental neo-liberal thinking seemed the only possible way forward for a majority of the population. Progress towards a social Europe became more difficult, with European integration becoming increasingly focused on the liberalisation of market forces and the globalisation of free trade. The interaction of these factors led to the election of neo-liberal/conservative governments, the majority of which supported neo-liberal European policy. What has since then been lacking among EU Member States is a common understanding of the extent to which each state should provide social protection to its citizens, protecting them against the risks of life. Despite this new conflict situation, the EP attempted to curb this market radicalism in important issues\textsuperscript{109}, as seen for example in the debate over the Services Directive and the regulation of working time.

Nevertheless, the conclusion can be drawn that, as a policy consequence of the shift towards heterogeneity associated with the accession of the East European countries, the model gained ground of free markets being one of the main drivers of integration. Instead of making available suitable instruments – as had been the case with the accession of the Mediterranean countries –, the Commission executed a wide-ranging paradigm shift: The Posted Workers Directive in particular moved more and more into its line of fire as the only directive

\textsuperscript{109}. I am using the term ‘market radicalism’ to describe the ideology that government action stands in the way of the markets and the anti-regulatory policy deriving from such an ideology.
attempting to set minimum conditions for a fair balancing of the different social levels of Member States, thereby offering basic protection for cross-border workers in this problematic field. The Commission attempted to water down these protection standards, *inter alia* with a number of breach-of-treaty suits, for example against Luxembourg. This trend was adopted and confirmed by the CJEU, as seen in its Viking, Laval, Rüffert and Luxemburg rulings. This paradigm shift towards the primacy of markets and competition over such fundamental labour rights as the right to strike or the right to collective bargaining took its course, even though in many cases the constitutional law of the Member States was involved and even though the Charter of Fundamental Rights and the ILO recognise these rights as both human and trade union rights. It was not by chance that the Commission, in early 2004 - the year of the accession of the East European countries - unleashed an unprecedented deregulation programme with the introduction of the Services Directive, heralding a retreat from social achievements on the basis of the 'country of origin' principle. Hardly anything would have been left of fairness or even fair competition.

3.2. Outlining the problems of the CJEU rulings

The individual cases behind the debatable rulings (Laval, Viking, Rüffert, Luxemburg etc.) all involve the question of which working conditions apply to workers on short-term postings to another Member State in the context of a service contract. This whole topic is basically covered by the Posted Workers Directive (PWD), which provides a minimum level of protection for all posted workers. The PWD encourages Member States to offer higher levels of protection. But it is exactly this right of Member States over which the CJEU puts a question-mark, interpreting the PWD not as a minimum but as a maximum standard. This has led to a series of fundamental problems, ultimately raising the question of which social constitution the EU wants. This is a question of the fundamental relationship between the 'basic freedoms' of the Single Market and fundamental human and labour rights.

*Regulation of working conditions in the Single Market.* Ever since the Treaties of Rome, Member States were supposed to be responsible for the regulation of working conditions (wages, holiday entitlements, working
hours, training, etc.). With regard to wage setting in particular, the respective national tradition was respected, allowing wages to be set both via national legislation and via collective bargaining between the social partners. Of decisive importance was the basic principle that even under the minimum harmonisation taking place in the social area for the purpose of aligning competition conditions, Member States were free to provide for more favourable conditions than the minimum EU standard. This basic principle was swept aside by the CJEU in its latest series of rulings, with Member States only being allowed to apply the minimum standard, but not any conditions going beyond it and more favourable to labour. In doing so, the CJEU restricts the rights of Member States to organise their respective industrial relations systems. It would be a good idea to check whether, in doing so, the CJEU breaches the principle of subsidiarity.

Legitimisation of wage competition. The CJEU ban on a Member State allowing better working conditions for people working on its territory can be interpreted as the explicit approval of direct wage competition between Member States. This interpretation can be seen as a paradigm shift, running contrary to the previous consensus that material protection and prosperity are to be guaranteed within the national framework and that the objective of the Single Market is to achieve an upward alignment of standards of living. From now on, integration is no longer to be achieved via social cohesion, but via the exploitation of ‘competitive advantages’, including competition over wages and working conditions and over taxes.

The social orders of the Member States. The question is now raised as to the extent Member States are able to organise their social orders in tune with their own ideas. In the case against Luxembourg, the state of Luxembourg attempted to define the provision of more favourable working conditions as being part of the ‘ordre publique’, i.e. linking it to the concept of public order and the maintenance of social peace. The CJEU argued against this, questioning whether Member States were in a position to autonomously define what they understood as ‘ordre publique’ and ruling that even this concept was to be checked as to whether it infringed the four market freedoms. In doing so, the CJEU gives the four market freedoms primacy over Members States’ social orders.

Fundamental rights v. the Single Market. In the same vein, the CJEU puts a question-mark over the status of trade union rights in the Single Market,
putting forward the fundamental argument that any form of trade union action is subject to the so-called ‘third-party effect’ of the four market freedoms. These apply not just in relations between the state and the private sector, but also between private sector entities. As a consequence, all trade union action is to be checked as to whether it has a negative effect on the four market freedoms. Put in concrete terms, this means that the exercise of such fundamental trade union rights as the right to strike or the right to collective bargaining, both of fundamental importance for all trade union action, is dependent on whether it has a negative effect on the exercise of the four market freedoms. At the end of the day, this considerably weakens trade unions, not just in cross-border situations but also in the national industrial relations hierarchy. In these rulings, the CJEU made reference to the Charter of Fundamental Rights (CFR) (not legally binding at that time), though without inferring that collective rights needed to enjoy special protection. Though the CFR has in the meantime become legally binding, the latest series of CJEU rulings continues to grow, ruling out any hope of the CFR having a positive legal influence.

This paradigm shift of the Commission and the CJEU brings with it a number of consequences:

a) Negative effects on collective bargaining autonomy. In the Rüffert case, the CJEU comes to the conclusion that a collective agreement negotiated between trade unions and employers has no effect in cross-border situations, as European legislation does not provide for / does not recognise this wage-setting instrument. According to the CJEU, only wage-setting instruments provided for in secondary legislation can guarantee compliance with regard to the enforcement of the four market freedoms. In doing so, the CJEU restricts freely negotiated collective agreements and the exercise of collective bargaining autonomy, providing a fit occasion for any austerity policy to sweep aside collective bargaining autonomy, especially in the public sector. A similar constellation was to be found in the case on collective agreements substituting wages for pension fund payments concluded in Germany between public sector employers and trade unions.\textsuperscript{110}. The collective agreement provides for local

\textsuperscript{110} The CJEU ruling of 15 July 2010 on pension funds in the public sector deals with a collective agreement signed on 18 February 2003 between the public sector
authorities and their associated companies only being able to conclude framework agreements with certain selected providers. The Commission initiated legal proceedings against this, holding the opinion that such framework agreements constituted procurement contracts subject to Europe-wide calls for tender. The argument that only specific contract partners are mentioned in the collective agreement as only they are seen as being most likely to reflect employee interests (solidarity, no medical checks, etc.) was not deemed applicable by the CJEU, ruling that such aspects can be listed in a call for tenders. There is a certain amount of truth in this reasoning. The problem is much more that the ruling subjects such a valuable asset as a pension fund to market forces. It is also completely in line with the latest set of rulings, with paragraphs 41 ff stating that the basic nature of the right to collective bargaining does not necessarily free a contracting party from the obligation to comply with the requirements deriving from the freedom of establishment and the freedom to provide services. The CJEU refers to the Viking ruling, stating that clauses in collective agreements cannot be removed from the scope of the provisions of the market freedoms. The exercise of such a fundamental right as the right to collective bargaining can consequently be made subject to certain restrictions. Though the right to collective bargaining comes under the protection of Germany's constitution, this constitutionally protected fundamental right is to be exercised in harmony with EU legislation and with the requirements of the freedoms protected by the Treaty. The consequences of this ruling are wide-ranging and serious. It means that a national constitution such as the German ‘Grundgesetz’ can lose its whole effect through simple policy provisions set forth in the Treaty.

b) The Commission questions in this case whether a public sector employer can use a collective agreement as an instrument for setting up a pension fund without resorting to a public call for tenders. The ruling can be seen as another blow against a social Europe. The application of the fundamental economic freedoms is nonsense when what is involved is the setting of cornerstones for pensions in Europe.

employers' association Vereinigung der kommunalen Arbeitgeberverbände (VKA) and ver.di, the public sector trade union.
The ruling fails to recognise the independence of the public sector when the latter acts in the capacity of an employer. Even more worrying is the fact that the ruling confirms the primacy of economic freedoms over fundamental labour right. The series of rulings that started with Viking and Laval continues. As a consequence, ETUC renewed its demand for the European authorities to act as quickly as possible to stress that the EU is not just an economic project but is also an instrument for achieving social progress.

c) Curbs on the right to strike. In its Laval ruling the CJEU declared industrial action provided for under Swedish legislation to be illegal, as it restricts the freedom to provide services. Swedish trade unions had taken industrial action legal under Swedish law, boycotting a Latvian employer in an effort to get him to comply with a collective agreement. The CJEU ruled that the action, though legal in Sweden, was ‘disproportionate’. In doing so, it places a restriction on the fundamental right to strike, the very purpose of which is, as an ultimate weapon for enforcing workers’ rights, to hinder economic activities in the short term.

d) Fundamental rights vs. the four market freedoms. In the above-mentioned cases, the CJEU makes no attempt to balance such fundamental rights as the right to collective bargaining or the right to strike with the so-called basic freedoms, instead subordinating the fundamental rights to the four market freedoms. In its view, the exercise of fundamental rights is only legal when it is ‘proportionate’ and does not interfere with the free provision of services. In doing so, it virtually makes such fundamental rights meaningless. The very purpose of collective action is to place limits on market mechanisms in the sense of protecting employees. Should it become necessary to subject any such decision to a restrictive proportionality test, the collective action loses all sense. Put in a nutshell, the conclusion must be drawn that the market freedoms are not obliged to respect fundamental rights.

3.3. The CJEU and Social Europe

A major controversy has blown up over how these rulings are to be interpreted and what consequences they have. The two sides are led by
Franz Mayer as the apologist for the CJEU and Fritz W. Scharpf as the CJEU’s critic. The controversy is based on the one hand on diverging opinions of whether the CJEU has the role of a political interpreter and player or whether it is neutral interpreter, and on the other hand on diverging opinions on the role of competition in the Single Market - as a legitimate competitive advantage or as social dumping.

Mayer’s intention seeks to support the CJEU and ignore any need for action, completely rejecting any questioning of the CJEU and its rulings. What he overlooks is the fact that the EU has no competence in the field of wages, the right of association or the right to strike/lockout. In spite of this lack of competence, the CJEU still pronounces rulings pertaining to such. He fails to analyse why the CJEU has made a U-turn, ignoring its earlier judgments. Mayer takes no account of the fact that both the European Parliament and Council, in their deliberations on the Posted Workers Directive - the core subject at issue here -, clearly stated that it had been their intention to set down minimum conditions and not maximum ones. He similarly takes no account of the fact that the European Parliament referred to the Andersson Report, stating that it did not approve of the way the CJEU was interpreting EU legislation. In Mayer’s view, the core issue lies with the exercise of competitive advantages in the Single Market, exacerbated by the massive disparities between the old and new Member States. His starting point is that ‘Polish workers would have no hope of working in Lower Saxony if they were just as expensive as German workers’. In Mayer’s view, the CJEU has tended ‘to take the side of the weaker employees from the new Member States, rejecting protectionist strategies’. He is therefore in favour of interpreting competition within the Single Market as competition between workers from different Member States over social conditions. This view is in line with a non-historical approach, ignoring on the one hand changes in the Treaties, and on the other hand sweeping under the carpet phases of varying intensity regarding European social policy - periods of high activity under Jacques Delors and quasi-abstinence under Barroso. In doing so, social policy becomes nothing more than a collection of ‘soft instruments of informal coordination without any legal footing’. The Delors era with its plethora of legislative activities in the areas of health and safety, equal opportunities, social dialogue, etc. is completely ignored. What is also surprising is that Mayer ignores the CJEU’s remarkable step of directly binding private individuals to market
freedoms. Even the implicit normative devaluation of the Charter of Fundamental Rights seems to be no problem for him. Mayer is probably unaware of the fact that the same argument is used in connection with the debate on migration, where it is stated that the goal cannot be equal treatment of seasonal workers but must instead be to offer them better conditions than in their home countries - a sort of ‘turbo country-of-origin principle’. The fact that this leads to an exacerbation of social tension (playing into the hands of the extreme right) would seem to have been missed by the expert.

In contrast to this, the opinion of Martin Höpner is that the CJEU is not free from making subjective value judgments. In doing so, it works autonomously on further developing legislation, thereby influencing integration policy and amending national labour and social legislation without having the legitimacy to do so. It leverages case law to achieve a progressive extension of EU competence, establishing in the 1960’s the primacy of EU legislation over national legislation, and subsequently subordinating national constitutions including fundamental rights. From case law it has derived the principle of direct effect. This means that, together with the primacy aspect, the potency of the market freedoms provided for under the Treaties of Rome has increased exponentially. Last but not least, the CJEU re-interprets anti-discrimination provisions as bans on restrictions, thereby making any obstacle hindering the flow of goods illegal under EU legislation. The Court started by just setting limits. These were later mainly abandoned, with the bans on restrictions being extended to cover the other Single Market freedoms. The Court ended up by abstracting European fundamental rights as general legal principles of the Community out of the governing constitutions and norms of the Member States, i.e. without any definition of fundamental rights by the European legislator. What still applied was that any European interpretation of fundamental rights and market freedoms was not allowed to encroach on national fundamental rights. The latest set of rulings means that the CJEU is linking up primacy, direct effect, the ban on restrictions, including the policy fields of wages, the right of association, the right to strike/lockout (even though not foreseen in the Treaty), thereby dangerously radicalising the ‘long series of rulings which has seen European judges further developing law without any political interference’. It is reducing the Member States’ market-regulating scope to a minimum, thereby radicalising Single Market integration.
Höpner sees the only solution in ‘CJEU self-restraint watched over politically by the Member States’. This would involve defining the limits of economic integration: ‘A Social Europe can only be a Europe cautiously promoting the transnationalisation of social affairs, while at the same time taking into account the autonomy of national industrial cultures, redistribution practices and social partnerships.’ What is needed is a ‘political response’. He does not go into what this actually means.

Remarkably enough, his analysis concurs with that of Dieter Grimm. The latter comes to the conclusion that the market has become the sole decisive criterion, since there is no field of law which cannot in this or that case have an inhibitory effect on free market access. A further finding of Grimm is that there are no possibilities for corrective measures at an EU level - as found and used at national level. The EU’s political organs, the Council and the Parliament, have no possibility of intervening, meaning that the only corrective measure available is an amendment to the Treaty. This is seen as being ‘practically impossible’. Grimm also comes to the conclusion that a trend once initiated by the CJEU cannot be stopped by the German Constitutional Court. He does not comment on whether the Member States can curb any such trend.

Fritz W. Scharpf also sees the CJEU as a player working to enforce European integration, fighting against recalcitrant Member States. Its intrusive strategy has the effect of undermining their democratic legitimacy and their ability to define regulatory frameworks for industrial relations. The hierarchy between European and national legislation mutates into a hierarchical relation between liberal and republican constitutional principles, between citizens advocating the rule of the markets and other advocating the rule of the state. Court action has progressed from a ban on discriminatory measures to a witch-hunt against potential, hypothetical barriers to trade. The CJEU is seen as destroying the link between rights and responsibilities in a community, opening up easy exit opportunities for contributors and easy entry opportunities for non-contributors. Though this might at first be seen as generosity, it ends up de facto eroding public benefits and services. The treatment of public interest and collective rights is

asymmetric, making trivial breaches of the ‘fundamental freedoms’ subject to a proportionality test, with the burden of proof lying with the defence. The Treaties’ preservation of autonomy vis-à-vis the ‘fundamental freedoms’ is considered irrelevant by CJEU case law, leading to the CJEU simply abolishing national wage regulation in Germany and Luxembourg. The dismantling of national solutions in the context of the EU system reduces overall problem-solving capabilities. National industrial relations systems are the results of long adjustment processes, whose fragile balance of fairness is now being interfered with from outside. The only institution possibly able to restore the balance is - in the opinion of Scharpf - the European Council. It is in a position to assess the effects the CJEU rulings have on policy and to take appropriate corrective action. Non-compliance with the rulings would be the nuclear option, with a first step being the creation of a forum and procedures for enacting corrective measures. Scharpf says nothing about the possible content of such political corrective measures.

Interim balance of the ‘latest series’. This shows us that the CJEU is both a symptom and a contributor to the paradigm shift. Mayer’s contribution sees no need for change. The contributions of Höpner and Scharpf point to the Single Market freedoms having a direct effect down to a national level, thereby restricting policy-making scope. Höpner pleads for the CJEU to exercise ‘self restraint’, upholding autonomy (‘Autonomieschonung’), whereas Scharpf calls for European Council intervention, overlooking however its political orientation and heterogeneity since the accession of the East European countries. Up to now, the Council has not succeeded in coming up with a joint declaration on the rulings. Furthermore the Council has no right to introduce legislative proposals. Scharpf does not include the Parliament in his thinking. Contrary to the Council and in spite of its conservative-liberal majority, this body at least came up with an opinion. It also has a greater ability to shape policy as, contrary to the Council, it must directly legitimise itself politically. Apart from the substantive democratic problems deriving from his idea of not complying with the CJEU rulings, he also overlooks the fact that the majority of Member States either welcome or are tacitly in favour of the political and social trend set by these rulings. Höpner as well comes to a nebulous and contradictory conclusion, asking why such a powerful CJEU should all at once become modest after years of success. Why should Member States stop it all of a sudden, after not having wanted to do so up to
now? We are also left in the dark on the prospect of a ‘transnationalisation of social affairs’ and a ‘political response’.

Scharpf refers to the massive effect these rulings have on the balance of national social systems and industrial relations, with their negative consequences for employees. They make visible an otherwise distant policy level, creating a basis for political action. A reminder is given of a similar situation in recent years, that caused by the Services Directive. The thinking of Scharpf and Höpner leads to the revelation of a decisive criterion for any proposed solution: that it must be established on the level of primary legislation. As the problems referred to do not just have their origins in secondary law but are also the result of a long period of development in the wrong direction, the call for measures protecting national autonomy and ensuring subsidiarity - i.e. the reversion to national solutions - cannot be seen as having any great chance of success. Any solution must be anchored in primary law, with the question needing to be answered of whether primary law needs to shape a common social dimension to the same extent as it does with regard to the Single Market.

3.4 Possible solutions

The possible solutions discussed below have different scopes, are anchored on different levels and make use of different instruments. The first ones are directly linked to the CJEU rulings, whereas the ones following seek solutions for the underlying problem of social dumping.

On the level of primary law: Introduction of a social progress protocol into the EU Treaty. One possible solution proposed is to introduce a ‘social progress protocol’ into primary law,112 i.e. into the EU Treaty. Such a protocol would need to contain a clarifying statement to the effect that market freedoms are always to be interpreted in a manner taking fundamental rights into account. This would underline and safeguard the principle of ‘social progress’ contained in the Treaties, meaning that in any interpretation of the CJEU or in everyday politics

the Single Market freedoms would not fundamentally have primacy over legislation protecting workers, their right of association or their right to collective bargaining. The protocol would ensure that none of the market freedoms could be used as grounds for intervening in nationally guaranteed individual or collective labour rights. From an overall EU perspective, the protocol would cement the principle that trade unions could not be prevented by EU legislation from taking industrial action in protection of existing social standards. The decisive aspect of such a protocol would be to correct the one-sided CJEU interpretations on a Treaty level, with the Single Market respecting fundamental social rights. What still needs to be discussed is when and under which circumstances such a protocol could be adopted. The next accession treaty would represent an opportunity of adopting such an amendment. At their December 2010 party conference in Warsaw, European Social Democrats saw themselves neither able to adopt a resolution calling for a social progress protocol nor for Social Democrat labour ministers to support a revision of the Posted Workers Directive. On the other hand, the European Christian Democrat Workers Movement under its chairman Elmar Brok supports these ETUC initiatives\(^\text{113}\). European Social Democrats prefer to call for a nebulous progress pact.

On the level of secondary law: a revision of the Posted Workers Directive. As a measure on the level of secondary law, a revision of the Posted Workers Directive is proposed\(^\text{114}\). The objective here is to prevent interpretations of the Directive not intended by the European legislator when the Directive was first adopted. Clarifying statements within the Directive must be aimed at making it clear that the conditions defined in the Directive are minimum conditions and that they may be exceeded. Member States would need to have wide-ranging discretionary power to define for themselves and from their perspective which social provisions are essential and are to be complied with when workers are posted. A further important factor is the establishment of control measures for making sure that the PWD provisions are

\(^{113}\) ETUC-EUCDW Joint Declaration, http://www.etuc.org/a/6942

complied with in individual Member States. A further possible solution is the extension of the Directive's legal basis. At present the Directive only applies to the freedom to provide services. Its legal basis could for example be extended to cover workers' freedom of movement. Such a revision would need to take place on the initiative of the Commission. The latter is however opposed to this, at present only wanting to review the Directive's enforcement. Similarly there is no-one on the Council of Ministers as yet advocating a revision.

Solutions coming under the Open Method of Coordination (OMC): The Corridor Model and the drafting of a 'Social Pact'. Klaus Busch has for a long time now been calling for a 'Social Stability Pact', linking the size of the welfare state to individual states' level of development. This call has recently been taken up by the German trade union ver.di. Such a pact would provide for four groupings of states. Each grouping would have its own 'corridor' dictating the level of social security spending. Member States would switch from a lower corridor into a higher one dependent on the progress made in their economic development. Busch reasons that under the terms of the Monetary Union the nominal exchange rate is no longer available as an adjustment variable, meaning that the importance of unit labour costs, social security costs and corporate taxes as competitive variables increases. To prevent increased competition leading to a downward spiral in these three policy fields, European-level collective negotiations and the coordination of social security costs and corporate taxation are needed. The basic principle of the corridor model is taken from the stability pact, consisting of a mid-range value with the possibility of upward or downward adjustment within a corridor. The quantitative approach of the corridor model based on the cost dimension ignores the qualitative aspect of the minimum standard model, basically meaning that it is a step backwards compared to the conventional approach. The corridor model contradicts the harmonisation approach and offers no solution to dumping

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[115] Busch recently 'revised' his approach in response to alleged 'misunderstandings' by his critics. In his opinion, the critics had recognised his method of differentiating between states as making sense, but had stated that such a procedure already existed, i.e. the possibility of greater collaboration enabling different levels of minimum conditions to be introduced. However, such an approach seldom had the necessary political backing. This meant that the corridor model had little chance of becoming reality.
between corridors. The definition of maximum standards represents the corridor model’s greatest disadvantage, putting the brake on progress. In doing so, it is diametrically opposed to the ‘progress philosophy’ underlying the minimum standards model. The following conclusion can be drawn: The concept of differentiated integration (with one standard for a group of countries and a more rigorous one for a core group) as an extension of the approach of establishing minimum standards is to be preferred to the inflexible corridor model. The definition of different social policy standards dependent on the level of economic performance of countries is on the other hand compatible with the minimum standards model. It is worthwhile discussing whether a step-by-step EU-level harmonisation of fiscal and social policy would not lead to greater efficiency.

On the level of the social partners. With regard to the areas of freedom of association and the right to strike/lockout, the EU Treaty clearly states that the EU has no regulatory authority here. Nevertheless there are many ways in which it either directly or indirectly influences national collective bargaining policy. Apart from the CJEU rulings discussed here, the European Council exercises its influence on wage policy through its ‘Broad Economic Policy Guidelines’. Both the European Central Bank and the European Commission are permanently criticising what they see as the inflexibility of national labour markets and collective bargaining systems. What is also now being seen is that national wage policy in the Eurozone has for all intents and purposes become a substitute for the monetary policy lost as a result of the Monetary Union. A consequence of this shift is wage competition, which has led to major imbalances in the competitive situations of individual Member States. Germany for example was able to achieve its current competitive advantage over its EU competitors mainly through extensive wage restraint, with workers bearing the burden. A further competitive factor is the major disparity in wages and working conditions between the old and the new Member States.

a) European harmonisation of collective bargaining policy. Without a wide-ranging European harmonisation of collective bargaining policy, trade unions are faced with a permanent loss of power, meaning that they will be increasingly unable to prevent competition on the level of wage costs. A wage policy based on productivity gains and calculated on the basis of inflation compensation, productivity
gains plus a redistribution factor would be the right way. At present there are 27 different forms of legal constellations of national collective bargaining systems. A European-level harmonisation of collective bargaining policy has been under discussion in trade unions for a long time. The so-called Doorn initiative pioneered the move for better coordination of national wage policies. This initiative was supplemented by the attempts of the European metalworkers' unions to coordinate their wage policies in certain Western European countries and to formulate and push through common European collective bargaining demands. Nevertheless, collective bargaining policy remains predominantly an area of national policy. There is for instance no EU-level legal framework either for collective agreements or for European industrial disputes. In its 2007 work programme, the European Commission announced its intention to establish a legal framework for transnational collective agreements. This intention remained just an intention. To a certain extent national trade union negotiators are to blame for this situation, having sent a loud 'No' to Brussels. The question needing to be asked here is what intention prompted this rejectionist strategy. All that is now left is the idea of a framework for transnational agreements on a company level. European collective agreements in trans-European companies have the potential of ensuring the same working conditions (for instance the same working hours and wage-setting criteria) in all European branches of the company. European sectoral collective agreements would go further, offering an effective contribution to stability in the Eurozone and combating wage competition. If not forthcoming, European collective bargaining autonomy will remain just an item on the agenda, without any further action being taken. In order to make progress in this question, the non-competence clause would need to be removed from the Treaty or other competence norms used. Another interim option would be to harmonise national norms on a European level, with national legislation on industrial disputes allowing the goals of industrial disputes to be transferred to a European level, thereby regaining a level playing field for disputes. One of the bases for this could be the Charter of Fundamental Rights and the fundamental right to collective bargaining and action contained therein. A different approach is advocated by Florian Rödl: European-level industrial disputes need to be understood as a coordinated network of local-level disputes,
each conducted in accordance with longstanding national legislation. A company-level collective agreement in the area of wages and working time - the two main labour-related factors of unit labour costs - has the potential of putting a stop (at least to a large extent) to any cost competition between two locations and gaining European reach. The methodological approach would involve structures and institutions being subjected as little as possible to European-level harmonisation. This would also mean that no ‘standardised European legislation on industrial disputes’ would be needed.

b) **A European-level minimum wage.** A further element belonging to this debate is the question of a European-level minimum wage. The call for the introduction of a standard minimum wage for all 27 Member States can be seen as unsuitable and illusionary against the background of the major disparities in wage levels. What is worthwhile considering is for Member States to reach agreement that minimum wages, where they do exist, be linked to GDP in accordance with a common formula. Given the fact that even Great Britain has introduced a minimum wage, such an approach has a chance of success. The advantage of this would by a stabilisation of wage developments, thereby at least reducing wage competition between Member States. At present, both Scandinavian and Italian trade unions are opposed to a common formula for calculating minimum wages.

c) **Social Dialogue.** A further level involves the development of a European collective bargaining framework within the context of ‘social dialogue’. Commission President Delors anchored in the Treaties the option of transnational European-level collective bargaining as a counterweight to the Single Market and as a second way of achieving European-level minimum standards (alongside the normal legislative process). The Commission at that time took the Treaty obligation of promoting social dialogue seriously. This led to three agreements being negotiated in the 1990’s, which were then transposed into directives: parental leave (1995), part-time work (1997) and fixed-term work (1999). Subsequent Commissions

116. Florian Rödl, Arbeitskämpfe ... pp. 159 - 160.
saw no political priority in further developing the social dimension. In line with the overall dearth of legislative initiatives in the social field, they did not initiate any social dialogue negotiations. The Barroso Commission did make a problem-ridden attempt to revive the instrument in the directives on European works councils and parental leave, though, in contrast to Delors, it did not leverage its right of initiative (‘bargaining in the shadow of the law’\textsuperscript{117}) instead relying on appeals. In doing so, it exploited social dialogue to distract attention from its own lack of will to further develop the social dimension, delegating responsibility to the social partners. This basically meant that it acceded to employer demands for a ‘social moratorium’. The experience gained with social dialogue points to the core role assigned to the Commission. As with legislative proposals it has the right of initiative and the monopoly of initiative. Both ways of achieving European-level minimum standards have therefore been politically blocked for years. Under its President Barroso, the European Commission did not just merely pay lip service to the social dimension. It even attempted to overturn and restrict existing national collective agreement rights. One of the main examples here were the breach-of-treaty proceedings initiated against Luxembourg and Germany.

Despite the Commission's devaluation of social dialogue, 95% of ETUC members see social dialogue as being important or even very important. The situation in 2011 is different to that of 1991, the year the Social Protocol was signed. The political environment has changed, the term ‘labour’ has practically disappeared from all official Commission texts, the social democracy and co-determination deficit has increased, as has the heterogeneity of social models, and the balance of power has shifted away from the trade unions. The institutions are looking solely at the two aspects: poverty and social exclusion, regarding ETUC as just another lobbying organisation, on the same level as NGOs, universities or consumer protection organisations. At the same time the European discourse is increasingly focusing on core trade unions topics such as pensions, wage developments or the public sector, without any labour coordination taking place. Despite this situation ETUC member unions

\textsuperscript{117} Cf. Jacques Delors, 'Memoir' 2004
are opting for increased vociferousness and protest and not for exit or loyalty options.

On the level of EU institutions. With the CJEU part of a multi-level system of complex policy-forming and decision-making processes, any discussion of the policy processes leading to the shaping of the CJEU rulings is to be welcomed. The role of the Commission needs to be investigated, looking into which situations lead to breach-of-Treaty proceedings and which not, in which cases the Commission supports CJEU decisions based on its own preferences and in which cases it stubbornly takes action against rulings it does not like (on-call duty, working time directive). Attention is also drawn to the role of national courts which through the referral system (for instance Rüffert) open the door to the CJEU, giving the latter the chance to intervene without having to adhere to national court hierarchies. A further point needing to be reconsidered is the procedures for appointing CJEU judges, checking whether these can be made more transparent and democratic. One possible option would be a hearing of candidate judges before the European Parliament, thereby making the selection procedure more democratic. A further aspect worthwhile considering is whether a less inter-governmental composition would make sense, with the number of judges being reduced or a rotation procedure introduced.

3.5 Balance of the latest series of CJEU rulings

The various types of possible solutions have, as mentioned, different reaches. The proposed changes to primary and secondary law have a direct bearing on the rulings. A number of trade unionists relied on an automatic adaptation and correction of the rulings in subsequent case law as a result of the Lisbon Treaty coming into force and making the Charter of Fundamental Rights legally binding. This is seen as a major extension and anchoring of social rights in Europe. This hope, though justified, has been totally destroyed by the latest CJEU rulings. It has become evident that the political ‘improvements’ to the Charter of Fundamental Rights, in particular Article 52, as well as the transformation of the draft European Constitution into the Treaty of Lisbon, have firmly anchored the link back to existing Community law. This has led to the creation of an inescapable vicious circle, in which fundamental rights only apply when not contradicting EU legislation.
The CJEU has adopted this interpretation in its case law, meaning that the sole remedy available is a renewed modification of primary law. This is all makes a social progress protocol imperative. Within the trade union movement the demand for a package deal was put forward, with further countries only being allowed to accede to the EU after the inclusion of a social progress protocol in EU primary law. This demand however enjoyed no majority support. It is not acceptable to burden employees from new accession countries with further conditions. Progress could be made a lot quicker if the social progress protocol were to be included in the Treaty at the next possible occasion, together with agreement on a revision of the Posted Workers Directive and a framework for European collective bargaining policy.

The latest CJEU rulings insist that the enforcement of a higher level of working standards constitutes an obstacle in the way of the free movement of capital. In the opinion of the CJEU, the only acceptable principle is for the minimum standards applicable to posted workers to be used as maximum standards, probably also for seasonal workers and intra-corporate transfers from third countries. Migrant workers would therefore be seen as second-class workers, subordinate to domestic workers and correspondingly treated worse. The introduction of this asymmetry is an open invitation to xenophobia.

‘Human dignity’ as a relative and violable value. Recent CJEU rulings demonstrate that nothing escapes the sacrosanct realm of market freedoms. In the Laval case, the CJEU prohibited employees from taking strike action against an employer posting workers without complying with labour and industrial relations legislation. The equal treatment of posted and domestic workers is seen by the CJEU as an obstacle in the way of the free market for services. Employees are being told not to take action against off-shoring or flags of convenience. It was a characteristic of the Communist regime that new ideas were enforced top-down without any opposition being allowed. It would seem there is now a risk of this re-occurring in the case of the CJEU.

rulings. In contrast to the situation in the Member States, it is becoming increasingly impossible to introduce controversial topics in a bottom-up manner, especially when the topic involves the shaping of social justice and the conflicting interests of employers and employees. The most worrying aspect is the fact that human dignity, which is not just one of many fundamental rights but the cornerstone of a civilised legal order enshrined in the 1944 Declaration of Philadelphia, the 1948 Declaration of Human Rights and in the first article of Germany’s Grundgesetz (the country’s constitution adopted in 1949) - i.e. an overriding legal principle -, is being relativised by the CJEU in § 46 of Viking and § 94 of Laval: respect of human dignity is subordinate to the provisions of the Treaty, on the same level as market freedoms (‘n’échappe pas au champ d’application des dispositions du traité’). This means that human dignity is to be brought into line with economic freedoms, taking second place to market freedoms when doubt exists. Immanuel Kant, for whom the price of dignity was higher than everything else, would turn over in his grave. Put in a nutshell: human dignity is sacrosanct - as long as it does not interfere with market freedoms.

EU law can only be changed through unanimous resolutions, i.e. through the conclusion of new treaties. By contrast, nation states have the possibility of changing direction by adopting new laws. The CJEU has no institutional/legislative counterpart able, in a system of checks and balances, to enforce the primacy of politics. When the CJEU starts taking policy-determining decisions, the democratically legitimated decision-making power of the judges is exceeded. This has nothing to do with chastising judges. What is involved here is the inviolability of CJEU rulings which de facto can no longer be corrected, de jure only on the basis of a unanimous decision. The CJEU does not just gain a monopoly in interpreting the Treaties - this monopoly is infallible and inviolable. With the institutional system of checks and balances seen to have lost its balance, the proposal has been made to move away from the unanimity rule and introduce majority decisions. The Treaties are fraught with specific regulations which have absolutely no place in a European constitution.

The Commission’s reticence in establishing European social standards is a major contributory factor to the relative lack of progress in the social field. Other policy fields already show high levels of harmonisation, even having a dominant formative effect on the social area in accordance with the principle of the primacy of market freedoms over fundamental rights. The big-bang accession of the East European countries was used for this purpose, favouring deregulation and liberalisation processes. The dominant liberal-conservative policy is leveraging the massive social divide to keep Europe’s social dimension on the back-burner. The revision of the Posted Workers Directive (as suggested by ETUC) would be just one step towards counteracting this policy. Other initiatives would need to follow, for example in the field of social protection. The original concept of two separate spheres - on the one hand the European Single Market and on the other hand national social protection systems - has turned out to be an illusion in the light of the steady expansion and spread of the Single Market. In the social field, the European level was seen as being complementary. However the rules of the Single Market are increasingly proving to be irruptive, having a destructive effect on long-established national structures. National deregulation alongside European re-regulation used to be part of the overall programme, but unfortunately only the first part of this programme was actually implemented. The one-dimensional approach of upholding the principle of subsidiarity to protect long-established structures and institutions, up to now the main tactic of many trade unions, is not far-reaching enough. What is needed is a two-sided approach, with firm priority being given to European-level harmonisation and re-regulation on the one hand, and to subsidiarity on the other.

The proposal to introduce a corridor model designed along the same lines as the Stability Pact is incompatible with the minimum standards approach. It reflects an outdated status of debate, focusing on quantitative aspects and ignoring the possibility of achieving qualitative improvements. The proposals for a European-level harmonisation of collective bargaining policy point in the direction of maintaining, developing and expanding European minimum standards. They are however to be understood as middle to long term approaches. An informal and non-binding exchange of information as experienced in the Doorn process has reached its limits and is not an ongoing basis. Social dialogue itself can only function when the Commission acts pro-
actively and assertively. Flanking institutional readjustments may be helpful. What is needed is a comprehensive new approach. All that remains of the Delors trinity of competition, cooperation and solidarity is competition. The two missing components – cooperation and solidarity – need reviving. Against the background of the current global financial crisis, we should not forget that both Roosevelt’s New Deal and Obama’s recovery programme had three dimensions: fighting the financial crisis, kick-starting the economy and social components including support for trade unions. This element is completely missing in the European approach. The opposite is true, with the social dimension being undermined. For the social dimension to gain a new and higher status in the EU, a pro-active Commission is required, together with an ambitious European-level programme of harmonising social policy.

The CJEU unfortunately refuses to join in the debate. Invited to take part in a high-level panel discussion involving the Commission, BusinessEurope, ETUC and the European Court of Human Rights, the CJEU turned down the invitation, citing time problems as the reason for not being able to come. In the discussion, the representative of the European Court of Human Rights made it clear that rulings ‘from above’ were not to be seen as sacrosanct, but that dialogue needed to take place. She also admitted that tension existed between the two courts. It would have done the CJEU good to get down from its high horse and take part in the debate - but perhaps this will happen one day.

3.6 Is the Commission against fundamental rights?
The European labour market and immigration policy

In a context shaped by the latest series of CJEU rulings, the Commission is proposing to revamp the labour market via migration. There are three directives on migration policy: one on a single permit, a single application procedure for a single permit for Non-EU Member Country
nationals to reside and work in the territory of a Member State; one on seasonal workers (2010) and one on intra-corporate transfers (2010). All three directives contribute to increasing the fragmentation of the labour market, as they promote unfair competition, give priority to the country-of-origin principle over the host-country principle, and make mockery of the principle of equal treatment. In doing so, they greatly reduce trade union bargaining power. The first problem involves the legal basis chosen by the Commission, Article 79 on immigration. By choosing this one, the obligation to consult the social partners does not apply. There can be no doubt that a horizontal instrument, a legal framework for regulating immigration is absolutely necessary, but initiatives must be designed in such a way as to help prevent abuse and protectionist reactions. This is why accompanying social measures are important, a minimum stock of labour rights, of social and labour norms needing to be complied with. However, appropriate instruments are missing in the immigration package, such as joint and several liability, a chain of responsibility for wages and working conditions, a strengthening of labour inspections, and initiatives targeting compliance with wage and working conditions including the revision of the Posted Workers Directive. Why is the Commission so opposed to equal treatment? Because its approach for shaping the labour market is based on the rule of compassion, kindness and charity and not on the principle of equal pay for equal work.

ETUC is calling for a fair immigration policy based on fundamental rights - the Single Permit Directive however provides no full access to the labour market. A further problem is the lack of any assessment of the social impact of these measures. All special categories of workers need – without exception – to be listed in Chapter III (Right to Equal Treatment), ensuring their equal treatment at work without discrimination and with regard to social standards. The Seasonal Workers Directive was presented without any prior consultation of the social partners, as if this measure had no influence on the labour market. The initiative raises questions regarding its objective, the sectors that are not defined, and again equal treatment. Trade unions see themselves faced with a further attempt to prune their bargaining power and segment the labour market. Member States’ monitoring possibilities are severely restricted, in particular with regard to preventive controls. As a consequence, ETUC has called for the Commission to withdraw the directive. This package of directives
contains a momentum similar to that of the Bolkestein Directive – creating a two-tier labour market. Opening Europe's frontiers to cheap labour does not just undermine domestic working conditions but also has potentially explosive social consequences. The conditions of the host country, and not minimum standards, must be applied to intra-corporate transfers. Any undercutting of these conditions would cause racism and anti-immigration feelings.

Finally, the Commission wants to simplify intra-corporate transfers for employees from non-EU countries in line with the General Agreement on Trade in Services (GATS). This measure is similarly too broad-ranging, with all sectors covered by its scope. Member States themselves can decide whether to require employees to have already worked for their company for the 12 months preceding transfer. This simply opens the door to forum shopping, with companies choosing the most favourable jurisdiction. To prevent unfair competition, the right thing to do would be to let transferred employees enjoy equal wages and working conditions. The question can be asked why access for highly qualified workers is not simply covered by the European Blue Card scheme. Though equal treatment of domestic and posted workers is imperative, the trend is moving towards merely recognising generally applicable collective agreements, putting further pressure on collective bargaining systems. There is no provision for either control systems or sanctions. When even paid trainees are posted, the danger exists of them being employed as posted workers. Monitoring and inspection of compliance with the equal pay principle in the host country becomes all the more important.

What ETUC is demanding is equal treatment and no discrimination. The problem behind the proposals becomes clear in the light of the CJEU rulings and the inverted hierarchy between fundamental rights and economic freedoms. The legislative proposals lead to a fragmentation of the labour market, promote unfair competition, undermine the principle of equal treatment, contribute to an erosion of the host country principle and restrict the bargaining scope of the social partners despite the provisions of the Lisbon Treaty. The proposals are based on Article 79, even though they have a massive impact on the labour market and on instruments defining the rights of such workers. The social partners were not consulted – but who is responsible for structuring the European labour market? Why was a specific
instrument needed, even though the Blue Card scheme would have covered such workers? A further problem is the relation to the Posted Workers Directive, which does not provide either for the equal treatment of posted and domestic workers or for compliance with generally applicable and specific collective agreements in respect of the host country principle. The proposal’s scope is too wide-ranging, covering all sectors and all sizes of companies. The definition applying to managers and professionals, and the inclusion of trainees is a further area over which a question-mark hangs. There is no provision for either control systems or sanctions. In the light of the missing impact assessment it is no wonder that certain sections of the European Parliament are trying hard to wave through the package. With regard to immigration, the political class seems incapable of grasping its impact and the huge cultural change it causes, and steering it in the right direction.

4. Unions at the Crossroads – mainstays and guardians of official Europe or counter-power for a fundamental change of direction and a different kind of Europe? Has the European bicycle tipped over?

The slow march of European integration is often compared to the forward movement of a turtle or the famous bike that tips over as soon as it comes to a halt. The strange thing with this overworked bicycle image is that this assumes that the bicycle is riderless, because only in this case does it fall over on stopping: any cyclist knows how to bring a bicycle to a halt without it tipping over. The question is rather the direction in which the bicycle is moving, in the direction of social progress, full employment, equal treatment, or in the direction of competitiveness as the sole objective and with fiscal and social dumping as side effects. The debate of ideas in the European Parliament (EP) frequently remains chained to this bicycle image. It is frequently used, across the political spectrum, but solely with reference to the question of whether to apply the ‘Community approach’ or intergovernmental method, without the discussion ever reaching the substantive points. The argument over the revision of the Treaty in the EP on 15.2.2011 was one such case. The issue was not about content, but only about who was at the wheel – whether it was the intergovernmental or Community
method that applied, i.e. whether Member States or the European Commission were in the driving seat. Even for the European Left the sole question was what kind of intergovernmental conference should take place: the interrelationship of the Treaty revision and austerity policies escaped it completely. That in both cases – an intergovernmental approach, or Community method – the train goes in the wrong direction, played no role in this at once elevated and garbled debate.

Often the choice is indeed between a European solution and a variety of national solutions, in which case the question of intergovernmental or Community method is a secondary consideration. The first permanent European Council President, Herman Van Rompuy, claims that there is no rivalry between the European Council and the Commission, but that the two work together hand in hand. Sometimes it would be better for there to be fruitful strife, with serious discussion of the direction being taken. Such conflicts could make the seemingly boring 'Brussels' more interesting and bring more colour to the technocratic-bureaucratic complex. The European Union is not a state and the procedures and structures are complex and not always comparable to national government ones.

Europe's post-war societies are based on a double compromise between capital and labour, and between market and political institutions. This compromise is now being called into question. In the same way the European project was based on a compromise between capital and labour, and between the market and the creation of institutions, with the objective of replacing national market ringfencing by European regulations, parallel with the construction of the new institutional triangle of the Commission, Council and Parliament.

The common market became the principal vehicle on the rocky road to economic union, to be followed at a later date by political and social union. With some delay, work began on a series of social policy directives. In the meantime, however, the intention of replacing national regulations by common European ones has been abandoned. With re-regulation at European level proving difficult and complex, the main task has become, since the mid-90s, to unleash capital from earlier limitations and regulations, to subject everything to the market and roll back national regulations that are unanimously regarded as an obstacle. The mere mention of the concept of harmonisation triggers
Pavlovian defence reflexes. The compromise between globalised capital and nationally ringfenced labour appears to have been terminated, while still being maintained as a façade. The business community has written liberalisation, deregulation and flexibility on its flag and the Commission is pushing forward this agenda. An important reason for this change of course at the Commission lies not primarily in effective lobbying by capital, but in the self-interest of the Commission in the commodification of social relations. The market is seen as a general solution provider for both economic and social problems.

Against all expectations, the global crisis of the financial system has shifted the balance of power between state and market further in favour of the market. This crisis is far from over, its outcome is still open. States are now on the defensive against the – previously rescued – financial markets. From a trade union perspective, it is high time that the pendulum begin to swing in the opposite direction and that the influence of the market be pushed back. For the unions, the challenge of pursuing a dual strategy at national and European level was difficult from the outset: in the financial crisis it seems to have exceeded their strength, leading some trade unions towards an 'exit from Europe', expressed in different variations: 'European work' is being downgraded, certain unions are retreating into ideological mock combats, or union discord at the national level is having a de facto self-neutralising effect, in short: the outcome is that unions are leaving the European battlefield. In this situation the direction in which trade union Europe is heading will depend on the small number of active trade unions. On the one hand these could end up forming a trade union avant-garde, which will in fact determine the European strategies. On the other hand, the lack of interest in a common European representation of interests could increase and bilateral cooperation be expanded – paralleled by the weakening importance of the ETUC. A third possibility would be 'hibernation': a passive waiting for better times and temporary withdrawal from the European work. Which direction the unions will take will become evident over the coming months and years.

The starting point for the positioning of European trade unions has always been a fundamentally pro-European attitude, coupled with largely pro globalisation positions. The increasingly unequal distribution of wealth, high youth unemployment and, in general, mass unemployment, the growing area of atypical and precarious employment, the
expanding low-wage sector and the latest series of CJEU rulings show that employees are not in a win-win situation there, but that there are both winners and losers. To put it bluntly it can be said that the financial aristocracy has become the main winner and the fight against climate change has become one of the main losers. When two crises overlap, the more severe displaces the less severe for a while. Since the failure of world climate summit in Copenhagen in 2009, the climate train has been in a siding and the sustainability issue is of secondary importance. Parallel to this, social Europe is on the defensive, so that during the preparation of the Athens ETUC Congress 2011, the defensive slogan ‘Save Social Europe’ gained increasing support, before being buried alongside the slogan ‘For another Europe’. Finally it was ‘Mobilising for Social Europe’ that prevailed.

The challenges have not become smaller. The financial crisis has acted as a paradigm shift, sparked new discussions and created a new perspective on Europe. How are we to respond to the challenges? What strategies are available, if the options of ‘re-nationalization’ and indifference are ruled out? Let us finally look at the various strategy options, which partly overlap and are clearly distinguishable only on an analytic basis:

— Naive Pro-European course – with the risk of European trade unions being perceived as an adjunct or even an ‘agency’ of the Commission or as ‘useful idiots’ (Lenin);
— Business as usual – that is the status quo, with European trade unions implicated in the institutional network through processes such as macroeconomic and social dialogue, through project financing, through reacting to and formally commenting on Commission initiatives, by participating in the European Economic and Social Committee (EESC), in expert panels, in high level groups, respected because of their seriousness;
— A role of selective opposition, as with the Services Directive or against Economic Governance, in order to prevent a shift towards an anti-social Europe, including exploiting internal differences in the pro-European parties and where necessary entering into ad hoc coalitions;
— Fundamental opposition – advocating a fundamental change of course for ‘another Europe’ and the persistent pursuit of a tactic of attrition, until official Europe changes course;
— **Aggiornamento**, that is pushing dynamically and in offensive mode for a social Europe – maybe possible only after a period of fundamental opposition.

With social Europe and European social union in the 21st century increasingly resembling a fata morgana, it is not surprising that Europe's attractiveness, legitimacy and consensus are eroding. Europe cannot be left to itself, or to the Eurocrats, otherwise French Marxist philosopher Etienne Balibar's message that 'Europe is a dead political project' will become a self-fulfilling prophecy. The trade unions must continue to strengthen social Europe and the European social model. In this task they have a unique function: that of calling at the 'bottom' for fair competition and at the 'top' for solidarity. Currently the European trade unions are insufficiently able to win over the European elite for solidarity. The Commission is less concerned with solidarity than with competitiveness, which is becoming the most important and often only guiding principle, while the financial world seems to have absolved itself of any sense of social responsibility.

*More Europe and more European powers. Are these a panacea? The solution of 'more Europe' which was long seen – and is still seen by some – as the master key to solving national problems, is running into increasing scepticism. This motto, retained at the ETUC 2007 Seville congress as a left-over from earlier positions, was quietly buried in advance of the ETUC congress in Athens in 2011. Nevertheless, the debate on Europe's social competences needs to be reopened. The ETUC is proposing, in addition to the Social Progress Protocol to amend the Treaties, the Monti II Regulation on the protection of fundamental rights and the revision of the Posting of Workers Directive, as well as a European framework for collective bargaining and a framework for greater democracy in the workplace. The trend*

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121. Etienne Balibar, ‘Europe is a dead political project. This is the beginning of the end for the EU unless it can find the capacity to start again on radically new bases’, The Guardian, 25.5.2010; cf. E. Balibar, 'Europe: Final Crisis? Some Theses', in: Theory & Event, Volume 13, Issue 2, 2010.

122. This is the ‘spin’ that Commission spokespersons give when trying to talk up the Eurobarometer results: Citizens want ‘more Europe’ – in fact the latest survey results reflect a severe crisis of confidence. From the intellectual side, the publishers of the review ‘Confrontations’ give flanking support to the Commission: Editorial entitled ‘Nous croyons à l’Europe’, Confrontations Europe, July-September 2010, no 91, p. 4.
towards the expansion of the European social competences is frequently criticised, especially in leftist circles, but ignores the fact that Member States’ social policy competences are being vaulted over, hollowed out and blocked by the effect of the internal market, with negative effects on the social fabric and the system of industrial relations. In the early years of the Rome Treaties, social competences were viewed as secondary to the economic ones. Social policy was there as a tool to limit the negative social impact of the internal market. The angle of vision changed only in the ‘70s: with social competences now viewed as ranking equal with economic ones. There followed a series of social policy legislative initiatives. The main extension of social competences came with the Maastricht Treaty, since when there has been only minor progress. It would, however, be consistent with the concept of a European model of society to conceive social competences, not as an appendix to but as predominating over the economic ones, so as to profile the EU as a social union. The reflex reaction of calling for ‘more Europe’, which was for decades viewed as a general solution to all possible European problems, has now exhausted its role. Further transfers of competences to Europe, leading only to the relinquishment of social achievements fought for and won at the national level, cannot be in the interest of progressive forces.

Afterthoughts: European Blues

As so often happens, the European political class reacts to criticism with its classical ‘no comment’. At times this is also a refusal to look reality in the face. Critical observers frequently run up against a total Commission brick wall when voicing their observations. Responsiveness and self-

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123. As late as 2010 a joint paper by the SPD und PS (http://docs.jean-jaures.net/NL398/1_texte_ps_spd2.pdf) is based on the philosophy that subordinates social policy to economic policy: market excesses need to be corrected. Europe is accused of forgetting that ‘mutual learning’ is a positive approach against dumping! Even from the opposition benches, the SPD and PS are unable to overcome their socio-political dumbness and are propagating a ‘joint European framework’ to promote the convergence of various national social policy sectors, with the ensemble packaged as a ‘European Pact for Social Progress’. The sole concrete project is the demand for minimum wages, with a benchmark of 60% of average income as a basis.

124. Green MEP Sven Giegold also shares this belief: ‘Es ist Zeit für mehr Europa’, was the title of the press information of 20.10.2010. This confession can already be found in Nietzsche: ‘We are, with a word – and it should be our word of honour! – good Europeans.’
criticism have lately not been fundamental characteristics of the EU, marked more by a mixture of self-satisfaction, complacency, arrogance and close cooperation with consulting firms and protagonists of deregulation.

If I think of Brussels at night, I think of the arrogance of power. Lobbying and comitology produce strange flowers: Green MEP Pascal Canfin has pointed to the fact that Brussels now numbers more lobbyists than Washington, making it the new capital city of this profession. A group of experts on banks is largely dominated by investment banks, private banks and all the major U.S. banks: JP Morgan, Bank of America, Goldman Sachs, but no NGOs or trade unions. If this trend continues, a de-Europeanization of Europe is to be feared, especially as nothing is being done to narrow the growing breach between the economically strong countries and industrially weak ones, in which salaries are being reduced, public services cut back, and social wealth is being increasingly shifted in favour of capital. Many European politicians have lost all sense of how far one can strain the social contract that implicitly undergirds a society, before it breaks. When all is said and done, what is needed is a socially binding agreement once again in Europe.

The critical attitude of many local unions appears to reach Brussels only in a filtered fashion. What might be the problem? There are certainly structural causes and deficits: in many unions Europe is still seen as an ‘international’ theme and not as ‘domestic politics’. As a result - and this has been criticised for a long time – European trade union meetings are in many cases attended by the ‘international secretaries’, i.e. the union touring squad, the same people who travel at times to China or America

125. The Commission is increasingly thinking in ‘silos’, with each Directorate-General working in total isolation. Introducing regular rotation of posts, every 4 to 5 years, has the foreseeable side effect of undermining the institutional memory and encouraging careerist tendencies. Hans-Magnus Enzensberger, ‘Wehrt euch gegen die Bananenbürök ratie!’, in FAZ: 3.2.2010, p. 27, gathers a whole bag of anti-European prejudices, the common denominator being the EU’s lack of responsiveness, translated into populist language such as ‘immunisation’ against criticism, self-congratulation, ‘self-inflicted isolation’, ‘political expropriation of citizens’. Robert Menasse on the other hand sings a paean of praise for the Commission’s ‘enlightened civil servant apparatus’, which the common people is regrettably unwilling to follow, in ‘Die demokratische Gefahr’ in: Die Zeit, no. 21, 20 May 2010, p. 49.

or Africa, and not by the experts on the particular subjects under discussion. Feedback with the expert departments is often non-existent. Basically, many trade union travelling cadres exhibit a strong European affinity and with it the inclination not to express fundamental criticism, but to sweep it under the carpet. The national union press is only insufficiently open to European issues, as if it were not competent or as if the existence of a small number of European (mostly English-language) newsletters were sufficient. But this is a fallacy: the goal should be not the construction of supranational structures or audiences, but the trans-nationalization and the Europeanisation of existing structures or audiences, to enable these to open up to one another. In the case of a small number of Europe-wide campaigns, this necessary opening did indeed come about, for example in the battle against the Bolkestein directive. But this case has remained an exception.

There is now a common European experience following the financial crisis: everyone is feeling the impact of the cuts and unions are expressing widespread and visible hostility towards the austerity policy. Since the ETUC action day on 29 September 2010 there have been peaceful protests in many European countries, in some of them violent riots against the austerity programmes. These demonstrations have had a huge resonance. This is not the place to list all the actions - a few examples may suffice: three million people took to the streets in France on 12 October 2010, a general strike was held in Portugal on 24 November 2010, on 16 March 2011, 40,000 people demonstrated in Bucharest, on 19 March 50,000 in Lisbon, on 24 March 30,000 in Brussels, on 26 March 2011 half a million in London, on 9 April, 50,000 in Budapest. So far arson and other attacks have been limited to Greece, but indignation and resignation are gaining ground. At the same time Wall Street paid bonuses running in millions. The impression is spreading the order of the day is to push through a rollback, with less all-embracing welfare states, less comprehensive public services ...

When the subprime crisis broke out, governments promised to change the rules of the game for the financial world, to amend legislation and bring those responsible to account. At the same time the Commission pushed forward its plans to dynamise the economy and encouraged

127. ETUC Austerity and Bonus Watch.
Keynesian policies on a temporary basis only. Repeatedly the banking system had to be rescued with public money. In parallel, the Commission, by switching to fiscal adjustment and austerity policy, introduced an almost (counter) revolutionary process of destruction of the European social model and an unprecedented attack on social rights. The background: somebody had to pay for the crisis, and certainly not those who had caused it. According to the polluter pays principle, the banks ought to have paid for their irresponsible behaviour. Out of these reactions to the crisis comes the overlying social and legitimacy crisis, which may develop into a crisis of democracy. It is not just outrage, anger and despair that explain the escalation of violent protests. It is the absence of democratic answers and alternatives.

In this context the simplified leading theme and simplistic line of argument of the populists: ‘the political establishment has made gifts billion to banks, and it now the little people who must pay the bill - away with this political caste!’, echoes all the louder. And is this protest completely wrong? While the political elite could agree in a matter of hours on enormous amounts of money to rescue troubled banks, not even a fraction of that amount was available to fight the recession and to protect jobs. Whether the mass protests will bring the governments to change course is an open question. The gap between the supposedly feasible and what is necessary widens, leaving the trade unions rather isolated with their principal demands for an amendment of the Treaty by adding a Social Progress Protocol and a revision of the PWD: ‘It is a Herculean task for the unions even to place the adoption of a Social Protocol on the agenda of a government conference’, says Florian Rödl.128

European de-democratisation trends. Clandestinity is on the rise in Europe: decisions are first taken in back rooms and only later discussed ‘transparently’. The Commission is taking decisions in opaque relationships with industry-friendly lobbies in order to avoid public influence. These novel, non-transparent power complexes and bargaining regimes are squeezing out democratic processes. Is it surprising, given this development, that election turnouts have declined steadily since the first direct European elections of 1979? The experts are afraid of the hard and

uncomfortable diagnosis that official Europe appears to be creating resignation and a discouraged, resentful mood. In 1999, turnout slipped to well below 50 per cent and since then has gone steadily downhill. But visibly this can happen without the political class seeing any need for concern. Does there lie behind this a strategy to drive people to resignation with processes that turn political responsibility anonymous? It should not be forgotten that resignation can always turn into overt anger and outrage. The taboo and silence surrounding this issue are playing with fire.

The policy of constraint conceals a subtle, gentle blackmail: that of lack of alternatives and unavoidability, concepts of grey consensus democracy. The enforcement of constraints without alternatives may work for a certain period of time. However, it generates feelings of helplessness and anger that can be expressed in public protest and result in the search for alternatives. These feelings of helplessness and anger in the face of an unbridled financial system are becoming more and more visible. The enforcement of Europe-wide austerity with no public discussion could still prove _ex post facto_ to be been a fatal error: when hot metal starts flying round people’s ears because the boiler has exploded from over-pressure. Before now we have seen sharp-witted counter-campaigns come into vogue and even win majorities in European referendums. The fear of the established parties and the EU establishment at the time of the recent EU referendums and the Irish parliamentary elections of spring 2011 was tangible.

Arrogance of power, nonchalant attitudes and self-reference have served to immunise against outside influence, and against criticism of any kind. Self-reference as a method has found its way into the Treaties: for example, the Charter of Fundamental Rights was, by means of a passage added at the last minute, which refers back to the entire corpus of Union law, placed on a par with this secondary legislation. With this vanished the hope that the Charter of Fundamental Rights would have priority over simple policy rules (as it did in the Draft European Constitution).

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129. The concept stems from the system theory for designating self-referring systems.
Anyone familiar with market rationality will realise at some point that an economy driven by financial markets becomes decoupled and detached from social interests. This has occurred simultaneously with a landside fall in confidence in European democracy and in the governance capacity of European politics. Despite all the expertocracy and comitology, the informed and outraged citizen is refusing to swallow everything and is increasingly outraged by the arrogance of the rulers, especially when this arrogance has become anonymous and hidden in 'constraint-driven systems'.

It is precisely the right-wing populists in the European Parliament who are rejoicing in the role of dissidents, who have written pure provocation and disruption of routines on their banners.

'Wutbürger' (literally: angry citizens) was the name given to the new angry demonstrators and outraged protesters – a denunciatory term that was quickly dropped after the mass protests in Tunisia, Egypt and other Arab countries. A manifest estrangement has occurred between Europe's political class and the population. Legitimacy solely by means of processes in which citizens as voters have a minimal – because unspecific – influence on later decisions, is not sufficient. Participation must also be possible by other means. The strategy of depoliticisation has not worked. The political space needs to be recaptured. We have to speak out against the total commodification of life.

The official Europa is looks pretty forlorn, showing little concern either about the creeping loss of confidence or about its own image. An explosive mixture is brewing: voter turnout could slip below 40% at the next European elections, with Euro-sceptics making further gains. According to the latest Eurobarometer, for the first time more people distrust the EU than trust it. Under pressure from the rating agencies Europe is being steamrollered with austerity measures that do not work, while at the same time treating the financial world with kid gloves. The next crisis is coming. A wave of protest is running through Europe. Nationalist and populist forces are gaining in strength. What still needs to happen before official Europe comes to its senses and starts to listen to the European trade union movement and to take it seriously?

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For example Peter Sloterdijk, ‘Der verletzte Stolz’, in: Der Spiegel 45/2010, p. 140
The relationship of many trade unionists to Europe can be summarised as follows: they are suffering from the *Euro-blues*, the feeling of being depressed, frustrated or simply sad and disappointed at the undesired development of Europe, at the many compromises at the expense of working people. Many are also outraged and ready to act. Compromises are necessary in Europe, otherwise it is will not progress, but more and more rarely are the compromises social, sustainable and viable. Surely it is better for bureaucrats to sit wearing their trousers shiny than for nations go to war, but should the field be left entirely to lobby-friendly bureaucrats with no idea of the real world, who seek to compensate their distance from reality with an excess of ideological beliefs? Where are the committed citizens? Have they given up on Europe? If 'more Europe' as a general solution is no longer an option, then the re-nationalization of certain policies looms as a way out. It is precisely in order to prevent this course that the demand for a fundamental 'change of course', a 'different Europe', is seeking to be heard.
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