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European Governance: Some Normative Issues and Empirical Observations

by Marco Giuliani

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'Whether it is a 'malaise', 'troubles' or 'crisis', the European Union is in serious difficulty', explains George Ross (2008, p. 389) in his article on the different narratives regarding the present state of the Union. 'Crisis, what crisis?' would seem to be the reply given by Sedelmeier and Young (2006), in their work devoted to the analysis of European political events following the French and Dutch constitutional referendum.

It is not unusual to witness divergent views or interpretations of issues in the social sciences: in fact, in a certain way this plurality of positions represents the very essence, if not the engine, of scientific progress. Indeed, in certain cases it constitutes the precursory symptom of paradigm change designed to reconcile contrasting positions. Nevertheless, the previous two quotes, each of which the mirror image of the other, do not seem to merely represent two different viewpoints concerning the same empirical object, but would appear to refer to two different phenomena, albeit expressed using the same language. This type of incongruence is the result of a particularly loose interpretation of the concept of

'European governance' (Pierre 2000; Kohler-Koch and Rittberger 2006) on the one hand, and the identification of diverse benchmarks with which to compare European experiences on the other (Giuliani 2008).

The following short essay shall thus argue that the debate over the state of health of the European Union is somewhat similar to the debate over the meaning of beauty: the nature of the subject matter very much lies in the eyes of the beholder. The Eurobarometer survey figures will provide a clearer picture of this multiplicity of representations, and will lead us to reflect on the relationship between public opinion and legitimacy, before extending our reasoning to a number of normative evaluations of European governance.

Two different viewpoints, or two different objects?

'Optimism-scepticism' and 'activism-sclerosis' are two dichotomies often associated with various stages of the European Union's history: the negative polarity is seen as characteristic of the EC during the 1970s, while the positive polarity is associated with the re-launching

of the European project under Delors during the second half of the 1980s.

Recently, there has been much talk of the crisis of the European political framework: a crisis associated with the end of the so-called 'permissive consensus', and which, through the perception of a widespread democratic deficit, is claimed to have affected the entire European polity, the political relations that characterise that polity, and the policies it produces. In other words, a crisis of European governance itself, in the broadest possible understanding of the term. While those who support this 'decadent' view of the European Union have obviously pointed at the failure to ratify the constitutional treaty and at the consequent political impasse in the integration process, it is interesting to note that a new impetus has been given to debate even by the signing of the Lisbon Reform Treaty. This treaty, albeit not that far removed from its predecessor (Ziller 2007), is in fact seen as a clear sign of retreat from the more ambitious position adopted beforehand which ultimately ended in political failure, and as such is an even clearer sign of the widespread European crisis.

On the other hand, there is another school of thought, consisting of scholars, politicians and political commentators, which whilst not denying that the EU political architecture could be improved¹, nevertheless seems to reject the idea of any inherent crisis in the European system of governance. On the one hand, the very idea of crisis – which presupposes instability, transition and regression – is incoherent with the factual persistence of the phenomenon in question. If Europe were really going through a crisis, then the widespread, deep-rooted consequences of such crisis would have been clearly visible for some time now. This is not the case: what we are witnessing is a European Union capable of attracting new member states and new candidates for membership, of constantly producing a thick regulatory fabric, of ensuring increasing compliance, and of experimenting new decision-making methods. Furthermore, contrary to what the critics claim, each obstacle and each difficulty encountered is perceived in terms of it eventually being overcome, and thus the Lisbon treaty is more a test of how lively the EU is, and how capable it is of learning from its own mistakes, rather than a symptom of an inevitable retreat. Thus, according to this latter view, what we have is a consolidated system which, although requiring the democratic consensus of its citizens, is nevertheless mature and stable enough to

“One cannot deny that the European Union has become institutionalised to a degree not seen in other international organisations”.

sustain substantial bouts of dissent, just like the political systems of its individual member states.

On the one hand, it is clear that the two positions focus on the very same political object from two diverse viewpoints. Adopting the terminology proposed by Thomas König (2007), the first stance has all the typical normative and applied features of political engineers, whereas the second, more positive attitude is that adopted by social scientists more interested in explaining developments than in taking action.

The European Union is still a fairly new institution compared with nation states. Until its borders and its duties are clearly defined, working around their definition shall continue to constitute a focus of attraction for social and political engineers. During the past decade, the EU even appears to have encouraged such interest: one only has to think of the link between analysis and prescription that emerged from the debate over the future of Europe and the white paper on European governance, and how

this debate was then linked first to the discussion of democratic deficit, and to the novelty of the European constitutional convention thereafter. At the same time, one cannot deny that the European Union has become institutionalised to a degree not seen in other international organisations, to the point where it is capable of being 'taken for granted' by national policy-makers, and of binding their choices and re-directing their preferences, as studies of the Europeanization process have pointed out for some time now. Within this context, the task of social scientists should be more that of understanding 'how' things get decided, than that of trying to influence 'what' is decided.

While such a dichotomy may appear excessively stylised, to the point where several studies are to be found in an in-between, no-man's land, it is nevertheless not difficult to find a number of excellent studies representing the two opposing viewpoints. For example, the title of the recent work by Simon Hix (2008) – 'What's wrong with the European Union and how to fix it' – is an immediate indication of its desire to influence the future of the process of integration, going back to, and extending, the idea that the EU requires further politicisation if it is to function properly². Perhaps the most interesting feature of Hix's study is that its point of departure is a precise empirical analysis of the European union as political system (Hix 2005), rather than any purely normative speculation. The volume edited by Thomson *et al.* (2006)

and entitled 'The European Union decides', may be seen as the archetypal counter position. During the course of the book's ten chapters, its authors test out a series of hypotheses concerning the EC's legislative process which could easily have been formulated, rules and actors being equal, in other contexts. In this particular context, the use of models based on rational choice neo-institutionalism, only goes to place further emphasis on the 'positive,'non-normative' attitude of their authors.

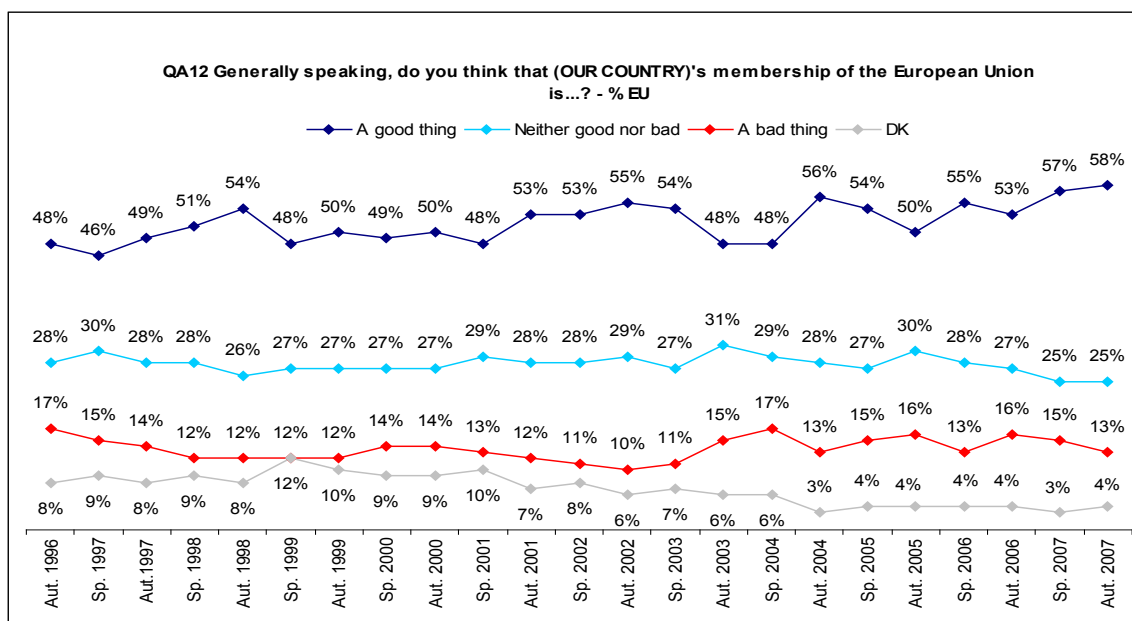
However, the two positions not only adopt different viewpoints, but they tend to focus even on different 'objects'. This has clear consequences for the type of analysis that the two positions lead towards. Despite the fact that there are no political systems devoid of failures and defeats for the common good, by focusing on the decisional moments at which such failures are more likely – the historical decisions, large-scale reforms, redistributive processes, the budget, the innovative frontiers of collective action – can only confirm the previously-mentioned perception of a political system in crisis, or perhaps even bankrupt. Every political system can be perfected, and the idea of looking ahead towards an ideal benchmark legitimises a critical stance. Vice-versa, looking back at fifty years of common European history may be reassuring, especially if we focus on everyday EU decisions: 'The daily multiplication of such decisions, cumulating over many years, has altered Europe dramatically and irrevocably, in ways visible to the entire world' (Schneider, Steunenber and Widgrén 2006, 300). A policy approach perhaps helps us to put this kind

of problems into perspective, or in any case to compare them with those encountered by national governments which could find themselves in much greater difficulties from various points of view (Schmidt 2006; 2007).

Governance and public opinion

Public opinion figures have often served to back up the first of the two positions – the one maintaining that the European Union is currently subject to a dangerous process of involution. Community governance is claimed to be afflicted by a serious democratic deficit, creating a divide between governing institutions and EU citizens. There is no longer any broad consensus on regional integration, recently perceived as a rather distant project: the new citizens of the European Union now demand more. Faced with the objections raised by the new, clearly euro-sceptical parties, the EU, which certainly can not base its own legitimacy on a common *demos*, is forced to try and convince its doubters by placing the emphasis on its output, that is, its ability to resolve shared problems in an effective manner (Scharpf 1999). It is for this very reason that the opinion of its citizens is of such strategic importance.

Let us take a look at the latest Eurobarometer survey figures, which refer to Autumn 2007, in order to ascertain whether the fears expressed are founded or not. The questions we are going to analyse are the two traditional indices of broad support, consisting of the citizens' view of the adequacy of European integration from their own country's point of view, and their assessment of the

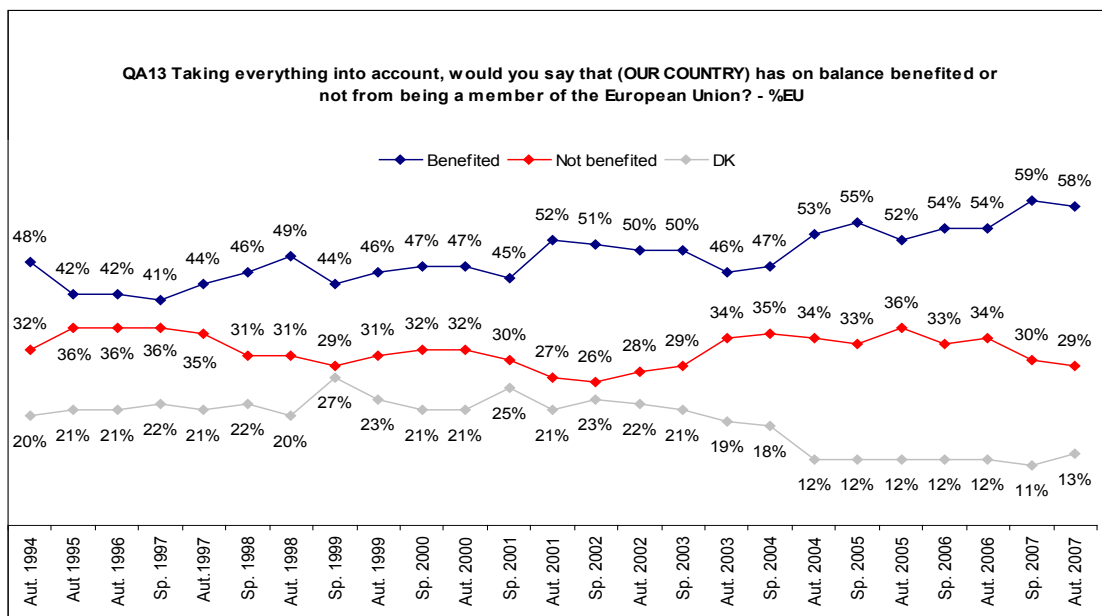


Source: Standard Eurobarometer No. 68, First results, December 2007

advantages offered by membership of the EU.

Surprisingly, the assessment of the adequacy of European integration shows an increasingly favourable trend in recent years, culminating in an absolute majority of satisfied citizens (58%) in the autumn of 2007. In order to find a similar percentage, we need to go back at least thirteen years. To tell the truth, during the 34 years of the Eurobarometer's existence, only the period between the Single European Act and the Maastricht Treaty witnessed a percentage of citizens in favour of European integration constantly above the 60% threshold. Recent progress cannot be attributed to the latest expansion of the EU, given that new and old member states are equally distributed above and below the European average

for the said index. Furthermore, as always happens, the more highly educated citizens belonging to the more integrated employment categories are the ones mainly expressing a favourable opinion. If anything, the most surprising fact is that there are substantial short-term oscillations within individual nations. For example, in France, the percentage of those giving a positive view of EU membership has grown by eight percentage points in just six months, whereas the same index has fallen a further five percentage points in the UK during that same period. Similar significant oscillations have seen Italy transformed from a nation in favour of European integration to one of Eurosceptics (8 percentage points lower than the European average for this index)



Source: Standard Eurobarometer No. 68, First results, December 2007

Judgement regarding the benefits deriving from the process of integration reveal a similar picture. The percentage of people who believe that their country has benefited from membership of the EU has constantly grown since 1995, and levels of this kind over the past 25 years were only briefly seen beforehand towards the end of 1990. Once again, the expansion of the EU has not unbalanced this evaluation, whereas there have been strong local oscillations of a short-term nature (for example, the percentage of Spanish citizens who believe that their country has benefited from EU membership has dropped by 11 points in just six months, whereas the number of Dutch and Greek citizens holding the same belief has risen by 5 percentage points).

If we now examine those indices providing a more direct assessment of trust in the European Union,

comparing such trust with that placed in the main institutions of national governance – namely government and parliament – there is little to support the view of widespread mistrust of the EU.

On average, there is greater trust in the EU than in citizens' own national political institutions. In 21 out of 27 countries, this holds in the case of the comparison with national government and with the respective parliament. However, perhaps the thing that stands out most is that both individual figures for trust, and aggregate figures for the working of democracy at the national and European levels, reveal that there is no trade-off between the two levels. Quite the opposite, there is 'a strong link between trust in the EU and trust in national institutions' (Eurobarometer 2007, 37; see also Giuliani 2008, 19-20).

In other words, all of these indices show that there

Trust in political institutions: country results

	EU 27	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU
Tend to trust EU	48%	65%	58%	58%	59%	39%	67%	65%	58%	51%	55%	43%	55%	50%	59%	54%
Tend to trust (NATIONALITY) government	34%	43%	16%	21%	57%	40%	62%	46%	49%	42%	32%	23%	49%	19%	24%	65%
Tend to trust (NATIONALITY) PARLIAMENT)	35%	49%	11%	16%	74%	41%	46%	52%	47%	40%	33%	25%	49%	16%	13%	56%
	EU 27	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	HR	TR	FM
Tend to trust EU	48%	60%	56%	53%	46%	62%	57%	68%	65%	58%	43%	40%	25%	32%	25%	63%
Tend to trust (NATIONALITY) government	34%	21%	45%	49%	53%	17%	30%	21%	32%	40%	58%	41%	30%	20%	63%	36%
Tend to trust (NATIONALITY) PARLIAMENT)	35%	21%	42%	54%	54%	10%	34%	18%	31%	37%	65%	57%	34%	20%	64%	23%

Source: Standard Eurobarometer No. 68, First results, December 2007

is no qualitative difference in citizens' assessment of the more institutional aspects of European governance, either in relation to the past, where if anything their views are somewhat more positive than they have been in the past fifteen years, or compared to the situation in their respective nations.

Finally, we would like to point out something that allows us to return to the dichotomy mentioned in the previous section. All the indices of widespread support reported so far refer more to the institutional framework, and to the general perception of progress or regression in relation to the process of integration, than to the daily practices of the European Union. If we shift our attention towards everyday EU decisions, we can see a kind of support for policy, that is, an implicit legitimisation of the EU's output. Apart from the general increase in the number of citizens who would prefer decisions in various sectors to be taken jointly by national government and the EU, the following graph also reveals that in all sectors where the EU has a substantial voice in matters, a majority of citizens believe that national governments should not be allowed to legislate independently. Even in politically sensitive areas such as defence, foreign affairs or terrorism, it is clear that modern-day challenges must be faced by the joint effort of national governments and the EU. Only in those sectors where the EU plays a secondary or indirect role, such as healthcare, welfare and education, do citizens maintain more traditional views, despite the fact that there are already some countries in which the majority of citizens

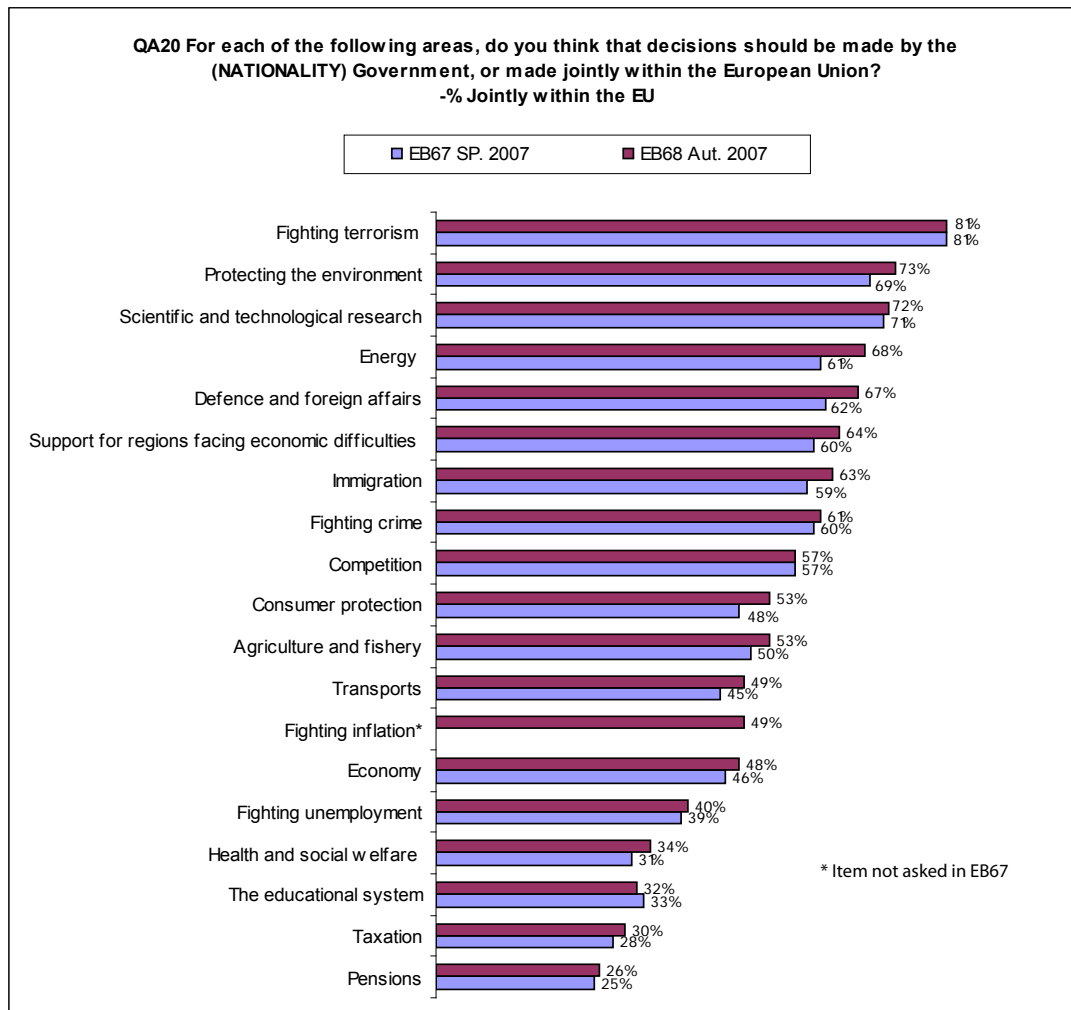
"In all sectors where the EU has a substantial voice in matters, a majority of citizens believe that national governments should not be allowed to legislate independently".

would like to see greater EU involvement in the welfare sector.

To sum up then, while it may be true that the European Union is characterised more by what it does than by what it is, to the point where it is legitimised more by its policies than by the progress made in the integration process, the figures shown here do not seem to back up the arguments of the 'theorists of crisis'. So perhaps it would be worthwhile to re-examine the debate over the democratic gap in European governance, starting from this simple, albeit fundamental, observation.

Government vs new governance?

I do not believe that we should, or can, take the present figures as indicators of absolute truth. Their short-term oscillations are a reminder of the fact that the public's perception of reality may also be the product of the political communication strategies adopted by domestic actors, and cannot therefore be considered an exogenous, independent factor. At the same time, at least in terms of the long-term comparison that can be made thanks to the Eurobarometer surveys, it would not seem that EU citizens express any substantial 'constraining dissensus' (Hooghe and Marks, quoted in Tsakatika 2007a, 867) in relation to any hypothetical 'golden age' of public consensus. Furthermore, if the same figures are used as a proxy for the existence of a democratic gap in the EU, there are no grounds for believing that a similar gap does not exist at the national level. Finally, it would be a good



Source: Standard Eurobarometer No. 68, First results, December 2007

idea to assess public consensus while bearing in mind that the community project was founded, and continues to be perceived, as a framework for resolving collective problems. As has been rightly pointed out by Tsakatika (2007a, 868), 'we should revise our democratic theories in order to set up novel democratic tests appropriate for the evaluation of the kind of entity that the EU is [...], a complex web of governance practices'.

This revision may, however, be of various kinds. There are some who, in acknowledging the basic inadequacy of the input-based criteria produced by decades of serious philosophical and political reflection³, simply deny that Community policy can attain a democratic equilibrium other than through reforms of a constitutional nature. The democratic deficit lies at the heart of the EU crisis and we cannot unravel the second if we do not answer the first. At the same time, a similar point of departure may lead to a very different conclusion, whereby it is argued that it is not legitimate to ask a supranational or international institution to comply with criteria (albeit democratic)

designed for a nation state, and thus the question of a democratic deficit constitutes a false problem. A minimalist or intermediate solution would be to imagine the EU politics as an arena which, thanks to the pursuit of policy practices in the defence of citizens' rights and in the safeguard of public interest, may in the future develop into a more truly democratic polity. However, it is easy to reject such a likelihood since common rights and public interests can be determined and endorsed only by majorities of citizens expressing themselves in public arenas and through the traditional political channels – which is something that, for the moment, happens at the national level only (Bellamy 2006). The same conclusion is drawn, following a different route, by Myrto Tsakatika (2007a; 2007b), who attempts to stylise democratic principles shorn of all traditionally national features, before arguing that the practices of European governance fail to pass this basic test, and are thus to be deemed fundamentally undemocratic.

In truth, at the risk of doing an injustice to the many,

diversified studies of this question, we believe that we can duly observe the following.

Firstly, despite the fact that the procedural, 'Schumpeterian' features of a democracy cannot be readily adapted for use by the European Union, this does not mean that the said features are devoid of all meaning within the European Union. The rule of law governs the selection of the leadership and the legitimacy of decisions also at the European Union level. 'Its rulemaking is carried out according to agreed procedures and only those empowered to make decisions do so. There are recognised processes for dealing with procedural disagreements, [and the EU] performs all the [traditional] functions of rule-making, rule application and rule-adjudication' (Weale 2007, 11).

Secondly, the democratic benchmarks that are sometimes applied to community governance practices, be they high or low, should also be tested and applied at the national level. This is particularly true in the case of the so-called 'new governance' practices, the main features of which – their complexity, network of public-private actors, consensual approach to problem solving, the role of expertise, and so on – are not by any means the prerogative of the European Union, but are an integral part of national policy-making regardless of party-government model. Policies, their dynamics and results, are of fundamental importance for any evaluation of the quality of democracy also for nation states (Schmidt 2006).

Thirdly, government and new governance are not antithetical concepts (Giuliani 2008), though perceiving them as such often constitutes a useful rhetorical expedient (Rhodes 1997). On the contrary, it should be recognised that, in any democratic arena, the second can only come about if the first is already in place. The shadow of a hierarchical structure is necessary if we are to test practices capable of overcoming the limits and difficulties of the hierarchy itself. Government is, at one and the same time, the premise for experimentation and the fall-out solution, should new governance practices fail. This fundamental interweaving of the two concepts is too often forgotten by those who examine the democratic deficit of the EU, and especially of its governance practices, in too severe a fashion.

To conclude, one final methodological observation. The search for a unit of measurement of democratic government, which has seen generations of scholars of classical topics and more recent dynamics (Sartori 1987), has never constituted an end in itself. The question has not revolved around the democratic essence of government

as a concept, but around the need to construct a measure of the democratic nature of (individual) governments as empirical realities. The recent debate over democratic governance, on the other hand, and over European democratic governance in particular, seems to have jumped a few steps. This debate, which has ignored the need for a new 'democratic metric' founded upon output and practices, that should go along with procedural measure in terms of input, has been overwhelmed by ontological questions regarding the democratic essence of governance as such, rather than of its multitude of diverse empirical expressions. The polarisation of the different positions on this matter is also justified by this 'methodological leap'. Before seriously reasoning on the democratic nature of governance, we ideally need to go back to Rousseau and the question of the freedom of the English people between one election and the next⁴. One hundred and fifty years later, answering to this question, Schumpeter offered us a 'metric of democracy' based on the input side of the political process. Political scientists still use it in order to assess the diffusion of democratic governments. What we need is an equally convincing metric in terms of output: that is, not an ontological appraisal of European governance *per se*, but an instrument for evaluating the democratic features of the individual experiences of governance as empirical political phenomena.

¹ The reference to 'work in progress' as a metaphor for current EU policy, given by a former president of the European Commission such as Romano Prodi (2008), and by a scholar specialised in welfare policy, that is, in policies situated on the very edge of community action, such as Ferrera (2008), is symptomatic of this position.

² On this point, see the diverse positions expressed in Hix and Bartolini (2006), subsequently reviewed by Magnette and Papadopoulos (2008).

³ This reflection is an ongoing process, as shown by the diverse editions of the famous work by Held (2006). For a wide-ranging analysis of the normative questions related to European governance, see Della Sala and Ruzza (2007), and the works listed on the Newgov Project website, and in particular the following pages: http://www.eu-newgov.org/datalists/deliverables_clusters_detail.asp?Cluster_ID=5

⁴ 'The English people believes itself to be free; it is gravely mistaken; it is free only during election of members of parliament; as soon as the members are elected, the people is enslaved; it is nothing. In the brief moment of its freedom, the English people makes such a use of that freedom that it deserves to lose it', *The Social Contract*.

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Flexicurity: a New Jargon in the European Policy Debate

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Ten years after the launching of the European Employment Strategy a new jargon has gained a prominent role in the European debate on employment policy: the jargon of flexicurity. Flexicurity generally refers to a new policy approach aimed to balance flexibility in labour market with the security needs of workers. In a recent communication, the European Commission has defined flexicurity as 'an integrated strategy to enhance, at the same time, flexibility and security in the labour market' (European Commission 2007, 5). But what does this really mean? And where is the novelty?

By and large, since the 1990s the European labour markets have known a period of permanent transformation. Almost every state in the EU has experienced in the last decade some kind of reforms aimed at liberalising the regulation of its labour market and recalibrating its welfare state policies. For this reason, the concept of flexicurity is meaningless when it simply describes what appears as the ordinary development of national employment and social security policies. On the contrary, the flexicurity concept is more helpful when it refers to a political orientation – i.e. an inspiring principle for future labour market reforms – rather than to the identification of stereotyped models of policy reform to emulate.

The ambiguity generated by the concept of flexicurity is probably due to the fact that such a new buzzword has been frequently used to label some remarkable national experiences as 'best practices'. This is the case of the Netherlands and Denmark. The Netherlands received the title of flexicurity country thanks to the adoption of the Flexibility and Security Act at the end of the 1990s¹. Nevertheless, after this Agreement the Dutch Nation action plans or the National reform programmes did not report any other significant policy measures aimed at balancing at the same time flexibility with security needs (Bekker 2006). Moreover, the debate on flexicurity and the actual success of the Dutch employment policy system is still open. On the one hand, there is a persistent disagreement among the social partners about the reduction of employment protection legislation as a key element of the Dutch flexicurity strategy. On the other hand, important groups of long-term unemployed, old unemployed, ethnic minorities and disabled workers

targeted by activation policies have not been affected by the 'miracle', while social security coverage for flex-workers still appears inadequate.

As for Denmark, Danish policy-makers adopted the flexicurity approach even before knowing it. The term flexicurity enters in the Danish political agenda only in 2004 and now everybody refers to the Danish employment policy mix – the so-called 'golden triangle model' – as the most fashionable flexicurity recipe. Such a recipe combines three essential ingredients: comparatively loose employment protection legislation, a generous Scandinavian welfare state and a high spending on active labour market policy. Indeed a good idea, since during the second half of the 1990s, the Danish labour market has experienced a dramatic fall in unemployment rate and a notable performance in employment trends. But these ingredients, in particular the low level in employment protection legislation and the generous unemployment benefits system, have been available for some time, even when in 1993 the Danish unemployment rate reached the level of 9,6%². The extraordinary success of Danish employment growth has easily dazzled political observers, preventing them to understand its reasons and consequences. Although the Danish labour market reforms during the 1990s, and in particular the 1994 general reform, have certainly contributed to a better functioning of the Danish labour market, we cannot jump to the conclusion that the good performance of the Danish labour market depends on the adoption of a new national employment policy system: the basic characteristics of the so-called Danish 'golden triangle' are the result of a long-lasting process. Moreover, the Danish 'job miracle' cannot only be depicted as an 'employment policy miracle'. As a matter of fact, it has been the by-product of different factors, and in particular of a demand-driven economic growth. Finally, one of the outcomes of the Danish employment system has been the expulsion of a large group of 'unproductive' persons from the labour market, with a rising share of the adult population receiving public income transfers (Madsen 2002). Therefore, it is important to consider the challenges that the Danish system has encountered in the last ten years, as well as its chances to survive, beyond drawing (partial) lessons from stereotyped versions of the Danish

employment policy model.

To sum up, all that glitters is not gold. The Danish and the Dutch paradises can obviously hide some snakes and it is important to remember that the good performances of their labour markets are the result of specific political and economic contingencies as well as of policy legacies. Therefore, the flexicurity agenda should not be limited to the identification of some national policy models to make easier their transfer: the 'we-should-do-like-the-Danish' formula does not work. Beyond the statistics on labour market performances, the 'success' of an employment policy system remains something more complex than the production or the reproduction of a magical recipe.

This article will be divided into three parts. In the first part, we will briefly reconstruct the history of the flexicurity strategy, focusing on its rationale as new policy issue on the agenda of the European Commission. In the second part, we will present the main characteristics and the added value of the flexicurity approach. In the final part, we will give a general overview of the European debate on flexicurity and discuss the main obstacles that can seriously hamper the effective adoption of the flexicurity agenda in the European member states.

A brief history of flexicurity in the EU

The first specific reference to the flexicurity strategy can be found in the 1997 Green Paper on 'Partnership for a new organisation of work'³. The 1997 Green Paper paved the way for a wide consultative process among European institutions, national public authorities, employers associations and trade unions on the renewal of legislative frameworks which govern work organisation. The main message was to invite a wide array of public and private actors to build partnerships for finding new ways to reconcile the security and flexibility needs of workers and employers. Such an idea was reaffirmed at the European Jobs Summit held in Luxemburg in November 1997. On this occasion, the need to balance flexibility for business with job security and employability for employees became a key target under the so-called 'adaptability' pillar, one of the four thematic pillars of the European Employment Strategy (EES, henceforth).

Ten years on, the role of labour law as a key element of the flexicurity approach was at the centre of another green paper issued by the European Commission: the 2006 Green Paper 'Modernising labour law to meet challenges of the 21st century'⁴. In this document,

member states, social partners and other relevant stakeholders have been called to identify the main obstacles in the existing legal and contractual frameworks which can hamper greater flexibility and enhance the divide between 'insiders' and the so-called 'outsiders' (i.e. people out of work or with precarious jobs). What has emerged from the public consultation launched by the Green Paper is the strong criticism of trade unions, in particular the Employment Trade Unions Confederation (ETUC), towards the analytical framework presented by the European Commission drawing upon the assumption that the traditional model of employment relation (i.e. full-time and permanent contract) is outdated. Moreover, other important points of divergence remain between employees' and employers' associations regarding the scope for external flexibility and the interpretation of what 'security for workers' should really mean.

In June 2007, the Commission adopted a new Communication where it defined eight main common principles of the flexicurity strategy⁵. This Communication can be read as an attempt to re-launch some aspects of the

EES, in particular the thematic pillar of adaptability. In its five-year evaluation of the EES, the Commission made some criticisms about the measures adopted under this pillar, highlighting the risk that unbalanced reforms of work organisation may be detrimental to the quality of work and employment security. Indeed, the eight flexicurity principles constitute the basic

elements of a common framework aimed to encourage and steer a broad debate on labour and social security law at the EU, national and local levels. In this sense, the Communication on flexicurity ends up promoting the role of the European Commission as a broker of interests. As Keeune and Jepsen (2007) argue, flexicurity is a useful discursive tool that calls on social partners and national governments to negotiate on a certain balance between flexibility and security needs. In the new 'dialogic space' created around the flexicurity agenda, the European Commission can make good use of its entrepreneurship capacity, framing the debate on national reforms and re-launching those policy guidelines previously related to the adaptability pillar of the European Employment Strategy.

At the beginning of December 2007, the Employment ministers met in Brussels, under the Portuguese Presidency, in order to find an agreement on common flexicurity principles, supplementary pensions, working

"The 'success' of an employment policy system remains something more complex than the production or the reproduction of a magical recipe".

time and temporary agency work directives. The Council adopted the eight principles of flexicurity mentioned in the European Commission's communication, but failed to reach a political agreement on the other issues. In particular, the debate on working time and temporary agency workers directives has been postponed because of the UK government's veto on the principle of equal treatment of temporary agency workers.

To sum up, flexicurity has rapidly become a key element of European employment policy. Starting as an implicit and somewhat 'generic' target pursued under the 'adaptability' pillar of the original EES, flexicurity is nowadays gaining a prominent role. To what extent the flexicurity strategy will just develop as one of the main components of the European Employment Strategy, or by contrast will absorb the EES itself, re-orienting its main targets, remains at present an open question. In the next section we will look more in detail at the content of the flexicurity strategy promoted by the European Commission.

Beyond trade-offs: flexibility and security in the labour market regulation

The flexicurity strategy involves both substantial objectives and a method for reform. As for its procedural dimension, the main novelty of the flexicurity approach is represented by the synchronical and mutually supportive quest for two apparently contradictory targets: flexibility in the labour market and security for workers. The rationale of flexicurity is to overcome the simple trade-off between flexibility and security through the adoption of measures that take into account these two objectives at the same time or, at least, in a coordinated way. This certainly represents a challenging target, since it requires a high level of coherence between the measures to adopt and invites to a normative re-orientation of those employment policy approaches largely based on the paradigm of job security (i.e. having the same job all your life).

Turning our attention to the substantial goals, the flexicurity strategy is addressed to two overarching targets: the synchronical pursuit of flexibility and security. But what do flexibility and security really mean?

Flexibility and security are indeed complex concepts that involve different dimensions. As a matter of fact, the literature distinguishes four types of flexibility:

1. *external-numerical flexibility*: it refers to the

management's possibility to vary the amount of labour even in response to short-time changes in demand (using fixed-term contracts; subcontracting and outsourcing and easing the possibility to hire and fire employees);

2. *internal-numerical flexibility*: it regards the possibility to change the quantity of labour in a firm, varying the patterns of working hours (using part-time contracts, week-end working; overtime; nights and shiftworks)

3. *functional flexibility*: it concerns the possibility to quickly redeploy employees among tasks and activities, adapting the working organisation to new challenges (job rotation; multitasking; flexible organisation of work);

4. *financial flexibility*: it enables employers to alter standardised pay structures, incorporating elements of variability (rewarding systems; result-based pay).

At the same time, the concept of security can be referred to different aspects of workers' careers. In particular, we can focus on four specific dimensions:

1. *job security*: it concerns the expectation of a high job tenure referred to a specific job;

2. *employment security*: it concerns the degree of certainty to remain at work, even if not necessarily with the same employer;

3. *income security*: it concerns the protection of income in case of adverse occurrences such as illness, unemployment or maternity which can involve a break in paid work;

4. *combination security*: it regards the possibility to combine paid work with private life and social responsibilities such as family duties or recreational activities.

Thus, flexibility and security should be considered as multi-dimensional policy targets that can be reached focusing on several instruments. Whereas the flexibility of work refers to the several aspects of an employment relationship, the promotion of the security of workers entails a broad vision that goes from the most traditional forms of job and income security, to the need to reconcile work and family responsibilities and to maintain or improve one's skills and employability. In this sense, flexicurity can be considered a 'risk management strategy' (European expert group on flexicurity, 2007), since it deals with the management of trade-offs between forms of flexibility and security.

An in-depth analysis of the actual conditions of national labour markets and labour and social security law is a compulsory point of departure for the adoption

"To what extent the flexicurity strategy will just develop as one of the main components of the EES, or by contrast will absorb the EES itself, re-orienting its main targets, remains at present an open question".

of the flexicurity approach. Since the feasibility of reforms depends on the specific national backgrounds and policy legacies, it is important to take into account the different legal and institutional frameworks, as well as the political and industrial relations systems which characterize each country. Indeed, a 'one-fit-for-all solution' cannot be considered a proper option. On the contrary, the latter may be counter-productive, because it will not be able to address specific problems and situations.

The idea of flexicurity as an adaptive approach, instead of a model that can be mechanically transferred to different national contexts, has been partially embraced by the European Commission, who has identified four emblematic 'pathways', i.e. trajectories of policy reforms:

1. *'tackling contractual segmentation'*: flexibility and security should be distributed over the workforce in particular in those labour markets characterised by a strong segmentation. Reducing asymmetries between standard and non standard employees will be possibly promoting the progress of temporary workers into better contractual arrangements;

2. *'developing flexicurity within the enterprise and offering transition security'*: in labour markets characterized by relatively limited dynamism, i.e. low job-flow and high level of job protection, policymakers should promote investments in employability to enhance workers' adaptability within enterprises or from one job to another;

3. *'tackling skills and opportunity gaps among workforce'*: when labour market turnover is relatively high, but there are large skill and opportunity gaps among the population, the main challenge is to reduce segmentation risks for specific groups of workers. This may be possible favouring transitions for the low-skilled workers and enhancing their opportunities in the area of training and life long learning.

4. *'improving opportunities for benefit recipients and informally employed workers'*: countries where there is a high number of long-term benefit recipients and informal workers, mainly due to important processes of economic transition and restructuring, should ease the shift from undeclared to regular employment as well as develop an effective system of active labour market policies combined with an adequate level of social protection.

Such flexicurity pathways, based on the identification of four different 'problem-syndromes', should represent planned and negotiated policy strategies covering

both contents and procedures. Their aim is to start and promote positive debates in each country, addressing the need for synergy between aspects related to flexibility and security.

To sum up, the flexicurity approach envisages a re-articulation of the concept of work that goes beyond the traditional 'fordist' form of organisation of the labour market. This re-articulation means giving up the idea of a strenuous, and sometimes counter-productive, defence of job security. At the same time, it implies a refusal of the so far uncontested argument that permanent regular jobs are now obsolete or even harmful. By contrast, the

modernisation of work entails improving employment flexibility and making different ways of work more secure, through the amelioration of working conditions and income protection during employment careers. What is needed is not a simple de-regulation of the national legal frameworks, rather a comprehensive re-regulation of labour

market policies, that can encounter, as we will argue in the next section, many obstacles on its road.

The challenges ahead

If we consider data from European opinion polls and surveys, what seems to emerge is a high acceptance of certain aspects related to the concept of flexicurity, such as attitudes towards training, job-seeking and flexibility. The 2006 Eurobarometer shows that 72% of EU-25 citizens concur with the statement that 'work contracts should become more flexible to encourage job creation', while 76% think that 'life-time jobs with the same employer are a thing of the past'. 'Regular training improves one's job opportunities' according to 88% of interviewees; 'being able to change easily from one job to another is a useful asset to help people find a job nowadays' according to 76% of interviewees (Eurobarometer 2006). Moreover, a consultation on 349 members of the European Business Test Panel conducted in spring 2007 has shown that approximately 58% of the employers acknowledge the possibility to improve flexibility and security at the same time. A large majority of respondents (81%) asks for more flexibility, while roughly 60% think that combination and employment security for workers should be increased (European Business Test Panel 2007).

Despite this large consensus on the general idea of flexicurity, a deeper look at the European debate clearly shows the presence of diffuse disagreements on what flexicurity elements should be promoted and how. Even if

the positions of trade-unions and employers associations have recently come closer, 'slightly' different views remain on what are the main challenges that affect the labour market and consequently on the way to address them. The ETUC has at various times denounced the risk that the ongoing debate on flexicurity will mainly support reforms that enhance flexibility with cosmetic social advantages (Monks 2007). In ETUC's view, flexibility, meant as easing the possibilities to hire and fire, is already high in many European countries and a further step in that direction will only hit more vulnerable workers and raise inequality between outsiders and insiders of the labour market. At the same time, the Social Platform⁶ has argued that the promotion of more secure transitions between jobs should not involve that permanent work has become obsolete: on the contrary, regular employment relationships are still to be considered necessary (Social Platform 2007). As we can expect, such statements are not 'perfectly in line' with the employers' perspective expressed at the European level by BUSINESSEUROPE⁷ and UEAPME⁸. In the words of Mr De Buck, BUSINESSEUROPE's general secretary, the flexicurity approach calls for the necessity to adapt and modernise economic and social systems, moving away from a job preservation mindset to a job creation mindset. In other words, according to the European employers' associations view, such a new policy strategy requires tackling outdated, ill-conceived and unnecessary rigid labour legislation that hamper job creation and business growth (De Buck 2007). To sum up, it is clear that, even if the different stakeholders involved in the debate on flexicurity consider the *status quo* as a no longer sustainable option, then they diverge on why this occurs (i.e. the diagnosis) and subsequently on the solutions that should be adopted (i.e. the prognosis).

Beyond such disputes, the adoption of policy reforms in accordance with the basic tenets of the flexicurity principles seems to be linked to the presence of some institutional, political, financial, and cultural pre-conditions. As for institutional pre-conditions, the existing configuration of national labour market institutions, social security and industrial relation systems can affect the ability of a government to deal with flexicurity-type reforms. The implementation of such reforms requires a certain effort in terms of magnitude of policy change (i.e. a greater institutional adaptation), that depends on the

degree of compatibility of the inherited policy settings with the flexicurity principles. As we have seen, many commentators have claimed that the recent success of the Danish model is largely based, beyond the positive trends in the national economy and in international business cycle, on the pre-existing features of the Danish labour market regulation and welfare state, deeply rooted in the history of this country.

Also the presence of robust social dialogue traditions can play an important role in promoting flexicurity. In certain member states, such as the Netherlands, Austria and Denmark, flexicurity reforms have been favoured by a consolidated system of industrial relations. However, flexicurity solutions can be also reached in countries where there is a lack of a tradition of trust between governments and social partners. For example in Spain, a country for a long time characterised by adversarial industrial relations, important flexicurity measures have been recently adopted thanks to the concertation with trade unions and employees' associations⁹. At the same time, also collective agreements can represent an important instrument to enhance the flexicurity approach (Andersen and Mailand 2005). To this end, two characteristics of the collective bargaining system seem crucial: the presence of an effective multi-level bargaining system, which associates local or enterprise-based agreements with national framework agreements and EU regulation, and the large scope of collective negotiations.

On the one hand, a multi-level collective bargaining system can give the chance to national policy-makers (and social partners) to limit the blame for unpopular reforms, allowing at the same time the adoption of tailor-made solutions within the framework of standard rights for workers as defined by the EU or national laws. On the other hand, collective bargaining can facilitate the approval of flexicurity measures especially when it refers to a large array of issues. As a matter of fact, even if the extension of the content of agreements (from wages and working time organisation to leave schemes and job security measures) may increase the complexity of the deal, it gives more room for manoeuvre to negotiated trade-offs and so to strike political agreements.

Looking at political conditions, even when national authorities and social partners agree on the general need for a certain flexibilisation of the labour market and for the reform of the social security system, they tend to

“Even if the different stakeholders [...] consider the *status quo* as a no longer sustainable option, then they diverge on why this occurs (i.e. the diagnosis) and subsequently on the solutions that should be adopted (i.e. the prognosis)”.

conflict about how to and who should bear the burden of paying for the cost of reforms. In this scenario, political actors and social partners are often engaged in a 'war of attrition', where it is difficult to understand who will make the first concessions, in particular if any concession is considered as a partial loss of identity. The result is that policymakers will mostly act in an untidy and reactive way, treating each policy measure as a matter of separate and more or less hidden bargaining tables, instead of developing consistent and integrated policy packages. This may lead to a lack of coordination among the policy initiatives, which ends up hampering their concrete efficacy or even causing perverse effects. This situation is particularly true in those countries where disputations on labour market policies have a strong ideological nature: this can hamper any attempts at reforms inspired by efficacy and equity concerns, while the centrifugal tendencies of the political competition tend to encourage a fragmented production of social rights.

Another favouring condition of flexicurity is related to the good condition of the national public finances. As estimated by the European Commission, the increase in the labour market expenditure across European countries which is needed to match the spending intensity of the three higher EU spending countries would amount to over 4 percentage points of the GDP in total spending on labour market policies (European Commission 2007, 95)¹⁰. Therefore, the presence of national budget deficits can limit the ability of governments to support adequate investments in active labour market programmes and in particular in social security provisions. This means that in certain countries, such as Italy, unless ones wants to increase the tax wedge or the fiscal pressure, a comprehensive redistribution among the different items of the social expenditure should be needed to face the financial cost of flexicurity-type reforms.

Finally, the adoption of the flexicurity approach can be favoured by certain cultural traditions. A high level of trust of European citizens in future employment opportunities and in their ability to deal with change seems to be an important pre-requisite for developing flexicurity (European Expert Group on Flexicurity 2007). Moreover, some scholars have recently highlighted that a certain level of 'public spiritedness' may represent a key element for the promotion of flexicurity reforms. Alan and Cahuc (2005) argue for example that a weak sense of 'civicness', defined as a condition where people are more prone to cheat over government benefits, will seriously hamper the implementation of a generous social security

"Flexicurity should be considered as an incremental learning strategy".

system inspired by flexicurity principles. Beyond the supposed moral superiority of some national societies, such a thesis indirectly highlights the importance to build effective control and enforcement mechanisms that can support the recourse to more generous social security systems.

In conclusion, a consensus on flexicurity approach cannot be taken for granted, especially when we shift from the vague idea of balancing flexibility and security needs in the labour market to its translation in concrete policy measures. Moreover, the presence of a certain number of pre-conditions may represent a too demanding request for some countries, shedding shadows on the concrete

possibility to implement policy reforms truly inspired by a flexicurity approach. Indeed, the main lesson that we can learn is that flexicurity cannot be conceived as a rational strategy that mechanically follows from the transfer of some foreign

models to other contexts. By contrast, flexicurity should be considered as an incremental learning strategy, that should proceed step by step with the mutual engagement of social partners and public authorities at different levels of governments.

Conclusion: flexicurity, a strategy for all seasons?

As Peter Auer has recently claimed: 'when two elements of social and economic policy that are commonly seen as being linked in a trade-off manner are presented as being complementary, one has to be particularly careful that we are not in the presence of 'spin': a PR gimmick, or a word that in reality has a hidden agenda' (2007,1). Hidden agenda or not, flexicurity is nowadays presented in several documents as a panacea for the solution of national labour market diseases. It is clear that as any magic recipe, flexicurity seems destined to remain an ambiguous concept that can be interpreted in many different ways. As a matter of fact, the flexicurity formula does not clearly indicate the 'right quantity' of its ingredients, so the flavour of the final dish may change a lot.

Indeed, the openness of the flexicurity approach has favoured the emergence of a 'permissive consensus' on the need to find a balance between flexibility in labour market and security for workers. This ambiguity may constitute also a point of strength, since the vagueness of the EU policy discourse, that reflects the 'catch-all' strategy pursued by the European Commission, can be a fruitful approach – perhaps the only immediately viable - to influence the political agendas of different

member states. As claimed by the European Commission, flexicurity cannot in fact be considered a one-fit-for-all model, suitable for each country. member states have to start from different points (because of their institutional or economic inheritances), as well as to address different problems. Therefore, the main aim of EU flexicurity agenda should be to increase the awareness of policymakers and to establish a positive and open dialogue with social partners on labour market reforms.

Beyond the general consensus on flexicurity approach, the debate over labour markets reforms remains widely open in EU countries. Two main contended issues seem strictly linked to the flexicurity approach. Firstly, when the debate shifts from the vagueness of the flexicurity strategy to the very issue of deregulation of labour market, it is more and more difficult to find a consensus. Here, the positions among the stakeholders in different countries as well as among the national governments are often conflicting, as the reactions to the Green paper on the modernisation of the labour law have recently confirmed. A second contended issue deals with the role of the EU in the regulation of labour markets. What should be the scope for EU action in developing the flexicurity approach? Should be it mainly confined within the framework of the Open Method of Coordination? The need for further legislative initiative at the EU level in order to define a level playing field of minimum rights remains a crucial question for the advancement of the flexicurity agenda. Some important steps in this direction have already been taken (e.g. the directives on part-time, fixed-term work and on parental leave), but the failure in finding a political agreement on temporary agency work directive have pointed out that there are still many obstacles on the road.

In conclusion, is there a concrete alternative to flexicurity? By and large, we can imagine opposite alternatives. One is to remain stuck in political stalemates or, at least, 'doing business as usual', mainly in a reactive way. The other is to try to 'transform trade-offs in complementarities' (Auer 2007, 13). This latter option represents a challenging target that can be reached only through coordinated and reflexive strategies of reforms. A partial or asymmetrical implementation of flexicurity approach will just be viewed as the confirmation of some kind of hidden agenda. Moreover, the omission of even only one of the elements of flexicurity approach (the needs for stability, flexibility and security) will generate sub-optimal results to the detriment of employers and employees, hampering the production of that 'mutual trust', so important for adopting balanced reforms.

¹ The Dutch Flexibility and Security Act came into force on 1 January 1999. According to the Act, temporary work agencies must offer to their employees a permanent employment after three consecutive contracts.

² Source: Eurostat.

³ COM (97) 128 final.

⁴ COM (2006) 708 final.

⁵ These principles can be resumed in eight main points: 1) flexicurity involves flexible and reliable contractual arrangements, comprehensive life long learning strategies, effective active labour market policies and modern social security systems; 2) flexicurity implies a balance between rights and responsibilities for employers, workers, job seekers and public authorities; 3) flexicurity should be adapted to the specific circumstances, labour markets and industrial relations of the Member States; 4) flexicurity should reduce the divide between insiders and outsiders on the labour market. Current insiders need support to be prepared for and protected during job to job transitions. Current outsiders need easy entry points to work and stepping-stones to enable progress into stable contractual arrangements; 5) internal (within the enterprise) as well as external (from one enterprise to another) flexicurity should be promoted. Sufficient flexibility in recruitment and dismissal must be accompanied by secure transitions from job to job. Upward mobility needs to be facilitated. High quality work places and continuous upgrading of skills are part of flexicurity. Social protection needs to support, not inhibit, mobility; 6) Flexicurity should support gender equality as well as provide equal opportunities to migrants, young, disabled and older workers; 7) Flexicurity requires a climate of trust and dialogue between public authorities and social partners; 8) Flexicurity policies have budgetary costs and should be pursued also with a view to contribute to sound and financially sustainable budgetary policies.

⁶ Social Platform is the alliance of representative European federations and networks of non-governmental organizations active in the social sector.

⁷ BUSINESSEUROPE, former UNICE, is the confederation of European business mainly representing large enterprises.

⁸ UEAPME is the employer's organisation representing the interests of European crafts, trades and SMEs at EU level.

⁹ In May 2006, the Spanish government signed with the social partners a general agreement on reform of the Spanish labour market (the so-called 'Spanish Agreement for Improved Growth and Employment'), that entered into force few months later, through the adoption of a new legislation. Among the main issues included in the agreement we can remember: the measures against an excessive use of fixed-term workers; the measures to improve hiring and to reduce employer costs; and finally the measures to protect employees in insolvency situations.

¹⁰ As affirmed by the European Commission, this data should be considered just as a simple quantitative exercise to illustrate the financial implication of the adoption of generous system of labour market policies. As a matter of fact, the estimation does not take into account the positive effects that would be produced by an increase in the labour market policy expenditure.

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Extending the Equality Principle to Non-EU Migrants: Analysing a Proposal for a Directive on Rights for Third-country Workers

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The 1999 Tampere Programme – the political document outlining goals in a common EU immigration policy for years to come – called for ensuring fair treatment of third-country nationals by granting them rights and obligations comparable to those of EU citizens. Nearly a decade later, the above goal is yet to be fully achieved (see for instance Frattini 2007). To narrow the existing 'rights gap' between immigrant and EU workers, the European Commission issued in October 2007 a 'Proposal for a Directive on rights for third-country workers' (European Commission 2007c) seeking to grant a common set of socio-economic rights to all third-country workers legally working in a member state. The proper implementation of the Directive (if adopted), which may cost national governments around 5 billion Euros overall, may enhance integration of immigrants required

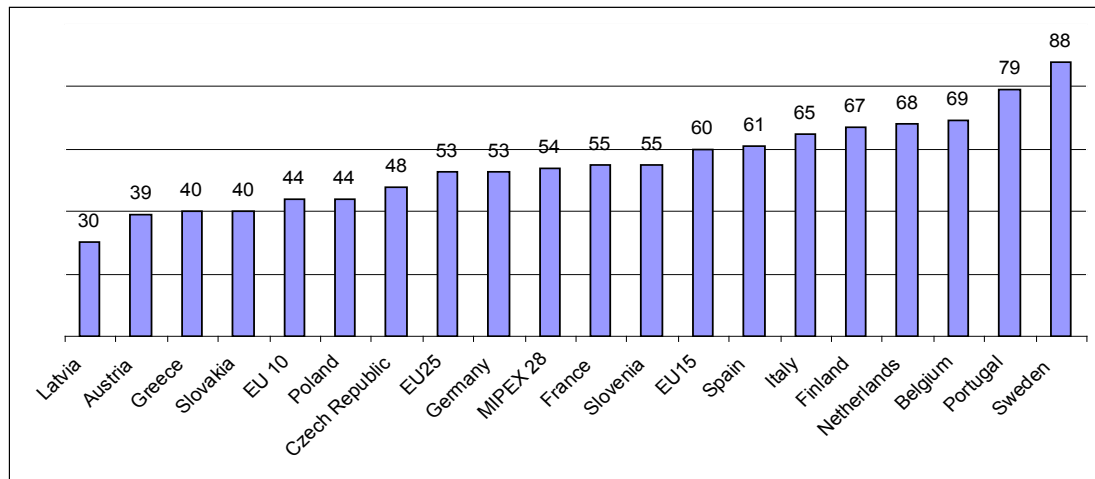
for the better functioning of Social Europe. In spite of negotiations having started only in January 2008 and the prospect of protracted decision-making process in the Council, it is not too early to commence a discussion on a directive that may have a significant impact on not only domestic migration policies but also on migrants' position in hosting societies.

The latest edition of the Migrant Integration Policy Index provides an interesting overview of a variety of national policies promoting integration across the European Union (see Figure 1). On the basis of data gathered in a rigorous and systematic manner, the index measures 'how close each country's policies come to European standards of best practice'. It focuses on six policy areas: labour market access, family reunion, long-term residence status, political participation, access to

nationality and anti-discrimination (Niessen *et al.* 2007, 4). The findings show that most EU member states are far from reaching 'European standards of best practice' in key policies. On the scale from 1 to 100, only two countries reached a score above 75 and not less than 13 member states had their policies marked below 50. While the EU 15 average is 60, average among states that joined

the EU in 2004 is at the alarming level of 44. Against this background, all changes in migrant integration policies within the European Union should be vigorously monitored to ensure that instead of leading to the common lowest denominator reforms proposed at either domestic or European levels will bring policies closer to the suggested best practices.

Figure 1: Performance of the selected member states on the Migrant Integration Policy Index, scale from 0 to 100



Source: Niessen *et al.* (2007, 17)

The existing international and supranational legislation provides for a superior position of selected categories of immigrants. Depending on the length of their stay (i.e. long-term residents, Council 2003b) or on their nationality (i.e. those from countries that have signed agreements with the EU, such as Turkey), third-country workers may be granted a special status which in general is subject to domestic legal and administrative arrangements as well as to control by the European Court of Justice. Most other groups of third-country workers lack such a protection. Although all EU Member States have ratified the European Convention on Human Rights, the Convention primarily safeguards political and civil rights. The European Social Charter (23 ratifications among EU countries) and the European Convention on the Legal Status of Migrant Workers (six ratifications) refer directly to the principle of equal treatment in the economic spheres such as working conditions, entitlements to social security and transfers of payments, yet they can be applied only to these foreigners who are nationals of one of the contracting parties. Against such a legal background, the exact content of social and economic conditions of migrant workers is subject to national legislations (European Commission 2007a, 9-10).

The 'generosity' in terms of rights granted to third-country workers varies significantly depending on areas

and member states. To this end, in some cases disparity between national systems reaches a significant scale. It is very low in the case of working conditions, low in the sphere of education, fair in the access to social security but high as for the possibility of transfer of pension savings and restitution of security benefits and access to public services (European Commission 2007a, 225). In particular, equal treatment in terms of working conditions and education is granted to third-country workers in all member states (with the exception in Germany and Czech Republic in the latter case), some social security benefits are granted to third-country workers but only few countries allow migrants to transfer these benefits outside the EU (e.g. while majority of member states allow for the transfer of an old age pension, at least Cyprus, France, Italy the Netherlands do not allow for the transfer of an invalidity pension, no country allows for the unlimited transfer of family benefits). Greece, France and Italy are the only member states where the access to public services is widespread with most member states having the access to public services highly limited. In total, as concluded in the Commission's impact assessment, third-country workers are considered to suffer from a 'double rights gap' with the scope of their rights being dependent on their nationality and on the member state they stay in (European Commission 2007a, 11-12).

Overview of key elements of the Proposal

The Proposal defines the term 'third-country worker' as a third-country national who 'has been admitted to the territory of a member state and is allowed to work legally there' (Article 2b). In practice it means that an immigrant does not have to be in actual employment to be covered by the equality principle. Such a broad definition of a 'worker' was envisaged to cover also situations prior to the employment (e.g. recognition of diplomas) or following it (e.g. unemployment benefit). However, several categories of workers such as intra-company transferees or temporary workers (i.e. those admitted for a period not exceeding 6 months in any twelve-month period) are not covered by the Directive provisions.

Article 12 of the Proposal stipulates that third-country workers will enjoy equal treatment with nationals in *at least* eight areas. According to the second paragraph of Article 12, in some cases member states may restrict the scope of equal treatment. The list below indicates the fields where the equality principle should be observed along with possible restrictions introduced on a derogatory basis in the draft:

- i) working conditions, including pay and dismissal as well as health and safety at the workplace;
- ii) freedom of association and affiliation and membership of an organization representing workers or employers;
- iii) education and vocational training (in particular in the case of tuition fees at schools and universities), a member state may require proof of appropriate language proficiency for access to education and training, rights may be restricted in respect to study grants;
- iv) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- v) branches of social security (as defined in Article 4 of Council Regulation No 1408/71, these are the following: sickness and maternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits and family benefits), rights may be restricted to third-country workers who are in employment except for unemployment benefits;
- vi) payment of acquired pensions when moving to a third country;
- vii) tax benefits;
- viii) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing and the assistance afforded by employment offices, access to public housing

might be restricted to those third-country nationals who have been staying or have the right to stay in the territory of member states for at least three years.

Moreover the equal treatment principle with regard to working conditions, freedom of association and tax benefits may be restricted to those third-country workers who are in employment.

In total, the Proposal complements current Community legislation on the coordination of social security systems (including sickness and maternity benefits, invalidity benefits, old age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, unemployment benefits, family benefits and death grants). While the Regulation 859/2003 (Council 2003a) ensures that there will be no difference in treatment between a third-country national and a EU citizen when *moving* from one member state to another, the new legislation would provide an equal access to social security benefits for a third-country worker *residing* in one member state and as such would cover also those coming directly from a third country.

According to some estimates, broadening the scope of rights of third-country nationals, i.e. increasing the costs of labour force, could in turn lower demand for legal non-EU labour and give rise to shadow work. And it is at this point that the introduction of a single application procedure for a single work/residence permit foreseen in the same Proposal comes to play a crucial role in counteracting the effects that the former part of the Proposal may cause. By creating quicker and more efficient procedures, the scope of undeclared work may be reduced. Since only the component of the Proposal on a single application procedure will bring benefits and costs savings upon proper implementation, its joint submission with the part on a common set of right is understandable.

The existence of a 'rights gap' has been considered as a starting point for drafting the catalogue of areas where equal treatment between third-country workers and EU nationals should be guaranteed at the EU level. By reducing a 'rights gap', the Commission seeks to diminish 'unfair competition' originating in inferior treatment of third-country nationals. Furthermore, the introduction of a common set of rights would create a level playing field for all third-country workers, irrespective of the member state in which they stay (European Commission 2007c, 3). The Commission warns that if national governments act alone there is a risk of maintaining differences in treatment of third-country workers in different member states. This in turn, according to the Commission could lead to 'distortion of competition within the single market

and can result in secondary movements of third-country nationals to those member states which grant more rights than others' (2007c, 7).

While the argument of narrowing the gap between rights granted to EU and third-country workers can be fully endorsed, the Commission does not explain sufficiently its concerns about 'rights shopping' across the European Union. It may be one of the very few instances where the Commission, rightly or wrongly, acknowledges that free movement of workers might be actually contrary to the principles of the single market. Even with the existing differentiation between scope of rights granted to third-country workers in different member states, the official mobility of immigrants within the EU is neither a quantitatively significant phenomenon nor a politically contentious issue. At this point, the Commission is concerned more about the situation when one member state 'grants more rights than others' and not the opposite. And this is actually a 'rush to the bottom' in terms of immigrants' rights that have been observed recently across the European Union and that should be a major concern (see for instance recent policy changes in countries such as the Netherlands, France or Germany).

The European Commission perceives the Proposal as a 'freezing instrument' for harmonising the scope of rights across the EU. The Commission acknowledges that the prerogative to define the *content* of the rights remains as member states' competence. As a consequence, 'rights granted to workers will further differ as no minimum rights are defined but equal treatment' (European Commission 2007a, 32). Nevertheless, with member states having still the right to depart from this threshold, even the scope of rights will still differ across the EU. National governments can still guarantee higher standards for immigrants since the Proposal defines the *bottom* threshold of areas where the equality principle must be secured (see Articles 12 and 13). This may lead to the creation of higher standards in more foreign-labour hungry member states; a situation that the Commission is preoccupied about (as described above). Yet, with the possibility of exceptions to be applied by national governments during a transposition process, the contrary could actually happen. Member states may eagerly use derogations they have been offered in the Proposal (Article 12(2)) since 'immigrants would come anyway'. To attract better qualified workers, a government will offer some 'extra' rights only to a selected

category of workers (e.g. highly qualified immigrants). 'Regular' (i.e. low-skilled) immigrants may end up having the lowest possible status due to the implementation of all derogations. As a final effect, scope of rights granted to migrants will still differ across the EU and the existence of (at least) two categories of immigrants (i.e. low and highly skilled) will be codified in the Community legislation. Such a pessimistic scenario is naturally never mentioned in the impact assessments attached to the Proposal.

In total, the existing Community legislation covering different categories of immigrants (i.e. family members, third-country researchers, long-term residents) creates a patchy picture of third-country nationals' rights and in the end it establishes a system of differentiated treatment depending on the immigration status. The European Parliament in its Resolution on the Policy Plan on Legal Migration recalled 'the need to avoid double standards of rights amongst different categories of workers and to safeguard particularly the rights of seasonal workers and paid trainees, who are more vulnerable to abuse' (European Parliament 2007). As a matter of fact neither of these two categories is included in the Proposal.

In the impact assessment to the Proposal, the Commission took also into account the legislative option in the form of a Directive focusing on the *commonalities* (European Commission 2007b, 4-5). In this scenario, a directive would grant equal treatment in all employment-related fields *excluding* social security, the transfer of social security contributions and pensions and access to public services. Such a

legislation would not change a status quo in terms of existing provisions in member states and as such would not contribute much to the improvement of immigrants' position in hosting societies. Choosing a more ambitious option, i.e. the one that includes equal treatment also in the fields of social security means some additional costs for some member states as their domestic schemes do not cover yet third-country workers. This implies an increase in the payment of social security benefits to third-country workers and in the expenditure on public services (European Commission 2007b, 7). The Commission estimated the entire costs for the extension of equality principle on third-country workers across the entire European Union for nearly 5 billion Euros (see Table 1). This figure is not insignificant considering that cost savings and benefits owing to the introduction of a single stay/work permit will account for not more than

"The existing Community legislation [...] creates a patchy picture of third-country nationals' rights and in the end it establishes a system of differentiated treatment depending on the immigration status".

half of that amount (i.e. estimated for between 1,19 and 2,37 billion Euros). On the other hand, the cost of an unsatisfactory integration of immigrants, very often

caused by the limited scope of rights, is significantly greater. Only in Germany, losses are estimated for 16 billion Euros per year (Fritschi and Jann 2008).

Table 1: Summary of the estimated additional administration and implementation costs in member states upon the adoption of the Directive (million of Euros)

	Administration costs	Implementation costs	Total additional expenditure
Social security	136.2	4,018.6	4,154.8
Education	11.7	573.2	584.9
Health care	5.1	176.7	181.8
Housing	0.1	3.6	3.6
Total	153.1	4,772.1	4,925.1

Source: European Commission (2007a, 227).

The chances for the adoption: legal and political challenges

According to the established timetable, the Slovenian Presidency will seek to finish the reading of the Proposal at the expert level by June 2008, drawing up 'a list of issues that are simple and a list of issues that are problematic'. On such a basis, according to the Slovenian government, the forthcoming French Presidency 'will be able to start serious negotiations between the member states and the Parliament on possible final solutions'. In this respect, finding the right set of rights has been considered as the main challenge of the Proposal (Presidency 2008). To this end, more than telling is the statement of Nicolas Sarkozy declaring that by the end of the French Presidency, member states should adopt a 'EU Immigration Pact'.

Nevertheless even in the most optimistic scenario, it will be still a long way before the rules envisaged in the legislation would become reality. Owing to the current requirement of the unanimity in the Council, plethora of interests will need to be taken into account before the adoption of the Directive. Considering that the Directive will be adopted in a 'regular' timeframe, deadline for the implementation of the provisions included in the Directive could be not earlier than 2011. During negotiations, the Commission will have to face a critique from both 'sides'. On the one hand, human rights associations will again condemn the EU institutions for lowering standards (i.e. standards included in the Proposal are lower than those included in the International Convention on the Protection of the Rights of all Migrant Workers and the

Members of their Families). On the other hand, as it was the case during the debate on the Green Paper on economic migration (Commission 2004), member states will refer to the subsidiarity principle and object the Community right to intervene in this field. And it is this latter concern, on top of variety of domestic systems, that will need to be taken into account if an unanimity among all national governments is to be reached and the new law adopted at all.

Interestingly enough, the recent changes introduced in the Treaty of Lisbon may turn the entire process of a decision-making upside-down. The new Article 79 calls the

European Union to 'develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, and fair treatment of third-country nationals residing legally in Member States'. To this end, the new Treaty reiterated the already existing provision on the introduction of the common conditions of entry and residence of immigrants (Article 79 2a).

The EU will also adopt 'the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States' (Article 79 2b). The above paragraph explicitly refers to the establishment of the definition of the rights of not only long-term residents (as it is drafted in the current version of the Treaty) but also those third-country workers without that status. In this respect, it is also this paragraph (and not only Article 79 2a) that could stand as the Treaty basis, should a Proposal for a Directive on rights of third-country workers be submitted *after* the

"Considering that the Directive will be adopted in a 'regular' timeframe, deadline for the implementation of the provisions included in the Directive could be not earlier than 2011".

ratification of the new Treaty.

Furthermore, the Lisbon Treaty provides also for a completely revised procedure for the adoption of a directive in legal immigration matters. The European Parliament and the Council will act in accordance with the 'ordinary legislative procedure' (i.e. co-decision). Not only the position of the European Parliament is going to be strengthened significantly but the adoption of a proposal will require qualified majority. This means a completely new paradigm for a decision-making whereby the entire process cannot be spoiled anymore by one member state and governments will need to take the opinion of the European Parliament on board. In theory, it could mean more immigrant-friendly policy with the European Parliament being more liberal in this respect and with the decision-making procedure within the Council that does not lead towards the lowest common denominator (as it was the case with most immigration-related Directives adopted under the unanimity procedure).

There is still however a long path before this more optimistic scenario may become a reality. The Treaty has not been ratified yet and will not be before the end of 2008 (with at least one referendum in Ireland). If one considers that the Council will need at least two years for the adoption of the Directive, the later stage of the decision-making process will overlap with the introduction of the new Treaty. It is still to be seen how that will influence the entire EU immigration policy-making machinery but depending on the progress, the Commission may consider submitting an amendment proposal under the new Treaty provisions following the forthcoming Parliament's resolution on the Proposal and the progress in ongoing negotiations in the Council. Even under the new procedures, it still goes without saying that

"The Lisbon Treaty provides for a completely revised procedure for the adoption of a directive in legal immigration matters".

immigration portfolio is extremely difficult to be agreed among member states. Co-decision procedure means that should the Parliament and the Council completely disagree on the Directive provisions, the Proposal may be rejected causing it to fall. Under the new Treaty provisions, adoption of the Directive could also be hindered due to the reinforced control mechanism of subsidiarity (i.e. if a proposal is contested by a simple majority of the votes allocated to national parliaments, the Commission will need to review the draft, which it may decide to maintain, amend or withdraw).

Back in 1997, several NGOs and scholars criticised the choice of member states to keep legal immigration matters under the unanimity procedure. Would 'qualified majority voting' (QMV) change much? It is clear (see Table 2) that some countries may find it particularly difficult to accept provisions envisaged by the Commission.

For states such as Germany, France, Italy, the Netherlands, Finland and Sweden, the application of the Directive will bring no (financial nor administrative) profits but rather additional costs for they have already introduced a single application procedure but they would need to extend rights of third-country workers on areas hitherto not taken into

account. Unfortunately (for the success of the decision-making), countries that are in this particular position have been the most influential during negotiations on the so far adopted immigration-related Directives. Technically speaking from the perspective of the QMV, their combined weight of votes in the Council (at least until 2014 when the new rules are going to be introduced) accounts for around 37 per cent. It would be still more than enough to block the decision-making with the rule for the required majority of 74 per cent in the Council.

Table 2: Division of member states depending on a possible financial impact of the Directive

		Extension of third-country workers rights	
		Already present	Need for change
Existence of a single application procedure	Already present	Estonia, Greece, Spain, Luxembourg, Poland, Portugal	Germany, France, Italy, Cyprus, the Netherlands, Finland, Sweden
	Need for change	Ireland, Romania, Slovenia, Slovakia	Austria, Bulgaria, Belgium, Czech Republic, Latvia, Lithuania, United Kingdom

Source: European Commission (2007a, 67-68).

Concluding remarks

After the failure in adopting a far-reaching and ambitious project of the Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment (European Commission 2001), the European Commission decided to issue in 2007 the Proposal representing the minimum, yet the most feasible scenario. However, as presented above, the adoption of a directive might be more than troublesome as various interests will need to be considered and the process of negotiations will overlap with the introduction of the new institutional setting of the decision-making. In this context, a cautious position of member states is understandable. A directive would have a significant impact on domestic immigration policies, administrative procedures and immigrants' dependence on national welfare states. With a new legislation being agreed, there will be no possibility to return to the *status quo ante*. Undoubtedly, a debate on the Proposal will raise difficult questions about the limits of the European integration and the scope of immigrants' rights codified in the EU law.

Institutional and political constraints aside, the adoption of the Directive based on high standards may enhance the integration of immigrants. Considering that immigrants serve indeed 'the most dramatic case of rights in general' (Joppke 2001, 359), how the European Union ensures a fair treatment of third-country nationals may be perceived as a good indicator of the genuine character of the EU values and goals. During the negotiations on the Family Reunification and Long-term Residents Directives (Council 2003b and 2003c), the rules envisaged in the Commission's drafts were watered down by domestic delegations unfavourable to more liberal policies regarding immigrants and to a wide scope of the EU intervention into this politically sensitive field. Negotiators inserted several derogations, introduced new restrictions and limited the initial proposals in a manner that gave national governments even greater flexibility during the implementation of the EU directives. Now in 2008, in what is turning out to be the most relevant EU directive for third-country workers, the ongoing negotiations (and as a consequence their output) may suffer from the *déjà vu* effect. In a less optimistic scenario, a debate on the Proposal may offer a platform for more conservative voices and the entire debate might be jeopardised by anti-EU and anti-immigrant stakeholders. In order to avoid such a situation, a coalition of domestic and Brussels-based stakeholders, campaigning for a sound EU policy for immigrants, is a must. However, it would not be an easy task; in a very unfortunate turn of

events, the Council decided not to publish minutes from its negotiation proceedings directly on the website. They are available only upon request to the General Secretariat of the Council and even when received, they exclude those parts which enable identification of member states' positions. We are again left misinformed about what happens behind the closed and gilded doors of the Council.

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Towards a New Territorial Cooperation in Europe?

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Cross-border cooperation activities among sub-national authorities began to spread across Western Europe in the late 1950s and they gradually expanded until a real boom in the 1990s. The success of cross-border partnerships gave birth to highly differentiated administrative structures in terms of dimension, number of participating sub-national entities, legal personality and modes of decision-making. Pioneering groups of border regions initiated and developed permanent cross-border cooperation in an organised way, mainly on the German borders: EUREGIO was the first cooperation structure established in 1958 on the Dutch-German border. Other Euroregions were created at the very beginning of the Community integration process among the six founding member states: the European Commission itself indicated these cooperation experiences as 'micro laboratories of the European integration'. Besides Euroregions, since the 1970s two other forms of cross-regional cooperation structures have developed across Europe. Firstly, the so-called Working Communities that are structures based on legally non-binding agreements of cooperation among several regions in structurally disadvantaged areas, in particular mountain areas (e.g. the Arge Alp in the Central Alps and the Working Community of the Pyrenées). Secondly, sub-national authorities started to set up wide European interregional associations among non-contiguous territories both with an open membership (e.g. the Assembly of the European Regions) and based on

specific geographic or other criteria (e.g. the Conference of Peripheral Maritime Regions and the Four Motors for Europe). As for the Working Communities, the aim of these associations is to collectively represent the sub-national interests in order to gain more bargaining power vis-à-vis national governments and Community institutions; the ultimate and broad goal is to promote the concept of regional democracy in Europe and the role of the regions in the political process.

The cooperation structures established since the late fifties saw their scope for action very much limited because of the absence of a common legal framework at the European level. The Council of Europe was the first international organisation to recognise the right of territorial communities to cooperate beyond national borders at a supranational level. In 1980 it promoted the signature of the so-called Madrid Outline Convention that still represents one of the main international political agreements on cross-regional cooperation. The Madrid Convention provides a legal framework and sets out a range of model agreements for both local and regional authorities as well as States. The Convention was integrated by two Protocols, respectively in 1995 and 1998. The first Protocol has expressly recognised, under certain conditions, the right of territorial communities to conclude transfrontier cooperation agreements, the validity in domestic law of decisions made within the framework of transfrontier co-operation agreements and

the legal personality of any co-operation body set up under such agreements. The second Protocol has sought to provide an adequate legal framework aimed at assuring an effective cooperation among local territories and it has extended the principles set down in the Convention and the first Protocol also to the cooperation among territorial non-neighbouring communities. Notwithstanding such efforts, the Madrid Convention and its Protocols have not been yet ratified by all the signatory states: this makes them inapplicable in these countries¹.

Opportunities and challenges for territorial cooperation in Europe

The motives that explain the diffusion of cooperative experiences among the European sub-national authorities are manifold: to gain efficiency in all the cooperation areas and to encourage strategies of 'resource synergy' among partners; to promote and lobby for the interests of regional actors at European or national levels; the presence of a common history and cultural traditions. Indeed, since the late Eighties, one of the main reasons stimulating cross-border cooperation has been related to the access to new financial resources of the European Union's structural funds. As a matter of fact, in 1990, the European Commission launched the Community initiative Interreg (*INTERNational REGions initiative*) in the framework of the cohesion policy.

The main aim of Interreg was to overcome the barriers to a balanced development and integration of the European territory represented by national borders: this was consistent with the cohesion policy's overall goal to reduce disparities between the levels of development of the EU regions and the backwardness of the least favoured regions, according to Article 158 of the Treaty. After the pilot programme Interreg I (1990-1993), in the period 1994-1999 Interreg II expanded considerably in terms of number of projects and geographical coverage. Moreover, a major new development concerned external EU borders with the establishment of Phare CBC (1994) and Tacis CBC (1996) programmes, both devoted to the promotion of the co-operation experiences between the border regions of Central and Eastern Europe and adjacent regions of the European Union, as well as border regions between applicant countries². In the programming period 2000-2006, Interreg III was one of the four 'Community initiatives' (along with Equal, Leader+, Urban) which were aid or action programmes set

"One of the main reasons stimulating cross-border cooperation has been related to the access to new financial resources of the European Union's structural funds".

up to complement Structural Fund operations in specific problem areas within the general framework of the Cohesion Policy. Interreg III was divided into three specific strands: strand A dealt with cross-border cooperation between neighbouring sub-national authorities; strand B concerned transnational cooperation between national, regional and local authorities; and finally strand C was devoted to interregional cooperation between non-neighbouring sub-national authorities.

The 2004 European enlargement made necessary some important changes in the governance of structural funds. In 2008, economic growth and greater cohesion have become the most important targets of the Community policy. For the first time in the history of the European Union, the share of the EU budgets dedicated to these two measures has exceeded the budget allocated for the common agricultural policy. The new cohesion policy for 2007-2013 is articulated into three key objectives: the first is the Convergence objective, aiming at promoting growth in the least-developed member states' regions; the second is the Regional Competitiveness and Employment objective, whose goal is to strengthen competitiveness and attractiveness, as well as employment; the third is the European Territorial Cooperation objective. Based on the old Interreg initiative, the main aim of the Territorial Cooperation objective is to strengthen cross-border, transnational

and interregional cooperation in accord with the political priorities set up at the Lisbon and Göteborg European Summits. Such an objective accounts for only 2,52 % of the total European structural policy (i.e. about EUR 8,7 billion), an amount more or less similar to the resources previously available for the Interreg III programme. Nevertheless, the main novelty is that the 'Territorial cooperation', initially conceived as a rather marginal activity, has by now gained prominence, at least in symbolic terms. A second major innovation in the promotion of the Territorial cooperation objective concerns the introduction of a new and distinct legal instrument, the European Grouping of Territorial Cooperation (EGTC).

The European Grouping of Territorial Cooperation: an effective tool for multi-level governance?

In July 2006 the Commission adopted the Regulation 1082/2006 on a European Grouping of Territorial Cooperation. The EGTC is a new cooperation instrument at Community level for the creation of cooperative groups

in order to facilitate cross-border, transnational and/or inter-regional co-operation between regional and local authorities. The adoption of this Regulation is a clear answer to the lack of an appropriate legal framework aimed at organizing joint management structures for territorial cooperation. The choice for a European Regulation represents a remarkable advance since it establishes a uniform framework that recalls the main principles of the Madrid Convention and its Protocols, but it is applicable to all 27 member states and it is subjected to both judicial and non-judicial control mechanisms.

One of the main features of the EGTC is that it offers the opportunity to create entities with a legal personality under Community law, even if certain aspects are still regulated by national law. Moreover, the Regulation 1082/2006 provides five categories of EGTC potential members: member states, regional and local authorities, bodies and organizations of bodies governed by public law, which are located on 'the territory of at least two member states' (art.3.2). The possibility for a member state to take part in territorial cooperation has been welcomed by practitioners, since it allows concluding agreements between regions and (small) states where no regions still exist (e.g. Slovenia, Luxembourg). By contrast, it is not possible that entities belonging to only one member state and one third country may establish an EGTC, such as a partnership between a European member state and Switzerland. Finally, also the participation of private actors (with the exception of those 'governed by public law') seems excluded.

Although the recourse to a Regulation provides a uniform framework for territorial cooperation, it will probably not produce a standardization of territorial cooperation practices all around Europe. This is due to two main reasons. Firstly, the creation of an EGTC may be addressed to at least four different objectives, such as: i) administrating cooperation projects within the framework of the European Territorial Cooperation programmes; ii) managing co-financed projects regarding territorial cooperation under the Structural Funds; iii) carrying out strategic cooperation to implement measures under Community policies other than the Structural policy; iv) managing cooperation projects out of any EU funding (Interact 2007)³. Secondly, besides Community law, the different phases and actions of the EGTC (its establishment, the interpretation of the convention and the statute, the financial control) can be ruled by different

national legal constraints. Indeed, the recurring reference to national law in the Regulation 1082/2006 reflects the will to adopt a flexible approach, respectful of the diversity of national situations. Nevertheless, as claimed by Interact (2007), there is a risk of legal uncertainty that can provoke distrust among the potential members of an EGTC.

Another important limitation of the new European legal instrument for territorial cooperation is related to the threat of national governments' resistances to the adoption of EGTCs. As stated by Article 16 of the Regulation 1082/2006, member states shall adopt laws or administrative measures 'to ensure the effective application of this Regulation'. In this sense, this Regulation seems rather similar to an EU Directive, since it foresees a sort of transposition at national level. In December 2007, the EGTC state of play remain patchy in the national contexts: only eight EU member states adopted provisions for the implementation of the EGTC Regulation (Bulgaria, Hungary, Portugal, Romania, United Kingdom, Spain, Germany and Greece), while three member states are at a preparatory work stage, by drafting their own national laws (Belgium, France, Italy). Moreover, the Regulation 1082/2006 states that national governments shall approve the prospective member's participation in the EGTC, unless they consider that such participation is not in conformity with national law or that is not justified for reason of public interest or public policy

(art. 4.3). This means that national governments can exercise in their ex-ante control a veto power on the establishment of a specific EGTC.

The above considerations do not exclude that regional and local authorities can launch consultations and other explorative missions even in the absence of clear national provisions. As a matter of fact, the setting up of EGTCs is currently under evaluation by several local authorities who have signed memorandum of understanding (e.g. Euroregion Alps-Mediterranée); have published feasibility studies (the project Matriosca for Euroregion Alpe-Adria, the feasibility study for the Euroregion Galicia – Northern Portugal); or have expressed references in Operational Programmes under the objective European Territorial Cooperation (as in the case of Euroregion Pyrénée Méditerranée).

In conclusion, the creations of EGTCs may represent a crucial advance in the development of European cross-regional cooperation. Indeed, such an instrument offers

"The EGTC is a new cooperation instrument at Community level for the creation of cooperative groups in order to facilitate cross-border, transnational and/or inter-regional cooperation between regional and local authorities".

new opportunities to structure a multi-level system of governance in Europe, beyond the administration of the Interreg programmes or the implementation of the international conventions and protocols promoted by the Council of Europe. Nevertheless, the establishment of an EGTC cannot be considered as a goal in itself (Interact 2007), but a mean to foster and facilitate all kind of territorial cooperation in Europe. The creation of an EGTC will entail long and costly processes. Therefore, its recourse should be carefully evaluated on the light of the existing alternatives, in particular the legally less complex ones. Beyond the rhetorical emphasis on the role of sub-national entities in Europe, the future of territorial cooperation mainly remains a matter of pragmatism.

¹ The status of signature/ratification in January 2008 is the following: a) the Madrid Convention was signed by 37 Countries and ratified by 34; the first Additional Protocol was signed by 26 Countries and ratified by 18; the Second Protocol was signed by 24 Countries and ratified by 17.

² The EU funding to cross-border activities also in Central-Eastern European sub-national levels had a clear political reason: Phare CBC and Tacis CBC programmes represented one of the instruments to favour the EU accession process and had an important role in the framework of European Neighbourhood Policy.

³The main policy areas usually covered by the territorial cooperation programmes are: transport and accessibility, environment and natural risks, collective services, culture and tourism, research & innovation, economic development.

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URGE's research work is organised in three thematic areas:

- *Governance of European Public Policies*
- *Social Europe*
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