

1 Unity and Flexibility in the future of the European Union: the challenge of enhanced cooperation

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Forms of flexibility in the social policy of the European Union

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1. Introduction

Among its various objectives, the European Union pursues aims with a social purpose. In the preamble to the Treaty on European Union, the Member States confirm their “attachment to fundamental social rights as defined in the European Social Charter [...] and in the 1989 Community Charter of the Fundamental Social Rights of Workers”, and refers to the desire to “deepen the solidarity between their peoples”, as well as promoting “economic and social progress for their peoples”. Article 2 reiterates the objective “to promote economic and social progress” and also “a high level of employment” and “strengthening of economic and social cohesion”. The Treaty establishing the European Community reiterates and develops these objectives through a whole series of more detailed provisions. The unborn Treaty which sought to establish a Constitution for Europe and the Treaty of Lisbon incorporate these values, principles and provisions, evoking the “social market economy” model (Article 3, paragraph 3 of the Treaty on European Union as amended by the Treaty of Lisbon).

The objective of solidarity within the European Union has two main dimensions: solidarity between the Member States, which seeks to reduce disparities between these States, and solidarity within the Member States, which seeks to reduce material inequalities between persons or groups of people. Both dimensions are linked through Treaty provisions that define policies with the usual instruments: institutions, competences and procedures. Social policy is highly *political* and less *legal* than other Union policies. Directly applicable provisions in the Treaty with a social dimension are few: the free movement of workers and freedom to provide services can have a social dimension; also the provisions on equal pay between men and women; the provision on services of general economic interest also shows an important social dimension; the citizenship provisions, in relation to the principle of non discrimination on grounds of nationality, have had major impacts in the social sphere; finally, it is worth recalling the various instruments of fundamental social rights: the European Social Charter of 1961, the Community Charter of Fundamental Social Rights of Workers of 1989, and the Charter of Fundamental Rights of the European Union, whose Title IV, under the heading “Solidarity”, contains a whole series of social rights. The rest is legislative policy, administrative and executive action, and more informal action within the framework of the open method of coordination (OMC).

The question I ask myself in this study is whether the limitations of the social policy model of the European Union can be addressed in some way in any of its fields, using formal or informal mechanisms for flexibility such as enhanced cooperation and others. But before turning to this question we must remember what the main limitations of the Union’s social policy are.

I will do so by referring to my latest work on this issue⁹². There I concluded that, contrary to what is stated by Fritz Scharpf⁹³, there is no obvious bias in favour of the market and against social values as far as the provisions of the Treaty are concerned, as these are generally interpreted by the Court of Justice. Nor does it seem that the limitations of the competences of the European Union in the social sphere must necessarily

(*) All opinions included in this chapter are purely personal.

⁹² “The Socioeconomic Model of the European Union: Stuck with the Status Quo?”, in G. Amato, H. Bribosia and B. de Witte (eds.), *Genèse et destinée de la Constitution européenne* (Bruylant, Bruselas, 2007), pages 1105-1128. See also my article “Los valores económicos de la Unión Europea: pasado, presente y futuro”, *Boletín europeo de la Universidad de La Rioja*, nº 14-15, 2005, pages 2-8.

⁹³ “The European Social Model: Coping with the Challenges of Diversity”, *Journal of Common Market Studies*, 2002, p. 645.

lead to a European legislation with a weak social content. There are areas in which Union institutions cannot act or can only act in a very limited way, but this does not mean that their decisions will undermine the social policies of the Member States. In general, European Union measures concerning the internal market must take into account other general interests, of an environmental, health, social etc nature, that may even prevail over the interests of the market. Where there might be a neo-liberal bias, and Scharpf could be right here, is in the field of Economic and Monetary Union. If these rules were applied strictly, which has not always been, or will be, the case, both before and after the crisis, they could indeed have a negative effect on social policies in relation to provision of welfare in the Member States. In any case, they have the effect of restraining public expenditure, which can contribute to the reduction of certain social policies. Finally, Scharpf's thesis also could be more convincing if we look at the decision-making process: in some cases, one can see a kind of neoliberal inertia due to the constraints and limitations of the European political process. In other words, the democratic deficit often could translate into a social deficit. Unanimity, which still operates in many important areas of social policy, such as social security, protection of unemployed workers, or working conditions for nationals of third party countries, leads to inaction or to the adoption of standards of a low intensity, at the lowest common social denominator. Qualified majority, wherever applicable and when the European Parliament fails to define a clear position, can also become trapped in a logic of consensus and of the social lowest common denominator. To all of this one must add the existence within the Union of several different versions of the welfare state and of various very different cultures in relation to social policy.

Finally, in the conclusion of that previous work I pointed out that this socio-economic model, which is problematic in itself as far as it imposes structural constraints on the development of European social policies which at the same time represents a limit - light and flexible but real - on the social policies of the Member States, did not change essentially in the Treaty which sought to establish a Constitution for Europe, in spite of which the popular perception is that the European Union in general is a neoliberal project and that its policies have a social deficit, had a significant bearing on the reasons for the "no" vote, at least in the case of France. Nor has this model changed in the Treaty of Lisbon. Hence the recent reform of the Treaty does not affect my previous position. I also pointed out there that the application of the Lisbon strategy and the OMC in social matters did not seem to have borne any fruit that could alleviate the social deficit. All of this is of some significance, since the reform or the search for a "European social model", although no more than a "model of models", in a socioeconomic context that is undergoing major changes, is crucial for the development and sustainability of integration and of European societies⁹⁴, and this reform or search can only succeed if we have the necessary means and operate in an environment conducive to its realization. However, those means are limited, and the context does not always allow one to be very optimistic.

Overall I keep to that position. One now has to examine, from this starting-point, something that I did not then take into account, and that one usually tends to ignore: the possibility that through enhanced cooperation or other informal methods of making more flexible or of differentiation of social policies of the European Union, one can make progress in this area, and somehow correct the social deficit of the Union. I think this question depends largely on the outcome of the Lisbon strategy in the social field. If it is shown, as is possible, that the Lisbon strategy, at its ten-year review, has not had the results predicted, there could be a movement in favour of a second review of the strategy or a movement in favour of establishment or strengthening more traditional and orthodox community policies from a legal standpoint. If this second movement is not supported by various Member States, which is also something one cannot rule out, the possibility could arise of establishing closer cooperation in certain social areas, with the political risks that this involves.

2. Experiences of flexibility: constitutional differentiation

Social policy is one of the areas where there have already been experiences of flexibility, both at the constitutional and legislative level.

At the first level, we have the United Kingdom's opt-out from certain social policy instruments. This Member State, in fact, did not sign the European Social Charter of 1989, and in Maastricht obtained an opt-out from the Agreement on Social Policy. The Protocol on Social Policy annexed to the Maastricht Treaty allowed 11 of the then 12 Member States (from 1995, 14 of 15) to implement the agreement. The United Kingdom was

⁹⁴ See, for an analysis of the problems and some interesting proposals, A. Giddens, *Europe in the Global Age*, Polity, Cambridge, 2007.

excluded from the negotiations in this area, and the acts adopted therein would not affect it nor have financial implications for this State. This is a clear case of variable geometry, in that it did not anticipate the possibility of a subsequent incorporation of the United Kingdom (opt-in). From the entry into force of the Maastricht Treaty (1 November 1993) until the entry into force of the Treaty of Amsterdam (1 May 1999), social policy had two simultaneous frames of reference: the social provisions of the Treaty and the Agreement on social policy. The first applied to the 12 Member States and the second to 11 of them. The Commission, in this situation, said it would examine which framework to use on a case-by-case basis, preferring the inclusion of the 12, especially in the case of proposals on health and safety at work (areas in which the UK wanted to participate) and leaving the exceptional framework of 11 States for the cases where it was not possible to move forward together⁹⁵. This is what we can call the problem of duplicity: in some cases differentiated integration within the framework of the Agreement on Social Policy established legal bases that did not correspond to legal bases specified in the Treaty, i.e. it seemed to extend the competences (at least express competences) of the Community; for example, it envisaged the possibility of adopting directives on information and consultation of workers, an area which was not expressly provided for by the then Article 118 EC. In other cases, the possibility arose of taking decisions applicable to 11 Member States in matters that were also covered by the Treaty, creating two different frames of reference.

The mechanics of the Social Policy Agreement were complex but all in all manageable. While they were functioning, four directives were adopted within this framework, all of some significance: the European Works Council Directive 94/95 EC⁹⁶, the Parental Leave Directive 96/34⁹⁷, Directive 97/80 on the burden of proof in cases of discrimination based on sex⁹⁸, and the Part-time Work Directive 97/81⁹⁹. With the Labour Party coming to power in 1997, the United Kingdom decided to join the social chapter. There were some technical difficulties, but finally everything was resolved with the Treaty of Amsterdam: the United Kingdom signed it and ratified it, ending the exclusion and the dual framework of the EU's social policy. As for the directives issued in the interregnum, it was decided to readopt them on the basis of Article 100 EC (now Article 94 EC) in order to extend their application to the UK¹⁰⁰. This Member State incorporated them into its laws and in some cases other States also had to re-align their legislation (in the case of the European Works Council Directive, in order to take into account the inclusion of a new Member State).

Can it be said that four directives in five and half years are not so many? They do not seem a lot, and this may be because the Agreement on Social Policy kept unanimity in the Council for many social issues. But these are very important directives that probably would not have been adopted between the twelve Member States.

According to Catherine Barnard¹⁰¹, the British opt-out had advantages and disadvantages. The experience left us three main lessons: first, the institutional consequences of a practical nature are complex and affect all Member States, both those involved and those who do not participate; second, States that want to move faster may end up not doing so, preferring to use other instruments to avoid creating divisions or to prevent Member States which are outside taking advantage of competitive advantages in the labour market; finally, in a globalized market, the measures taken by the core can ultimately affect all the Member States through legal or economic externalities. The example to be given is the European Works Councils Directive, which are required to be established by enterprises with over 1000 employees that have more than 150 employees in two or more Member States: various British companies with presence on the continent ended up having to create them before the end of the opt-out, although the UK was unable to have a say on the provisions of the directive. Some foreign companies established works councils in the UK without being obliged to do so, following the practice

⁹⁵ *Communication concerning the application of the Agreement on social policy*, COM(93)600 at end.

⁹⁶ Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64–72).

⁹⁷ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ L 145, 19.6.1996 p. 4-9).

⁹⁸ Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (OJ L 014, 20/01/1998 P. 6-8).

⁹⁹ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ L 014, 20/1/1998, p. 9-14).

¹⁰⁰ Council Directive 97/74/EC of 15 December 1997 (OJ L 10, 16.1.1998, p. 22-23), Directive 97/75/EC of 15 December 1997 (OJ L 10 of 16.1.1998, p. 24) Council Directive 98/52/EC of 13 July 1998 (OJ L 205, 22.7.1998, p. 66) and Council Directive 98/23/EC of 7 April 1998 (OJ L 131, 5.5.1998, p. 10).

¹⁰¹ "Flexibility and Social Policy", in G. de Búrca and J. Scott (coordinators), *Constitutional Change in the EU: From Uniformity to Flexibility?*, Hart, Oxford, 2000, pp. 197-217, p. 203.

in other venues. At least in the case of this directive, the British opt-out was eroded by the interdependence and porosity of contemporary markets¹⁰².

Van Raepenbusch and Hanf, clearly positive in their assessment, stress that the experience with the social policy agreement showed that even a differentiation formally enshrined at the constitutional level need not be “eternal”; that the institutions can manage the duplication situation effectively; and that the Protocol on Social Policy eventually became the model for the provisions on enhanced cooperation due to the Amsterdam Treaty¹⁰³.

It is not easy to reach a conclusion on this issue. On the one hand, viewed in retrospect, these five and half years could be seen as wasted time. On the other hand, it was surely an indispensable experience in order for the United Kingdom, with its habitual caution, to end up coming into line with the other Member States.

3. Experiences of flexibility: legislation

Barnard refers to another type of informal flexibility, at the legislative level (“soft flexibility”), a form of differentiation that cannot be ignored. In fact, differentiation can occur not only at the constitutional level: the legislative measures themselves and ‘soft law’ decisions can often establish differences, whether permanent or provisional, among Member States, and such differentiation may be preferable to that enshrined at the constitutional level. According to Barnard, this second type of flexibility has been essential in order to accommodate the different models of social legislation, labour relations and State presence in the labour market. She refers, following the by-now classic division of Esping-Andersen¹⁰⁴, to the Romano-Germanic model (France, Germany, Italy), in which the State has a fundamental role in labour relations and in which there is complex and comprehensive legislation on these issues; and opposing it, the Nordic model, based primarily on collective agreements and in which the State would have a limited role in this field. The Anglo-Irish model would be the third, with little regulation and little State presence. To accommodate these differences, flexibility strategies at different levels would be developed, without in any case imposing uniformity or legislative unification: in the choice of legislative instruments (directives setting minimums rather than regulations; the possibility that Member States can adopt higher levels of protection, as provided for in Article 137, paragraph 4, second indent: “[t]he provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty”); preference for ‘soft law’ measures (for example, in employment policy and in the fight against exclusion, prefiguring the generalization in the social sphere of what has been called the open method of coordination), recommendations, etc.; at the heart of the action taken: the harmonisation is only partial, with frequent references to the law and the practices of Member States; sometimes allowing collective agreements in the field to still be applied or that the directive is incorporated into domestic law through collective agreements; at other times allowing some Member States to enjoy a longer period for transposing a directive.

There are numerous examples of differentiation in legislation: Van Raepenbusch and Hanf refer to various provisions of numerous regulations and directives¹⁰⁵. Often these exceptions are drafted in general and abstract terms, but they may be genuine opt-outs included, so that other Member States may take advantage of them.

The most prominent case of this kind of flexibility at the legislative level is the working time Directive (now, after several amendments, Directive 2003/88)¹⁰⁶. The directive was adopted by qualified majority, on the basis of Article 137, paragraph 2. The United Kingdom challenged it before the Court of Justice, considering that the appropriate legal basis was either Article 94 or Article 308, which provide for unanimity. The Court rejected the application for annulment, considering that the legal basis was correct¹⁰⁷. However, during the negotiations, the United Kingdom had managed to achieve introduction of an undefined possibility for opt-

¹⁰² S. Hargreaves, “Social Europe after Maastricht: Has the United Kingdom Really Opted-Out”, *Journal of Social Welfare and Family Law*, 1997, vol. 19, p. 1.

¹⁰³ S. Van Raepenbusch and D. Hanf, “Flexibility in Social Policy”, in B. de Witte, D. Hanf and E. Vos (coordinators), *The Many Faces of Differentiation in EU Law*, Intersentia, Amberes, 2001, p. 65-81, In p. 67.

¹⁰⁴ G. Esping-Andersen, *The Three Worlds of Welfare Capitalism*, Polity, Cambridge, 1990.

¹⁰⁵ Article cited, p. 69-70.

¹⁰⁶ On this directive, see Philippa Watson, *EU Social and Employment Law: Policy and Practice in an Enlarged Europe*, Oxford University Press, Oxford, 2009, p. 299-327.

¹⁰⁷ Case C-84/94, United Kingdom/Council, Rec. 1996, p. I-5755.

out, under certain conditions, from the application of Article 6 (48 hour-week maximum working time). There was also the possibility of delaying the transposition of Article 7 (four weeks paid annual leave) for three years. The possibility of undefined opt-out, drafted in general terms, was only used generally by the UK until in May 2004 Cyprus and Malta also resorted to it in general terms. Meanwhile, at least Spain and France have also resorted to the opt-out in some sectors such as health and hospital services.

Recently, as part of the proposal for a reform of this directive, Parliament has proposed to eliminate the exception, but in the negotiations of March and April 2009 there was no agreement on excluding the possibility of opt-out and the proposed reform of the directive, which has been on the table for five years. After five years of negotiations, one is given the impression that the British position has now spread somewhat and has become entrenched. This is one of the risks of including an opt-out clause drafted in general terms in legislation, despite the fact that originally only one Member State had any intention of using it. The Commission must decide what to do now, but it will not be easy to initiate a new reform proposal along the same lines¹⁰⁸.

Another interesting example of flexibility at the legislative level is Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work¹⁰⁹. Recitals 16 and 17 of its preamble inform us that “In order to cope in a flexible way with the diversity of labour markets and industrial relations, Member States may allow the social partners to define working and employment conditions, provided that the overall level of protection for temporary agency workers is respected”, and that “in certain limited circumstances, Member States should, on the basis of an agreement concluded by the social partners at national level, be able to derogate within limits from the principle of equal treatment, so long as an adequate level of protection is provided”. These opportunities for exceptions are detailed in the articles of the Directive (Article 5). They are, to a certain extent, opt-out possibilities, and the limits and conditions for using them are very vague. What is the “general level”? What are the “limits” of the divergence allowed in the application of the principle of equal treatment? What is the “adequate level of protection”? The directive is somewhat ambiguous on these points. The impression given is that it conceals a substantive disagreement about the level of protection, perhaps partly contradicting its main objective (Article 1: “to ensure the protection of temporary agency workers”). It is normal to be allowed to establish a higher level of protection, to the extent that Community legislation merely establishes a minimum. This is a *positive* sort of flexibility. But in this case what we have is a *negative* flexibility, the possibility of reducing the level of protection and circumventing the principle of equality. There is a price to pay for trying to turn this disagreement into a legal rule: the price of legal insecurity for workers of temporary employment agencies.

4. Enhanced cooperation?

Is it possible to use the provisions on enhanced cooperation within the social field? The analysis should have two stages: a legal stage, asking if formally there is any obstacle; and another, a political moment, asking, on final reflection, whether it is appropriate to resort to differentiated integration in this field.

For the first question, Van Raepenbusch and Hanf already provide an analysis concerning the provisions on enhanced cooperation as presented in the Treaty of Amsterdam, without the later reforms. Despite this limitation, given that conditions have not changed dramatically, their reflection is useful for the present analysis.

The first substantive condition is that established by Article 43 EU d): cooperation must remain “within the limits of the competences of the Union or of the Community”. This is the most important limit to this possibility, as it would be of much greater use if they could also use it to do things that cannot be done within the framework of the Treaty. This condition, moreover, can be played with, interpreting more or less extensively “the limits of the competences of the Union or of the Community”, to the extent that the exclusion of certain Member States can facilitate a broader interpretation among a smaller group of States. But given that, as we have seen, Community social legislation often contains differentiated integration trends over time and sometimes even opens up possibilities of variable geometry of an indefinite duration, it is understandable that the formal mechanism of enhanced cooperation has not been used. Within the social sphere, it is often maintained that the limits of Union competences are too narrow and are part of the cause of the social deficit of the Union. Enhanced cooperation cannot not be used to remedy this limitation.

¹⁰⁸ E. Vucheva, “Talks to Revise EU Working Time Bill Fail”, EUobserver.com, 28 April 2009.

¹⁰⁹ OJ L 327, 5 December 2008, p. 9-14.

On the other hand, the same section d) of Article 43 EU precludes resorting to enhanced cooperation in areas of exclusive competence of the Union. This is obviously not the case regarding the reduced community competences in social policy, which are usually shared competences with the Member States, or merely support and coordination competences.

The authors also analyze the possible impact on the principle of non-discrimination between nationals of Member States, a condition deleted by the Treaty of Nice. The deletion is not the end of the matter, however, since the establishment of enhanced cooperation must respect the Treaty (Article 43 EU, b) and Article 280 A, first paragraph, of the wording given by the Treaty of Lisbon), and one of the key provisions of the Treaty is Article 12 EC, which prohibits any discrimination on grounds of nationality. For Van Raepenbusch and Hanf, the condition implies that the rules agreed by the Member States participating in enhanced cooperation must be applied without discrimination to all Union citizens in their territories. Likewise, they affirm, non-participating Member States must apply their own legislation on a non-discriminatory basis to nationals of all Member States¹¹⁰. This is a formal approach, purely legal, to discrimination, and it ignores the substance of the non-discrimination rule. The fact is that the establishment of enhanced cooperation necessarily results in a difference in treatment between nationals of Member States and those of the Member States who do not participate. Rather, the argument that would have to be used to save it is that the Treaty itself authorises this differential treatment, by allowing the establishment of enhanced cooperation. Since Article 43 EU is at the same hierarchical level as Article 12 EC, it can be argued that the first constitutional provision implicitly allows an exception to the second.

Another requirement is that enhanced cooperation shall not constitute “a barrier to or discrimination in trade between Member States” and shall not “distort competition between them” (now Article 43 EU, letter f); Article 280 A, paragraph 2, in the wording of the Treaty of Lisbon). According to Van Raepenbusch and Hanf, it is difficult to demonstrate, in economic terms, that social policy disparities distort competition or constitute a barrier to free movement. Political institutions have a large measure of discretion in this matter, and as in the field of application of the legal basis of Article 95, the Court of Justice would limit itself to reviewing manifest errors of assessment¹¹¹.

Their conclusion, which I share, is that there are not many legal barriers to the use of enhanced cooperation; the barriers and the lack of incentives, especially in the social field, are above all *political*, i.e. a reluctance to create distortions of competition, the possibility of flexibility in the Treaty itself, the possibility of introducing flexibility in legislation, and above all the reluctance of Member States to lose, reduce or restrict excessively the exercise of their social policy competences.

5. Final reflections

The possibility of establishing “enhanced cooperation” among a group of Member States reveals the fragile and incomplete nature of the common constitutional framework of the Union. For some States, this framework is seen as something insufficient and temporary. For others it is a permanent, perhaps even too ambitious framework. Within the social field, the possibility of resorting to enhanced cooperation highlights the weakness of the constitutional framework within which the EU’s social policy is developed, and the partial dissatisfaction with its socio-economic model. In general, this possibility should be viewed as a fracture (real or potential) in the basic federal pact of the EU. Past experience should warn us not to fall back into this fracture, which may at one time have been indispensable for a Member State, but which should not be repeated. However, the British and Polish Protocol on the Charter of Fundamental Rights of the European Union, whose deleterious effects can be reduced through interpretation¹¹², once again raises the possibility of a fracture, especially as regards the Charter’s social provisions.

It seems to me to be crucial to take into account the importance acquired by the open method of coordination (OMC) in the social and employment fields since 2000, with the Lisbon Strategy (OMC in the field of social protection and social inclusion, etc.), a strategy which has its origin specifically in the European

¹¹⁰ Article cited, p. 78

¹¹¹ Article cited, p. 79-80.

¹¹² As I have argued in my article, “What’s Left of the Charter? Reflections on Law and Political Mythology”, *Maastricht Journal of European and Comparative Law*, 2008, Vol. 15, n° 1, p. 65-77.

Employment Strategy, and which has to do with initial social provisions of the Treaty of Rome, which encouraged the Commission specifically to promote cooperation among States in this area (Article 117 of the Treaty of Rome in its 1957 version). Indeed, the Lisbon Strategy could be rather more sophisticated in its presentation, but in terms of means and ends, it does not go much beyond that flexible framework, without legal obligations, and with no transfer of competences or financial powers to the Community¹¹³. The preponderance of the OMC has led to a certain flight from law and the community method, which flight is also present today in other areas of activity of the EU¹¹⁴.

If the Lisbon Strategy, revised after the critical report of the Kok Committee of 2004, does not quite achieve its objectives¹¹⁵, despite the improvements introduced, there could be a new review of it (in 2010) or else abandonment, which could lead to an attempt to employ the traditional community instruments in this field, or to the establishment of enhanced cooperation of a social nature by Member States dissatisfied with the status quo. However, it seems that there is loyalty to the “renewed” Lisbon strategy, even though it does not seem to be giving the expected results. The conclusions of the Presidency of the European Council of 19 and 20 March 2009 are clear on this point: “In the current crisis, the renewed Lisbon Strategy, including the current Integrated Guidelines, remains the effective framework for fostering sustainable growth and employment”. The European Council also states that it “looks forward to the proposals on the post-2010 Lisbon Strategy the Commission will present during the second half of this year”. 2010, therefore, is the date on which the future of the Lisbon strategy will be decided, although everything suggests it will be maintained, perhaps with some modifications. On the other hand, the political context does not seem very conducive to the establishment of enhanced cooperation in the social field.

¹¹³ Ph. Watson, op cit, p. 60

¹¹⁴ J.-V. Louis, “Community Law Fifty Years On”, in J. Baquero Cruz and C. Closa (coordinators), *European Integration from Rome to Berlin: 1957-2007: History, Law and Politics*, P.I.E.-Peter Lang, Brussels, 2009, p. 65-90.

¹¹⁵ See the Kok Report (*Facing the Challenge: The Lisbon Strategy for Growth and Employment*) of 3 November 2004 and the Commission's reaction, proposing the revised Strategy: *Working together for growth and jobs – A new start for the Lisbon Strategy*, COM(2005)24 at the end. On the Lisbon Strategy in the social area, see M. Heidenreich and G. Bischoff, “The Open Method of Co-ordination: A Way to the Europeanization of Social and Employment Policies”, *Journal of Common Market Studies*, 2008, vol. 46, n° 3, p. 497-532; J. Zeitlin and Ph. Pochet (coordinators), *The Open Method of Coordination in Action: The European Employment and Social Inclusion Strategies*, P.I.E.-Peter Lang, Brussels, 2005.