

**EUROPEAN SOCIAL MODEL IN MAKING -
European Commission reporting on Romania between
1999-2006**

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Abstract

The European Union is often described as being an economic giant but a political dwarf. True enough, the European project started with economics, but has gone a long way since the time that it was only about economy.

In Europe, there are obviously many different types of social models and welfare regimes. In addition to national models and regimes, there is an ongoing process at the European level that can be characterised as a search for “European social model”. This process involves both the institutions of the European Union as well as the member states. Political (and economic) battle that is being waged concentrates on what “European social model” should look like and who gets to define it. For its part, the European Commission is fond of the term “European social model”, which implies societies supposedly being based on a certain set of shared values and a willingness to act upon these values. Member states, on the other hand, often highlight the differences instead of similarities in social models and welfare regimes found across Europe.

One of the success stories of European integration is the successive waves of enlargement, a process in which the EU can be seen to be using its economic and political power. With the previous EU enlargements, social rights or social condition did not play a key role for two reasons: firstly, integration meant mainly economic integration and, secondly, there was no deficit in social rights and the social condition in acceding states was equal or in fact surpassed the condition in the existing member states. However, all this changed after the fall of communism and the new situation in Eastern and Central Eastern Europe.

This study focuses on Commission Regular reports on Romania between 1999 and 2006. The primary sources are the Regular reports on Romania’s progress towards membership prepared by the Commission. Some of the questions that arise in the study are: How are social rights and social policy dealt with in Regular reports? Concerning social rights and social policy, which issues does the Commission bring up and concentrate on in its reporting on Romania? And, finally, what does the European social model look like when it is constructed from the analysis of Commission Regular reports on Romania between 1999 and 2006?

It is suggested that in the area of social rights and social policy the competence of the Commission, and the way in which Commission uses conditionality, can be described as being functional rather than legal in nature. Furthermore, it is argued that the Commission could take a tougher stand regarding social rights and social policy without a risk of losing its credibility and influence towards the acceding states.

Based on this study it seems clear that the Commission advocates a social model based on active employment and labour market policies. To describe the European Union as being an economic giant but a political dwarf is maybe outdated, this study suggests that the EU should be called an economic giant, political half-ling and a social dwarf.

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1. Introduction

The European Union is often described as being an economic giant but a political dwarf. True enough, the European project started with economics, but has gone a long way since the time that it was only about economy. Debate on the European level is increasingly concerned with the image of Europe around the world, which is closely linked to the fact that Europe, as a whole, needs an educated workforce from abroad due to its own population decreasing and getting older. In terms of social policy, two parallel processes follow: firstly, Europe has to find a sustainable solution to the ageing “problem”. Secondly, Europe has to make sure that it is an attractive area when the global competition for the best labour is being waged. This, among other things, has led to a situation where social policy is looked upon as an asset instead of as simply a compulsory expenditure.

In Europe, there are obviously many different types of social models and welfare regimes. In addition to national models and regimes, there is an ongoing process at the European level that can be characterised as a search for the “European social model”. This process involves both the institutions of the European Union as well as the member states. Political (and economic) battle that is being waged concentrates on what the European social model should look like and who gets to define it. For its part, the European Commission is fond of the term ‘European social model’, which implies societies supposedly being based on a certain set of shared values and a willingness to act upon these values. Nonetheless, one does not have to study social and public policy to know that the member states of the EU differ significantly in the sphere of social policy.

There are problems that arise from these (supposed) shared values and the models of implementing them are manifold and totally different. One of the dilemmas for the

Commission is the fact that social and employment policies play such a key role in its drive towards the goals of the Lisbon strategy. In the Commission's reasoning, a more uniform approach to social policy would be the next logical step in the process of European integration, following broadly the logic and process of spillover. The member states of the EU have their own reasoning and agendas, and combining these different views is a daunting task, especially because the Commission has very limited competence in the area of social policy.

One of the success stories of integration is the successive waves of enlargement, a process in which the EU can be seen to be using its economic and political power. The economic and political criteria associated with accession negotiations are commonly agreed upon by the member states and the Commission is given the task of carrying out reporting on and monitoring of each of the candidate countries and their progress. The role of the Commission and negotiation teams has made the EU accession a process of negotiations and close scrutiny. Moreover, the conditionalities associated with becoming a member of the EU are set by the member states, but spelled out by the Commission in annual Regular reports. These conditionalities are a major part in the process that aims at rule adoption by the candidate countries, i.e. preparing them for smooth transition from candidate country status to becoming a full member.

With the previous EU enlargements, social rights or social condition did not play a key role for two reasons: firstly, integration meant mainly economic integration and, secondly, there was no deficit in social rights and the social condition was equal or in fact surpassed the condition in the existing member states. However, all this changed after the fall of communism and the new situation in Eastern and Central Eastern Europe. With the first wave of former socialist countries joining the EU in 2004 and the second in 2007, the

Commission began to pay more attention to social rights and social condition in the acceding countries. At the same time, the nature of integration has changed and now embraces more political integration than ever before: after the Amsterdam Treaty was signed by the member states in 1999, the social sphere in the EU gained new significance.

The pressing question is whether or not social conditionality can be meaningfully talked about in the same way as political or acquis conditionality is discussed? The Commission cannot influence the social policy of member states to the same degree it can that of candidate countries through conditionality. In other words, if the Commission wants to have an influence on future member states social policy, the best time it to be exercised is during the monitoring process and accession negotiations. This has the additional effect of the Commission possibly using the social policies of new member states as an example of what European-wide social policy should look like, i.e. policies influenced by the Commission during the monitoring and negotiations for accession.

This study focuses on Commission Regular reports on Romania between 1999 and 2006. Romania was chosen because it is the latest entrant to the Union and, hence, represents the latest example of the way in which social rights and social policy are dealt with in Regular reports and, furthermore, the way in which conditionality is used. Romania also represents countries with a socialist past, implying that it has a markedly different welfare regime and social condition in comparison with the majority of the existing EU member states.

Another reason behind the selection of Romania as a case study was the author's personal experience of working in Romania, although Romania, as such, is not the focus of this study. The primary sources are the Regular reports on Romania's progress towards membership prepared by the Commission. Some of the questions that arise in the study are: How are social rights and social policy dealt with in Regular reports? Which of the

issues concerning social rights and social policy does the Commission bring up and concentrate on in its reporting on Romania? And, finally, what does the European social model look like when it is constructed from the analysis of Commission Regular reports on Romania between 1999 and 2006?

In order to give the reader an idea of the context, let us first look into the process of EU enlargement and relations between the EU and Central Eastern Europe, particularly Romania.

2. Enlargement, EU and Romania

In this chapter we will consider enlargement in general and the case of Romania in particular. The first part deals with the overall goals of enlargement and also includes a brief look at the previous waves of enlargement. The second part deals with Central Eastern European states including Romania and raises the question; what are the motives behind CEE countries seeking a membership and EU wanting them as full members? The final part considers the relationship between the EU and Romania before and during the accession negotiations. The purpose is to give the reader an idea of some of the issues which will be dealt with in more detail in the following chapters.

Enlargement is without a doubt one of the most talked about EU policies of recent years. Enlargement is inherently based on an idea that any country that fulfils the criteria laid down by the member states can join the EU, provided that the EU is ready to accept them. The notion of the EU's readiness is something that, in recent debates, has been referred to as 'absorbtion capacity'. This is a euphemism that basically gives the EU an opportunity to postpone further enlargement if the member states do not agree politically with further enlargement. This obviously relates to the fact that national decision makers have to "sell" their decisions at home, and for the past years the willingness of European citizens has been fading in terms of wanting more countries to join the ranks of the Union. This "enlargement fatigue" can also be seen as one of the reasons why French and Dutch voters rejected the Constitutional Treaty in 2005.

2.1 The Enlargement process

The basic goals of enlargement are “extending peace, stability, prosperity, democracy, human rights and the rule of law across Europe”.¹ If we consider the past enlargements, it can be said that enlargement as a process and as a policy tool has been effective in promoting stability, both political and economic. As an example we might consider Spain and Portugal which joined the European Community in 1986, relatively shortly after the dictatorships of Franco and Salazar had fallen. Few people would argue today that Spain and Portugal are not democracies with functioning market economies. True enough, the process of consolidating democracy and a market economy takes time, and sometimes domestic policy makers promise too much, as was the case with the enlargement of 2004. The EU is not some kind of magic bullet that fixes things automatically, democracy and a functioning market economy are processes which are not installed overnight. What membership of the Union promises is political stability and economic predictability, which can be capitalized on by the governments in order to achieve higher living standards through a calculated policy mix.

The process of joining the EU includes various steps and different levels of engagement. The basic idea is to gradually develop closer ties between the aspiring countries and the EU institutions and policies. In this process, every country is “treated on its own merits” and developments are rewarded with closer cooperation and a promise of eventual membership. The Commission’s annual reporting in the form of Regular reports monitors and measures the progress of each candidate country and directs attention to particular issues that the Commission considers as causes for concern in light of further progress in the accession process. This process of agenda setting and monitoring aims at rule adoption

¹ European Commission, http://ec.europa.eu/enlargement/enlargement_process/index_en.htm (2.10.2007)

by the candidate countries and is called conditionality, which means that certain conditions have to be met by the candidate countries in order to progress towards full membership of the Union.

2.2 Central Eastern Europe and the EU

Membership of both NATO and the EU became core foreign policy objectives of all the Central Eastern European (CEE) states after the demise of the Soviet Union. As Pinelli has argued, “Central and Eastern European countries shared a sense of there being no alternative to EU membership if future stability and prosperity were to be assured”.² The common experience of all the CEE countries made them actively seek strong economic and political association, and eventual membership, with the EU. Needless to say, for security purposes, the answer was NATO. From the point of view of CEE countries, including Romania, this assessment made perfect sense. But what about the EU, what are the main reasons and arguments in favour of enlargement?

The accession of Romania and Bulgaria into the EU in 2007 completed the fifth wave of enlargement that started in 2004 with the accession of ten countries. Out of the ten countries joining in 2004, eight were part of the former “east”. After the Soviet Union collapsed, the EU quickly started to work towards building up its influence in the former eastern bloc. If there ever was any question of the logic and motives of the EU trying to consolidate its influence behind the former Iron curtain and in the Balkans, the bloody conflicts in the Balkans during the 1990s showed clearly that political stability and prospects of economic upturn were imperative if the area was to achieve peace and prosperity. Europe’s backyard, as the Balkans is sometimes called, was on fire and the EU

² Pinelli 2004, p.358

was unable to extinguish the flames without the help of NATO and the United States as its leading nation. This development in the Balkans obviously gave rise to serious considerations of the EU's military capability and eventually resulted in an enhancement of the enlargement process.

As the EU was not able to project enough hard power to contain inter-ethnic conflicts in its backyard, the decision was made to use the strong points of the Union, namely economic incentives and political persuasion, to try to increase stability in the area. From the EU's point of view, one of the main incentives is of course enlarging the common market, which will subsequently make it stronger in terms of global competition. At the same time as the EU made an assessment, both political and economic, in favour of further enlargement, it already enjoyed a favourable image in both the CEE countries and the Balkans in terms of guaranteeing economic prosperity and political stability. Joining the EU and NATO can also be seen as a clear signal towards Russia, something that is well demonstrated by the attitude of Russia towards the warming relations between the EU and Moldova and Ukraine, for example. To put it bluntly, push and pull factors were in place and they pointed in the same direction. Romania itself did not suffer from prolonged, bloody internal conflicts, but the actual transition of power in 1989 was the bloodiest in the whole region. Romania also has a history which undermines the consolidation of democracy and the rule of law. After the transition of power in 1989, corruption was endemic and the population saw a declining trend in their living standards.

Another important strategic goal worth mentioning here is the EU's access to the Black Sea. This access was consolidated once Romania and Bulgaria became full EU members. One of the most talked about strategic goals at the EU level during the past couple of years has been diversification and the security of energy supplies. Romania and Bulgaria are

both well placed in terms of oil and gas transit from the greater Black Sea region to the EU. Several pipeline projects are well under way using either Romania or Bulgaria or both as transit countries. In addition to the opportunities that the newest members bring in terms of energy supply, one might also highlight the fact that access to and presence in the Black Sea region also brings with it great challenges. Examples of these challenges include an unstable neighbourhood; Ukraine has been in internal chaos and the question of Transnistria remains unsolved. Romania has been active in promoting further cooperation between countries in the Black Sea region. Obviously, Romania would like to see itself becoming the leading nation in this cooperation, something that is not well received in Russia or Turkey, for example. Be that as it may, the fact remains that the Black Sea region is on the EU agenda and Romania is one of the main players inside the EU in that region.

2.3 Romania and the EU

The recent history of Romania is a history of intense totalitarianism and coercive party-state. The period of rule of Nicolae Ceausescu (1965-1989) was defined by a vast secret police organisation, known as the Securitate and, as Gallagher has observed, “The Ceausescu state possessed more attributes of a totalitarian dictatorship than any of the other East European party-states.”³ After the overthrow and execution of Ceausescu in 1989, the state remained in the hands of former communists who had most to lose. In a way, the state remained both too big and too weak but with enough coercive power to keep popular dissatisfaction from reaching dangerous proportions. Social progress (or the lack of it) in Romania has been strongly linked with a notion of the powerful state, uninterested in providing welfare for the society at large. Indeed, according to Gallagher, the frustration

³ Gallagher 2005, p.70

of the population with the inadequately performing state “has not resulted in autonomous groups becoming strong enough to promote a civic culture which might limit the absolute power of the state and encourage it to acquire a sense of social responsibility”.⁴ Against a background of the aforementioned reality we may now turn to examine the relations between Romania and the EU.

Romania was the first of CEE countries to have official relations with the European Community. In 1974, Romania was already included in the Generalised System of Preferences agreement. Diplomatic relations between Romania and the EU date from 1990 and Trade and Co-operation Agreement from 1991. The Europe Agreement came into force in 1995 and during the same year Romania submitted its EU membership application. The decision to start membership negotiations with Romania was made in the Helsinki European Council in 1999 and formal negotiations started the following year, in 2000. The first comprehensive paper concerning Romania’s application was the Commission Opinion in 1997. After its initial Opinion, the Commission submitted annual Regular reports and later Monitoring Reports concerning Romania’s efforts towards membership. These Reports, from 1999 to 2006, form the body of documents analysed in this thesis.⁵

The relationship between Romania and the EU during the membership negotiations was often seen to be asymmetrical. One of the main concepts related to this perceived asymmetry is conditionality, which will be discussed in more detail below. As Schimmelfennig and Sedelmayer have stated,

⁴ Gallagher 2005, p.331

⁵ All these documents can be found from:
http://ec.europa.eu/enlargement/archives/romania/key_documents_en.htm (2.10.2007)

The desire of most CEECs to join the EU, combined with the high volume and intrusiveness of the rules attached to membership, allow the EU an unprecedented influence in restructuring domestic institutions and the entire range of public policies in the CEECs.⁶

This is of course a very simplistic way of looking at the process of enlargement negotiation, as is highlighted by Schimmelfennig and Sedelmayer when they go on to state that,

EU conditionality might be encompassing, but it might not be effective in particular issue areas or countries, and policy or institutional changes in particular issue areas might not be causally related to it.⁷

Others even argue that Romanian negotiators were able to skilfully play the EU side in order to give an impression of complacency while at the same time not doing much to address these issues at home. Gallagher has been one of the most vocal critics in this sense, stating, for example, that:

It will be ironic if the principal outcome of the EU's engagement with Romania is decisively to consolidate the influence of a ruling elite that regrouped upon the fall of communism in 1989. If this happens, the EU will be reinforcing the historical traditions and methods that have made Romania synonymous with bad governance throughout much of its history.⁸

The issue of conditionality and the way in which the Commission used it in its Regular reports will be discussed and analysed in more detail below. However, before looking at

⁶ Schimmelfennig & Sedelmayer 2005, p.1

⁷ Ibid., p.2

⁸ Gallagher 2005, p.355

the evolution of social rights and social policy in the context of European integration, let us first take a look at the research design of this study.

3. Research design

The purpose of this chapter is to familiarise the reader with the key concepts, methodology and research questions of this study.

The main questions that this study addresses are:

1. How does the Commission motivate Romania for action in social issues?
2. Which social rights and social policy issues are given priority in the Regular Reports?
3. What does the European social model look like on the basis of the issues taken up in the Regular Reports?

3.1 Definition of key concepts

In this chapter, some of the key concepts will be defined and placed in the broader context of this paper; the first of these concepts is social rights.

Social rights is a concept that has no universal definition. Debate on whether social rights can be included in a framework of universal human rights or fundamental rights is ongoing. The history of the term goes back to the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in 1948.⁹ Another important UN text is the International Covenant on Economic, Social and Cultural Rights, which was adopted in 1966.¹⁰ In Article 22 of the UDHR, where social rights is mentioned,

⁹ General Assembly Resolution 217A (III), Article 22: “Everyone, as a member of society, has the right to social security and is entitled to realization , through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

¹⁰ General Assembly Resolution 2200A (XXI), Preamble: “...the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”.

we can already see why the concept of social rights has been debated ever since. Social rights, as opposed to civil or political rights, require state intervention in terms of providing material resources for these rights to be realised. In other words, civil and political rights can be seen as a defence against the state, whereas social rights require state action.¹¹ This is one of the main arguments against social rights to be included in fundamental rights. However, as argued by others, even traditional civil and political rights require state action and material resources in a sense that a peaceful, violence-free society is created by distributing enough resources, for example, to polising and street lighting.

A classic definition of social rights can be found in the work of T.H. Marshall.¹² Marshall's main idea is that a different set of rights can be seen to evolve in chronological order. Marshall mainly studied the United Kingdom and some other nation states in Europe, arguing that after civil and political rights were granted, economic and social rights followed suit. Marshall describes economic and social rights as 'third generation' set of rights and, hence, civil and political rights are seen as first and second generation in Marshall's theory. Marshall argues that while civil and political rights were granted throughout Europe during the 19th Century, the main development during 20th Century was to introduce economic and social rights and to have meaningful dialogue about policies and implementation issues concerning these 'third generation' set of rights. While the theory of the chronological evolution of different citizen rights can be seen to be logical in a framework of nation states, how does this theory work when combined with the context of European integration and supranational social policy that the Commission is trying to define and impose?

¹¹ See Weiss 2002, Lyon-Caen 2002.

¹² Marshall & Bottomore, 1992.

Regarding Marshall's theory of the first, second, and third generation of certain set of rights, it is easy to see that European integration did not follow the same path as European nation states. Obviously, it can be asked how could it have, due to the fact that national social policies were tightly guarded by sovereign states. What is interesting though, is the fact that, in the context of European integration and the creation of an internal market, citizens were treated mainly as 'market citizens' for decades. While the citizens of member states did not have any civil or political rights at the European level until perhaps the 1970s with the first direct elections of MEPs, the same citizens enjoyed at least some economic or market rights. These rights were obviously tied to work, i.e in terms of working conditions, health at work and so on. In general, these rights could be described more accurately as workers rights and not so much as social rights in a broader sense.

A significant critique followed Marshall and his theory of evolution of rights. This critique culminated in the 1980s when the 'new right' was making headway especially in Britain and the United States of America. When Thatcher and Reagan were leading two very significant powers, their policies were formulated on the basis of the privatization of state-owned enterprises and the creation of free markets around the world. This ideology obviously attacked Marshall's theory that suggested that economic and social rights should be treated as basic rights precisely as civil and political rights were treated. The question was not so much about the chronological evolution of different set of rights as it was about the nature of these different set of rights. What the 'new right' in the 1980s was effectively saying was that economic and social rights cannot be treated the same way as civil and political rights because these 'third generation' set of rights involve too much intervention by the state in the affairs of the market and its internal logic.

One of the main arguments in the critiques was to say that economic and social rights

cannot be treated in the same way because, on the one hand, they demand too much intervention by the state, and on the other they are too costly for the society as a whole. Inherent in this argument is the idea that while civil and political rights do not require extensive distribution of funds by the state to secure these rights, economic and social rights would inherently involve a massive redistribution of wealth and, hence, it would be a big burden for both the state and the market. Marshall's response to this particular critique was to argue that in order to secure both civil and political rights, a state also needs to distribute appropriate funds, and that this is in no way different than the fact that economic and social rights, and their implementation, would necessarily involve distribution of funds as a way to secure these rights.

For the purposes of this thesis, it is interesting to note that European integration, which started from economic integration and market logic, has come to embrace the idea of combining economic and social policies in order to create more competitive and innovative societies in Europe. In a context of this thesis, it may in fact be more meaningful to look at social rights in such a way that state action or governmental policies define those rights. Here, the term 'social rights' will be used in its broad sense, i.e. including social as well as economic rights. As it is clear, the legal base for social rights can be found at both the EU and national level, but this does not say anything about the actual status or the scope of those rights. In other words, the concept of social rights in this thesis is based on the idea that social rights are part of EU citizens' fundamental rights, and that they are manifested in European level judicial texts (i.e. TEU, TEEC). Through an analysis of the Commission Reports on Romania, this thesis will try to establish what kind of European level social policy, based on existing European level social rights, is actually being talked about when the Commission refers to the 'social dimension' or, more recently, the 'European social

model’.

Conditionality

Conditionality refers to the system of EU conditions aimed at rule adoption by the candidate countries. This process of rule adoption is central to EU enlargement. In other words, certain conditions have to be met by the candidate countries before they can join the Union. Concerning rule adoption by the candidate countries, Schimmelfennig has argued that “the most important distinction for the likelihood of rule adoption [...] is whether or not the EU had made rules subject of its conditionality.”¹³ In short, if the EU wants to increase the likelihood of particular rules being adopted by the candidate countries, it has to use credible conditionality to back its requirements.

Conditionality can be divided into two broad and different areas. These two areas are democratic and acquis conditionality. The Commission uses these two kinds of conditionality in its communication and negotiations with the candidate countries. As the name suggests, democratic conditionality refers to the general political rules of liberal democracy. According to the Copenhagen criteria, which is the basis of democratic conditionality;

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities... Membership presupposes the candidate’s ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.¹⁴

¹³ Schimmelfennig & Sedelmaier 2005, p.215

¹⁴ Presidency Conclusions Copenhagen, June 21-22 1993.

Concerning democratic conditionality, it has to be said that these basic requirements of liberal democracy are not specific to the EU. The democratic conditionality of the EU goes hand in hand with the efforts of other international organisations, such as NATO, OSCE, OECD and CoE. When the Union starts formal accession negotiations with a candidate country it is a signal that the EU considers that the major conditions of democratic conditionality are fulfilled.¹⁵ This thesis is concerned with the Commission Opinion and Regular Reports on Romania between 1997 and 2006. Accession negotiations in the case of Romania started in 2000. In other words, the EU considered that the democratic conditionalities had been fulfilled by Romania before 2000.

After the initial requirements of democratic conditionality have been met and accession negotiations started, *acquis* conditionality sets in. *Acquis* conditionality refers to the EU's legislation, known as *acquis communautaire*, which amounts to approximately 80000 pages of legislation. Social rights, as part of basic EU Treaties and a candidate's international commitments, fall under democratic conditionality at least in the political sense. Common social policies, or the "European social model", derived from the basic principles of social rights, falls under two separate categories, namely *acquis* conditionality and a candidate's ability to implement common policies (such as employment policy).

This thesis concentrates on *acquis* conditionality. The initial question is how much attention is the Commission paying to social policies in its reporting on Romania? More specifically, the task here is to try to find out what kind of social policy is recommended by the Commission. From these recommendations and issues taken up in Regular reports, a picture of the "European social model" can be formed, as seen through the Commission

¹⁵ Schimmelfennig & Sedelmaier 2005, p.212

communication and reporting on a candidate country, i.e. Romania. What is also interesting though is to try to find out if it is plausible at all to say that the Commission is using credible and effective conditionality when it comes to social rights and social policy.

Socially responsible globalisation and enlargement

Globalisation is probably one of the most used terms in recent discussions, regardless whether those discussions are about economy, politics, the environment, or social change. The theoretical framework of this study lies in the concept of socially responsible globalisation and the role of EU enlargement policy in it. The EU is often portrayed as counterbalancing the effects of globalization in general, and economic integration and competition in particular. The EU can be seen as an initiative by the European states to have a greater say in how globalisation will reshape the lives of Europeans. Globalisation is a process that affects the EU, but the EU is also contributing immensely to what kind of globalisation we are experiencing.

Obviously, the role of the EU is first and foremost to serve the interests of the citizens of the EU member states, but it would be a mistake to disregard the global influence which the EU has. For example, the Commission represents its member states in global trade talks, which have a very significant effect on the direction in which globalisation is heading. Furthermore, through the system of human rights clauses in trade agreements, as well as being the biggest player in the field of development cooperation, the EU is pioneering practices meant to alleviate the worst effects of economic globalisation. Between the EU's internal and external action lies the process of enlargement, which is widely publicised as one of the biggest success stories of the whole integration process.

Socially responsible globalisation as a concept is an answer to the negative social impact of globalisation. Among others, Deacon has noted that

Much of the discussion about globalisation assumes a certain economic logic which suggests there is an inevitability to the process and form of globalisation. It is a 'fact' of life to which governments have to adjust.¹⁶

In order to challenge this overwhelmingly economic and deterministic view of globalisation, socially responsible globalisation draws attention to alternatives and possibilities. To depict globalisation only in terms of a practical process is to miss the ideological side of it. If we take into account the ideological aspects of globalisation, then we can have a more meaningful discussion about not only the nature of globalisation but also the ways in which the whole process can be understood as an opportunity to achieve socially responsible globalisation.

In terms of social policy and globalisation, the view can be taken that national governments play a key role in the process, since the social effects of globalisation in any given country are ultimately the result of government responses to external and internal challenges. In this view, it is interesting to note that the EU is pioneering a kind of supranational governance that has never been tried before. With regards to the national social policies of the member states, the EU has had an effect through the economic integration.

As will be discussed in more detail below, the integration process that started with economics and market logic has come to embrace the idea of integrating economic policies with political integration, including the social aspects. Taking into account the ideological

¹⁶ Deacon 2001, in Sykes & Palier & Prior (eds.) 2001, p.59

side of globalisation and the growing influence of the EU in the area of social policy, the question must be asked of what kind of globalisation is the EU driving for? At least part of the answer can be derived from the way in which the Commission, as the main driving force behind the integration, is handling social rights and social policy in its negotiations with candidate countries. Is the Commission trying to reinvent mechanisms of redistribution, regulation and empowerment on a European level, using the same tools as those which states are using to achieve social objectives?

3.2. Method

This study uses arrested narrative as the main method. This method has been used, among others, by Palola in researching the nature of the European social model through Commission documents and communication.¹⁷

If we consider a basic, three-episode narrative¹⁸, we can describe the episodes as follows: the first part of the narrative sets the scene, creating preconditions for future action. The second part is that in which the actual action takes place on bases of the premises laid in the first part. The third part, then, is concerned with the assessment of what happened, i.e. ‘the morale of the story’. As a method, arrested narrative, as the name suggests, means that the basic three-episode narrative is not followed through. As Törrönen has observed, the narrative is arrested immediately after creating the preconditions for future action.¹⁹

According to Palola, the EU is a good example of the modern age in the way that constant change and preparing for change is always present. In arrested narrative, the storyteller

¹⁷ Palola, 2004.

¹⁸ According to Greimas & Courtes, 1982.

¹⁹ Törrönen 2001, p.418-419.

recognises a challenge or a threat, sets out the guidelines and direction for action, and finally justifies the mission as just and needed. Crucial to the arrested narrative is the subject for action is prepared and motivated.²⁰

Concerning this study, and in looking at the Commission Regular Reports through the notion of the arrested narrative, it is worth noting that the narrative is ‘arrested’ and then continued in successive Reports, and, in addition, that the Commission documents include some parts that can be categorised as belonging to the third part of a basic narrative, i.e. assessment of what has happened. In short, the Commission is pointing out certain areas where action is needed without expressively stating what kind of action is needed. After setting the scene for action, the Commission comments in successive Reports on the way in which the action taken corresponds with that which was supposed to have been achieved.

The first part, creating preconditions for action, is laid down when looking at social rights and social policy and pointing out certain issues and the thematic areas that should be dealt with. The third part, assessing what happened, comes out in Regular Reports in assessing individual policy areas.²¹ The second part, the actual action, is of course left to the Romanian counterparts.

In order to better understand what is nowadays called the ‘European social model’, let us take a look at the evolution of the EU in terms of social rights and social policy.

²⁰ Palola 2004, p.571.

²¹ In this case, Chapter 13 on Social Policy and Employment.

4. The Road to the European social model(s)

This chapter will consider the evolution of social rights and social policy with a view to the political will of the member states and the legal framework in which this policy area has to operate.

When European integration was launched after the Second World War, the main objective was to enhance economic cooperation. By creating a common market it was believed that economic growth and stability could be achieved. The underlining principle, of course, was to achieve a peaceful coexistence between former enemies in the European context, i.e. to create mutual economic benefits in order to decrease political tensions and to accelerate post-war economic development. Social or moral considerations did not play a significant role in the beginning, as the main objective of economical development was the creation of a common market and an apparatus to support it. It is also worth mentioning that, by differentiating economic integration from fundamental rights, the Community was able to concentrate on market building and to minimize the interference of heavily guarded national systems of social protection, labour law, and industrial relations. Concerning economic and social rights, in late 1950s there was a wide consensus that economical cooperation and development would rapidly enhance social standards.²²

Before the European Economic Community (EEC) was founded in 1957, there was a wide debate on the social policy competence of the Community. Under discussion was the supposed need to balance the structural and social effects of competition stemming from market liberalisation. In the end, it was decided that the EEC would not have extensive competence in the area of social policy, and the main area in which the EEC was given

²² Hervey & Kenner 2003, p. 5-6

limited competence was the free movement of labour. During the 1960s, the Commission made an effort to activate Community-level social policy and even suggested step-by-step harmonisation of member states' social security systems. The Commission proposals met resistance in the Council, which stated clearly that the Commission did not have competence in this area. It did not take long, however, for social policy to come up again in the agenda.²³

4.1 Into the 1970s

It was in the 1970s when the Community began to embrace the idea of combining economic and political integration. What was different, in comparison with previous decades and initiatives, was the fact that now both the Commission and Council supported the idea of balancing economic integration with some form of social integration. This could also be characterized as combining economic freedom and social rights in a context in which the Community started to work towards the European Monetary Union (EMU). Two primary lines of argument followed, the first being in favour of a model of European integration restricted to economic integration and the second in favour of economic integration combined with political integration. There is a big difference between the two if we think about social rights. For economic integrationists, “the goal is to maximize wealth (efficiency) through free trade and market integration”, whereas “for those who argue in favour of a model of political integration, wealth maximization has to be complemented by some criterion of solidarity and distributive justice in the new political community”.²⁴

²³ Pakaslahti 2002, p.50

²⁴ Poiares Maduro 1999, p. 466

In 1979, the Commission published a memorandum which urged the Council to discuss the possibility of the Community joining the European Convention on Human Rights (ECHR).²⁵ This was a clear attempt by the Commission to give meaning to an emerging idea of the European citizen who had a “legitimate interest in having his rights vis-à-vis the Community laid down in advance”.²⁶ This memorandum was not followed by any legislative proposal by the Commission, partly because of a degree of uncertainty over competencies and partly because certain ambiguity concerning the Community’s identity as a human rights actor and its relationship with other international institutions acting in this field. These considerations still have an influence today, as Kenner points out, “...a prime motivation for adopting the [EU] Charter [of Fundamental Rights] some 20 years later, was to offer an alternative to EU accession to the ECHR”.²⁷ A Constitutional Treaty would have solved this issue because it would have made the EU a legal person and hence able to access the ECHR; however, at the moment, the future of Constitutional Treaty is still open.

4.2 Into the 1980s and the birth of the social dimension

During the 1980s, following the publication of the internal market ‘White Paper’ in 1985, more and more discussion concentrated on the possible negative effects of the internal market on social conditions in the member states. A phrase that was widely used at the time was “race to the bottom”, which meant that lower production costs in neighbouring countries force other countries to lower their own costs respectively. Demands for a ‘social dimension’ or a ‘European social policy’ grew stronger, and as there was no consensus

²⁵ Commission Memorandum 4 April 1979, EC Bull Supp 2/79, p. 5

²⁶ Economides&Weiler, *Modern Law Review* 42, p. 686

²⁷ Hervey & Kenner 2003, p. 7

among the member states to give the Community more competence in the area of social policy, “Community began to explore the possibilities of an alternative approach based on identifying a catalogue of “fundamental social rights” to be observed by the Member States and to act as a spur for legislative and programmatic activity at both Community and national levels.”²⁸

Building on this momentum, it was declared in the Single European Act of 1986 that the Community was:

Determined to work together to promote democracy on the basis of fundamental rights recognized in the constitution and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice.²⁹

The Social dimension appeared on the mainstream political agenda of European integration during the 1980s, but it did not produce any significant results in the area of European social policy. Member states, with Britain leading, did not want to grant more competence to the Community. The Maastricht Treaty of 1991 concentrated on the EMU, and the social dimension did not feature as prominently in discussions as it had done in the 1970s. The Commission kept social policy on the agenda with communications and initiatives, but the member states were not receptive to the Commission proposals.

The turning point in the area of social policy came in the 2000 Lisbon European Council, where the EU declared its strategic goal of becoming “the most competitive and dynamic

²⁸ Ibid.

²⁹ Third recital, Preamble, Single European Act 1986.

knowledge-based economy in the world” by 2010.³⁰ This was highly significant, so much so that one can talk about a qualitative shift in the whole integration process. Previously, the goal had been the development of internal markets and competition policy from the point of view of competition and market policies. After Lisbon, more emphasis was put on the social dimension of integration, which, in practice, meant an integrated approach combining economic, employment, social, and environmental policies into an integrated model that would ensure the competitiveness and effectiveness of the European project in the era of globalization.

4.3 From social dimension to the European social model

Although the term ‘European social model’ had first appeared in 1994, in the Commission’s White Paper³¹ on social policy, it took a few years and the Lisbon strategy for it to become a household name. During the 1990s, concepts such as ‘the social dimension’ and ‘social Europe’ were used when referring to combining economic growth and social responsibility, but in reality not much happened. In 2002, the European Council in Barcelona the ‘European social model’ was defined as

based on good economic performance, a high level of social protection and education and social dialogue. An active welfare state should encourage people to work, as employment is the best guarantee against social exclusion.³²

After the Lisbon strategy and Barcelona conclusions, the ‘European social model’ became the definitive concept in official EU jargon, superseding both ‘social dimension’ and

³⁰ Presidency conclusions, Lisbon European Council 23.-24. March 2000.

³¹ European Social Policy – A Way Forward for the Union. COM (94) 333.

³² Presidency Conclusions, Barcelona European Council, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/71025.pdf (1.10.2007)

‘social Europe’. The Commission is especially keen to promote the use of the European social model as a concept for the obvious reason that it not only refers to a Europe-wide, common approach but also to the supposed social model shared by the member states.

Much debate followed with regards to what should be the priority areas of this new model and also what parts of it should be the competence of the Commission. It was clear, however, that a shift in the terms of debate inside the Commission had also happened regarding social rights and social policy. Once social rights were heavily rooted in Treaties, the Commission began to look for different ways to ensure its influence on policy formation and the actual implementation of those rights, i.e. social policy. Whether one agrees with the Commission’s position or not, it is a fact that the 2000 Lisbon strategy outlines the EU’s strategic goals for the next decade including its social aspects. The presidential conclusions from the Lisbon European Council state that,

The Union has today set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. Achieving this goal requires an overall strategy aimed at... modernising the European social model, investing in people and combating social exclusion.³³

The Commission has actively promoted the use of the European social model in its communications and discussions with the Council as well as with member states and third parties. According to Palola, the Commission’s rhetoric is dominated by a story of change that aims at transforming the European social model. Furthermore, “European social policy

³³ Presidency conclusions, Lisbon European Council 23.-24. March 2000.

can best be understood as part of a discursive formation on European governance where each policy articulation is part of a broader discursive structure”.³⁴

4.4 Open Method of Coordination (OMC)

Once it became clear during the 1990s that a common social policy, in the form of a ‘hard law’, would be impossible to achieve, an initiative was launched to find new arrangements for governance in different areas such as employment and social policy. This new style or arrangement of governance came to be called the ‘open method of coordination’ (OMC), and it was endorsed and used, for example, in the European employment strategy (EES). The OMC is based on “broad participation in policy making, coordination of multiple levels of government, use of information and benchmarking, recognition of the need for diversity, and structured but unsanctioned guidance from the Commission and Council”.³⁵ One could argue that with 27 member states in the EU, there is a real need for an approach to governance that accepts more diversity and encourages semi-voluntary forms of coordination instead of top-down, traditional regulatory approach.³⁶ Trubek & Trubek illustrate the debate concerning the OMC well when they state that.

Much of the debate concerning the Open Method of Coordination... concerns the respective merits of “hard” and “soft” law in the construction of Social Europe. [...] The OMC, which has general and open-ended guidelines rather than rules, provides no formal sanctions for Member States that do not follow the guidelines, and is not justiciable, is thought of as “soft law”. Proponents of the OMC argue that it can be effective despite – or even because of – its open-ended,

³⁴ Palola 2004.

³⁵ Trubek & Trubek 2003, p.2..

³⁶ For more information on Open Method of Coordination and debate around it, see Kari 2002, De la Porte et al. 2001, Rodrigues 2002, Chassard 2001.

non-binding, non-justiciable qualities. Opponents question that conclusion. They argue not only that the OMC cannot do what is needed to construct Social Europe and that “hard law” is essential; they also contend that use of the OMC could undermine efforts to build the hard law they think will be needed.³⁷

4.5 Influence of the European Court of Justice

The European Court of Justice (ECJ) is an EU institution that is very poorly known. As its decisions bind member states, i.e. comparable to a constitutional court, it is worth examining the influence of the ECJ on social rights and social policy. Some scholars have taken a view that the ECJ is an example of trans-national democracy in a context of anarchic global order. As Giddens remarks,

The existence of the EU drives home a cardinal principle of democracy, when seen against to democracy within states, as well as between them. The European courts, for example, have made a range of decisions, including measures protecting individual rights, that hold within the member countries.³⁸

While this is true, some other scholars have pointed out that the main problem concerning the ECJ is that it is constantly widening its competence in a manner that raises questions. This has led a variety of scholars to consider the ECJ to be more influential than the Commission, Council or the EP when it comes to influencing national social policies³⁹

³⁷ Trubek & Trubek 2003.

³⁸ Giddens 1999, p.81

³⁹ All the other EU-institutions, except ECJ, have their competencies laid down in detail in founding Treaties. For more information see Chassard 2001.

With regard to ECJ competence in general and social policy in particular, Pakaslahti has argued that issues of competence should be clarified as soon as possible.⁴⁰

4.6 The European social model considered

After this brief introduction into the ways in which the social dimension and, later, the European social model, came to the fore, let us now turn to the present day situation. The treaty base of EU social policy consists of the Treaty on European Union (TEU) and the Treaty Establishing the European Community (TEEC).⁴¹ We can divide EU social policy into three areas, namely secondary legislation (regulatory, minimum standards), policies requiring member state coordination (such as employment policy), and social dialogue. What is worth noting here is the fact that EU social policy is regulatory in nature, i.e. it does not consist of any distributive or redistributive qualities.

With the accession of ten new member states in 2004, the “race to the bottom” discussion gained a renewed momentum. Nonetheless, as Kvist and others have argued, internal challenges, such as ageing population, are of more importance for social policy development than the encounter of old and new EU countries with different social policy models. As a consequence, instead of a race to the bottom, we might be witnessing a race to the top, an era in which social policy seems to be one factor that will attune the competition for the best labor force not only globally, but among the EU member states

⁴⁰ Pakaslahti 2002, p.65

⁴¹ “Article 2 of TEU calls for the Union to promote “economic and social progress which is balanced and sustainable” and for the “strengthening of economic and social cohesion”. Article 2 of TEC lists among Community goals a “high level of employment and social protection, equality between men and women, ... raising the standard of living and the quality of life, and economic and social cohesion and solidarity among member states.” As specified in Article 3 of TEC, the activities of the Community include measures ensuring the free movement of persons, a strategy to coordinate member state employment policies, a European Social Fund, increasing economic and social cohesion, health protection, and contributions to education and training.” Sissenich 2005, p. 157

also.⁴² However, as Maydell et al. point out, “The spiralling upward or race to the top would arise when there is a large mobility of labour, meaning that the best, highest skilled employees start to work in a member state with better conditions”. During the years, one of the challenges of the EU, when compared with the USA, for example, has been the low mobility of labour (between the member states). If we are to believe that race to the top is more probable than the race to the bottom, then labour mobility inside the EU has to increase. This, in turn, might decrease the willingness of the EU member states to adhere to the ‘European social model’ formulated by the Commission; at least if the model is understood as some kind of “one size fits all” package.

As it was mentioned before, the idea of the European social model is to bring together economic, employment, social, and environmental policies in order to form an integrated model that could flexibly and innovatively answer to the requirements of integration and globalisation. An excessive compartmentalisation of policies might be outdated and not very helpful if the goal is an integrated model, but the question of relations between and the preferences within different policies has to be answered. One of the subsequent questions that arises is, what is the preferred policy mix and to what level of detail it should be formulated and by whom? The complementary challenge, as Maydell et al. point out, “is to develop a conceptual model of policy making that recognises the interplay and reciprocal impact of policy areas in shaping social outcomes”.⁴³ The open method of coordination (see above) is one answer to the requirement for a new approach to social policymaking. However, as previously stated, this approach is not without its limitations and questions concerning the best practices.

⁴² Maydell et al. 2006, p. 47

⁴³ Maydell et al. 2006, p.130

One of the interesting components of EU social policy is social dialogue. In the context of accession negotiations and Commission Regular Reports, social dialogue is included in Chapter 13, Employment and Social affairs. Social dialogue is meant to be European-level consultation procedure between employer and labor organizations with an inherent idea of these consultations possibly leading to EU legislation. As Sissenich has noted,

Though the social dialogue is an EU-level procedure, it does implicitly require functioning structures of socioeconomic interest representation at the national level. Yet member states do not share a single model of industrial relations and socioeconomic consultation but retain nationally specific structures and practices. Hence, the Commission's case for adjusting any national social dialogue to EU-level practices is functional rather than legal, which limits the scope for EU sanctions against noncompliant candidates.⁴⁴

As stated above, the Commission has no competence when it comes to implementing social policy. The role of the Commission is to make declarations, set minimum standards and make its preferences known, but the actual implementation and, hence a choice between different policy models and preferences in policy mix, is up to the national policy makers to decide. On the other hand, the Commission is more than willing to take on more and more responsibilities and new policy areas. To this end, it is interesting to see if the Commission is using its Regular Reports as a platform for a possible future European social model, directed by the Commission. Moreover, as future member states, candidate countries form an interesting "testing ground", which can be used later on by the Commission in the process of inter-institutional arm wrestling. The main problem in this scenario is that candidate countries can easily ignore the Commission if it is not using

⁴⁴ Sissenich 2005, p. 158

credible conditionality, which in the area of social policy is questionable due to competence issues.

After looking at the evolution of 'the social' in the context of European integration, and the birth of the European social model as a concept, let us now to dive into the actual Regular reports and try to find out how social rights and social policy are dealt with in these Commission documents.

5. The social component of Commission Regular Reports

This chapter will deal with social rights and the social policy issues raised in the Reports. After describing what kind of social issues can be found from the Reports we will then move on to consider what does the 'European social model' look like through Commission Regular Reports on Romania.

Since the initial Commission Opinion on Romania in 1996, the Commission has published annual Regular Reports on Romania's state of preparedness. To be included in this analysis are the Reports from 1999 to 2006, with one Report each year except for 2006, when the Commission published two Reports. The decision not to include Reports from 1997-1998 is due to the fact that in its 1999 Report, the Commission recommended membership negotiations to start in 2000. This was a clear signal that the Commission considered that Romania had fulfilled the Copenhagen political criteria in 1999, which in turn implied that fundamental rights, including social rights, in Romania were considered to be on a level needed to start the negotiations.

The Reports are drafted in a way that political and economic criteria are assessed first in general, which is followed by considerations on Romania's ability to assume the obligations of membership. Social rights can be found from the section dealing with political criteria, more specifically under the main heading 'Human rights and protection of minorities', subheading 'Economic, Social and Cultural Rights'. Social policy is located in a section dealing with Romania's ability to assume the obligations of membership, under the main heading 'Economic and social cohesion', subheading 'Employment and Social

Affairs'.⁴⁵ The Commission states the sources of information used in preparing these annual Reports in the introductory part of every Report:

The candidate countries have been invited to provide information on progress made in preparations for membership since the publication of the last regular report. The National Programmes for the Adoption of the Acquis of each of the candidate countries, as well as the information they have provided in the framework of the Association Agreement and in the context of the analytical examination of the acquis (screening) and the negotiations, have served as additional sources. Council deliberations and European Parliament reports and resolutions have been taken into account in the preparations. The Commission has also drawn on assessments made by various international organisations – in particular the contributions of the Council of Europe, the OSCE, the International Financial Institutions, as well as those from non-governmental organisations.⁴⁶

In its Regular reports, the Commission does not usually specify the source of individual information, except for statistics and macroeconomic indicators. This is a source of confusion at times, because organizations as different as CoE, IFIs and NGOs definitely do not share a common understanding about the nature of social rights or the necessary social policy in order to balance competition and economic considerations in general. It would be beneficial for a researcher to know where the information used came from, but at the moment it is hard to confirm any piece of individual information since the source is not defined. On the other hand, this is beneficial for this particular paper, since the idea is to find out what kind of social model is propagated by the Commission. After this small

⁴⁵ Since the 2001 Regular Report, social policy is located in its own chapter 'Social policy and employment', under Romania's ability to assume the obligations of membership. This follows the start of membership negotiations in 2000 and the subsequent reorganization of Reports into chapters under negotiation.

⁴⁶ Regular Report 1999, p.6-7

introduction, let us turn to actual substance of the Regular Reports, starting with social rights and then moving on to social policy.

5.1 Social rights in the Regular Reports

Social rights are considered part of the wider set of human rights in the Regular Reports, and in this way, they are clearly considered as part of the fundamental rights in the EU. These fundamental rights are considered part of the Copenhagen political criteria, which Romania was seen to fulfill in 1998.⁴⁷ The way in which the Commission drafts its Reports includes repetition but also a clear statement: “As mentioned in the last Regular Report, Romania continues to respect human rights and freedoms. The following section only concentrates on subsequent major developments”.⁴⁸ As a consequence, reading consecutive Regular reports can be surprising, since issues which were taken up in the previous report do not necessarily appear in the following one. How much this is due to the situation getting significantly better and how much to the simple fact that since those issues were already taken up there is no need for repetition is not very clear. Indeed, it is the Commission that does not make this clear. The following pages are meant to illustrate, with use of selected excerpts and quotations, the way in which the Commission is dealing with Romania’s legislative action in regarding social rights. In its 1999 report, the Commission states the following:

As mentioned in the last Regular Report, Romania continues to respect human rights and freedoms. [...] The Constitution foresees that international conventions ratified by the Romanian Parliament become automatically part of domestic legislation and that

⁴⁷ Regular Report 1998, p.12: “Developments confirm that Romania fulfils the Copenhagen political criteria.”

⁴⁸ Regular Report 1999, p.19, introduction to the section ‘Human rights and the protection of minorities’.

international law prevails over domestic law. However, efforts are still required to ensure effective implementation of this principle. For this reason cases are sometimes brought up all the way to the European Court of Human Rights rather than being settled at national level.⁴⁹

This excerpt highlights one of the persistent features related to candidate countries' efforts to assume the obligations of the EU membership, namely the issue of implementation. Laws are passed by the parliament, but there is not enough administrative capacity to actually implement and enforce them. Regarding social rights, Romania has national legislation⁵⁰ in place and it has also signed and ratified, among others, the Revised European Social Charter (ESC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). On the part of the Commission's, lagging behind in implementation could be used as a rationale for more stringent conditionality in social issues also. Concerning the overall social condition in 1999, the Commission notes that

Due to the economic contraction and increased unemployment, the population of Romania have seen worsening of their living conditions. This concerns in particular the socially vulnerable groups like institutionalised children, handicapped and retired persons and the Roma. Poverty indices like those of the World Bank indicate that a third of the population lives below the subsistence level. Seen in the context of the rights defined in the European Social Charter this development is of concern.⁵¹

⁴⁹ Regular Report 1999, p.15

⁵⁰ Rights to minimum means of subsistence and social security are written into Romanian constitution, and the right to education is guaranteed.

⁵¹ Regular Report 1999, p.18

The Commission makes a reference to the European Social Charter and states in its 1999 report that, “In May, 1999 Romania ratified the European Social Charter”.⁵² Confusingly, in its 2000 report, the Commission states that “Romania has ratified the core provisions of the Revised European Social Charter, which are embodied in existing domestic legislation. However, the original European Social Charter has not yet been signed”.⁵³ In order to effectively monitor and screen the development and implementation of social rights in Romania one would assume that the Commission would be aware of the basic national and international obligations of the state in question. Be that as it may, it is clear from the Commission’s 1999 Report, that social rights, as embodied in the Romanian national legislation and the international commitments made by Romania, are not observed at ground-level: this is one reason for concerned citizens to take their cases to the ECHR instead of Romanian national judiciary. In the conclusion of the 1999 Report, concerning political criteria, the Commission considers that,

at the moment, Romania still fulfils the Copenhagen political criteria although this position will need to be re-examined if the authorities do not continue to give priority to dealing with the crisis in their child care institutions. [...] Other areas which still need attention include [...] despite some positive developments, the situation of the Roma; where, despite severe general budgetary restrictions, adequate budgetary resources should be made available and efforts should be made to fight discriminatory attitudes in society.⁵⁴

The deteriorating situation in regards to living conditions (especially of identified vulnerable groups), inn addition to the poor level of the implementation and enforcement

⁵² Ibid.

⁵³ Regular Report 2000, p.23

⁵⁴ Regular Report 1999, p.77

of legislation in the area of social rights, is a cause of concern but does not seem to be a priority for the Commission. While it is understandable that requirement for macroeconomic stability place heavy restrictions on public spending, social exclusion and wide-scale poverty (a third of the population below the subsistence level) should convince the Commission of the need to require more efficient action in the area of implementing social rights legislation. Would more explicit language and the use of more stringent conditionality make a difference? In the 2000 Report, the progress concerning socially vulnerable groups is described as follows:

Some progress has been made with regard to treatment of the socially vulnerable. The situation for handicapped persons was improved by an emergency ordinance that expands the possibilities of tax holidays for economic units that hire handicapped persons. Financing of social protection is ensured by the Special Solidarity Fund for Handicapped Persons that was created in 1999. A National Council for the Elderly has also been established and social assistance measures were adopted to support the elderly poor.⁵⁵

Measures were taken by an emergency ordinance in order to tackle the problem of social exclusion, which was identified as a cause of concern in previous reports. Emergency ordinances, as a tool for passing legislation, is a constant feature in the Regular Reports, and the Commission voiced its concern over the extensive use of emergency ordinances arguing that

Romania still needs to improve the decision making and legislative processes. In particular, the Government's reliance on emergency

⁵⁵ Regular Report 2000, p.23

ordinances should be reduced and parliament's ability to scrutinise legislation increased.⁵⁶

Governmental emergency ordinances obviously ensure the swift passing of legislation, but it is worth noting that extensive use of emergency ordinances undermines the normal parliamentary procedures and often produces legislation which has to be modified or corrected continuously. In this field, the Commission noted that

The Economic and Social Council has been created as an institution to allow social partners to comment on legislation with a significant economic and social impact. However, to date, the Council has not been systematically consulted."⁵⁷

With regard to emergency ordinances as a way of passing legislation concerning social rights and policy, it is worth remembering that,

Social policy as an interest area of politics has been and will be developed in democratic processes where different interests are put forward, debated and contrasted.⁵⁸

It remains to be seen what, if any, consequences the extensive use of emergency ordinances might have in the development and maturation of Romanian democratic governance.

Following the progress of implementation and changes in social condition, the Commission observed in 2001 that,

⁵⁶ Regular Report 2002, p.37

⁵⁷ Regular Report 2001, p.28

⁵⁸ Maydell & al. 2006, p.46

The government's agenda has prioritised social issues such as the fight against social exclusion and promoting equal opportunities between men and women. Various initiatives have been launched – but a lack of resources and limited administrative capacity has slowed down implementation. [...] No less than five government bodies are involved in the provision of social assistance and the fight against exclusion.⁵⁹

It seems clear, so far, that there is no shortage of legislative action; the real problems lie in overall administrative capacity and the lack of resources in implementing the existing legislation. This is further confirmed by the 2003 Report, in which the situation is described as follows:

Fighting social exclusion and poverty remains a government priority and further legislative progress was made during the reporting period. The legal framework for the provision of social assistance is now in place – but there are number of issues that will need to be addressed if these provisions are to be effectively implemented. Most importantly: institutional responsibilities for social inclusion at both central and local levels are confused and divided between a large number of bodies; staff numbers related to the provision of social assistance need to be increased; and training needs to be developed.⁶⁰

As negotiations for Romania's membership of the EU drew to a close during 2004, the Reports also started to concentrate more on actual policy processes than legislative action which was seen as a prerequisite. To this end, the Commission stated in its 2004 Report that,

⁵⁹ Maydell & al. 2006, p.27-28

⁶⁰ Regular Report 2003, p.28

Fighting social exclusion and poverty remains a government priority and further legislative process was made during the reporting period. The legal framework for the provision of social assistance is now in place, and was completed with secondary legislation to regulate the delivery of social services by non-profit organisations.⁶¹

As can be seen from the excerpts from the Commission Reports, recycling the same passages with minor modifications is the norm. The pressing question here, then, is what should be the appropriate level of conditionality when it is obvious that recommendations and policy priorities are not met? Before considering this and other questions in more detail, let us turn our attention to issues of social policy.

5.2. Social policy in the Regular Reports

Continuing from the sphere of social rights, we now turn our attention to social policy. The Commission has divided chapters dealing with different policy areas according to negotiations, i.e. issues in social policy area are dealt with in one chapter in the Regular Reports, called “Chapter 13: Social policy and employment”.⁶² In its 1999 Report, the Commission concluded that,

In line with the needs identified in the Commission’s 1997 Opinion, much remains to be done to strengthen the public administration and enforcement structures in most areas of social policy and particularly on health and safety at work, public health and labour market and employment policies. [...] The consolidation of the social dialogue is

⁶¹ Regular Report 2004, p.29

⁶² Until 1999, social policy was included in ‘Employment and social affairs’. After the start of membership negotiations in 2000, social policy was included in ‘Chapter 13: Social policy and employment’.

of particular importance not least in view of the required economic restructuring.⁶³

In this excerpt, social policy priorities are closely related to work, and the general need for economic restructuring is also brought up in connection with the social dialogue. Another area brought up in the 1999 Report is the status of equal opportunities, in terms of both legislation and implementation, about which the Commission notes that, “Monitoring the situation and implementing equal opportunities in practice will be a challenge”.⁶⁴ Concerning social protection schemes and the overall low rates of social insurance contributions, the Commission notes that the measures taken have led “to only slightly improved recovery rates”.⁶⁵ With reference to the economic viability of social protection, recovery rates for social insurance obviously play a key role. In terms of progress in the areas identified in the 1999 Report, the Commission introduces its 2000 Report (in the area of social policy and employment) as follows:

The last regular report recognised that only limited progress has been made on the legislative side and that the overall pace of reform was slow. Since then, no significant progress has been achieved in this area.⁶⁶

The way in which policies are formulated and legislation drafted is also criticised by the Commission, which notes that in the area of social policy and employment policy,

⁶³ Regular Report 1999, p.51

⁶⁴ Regular Report 1999, p.50

⁶⁵ Regular Report 1999, p.51

⁶⁶ Regular Report 2000, p.58

In spite of the existing legal provisions, much legislation is still approved without adequate consultation of social partners and without full consultation with the Economic and Social Council.⁶⁷

As was noted earlier, regarding the extensive use of ordinances by the government in the area of primary legislation, the same concerns already raised also apply to policy formulation through secondary legislation. One of the highly visible social issues in Romania is the condition of the Roma minority, which was also noted earlier with regards to social rights. In the 2000 Report, the Commission takes note of the fact that the government issued an ordinance prohibiting all forms of discrimination, but also highlights the fact that, “The implementation of this legislation [...] will require substantial effort and continuous attention”.⁶⁸

With a clear emphasis on employment policy and the labour market, the Commission notes in its overall assessment in 2000 that,

The scale of Romania’s labour market problems is far greater than indicated by aggregate data on employment and unemployment because of the extent of underemployment in agriculture.⁶⁹

If we compare the leverage and competence that the Commission has in overall social policy and employment / labour market policy making, regarding the actual member states, it is no wonder that employment policy and labour market problems are stealing the show from other areas of social policy. To highlight this point, what follows is the overall

⁶⁷ Regular Report 2000, p.59

⁶⁸ Regular Report 2000, p.59

⁶⁹ Regular Report 2000, p.60

assessment of 'Chapter 13: Social policy and employment' from the Commission's 2000 Report:

In May 1999, the Romanian government ratified the main articles of the Revised European Social Charter. Nevertheless, in line with the needs identified by the Commission in previous documents, much remains to be done to strengthen the public administration and enforcement structures in most areas of social policy and particularly on health and safety at work, public health and labour market and employment policies.⁷⁰

It seems clear that areas of social policy (employment and labour market policy) that can contribute directly to the functioning of the market are given priority. As with social rights, it seems clear that the biggest problems lie not in passing new laws, but mostly with implementation, inadequate funding and enforcement. On the issue of equal opportunities, for example, the Commission notes in 2001 that,

A National Action Plan on equal opportunities was adopted in December 2000. [...] While the National Action Plan is a welcome development it does not appear to have been followed by any implementing action and it is essential that the Plan is adequately financed if it is to have any impact. Other than the National Plan, there has been little progress improving the position of women on the labour market.⁷¹

In its overall assessment for 2001, the Commission states that "While Romania has advanced in some areas, considerable efforts are still needed to align with the social policy

⁷⁰ Regular Report 2000, p.60

⁷¹ Regular Report 2001, p.65

acquis”.⁷² To this end, it is maybe a bit surprising that in 2002, the Commission states first that “Some progress has been made since the last Regular Report”⁷³ and then goes on to conclude that,

In its 1997 Opinion, the Commission concluded that Romania would need to make very considerable progress in all areas of social policy. [...] Since the Opinion, Romania has made good progress in aligning with the acquis, especially over the last two years. Legislative progress has been particularly good with regard to the equal treatment of men and women, social assistance and social inclusion, and anti-discrimination. Despite these developments, additional legislative efforts are needed. Institutional mechanisms and budgetary means for implementing the new legislation also need to be developed. [...] Negotiations on this chapter have been provisionally closed.⁷⁴

It seems clear that the Commission’s priority is to make sure that proper legislation is in place. In terms of implementation, financing and enforcement, Romania as a future member state can do more or less as it sees fit. The extent of emphasis on employment and labour market policies is again highlighted in 2003, when the whole chapter dealing with social policy is renamed “Chapter 13: Employment and social policy”.⁷⁵ Concerning pensions and other social security benefits, the Commission finds that,

The public system of pensions and other social security rights was amended in February 2003. It reduces contribution quotas and envisages setting up of an integrated system for the collection, audit

⁷² Regular Report 2001, p.66

⁷³ Regular Report 2002, p.83

⁷⁴ Regular Report 2002, p.87

⁷⁵ Regular Report 2003, p.76

and enforcement of social security contributions. [...] The reform of the pension system is an area where little progress has been made.⁷⁶

It is increasingly evident that the number one issue for the Commission is employment. In 2003, the Commission states that,

Regarding employment, the Joint Assessment Paper represents an important step in the preparation for accession. It is important to ensure effective implementation of these policies and monitor the phasing-in of the priorities and commitments contained in the JAP. Efforts need to focus more on active and preventive employment measures and on increasing employability.⁷⁷

The overall conclusion in 2003, again, is that “some progress has been achieved” in the area of employment and social policy. Maybe the 2003 Report gave too strong a signal about the Commission’s preferred social policy model, since, in 2004, chapter 13 is again called “Social policy and employment”.⁷⁸ Be that as it may, the contents of the chapter are almost identical to the previous Report. In concluding the chapter, the Commission’s view is that,

In order to complete preparations for membership, Romania’s efforts should now focus on completing legislative alignment in the area of labour law, especially in order to establish the Guarantee Fund. Further strengthening of the Labour Inspectorate in terms of human resources and training is needed, namely to ensure proper implementation in the area of health and safety at work. Efforts

⁷⁶ Regular Report 2003, p.78

⁷⁷ Regular Report 2003, p.79

⁷⁸ Regular Report 2004, p.91

should continue to increase awareness of gender equality issues and to promote social dialogue in general.⁷⁹

Social protection, which was also touched upon in previous Reports, is given a whole paragraph in the 2005 Report. In 2005, the Commission is of the opinion that,

Concerning social protection, sufficient funding at both local and national level should be ensured for the implementation of the decentralisation process which is on track. [...] A major challenge of the Romanian pension system resides in the ways to ensure at the same time its adequacy and its long-term financial sustainability, which raises in particular the question of the ratio between the number of contributors and that of beneficiaries. In that respect an increase of older workers' employment would contribute to the search for a better balance.⁸⁰

As with other issues, it is clear that legislation is in place, but in this case the implementation of the decentralisation process is also “on track”. What this means in practice is hard to assess. Clearly, the number one problem for the allocation of pensions and benefits, as well as for the smooth functioning of the whole system, is financial sustainability.

As the first possible date of accession, 1st of January 2007, drew closer, the Commission noted in its conclusion in the May 2006 Report that,

Only limited progress has been made in most areas of social policy and employment. The situation in the field of equal treatment of women and men has deteriorated, and a lack of progress can be noted in the field of health and safety at work. Increased efforts and swift

⁷⁹ Regular Report 2004, p.96

⁸⁰ Comprehensive Monitoring Report 2005, p.54

action are now needed in order to solve the shortcomings in time, before accession. Legal alignment needs to be completed and enforced in the areas of labour law, equal treatment of women and men, health and safety at work and public health. Social dialogue should be improved. [...] In general, increased efforts continue to be needed to strengthen the administrative capacity to ensure due implementation of the social policy acquis.⁸¹

It seems that quite a lot still needed to be done or improved in the area of social policy before the accession. In its second Report from 2006, the Commission placed the social policy chapter under the general heading, “Areas in which further progress is still needed”.⁸² In its final assessment (as Romania joined the EU in the beginning of 2007), the Commission maintained that,

There has been some progress on the legislative front, in particular as regards health and safety at work. However, legal alignment still needs to be completed swiftly in the areas of labour law and equal treatment of women and men. Particular attention needs to be paid to completing transposition in the field of public health, such as communicable diseases, tobacco advertising and blood and tissues. Efforts need to be maintained to achieve full implementation and enforcement of the legislation and to further strengthen the administrative capacity in these areas. [...] Further efforts are also necessary to improve the health status of the population and access to health and health care, especially at regional level and among poorer socio-economic groups and minorities. [...] In the area of social inclusion, efforts need to continue to improve the situation of

⁸¹ 2006 May Monitoring Report, p.29

⁸² 2006 Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, p.47

vulnerable groups, such as the Roma, and promote their full integration into society.⁸³

Since this was the last assessment by the Commission concerning the state of preparedness in the area of social policy, let us now turn our attention to the issues of conditionality and eventually to what kind of 'European social model' can be seen in the Commission Regular Reports?

⁸³ 2006 Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, p.49

6. European social model through Regular reports

This chapter will consider the way that the Commission deals with social issues in its reporting on Romania in the period 1999-2006. In what ways is/was the Commission motivating Romania in social rights and social policy issues? What are the social issues taken up by the Commission in its Regular Reports? Based on the issues taken up, what kind of “European social model” can we construct on basis of the Commission Regular Reports? Or, maybe more to the point, what is the role of ‘the social’ in this ‘European model’?

Romania acceded to the European Union without fulfilling all of the criteria that were initially put forward. Since it was made clear in early stages of the negotiations that Romania would enter the EU either in 2007 or 2008, it became (mostly politically) unwise to postpone the accession by one year. In terms of social rights and social policy, it seems that the process concentrated heavily on legislation being passed, and not so much on the implementation or enforcement of the new laws. Undisputably, as was shown regarding the Regular Reports, year after year the same misgivings and shortcomings were pointed out, but they were never made a deciding factor in the bigger picture of Romanian progress towards membership. What, in the end, was the role of conditionality concerning social rights and social policy?

6.1 Plausibility of “social conditionality”

In a way, it does not seem that it was very hard for the Commission to motivate Romania during the period studied here. Conditionality makes sure that there is enough incentive for action; otherwise, Romania would risk slower progress towards eventual full membership of the EU. Throughout the period under scrutiny in this study, 1999-2006, the Commission

regularly pointed out that the administrative capacity of Romania is weak and, in addition to this, decentralisation of powers is causing problems. The problem is that real political will and financial resources are needed in order to make changes in administrative capacity, and in decentralisation of power, possible.

One peculiar issue which comes up regularly in these reports is the use of emergency ordinances in order to satisfy EU requirements. It should be noted that it is the Romanian government that is ultimately responsible for introducing and carrying out social policies and making social conditions in Romania better. However, due to the existence of conditionalities, the Commission possessed powerful leverage to instigate at least legislation.

In the analysis of the Commission Regular Reports 1999-2006 presented here, social rights, as guaranteed by both national and international legislation and commitments, were scrutinised and monitored, and the same can be said of social policy. Despite this, the Commission did not use any kind of conditionality that could be described as being plausible. The same problems and issues are mentioned over and over again in the Regular Reports, but they are not taken up as issues requiring “urgent” action, which would mean that those issues would have a direct impact on the speed of the accession process.

The main idea seems to be that with some time and economic development these issues are going to get better automatically. But as it is stated over and over again in Commission’s Regular reports, collection of social security contributions from employers, for example, is nowhere near where it should be. In the area of social rights and social policy the competence of the Commission is more functional than legal in nature, which results in balancing between plausible conditionality on one hand and questions of Commission’s competence on the other. Based on the reports analysed in this paper, it seems that

Commission is aware of this balancing act and tends to overlook the lack of progress in the area of social rights and social policy. We would argue that Commission could take a tougher stand regarding social rights and social policy without a risk of losing its credibility and influence towards the accession states.

Now that Romania is a full member of the EU, the Commission does not have the leverage it could have had. With the economic situation of the country getting better, it is obviously easier for the state to be more responsible towards the people in danger of social exclusion or different forms of discrimination. In the case of Romania, it remains to be seen if positive development of the social condition of the most vulnerable groups is going to happen, but it is clear that this kind of development and social responsibility is not a cause for the Commission to deploy its potential heavy artillery in the cause of social justice in its negotiations with the accession countries.

EU as an actor for more socially responsible globalisation?

If the Commission, and the EU as a whole, wants to convey an image of a socially responsible Union that drives for sustainable social development globally, then it might be worth noting that at least the Regular Reports send a message of social conditions always being prioritised after the economic calculations. In the study of the Regular Reports on Romania presented here, most of the social policy issues raised fall under either employment or labour market policy. In some ways, this is understandable as these are the areas in which the Commission has most of its say regarding social policy: this is precisely because these areas have a direct connection to the proper functioning of the single market. In this sense, it can be argued that enlargement is first and foremost a project aimed at enlarging the Common Market, which means that in a conflict situation, economic calculations and market logic always prevail. The EU can nonetheless be seen as a testing

ground of a supranational style of governance that influences and has already taken some responsibilities in the area of social policy.

The matter of Commission competence in social policy is also an issue, since after Romania became a member of the EU in January 2007, social policy is one of the areas that fall under the national competence. When talking about social rights, it is paradoxical that the Commission can require third states to respect certain set of rights in trade negotiations (for example the status of minorities, or regarding social rights as part of fundamental rights that needs to be respected), but it has almost no say in these issues towards the member states.

The European social model is a catchy phrase, but what does it actually mean? Seen through the Commission Regular Reports, what kind of model are we talking about?

6.2. European social model in making?

Talking about the 'European social model', an integrated model that combines economic, employment, social and environmental policies is, in effect, (as seen through the Regular Reports and the use of conditionality) to talk about a sound economic policy complemented by active employment and labour market policies. It is clear that the Commission advocates a model based on active employment and labour market policies in which public spending is kept in tight check, even if this means that a proportion of (a country's) population is scraping by on subsistence level. The main purpose of social policy in this model is to encourage people to be active and employed; for people who are for some reason out of work or at the margins, this model offers basic means to survive. Reducing social policy to the role promoted by the Commission effectively means that it is first and foremost meant to be an integral part of an economic apparatus, one of the

variables in a production chain.

One point that is worth mentioning is the fact that instead of a convergence we might be witnessing a divergence of social policies in Europe. This is definitely partly due to different traditions and practices, but maybe also to the fact that European countries are trying to attract more qualified labour and workers to their respective countries instead of just “Europe”, which leads to, for example, varying models of taxation. The main area of responsibility for the Commission in this supposed divergence is to try and argue for the rationale of social policy convergence. But, as Rothstein has observed,

The remarkable thing about this widening social policy divergence between countries is that it has occurred at the same time as these countries have experienced an increasing internationalization of their economies. Indeed, the overall political and social interdependence of these countries has increased during the last three decades.⁸⁴

In order to achieve what the Commission obviously views as rational, i.e. more convergence concerning social policy in the EU, it has taken to promote active employment and labour market policies instead of a model based on universal social security grounded in generous benefits and high taxation. As previously noted, it seems that the Commission has taken a new approach in trying to reach its goal: more policy learning between the countries and more information dissemination on part of the Commission. The Open method of coordination is but one example of this approach.

On the basis of this study and its results, it is still plausible to say that the European Union is an economic club more than anything else. This might sound like an obvious statement, but when one is looking at the rhetoric and declarations used by the Commission

⁸⁴ Rothstein 1998, p.145.

describing the social side of the enlargement (and integration as a whole), one might get the wrong impression. Maybe in the future, if the Commission gets more authority and competence especially in the area of social policy we will see more vigorous action concerning social rights and social policy. Whether or not this is desirable is obviously another question altogether, since it would entail a profound change in the dynamics between the Commission and the member states. “Little less conversation, little more action” in the social dimension of European integration would also mean a real qualitative shift in the whole European project.

7. Conclusion

In Europe, there are obviously many different types of social models and welfare regimes. In addition to national models and regimes, there is an ongoing process at the European level that can be characterised as social policy convergence. One point worth mentioning is the fact that instead of a convergence we might be witnessing a divergence of social policies in Europe. This is definitely partly due to different traditions and practices, but maybe also to the fact that European countries are trying to attract more qualified labour and workers to their respective countries instead of just “Europe”, which leads to, for example, varying models of taxation. The main area of responsibility for the Commission in this supposed divergence is to try and argue for the rationale of social policy convergence.

With the previous EU enlargements, social rights or social condition did not play a key role for two reasons: firstly, integration meant mainly economic integration and, secondly, there was no deficit in social rights and the social condition was equal or in fact surpassed the condition in the existing member states. However, all this changed after the fall of communism and the new situation in Eastern and Central Eastern Europe. The relationship between Romania and the EU during the membership negotiations was often seen to be asymmetrical. One of the main concepts related to this perceived asymmetry was conditionality.

In the analysis of the Commission Regular Reports 1999-2006 presented in this study, social rights, as guaranteed by both national and international legislation and commitments, were scrutinised and monitored, and the same can be said of social policy. Despite this, the Commission did not use any kind of conditionality that could be described as being plausible. The same problems and issues are mentioned over and over again in

the Regular Reports, but they are not taken up as issues requiring “urgent” action, which would mean that those issues would have a direct impact on the speed of the accession process. In the area of social rights and social policy the competence of the Commission, and the way in which Commission used conditionality, can be described as being functional rather than legal in nature.

Talking about the ‘European social model’, an integrated model that combines economic, employment, social and environmental policies is, in effect, (as seen through the Regular Reports and the use of conditionality) to talk about a sound economic policy complemented by active employment and labour market policies. The main purpose of social policy in this model is to encourage people to be active and employed; for people who are for some reason out of work or at the margins, this model offers basic means to survive. Reducing social policy to the role promoted by the Commission effectively means that it is first and foremost meant to be an integral part of an economic apparatus, one of the variables in a production chain.

On the basis of this study and its results, it is still plausible to say that the European Union is an economic club more than anything else. The process of enlargement is both political and economic in nature, but when the political decision inside the EU has been made, the actual interest of the Commission concentrates heavily on enlarging the Common market. In this process social rights are talked about but, as in the case of Romania, lack of progress or signs of problems are not really taken seriously. Much like social rights, social policy can be seen as a by-product of (future) economic growth, not really something that should be taken as seriously as economic indicators. To describe the European Union as being an economic giant but a political dwarf is maybe bit outdated, we propose that in the future the slogan should say “an economic giant, a political half-ling and a social dwarf”.

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