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The future of Europe

**Peter Scherrer, Juliane Bir, Wolfgang Kowalsky,
Reinhard Kuhlmann and Matthieu Méaulle**

etui.

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Foreword

The publisher of this volume – the European Trade Union Institute (ETUI) – is best known for its scientific publications; nevertheless, the authors whose contributions follow this foreword have not confined themselves to a simple description and analysis of different areas of European policy. They work every day for a better Europe, and they propose ways of getting us from here to there.

This year will be marked by a number of significant political milestones. Question marks hang over the nature of Europe, the future of the European Union (EU) and the political and economic development of our continent, and the debate on Brexit and the lack of a common asylum and migration policy are just some of the things that will shape the answers to these questions. Political pundits can talk of nothing but the forthcoming elections to the European Parliament and the appointment of a new European Commission which will ensue, filling the airwaves with phrases such as ‘a watershed election’ and ‘our last chance’, and in many cases claiming that it is finally time to make ‘social Europe’ a reality. Tangible and proactive commitment to the task of shaping the scientific, political and cultural future of Europe is what many politicians, scientists, journalists and trade unionists are calling for, and rightly so. A glance at projections by pollsters reveals a noticeable increase in the share of parties opposed to the European process of integrating a ‘Europe of sovereign states’, and virtually all the manifestos of populist parties – at both ends of the political spectrum – call (with varying degrees of vehemence) for the EU to be stripped of many of its powers, for a return to the borders of the past, and for an exit from the euro or even from the EU. The trade unions stand in opposition to this retrogressive trend and to the instinct to put up the shutters and stay within the narrow borders of the nation state, and instead call for a future in which Europe’s different peoples coexist in a spirit of humanitarian solidarity that ignores lines on maps; after all, the advancement of this unique coming together of free and sovereign states has been backed by Europe’s trade unions ever since the start of European unification. A great many people, both within Europe’s borders and without, still regard ‘Project Europe’ as an extremely attractive proposition, and Europe is still inextricably linked in their minds with the promise of well-being, a basic level of social security and a life of freedom and peace. The contributions in the remainder of this volume discuss what needs to be done to put Europe in a position to continue delivering on this promise.

The first contribution (by Reinhard Kuhlmann and myself) highlights failings in the current debate on Europe’s future, and the very title proposes a way to remedy them – by saying ‘Yes to more Europe - now!’ If we want to stop Europe falling apart, and in particular if we want it to grow, we must avoid focusing solely on stand-alone issues,

regardless of how important they no doubt are. We need to ask questions about Europe's future which get right down to brass tacks, and we need to respond to these questions with conviction. The democratic structure of the European Union's Member States is one of the main pillars on which this Europe of ours is built, and yet certain political circles are making energetic moves towards authoritarianism. Compliance with the basic principles of democracy must be scrutinised more closely than ever before if we are to prevent these principles from falling by the wayside.

Workplace democracy and democratisation of the economy are factors which play an integral role in a society's journey to democracy, and they have formed the focus of Wolfgang Kowalsky's research work for decades. His contribution to this volume describes a number of political and legislative initiatives in great detail, and reveals very plainly that it is up to Europe's trade unions to campaign for greater transparency and participation in corporate governance, since very little in the way of proactive effort can be expected from political parties in this area.

The financial and economic crisis which hit Europe from late 2008 onwards pushed many of its citizens to the brink of catastrophe. It has even been said – with some justification – that the crisis cost some individuals their lives, since upheavals in certain Member States' healthcare systems made it difficult or even impossible for the sick to have access to medication or treatment. Matthieu Méaulle's contribution tackles the question of what needs to be done to ensure that every citizen of the EU benefits from its economic recovery; we must not content ourselves with mere soundbites about healthy financial markets, or with simply calling for an equitable tax policy. We must take action, and we must stem the rising flood of income and wealth inequality.

Juliane Bir provides a well-structured overview of what dialogue with the social partners has achieved in the past and a sobering insight into the current and likely future fate of this initially promising tool; her contribution closes with an appeal to the protagonists to be mindful of their political responsibilities. Agreements which are freely concluded on the basis of social dialogue and which may ultimately acquire legislative force are a valuable opportunity for Europeans to participate democratically in policy-making, and the need for employers and the European Commission to harness this opportunity is more pressing than ever before.

Positioned after these meditations on Europe, my conclusion contains a number of thoughts on the trade unions and a call for them to take action. Strong and assertive trade unions were (and in many European countries still are) the most reliable representatives of working people, but they need to evolve in order to ensure that this remains the case. Their level of enthusiasm for building Europe at policy level will determine whether or not they play a meaningful role in shaping its future, since trade unions too are not immune from the tendency to retreat into national antagonisms and turn away from Europe. Populist propaganda against the bureaucratic behemoth of Brussels is also gaining an audience among trade union members, and anti-EU parties often hold a surprising appeal among working people. This represents a serious challenge for trade unions which wish to take a firmly pro-European line when exercising their power to shape policies.

I would like to end by expressing my warm thanks to all of the authors who have contributed to this volume, and not only for their diligence in meeting deadlines. Work on this publication triggered an internal debate and reminded us of the question which motivates all of us who believe in the shared vision of a democratic Europe and a Europe of solidarity, peace and human rights; 'What can we do to help Europe grow?'

My thanks also go to my colleagues at the ETUI for their assistance with the printing and publication of this volume.

Peter Scherrer
(April 2019)

Chapter 1

Yes to more Europe – now!

Reinhard Kuhlmann and Peter Scherrer

'Tis the time's plague when madmen lead the blind...'
(Shakespeare, *King Lear*)

Europe? Europe!

The European Union is in a political nosedive. Forces from the outside are undermining it, while forces from the inside are eroding it or actively destroying it; at the same time, a rising groundswell of anti-European populist nationalism has proven itself theoretically capable of gaining a majority. For a long time now, people have ceased to view the visions of European integration evoked by de Gaulle and Adenauer, De Gasperi and Churchill, Mitterrand and Kohl as the lesson which Europe learned from its two world wars and as the logical next step for politics, the economy and society.

Europe serves as a screen onto which growing numbers of people project their opposition to everything they think is wrong with the world. This opposition is evidenced clearly in their outright rejection of the EU (characterised as a 'political behemoth') and its institutions. In conceptual and emotional terms, Europe is looking ever more like an old boys' club for the few (cosmopolitan, left-wing and liberal city dwellers), while the many (residents of rural areas and peripheral regions far from the urban centres) are left feeling isolated, abandoned and forgotten.

The ever-wider gap between the city and the country, the 1% and the 99%, the rich and the poor, those in precarious work and those in long-term employment, and the sheer number of people living on the brink – all against a backdrop of political failure at national level – is making it harder and harder to believe in the 'European promise' of peace and security, prosperity and growth, justice and sustainability.

European visions – visions of Europe

If we follow Helmut Schmidt's maxim that 'People with visions should go to the doctor', the German political establishment is in rude health. Germany's debate on Europe is entirely devoid of any visionary view of the future or ideas for a concrete political utopia, and there is no foundational principle guiding the country's actions. Instead, the discussion is dominated at every turn by sober and pragmatic realism and a 'policy of the smallest possible steps', underpinned by the belief that Europe can be built quietly and cautiously in this way, through 'piecemeal engineering'. Progress (in some cases significant progress) has indeed been made in individual areas, but Europe is more fragile than ever and on the verge of crumbling. We are losing sight of the fundamental promise and the central political message of the European Union – guaranteed peace and prosperity for everyone.

This predilection for pragmatic realism has brought forth sobering fruit. Europe is perceived as a bureaucratic colossus in Brussels which churns out rules and regulations and watches over their implementation, and as an aloof entity which is remote from its citizens and which lacks transparency and democracy, even though the men and women working in its fortress-like office blocks are doing nothing other than what they are told to do (or not told not to do) by the national political bureaucracies. The policy of pragmatic realism followed by these latter has turned Europe into a symbol – particularly among those of a populist mindset – of creeping hyper-regulation and bloated administration.

Impassioned calls for an integrated future Europe, as the legacy of and the lesson learned from our shared history, are heard only on particularly momentous or solemn occasions. The fundamental questions – peace or war, prosperity and growth, solidarity and social justice, an open society and sustainability, and whether we want to be the captain of our own ship or a vassal state simply rubber-stamping decisions by other ‘world powers’ which push us around – have been put on the back burner, and are no longer given their due prominence. Yet this Europe of ours cannot survive without a tangible shape and an institutional framework. Joschka Fischer¹ put forward for discussion a vision for a concrete utopia, intended to guide our actions; the ‘transition from a union of states to full parliamentarisation as a European federation’. Instead of voices debating ideas such as this, however, we hear only deafening silence, or at most soapbox speeches in which the concepts are rendered remote and harmless and watered down to heartfelt wishes for more Europe and a better Europe. The political will to achieve full parliamentarisation of the European Union is needed more urgently than ever, and it must be the issue on which the forthcoming European Parliament elections are contested. The European Parliament is the voice of Europe’s peoples at EU level, with the European Council acting at best as a second house in the law-making process, and this landscape of political democracy must also be supplemented by individual examples of direct democracy such as referendums and the citizens’ initiative.

The European Union – the most auspicious political project of modern times in a continent convulsed for centuries on end by wars, various brands of nationalism and hegemonies – is lurching into the worst crisis in its history. The symptoms of this crisis? Brexit, the structural instability of the euro area, Eastern Europe’s *Sonderweg*, a resurgence of identity-based nationalism, a manifest inability to take a common line on the migration issue, a growing anti-European populism on the one hand and a cementing of anti-liberal political and constitutional convictions on the other, and the palpable hesitation and inability of the ‘Europhiles’ to share a convincing and believable pro-European story and strategy.

The European Union is a monumental peace project and a successful one, even if no one nowadays is able or willing to hear this truth. November 2018 marked the passing of 100 years since the end of the First World War – a war of senseless slaughter. The European Union was an idea born out of both of the world wars, but the veneer of civilisation continues to be worryingly thin. We can no longer pretend that the world

1. In his ‘Humboldt speech’ of 12 May 2000 (Fischer 2000).

order has become safer, since the fundamental principles which underpin the European Union (the rule of law, the basic tenets of parliamentary democracy, the inviolability of borders, the validity and binding nature of the canon of international human rights and, last but not least, the self-imposed moral obligation to engage in international cooperation and stick to the rules) are being questioned or even ignored in many other geopolitical arenas. It is becoming increasingly common for infringements of these fundamental rules of human coexistence to be trivialised as ‘taboo breaking’, and the global freedom of the Internet, social media and fake news have made it even easier to push the envelope of basic moral boundaries.

Action?

In subjective terms, what hurts most (and what feels closest to historical failure) is the ‘wait-and-see’ attitude, the tactical manoeuvring, the timidity and the faint-heartedness of the committed Europhiles in Germany and in other Member States of the European Union. The small-minded way in which they think and act is painful to see, and there is a glaring contradiction between the fine speeches they give, safe in the knowledge that talk is cheap, and what they actually do in practice. The reason why this is so painful is because it ties into the broader trend of plummeting political credibility on the part of the country’s Federal Government and the mainstream parties which form its governing coalition (the CDU/CSU and the SPD), as evidenced by the stony silence in response to Macron’s proposals, the absence of any strategic framework guiding the advancement and strengthening of the European Union, and moves to block the development of a shared roadmap. Everyone is happy to get up on his or her soapbox and join the choir of voices agreeing that Europe is vitally important, but the real focus of their politics is on minute details, and it is one of these minute details – a European unemployment insurance scheme – which could ultimately upset the whole apple cart. It is only a tiny piece of the larger puzzle of European integration, and yet even a measure on this small scale is doomed to failure for lack of cash. Against a backdrop of such ingrained procrastination, it is hard to see how the bigger challenges can be overcome, and hard to see the sense in calls for a European tax policy (digital tax, financial transaction tax, corporate tax), despite its importance in the interests of social justice.

There is no point hoping for the emergence of bold initiatives to shape Europe until the pro-Europeans (in Germany at least) have cast off the shackles they themselves created by arguing so vehemently against the ‘redistribution union’, the ‘debt-sharing union’ or the ‘liability union’. Europe costs money, and those who benefit most – particularly through public assets such as peace, freedom, democracy, fundamental social rights and (lest we forget) shared prosperity – can and must bear the larger part of what some refer to as a burden.

Prosperity for all

The European Union promised prosperity for its citizens, and it has delivered on this promise. The EU is a union of prosperity – unparalleled in the world and unprecedented

in history. Its economic clout and financial growth, in which the vast majority of its citizens can share thanks to mechanisms such as mandatory social participation, make it attractive to people all around the world. This is not the whole story, however; the European Union is also characterised by the creeping spread of insecurity with its myriad faces, the entrenchment of poverty in certain social groups (in particular the persistent youth unemployment in Europe's peripheral regions) and the unsustainability of its ecological and economic transformation. The promise of prosperity, of living a good life in peace and freedom with a decent job and the right to basic social insurance, is one that we must also make to future generations without any ifs or buts, and the European project will only gain acceptance in the Member States if we can deliver on this promise. At the same time, no discussion of prosperity can be complete without reference to the need to level the metaphorical playing field for entrepreneurial initiative, or the need to tackle the present and growing wealth gap. The ever-worsening disparity between Europe's prosperous regions and countries and its remote ones (in subjective and objective terms) is symptomatic of a major problem which calls for action in the here and now. Helping the less well-off should not be confused with propping up debt-driven economies – it is in the interests of the strong, since it helps the weak to find their way to independent economic growth, gradually overcoming and closing the wealth gap in the process. Against a backdrop of shifts in the global economy and the rising dominance of individual large countries and corporations, Member States will only be able to protect their own interests if they present a united front on international economic and financial issues and (even more importantly) on security and defence issues.

Industry policy of the future

In the current geopolitical climate, the peace project of a European Community and its promise of prosperity can only be achieved by a union acting together. Individual states – yes, even the EU's founding countries – will never achieve the critical mass they need to respond effectively to the profound economic, social, financial, ecological and political transformations which are visible on the horizon. To name just one example of initiatives which might harness our joint strengths, a coherent EU industrial policy could allow us to come to the table as well-respected and successful global actors playing on the same team. Yet efforts in this direction are currently fragmentary in nature and restricted to after-dinner speeches, with the Member States merely giving lip service to industrial policy initiatives which are launched by the Commission but which are ultimately doomed to end up as dumping grounds for both doable and not-so-doable proposals for a common industrial policy. In the medium and long term, Europe's manufacturing industries will only be taken seriously at global level if its Member States take concerted and genuine action on research, education and innovation. If we do not take meaningful steps to shape a truly common industrial policy for Europe, we will no longer be able to talk about 'European' industry in the medium term; the same is true by analogy as regards the need to align the agricultural budget with the goals of a sustainable environmental protection policy in the interests of fighting climate change.

A stronger EU is not a goal in itself; instead, it protects the interests of all the citizens of the EU's Member States. Leaving to one side the crucial (and quasi-constitutive) milestones

of the European Coal and Steel Community (ECSC), the Treaties of Rome, the Charter of Fundamental Rights and the Maastricht Treaty, in the past greater integration of the EU was achieved primarily through means other than legitimised political projects, and day-by-day progress towards this entirely plausible goal increasingly took place out of citizens' sight. It expressed itself in a growing body of legislation intended with every one of its rules and regulations to create 'more Europe' (and therefore a 'better life').

Free market rules

A free market was thus achieved in Europe, but with it came a jungle of common standards and rules, and these create loopholes, no matter how well-meaning they may be; for example, 'freedom to conduct a business' under European corporate law is often just another term for 'regime shopping' (making investments in countries with the lowest rates of tax and social security contributions and the weakest employee rights). The debt ceilings, limits and minimum standards of the Fiscal Compact were heralded as the building blocks of a tangible Europe – a Europe of bureaucrats and a land ruled by the European Commission, in which 'communitisation' was the first choice of method and process.

The national governments clung to the 'other European method' as a way of opposing the creeping erosion of national sovereignty. The EU Council (led by Merkel on behalf of Germany) refused to delegate key decisions on matters such as the euro-area bailout, and the intergovernmental 'cooperation method' (*coopération renforcée*) was systematically strengthened in order to contain and curtail the Commission's powers.

This dichotomy between an integrated Community method on the one hand and an intergovernmental cooperation method on the other is not an irreconcilable contradiction. It is the result of years of tinkering around without taking binding action, of failing to take decisions on the Europe we want and need, and of engaging in an unspoken conflict over its guiding principles. Many people agree that they want 'more Europe, a better Europe and a more social Europe!', but few can explain exactly what a gradual shift to greater communitisation and more binding arrangements for cooperation between the Member States would look like, just as they cannot explain how the nation states could still have a hand in the policy-making pot if the European Union were fully parliamentarised. If we want to answer questions about how far communitisation should go, we need forthright responses to questions about the future of the nation state.

Europe where do we come from and where to go?

The EU's wholesale expansions have further blurred an image which was already diffuse. Mathematically speaking, 'European Union' \neq 'European continent'; the former refers to the most important and defining political configuration of the latter. Expansions bring with them a rise in plurality and difference, making Europe the continent of diversity, history, tradition, strengths and weaknesses – this is where Europe's soul lies,

and evolving and extending what its citizens share and what binds them together is the *raison d'être* of Europe as a political project.

At the moment, however, exactly the opposite is happening in multiple different Member States, where the rule-of-law principles of a liberal democracy – the principles which bind us together – are coming increasingly under fire. The voices pulling Europe apart champion the European method of cooperation and binding agreements between sovereign nation states, and want the scope of these agreements to be limited to the opening up of markets and the establishment of uniform conditions for competition between businesses.

The EU needs to stop ignoring this mutiny in its ranks and to do so without delay. Brexit-style breakaways are no solution, and this domestic quarrel is drastically affecting the EU's capacity to take action at a time when action is needed more than ever before. We must also swallow a much bitterer pill, namely that accessions by new countries are likely to make the clamour of discordant voices louder rather than make the EU fitter for the future – bad news for the Balkans, and sadly also for the strategic sustainability of the EU in the future.

Social Europe?

Social Europe is a shadow of its former self – a fact which is all the more disappointing given that it was announced with so much pomp and circumstance and praised to the skies on so many different occasions. The differing standards of living within Europe and the differing extents to which employees are able to participate in corporate governance are sobering, particularly if we are honest with ourselves and admit that social security benefits and a highly developed welfare state need economic and financial backing to match. Europe has almost no voice on social policy issues, and this is not the fault of the Eurocrats – this is the fault of political players who remain blinkered by their limited nation-state perspectives. Today's movers and shakers in the social policy arena talk the talk but do not walk the walk, being well aware that anyone who has consulted and legitimised the current powers will also be shown the door in the event of serious conflict (however unlikely such conflict may be).

It costs nothing to talk about 'social Europe' in solemn speeches, but the security of workers' situations remains most dependent on the ability of workers' organisations to engage in conflict and cooperation at national level, and it would be foolish for these organisations to relinquish any of their power until reliable European power-sharing mechanisms are in place. The establishment of framework conditions and minimum values at EU level is a valid and important strategy, but it is equally important to avoid weakening employer and employee organisations at national and European level – and not only that, but to give them greater latitude and real negotiating power.

We must neither forget nor repress our experiences in Brussels when making this 'social Europe' a reality. From the perspective of social dialogue outcomes, the era of the Barroso

Commissions was a complete washout.² The lack of legislative initiatives on the part of the Barroso Commissions I and II served as an invitation for European employers' federations to turn 'social dialogue' (which in and of itself can act as a springboard for legislation) into a series of discussion groups which occasionally published joint opinions but produced nothing with any binding force, meaning that a crucial tool for democratic participation by the social partners went to waste. The trade unions need to take the long view, apply pressure at national level and achieve binding commitments if European social dialogue is ever to bear tangible fruit again.

For many within the political establishment, edicts from Brussels on social policy are of much less importance than those on the functioning of the internal market and those safeguarding competitiveness, and the European Court of Justice has set its own lines in the sand which mirror these views. 'Social Europe' is primarily a task for an EU-level constellation of strong national players committed to achievable endeavours such as wage negotiations which place limits on the reach of markets and power. We have little choice in the path ahead of us – we must safeguard and strengthen our ability to take action at national level, while at the same time pushing for 'Europeanisation' and a huge increase in the influence of the European institutions.

Europe's diversity

In historical and social terms, Europe's diversity has been a major factor in its political, cultural and economic prosperity, but respect for differences is yet another casualty of the recent trend towards nation state insularity. One of the foundational pillars of the European Union is the joint belief in a culture of tolerance, protection of minorities, liberal democracy and the rule of law; liberty, equality and fraternity are not just a guiding motto for France, but the inheritance of our entire continent (and far beyond). Every one of our forebears was once a foreigner somewhere in this continent, and this continent gave birth to ideas which led to the greatest catastrophe of civilisation and humanity. It is both conceivable and feasible that the nation states should give up a small portion of their sovereignty in return for the opportunity to safeguard this cultural and political connection, and it would be a scandal if the over-reported gap between communitarians (mostly in rural areas) and the globally minded urban elite were to be misused to stir up feelings against cosmopolitanism and tolerance. We must be aware of exactly where our strengths lie.

Europe and its Nation States

Nationalism and particularism lead to nothing but isolation and marginalisation, and there are countless cases in history where such forces have ultimately been brought to bear against the outside world. It would be absolutely wrong to try to whitewash away our national traditions and idiosyncrasies – our history will always be part of us. At the same time, however, we must not tolerate displays of national flag-waving by

2. See the chapter in this volume on social dialogue by Juliane Bir.

populists, agitators and nationalists. We must engage in an open and clear debate on the relationship between the nation states and the European Union, since at present too much of this debate is being conducted in whispered conversations, and everyone is being left in the dark.

Europe needs to acknowledge its nature as a state and emphasise its unique form of statehood, which involves complementing rather than replacing the nation states. Achieving this statehood in the world as it stands today necessitates a gradual transfer of certain attributes of each nation state's sovereignty, according to guiding principles and with a particular purpose in mind – not as a goal in and of itself, but for the good of everyone in a changing world. It is misleading to refer to the European project as the 'abolition of the nation state', but pseudo-debates predicated on assumptions of this kind are depressingly common in the Federal Republic of Germany and elsewhere. Without bothering to do their due diligence by analysing the situation, and disregarding objective truths and global trends which are plain as day, the fantasists who participate in them are wont to refashion the nation state into a panacea for all the woes caused by political, economic, social and ecological vicissitudes.

Outlandish claims are made to the effect that the proponents of further and far-reaching European integration are ready and willing to give up sovereignty and erase national identity. Yet a belief in the sovereign nation state as all-powerful and all-preserving is nothing but reactionary self-deception in the modern world – globalisation, digitalisation, migration and climate change call for new answers that look forward to the future. Our job is to strike a fresh balance between progressing towards EU statehood on the one hand and safeguarding the essence of the nation state on the other, and to ensure that this process is focused on solutions and appropriate to the tasks we face.

We must also say a firm 'yes' to the transfer of extra sovereign attributes to the EU, provided that this transfer is democratically legitimate and follows a solution- and task-centred approach. This new balance of sovereign powers is what will allow the European Union to assume the shape predestined for it by history, rather than looking back towards some golden age that never was. We must remind people that the concept of a nation centres on the ability of its citizens to take decisions freely and of their own volition, and not on identity-related ideas such as ethnic homogeneity. If we are to answer the question of how far down the path of communitisation we should go, we must first give an honest answer to questions about the future of the nation state, and this political linchpin must not be ignored in the much-called-for EU reform debate simply because it is 'too controversial'. A new 'European Convention' made up of the European Parliament, the national parliaments and the national governments would serve as a suitable political platform for this task.

Uncertainty and rapid change

Despite the many forms it takes, the widespread uncertainty felt by the citizens of the EU Member States can indubitably be traced back to common political, economic and social factors. One of these common factors is a sense of political and cultural insecurity

caused not by actual experiences of economic and social decline, but by the fear of such decline and of being relatively worse off than other people. The world of today offers manifold justifications for this socio-culturally motivated uncertainty and fear; the collapse of the world order and the positions and roles which have structured society since World War Two, the rapid pace of change made tangible through the globalisation of business and trade, the push towards digitalisation and the ensuing gap between those who have access to rapid networks and those who are socially isolated, the overwhelming nature of migratory flows and the helplessness (experienced at first hand by citizens) of politicians to do anything about any of these things. These changes may well be an opportunity and a call to take decisive steps towards modernisation, but the majority of EU citizens do not perceive them as such.

Instead, they perceive them as violent and earth-shattering tremors shaking the very foundations of a way of living which has been passed down over generations and which they believe must be defended. This sense of powerlessness has prompted a resurgence in old beliefs and ideas thought (at least to some extent) to have been relegated to the past – nationalism and the nation state, rejection of and opposition to everything ‘foreign’, the search for solid ground and a fixed identity as a bulwark against internal and external attacks and a guaranteed route to prosperity. What is entirely lacking is a convincing narrative about the need to modernise, to change and to make ourselves fit for the future – and a political paradigm which gains credibility by bringing this narrative to life in full view rather than behind closed doors.

Cash and subsidies can only go so far towards overcoming socio-culturally patterned fear and uncertainty of this kind. One of the reasons why money is not the only answer is because these worries affect not just the poorest of the poor or society’s outcasts in their allegedly hopeless plight – they also prey on people with a decent standard of living, up to and including those who are solidly middle class. Despite the fact that we are living in a time of unprecedented economic prosperity, fear of losing one’s job or one’s assets (and the resulting drop in social status) is rampant. People have stopped believing that they will benefit in any way from the changes which are either visible on the horizon or are already making themselves felt, such as the growing isolation of rural areas and the metropolisation of the major cities.

The gap between words and action is worryingly large, and there is no overarching narrative or vision of the future which moulds all of these changes into opportunities. We do not need a new story – the story of peace and security on this continent, the promise of prosperity, growth, justice and sustainability merely needs updating so that it can be experienced by many more generations to come. We must also explain in persuasive terms why ‘Europe’ is where we must look for solutions rather than the cause of all our problems.

This is particularly apparent in debates on European policy. The topic of Europe is never far from the agenda, whether it is being dismissed in off-hand and derogatory criticism of ‘Brussels’, or extolled in empty words about the importance of European unity for us all. Yet what is really happening on the ground belies the substance of these fine speeches, particularly in Germany, and particularly within the ruling parties.

Pro-European speeches are given, such as Ms Merkel's recent address to the European Parliament in Strasbourg (Merkel 2018), but details are avoided like the plague (with the exception of a reference to the 'European army', in a subtle nod to Mr Macron). Truisms and platitudes are all that remain for other much more important areas of policy, such as the monetary fund, the banking union, the digital tax, the EU's own revenues, an EU budget and deeper institutionalisation.

Shared destiny?

The same is true for Olaf Scholz' Europe-wide unemployment insurance scheme – a minor detail which is worthy of note, but no more than a minor detail in view of the Herculean tasks facing the Federal Minister of Finance (see above). The fact that the mutual aid granted under this scheme will at best be funded through loans also lends a particular piquancy to the 'shared destiny' of the EU Member States. Despite all of this, however, a sense of forward motion – no matter how gradual and halting – is apparent. The common denominator underpinning much-debated issues such as the financial transaction tax, the well-thought-out fiscal arrangements for the Internet giants and the future of the European budget is that we need Europe, and more of it – yet we want more Europe without spending more money, and certainly without digging deeper into our own pockets. This is the bedrock principle of Germany's European policy in autumn 2018, on the eve of the elections to the European Parliament, and it is one of the main reasons why political progress on Europe has ground to a halt in our country. The man on the street is skilled at spotting discrepancies between what politicians say and what they do, and the damage this has done has caused many people to turn their back not only on our own discredited political establishment, but also on Europe.

Europe remains a source of fascination, but increasingly a source of annoyance too. The introduction of the single currency added rocket fuel to the economy of the entire euro area and contributed significantly to its growth (and Germany is the country that benefits most from European integration and from the euro). We must therefore do everything in our power to strengthen the position of the euro, in the international financial system and elsewhere; its long protracted death in a series of crises would not mean the end of the road for Europe as a continent, but would fundamentally damage the idea and reality of an economically strong European Union, able to hold its own in the international political arena and able to shape the societies in which we live. The euro is the keystone which holds together the core countries of Europe, and shared economic and financial circumstances are the cement that binds them together most effectively.

Europe and its unity

We must nevertheless be wary of losing sight of the big picture, since the political, social and economic fallout of the euro's arrival in Southern Europe has been huge. It would be both foolish and incorrect to use the 'global competitiveness' of Germany (a country which has come out on top in the history of the euro so far) as the sole and final benchmark for political and economic behaviour; competitiveness certainly is and

will undoubtedly remain an important criterion and goal, but it would be deplorable to attempt to achieve it at the expense of mass unemployment, growing insecurity and social isolation. Germany is trying to evade the joint responsibility it more than anyone holds in this connection for Europe's growing problems of economic, financial and social polarisation; if entire countries start to feel left behind, it will once again become normal for nations to act according to their own agenda without first consulting any coordinating instance. This will be the point at which the bell tolls for the Union, and that is not what anyone wants.

Germany benefits from the euro and from escaping the burden of currency realignment; in return, there is a heavier obligation on the country to implement adjustment and compensatory measures as the political price for continuing a mutually acceptable process of convergence and adaptation. Germany must rid itself of the fear of a 'transfer union' – not because the country should prop up inefficiency and idleness, but because it should provide the cash needed for a union of hard workers, and a union which incentivises and demands regeneration and the transition to a way of working and living which is fit for the future. 'Controlled transfers' are the bare minimum needed in this respect, and integrated EU budgets are neither the devil's own work nor a guaranteed panacea. They play a key role in sustaining the momentum of growth during investment slumps, innovative dry patches and periods of asymmetric shocks and crises, as well as promoting and supporting gradual but consistent progress towards equitable living conditions within the EU.

We are suffering from a collective case of cold feet, and everyone is afraid to say out loud what they know to be true. The European Union is vitally important for the prosperity, the security and the very future of the EU Member States. We must be capable of taking action – in economic and financial policy terms on the basis of our own resources and our own budget, and in defence terms on the basis of our own army (carefully negotiated with and within NATO).

A fresh start

The European Union is in need of wholesale reform and a fresh start, and this is a process which can and must be accelerated by Germany. We must engage in a debate on the future which frames these new challenges as opportunities for us all, and which acknowledges that the European Union – as the central regulatory framework for our way of life and for innovation and dynamic growth – must not only be democratised from the bottom up, but must also be endowed with more and better rights and resources.

Developments in early January will have come as a bitter disappointment to anyone still persisting in the belief that the universally applicable 'European story' might remain the main plot element of the European elections, despite the risks we currently face. There is scant evidence of going back to Europe's roots, talking about the crucial part Europe plays in securing all of our futures and taking a credible leap forward in conceptual and strategic terms; instead, the idea of a 'European citizen' is being scaled down (if not to say belittled) in large swathes of Europe.

It is hard to stomach the SPD's decision to campaign for the European Parliament elections on a platform centred around the minimum wage and data protection, which supposedly form the pinnacle of the EU's achievements; these are, of course, worthy issues in and of themselves, but the debate on European integration has long since shifted to more fundamental questions. How do we achieve an integrated Europe which stands strong internationally and has clout on the global stage, but which can also secure peace and prosperity within its borders and across generations, on the basis of solidarity and sustainability? One can only assume that no one working at party headquarters has noticed that it is because of questions like this that people are criticising the EU and turning their back on it. If you were to listen to the soapbox speeches and debates, it would appear that the Europhiles in the country are well aware of the fundamental issues which need to be tackled in order to overcome the crises and difficulties we face – but as soon as the speech or debate is over, everything reverts straight back to narrow-mindedness and business as usual.

Let us be quite clear – a policy of targeted reform is needed, and the absence of any such policy is a strategic misstep which must be rectified with a vision of the future and guiding principles for future integration. One might even suspect a conspiracy – are the elites deliberately keeping this debate on the foundations of the state to themselves, because the common people are not (or not yet) ready or mature enough to engage in a discussion of this kind? Once again, another case of cold feet which obscures the need for a proper debate between the two opposing sides.

As Europeans, we can no longer fight shy of a discussion on the guiding principles which underpin our EU policies. What kind of Europe do we want? This is not simply a question of putting together a political wish-list in a spirit of political voluntarism – historical continuities offer opportunities and set limits.

The nation state is one of these continuities, and it may present more opportunities and limits as it evolves and changes. The nation states will play a significant role either in a European federal state or in an integrated confederation of European states, and there is some justification for the assertion that their importance and stature were underestimated in the past. Reports of the death of the nation state were undoubtedly premature, and the political importance of the diversity which defines Europe has also been underrated on occasion.

Core Europe?

What we should be aiming for is to accommodate this diversity in Europe rather than to eradicate it, using the traditional European solution of the compromise. In the context at hand, this means a 'core' Europe with the sovereign powers needed to conduct not only internal market policy, but also financial policy (on the basis of own resources, with a simultaneous obligation to work towards equitable living conditions) and social, foreign, security and defence policy, along with a traditional two-house system built on the existing EU institutions (Parliament and Council); it also means another 'core' Europe in the form of the euro area, which makes gradual but steady progress and

wins over doubters with its performance. This is not only a realistic utopia – it is also a realisable one, and we must not shirk our responsibility to engage in a debate on the topic.

What is to be done?

The messengers of the gods have become uncommunicative, and the days of knights in shining armour are long gone. It is up to us – the committed Europeans in the nation states – to take matters into our own hands. We must remind ourselves of the power of convincing arguments and be ready and able to use these arguments in debates within our political parties, associations and trade unions, and in discussions with our neighbours, our friends and society at large.

- Europe and European integration must once again become part of a positive and inspiring narrative about where we are going. Europe is our fate and our future.
- Europe's nation states are incapable of tackling global security challenges, global trade and economic challenges and global environmental challenges on their own; Europe serves as a vital platform for doing so.
- The current crisis faced by the European Union is not a temporary phenomenon that will soon pass. It is a symptom of tectonic shifts taking place below the surface and realigning the major powers of the world. Europe must decide whether it wants to sit at the table with these superpowers and decide – together with the USA, China, Russia and a few others – how the world and its trading relationships should be structured, or whether it wants to play the game according to rules that have been adopted in its absence.
- Europe is a model of living which can no longer be built and defended at nation state level alone. There can be no avoiding European integration if we wish to stand up for our understanding of social responsibility, our understanding of democracy and the rule of law, our social inclusiveness and our tolerance.
- The economic and social divide in Europe is a powder keg which could blow up in the face of European integration. Instead, it must be transformed into a launchpad for European solidarity – we must talk about support for viable and sustainable economic growth rather than the funding of consumption through transfers.
- The benefits delivered by Europe are hard to overestimate, and so it is only right that Europe should cost us money. We must overcome the shibboleth that a higher financial contribution by Germany is equivalent to a 'transfer union' devoid of any solidarity.
- Something must be done about the calamitous lack of any forward-looking approach or forward-thinking policies in Germany. Both the SPD and CDU face a

shared problem of legitimacy and credibility; they are all but refusing to discuss the future as a basis for credible action on Europe.

- Now is the time for an ambitious concept of a Europe which is fit for the future. Let us not give up before we have even tried – voters are cleverer than we give them credit for, and we should put our faith in them. We should also have the courage to harness the visionary power of a concrete utopia.
- We must strengthen and restructure the euro area, both for the Europe of today and for the ‘core’ Europe of tomorrow.
- We must ask awkward questions and be optimistic and open to the future, particular within large civil-society organisations. Globalisation and digitalisation will only make us slaves to technology and factual constraints (and supplicants at the table of the world powers) if we do not play our European card with conviction.
- This also includes debating the foundational principles which guide our efforts to shape Europe’s institutional framework. What would a European Federation look like? What role would be played by the major political movements and what role would be played by the nation states in a democratic and unified Europe?
- The European elections offer yet another opportunity for upheaval and reform. Will the parties have the courage to put forward electoral manifestos which are ambitious in their scope? Or will they remain trapped by fear (of populists and others), sluggishness, faint-heartedness and small-mindedness? Will we have the courage to call for ‘more democracy’ in or with this parliament and in the nation states?
- Efforts to build Europe’s legitimacy must ensure that experiences in one country (such as the ‘En Marche!’ [‘Forward!’] movement in France) are not simply transferred straight to other countries (the ‘Aufstehen!’ [‘Stand Up!’] movement in Germany).
- At its heart, the European project is very simple; tell the trues about the shrinking power of the EU’s nation states (till it is comparable meaningless) and at the same time take decisive action at European level!
- In the interests of fostering a European identity for European citizens, we should draw up and disseminate a top 10 list of ways to achieve integration.
- Last but not least, we need a grassroots initiative which turns the spotlight back on the fundamental questions of European integration, in view of the tendency of politicians and parliaments to shirk their duties in this respect. Europe as a promise of prosperity, as a guarantee of our security, as a community of values, as a global player acting in our interests, and as an expression of our way of life – this Europe is a sovereign confederation of sovereign nation states, and also a community which shares risks and liabilities. It is not a place where certain

individuals live at the expense of others, but a place where no one is left behind. A civil-society initiative of this kind is needed now more than ever before.

- Everyone must do his or her bit, every day.
- If not now, when?

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Chapter 2

'More democracy at work' or 'more power for big corporations' – which is the new paradigm?

Wolfgang Kowalsky

Introduction: Digitalisation, political developments and more democracy at work

Is digital capitalism compatible with democracy at work? Digitalisation is a major global trend that poses a challenge to the future of work and the employment relationship. Neither technological determinism nor technological solutionism is going to help pave the way forward: a broad societal debate is needed on the use of modern technology. Debates are particularly necessary on the use of artificial intelligence, i.e. self-learning systems that can take over many human tasks. Artificial intelligence is about data: linking data, extracting information, putting information into context, applying knowledge and reflecting upon it. In this connection, philosophical and ethical issues are becoming increasingly important, but the key issue is to distinguish between that which should be regulated by law and that which can be left to non-binding ethics (Nemitz 2018). The use of artificial intelligence is a key concern for the future of work: will artificial intelligence be used to ensure the supervision and control of humans, or will it support (the coordination of) humans to be more creative and productive? Will it be used to take non-transparent decisions and shy away from responsibility or to support human decision-making? Will algorithms be coded in such a way that they render humans superfluous, or will we see the development of an inclusive robot agenda where the buzzword is 'complementarity' (Went *et al.* 2015)? Are we always going to be able to slam the emergency brake on artificial intelligence when we want to?¹

Is digitalisation a driver for more democracy at work, or does it create obstacles? At first glance, it appears to be causing problems: for example, a German online platform for delivery services, Lieferando, has declared that 'a works council does not fundamentally correspond to our culture as a young, modern and open company' (Kläsger and Öchsner 2018). Codetermination is regarded as an old-fashioned feature of a bygone age; the goal of democracy at work is being superseded in the new digital world of work by 'direct participation'.

Digitalisation permeates worker participation and vice versa. Digital devices, online platforms and apps can be used either to circumvent and block democracy at work or to facilitate and broaden it. In those Member States with robust industrial relations systems, for instance, the design of an app can be influenced through worker participation so as to ensure the protection of employee data and strong participation rights, whereas, in other EU Member States, the applications being used are the same as those developed in

1. The question of the weaponisation of AI has not been addressed in this study.

the US, Russia or China without any significant involvement of the workforce. Satellite navigation systems, video monitoring, handheld devices, touchscreens and touchscreen gloves, etc. can be used as a means of constantly monitoring workers in companies – the right to take the initiative and to enhance democracy at work is often lacking. Will digital capitalism be a hindrance to or a driver for more democracy at work?

Both political and economic democracy are at stake in Europe, the US and elsewhere. The belief in linear progress towards more democracy, more welfare and a more social Europe has been shaken, and it is clear that stagnation or regression are possible outcomes. For quite some time in academic circles in Europe and elsewhere, the belief in linear progress and the ‘irreversibility’ of European integration was part of the politically correct dogma of the day (Fukuyama 1992). Very little consideration was given to how to stabilise the basis of the integration process or how to counter centrifugal forces. Since an alternative model was unthinkable, it was simply superfluous. What can be observed is an incremental extension of internal market features. Behind the ‘euphemism’ of the ‘modernisation’ of company law, a battle is being waged between proponents of free regime shopping and those who wish to safeguard a social model that guarantees full protection of workers’ rights. The question is whether the new proposals for company law are simply consolidating a largely unregulated free market economy that prioritises the imperatives of the market and of business profitability over the requirements of democracy at work. Capitalism has no particular interest in democracy at work; on the contrary, it is actively seeking to avoid greater participation of workers and their representatives in the decision-making process. Although it requires the direct commitment of individual workers, it does not seek to give them a collective voice.

Times have changed profoundly; backlashes and even a return to digital fascism are possible responses to the challenges of the 21st century. The financial crisis of 2008 has led to a great recession – the worst since the 1930s – and has profoundly changed the global economic order, accelerating transformative shifts (or, in modern terminology, disruptions), including, in particular, a significant shift in geopolitical power. The consequences of the great recession are long-lasting. The convergence process in Europe turned into divergence, with an increasing divide between the centre and the periphery, between southern and northern Europe.² The European political landscape has changed in parallel, becoming more polarised and fragmented. Right-wing and left-wing populist movements and parties are on the rise, pitting the ‘elites’ against the ‘common people’; they are hostile towards migrants and are often anti-intellectual, thereby running the risk of being left behind. Adding to these post-crisis effects, the pace of digitalisation, automatisisation and robotisation, and the rumours surrounding artificial intelligence, have disoriented many people and exacerbated their doubts about the future. A vague ‘malaise’ is feeding into anti-establishment parties and anti-EU movements. After the First World War, Thomas Mann coined the phrase ‘Die große Gereiztheit’ [Hysterica Passio]; while, after the Second World War, Leonard Bernstein named it ‘The Age of Anxiety’. Disillusioned, irritated and angry citizens are joining forces with protesters and denouncing any form of political compromise, thus

2. ‘Northern Europe’ is characterised by the Scandinavian political economy, ‘southern Europe’ by a more clientelist political economy.

rendering democracy more vulnerable and democratic procedures less predictable. The emerging turbulent political environment is accompanied by disruptive economic developments.

The participation of angry citizens in these movements is, among other things, the result of many parents' belief that their children will be worse rather than better off, and will live in a less secure and more polluted world. This belief leads people to turn to anti-Europeanism and consider the poor handling of the crisis by the EU to be a sign of European failure; in the process, they seek a return to the nation state and its powerful tools, which are deemed to be more efficient. The neo-nationalistic approach has the potential to divide Europe even further. The German Chancellor, Angela Merkel, stood alone in her decision – one which was to have repercussions for the whole of Europe – to open Germany's borders to over a million refugees in 2015, whereas she previously would not have hesitated to convene a meeting of the European heads of government over a weekend in order to coordinate rescue packages for the banks or for Greece. This unilateral decision had negative repercussions not only in the United Kingdom in the final run-up to the Brexit referendum, but also in some Eastern European countries, while creating a profound malaise in Western and Southern Europe. After this unilateral and nationalistic – in any event non-European – decision had been taken, the same German Government turned to its flabbergasted European neighbours and asked them to show 'solidarity' – this, after years of European austerity measures imposed by the German Government and a number of other Member States without so much as a hint of solidarity. The term 'solidarity' is perverted – instead of the decision being taken by the German Government alone, a discussion should have taken place between the governments concerned, all standing in solidarity with a view to reaching a joint decision. After a decade of austerity that served only to prolong the economic crisis, the German Government imposed its will once again, allowing immigration without laying down any clear rules and without holding any discussions with the other Member States. It is hardly surprising that anti-German attitudes began spreading across Europe and having a direct impact on the politics of other Member States. Where is the German Government's roadmap presenting solutions to overcoming these nationalistic deviations? Why does the German Government keep silent on the European proposals put forward by the French President, Emmanuel Macron, with the effect of blocking the process of European integration?

Europe appears to be divided by ancient animosities and paralysed through introspection. It is sleepwalking through today's 'interregnum' where, beneath the superficial appearance of multiple crises, in the words of Antonio Gramsci (in a famous passage from his *Prison Notebooks*), 'the old is dying and the new cannot be born'. Gramsci coined the term 'organic crisis' to describe a crisis that differs from ordinary financial, economic, social or political crises. An organic crisis is a comprehensive and holistic crisis, encompassing a socio-economic system that is no longer able to generate societal consensus. Such crises are at once economic, political, social, cultural and ideological – in Gramscian terms, organic crises are crises of hegemony. A blanket rejection of established political parties, economic policies and value systems is generally linked to periods of high uncertainty and disorder. However, it does not necessarily or automatically lead to the swift collapse of the political system nor to victory for left-

wing political parties. Gramsci described such situations as *interregna* – a window of opportunity which will not stay open forever. Since the end of the financial crisis, this interregnum has been used by some who seek to establish a new world order.

The ‘Old West’ in Europe was based on the paradigm that a market economy embedded in a liberal democracy (based on the separation of power, rule of law, free media, etc.) is more successful and better than any other system. This assumption is being challenged by China and other authoritarian regimes (combining strong state influence in big companies and the banks with far-reaching control of the media, social networks and the justice system, often in conjunction with a one-party system). The battle between the two systems has not yet really begun, and there are some initial conflicts emerging in the developing world, in particular in Africa. China is challenging the US as an economic, political, technological and military leader, while Europe seems largely occupied with internal issues, with several years taken up by discussions on Brexit. China is increasingly competing with Western companies in the fields of digitalisation, supercomputers, artificial intelligence and aerospace. In its 16+1 initiative, China is seeking economic cooperation with 16 Eastern European countries, 11 of which are EU Member States. This ambitious strategy reflects the weakness of the EU in geopolitical, economic and industrial policy terms. The lack of a European vision makes China attractive to these countries and vice versa; through this intense cooperation, China can exert influence on European decision-making when unanimity is required. This is an issue that Europe must address (for instance by switching to qualified majority voting).

What is at stake in Europe now? The rhetoric of anti-European populism is spreading across the majority of EU Member States.³ Many citizens are convinced that the mainstream or orthodox credo about the rosy future of European integration is similar to that linked to globalisation, depicting it as simplistic and overzealous in terms of opportunities, while it minimises or overlooks possible risks, and is therefore unilateral and void of credibility. For a long period from the 1970s (moving away from a Keynesian framework to global capital mobility with fewer regulations and lower taxes) until the financial crisis of 2008, everyone was considered a winner and there were supposedly no losers – that was the key aspect of the *doxa*, which has since been abandoned. It became obvious that the benefits of globalisation were unevenly distributed. Globalisation exposed people to too much market; they began demanding protection from excessive commodification, and this demand was transformed into ‘a Europe that protects’. Big corporations used globalisation to push back democracy at work. Globalisation offered a window of opportunity for re-formatting capitalism in the digital era and, in particular, shaping the future of digital capitalism. Many companies in Europe went bankrupt or were forced to undertake massive restructuring, while other companies moved to new

3. The left-wing populist vote in Southern Europe and the right-wing populist vote in Northern Europe are indicative of specific national economic configurations. They represent a protest against a certain vision of Europe, rather than a reaction to the national political landscape, against globalisation and the free movement of goods, services, capital and people; in sum, it is a protest against a Europe which facilitates and intensifies these kinds of movements. This form of protest demonstrates that political support for this kind of Europe is shrinking rapidly, and the mainstream political parties either do not understand this trend or do not know how to respond effectively to it (Manow 2018: 138).

markets in South-East Asia or were simply taken over by Chinese investors (automobile manufacturer Volvo, robotics company Kuka, etc.) penetrating companies considered to be a worthwhile investment. As long as the bulk of EU competences and decision-taking are still geared towards 'the completion of the internal market' and are not suitable for other objectives, there is no way out of this vicious circle.

A 'market society' is impossible to achieve in a democracy because people resist commodification, i.e. labour being turned into a commodity. A recent example is online platforms which symbolise a rollback of decommodification, provoking a certain amount of resistance and opposition. This and other trends feed into the weakening of Europe: Brexit, transatlantic trade conflicts, global migration, right-wing populism, high unemployment at the periphery of the financial crisis, as well as its mid-term repercussions, and socio-economic divergence, not to mention long-standing key challenges such as ongoing climate change, digitalisation driven by big data monopolies and tech giants (Roose 2019), and rising social inequalities which, according to Thomas Piketty, exceed the inequalities of the *Belle Époque*. Europe is under threat from many sides.

Taken together, these trends amount to the biggest threat to political democracy since the Second World War. Political democracy is being increasingly challenged by modern right- and left-wing populism appealing to those 'left behind', and, to a similar extent, by biased perceptions and misperceptions of European integration. At the root of the support for right- and left-wing populism lies the disempowerment of broad segments of the workforce and the middle class. In parallel with the antagonism between authoritarian and democratic models, there is a rise in authoritarian initiatives by the EU establishment to circumvent democratic involvement: the dealings in connection with the Transatlantic Trade and Investment Partnership (TTIP) were quite symptomatic of feeding involuntarily into a more generalised public opposition to further integration. Some of the EU elites consider it functional and necessary to forge ahead with European solutions, legitimising their view with the old Thatcherian slogan 'there is no alternative' (also known as the 'TINA principle'). This slogan kills political debate, and yet citizens living in democratic systems want to have a choice. Modern policy-making is a process full of contradictions and antagonisms that are addressed through societal debate. The hegemony of a certain vision of Europe makes matters even more complicated: the unilateral emphasis on the strengthening of economic competitiveness as a key objective has harmed European integration, as it delivers no incentives for cooperation, more social participation (less exclusion), greater convergence, inclusive social policy or more democracy. Compounding this unilateral approach, the democratic deficit is also widening. The EU's powers have been growing for many decades now, but democratic legitimisation is still lagging behind.

Decision-making procedures are being increasingly moved to areas with no genuine possibility of democratic interference, thus contributing to a growing alienation from the European project and paving the way for nationalistic opposition. Permissive consensus is being transformed into open dissensus which, in itself, is not a bad thing. Instead of trying to overcome legitimate opposition by encouraging democratic involvement, the elites try to move ahead without any public involvement. A good

number of European decisions are not taken by democratically elected politicians but are delegated to technocrats acting beyond the will of the citizens⁴ – it is no wonder that the ETUC opposed the Fiscal Compact. Austerity is a striking example of far-reaching supervision and control of countries and their governments by small technocratic bodies evading democratic control. The EU's authoritarian tendencies unintentionally strengthen those forces that are opposed to European integration, leaving no room for pro-European forces to voice legitimate concerns or participate in contradictory pluralistic debates, forcing them instead to choose sides: either unconditional support for the EU establishment or general opposition (Scherrer 2018). This undemocratic behaviour is being concentrated down into authoritarian entities. The oft-used slogan 'there is no alternative' (TINA) is merely a symptom or indicator of this mechanism. The consequence is that, ultimately, many critics will either remain silent, abstain from taking action, become apathetic or join an anti-EU movement.

The main problem for political democracy concerns a lack of democracy at work. The issue of information, consultation and board-level participation in the workplace is linked to most of these challenges, if not directly then indirectly, as old corporate governance – together with short-termism and the shareholder value (or profit) maximisation principle – continues to generate inappropriate incentives. In this study, we will explore whether a new form of corporate governance with stronger information and consultation rights and broader board-level representation could help to steer company decision-making in the right direction and to reinvigorate social Europe and, in so doing, make it more resilient.

1. Revisiting European democracy at work in all its dimensions

The term 'democracy at work' covers several dimensions, in particular:

- (1) information and consultation procedures at national level, incorporated in works councils or similar worker representation bodies (as laid down in Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, but also in the Collective Redundancies and Transfer of Undertakings Directives);
- (2) transnational cross-border information and consultation at European level (as laid down in the European Works Council (EWC) Directive (94/45/EC) (modified in 2009 by Recast Directive 2009/38/EC) establishing a common floor of rights);
- (3) worker representation in company boardrooms, at national level as established in 18 out of 28 Member States (without any attempt at European harmonisation until now); and
- (4) board-level representation extended to other Member States through the 'before and after' principle laid down in the European Company (SE) Directive (2001/86/

4. For instance, key economic decisions ceded to an independent central bank, focusing exclusively on inflation, the austerity policy imposed by the Troika and the rescue policy for the banks paid by taxpayers, the many comitology decisions and the extension of post-democratic executive federalism into an outright intergovernmental rule, according to Habermas' criticism of the efforts made by Merkel, Sarkozy and others to gain more room for manoeuvre for executive action (Habermas 2011).

EC) and, subsequently, Directive 2005/56/EU on cross-border mergers of limited liability companies (European Parliament 2018: 29-35).

There is a significant difference between the quality of information and consultation procedures on the one hand and that of board-level representation on the other: the right to information and consultation involves guaranteeing the flow of information to the workforce and providing an opportunity to make the voice of the workers heard. The right to board-level representation is not limited to information and consultation, as it gives workers the power to influence the company's decision-making and strategic development. The goal of information and consultation is for workers to be consulted, while the goal of participation is to be part of the highest-level decision-making body and assume responsibility for it, contributing to the decision-making process or delaying, amending or even blocking decisions. Information and consultation are limited to cross-border issues in the company in the case of European Works Councils (EWCs), whereas board-level work involves the discussion of fully disclosed information on all strategic issues relevant to the company's life cycle. Board-level representation is not a simple extension of the information and consultation procedures; it also changes the quality of participation, involving a totally new set of opportunities to exert influence, as well as numerous obligations, responsibilities and duties.

Board-level representation in Europe can be defined as the 'phenomenon where employees elect or appoint representatives to the strategic decision-making body of companies', including situations where the workers have voting rights. In two-tier structures, this would refer to the Supervisory Board, in one-tier structures to the Board of Directors or Management Board. Whereas such structures exist in 18 out of the 28 (soon to be 27) EU Member States, there are a variety of different arrangements in place and, to date, no single European model exists.

The European social partners sat down for three meetings to negotiate an agreement on EWCs. However, the Confederation of British Industry (CBI) published a press release opposing the conclusions of a meeting approved by the Union of Industrial and Employers' Confederations of Europe (UNICE),⁵ which was not without blame, as each UNICE member organisation had a veto right. In view of this sword of Damocles, the ETUC decided to walk out of the negotiations. Immediately after this breakdown in negotiations, which can be considered to be the first failure of European social dialogue, the conservative Commissioner for Social Affairs, Pádraig Flynn, pushed the dossier forward, and, in September 1994, under the German Presidency led by the conservative Labour Minister, Norbert Blüm, the right to transnational information and consultation was recognised and a Directive adopted 'on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees'. The adoption of the EWC Directive represented a victory for the ETUC's strategy of switching from a negotiating to a legislative approach (Degryse 2013: 150; Lapeyre 2018: 141-145). However, this strategy could work only as long as the Commission was proactive, and

5. These meetings were held between 23 February and 17 March 1994, and the UNICE press release was issued on 27 March 1994.

progress was made possible only ‘in the shadow of the (upcoming) law’. In 2008, a small step forward was made: the European social partners were involved in a ‘recast’ of the EWC Directive and succeeded in agreeing to a partial revision. However, demands for a comprehensive revision – repeated in 2017 by the ETUC (2017) – were not met with success.

In 2018, the European Commission published its EWC assessment (European Commission 2018a), which had been overdue since 2016, but refrained from proposing an EWC revision. The content of the assessment was quite disappointing, either largely ignoring any loopholes or non-functioning aspects of EWCs or simply drawing no conclusions whatsoever from their shortcomings. The lengthy assessment of the Quality Framework on Restructuring made the situation even worse: this had been overdue since 2016 but was published only in 2018 (European Commission 2018b, 2018c). One outcome was that the guidelines and principles laid down by the Commission were largely ignored. The document was spin-doctored in such a way as to camouflage and legitimise the inactivity of the Commission.

The history of transnational board-level representation began back in the 1970s with a first report on how to render such a provision in a new form: a European company statute. Some 30 years later, after numerous revisions, amendments, delays and fresh proposals, a political compromise was reached at the Nice European Council of December 2000, paving the way for the formal adoption by the Council in October 2001 of the Regulation on the Statute for a European Company (known by the Latin term ‘*Societas Europaea*’ or ‘SE’) and, in parallel, the Directive on the involvement of employees in the SE (Kowalsky 1999, 2000). ‘Participation’ was defined as a form of involvement in the supervisory or administrative board of a company, the development of its strategies and the key decision-making process and not in the day-to-day running of the company, which remains the responsibility of its management. In terms of worker participation, a balance had been struck between several models. The compromise stipulated that the standard rules concerning worker involvement would apply if at least 25% of employees enjoyed the right to participate in decision-making prior to the set-up of an SE. However, the Charter of Fundamental Rights of the EU does not provide for any threshold. There are four ways of setting up a European company: a merger of public limited liability companies; the creation of a holding company with subsidiary companies or branches in another Member State; the establishment of a joint subsidiary by at least two companies from different Member States; or the conversion of a public limited liability company that had a subsidiary in another Member State. In the meantime, there have been more cases of abuse through circumvention than there have been cases of genuine Europeanisation, as had been hoped for by the trade union movement when agreeing to this compromise after 30 long years of intense debate, and this has proved somewhat of a hindrance to the whole process. As a result of the wide range of participation systems and strong opposition from employers’ organisations firmly entrenched in 19th-century management methods, the Member States could not agree on European minimum standards, but decided, in the case of the SE, simply to extend national provisions to the European sphere.

An important but oft-overlooked question is 'What constitutes a European approach?' Ever since the adoption of the European company statute, many observers have conceptualised Europeanisation in relation to the European composition of boardrooms, or in terms of the prolongation or extension of national provisions in the European sphere, which in reality does not even come close to a genuine European approach based on minimum requirements. The SE is quite simply based on extended national provisions – it produces nothing other than a juxtaposition of extended national provisions, and does not provide a common floor of rights. In 2018, there are no more than 74 normal European companies with board-level representation of workers⁶ – not much of a success story there. Moreover, while there may be 74 companies with board-level representation of workers, more than 100 companies have switched from being a national company to an SE in order to evade national obligations to put worker representatives on their boards. Initially, a compromise was reached on the SE in order to protect workers' participation, but it soon turned into a tool allowing it to be circumvented. Is circumvention the real hidden success story here? Since the SE no longer constitutes progress towards Europeanisation but instead incorporates a defensive attitude in order to prevent more collateral damage and protect the different European social models, new avenues must be explored.

In November 2010, the European Commission issued a report on the application of the SE Regulation, and, in July 2011, the social partners were consulted on the need for and scope of a possible revision of the SE. In the following October, the social partners responded, with employers alluding to the protracted negotiations that had led to the compromise in 2001, and the ETUC qualifying the outcome as 'thoroughly designed'. In 2012, there followed a public consultation, and the Commission ultimately abandoned its intention to revise the SE Regulation and Directive. The ETUC maintained a relatively conservative position owing to the dissensus still reigning within the trade union movement over the question of how to devise a more tailored approach and how to resolve the impasse over the fact that an increase in the number of employees has no effect on workers' right to boardroom representation ("freezing"). The alternative of proceeding with a revision while stepping up efforts to establish a more appropriate minimum standard was not even taken into consideration. Could this despondent approach then be qualified as a missed opportunity or rather put down to a lack of imagination or flexibility? It is probably a combination of the failure to recognise and seize windows of opportunity, a lack of imagination regarding how to devise a sustainable approach and a 'business as usual' attitude which went unchallenged at the time. It was only at the subsequent ETUC Congress that an in-depth analysis of the issue was launched.

In the 2005 Cross-Border Mergers Directive (2005/56/EC), the compromise reached for the SE had been watered down: the percentage of the workforce that must be covered by codetermination in order to be entitled to protection was raised from 25% to 33⅓%, an increase which makes protection much more difficult. In parallel, the quality of

6. Thanks to national provisions, some 16,000 people serve as 'worker directors' (worker representatives) in company boardrooms, whereas the SE Directive has increased that number by only 240 since its adoption in 2001.

participation has changed: whereas before a merger, worker representatives are included in the highest decision-making body, after the merger they can be excluded from the newly formed highest governing body. For instance, in the case of the establishment of an overarching holding company, there is worker representation only at company-level and not in the supervisory board of the holding. The merger of Praxair and Linde is a good example of this: whereas workers have previously had a say in the highest decision-making body, this body will be downgraded to an executive body of the newly established highest decision-making body of the newly established holding. The Linde-Praxair ‘merger’⁷ is proof that the European company law package is not comprehensive: the establishment of a holding can provide a means of merging companies that not only allows a tax reduction but also makes circumvention of codetermination in violation of the spirit of the Directive possible. It appears that, by simply choosing a specific legal ‘merger’ status, the Cross-Border Mergers Directive is rendered null and void. Is this a genuine protection of rights or is it a case of downsizing and social dumping? European company law will never be watertight as long as such cases are permitted. The same is possible when converting to SE status, as is the case for Porsche which has no worker representation in the supervisory board of the holding.⁸ Such developments – based on a lack of understanding of the importance of budgetary control for future investments – jeopardise the very essence of trade union participation rights.

The business community and a large number of politicians consider the form of capitalism which is based on shareholder value maximisation to be a legitimate one. Stakeholder capitalism did experience an upswing in the wake of the financial crisis, but what has been the situation since then? Is there a new trend towards democratisation, or does democracy still stop at the factory gates? Is a new contradiction emerging between the European core and periphery, and can it be resolved in a productive, forward-looking way? Well, the post-crisis situation is hardly any different from that during the crisis: there is still no financial transaction tax, no European rating agency and no tax on digital oligopolies, thus allowing the system to continue operating like an open casino. There is clearly still a long way to go.

2. Beyond a national floor of board-level representation rights: how do we fill the gap?

Two contradictory tendencies are influencing the world of work: the rapid globalisation of business on the one hand and the limited, belated Europeanisation of workers’ participation on the other. National provisions for workers’ participation are still hegemonic over European ones, as European provisions are only complementary to existing national ones – a situation which is legitimated under the proviso of ‘subsidiarity’. However, there is an urgent need to catch up with developments in the business world.

7. The official website calls the merger first a ‘business combination between Praxair, Inc. (“Praxair”) and Linde AG (“Linde”)’ but then specifies: ‘A merger of equals between Linde and Praxair will provide a platform that harnesses both companies’ potential and delivers new value to stakeholders.’ <http://lindepraxairmerger.com/websites/lindepraxair/English/1000/home.html>

8. ‘Die Porsche SE schließt die Mitbestimmung aus’, *FAZ*, 19 November 2018.

The challenge is quite complex: whereas the compromise found for the SE in 2001 is based on the 'before and after' principle, the ETUC's 2016 proposal (ETUC 2016) is based on the principle of negotiation so that worker representatives can (almost) freely negotiate arrangements 'in the shadow of the law', in particular using the 'escalator approach', which involves sending worker representatives into company boardrooms in order to discuss company decision-making. The lack of democracy at work can be remedied with proposals such as the ETUC demand for a horizontal framework for information, consultation and participation together with an escalator for board-level representation rights. The 'escalator' proposes a lower proportion of worker representatives in small enterprises that increases to higher proportions depending on the size of the company (applicable to both the monistic and the dualistic systems)⁹ and provides minimum requirements, in other words a floor of rights. Workers' board-level representation is not about transplanting a single, identical model into all Member States. The ETUC proposal takes into account the wide variations in national provisions on thresholds in relation to company size (these vary from 25-50 employees to 50-500 employees to 1 000, 2 000 or even 5 000 employees), where the proportion of representation varies from 1-3 representatives to a third or even half of the members of the boardroom. For the time being, the ETUC proposal simply leaves open the questions of election or appointment and eligibility. It is about unity in diversity.¹⁰ The 'escalator' proposal thus has the advantage of anchoring the negotiation principle in the 'shadow of the law', with the added benefit of allowing for maximum flexibility.

Indeed, one of the most contentious and lively debates on corporate governance concerns the role of workers in company boardrooms. It took considerable efforts to overcome longstanding internal trade union divergences and hesitations and to adopt a courageous and ambitious approach to board-level representation in relation to the SE and any companies using European company law instruments. Finally, after years of lengthy and controversial discussions within the European trade union movement, there was overall agreement and a unanimous decision. The final outcome was the development of a new EU framework for information, consultation and board-level representation rights, adopted in 2016. Some hesitation still remains because of the different industrial relation systems, trade union cultures, ideologies and, in particular, the assumption that representation in boardrooms may lead to co-management. Indeed, it should be about participating in company decision-making, contributing to company strategy and influencing or even opposing decisions which might prove harmful to the workforce. In other words, it should be about control and supervision, not interference in day-to-day management.

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9. The ETUC proposal specifies that:
- small companies with 50 to 250 employees (within the company and its direct or indirect subsidiaries) should have a low proportion of workers' board-level representatives (2 or 3 representatives)
 - companies with 250 to 1 000 employees (within the company and its direct or indirect subsidiaries) should have one-third participation
 - big companies with more than 1 000 employees (within the company and its direct or indirect subsidiaries) should have parity (half of the seats).

The Directive should not lead to a situation where workers' board-level representatives have no works councils to report to.

10. The official motto of the European Union is 'In varietate concordia' or 'In varietate unitas' – 'United in diversity'.

The ETUC's call for a 'renewed effort to ensure board-level participation through binding EU law' was qualified as innovative but was also said to come into conflict with national models. Article 153 of the TFEU provides a mandate to legislate, stipulating that 'the Union shall support and complement the activities of the Member States' in the field of 'representation and collective defence of the interests of workers and employers, including codetermination'. The 'escalator' mechanism would 'give parity on boards at a new level for all European countries, including Germany' and would be 'a considerable development of employee board-representation rights in any country, including Germany' (Munkholm 2018: 12, 14). Such an extension was indeed the strategic objective of the ETUC proposal. The strength of the workers' voice (Hassel and Helmerich 2017) and access to collective representation is one of the contributing factors to a low level of inequality: increasing and extending workers' involvement at the workplace and, in particular, in company boards should be among the top policy measures aimed at reducing income inequality, mitigating wage excesses and increasing social cohesion and convergence.

At the ECE Annual Conference 'Perspectives of collective rights in Europe' in March 2018, the ETUC proposal was presented and discussed, but no political conclusions were drawn on whether or how to drive the proposal forward. Ultimately, the discussions that took place at the conference were a nice gesture, but they were no indicator of a policy shift: the Commission's style of governance, which has been to kick the can down the road and to 'wait and see', remains unchanged. The still quite scattered landscape will be maintained as long as no common floor of rights exists. It should be clear that such a floor of rights for board-level representation rights is urgently needed. The European approach to board-level representation as laid down in the 'before and after' principle of the SE Directive is quite different compared to the approach laid down in the EWC Directive or the general framework on information and consultation; both establish minimum standards through material EU law. The conclusion is that Europe is still a long way from achieving equal rights for all workers with regard to democracy at work. When will the Commission get off the fence?

For over a decade, there has been no progress on transnational information and consultation, and yet a number of loopholes and disadvantages of worker participation continue to exist. There is still no framework for restructuring as demanded by the Cercas report,¹¹ to which the Commission responded with a non-binding Quality Framework for Anticipation of Change and Restructuring. Meanwhile, in the European Parliament, there has been no follow up to the Cercas report, and the 2015 Händel report on the board-level representation of workers was abandoned. The positions expressed by the main political parties with regard to democracy at work are void of substance. Against this background, in spring 2018, the ETUC decided to launch a campaign calling for more democracy at work in Europe (ETUC 2018). A cornerstone in the framework of the ETUC Strategy was the European Appeal.¹² On the first day of the Annual EWC Conference in 2018, the handover of more than 900 signatures took place with Stefan Olsson, Director for

11. European Parliament resolution of 15 January 2013 with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring.

12. www.european-appeal.org published in *Le Monde*, *El Diario*, *Süddeutsche Zeitung* and a number of other newspapers and websites. The EWC Conference and rally took place on 10 October 2018.

Employment at the European Commission, and representatives of all the major political parties in the EP during a rally in front of the European Parliament in Brussels.

3. The new Company Law Package: towards less democracy at work, or business takes it all?

There have already been some casualties in the field of European company law: both the European Private Company (EPC) and the Single Member Company (SUP) are dead and buried. These earlier initiatives of the European Commission were designed without any specific provisions to protect existing workers' participation rights. Due to its 'open business' policy, both initiatives failed in the European Parliament in the face of broad opposition to such an unbalanced approach. It is not known whether a self-critical assessment has ever been made, but at least the Commission recognised the need to prepare more carefully and to consult main stakeholders during the preparation of the new company law package.

While this preparation was under way, the European Court of Justice handed down its judgment in the Polbud case¹³ – its ruling may be interpreted as granting a licence for fiscal evasion, the Company Law Package provides no tools to curb such evasion. The key question, moreover, is whether there are to be any new tools to circumvent or downsize. The Company Law or Mobility Package published in April 2018 seeks to establish European rules for business mobility in three areas: company conversions, mergers and divisions. On the one hand, there is a threefold delivery to the business community in terms of replacing national rules with European ones in order to facilitate cross-border company activities. But, on the other, no real progress has been achieved for workers – only the temporary and limited survival of national provisions for information, consultation and participation. In the past, only the strict minimum has been done to retain workers' participation rights in a European context. The new Company Law Package offers limited protection, but it seems this is only because the European Commission had no wish to renew efforts to remove worker representatives from the company boardroom.

The business community has now been given a major boost, while the workers get nothing more than what they already acquired a long time ago at national level. Why is it that we are facing such a one-sided, unbalanced approach yet again? A solution to the dilemma could lie in applying the 'real seat' principle in order to protect board-level representation and prevent the establishment of letterbox companies, money laundering and regime shopping. However, this option is not on the cards, as both tax and wage competition are considered to have positive effects and be instrumental in achieving greater efficiency.

There are two possible explanations for this: either the Commission is biased and overly business-friendly with regard to company law and considers that, following the publication of the European Pillar of Social Rights, the time is ripe to improve

13. <http://curia.europa.eu/juris/documents.jsf?num=C-106/16> (2017).

company mobility regardless of the need to improve democracy at work; or the Juncker Commission simply wasted its first years in office before coming up with a Social Pillar which, whether intentionally or not, is not the least bit concerned with promoting workplace democracy. It is indeed quite bizarre that the European Commission missed the opportunity presented by the Social Pillar in failing to introduce any changes related to workers' participation rights.¹⁴ It might even be the case that the Directorate-General for Employment, Social Affairs and Inclusion simply forgot about the plan put forward by the Directorate-General for Justice and Consumers to deliver a Company Law Package – that would be a typical example of silo thinking. Whatever the explanation, it would have been more logical to adopt a dual-track approach, making life easier for businesses whilst, at the same time, providing workers with opportunities to influence company decision-making. However, this even-handed approach – one previously adopted in relation to the European Company Statute (SE) in 2001 – was overlooked. Does this come across as an intelligent and sustainable way of working?

The discrepancy between national and European regulations is quite striking. The legislative proposals concerning business activities are genuinely 'European' in their aim to establish European rules and regulations. The proposals concerning workers' rights, however, are a mere extension of any pre-existing national rules into the European sphere, complete with a sunset clause. While the Commission is proposing new European rules for business activities, the 'country of origin' principle applies to democracy at work: companies must comply with certain rules of the country of origin, and they have to adhere to those same rules in the country of destination. This means that each company must comply with a different set of rules depending on the country of origin. This situation may result in an internal market for business, but it does not create a level playing field for workers. When the Commission began working on the issue of cross-border mobility, the rules on mergers, divisions and transfers of seat varied significantly from one country to the next. The same could be said about the state of play of democracy at work, given the wide range of rules within the EU. The Commission decided to harmonise the rules for business activities. This time, unlike the earlier proposals for the EPC or SUP, the Commission has acknowledged the rules and sought to ensure their temporary and limited survival; however, it has done nothing to ensure the equal treatment of workers. This response on the part of the Commission is incoherent – while it may be European, it also forms a scattered landscape of different national rules, all remaining totally unaffected. Therefore, this discrepancy between a national and a European approach must be challenged and rectified.

The European Commission is well aware of the loophole. At the Company Law Conference organised by the Estonian Presidency in September 2017 in Tallinn, one of the debates focused on the Company Law Package which was then in the process of preparation. One of the problems of European company law – besides letterbox

14. https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en Principle 8 on workers involvement is window dressing – as it repeats only the current state of play and makes no indication of any forthcoming initiative: 'Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies.' This shows a complete disregard for participation rights.

companies, tax and social security dumping – is the fact that it allows for circumvention and evasion of national regulations. At the conference, Professor Christoph Teichmann declared that there are two solutions to circumvention: one is to fight it, and the other is to have the same level of worker participation across Europe. He added that the latter is 'impossible for political and cultural reasons'; therefore, the only option is to 'fight circumvention' (Estonian Presidency 2017: 26, 24 et seqq.). I disputed the view that there could be no uniform rules or co-determination on the grounds that the rules around worker participation currently differ across Member States: 'The same is true for the rules for company law [...]. Division is quite different from one country to another. The question is: Do you want a European approach? If so, why do you want to apply it only to company law and not for the rest? If we want to go forward, we have to find a European solution for board-level representation.'

Ignoring this and many other debates, the Commission decided to forge ahead unilaterally. The Tallinn conference is only one example, but many others could easily be found, for instance in the countless other conferences or in the business-friendly composition of numerous Commission expert groups.¹⁵ This path could turn out to be a dangerous one. It is hardly surprising that people are turning away from Europe or are disappointed by social Europe. In the area of democracy at work, there is a great deal more evasion and circumvention going on than there is Europeanisation with regard to the protection of national rules. The Company Law Package increases this bias by delivering opportunities and even incentives for more company mobility without simultaneously delivering on democracy at work. Delivering on both issues in parallel would have constituted a more balanced approach.

It was no surprise that BusinessEurope welcomed the Package: 'For decades companies have been waiting to fully benefit from their fundamental freedom of establishment within the European Single Market. Finally, this empty space in EU law will now be filled with new legal frameworks on divisions and conversions of companies.'¹⁶ This euphoric statement from the business community highlights the need to pursue a dual-track approach, as once the 'empty space' is filled, there will no longer be any reason to accept a compromise. In the context of the Package, there has been an opportunity to strike a deal with a view to making some progress towards democracy at work. Hence, the ETUC sent an open letter to Commissioner Marianne Thyssen and Commission President Jean-Claude Juncker with regard to the Company Law Package (ETUC 2018b), asking the Commission to deliver not only on company mobility but also on more democracy at work. The ETUC presented its views at a hearing on the Company Law Package organised by the Legal Affairs Committee of the European Parliament in June 2018.¹⁷ Some progress was subsequently achieved in the work of the parliamentary committees: the ETUC proposal for an 'escalator' was adopted in the Employment and Social Affairs Committee

15. <https://corporateeurope.org/power-lobbies>. The goal of Corporate Europe Observatory is to expose the heavy influence of corporate interests on EU policies.

16. Press release: <https://www.besnesseurope.eu/publications/open-digital-door-and-bring-eu-company-law-21st-century>.

17. Draft programme of the hearing of 21 June 2018: <http://www.europarl.europa.eu/cmsdata/149414/juri-hearing-conversions-digitalisation-company-law.pdf>; recorded hearing: <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20180621-0930-COMMITTEE-JURI>; vote in EMPL on 15 November, in JURI on 6 December.

in November and again in the lead Legal Affairs Committee in December 2018, which in itself was quite an achievement.¹⁸ The European Parliament set about performing the necessary repair work. However, the final outcome of the trilogue negotiations between the European Parliament, the Commission and the Council is disappointing: the uncertainty over the future political composition of the European Parliament and errors in political priority setting allowed the Commission and Council to block any further progress towards more democracy at work. This also meant that the delegation of the EP was unable to push it through, effectively undoing the positive results already achieved in the EP. Parliament had introduced several important measures to prevent the establishment of artificial arrangements and letterbox companies in its report, but these provisions were significantly watered down in the course of the negotiations. Moreover, the most ambitious proposals put forward by the EP were not taken on board, in particular the creation of European Works Councils in the resulting companies and the establishment of board-level participation rights (along the lines of the ‘escalator’-proposal) in all companies that move from one EU country to another. In short, this was yet another missed opportunity to move towards more democracy at work and towards sustainable corporate governance and the stakeholder approach. Streeck (2018: 18) would conclude that, once again, market freedoms took precedence over social rights.

4. Business-friendly company law forever or move towards a rethinking of internal market policy?

Over the past decade, the internal market has been profoundly dysfunctional – the financial crash of 2008 led to the deepest and longest depression in recent modern history since the Second World War. European capitalism has not been functioning well over the past few years. Internal market policy has not been successful, and the same can be said of fiscal austerity. Unemployment rose substantially, especially in Spain, Portugal, Italy and Greece, and remained above its pre-crisis rate for an entire decade. Governments had been forced to use taxpayers’ money to bail out the banks.¹⁹ Investments declined in response to the rapid ‘financialisation’ of the corporate sector. Wealth inequality has grown even more than income inequality. The share of labour in GDP has fallen, whereas the top 1% of income-earners have done exceedingly well (Jacobs and Mazzucato 2016: 8). A total of 82% of the wealth generated in 2017 went to the richest 1% of the global population, while the 3.7 billion people who make up the poorest half of the world saw no increase in their wealth.²⁰ Rising inequality stems from the very high incomes of corporate executives. Labour markets became more polarised, segmented and insecure with a growing proportion of low-paid, precarious and platform

18. See for instance: Report on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (A8-0002/2019): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2019-0002+0+DOC+PDF+Vo//EN>.

19. Initial action taken to rescue the banking system cost around €1 trillion, subsequent action around € 400 billion (Schumann 2018).

20. Oxfam report, 22 January 2018: ‘Oxfam’s report outlines the key factors driving up rewards for shareholders and corporate bosses at the expense of workers’ pay and conditions. These include the erosion of workers’ rights; the excessive influence of big business over government policy-making; and the relentless corporate drive to minimize costs in order to maximize returns to shareholders.’ <https://www.oxfam.org/en/pressroom/pressreleases/2018-01-22/richest-1-percent-bagged-82-percent-wealth-created-last-year>.

workers. The trend towards social and economic divergence has not only replaced that towards convergence but has even become a feature of the EU since the crisis.

The fundamental aim of the internal market is to create a level playing field for companies. The underlying reasons for the orthodox approach run much deeper than the intellectual framework of internal market policy. This objective has the much overlooked side effect of being invasive towards employment and social legislation, including workers' participation. Internal market theory coupled with the distinctively hypertrophic interpretation of fundamental freedoms laid down in some ECJ cases (Laval, Viking, etc.) legitimise the Commission's action to establish borderless competition with the effect of there being no 'win-win' but instead a situation where 'business takes it all'. It is not out of the question that this invasive character of the internal market will become explosive in the context of an old corporate governance system based on the search for short-term shareholder value maximisation. Mainstream internal market discourse rests on a very simple underlying conception of how the internal market works. According to this conception, the internal market system is characterised by competition as a driver for economic efficiency and the search for maximum profits for shareholders, leaving aside the main societal challenges. The orthodox model provides an attractively simple framework for thinking about the internal market and internal market policy.

The conceptual assumptions on which the Company Law Package is based are internal market theory and the idea of the 'fundamental freedom of establishment', both of which are shared by the Commission, BusinessEurope and many orthodox economists. Mainstream economic thinking on the internal market is based on the notions of 'market completion' and 'market failure'. However, the concept of 'market failure' fails to provide an understanding of the threats to the functioning of the system as a whole, as occurred during the 2008 financial crisis, and therefore is not a useful tool. The company mobility package is considered by its proponents as a key step towards 'market completion'. However, (completion of) the 'internal market' is neither a value nor an objective as such; it should serve as a tool to achieve more innovative and sustainable forms of production, employment and prosperity. Mainstream economists think of a company's shareholders as its owners and characterise them as principals who engage agents to manage the company in the shareholders' interests. The logic of shareholder value maximisation dictates that shareholders own companies. In reality, however, 'Shareholders own shares. No one owns a company. Despite this legal reality the myth that shareholders are the owners of companies continues to prevail.'²¹ The problem with the corporate purpose of maximising shareholder value is that this way of thinking is intrinsically linked, as a causative factor, to the financial crisis. It is also linked to the claim that only owners and their representatives have the right to sit in company boardrooms. The question is whether an unrelenting Commission will continue to be an institutional bastion of belief in the free internal market, defending the idea that workers' representatives should not intervene in company decision-making, and believing in the superiority of flexibility, liberalisation and privatisation over fundamental social rights.

21. 'Shareholders own shares, not company', from Christopher Halburd (Frank Bold Society) <https://www.ft.com/content/74a46bc8-cbc0-11e3-8ccf-00144feabdco>. Cf. http://www.purposeofcorporation.org/documents/project_outputs/purpose_project_concept_note.pdf.

What are the alternatives? The mindset of and concepts used by the Commission and mainstream economists have to change. A more sustainable and inclusive system is possible but will require fundamental changes to how the internal market works and to how public policy is made so that it can create and shape a new framework for corporate governance. Policy measures are needed in order to reverse recent trends towards excessive executive pay schemes modelled on the precepts of neoliberal theory. One important tool to help reverse these trends is the promotion of democracy at work and, in particular, the extension of workplace democracy to the company boardroom.

5. New debates on putting workers in boardrooms

Fresh debates are emerging over putting workers on company boards: in 2016, the British Prime Minister, Theresa May, planned to reform board-level governance and put workers in boardrooms (Pratley 2016), but dropped the idea like a hot potato when faced with opposition from the UK's leading business organisation CBI. However, two years later, the UK's independent regulator Financial Reporting Council (FRC), in its updated Corporate Governance Code, recommends raising the number of employee seats on company management boards.²² During a Labour Congress in September 2018, Jeremy Corbyn, Leader of the Labour Party, unveiled a new plan that would force businesses to reserve one third of the seats on their boards for workers in all firms with 250 or more employees. In a commitment that echoes Theresa May's abandoned proposals to give workers representation in company boardrooms, Corbyn promised to give workers a 'real say' in how companies are run: 'Labour believes a worker's position is on the board. That's why we're proposing to give the workforce of all large UK businesses the right to elect a third of the seats on the board, giving employees a genuine voice and a stake, shifting the balance at work in favour of the wealth creators, improving both decision-making and productivity in the process. Decisions taken in boardrooms affect people's pay, their jobs and their pensions. Workers deserve a real say in those decisions. That's nothing for businesses to be afraid of. They should welcome the expertise and understanding that workers will bring to the company board.'²³

The French President, Emmanuel Macron, went even further during his election campaign in March 2017, promising 50% of boardroom seats for trade unions,²⁴ yet he never returned to the issue. This was followed by an appeal by politicians and intellectuals,

22. This non-binding code is based on the 'comply or explain' principle and is closely followed by listed companies. The Code recommends that companies enable staff to raise issues and problems. To this end, they are encouraged to appoint a director from the workforce, nominate a formal workforce adviser, or designate a non-executive director tasked with representing employees (*Planet Labor*, article No. 10764, published on 17 July 2018. <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF> (16 July 2018)).

23. On 23 September, 'Corbyn says Labour should welcome having workers on boards': <https://www.theguardian.com/politics/blog/live/2018/sep/26/corbyn-speech-labour-conference-set-to-address-labour-conference-as-party-rejects-mps-call-for-general-strike-politics-live?page=with:block-5bab75e2e4b072dfb217d0d9#block-5bab75e2e4b072dfb217d0d9>; <https://www.thetimes.co.uk/article/jeremy-corbyn-at-labour-party-conference-we-will-put-workers-on-company-boards-rp95pjtr6>; <https://www.independent.co.uk/news/uk/politics/jeremy-corbyn-workers-boards-labour-conference-one-third-union-a8550946.html>

24. Présidentielle 2017, 'La mesure choc de Macron pour une "cogestion à l'Allemande"': https://www.challenges.fr/election-presidentielle-2017/la-mesure-choc-de-macron-pour-une-cogestion-a-l-allemande_457583 (1 March 2017).

published in October 2017 in *Le Monde*,²⁵ calling on Macron to keep his promises. Even in the USA, in April 2018, Democratic senators Elizabeth Warren, Tammy Baldwin and Brian Schatz introduced legislation mandating that employee representatives must comprise one third of the members of the board of directors in publicly listed US corporations.²⁶ In October, US Senator Tammy Baldwin led 12 of her Senate colleagues (including Bernie Sanders and Elizabeth Warren) in calling on the Securities and Exchange Commission (SEC) to allow workers to join directors in boardrooms.²⁷ In July 2018, US labour lawyer Thomas Geoghegan from Chicago recommended that US states should try out co-determination. He proposed that US states should offer tax breaks to companies that allow rank-and-file employees to elect a third to a half of its corporate board of directors. Doing so, said Geoghegan, would allow US companies to test drive an alternative model to the current dysfunctional stockholder model.²⁸ On 4 April 2019 the Greens in the German Parliament initiated a debate on the need to apply board-level representation to all companies with more than 1000 employees. Is it not a shame that we see discussions popping up in the UK, France and the USA, but not at European level? Is it surprising or actually quite logical that continental social democratic parties remain silent on the topic? Commission President Jean-Claude Juncker, during his own election campaign in 2014, did a one-off interview in which he promised to propose minimum standards for codetermination in European companies as part of the Social Pillar once he was in office,²⁹ but he never followed through on his promise. We see a long list of empty pledges, which ultimately benefit populist movements who blame the establishment for failing to keep its promises. This raises the question of how important democracy at work really is for the European Social Model and for the EU institutions in particular. Are the trade unions willing to invest in it? If new alliances are required, which allies need to join forces? If there is to be a future for democracy at work, we will need to fight for it. However, if we take a look at the possible scenarios for this future, is damage control all we can realistically do? The Commission needs more drive to reinvigorate the issue of workers' participation. It is high time to resume the debate on more participative corporate governance in Europe.

Is there any light at the end of the tunnel? The German Labour Ministry supports a European minimum standard for board-level representation: in order to embed corporate codetermination firmly in Europe in the long term, the Federal Ministry of Labour and Social Affairs also supports the European Trade Union Confederation's call for minimum standards of employee participation to be anchored in Europe. To that end, negotiations need to be launched on a directive on minimum standards. A directive

25. *Le Monde*, 6 October 2017 (also published in German: <https://www.mitbestimmung.de/html/die-mitbestimmung-muss-gesetzlich-6192.html>).

26. George Tyler, 'Codetermination Enters The American Political Debate', <https://www.socialeurope.eu/codetermination-enters-the-american-political-debate> 20 April 2018. A poll showed that Americans would support this idea: <https://www.vox.com/2018/4/6/17086720/poll-corporate-board-democracy-worker-council-codetermination-union-labor>; Steven Hill, 'Codetermination takes the spotlight in the US', 13.02.2019: <https://www.mitbestimmung.de/html/codetermination-takes-the-spotlight-in-10518.html>

27. 'US Senator Tammy Baldwin leads effort to give workers a greater voice at public companies': <https://www.baldwin.senate.gov/press-releases/baldwin-leads-effort-to-give-workers-a-greater-voice-at-public-companies>.

28. Steven Hill, 'Trump Attacks US Workers And Labor Unions': <https://www.socialeurope.eu/trump-attacks-us-workers-and-labor-unions> (23 July 2018).

29. 'Mindestnormen in Sachen Mitbestimmung in Europas Unternehmen könnten Teil dieses Sockels sein', Für dieses Europa streiten die Kandidaten, *Die Mitbestimmung*, May 2014, p. 16: https://www.boeckler.de/pdf/p_mb_5_2014.pdf.

of this kind could also respond to the issues raised in relation to the SE – the ‘freezing of co-determination’ and the call for adjustments in the event that national thresholds are crossed – without, however, calling into question the consensus achieved on the SE itself (BMAS 2017: 161ff.). It remains to be seen how far the Ministry will be able to go in an environment where there is no overwhelming support for co-determination. Corporate lobbying seems to have become so powerful that any steps towards more democracy are threatened or blocked from the outset. The conclusion is simple: no progress has been made towards board-level representation at EU-level since 2001.

Conclusion: How can we prevent post-crisis corporate governance from following in the footsteps of pre-crisis corporate governance?

The outdated assumptions of the orthodox approach fail to provide a proper understanding of how modern markets work or how modern capitalism and corporate governance work. Drawing on these assumptions, the old rules and regulations provide incentives to policy makers who use them for political guidance. A more powerful explanatory alternative is needed. As I have demonstrated, a company is not owned by its shareholders: this key insight underpins the need for a rethinking of the concept of the ‘company’. Companies and markets are embedded in broader societal structures and conditions. Companies are constrained by non-economic institutional frameworks as well as by social and industrial relations. Companies are better understood as the interaction between economic and social actors – capital and labour – and wider institutional structures – both public and private – which are embedded in bodies of legislation and regulation, industrial relation systems, specific cultural and historical contexts that shape and constrain the nature of company activities and, in particular, business transactions. Karl Polanyi argued that companies are not purely economic institutions to which economic models can be applied (Polanyi 1944). All this creates a powerful case for rebalancing the relationship between capital and labour, and for reversing the EU’s current set-up by replacing deregulated markets with the idea of a socially embedded market economy and reconstructing industrial democracy in the digital era.

The concept of the ‘sustainable company’ is one alternative that also expresses an objective (Vitols and Kluge 2011; Vitols and Heuschmid 2013; Vitols 2015). Proponents of the sustainable company concept draw on a model of the firm not as one that seeks to optimise profit-making or shareholder value at any price, in the process causing significant collateral damage such as externalisation, but one that is based on the three-dimensionality of sustainability and the interaction between environmental, social and economic systems which constrain the behaviour of companies in competitive markets. Sustainability underlines the importance of ‘long-termism’, social responsibility and commitment, whereas ‘short-termism’ has reduced the willingness of firms to invest in employment.

Another orthodox assumption is the shareholder approach. None of the problems associated with the shareholder approach to corporate governance with its fixation on short-termism look likely to be resolved by the Company Mobility Package currently

being proposed by the Commission. This does not mean, however, that no solutions exist. Democracy at work is, first and foremost, about human dignity – the reconstitution of the dignity of all workers damaged by the devaluation of work since the 2008 crisis (through precarity, unemployment, platformisation of the economy, etc.) in contrast to the great revaluation of capital (through the financialisation of the markets and the big tech companies), with both trends being accelerated by digitalisation, robotisation, cobots and artificial intelligence.

The Silicon Valley term 'disruption' has become a buzzword. In the olden days, the disruptive process was always referred to as 'industrial revolution'. Neoliberals have a clear preference for rapid transformation, as the fast pace of change destroys old 'social safety nets', contributing to a breakdown in longstanding social relations that leads to disempowerment and the erosion of social capital and social cohesion. The fundamental societal approach of the 'disrupters' establishes a link between disruptive processes, the organisation of work, society and societal choices. The democratic principle of publicly discussing societal choices cannot simply be replaced by the de facto attitudes of certain giant tech corporations that see themselves as disrupters. The often irresponsible disruption discourse stokes apocalyptic fear, and not only among truck drivers or in former industrialised regions. Corporate governance structures evolve as a result not only of markets driven by legislation but also of the co-evolution of industry structures, technological developments, industrial policy, the role of the public sector, public authorities, public services,³⁰ social, economic and cultural traditions, institutional contexts, social and economic capital, and workers' involvement, etc.

The orthodox view that the maximisation of shareholder value will lead to greater efficiency has become a key assumption of business theory. The financial crisis has led to a loss of credibility for banks, financial institutions and orthodox economists, as well as to the delegitimisation of the shareholder model. The stakeholder approach – a powerful alternative to shareholder governance – also requires some clarification. A company's multiple stakeholders combine to form its two 'constituent' parts, both of which must be given a voice by putting representatives of capital and labour on its board.³¹ The stakeholder approach as such may be too broad in scope and lead to a shift in company policy, but the focus on the two main players is essential in order to avoid any possible misunderstandings. The involvement of all the forces of civil society in company boardrooms would essentially bureaucratised the decision-making process. However, implementing change by improving the gender balance and increasing diversity in company boardrooms is vital: a homogeneous company board of white heterosexual businessmen will arrive at very different decisions than a gender-balanced one with women and men of different origins, backgrounds, etc.

The failings of modern corporate governance are not temporary but structural and long term. Another trend of modern capitalism is the rise in greenhouse gas emissions which must be reduced substantially. Growth has always been accompanied by environmental

30. Such as schools, universities, health and social care services, housing provisions, social security, transport, energy, water, waste systems, police and defence.

31. The French trade union CFDT speaks of 'la reconnaissance des travailleurs comme partie constituante de l'entreprise'.

damage, whether through air, water or land pollution. Structural deindustrialisation has led to the transfer of production to the developing world. Very little has been undertaken in recent times to avoid such trends. The increase in the average global temperature may lead to a higher incidence of extreme weather events, displacement of peoples, conflict and the accelerated loss of ecosystems and animal and plant species. Nevertheless, such trends should not be regarded as inevitable, as the structures of capitalism and corporate governance can be reshaped and made to change course. A major transformation of energy, transport and industrial systems and corporate governance structures is required in order to tackle the problem head on.

The disjunction between internal market theory and the reality of modern capitalism and corporate governance must be addressed. Only a consistent and coherent policy can help to make the shift towards a new form of corporate governance. Part of this shift would involve the Europeanisation of board-level representation and a better representation of women in boardrooms. The digital revolution could help to develop ICT systems linked to a radical reduction of carbon emissions and material use in production and consumption lines. The switch to sustainability and the goal of a sustainable company must be an integral part of this transition. A new approach to internal market and corporate governance can accelerate such transitions, including a shift from labour taxation to energy, resource and ICT taxation.

The Fourth Industrial Revolution is having profound gender-specific impacts. Levels of female employment in the ICT sector are falling, and many women disappear within the first couple of years of entering the industry. Reports on gender discrimination in big tech firms show that there is little sign of improvement despite voluntary commitments to improve the situation. While online platforms may appear to be gender-blind, research reveals a gender pay gap. Gender inequality is embedded in the operation of platforms, and change is urgently needed.

Returning to the issue of democracy at work, we have to realise that the European trade unions – the key proponents of information, consultation and participation – became increasingly embroiled in disputes after the adoption of the 2001 SE Directive and, in particular, the 2009 EWC Recast Directive. As a result, the Barroso Commission, which was in office for a decade, failed to deliver on social progress. A major difficulty for the trade unions lies in the dilemma of being caught between an offensive struggle for counter-power through Europeanisation and a defensive battle for acquired national rights. Is a change of tack from the defensive to the offensive going to be possible? And is there any chance of the trade unions' becoming agenda setters and steering European integration towards more democracy at work? At the same time, an intellectual battle for hegemony must be waged that will eventually transform into efforts to define alternative concepts in the boardroom such as the sustainable company and its specific meaning, dimensions and potential.

Political science theorists have conceptualised European integration in a linear manner as if it were irreversible. This dogma has had a longstanding impact: many Members of the European Parliament and many civil servants at the European Commission intuitively consider more integration to be good and disintegration or 'less Europe' to

be bad, regardless of the issues at stake. This dualistic view is too simplistic and often nostalgic, comparing the current situation to the supposedly 'good old days'. Moreover, it is because of Europe that a number of well-established political parties are suffering a loss of legitimacy: they emerged in response to the dynamics of national capitalism, but were relevant only as long as capitalism remained within the confines of the nation state. The absence of a European profile symbolises that the taming of European capitalism does not constitute one of their key goals.

What is the outlook for democracy in the workplace? There appears to be no progress being made, and democracy in general is experiencing backlashes in many parts of Europe and elsewhere. Anti-establishment parties and Eurosceptic movements in Europe and in the US are gaining influence. The combination of economic and social 'malaise' has led to volatile conditions in many countries. The surprising election results in the US and the Brexit referendum were followed by further political earthquakes in Italy, Brazil and elsewhere. The political establishment appears to be rather impotent in dealing with globalisation, and its attempts to propagate a unilateral, positive vision of globalisation and digitalisation has undermined credibility and trust, contributing to a loss of public support owing to the growing gap between the richest 1% and the 'rest' of society. A window of opportunity has opened for the populists who promise that they will fix everything. Instead of an enthusiastic, optimistic, euphoric atmosphere of change, there is a sense of foreboding ushering in a new, darker era. More and more people are feeling disillusioned and abandoned by the social democrats, the 'elites', Europe, etc. and are turning to populist alternatives. While the French President, Emmanuel Macron, is busy tabling proposals for moving Europe forwards, the *gilets jaunes* – or 'yellow vests' – protest movement is calling for a 'Frexit'. Meanwhile, the 'Alternative for Germany' far-right party has added a German exit from the EU – 'Dexit' – to its agenda for 2024 and is seeking to abolish the euro and the European Parliament, unless the EU succeeds in turning itself into a 'club of nation states'.

Who will be instrumental in calling for more democracy at work in the current political climate? The European Parliament will be newly elected in May 2019. Meanwhile, the Commission is beginning to prepare for its new term in office. Some of the key issues are fairly clear: the Commission must stop being the institutional bastion of belief in the free internal market and the 'organic intellectual of the one percent'³²; it must change tack before matters spiral out of control and destroy the European integration process. Shareholder value is not and never has been a good measure of company sustainability, nor even of company performance. The Commission must pause to ensure that corporate special interests always come first. For even the most deeply embedded corporate governance regimes will break down when they no longer deliver fair results.

There is currently no political movement in Europe aimed at unlocking the economic, social and environmental benefits of a new corporate governance regime based on the stakeholder approach. Political parties, the scientific community and other stakeholders have no time to lose in taking up the issue of democracy at work. There are some glimmers

32. The actions against Wallstreet took place under the slogan: 'We are the 99%. Against the most powerful and rich few, the 1%.'

of hope that the hitherto unrelenting European Commission might start listening to its critics: for the very first time, the Commission organised a conference on sustainable corporate governance that asked all the right questions.³³ Nevertheless, the relationship between ‘soft’ and non-binding corporate governance features and ‘hard’ company law remains unclear, and the incorporation of sustainability issues into company law is still pending. Another encouraging glimmer was that the European Parliament, in a plenary vote in January 2019, endorsed the committee vote on the Company Law Package complete with ‘escalator’ provision. However, the final outcome of the trilogue negotiations was disappointing. If the Commission does not change tack, more and more people will voice their disappointment by turning away from Europe and voting instead for those political parties willing to dismantle it. Ultimately, the trade union movement alone will not be able to stop this disintegration from occurring. However, without the European trade unions’ playing a critical role in helping to achieve these crucial goals, changing tack will not work. It is a major challenge for the European trade union movement to gain hegemony on an alternative vision of sustainable corporate governance with strengthened board-level representation rights and new sustainable company law at its core.

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33. Conference held on 24 January 2019. Questions such as: Should the ‘interest of the company’ be clarified to ensure that stakeholders’ and wider society’s interests are also taken into account in corporate decisions? How would this be done? What other measures can be taken to mainstream sustainable corporate governance?

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Chapter 3

Profit, investment and inequality: a preliminary view

Matthieu Méaulle

Introduction

According to the standard national accounting definition, the value created in the economy is equal to the amount by which the factors of production are rewarded. In other words, the ‘G[ross] D[omestic] P[roduct] [which] measures the monetary value of final goods and services – that are bought by the final user – produced in a country in a given period of time (say a quarter or a year)’ (Callen 2018) is equal to the sum of profits and the total amount of compensation of employees. On the other hand, national accounting also defines gross domestic product as the sum of final consumption, investment and exports minus imports. For now, our intention here is to disregard government intervention.

It is now an established fact, according to the International Labour Organization (ILO 2016), the International Monetary Fund (IMF 2017a), the Organisation for Economic Co-operation and Development (OECD 2018) and the European Commission, among others, that the share of profits in gross domestic product, despite experiencing a fall during the crisis followed by a period of gradual recovery, has been increasing since the 1980s.

For the past 30 years, we have been told that wage increases could be detrimental to investment – not necessarily with regard to profit and competitiveness, but mainly because they generate uncertainty, especially about the evolution of inflation rates. Wage development had to be relegated to an impediment to growth rather than a stimulus for investment. Wage constraints became the rule, while the primacy of profit-making for investment became the norm.

Our intention is to determine whether this increase in profits as a share of domestic income has been translated into new investment for production. As we shall see, the increase in profit shares does not translate into an increase in private investment as a share of GDP, as expressed in a famous quote by former German Chancellor, Helmut Schmidt: ‘today’s profits are tomorrow’s investments and the day after tomorrow’s jobs’.¹ In fact, it appears that more and more profits are either distributed to shareholders or diverted towards financial assets. We would argue that such a move, combined with below-productivity wage increases, is also detrimental to inequality development, particularly at the expense of the middle class. Continuing to engage in such economic development – favouring profit increases at the expense of wage development – leads

1. Taken from a speech delivered on 3 November 1974.

to a vicious circle, for as wages decrease as a share of domestic income, the expected demand for new investment also decreases, while the shift towards financial market operations becomes somewhat more rewarding.

The conclusion to be drawn from these preliminary considerations is that the curbing of inequality cannot exist as a stand-alone social policy but must be complemented by the curbing of financial developments and an increase in the scale and progressivity of the tax system. Any action based on social policy alone could run the risk of causing the disappearance of the middle class and the development of a large low-income class, all for the benefit of the few richest households. Increasing financial regulation should prevent pure financial operations and limit the increase in financial incomes, for the benefit of the real economy. Increasing the scale and progressivity of the tax system would reduce inequality and make social policies more effective.

1. Profit and investment developments

Investment is of central importance to economic development, not only because investment, as a monetary magnitude, is a share of the value created each year, but also because fluctuations in productive investment are good indicators of future economic development. Investment in the necessary tools for production is, therefore, an essential ingredient for value creation in the future. In this respect, it provides a bridge between our current activities and our preparations for the future.

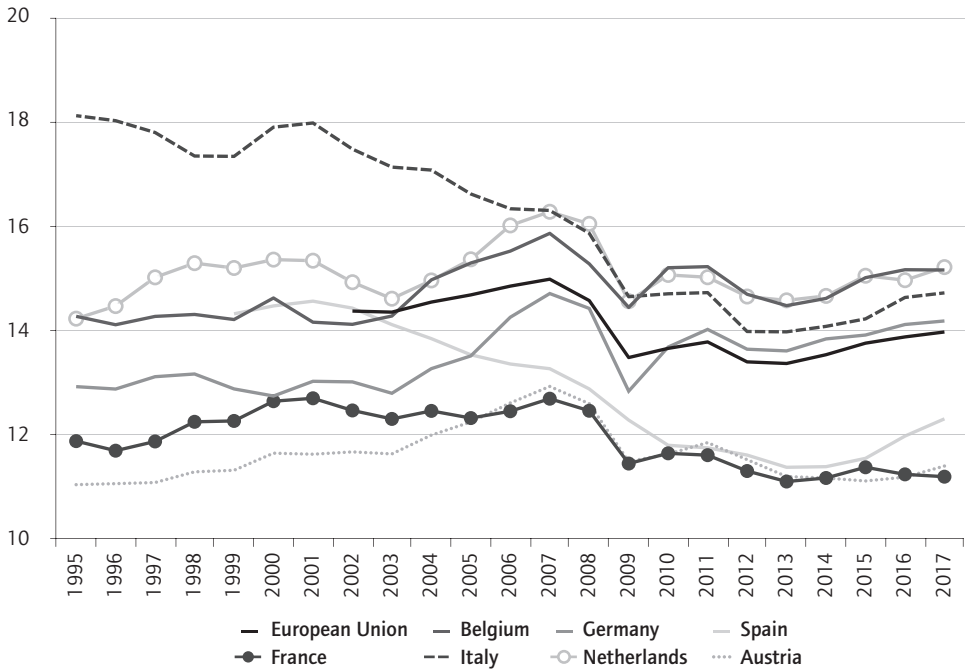
First, we needed to ascertain whether the returns on investment are sufficient to warrant the launch of new investment projects. To that end, we used a measure of the profit rate in order to assess the profitability of investment projects. The rates of profit are measured as profits and mixed income, over the net capital stock,² plus employees' compensation. Although some Member States recorded a decline in profit rates and volatility, the rates remained fairly stable at between 11% and 15%. With the exception of Spain and Italy, profit rates were all increasing before the crisis, even across the European Union as a whole, and trends thereafter show a gradual recovery (Figure 1).

Gross profits are defined as the gross operating surplus of the total economy. According to the national accounting definition, the gross operating surplus of the total economy, or total profits, can be compiled as the gross domestic product at current market prices minus employees' compensation, which includes wages and salaries and employers' social contributions and taxes linked to imports and production minus subsidies.

Although profits decreased during the crisis, they subsequently recovered and resumed the upward trends that they were experiencing before the crisis. Despite the fall in profits during the crisis, new investment projects were still launched in addition to the maintenance of the capital stock, thus implying an increase in total profits (Figure 2).

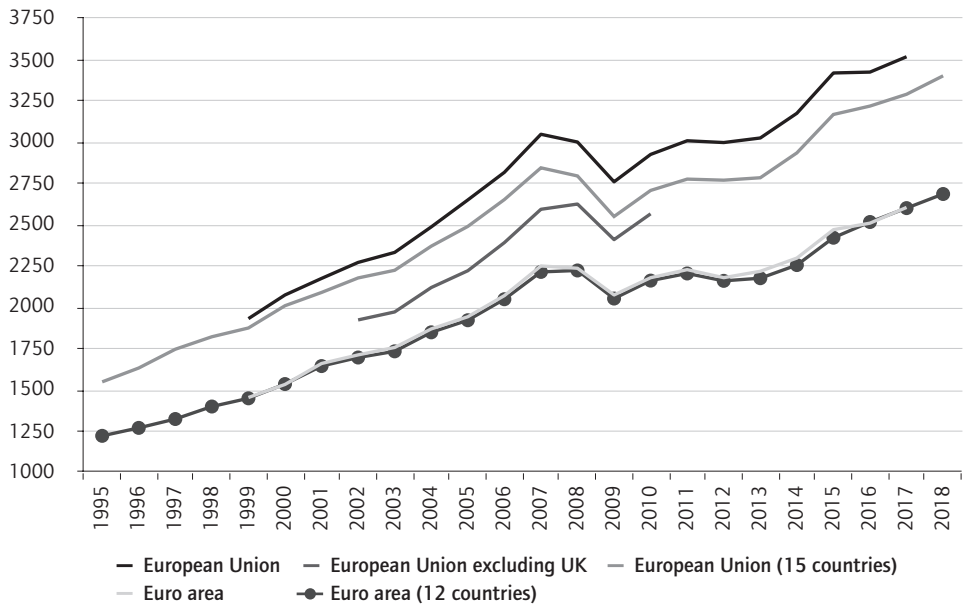
2. Defined as the net capital stock at date t-1 plus gross fixed capital formation at date t minus consumption of fixed capital at date t.

Figure 1 Rates of profit



Source: AMECO and Eurostat Databases, own calculations.

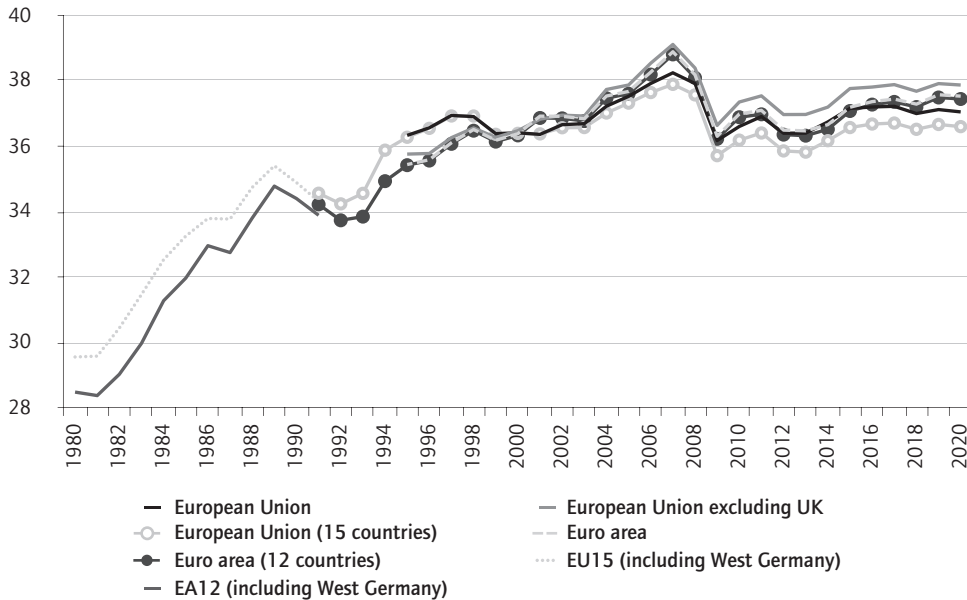
Figure 2 Gross operating surpluses (billion euros)



Source: AMECO Database.

Expressed as percentages, the figures are striking. In line with the call for profit development as a driver of growth, profits have increased as a share of GDP. Here, gross domestic product is calculated at current factor cost, which involves calculating GDP at market price minus taxes on production and imports plus subsidies, so as to produce a more accurate picture of income distribution patterns between labour and capital (Figure 3).

Figure 3 Adjusted profit as shares of GDP at current factor cost

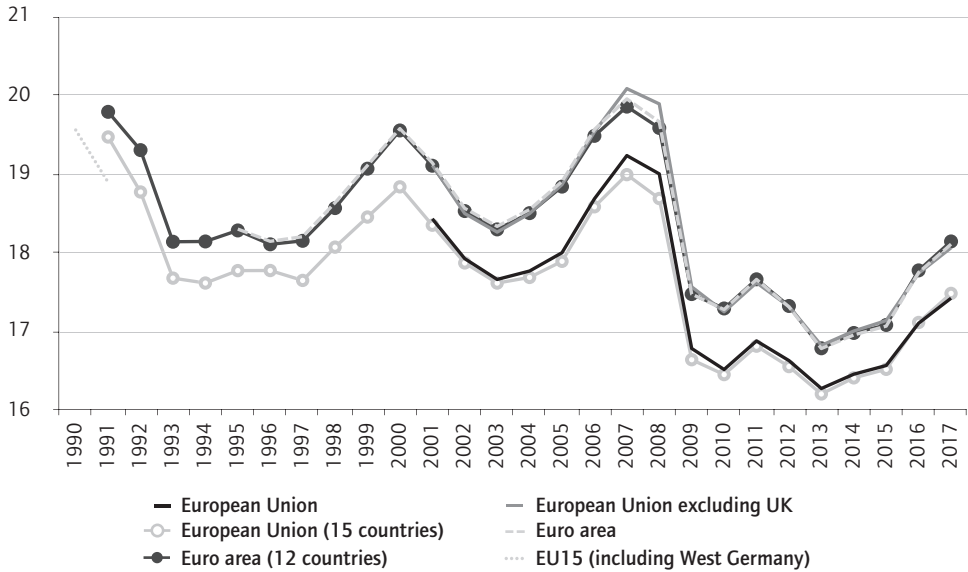


Source: AMECO Database, own calculations.

Profits developed at a faster pace than gross domestic product, since the share of profits in gross domestic product – which ranged from 24% to 33% in 1980 – has now increased to between 32% and 40%. For the European Union as a whole, in its different settings, it moved from around 28.5% in 1980 to about 37%. Although profit shares decreased during the crisis, they are slowly recovering their pre-crisis levels. This means that an increasing proportion of productivity growth was devoted to profits at the expense of wage developments.

Since profits in monetary terms have almost continuously increased, along with the share of GDP, it is possible to assess whether this rise in profit was subsequently translated into further investment or diverted to other sources of revenue. As a share of GDP, we can see that annual gross investment is on a decreasing trend, casting doubt on the role of profit as an engine of economic growth (Figure 4).

Figure 4 Private investment as a share of GDP

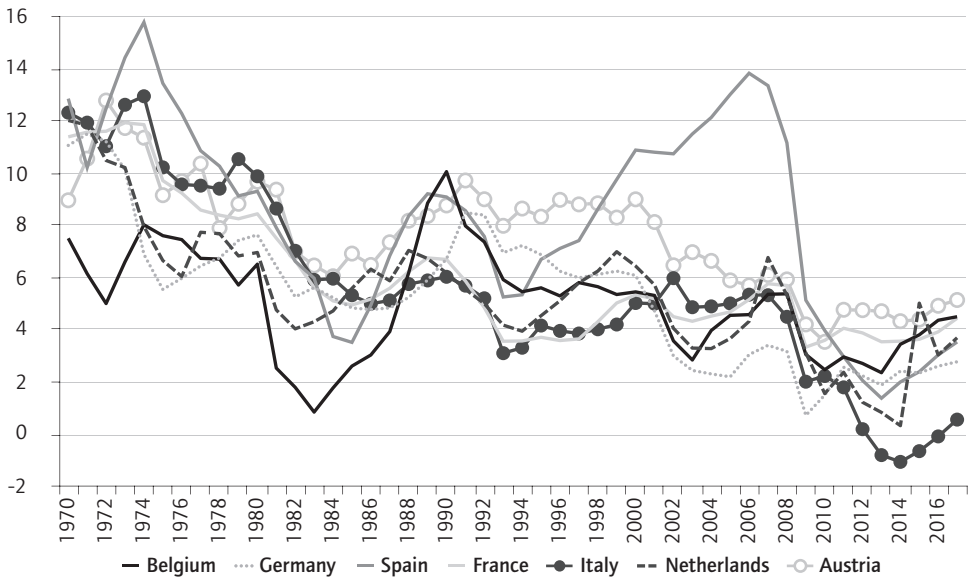


Source: AMECO Database, own calculations.

Moreover, if we look at new investment and not only gross investment spending, which includes capital depreciation, the figures are even more striking. We can therefore safely conclude that the increase in profit shares did not lead to further new investment. This means that corporations are still spending money to maintain the value and profitability of their capital stocks, which crystallises past investments, but they are spending less as a share of GDP on new investment projects (Figures 5a and 5b).

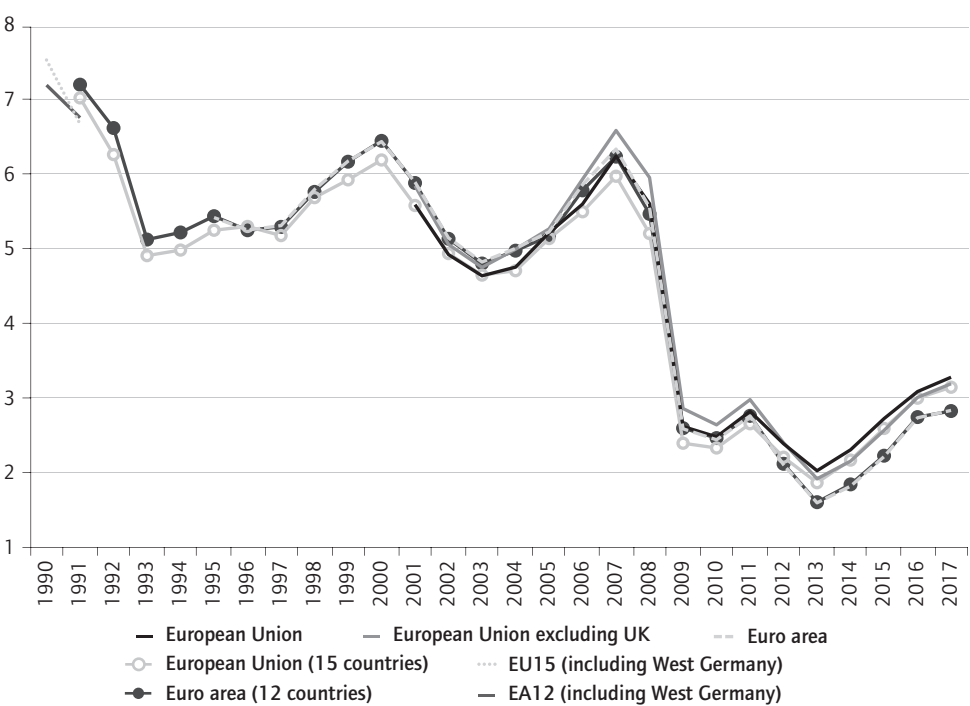
At corporate level, the share of net investment in net profit after capital depreciation, is on a decreasing trend (Figure 6), along with the additional fixed asset to operating income ratio after dividend payments for publicly listed non-financial companies (Tori and Onaran 2017). This means that, while profit as a share of GDP is increasing, the share of profit devoted to physical means of production is on a decreasing trend. In this respect, profit and investment figures show that we are failing to prepare our economic system for the challenges it will face in the future.

Figure 5a Net fixed private investment as a share of GDP



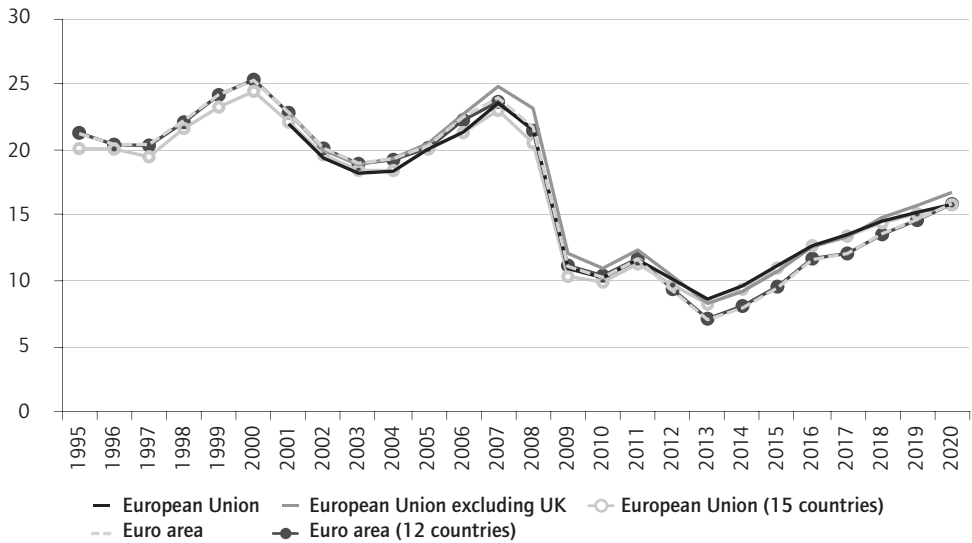
Source: AMECO Database, own calculations.

Figure 5b Net fixed private investment as a share of GDP



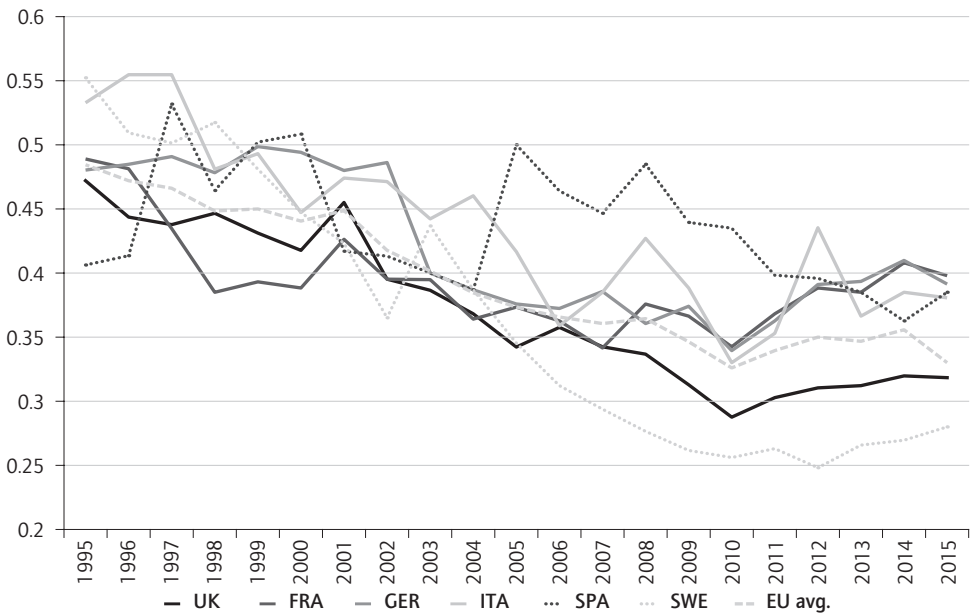
Source: AMECO Database, own calculations.

Figure 6 Net investment as a share of net profit



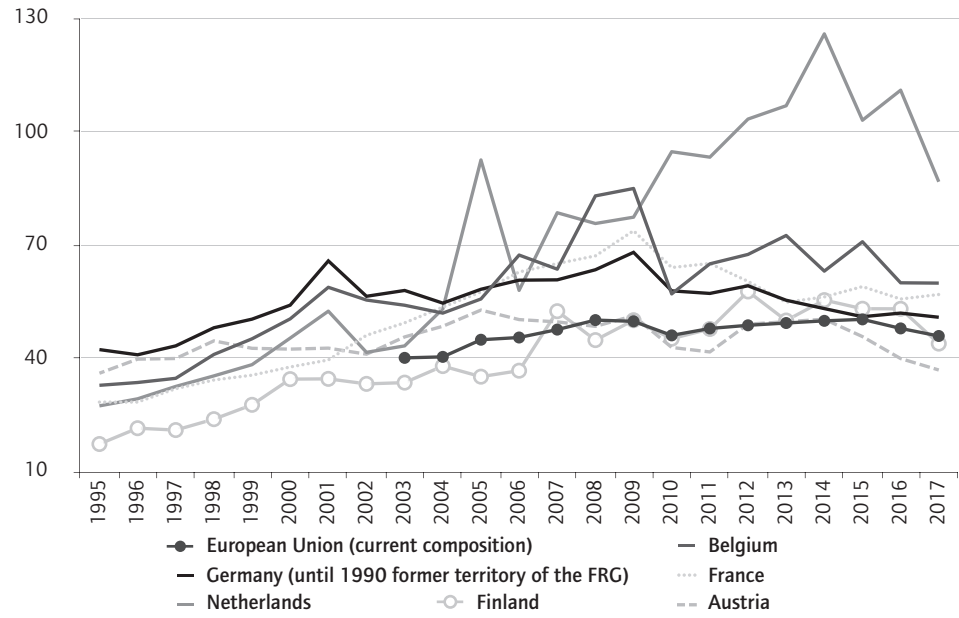
Source: AMECO Database, own calculations.

Figure 7 Additions to fixed assets/operating income



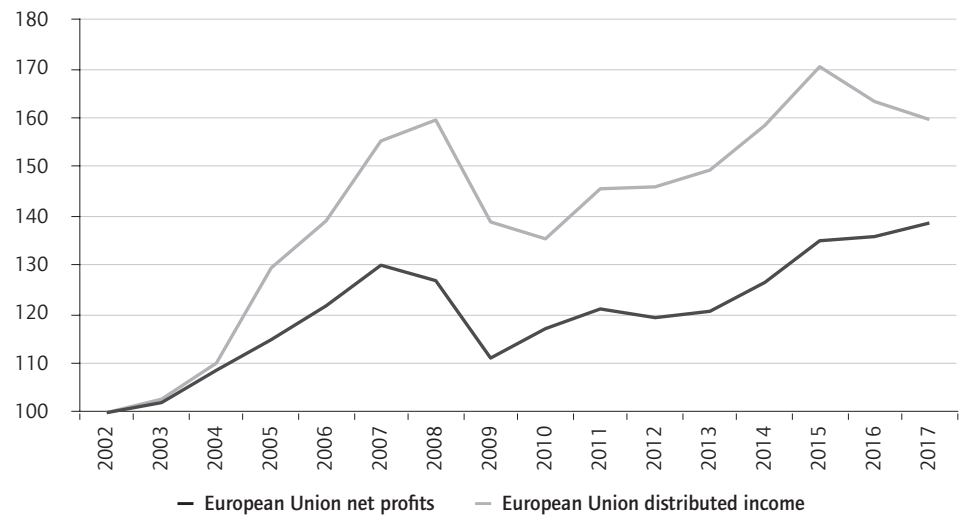
Source: D. Tori and Ö. Onaran (2017).

Figure 8a Distributed income of corporations as a share of total net profits



Source: Eurostat Database, own calculations.

Figure 8b Growth in European Union net profits and distributed income

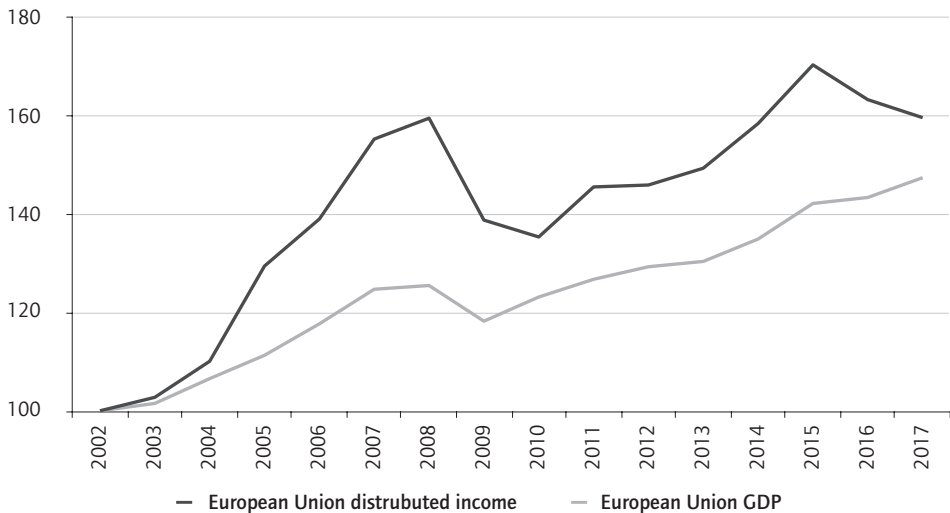


Source: Eurostat Database, own calculations.

A discrepancy emerges between the development of profit and that of private net investment, both as a share of GDP: one is increasing while the other is decreasing. This could mean that the profit increases were not translated into new investments but were distributed as dividends (distributed income) or used for the acquisition of financial assets. Since profits developed at a faster pace than GDP, as the figures for profit shares confirm, there is a likelihood that the increase in non-invested profits as a share of total net profits (Figures 8a and 8b) and GDP (Figure 9) are both increasing. Here, distributed income represents dividend payments made by corporations.

Since we already know that profits have increased as a share of GDP, along with dividend payments as a share of net profits, we are likely to see an increase in dividends as a share of GDP (Figure 9).

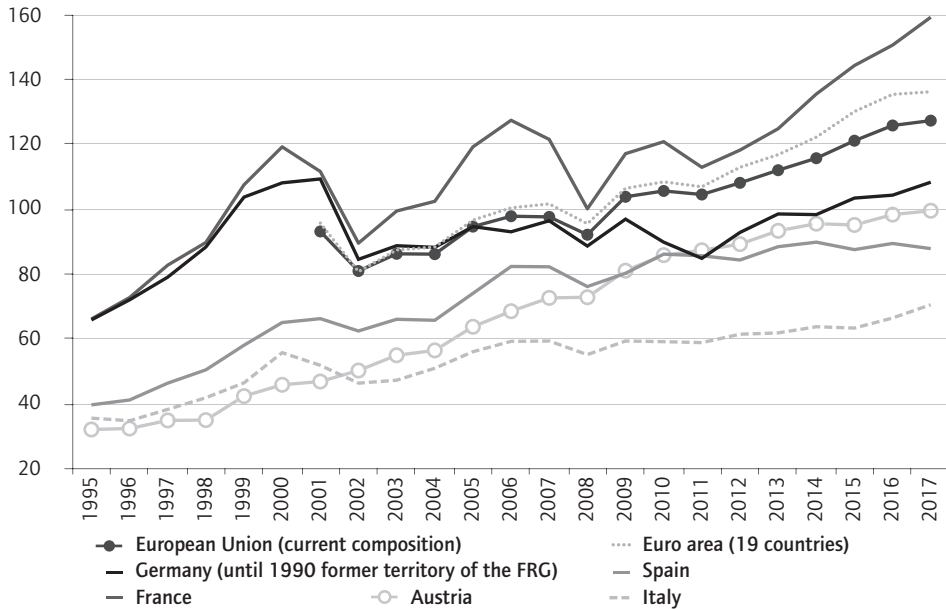
Figure 9 Growth of European Union distributed income and GDP



Source: Eurostat Database, own calculations.

At the same time, the share of financial assets acquired by non-financial corporations as a share of GDP is on the rise (Figure 10).

Figure 10 Non-financial corporations' financial assets as a share of GDP



Source: Eurostat Database, own calculations.

We conclude this section by contesting the belief that increased profit is the right driver for economic development. As we have already seen, the increased profits were not translated into further new investments, while an increasing proportion of funds were diverted from productive activities toward financial operations and distributed income. According to Tori and Onaran (2017), these are ‘funds [diverted] from real investment towards the accumulation of non-operating financial assets.’

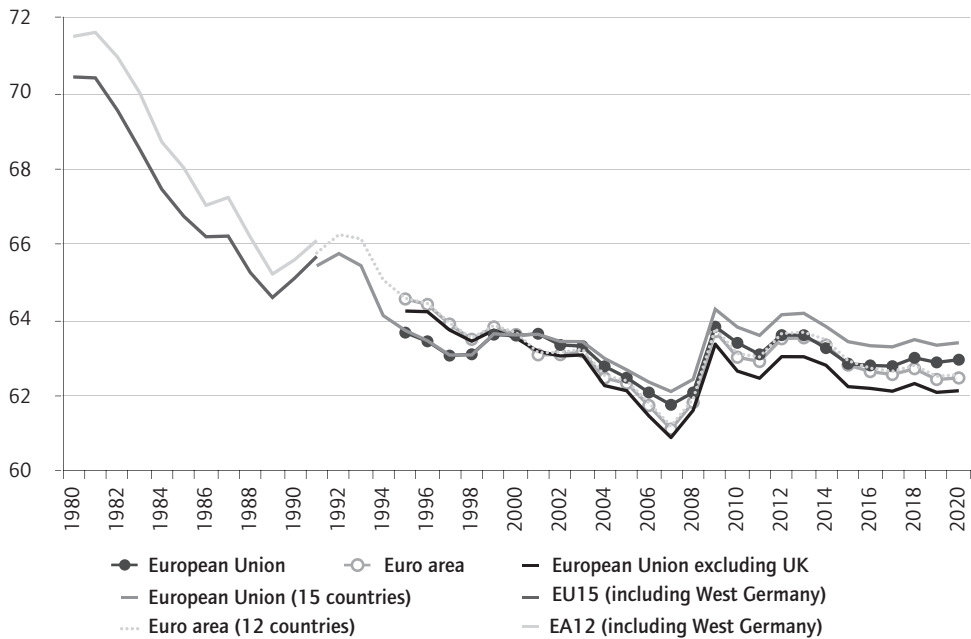
2. Inequality issues

Inequality also warrants some attention. It has often been said that inequality is the price we have to pay for economic growth. We have doubts on this issue since, as we highlighted earlier, the increased share of profit in GDP was not translated into increased investment as a share of GDP but was diverted towards financial assets and dividends. Inequality was also considered to be one of the main causes of the financial crisis. It will be interesting to see whether this situation has changed and whether poverty levels have decreased as a result of the expected growth generated by the increase in profits as a share of GDP.

Income inequality

While the figures show an increase in profit shares in GDP at current factor cost, they also show a decrease in wage shares in GDP at current factor cost (Figure 11). However, the wage share is not a tool as such for assessing inequality between people; it is more a means of measuring the capital/labour income distribution in production.

Figure 11 Adjusted wage as share of GDP at current factor cost



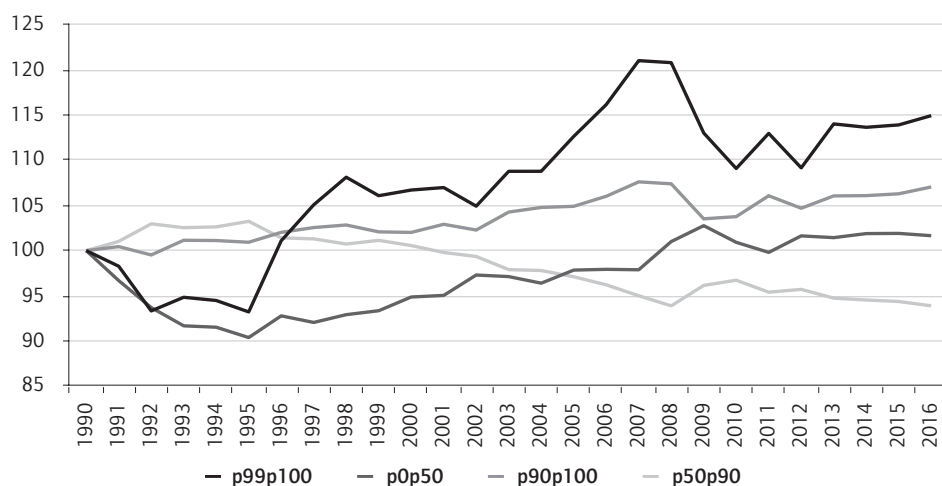
Source: AMECO Database.

This means that wage developments did not keep in step with productivity developments. Wage earners participate in the production process but receive a decreasing relative share of the pie. On the other hand, it also means that capital owners receive an increasing share, as shown in the previous section.

If we analyse the development of income shares in European income, it becomes evident that the poorest saw their wage share remain the same between 1990 and 2016, while the richest 1% and 10% saw their share increase at the expense of the middle class (Figure 12). In this respect, it can be said that inequality has increased, even after the financial crisis. However, it is also clear that the main issue lies in the increase in income shares of the richest 1%. In Europe, while the full population experienced an income growth of 40% between 1980 and 2016, the bottom 50% income group saw its income rise by 26%, the top 10% by 58%, the top 1% by 72%, the top 0.1% by 76%, the top 0.01% by 87% and, finally, the top 0.001% by 120%.³

3. World Inequality Lab (2018).

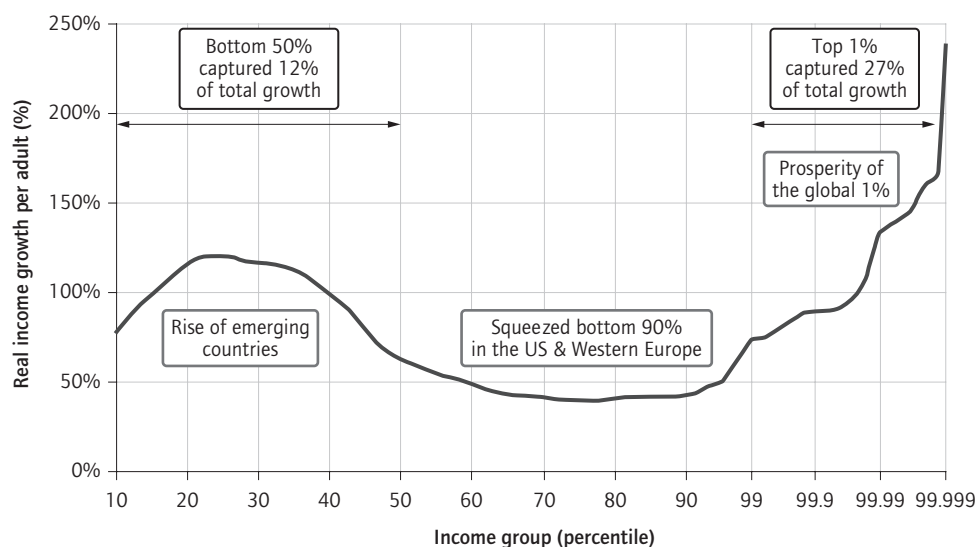
Figure 12 Development of income shares



Source: World Inequality Database, own calculations.

If we compare the increase in the share of income received by income level since 1980 and the growth in real income per adult, as shown in the World Inequality Report 2018 (Figure 13), it appears that, at global level, 27% of the real wage growth was received by the 1% richest (this figure is 28% according to the US-Canada and Western Europe calculations by the World Inequality Lab (2018)), while the poorest 50% received only 12% (this figure is 9% according to the US-Canada and Western Europe calculations by the World Inequality Lab (2018)).

Figure 13 The elephant curve of global inequality and growth, 1980-2016



Source: World Inequality Lab 2018.

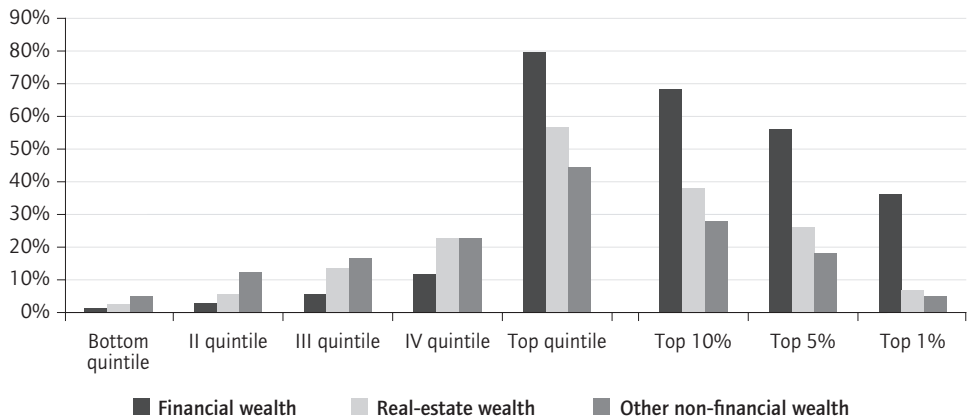
As stated in the World Inequality Report 2018, ‘In western continental Europe, inequality has also been on the rise since the late 1970s.’

Wealth inequality

Wealth refers to any income stream that is accumulated and not consumed. This corresponds to the total amount of assets owned by an individual or household, which includes both real assets (such as property or land) and financial assets (such as bonds, stocks and private pension rights). Wealth inequality therefore refers to the unequal distribution of assets in a group of people. As high-income households save a higher proportion of their income compared to poor families, wealth inequality is greater than income inequality.⁴ Wealth is also accumulated faster than labour income, as interest rates tend to outpace the growth rate.

Julius Bär (2014) estimates that the wealthiest 10% of European households, with a net wealth of at least EUR 850 000, own 52% of total wealth, while the wealthiest 1% of European households have a net wealth of at least EUR 1.5 million and own 27% of total European wealth. In addition, it can be seen that the wealth accumulated by the richest households is concentrated in financial wealth compared to that in the lowest quintile, and this implies an even greater level of inequality (Figures 14 and 15).

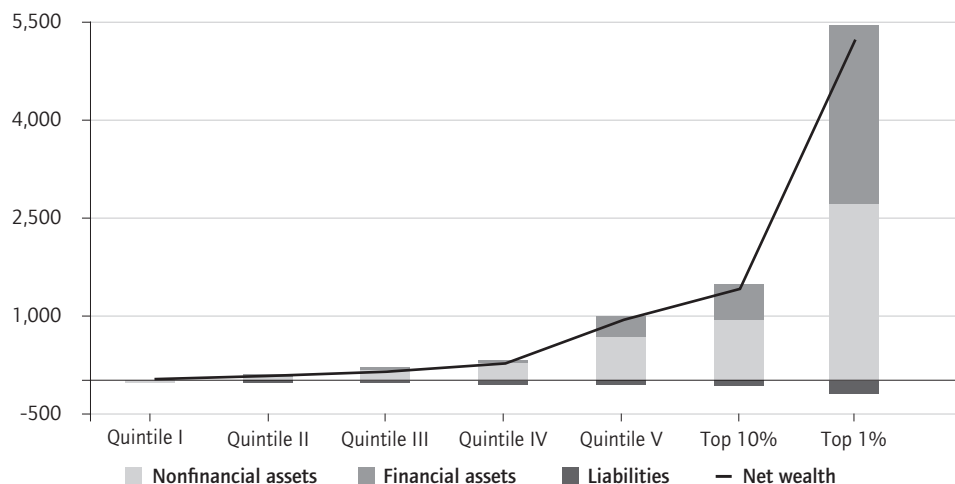
Figure 14 Shares of financial and non-financial assets for households belonging to different quintiles of the wealth distribution



Source: Balestra and Tonkin 2018.

4. See European Commission (2018b).

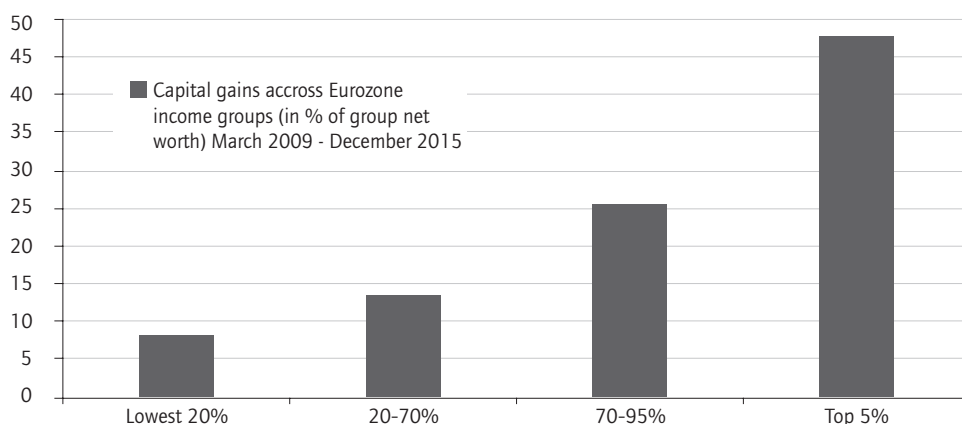
Figure 15 Household wealth composition by quintile and in top percentiles, average among OECD countries, 2010 or latest available year*



Note : * Thousands of 2005 US dollars at purchasing-power parity and adjusted by consumer price indices.
Source: Reproduced in IMF Fiscal Monitor 2017.

Since the global economy started to recover from the financial crisis in 2009, asset price developments have, on balance, increased wealth inequality. Owing to the combined impact of bond, equity and house price developments, households have been able to realise capital gains varying from 8% for households in the lowest income group to 48% for the top 5% (Figure 16). But, of course, households that do not own any assets have not benefitted from this at all. This is particularly true for households with lower incomes, as participation in equity and mutual fund holdings generally increases with income.⁵

Figure 16 Increasing wealth inequality



Source: ING 2016.

5. See ING (2016).

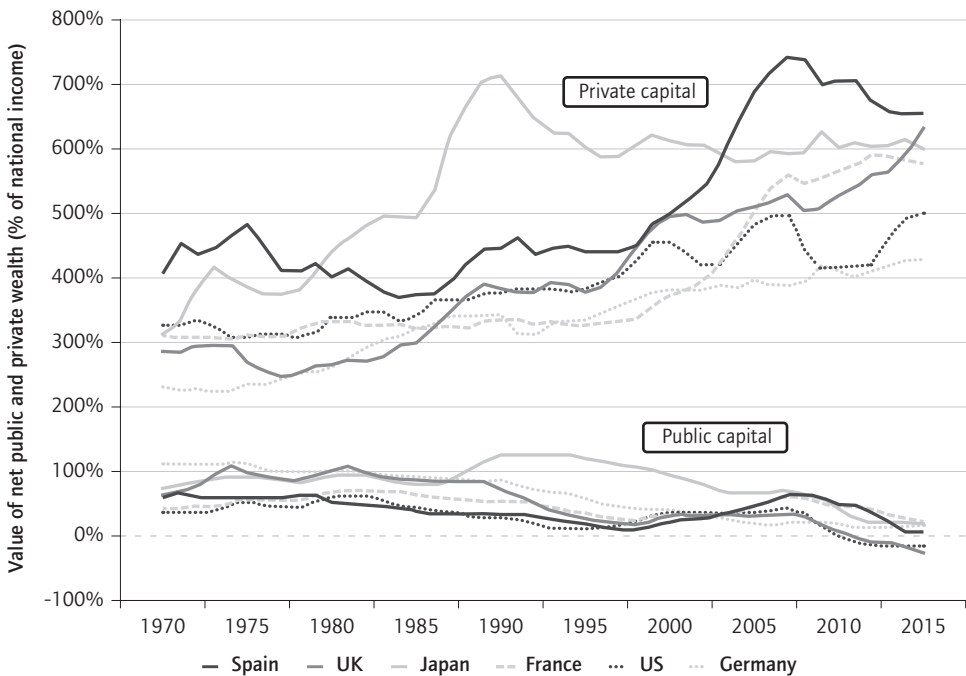
As stated in Balestra and Tonkin (2018), ‘Because of its high concentration at the top of the distribution, ownership of financial assets is the main factor influencing overall wealth inequality, [...] which also shows that higher prices of financial assets are associated with a larger share of wealth going to the richest 10% of households.’

Finally, inherited wealth as a share of aggregated private wealth appears to be on the rise, especially in the UK and Germany. After the beginning of the 20th century, the stock of inherited wealth as a share of private wealth was continuously decreasing, reaching a low of around 30% in 1970 and increasing back up to about 55% today, more or less the level it was between the 1920s and 1940s.⁶

Private wealth and national income

A general rise in the ratio between net private wealth and national income has been observed in nearly all countries in recent decades. Public wealth has declined in most countries since the 1980s. Net public wealth (public assets minus public debts) has even become negative in recent years in the United States and the UK, and is only slightly positive in Japan, Germany, and France. This arguably limits government ability to regulate the economy, redistribute income and mitigate rising inequality (Figure 17).

Figure 17 The rise of private capital and the fall of public capital in rich countries, 1970-2016



Source: World Inequality Report 2018.

6. See Alvaredo F. *et al.* (2017).

This means that the net value of the stock of public capital is depreciating and that inequality is therefore increasing, as the poorest households are benefiting less, in proportion to their incomes, from public good and services. Indeed, since 2008, public investment figures as a share of GDP have been continuously decreasing, recently reaching negative net investment levels, especially in the euro area, while public debts resulting from deficit spending have, in part, been feeding the system.

Poverty

While the rate of poverty⁷ before social transfers since the crisis has remained at a very high and stable level, it is clear that social transfers have become less effective since at least 2005 (Figures 18a and 18b). The rate of poverty after social transfers has been on the rise in the European Union. This casts doubt on the ‘trickle-down’ effect or theory, which generally refers to the economic proposition that taxes on businesses and the wealthy in society should be reduced as a means to stimulate business investment in the short term and benefit society at large in the long term.

Taxation

As mentioned above, profit development is widely considered to be a driver of economic growth. For this to be the case, any barriers to profit creation have to be removed, and the simplest way of doing that is to reduce corporate taxation. If households are to act as financial investors, then their income taxes should also be decreased, as this creates the knock-on effect of increasing consumption and stimulating investment. However, VAT rates are increasing, and this has somewhat less of an impact on the richest households, who have the lowest propensity to consume.

As shown in the graph below (Figure 19), over the past two decades, top corporate tax rates have been in constant decline in the European Union.⁸ This is a global trend, as observed by Gerber *et al.* (2018).

As illustrated in the graph below (Figure 20), the EU-28 average top personal income tax (PIT) rate was in constant decline until 2009. 2010 was the first year after more than a decade in which more Member States raised the top PIT rate than reduced it. Since then, the average top PIT rate has been relatively stable.⁹ This trend is also visible across the world.¹⁰

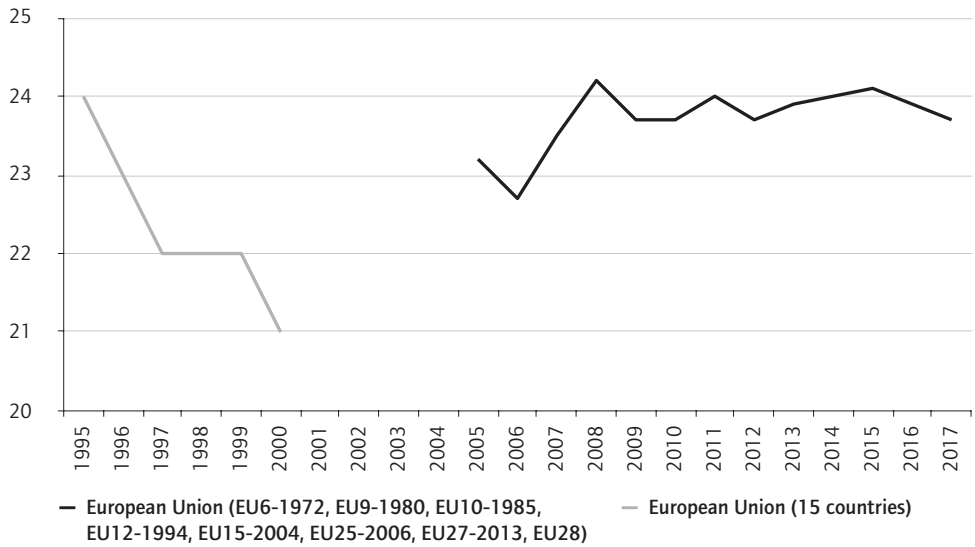
7. Threshold is at 60 % of national median equivalised disposable income.

8. See European Commission (2018b).

9. See European Commission (2018b).

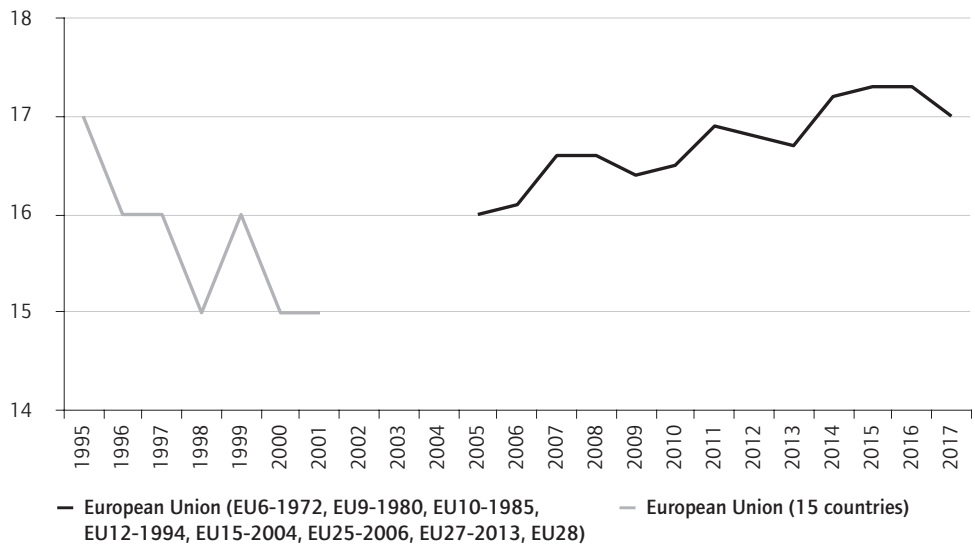
10. See Gerber *et al.* (2018).

Figure 18a At risk of poverty rate before transfers



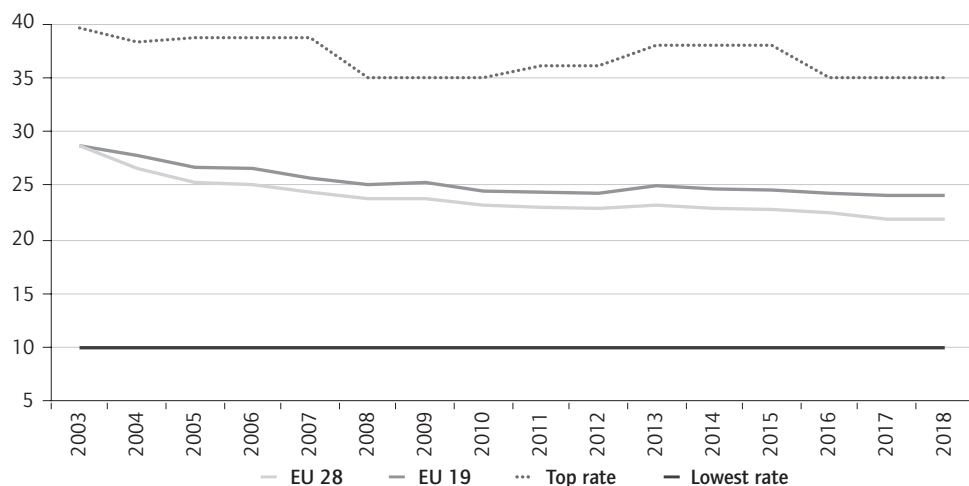
Source: Eurostat Database.

Figure 18b At risk of poverty rate after transfers



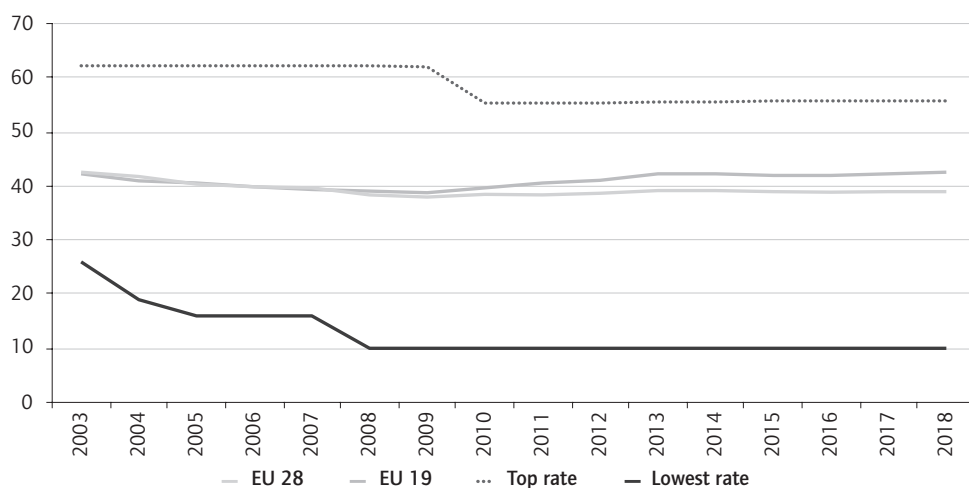
Source: Eurostat Database.

Figure 19 Top corporate tax rate - EU 28 and EU 19 average and range



Source: European Commission 2018a.

Figure 20 Top personal income tax rate - EU 28 and EU 19 average and range



Source: European Commission 2018a.

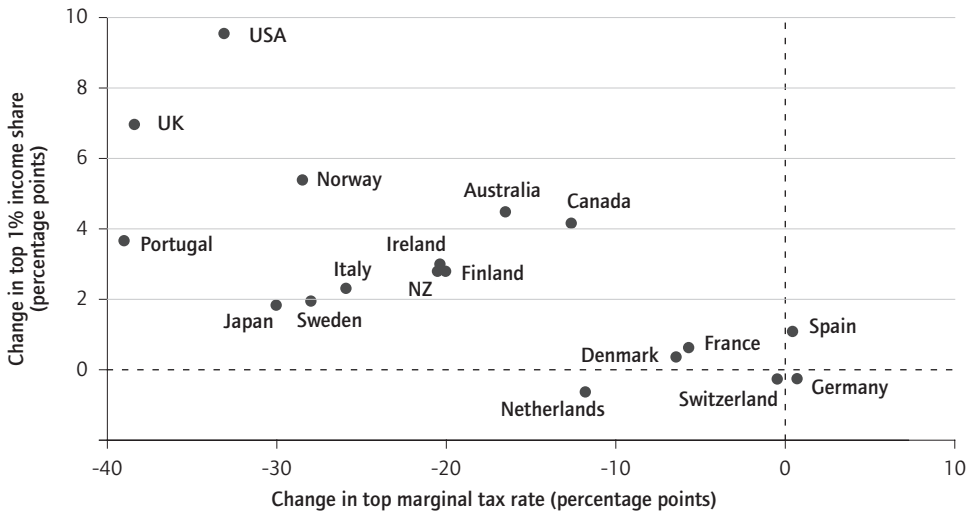
Moreover, as stated by the IMF (2017b), ‘Tax progressivity – the degree to which the average tax rate rises with income – has been on a declining trend in recent decades’ in the OECD. ‘Irrespective of the chosen measure, PIT progressivity declined steeply in the 1980s and 1990s’, the report continues. Ultimately, ‘tax systems may be even less progressive than suggested by these measures,¹¹ because wealthy individuals often have more access to tax relief and more opportunities to avoid taxes [...]’, while ‘Many tax

¹¹. See IMF (2017b).

reforms since the 1990s have involved an increase in the exemption threshold together with a lower top PIT rate, causing a shift in the tax burden from very low and very high incomes toward the middle’.

Figure 21 shows the relationship between changes in top marginal tax rates and in the top 1% pre-tax income share in OECD countries, which occurred between the early 1970s and the late 2000s. The correlation is particularly strong: on average, a 2 percentage point drop in the top marginal tax rate is associated with a 1 percentage point increase in the top 1% pre-tax income share. Countries such as Germany, Spain, Denmark and Switzerland, which did not experience any significant top rate tax cut, did not experience increases in top income shares. Conversely, the United States, UK and Canada experienced important reductions in top marginal tax rates and saw their top 1% income shares substantially increase. This graph strongly suggests that top tax rates play a key role in moderating pre-tax top incomes.¹²

Figure 21 Changes in top marginal tax rates and top income shares in rich countries since the 1970s



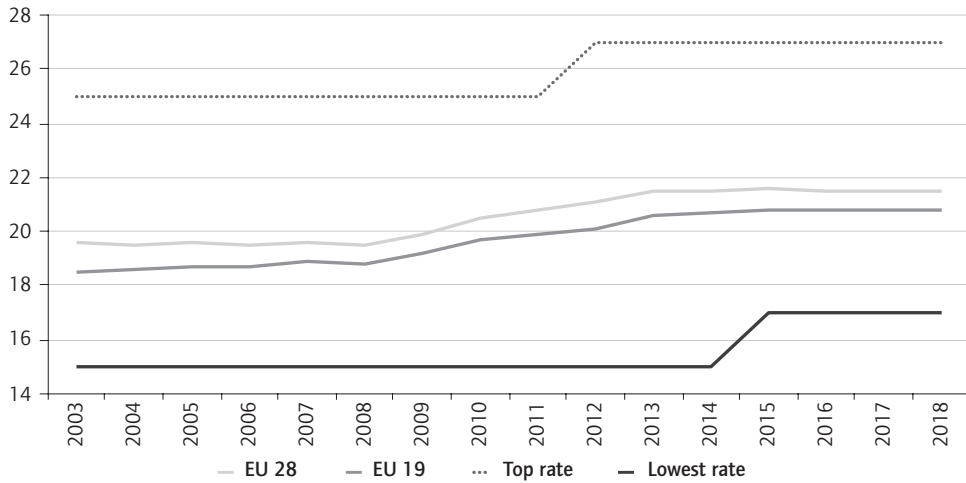
Source: World Inequality Report 2018.

Finally, value added tax rates across Europe are increasing,¹³ which represents a higher share in the poorest income households compared to the richest, as VAT is a proportional tax.

12. See World Inequality Lab (2018).

13. See European Commission (2018b).

Figure 22 Standard VAT-Rate – EU 28 and EU 19 average and range



Source: European Commission 2018a.

Conclusion

By drawing on standard national accounting definitions, we endeavoured to determine whether the call for increased profits led to an increase in investment as a share of domestic income. We observed that profit developments did not take long to recover after the financial crisis, resuming at a similar pace to that in the years preceding the crisis. We sought to determine whether this rise in profit as a share of GDP was translated into new investment projects as a share of GDP. This proved not to be the case, and we therefore contested the view of profit as an engine of economic growth.

We therefore tried to identify where additional profits were being diverted. We observed that an increasing share of net profits, after deduction of capital depreciation, were being distributed as dividends and diverted away from productive activities. Since profits increased at a faster pace than GDP in the period, in view of the rise in profit shares, we deduced and demonstrated that an increasing proportion of profit was being diverted away from the real economy towards financial activities, such as dividends and financial assets. To a certain extent, this is hardly surprising given the returns that can be expected from investing in the financial markets compared to the real economy, especially if there is a decline in the wage share of the economy.

We also endeavoured to show that the income and wealth of the richest households increasingly come from financial sources. We therefore tried to establish a link between the lack of investment and the increasing inequality in income and wealth in Europe. In so doing, we sought to demonstrate that wealth inequality is exacerbated by income inequality and that wealth is increasingly inherited, creating a further layer of inequality.

Since profit development and increased consumption were considered to be the real engines of economic growth, all corporate tax rates were lowered, and the top marginal income tax rates were cut. Meanwhile, progressivity in income tax rates decreased. This was compensated by public intervention, but at the cost of diminishing the value of the public capital stock, a move which comes at the expense of the low and middle classes who are liable to repay the debt to the richest for lending their non-taxed income and wealth. Finally, proportional taxes, VAT especially, were raised.

Therefore, it is possible to conclude that inequality is indeed detrimental to growth,¹⁴ since the additional profits are not reinvested as a means of increasing growth potential. Moreover, we cannot expect social policy alone to resolve the situation. As we have endeavoured to show, this diversion of investment away from the real economy that has been ongoing since the 1980s is creating a vicious circle which could be resolved either by means of fiscal intervention, though public deficit-spending, and/or by means of monetary intervention, through quantitative easing.

Corporate tax rates should certainly be higher (putting an end to the race to the bottom), and personal income tax rates should be more progressive and higher. But there is also an urgent need to reverse the decline in the wage share. Financial regulation also needs to be relaunched, and not only that of the banking system, in order to disincentivise diverting profit towards financial activities and prevent an increase in inequality, and in so doing bring more stability to the financial markets.

In other words, inequality is not merely the result of poor social policies; it is also an integrated ingredient of a degenerative productive system, siphoning away at the bases of the economic system for creating financial wealth.

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Chapter 4

The European social dialogue

Juliane Bir

Introduction

The origins of autonomous and bipartite European social dialogue can be traced back some 30 years. This period has been marked by distinct stages of development, ups and downs, successes and failures. This article does not purport to cover all the ins and outs or provide a comprehensive evaluation of the social dialogue process. It does, however, give a presentation of its general framework and review the most significant recent developments in the field.

At a time when the relaunch of social dialogue is being promoted and the social partners, either jointly or separately, are trying to evaluate its content and tools, there appears to be a fundamental need to define, or perhaps redefine, the concept of European social dialogue, as well as to ask some questions about its future prospects.

The first part of this article will present the general framework of social dialogue: its definition, stakeholders, evolution and main results. The second part will focus on recent developments in autonomous, bipartite social dialogue. The third and final part of the article will draw a number of conclusions and discuss the various perspectives for social dialogue. The outcomes of sectoral social dialogue will not be addressed in this article.

1. What is European social dialogue?

1.1 Definition and stakeholders

Enshrined in the Treaty on the Functioning of the European Union (TFEU), **European social dialogue** is a component of the European social model. It encompasses discussions, negotiations and joint actions carried out by the European social partners.

European social dialogue has yielded many results, including the adoption of approximately 80 joint texts by the inter-sectoral social partners: this process supplements the national practices of social dialogue established in most Member States.

Social dialogue is now an official part of EU governance and enables the social partners to make a significant contribution to shaping European social standards.

There are three distinct forms of European-level action carried out by the social partners: tripartite concertation, consultation and social dialogue.

1.1.1 Tripartite concertation

Tripartite concertation refers to exchanges between the social partners and European public authorities, as defined in the Laeken Declaration by the social partners. The main arenas for this type of concertation are the Tripartite Social Summit (when the social partners have the opportunity to meet directly with the Presidents of the Council and of the European Commission), macroeconomic dialogue and the European employment strategy.

1.1.2 Consultation of the social partners

Consultation of the social partners covers the activities of the consultative committees and any official consultations organised pursuant to Article 153 TFEU. Article 154 of this Treaty stipulates that the social partners at EU level must be consulted on all issues relating to employment and social affairs set out in Article 153.

This procedure takes place in two mandatory phases: first, the Commission consults the social partners on the possible direction of Union action and, second, it consults them on the content of that action. If, following both of these phases, the partners are unable to reach agreement on the opening of bipartite negotiations, and if the Commission is still of the opinion that the envisaged action is advisable, it may begin preparations for it.

Consultation under Article 154 is restricted to representative organisations of the social partners (see point 1.4 Stakeholders). These consultations of EU social partners can lead to negotiations and potentially to agreements, which can become EU legislation. Unfortunately, the recent consultations launched on the European Pillar of Social Rights, especially on work-life balance – which will be addressed later – did not result in engaging in negotiations because of the refusal of the employers.

1.1.3 European social dialogue

European social dialogue refers to the bipartite work of the social partners which may stem from the official consultations organised by the Commission on the basis of Articles 153 and 154 TFEU. Bipartite social dialogue takes place at inter-sectoral level between the European Trade Union Confederation and employers' organisations (see point 1.4 Stakeholders), and at sectoral level between the European trade union federations and their counterparts among the employers' organisations.

1.1.4 Stakeholders

At EU level, employees are represented by the **European Trade Union Confederation (ETUC)**. European employers are represented by three organisations: **BusinessEurope**, the former Union of Industrial and Employers' Confederations of

Europe (UNICE), established in 1958, and the **European Centre of Employers and Enterprises providing Public Services (CEEP)**, set up in 1961; further to a cooperation agreement signed in 1998, **the European Union of Craft Industries and Small and Medium-Sized Enterprises (UEAPME)** also participates in social dialogue. UEAPME recently change its name and became **SMEunited**.

1.1.5 European Trade Union Confederation (ETUC)

The ETUC represents employees at European inter-sectoral level. Established in 1973, the ETUC currently brings together 90 member organisations from 38 European countries (including all the EU Member States) and 10 European trade union federations, and thus has over 45 million members (according to its own data). In matters pertaining to European social dialogue, the ETUC Executive Committee can take decisions by a majority of two thirds of its members. The 10 federations cover most of the European sectoral trade unions.

1.1.6 Confederation of European Enterprises (BusinessEurope, formerly UNICE)

BusinessEurope was set up in 1958 and is the biggest organisation representing European employers in terms of economic coverage. It includes 39 employers' organisations from 34 European countries (including 17 EU Member States) and serves as an interface between economic and industrial interests and the European institutions. According to its own data, it represents 20 million businesses in Europe. Its decision-making body, which is also competent for social dialogue and acts unanimously, is the Council of Presidents.

1.1.7 European Centre of Employers and Enterprises providing Public Services and Services of General Interest (CEEP)

CEEP, established in 1961, is an employers' association of businesses and organisations providing services of general interest, businesses operating in networks (for instance local transport, postal services, energy, water, ports) and local authorities. CEEP has a national section in every country which is in permanent contact with member businesses. Decisions are taken by the General Assembly, a sovereign body which exercises all the competences attributed to CEEP.

1.1.8 SMEunited (formerly UEAPME)

Established in 1979, UEAPME is an organisation of employers representing the interests of European crafts industries and small and medium-sized enterprises (SMEs) at European level. It has 67 member organisations (from the 34 EU Member States), which are either national inter-sectoral federations, European sectoral federations or other associate members supporting SMEs. According to its own data, UEAPME represents 12 million businesses employing 55 million people across Europe. In December 1998, UEAPME signed a cooperation agreement with BusinessEurope, enabling it to take part in European social dialogue.

The two management organisations (Eurocadres and the European Managers' Confederation – CEC) signed a cooperation agreement in 2000 establishing a liaison committee through which they participate in European social dialogue. Their representatives participate in the dialogue as part of the ETUC delegation.

1.2 Evolution of social dialogue – 30 years after its foundations were laid at European level, social dialogue delivers tangible results

Consultations between the social partners began in the mid-1960s in the consultative committees, the Standing Committee on Employment and tripartite conferences on economic and social matters. However, European-level social dialogue evolved into a genuine European arena for negotiation in 1985, with the launch of bipartite social dialogue promoted by Jacques Delors, the then President of the European Commission. There have been **three key stages** in the development of social dialogue.

1.2.1 1985-1991

During this initial period, bipartite activities led to the adoption of resolutions, statements and joint opinions which had no legally binding force.

1.2.2 1992-1999

The second phase opened with the signing, on 31 October 1991, of an agreement between the social partners which was subsequently integrated into the Protocol on Social Policy annexed to the Treaty of Maastricht in 1991. Under this Treaty, the agreements negotiated by the European social partners could, at the partners' request, be given legally binding force by means of a Council decision. In 1997, the 1991 agreement was integrated into the **Treaty of Amsterdam** (Articles 154 and 155 of the TFEU). European social dialogue thus led to the implementation, by means of Council directives, of three framework agreements (on **parental leave** in **1996**, revised in 2009; on **part-time work** in **1997**; and on **fixed-term work** in **1999**).

1.2.3 1999-2017

The third stage began in December 2001, when the European social partners submitted a 'joint contribution' to the **Laeken European Council**. In accordance with the 1991 agreement (Article 155 TFEU), this last phase has seen an upswing in the degree of independence and autonomy of social dialogue, reflected in the drawing up of work programmes.

1.3 The Laeken Declaration and the autonomy of the social partners

During the period running from 1999 to 2011, the inter-sectoral social partners made a joint contribution to defining the role of European social dialogue in preparation for

the **Laeken European Council** in December 2001. This joint declaration comprised four major sections on:

- the specific role of the social partners in European governance;
- the distinction between bipartite social dialogue and tripartite concertation, with a view to enlargement;
- the need to improve the structuring of tripartite concertation around the different aspects of the Lisbon Strategy (in particular, replacing the Standing Committee on Employment with a tripartite concertation committee for growth and employment, later the Tripartite Social Summit);
- their wish to develop a work programme for more autonomous social dialogue.

The social partners stated in the Laeken Declaration that they wished to diversify their working practices, drawing on open consultation and encompassing opinions, recommendations, statements, exchanges of experience, awareness-raising campaigns, open debates, etc.

Over the years, there has been increased recognition of the role of European social dialogue by the European institutions, especially as a factor in the economic and social modernisation dimension of the Lisbon Strategy and as part of democratic governance as defined by the European Commission. In 2002 at the Spring European Council in Barcelona, the Heads of State or Government emphasised ‘the need to strengthen the role of the social partners in modernising the organisation of work, improving its quality, vocational training and access to and durability of employment. The social partners share responsibility for finding a balance between flexibility and security in employment and making it possible for enterprises to be adaptable. They must above all play the principal role in anticipating and managing change and achieving the balance which will safeguard the way enterprises operate as well as the interests of workers.’¹

This recognition — which did not, however, extend to asking the social partners to take part in shaping the policy guidelines for the Lisbon objectives — was coupled in 2003 with the establishment of an annual **tripartite social summit**, whose ‘task [...] shall be to ensure [...] that there is a continuous concertation between the Council, the Commission and the social partners. It will enable the social partners at European level to contribute, in the context of their social dialogue, to the various components of the integrated economic and social strategy, including the sustainable development dimension [...]’²

This recognition was also accompanied by the determination to assert the social partners’ autonomy from the European institutions, particularly the Commission. This was reflected in particular in the adoption of the **work programmes of the social partners**. In these programmes, the social partners themselves set their priorities and negotiation agenda and decide on the appropriate instruments.

1. http://europa.eu/rapid/press-release_DOC-02-8_en.htm

2. Council Decision of 6 March 2003 establishing a Tripartite Social Summit for Growth and Employment (OJ L 70, 14.3.2003).

Forums for inter-sectoral social dialogue

Social Dialogue Committee

The Social Dialogue Committee (SDC) was set up in 1992 and is the main body for bipartite social dialogue at European level. It meets three to four times a year, and these meetings are an opportunity for employers and trade unions to exchange views on various subjects, to adopt texts negotiated between the two sides and to plan work relating to European social dialogue. The SDC is made up of members drawn from the secretariats of the European social partners and the national organisations of social partners. A total of 43 committees for sectoral social dialogue have been established in addition to this committee.

Working groups and seminars

The SDC can set up technical working groups, as it has done for macroeconomic issues, the labour market, equal opportunities for men and women and vocational training. Seminars are organised by the social partners with the support of the European Commission in order to explore certain issues in greater depth. Topical issues include work on apprenticeships, the European Social Fund or employee training.

Negotiation meetings

If the social partners decide to enter into negotiations on a particular subject, each side prepares mandates for negotiation, which must be approved by their respective decisionmaking bodies, and appoints negotiation teams. The meetings are chaired by an independent mediator. The outcome of the negotiations is adopted by the SDC and subsequently approved by the signatories' decision-making bodies. The SDC usually monitors the implementation of the negotiated texts. Examples include the agreements on work-related stress or harassment and violence at work.

Social dialogue summits

High-level meetings chaired by the President of the Commission, these summits kick-start or periodically reinvigorate social dialogue. They take the form of plenary sessions attended by the representatives of the European social partners and member organisations at national level. A number of social dialogue summits have been held to date, the first taking place on 31 January 1985 in Val Duchesse to launch social dialogue, and the most recent on 29 November 2005 at the Palais d'Egmont to mark the 20th anniversary of European social dialogue and discuss its future.

Social partners' input into European decisions

On the basis of Article 155 TFEU, the social partners at EU level are consulted on all matters relating to employment and social affairs as part of the process of European social dialogue.

As stated above, this procedure takes place in two mandatory phases: firstly, the European Commission consults the social partners on the possible direction of Union action and then it consults them on the content of that action. If, following each of these phases, the partners are unable to reach agreement on the opening of bipartite negotiations, but the Commission is still of the opinion that the envisaged action is advisable, it may submit a proposal.

Since 1997, the Presidency of the Council of the EU has invited the social partners to meet the 'troika'³ immediately before European summits. Since the Nice Summit of 2000, it has been decided that these meetings should take place on a yearly basis, before the Spring European Council. The Council Decision of 6 March 2003 stipulates that the Tripartite Social Summit consists of representatives of the Council Presidency and the two subsequent Presidencies, the Commission and the social partners.

The establishment of the Tripartite Social Summit was an important political step, since it placed tripartite concertation at the highest level of the EU. Tripartite concertation covers macroeconomic dialogue, employment, social protection, education and training.

The Social Dialogue Summit of 29 September 2005 marked the 20th anniversary of European social dialogue. The social partners confirmed in a joint press release that they 'intend to continue contributing constructively to the EU integration process'. The press release went on to say that European social dialogue was the primary framework for negotiations between the social partners, but the Council and the Commission also needed to give a clear signal that they intended to steer Europe out of lethargy.

2. Results of European social dialogue

2.1 European framework agreements and frameworks of actions

At European level, social dialogue has undeniably made significant progress in a very short space of time. After taking up the gauntlet thrown down by President Delors in 1985, the European social partners have taken steps at both inter-sectoral and sectoral level to develop a European system of industrial relations which is not moulded on national systems but is geared to meet the challenges of European integration.

In 1995, the European inter-sectoral social partners brought their first European social dialogue negotiations to a successful conclusion, producing a framework agreement on parental leave, a revised version of which was negotiated and adopted in 2009. Since then, major developments have taken place in the field of European social dialogue in terms of its stakeholders, procedures and results. Undoubtedly one of the most significant developments is the transition from the negotiation of agreements transposed into EU directives to that of autonomous agreements implemented by the social partners themselves.

This development raises the question of the coverage of the agreements. Unlike directives, the coverage of autonomous agreements depends on the national system of industrial relations as well as on the level of representativeness of the social partners.

3. The term 'troika' refers to an alliance of three equal partners who join forces to exercise leadership. With regard to the European troika, a degree of continuity between three successive Presidencies of the Council of the EU held by the Member States was introduced in the 1970s.

For these reasons, the ETUC has always had a preference for the adoption of directives over autonomous agreements, despite the employers' continued refusal in recent years to engage in discussions.

There are currently **eight European framework agreements**:

- three agreements which have been transposed into European directives (1995: parental leave; 1997: part-time work; and 1999: fixed-term work) and form an integral part of the body of EU law; and
- five agreements which are to be implemented directly by the national social partners (2002: telework; 2004: work-related stress; 2007: harassment and violence at work; 2010: inclusive labour markets; and 2017: active ageing and an intergenerational approach).

A **framework of actions** constitutes another instrument for social dialogue, promoting the exchange of experiences at national or sectoral level; three such frameworks have been signed to date:

- 2002 Framework of Actions on the Lifelong Development of Competencies and Qualifications
- 2005 Framework of Actions on Gender Equality
- 2013 Framework of Actions on Youth Employment

2.2 Multiannual work programmes

To date, the European social partners have negotiated six multiannual work programmes.

As an integral part of European social dialogue, these joint work programmes identify a variety of diversified instruments and cover a balanced range of themes of common interest for workers and employers. Together they provide an autonomous bipartite roadmap for a three-year period.

The current work programme (for 2019-2021), adopted in February 2019, addresses six focused priorities: digitalisation, improving the performance of labour markets and social systems, skills, addressing psycho-social aspects and risks at work, capacity-building for a stronger social dialogue, and the circular economy.

This programme states that the social partners are particularly well-placed to accompany the process of transformation of the economy and to design balanced measures and solutions that contribute to economic and social progress. It also supports the objectives of the 2016 quadripartite statement on 'A New Start for Social Dialogue' to strengthen social dialogue at European and national levels; to foster the role and influence of national

social partners in the European semester;⁴ and to step up capacity building support to national social partners, notably through the European Social Fund.

2.3 Other EU social dialogue outcomes

Some 80 other joint reports, recommendations, statements, opinions and compilations of good practice have been published in connection with European social dialogue.

Social dialogue has reached maturity, and the time has come to opt for a more quality-oriented approach and to analyse its strengths and weaknesses at every level.

In the future, the European social partners will need to identify matters of common interest, bearing in mind that there are many potential instruments for social dialogue. Furthermore, in view of the complexity of the labour market and societal change, the European social partners must also be capable of showing greater initiative. They must be able and willing to hold internal discussions on strategic issues of common interest and to present their conclusions to the European institutions and public authorities at every level so that the institutions and authorities can put them into effect where necessary or appropriate.

The social partners' programme must necessarily be connected to the wider European agenda and its priorities.

In addition to identifying issues of common interest, the European social partners must also decide which instruments will enable them to tackle these issues to best effect at inter-sectoral and sectoral level.

It must be recognised that these other outcomes have become more varied and complex in recent years and that, as a result, the 'rights and obligations' of each instrument must be made clear in terms of implementation, follow-up and assessment.

3. Recent developments

3.1 Positive outcomes

3.1.1 Framework of Actions (FoA) on Youth Employment

Youth unemployment remains one of Europe's most pressing problems. The lack of job opportunities has affected young people more than any other group in society, especially in Eastern and Southern European countries. This is reflected in high and increasing youth unemployment rates and levels of precariousness. It is the reason why the European social partners decided to negotiate a framework of actions on youth employment in order to confront the urgency of the situation.

4. The European Semester provides a framework for the coordination of economic policies across the European Union. It allows EU countries to discuss their economic and budget plans and monitor progress at specific times throughout the year.

The framework of actions was adopted on 11 June 2013 by the four European social partner organisations BusinessEurope, CEEP, UEAPME and the ETUC (and the Liaison Committee Eurocadres/CEC), following seven-month-long negotiations. It identifies four priorities to foster youth employment and smoother transitions between education and work (Priority 1: Learning; Priority 2: Transition; Priority 3: Employment; and Priority 4: Entrepreneurship). At national level, the social partners were required to submit annual follow-up reports in 2014 (adopted), 2015 and 2016. In 2017, the European social partners evaluated the impact on both employers and workers. In addition, the FoA states that the social partners at European and national level must cooperate with EU institutions and/or national public authorities on the basis of the recommendations made.

Finally, for the first time, it was agreed in the joint FoA that, if no reporting had been done after four years, the European social partners would encourage their members in the countries concerned to keep them informed about their follow-up activities until actions were undertaken at national level.

The ETUC presented the FoA at a number of EU and national events (in Sweden and in Italy with national social partners' representatives, as well as in the European Parliament, at the EESC and during ETUI training seminars). A further innovation was the development of a toolkit designed to help implement measures at national level for the promotion and dissemination of the Framework of Actions on Youth Employment.

While the social partners recognised that further efforts are needed to help young people achieve better employment prospects and to support their sustainable integration in the labour markets, their final 2017 follow-up report does emphasise the positive evaluation of the joint actions and their impact. The report also reflects the various cross-cutting aspects identified in the previous annual follow-up reports which include, *inter alia*, skills and competencies, integration of vulnerable groups (drop-outs, NEETs), the regional dimension as a key factor and digitalisation.

3.1.2 Agreement on Active Ageing and an Intergenerational Approach (AAIA)

In response to the challenges deriving from demographic change, the European social partners – BusinessEurope, UEAPME, CEEP and the ETUC (and the Liaison Committee Eurocadres/CEC) – agreed in the context of their 2015-2017 Work Programme to negotiate an autonomous framework agreement on active ageing and an inter-generational approach.

This framework agreement constitutes the contribution of the social partners to the EU policies (including non-discrimination legislation) and actions which have already been developed to support active ageing and the intergenerational approach. This agreement therefore aims to build upon and enhance the existing measures and approaches that are in place in different contexts across Europe. It outlines tools/measures to be taken into account by the social partners and/or HR managers in the context of national demographic and labour market realities, and in accordance with national practices and procedures specific to management and labour. The framework agreement is based on

the principle that ensuring active ageing and the intergenerational approach requires a shared commitment on the part of employers, workers and their representatives.

The agreement covers the following key aspects: it establishes a general action-oriented framework with specific aims (increasing the social partners' awareness and understanding of the issue, providing practical approaches and/or measures to promote and manage active ageing; ensuring and maintaining a healthy, safe and productive working environment; fostering innovative life-cycle approaches; and facilitating exchanges, mutual cooperation and concrete actions to transfer knowledge and experience between generations at the workplace). It also identifies social partners' tools, including measures and actions for strategic assessments of workforce demography, health and safety at the workplace, skills and competence management, work organisation and the inter-generational approach.

For the first time in the case of such an agreement, it was established that, if no reporting had been done after four years, the European social partners would encourage their members in the countries concerned to keep them informed about their follow-up activities until actions were undertaken at national level.

This Agreement was certainly the key outcome of the previous work programme, not only because of the content of the Agreement itself which lays down specific guidelines for actions at national, sectoral and company levels, but also because of the tool itself. Indeed, it is of utmost importance for the ETUC that EU social dialogue produce binding outcomes with clear processes for their implementation. It is worth noting that no agreement was concluded between 2010 and 2017. This perspective clearly differs from the employers' point of view, given their strong preference for soft tools. Furthermore, the initiatives (projects, expertise, etc.) regarding the implementation process and the support provided to affiliates were frequently driven by the ETUC and were occasionally unilateral.

3.1.3 Subgroup on the implementation of EU social dialogue instruments

Capacity building social dialogue and maximising the impact of its instruments are another key priority of the previous and the current work programmes.

More than 10 years after the adoption of the first autonomous framework agreement, and in an EU which has enlarged to 28 Member States, implementation processes have highlighted a number of challenges that need to be overcome: coverage of the agreements, suitability of the tools selected, and lack of implementation. Following the initiative of the trade unions, European social partners have decided to develop their common understanding of the EU social dialogue instruments and how they can have a positive impact at the various levels of social dialogue in order to build, develop and reinforce it. They recognised that greater efforts are needed to ensure effective and efficient implementation of the commitments made during the negotiation process of autonomous agreements in all the Member States.

The European social partners also decided to create a subgroup (with a geographical balance) entrusted with the follow-up and implementation of autonomous social dialogue instruments. It met around 10 times in the context of the Social Dialogue Committee before reaching the end of its mandate (which was renewed in February 2019), and, during that time, its role was to report to the Social Dialogue Committee and propose supportive actions.

Furthermore, an experts' report was completed and presented at the joint Social Dialogue Conference on 'Promoting and reinforcing the EU social dialogue'. The report looked at the implementation of autonomous agreements in 10 Member States: Bulgaria, Croatia, Cyprus, Malta, Estonia, Greece, Hungary, Lithuania, Romania and Slovakia, and put forward recommendations to the national social partners for improvements to be undertaken in this area.

These capacity-building actions have improved the awareness and visibility of the implementation of the EU social partners' agreements, and, in some countries, have helped to launch or relaunch discussions to address the implementation of one or more agreements (Bulgaria, Estonia, Poland, etc.). Nevertheless, there is still a need to continue to promote the development of approaches aimed at achieving better implementation outcomes in the countries where more progress is needed.

According to the subgroup's experts' report, 'The situation, regarding the implementation of the four AFAs [Autonomous Framework Agreements], seems a bit better than what the Joint draft study of the EU social partners of 16 October 2015 tended to show: *"the glass is half full"*. This is probably due to the fact that some countries did not report at the time.'

However, as the report went on to state that 'there is still room for real improvement in some other countries: *"the glass [is] half empty"*'. Whereas the Telework agreement can be considered as largely implemented, the three other AFAs, and in particular the agreement on Inclusive Labour Markets, need further actions/initiatives by all social partners to ensure that the objectives of those AFAs are reached. It is not only an internal problem for the European social partners, but also a matter of credibility towards third parties, amongst others the Commission and the Council.'

On the basis of their findings, the two experts responsible for drawing up the report concluded that there are countries, such as Cyprus, that are on a 'good path', where all that was needed was to maintain the current level of willingness; countries, such as Hungary or Estonia, that need gentle encouragement in the short term, mainly through the organisation of seminars to disseminate social dialogue good practices; and countries, such as Bulgaria and Romania, that need capacity building in the medium and long term.

Following the experts' recommendations and the positive evaluation of national and European social partners, the sub-group will continue its work on the basis of the renewed mandate, looking into both implementation of outcomes and the issue of capacity building.

3.2 Mixed outcomes – much still remains to be done

3.2.1 Inclusive Labour Markets (ILM) Agreement

The purpose of the Framework Agreement on Inclusive Labour Markets, adopted in March 2010, is to promote measures to facilitate the ability of individuals to participate, remain and make progress in the labour market.

This framework agreement first aims to find ways to facilitate access to the labour market for those who are at the margins of the employment system (curative approach), and, second, it proposes measures to help those who are already in the labour market to remain and make progress (preventive approach).

The agreement does not take into account those people who are furthest from the labour market because certain factors at play in these circumstances go beyond the competence of the social partners and arise from social inclusion policies. Recommendations addressed to the public authorities are therefore annexed to the negotiated text of the agreement.

The agreement states that several factors, alone or in combination, may encourage or discourage labour market participation. They can be contextual, work-related and/or individual, and can evolve over time. In addition, active inclusion depends on how the labour market and society are organised, as well as on the capabilities, talents and motivation of individuals and organisations. In the agreement, the European social partners also identify obstacles to the creation of an inclusive labour market before exploring possible joint solutions and actions.

The European social partners consider inclusion in the labour market as an essential condition for cohesion, including the fight against poverty, and economic success. Achieving inclusive labour markets requires that various measures, actions and/or negotiations at all levels be taken or carried out by employers, workers and their representatives. These measures, detailed in the text of the agreement, include, for example, the introduction of plans for the development of individual skills, the organisation of awareness-raising campaigns and the development of action plans to improve and/or to restore the image of a given sector or profession, the implementation of recruitment methods and integration policies, or the development of systems of recognition and validation of skills.

Even if this agreement is the result of the first real negotiation on inclusion for the European social partners, which is an important joint message, the content of the agreement itself was not evaluated positively by ETUC affiliates. Indeed, the lack of clear actions and specific commitments was highlighted in the implementation reports.

3.2.2 Joint Labour Market Analysis

The update of the 2007 joint analysis of key challenges facing European labour markets was one of the employers' priorities for the autonomous work programme 2012-2014.

The final document consists of an Introduction (1) and six thematic chapters: 2. Employment, Investment, Growth, Competitiveness; 3. Productivity, Research and Development, Innovation, Education and Training; 4. Labour Markets; 5. Industrial Relations; 6. Social Protection and Cohesion; and 7. Demography. In total, the analysis runs to over 130 pages, includes a number of selected data and indicators covering the period 2007-2014, and gives an overview of several joint texts addressing a number of relevant issues.

3.2.3 The ETUC succeeded in reaching an acceptable compromise on a number of issues.

The trade union delegation rejected the employers' claim that austerity and structural reform of the labour market were the only possible responses to the financial crisis. For instance, the ETUC obtained references in the text to the relevance of countercyclical macroeconomic policies; the importance of fighting against inequalities and poverty; the need to create more and better jobs; and the need for the European economy to move up the ladder on innovation, education and R&D. Other important messages include ETUC opposition to the Stability and Growth Pact and hence any form of austerity; the need to boost investment (the Commission's plan being a first step, but one that does not go far enough); Member States' use of the flexibility built into the Pact; the importance of reviving the economy through robust and stable domestic demand; the development of high-quality public-service sectors; the need to address disproportionate executive pay by aligning it to results and management policies; the goal of setting real wages in line with productivity developments; the need to fund robust social protection systems; and the coordination of measures at European and international level to eliminate unfair tax competition.

Meanwhile, this time-consuming exercise was met with very little support from ETUC affiliates. Analysis is always worthwhile, but it should lead to more legally binding joint commitments, which, unfortunately, was not the case here.

3.2.4 Quadripartite statement

Through their bipartite dialogue, the European social partners were able to achieve another relevant result with the adoption, in January 2016, of the joint 'Declaration on a new start for a strong Social Dialogue'. It provides the social partners with a number of recommendations to improve social dialogue in four areas: capacity building, EU policy-making, the European economic governance process/European Semester and the Better Regulation Agenda. Shortly thereafter, the Council of the European Union adopted its Conclusions regarding the Declaration, and a quadripartite statement was ultimately co-signed by the European Commission, the European Council, CEEP, BusinessEurope, UEAPME and the ETUC in June 2016.

This unique initiative was positively supported by ETUC member organisations, but a question mark remains over what follow-up action should be taken. Even if some progress were to be made regarding the involvement of the social partners in the EU economic governance process, a number of key questions remain on the table such as potential future initiatives in the social field that might lead to the adoption of European legislation.

3.3 Missed opportunities

3.3.1 Consultations on work-life balance

The ETUC responded extensively to the first-phase consultation of the social partners on possible action addressing the challenges of work-life balance faced by working parents and caregivers. In its position paper, the ETUC expressed the need for further legislative measures in order to help improve gender equality and create a better work-life balance for women and men. The ETUC clearly stated that the existing measures at European level had not substantially contributed to these goals.

On 12 July 2016, the European Commission launched the second-stage consultation. The Commission called for the opinions of the European social partners as regards proposals for further actions at European level. The Commission's consultation paper was accompanied by an analytical document which both summarised the views of the social partners and other stakeholders, and focused on the current legislative and policy instruments in the Member States, as well as possible avenues for EU action. The ETUC welcomed the document, as it not only clearly demonstrated the necessity for specific action at EU level, but also provided a balanced analysis of expected costs and benefits of possible actions. Furthermore, the document made it clear that the participation of men in possible leave arrangements is crucial to reaching the objectives of gender equality, improving the quality of employment for women and men, and maintaining a better balance between family and working life.

The European Commission's consultation document invited the EU social partners to express their views and make proposals on the possible legislative avenues for EU action and the related parameters set out in section 5 of the consultation document covering the areas of (1) maternity leave, (2) paternity leave, (3) parental leave, (4) carers' leave and (5) flexible working arrangements.

In order to address these issues, the ETUC called for a balanced policy mix of legislative and non-legislative measures which complement and support each other. Such measures and legislation must be part of a comprehensive and coherence policy approach which also promotes the availability and affordability of and access to quality child, elderly and dependent care in all Member States supported by adequate budgetary allocations.

As already indicated in its first reply to the EC consultation, the ETUC was ready to start discussions and negotiations with employers' organisations at EU level to improve minimum standards of reconciliation policies in Europe.

On the basis of the second-stage consultation, the ETUC advocated starting negotiations to improve the parental leave agreement. The ETUC was also be ready to negotiate an agreement on paternity leave. With respect to carers' leave, this could be the subject of a third agreement to be negotiated after the successful conclusion of the previous two agreements.

Unfortunately, the employers' organisations declined the ETUC's offer, refusing to enter into any negotiations on these various initiatives on the ground of interference by the European Commission in the European social partners' autonomy.

3.3.2 Consultations on the Written Statement Directive

In September 2017, the EU Commission launched the second-phase consultation on the revision of the Written Statement Directive. Under this Directive, employers are obliged to give employees written details on the employment relationship.

The proposals made in this second-phase consultation sought to amend and reform the Written Statement Directive by transforming it from an instrument that places obligations on employers to provide information to workers on their terms and conditions of employment to a Directive that provides rights that workers can enforce.

In this second phase, the Commission made a number of proposals taking into account some of the ETUC's replies to the first-phase consultation, including an extension of the scope of the Directive to cover wider categories of workers, an increase in the range of matters on which information must be provided to the worker, and the introduction of new rights such as a right to predictability of work.

While reaffirming its full commitment to social dialogue, the ETUC was convinced that there were no longer the conditions, in terms of timing and scope, to start treaty-based negotiations with the employers' organisations at EU level on the above-mentioned issues.

In its letter sent to the employers' organisations and forwarded to the Commission for information at the end of July, the ETUC emphasised that a formal up-to-nine-month negotiation process would not fit within the time frame available for the Commission and Parliament to finalise the revision of the Directive before the end of the current legislative term.

The ETUC therefore proposed to the employers to engage in dialogue in order to develop joint inputs. However, this proposal was rejected by the employers, who did subsequently declare their availability to negotiate, but only on the condition that clear limits would be set on the scope of any negotiations. Regrettably, such a conditioned offer was unacceptable to the ETUC (since such negotiations would have been too limited in scope and the offer came too late for them to lead to a timely revision of the Directive). Consequently, the ETUC urged the Commission to come up with a legislative proposal.

The European Pillar of Social Rights could have been used to give a further boost to social dialogue, for example by introducing a format according to which the employers would no longer be able to avoid negotiations so easily.

4. The ETUC and the future of European social dialogue

In principle, and as previously described, European social dialogue at all levels is part and parcel of the European social model. It is enshrined in the TFEU and forms part of the European *acquis communautaire*.⁵ But sound industrial relations also have an economic added value. It is widely acknowledged – including by employers – that countries with the most developed social partnerships and effective social systems are among the most successful and competitive in the world, even in times of crisis. Strong industrial relations, including collective bargaining, are part of democracy and are necessary instruments for a fair and efficient regulation of the economy and of the labour market. Other levels and dimensions that play an important role in the development of social dialogue are tripartite dialogue, European Works Councils, European and international framework agreements, Inter-Regional Trade Union Councils (IRTUCs), etc.

The crisis that struck Europe in 2008 has had a negative impact on social dialogue and collective bargaining at all levels. Bi- and sometimes tripartite social dialogue has, in several countries, been decentralised, dismantled or undermined, directly or indirectly, as a result of European and national policies, often initiated by the Troika (European Commission, European Central Bank and International Monetary Fund) or the country-specific recommendations (CSRs) under the European Semester.

The Commission, which was a more proactive player 20 years ago with a number of social initiatives and policies under its belt, is no longer supporting social dialogue ‘in a balanced way’. The ETUC is currently facing opposition, as a matter of principle, from employers and certain governments to any binding instrument arising from an autonomous, inter-professional or sectoral agreement. In the absence of (legislative) pressure from the Commission, they are even less keen to negotiate.

We can only regret that, despite the positive initiatives linked to the European Pillar of Social Rights (on work-life balance and on the Written Statement Directive), the opportunity for social dialogue to open new negotiations has been missed. Furthermore, in several Member States and candidate countries, the current political climate is conducive neither to the development of European legislation nor to the promotion of national social dialogue. Meanwhile, in other countries, employers who are refusing to engage effectively in industrial relations with unions instead are lobbying governments in order to secure policies that weaken minimum social rights and standards.

In parallel, at the sectoral level, the two agreements for hairdressers and on informing and consulting civil servants and employees of central government administrations were properly referred to the Commission with a request that the agreement in question be transposed into a directive and submitted to the Council for adoption in a legally binding form. Unfortunately, the response from the European Commission was negative, accompanied by its own interpretation of the EU Treaty according to which it has the sovereign authority to decide whether to put an agreement forward.

5. The *acquis communautaire* is the accumulated legislation, legal acts and court decisions which constitute the body of European Union law.

The ETUC has strongly and consistently disputed this claim and seeks to guarantee that agreements, at all levels, are submitted to the Council for adoption in the future.

At the bipartite level, the recent outcomes of social dialogue have been diverse with some positive initiatives (the AAIA Agreement and the Social Dialogue Committee subgroup), missed opportunities with the two consultations and mixed outcomes such as the Inclusive Labour Markets Agreement or the Joint Labour Market Analysis.

As social dialogue is now in its mature phase, with social partners who have an agenda-setting power, it is necessary to opt for a more qualitative approach and to analyse its strengths and weaknesses at all levels.

The new autonomous Work Programme 2019-2021 must be seen as a new step in this direction, towards a strong social dialogue. In addition to identifying issues of common interest, the European social partners will also need to identify which binding instruments will enable them to address these issues more effectively at cross-industry and sectoral levels.

All studies conducted in recent years without exception highlight the political will of ETUC affiliates to strengthen this European social dialogue. Despite the difficulties encountered, the vast majority of member organisations believe that European social dialogue provides added value to workers, regardless of the sector or region concerned. One of the main achievements of this process is the involvement of the European social partners in European decision-making processes.

It is therefore crucial for the ETUC to identify the key challenges of and possible improvements to be made to European social dialogue, while considering its own role, responsibilities and possible levels of involvement. Indeed, addressing the challenges facing European social dialogue is a very complex undertaking, and yet it is probably the opportune moment to do so. Such an endeavour should involve all the key drivers of European social dialogue, be they political, strategic or institutional, as well as the support of the Member States, the European Parliament, the role of the European Commission as the 'shadow of the law', the expertise of the negotiators, the unity and coherence of national and European trade union strategies and, probably most importantly, the political willingness of the social partners to engage in social dialogue.

Finally, it may be equally important for the European trade union movement to question its own responsibility in this whole complex process. Have we always invested the necessary resources for social dialogue? Have we not expected problems to be solved at European level that are often difficult to resolve at other levels? Are we not nostalgic for the 'golden age' of social dialogue instead of bravely facing up to uncertainties over how we can best make use of this unique tool in the future? Are we able to combine our efforts and work towards a joint evaluation in order to develop a stronger and more ambitious social dialogue?

In conclusion, it should be acknowledged that European social dialogue is merely a tool and, by its very nature, is not an end in itself. A great deal therefore depends on

what the social and institutional actors are doing and plan to do with it. Nevertheless, it seems fundamental to consider that this tool is unique and is regarded by some with extreme jealousy. It is also a symbol to be taken seriously, that of democracy at work: a democracy that must be protected, defended and promoted.

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Conclusion

More Europe – now!

The role of Europe's trade unions

Peter Scherrer

The preceding contributions in this volume describe the many challenges facing not just the European political establishment, but anyone in a position to take action – and few would argue with the assertion that the trade unions are in just such a position when it comes to building a Europe rooted in social cohesion. The European trade unions must return again to the elementary question of how to achieve an integrated political, economic and social area known as Europe, and they must answer it convincingly. How far should and must the communitisation of social policy progress if we want to achieve a minimum standard of social security which is acceptable to all the Member States? How can we ensure that none of the European Union's workers lose out if their nation states join together in a single economic area? How can the trade unions coordinate wages effectively at European level? What do trade unions need to do in order to ensure that the EU's workers are not played off against each other in the quest for a decent job? Which measures are most likely to help refugees and immigrants fleeing war and/or poverty integrate successfully into the job market and society?

If trade unions want to have a say and ensure that any solutions found to the manifold problems we face are in the interests of all working people, and if they want to tread the boards of the political stage in one of the leading roles rather than a bit part, they need to do more to maintain and expand their influence. Given that their status as mass-membership organisations depends on large numbers of people being willing to pay dues, the individual trade unions which belong to the large and industry-wide umbrella associations must prioritise the acquisition of new members as an ongoing task, since their ability to negotiate wages correlates directly with their clout in the relevant economic sector. Small associations able to win industry round to their way of thinking on individual points because they represent professions whose members – even in small numbers – can hit whole industries or sectors where it hurts (e.g. train drivers and airline pilots) do not see themselves as political players, and policy-making is neither what they want to do nor what others want them to do. Assertive trade unions and their umbrella organisations are in a position to provide political and societal representation convincingly, effectively and for many; professional organisations are not.

Relying solely on statutory representation rules for public- and private-sector bodies as a guaranteed route to strong trade unions is likely to prove a misstep at the latest when a new government takes the helm and makes legislative amendments under the banner of reform which result in their overnight disappearance. In an era of successful populist movements ('gilets jaunes' and the like), trade unions are unable to rely on the potential for political mobilisation which they could formerly harness. Capacity-building efforts at local, regional and sectoral level, based on properly functioning social

dialogue structures, are therefore crucially important if trade unions want to retain their seat at the negotiating table in the long term, not only on wage-related issues but on all policy matters. It is also in the trade unions' interest to ensure that the employers' associations sitting across from them at this table have the necessary influence; the attitude (particularly among 'left-wing' trade unions) that social dialogue is pointless and superfluous is not entirely wide of the mark under current conditions, but it is also foolhardy, if not to say downright irresponsible. Trade unions benefit directly from concluding fruitful agreements (wage-related and otherwise) with employers on the basis of negotiations.

Forms of employment and labour relations are changing at a breath-taking pace; if they want to continue representing workers and enjoying their support, the trade unions must provide innovative responses to these changes (which include the significant and undoubtedly still growing number of people in 'precarious' jobs and changes to employment histories, *inter alia* as a result of digitalisation). Progress within Europe is very varied in this area, with the ETUC member organisations in the Nordic and Central European countries inarguably being better positioned – and although these organisations are lucky enough to have the financial clout to launch new member drives in these novel sectors of the economy, this is not the only reason why they are 'modernising' their approach to recruitment. The European trade unions must demand compulsory rules on digitalisation and artificial intelligence, and push these rules through at national and European level; if they want to remain credible, particularly among people working in the online or platform economy, non-binding ethical guidelines are simply not good enough.

Trade union executives and PR officers must also engage with these modernisation efforts. The urgent need for greater next-generation representation has long been discussed internally, and must be addressed post haste; the same is true as regards the need for a visible increase in the number of women sitting on decision-making bodies. Trade unions are no different to many other organisations, associations and public authorities in that good intentions often remain just that – intentions. Voluntary commitments which achieve nothing must be replaced by binding quotas which can easily be monitored, and trade unions must become younger and more female.

As in other mass-membership organisations, staffing policies are a particularly hot topic for trade union officials, congress delegates and members, and heated conversations are held among elected officials and those responsible for European and international cooperation whenever new executive board or secretariat members are announced or elected. The criteria used as a basis for these appointments should ideally relate to qualifications (trade union experience at national and European level, knowledge of languages) rather than the candidate's background, but when it comes down to it, the reasons why individuals are appointed are many and varied; a desire to maintain the political balance of power, a lack of viable alternatives (in the positive and negative sense), the need to preserve an equilibrium between different regions, and sometimes pure dumb luck (with makeshift solutions far from an unusual occurrence). It is rare to see instances where C-level appointments are the outcome of several years of careful planning and consideration, and yet the conclusion of joint agreements on a well-

coordinated and binding HR policy is one of the most urgent tasks facing the European trade union movement. Young trade union activists are keen to work within Europe's trade unions and to attend training courses organised by the member organisations and the European Trade Union Institute; they represent a pool of talent which could be assembled through the creation of certified training courses and then systematically drawn upon by the European and international trade union secretariats.

In the run-up to the 13th ETUC Congress held in October 2015, the question of how trade unions could mobilise themselves again and conduct successful campaigns was overheard in many corridor conversations. We may not have found the answer to this question over the three years since then, but developments are at least promising. The ETUC's pay rise campaign ('Europe needs a pay rise!') – long overdue in terms of its content – met with wide approval and active support, in particular by organisations working at the lower end of Europe's pay scale. In order to be successful, campaigns of this ilk need a well-laid plan and a generous flow of cash, but what they need most of all is for a single body to assume responsibility for them, and this is where the large organisations can leverage their position – by setting quantitative and qualitative benchmarks for wage agreements. The pay rise campaign could have achieved its full impact had wage policy objectives been coordinated properly (nominal pay rises, inflation plus productivity increase plus redistribution, as discussed for decades within the European trade union federations and writ large at conference after conference). If EU-wide campaigns are to serve any purpose at all, the ETUC member organisations must thrash out binding agreements between themselves; the 'Europe needs a pay rise!' campaign should have fed into the fight against the capitalist race to the bottom in terms of EU labour costs (a problem which has affected workers in large companies and smaller firms at the latest since the borders were opened up in the early 1990s). Trade unions must join together in solidarity (which must always be earned afresh) to oppose this trend, but campaigns for more solidarity presuppose agreements which are more binding in nature and therefore more dependable. The headline message of trade union policy is particularly apposite in the case of wage policy – yes: more Europe – now!

Europe must become a stronger global player, and trade unions can and must play a role in this process. Together we are strong, and that also applies to the Member States of the European Union – if we want to have a say in the way the world is run, we can only do so by acting as a team. China looms ever larger on our economic, trade policy and military radar, and the volatility of Trumpian politics across the pond means that success can only be achieved if we stick together. Once again, trade unions can make a key contribution by working in concert with their social partners – by saying yes to Europe at long last in the national sphere, so that action can be taken in the European sphere which benefits all of us.

Attitudes towards Eurobonds represent a useful litmus test of attitudes towards shared responsibility, since a willingness to assume joint liability within the euro area is an important (if not essential) indicator of a desire to go further in terms of European integration. Joint liability naturally also means joint policy-making and a ban on unilateral action which has not been agreed in advance; current political power groupings make this level of dependability impossible, but the trade unions must firmly

back this move towards communitised politics. Which brings us back round to the same point – yes to more Europe – now!

There can be no question about it – the bodies which represent Europe’s workers must speak out in favour of a proactive and sustainable industrial policy. What we want and need is European champions, and we can only create champions if we can compete on the global market with products which are energy-efficient, straightforward to recycle, easy on resources and competitive. A sustainable industrial policy must back renewable and clean energies, while at the same time offering alternatives for workers set to lose out as a result of these industrial cataclysms – the ecological transition must be a just transition, with no runners-up. Trade unions must agree to focus their policy work on the future, since the enormity of the environmental problems we face (climate change, pollution of the air, soil and water, species extinction, urban mobility) leaves us no option but to act quickly. Trade unions must espouse a sustainable and responsible policy for this and future generations to counter the bully-boy tactics of big business, which still operates on a quarterly basis in line with the financial markets. Germany’s Minister for the Economy recently outlined the country’s industrial policy goals in a document¹ which can only be described as staggeringly unrealistic and anachronistic, and the European Commission’s industrial policy recommendations also appear lacking in the face of the Member States’ insistence on being backward in coming forward – even though almost all the ‘ingredients’ of industrial production in Europe’s industrial nations depend on external factors (access to resources, energy supply, trade policy), meaning that there is very little scope for real action at national level. Once again, we must return to our siren call – yes to more Europe – now!, since only an EU-wide industrial policy can deliver long-term success at global level.

The aftershocks of the financial and economic crisis are indubitably still being felt in certain EU Member States, and this will continue to be the case for some time. An EU-wide unemployment insurance scheme would allow us to coordinate a joint response to economic crises of this kind in future and to mitigate their consequences. This is a trifling matter in some people’s opinion, but an important one nevertheless, and all trade unions must make more noise about it – at the same time, however, the community of the European trade unions must not be content with that alone. We need to take communitisation of social security seriously, meaning a guaranteed social safety net for everyone (in some cases for the first time). If the trade unions genuinely want to achieve upward convergence in the field of social policy, they must make no bones about calling for this process; the aim is not to impede or damage well-functioning systems, but to implement EU projects which improve the sub-standard systems in weaker countries. Trade unions therefore need to broaden their national frame of reference, and to find the courage to say yes to Europe and yes to solidarity (in word and deeds). Speaking in oversimplified terms, the EU Member States in the north and centre of the continent must be bolder in their attempts to push through European projects, and the Member States in the south of the continent must in return agree to a shift in trade union policy towards the binding and the dependable. The first item on the to-do list is to establish

1. <http://www.spiegel.de/plus/peter-altmaier-neue-strategie-fuer-industriepolitik-analyse-a-21b69ca6-a14c-4895-bdef-5fadoeed974>.

a consensual and mandatory framework for joint policy agreements between multiple competing organisations within a single country.

The national member organisations and the ETUC must cooperate much more closely and much more effectively on efforts to lobby the European Commission and the national governments, in particular the incumbent and incoming Council presidencies. The financial transaction tax and digital tax represent a further test of the trade unions' commitment to a common Europe; can they reach an agreement on the introduction of these taxes at EU level while refraining from the temptation to tolerate (or even uphold) tax shopping on their own home turf?

The European trade unions must speak out on behalf of Europe with authority and genuine feeling – not only in Brussels, but also within their own countries, within their own spheres of influence and in particular at the workplace!

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The future of Europe

Peter Scherrer, Juliane Bir, Wolfgang Kowalsky, Reinhard Kuhlmann and Matthieu Méaulle

The goal of this volume is a better, more social and more sustainable Europe. Question marks hang over the nature of Europe, the future of the European Union (EU) and the political and economic development of our continent. These debates are clouded by Brexit, the lack of a common asylum and migration policy and the upsurge in nationalistic politics.

The volume begins by asking some fundamental questions about Europe's future. It is more important than ever to defend and promote democratic and humanist principles. Workplace democracy and democratisation of the economy play key roles in a society's journey towards democracy, and the second contribution to the volume describes related political and legislative initiatives. Trade unions are campaigning for more involvement in corporate governance to build democratic workplaces.

The spectre of the financial crisis still looms large. This volume also asks what needs to be done to ensure every citizen of the EU benefits from economic recovery. There is great potential for improving working and living conditions through social dialogue, and this volume calls for its revival.

Strong and assertive trade unions are still the most reliable representatives of working people, but they need to evolve. Their enthusiasm for policies for building Europe will determine whether they play a meaningful role in shaping its future. Populist propaganda against Brussels is gaining an audience among trade union members, which represents a challenge for trade unions that wish to take a firmly pro-European line when exercising their power to shape policies.

