

Le politiche sociali in Italia nello scenario europeo

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National Welfare States and European Integration: Dilemmas and Perspectives

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Introduction

The last quarter century has witnessed a very salient but at the same time increasingly problematic encounter: that between the welfare state and the European Union. The encounter is *salient* because it brings together two institutions that must be counted among the most significant achievements of the XX century in Europe. It is not exaggerated to say that what makes our continent uniquely distinctive and recognizable nowadays at the global level are, precisely, its “social model”, centred on the welfare state and its “political economy” model, centred on the EU and its novel system of multi-level governance and shared sovereignty, especially in the economic and monetary fields. The encounter is increasingly *problematic*, however, because the guiding logics of the two institutions are inherently different. The welfare state essentially rests on a logic of “closure”: it presupposes the existence of a clearly demarcated and cohesive community, whose members feel that they belong to the same “whole” and that they are linked by reciprocity ties vis-à-vis common risks and similar needs. Since the XIX century (or even earlier in some cases) the nation state has provided the closure conditions for the development of a solidaristic ethos and redistributive arrangements within its geographical territory. By contrast, European integration is clearly guided by a logic of “opening”, aimed at fostering free movement (in the widest sense) and non discrimination by weakening or tearing apart those spatial demarcations and closure practices that nation-states have historically built around (and often within) themselves.

Can Europe reconcile these two logics and transform the encounter between its social and politico-economic models into a “happy marriage”, into an institutional engine for further expanding and strengthening the life chances of its citizens/residents? This article will argue in favour of a positive answer and will discuss possible pathways towards the happy marriage scenario.

I will proceed in three subsequent steps. First I will set the stage for my argument by illustrating the programmatic contrast and growing tensions between the welfare state, on one hand, and of the EU, on the other. My second step will be to outline a possible “grand strategy” of institutional

reconciliation. I will argue that the key for a successful reconciliation lies in a more explicit and effective “nesting” of the national welfare state within the overall spatial architecture of the EU. The third and final step will be more empirical and illustrative. I will try to identify and discuss some possible building blocks (and even some ongoing developments) which may promote the formation and consolidation of the new architecture and thus activate a virtuous nesting scenario, in which the economic and the social spaces of Europe will be able not only to co-exist without colliding, but also to re-enforce each other.

Two distinct logics and their potential clash

As has been shown by a large scholarship in sociology and political science¹, welfare state formation can be seen as the last phase or step in the long term historical development of the European system of nation states: the step through which territorially bounded political communities came to introduce redistributive arrangements for their citizens, thus transforming themselves into self-contained and inward-looking spaces of solidarity and inaugurating novel and original models of state-mediated social sharing.

While this transformation was being completed within each domestic arena, during the so-called *Trente Glorieuses*, a new institutional development took off in the inter-state or supranational arena: the process of European integration. Even though originally meant to “rescue the nation-state” (to use Alan Milward’s famous formulation) (Milward, 2000) by boosting economic growth, with hindsight we now realize that the Rome Treaty pulled a strong brake on the long-term dynamic of nation- and state-building in Europe. According to some authors (e.g. Bartolini 2005) since the 1960s the integration process has been operating as an increasingly strong de-structuring wedge for the political organization of modern Europe, based on a plurality of functionally interdependent but institutionally separate national spaces.

With the passing of time, the de-bounding and opening logic of European Integration has raised increasingly severe problems for the welfare state, as it has put in question two central tenets of this institution: the territoriality principle and the principle of compulsory affiliation to state-controlled insurance schemes. More specifically, through the four freedoms, competition rules and the rules of coordination of national social security systems, the EU law has launched two basic challenges to nation-based welfare:

- 1) a challenge to its territorial closure, through the explicit prohibition of (most) cross border restrictions regarding access to and consumption of social benefits and to some extent also the provision of services. The nationality filter has been neutralized for admission into domestic sharing spaces and some core social rights (such as pensions) have become portable across the territory of the whole EU;
- 2) a challenge to the very “right to bound”, i.e. the right of each national welfare state to autonomously determine who can/must share what with whom and then enforce compliance through specific organizational structures backed by coercive power (e.g. setting up a compulsory public insurance scheme for a given occupational category).

These challenges have manifested themselves gradually and incrementally over time, often through case law within rather opaque judicial arenas, affecting in different ways and with different intensity the various risk-specific schemes and the various tiers and pillars of provision in different countries (Martinsen 2005a and 2005b). So far the two challenges have not caused major organizational upheavals. But during the last two decades the institutional status quo has been explicitly and directly attacked on several occasions in some of its foundational properties: for example the link between legal residence and the fruition of means-tested social assistance benefits, the public monopoly over compulsory insurance or the very right to mandate affiliation to social sharing schemes (e.g. in the field of pensions). These attacks have been overcome –so far– either by successful defensive reactions of national governments or by benevolent rulings from the

Court². But one wonders what might have happened if the latter had ruled in favour of *Poucet-Pistre* or *Albany*, to mention the two most famous cases of the 1990s³: the whole French system of *monopoles sociaux* and the Dutch sector of second pillar pensions would have been seriously destabilised, with a likely domino effect on the social protection systems of other member states as well. The very presence of such “foundational” challenges must be interpreted as a sign of the deep tension which is building up in the relationship between nation-based forms of social protection and the logic of European integration.

This new situation of social “semi-sovereignty” (a term originally coined by Leibfried and Pierson, 1995) has prompted in recent years a growing politicization of the “opening” issue and, in some countries more than others, of the integration process as a whole. The most evident manifestation of this politicization has occurred in the Spring of 2005, during the campaigns for the French and Dutch referendums, which rejected the Constitutional Treaty (and the Irish referendum on the Lisbon Treaty held in June 2008 has confirmed that popular fears about “opening” have certainly not abated). Not surprisingly, questions regarding the social sharing dimension (who shares what, and how much? Is it appropriate for the EU to interfere in such decision? More crucially still, is the EU undermining national welfare arrangements and labour markets?) have been playing a central role in this process of politicization, while national governments find themselves increasingly sandwiched between the growing constraints imposed by the EU on the one hand and the national basis of their political legitimacy on the other—a legitimacy which remains highly dependent on decisions in the social protection domain.

As witnessed, again, by the referendum debates, the vast majority of ordinary citizens and a good number of policy makers think that the growing friction between the welfare state and the EU has or could have an easy solution: the two institutions should be put back on “separate tracks”, as they were in the first couple of decades after the Rome Treaty (Milward, 2000). Anyone that has some familiarity with institutional theory knows, however, better: macro-historical trends cannot be reverted (Pierson, 2004). As I put it in the Introduction, the two most important achievements

of Europe's XX century have now encountered each other and are bound to remain on the same track of development: there is no going back to separate tracks. If, as I am arguing, the logic of integration does have a high destabilising potential with respect to national social protection, then we must think of ways to mitigate this potential and imagine a strategy of compromise and "institutional reconciliation".

Is the clash avoidable? Towards a strategy of reconciliation and "nesting"

The term "reconciliation" immediately suggest the idea of some compromise in which each institution recognises the importance of the other, the advantage of cooperation and thus also the need to make some mutual concessions. The term "nesting" in its turn suggests to look for the compromise by firmly anchoring the narrower institution (in our case the national welfare state) within the fabric of the wider institution (the EU). In general and abstract terms, the concept of "nesting" is meant to connote the formation of a spatial structure characterized by two elements: 1) internal "convenience" (the structure provides an environment that allows for survival and development to whatever is hosted inside it) and 2) external "adjustment" (the structure fits within a the wider sets of elements that surround it). The concept of "nesting" is increasingly used by institutional theory in many of its contemporary variants within the social sciences (e.g. Aggarwal, 1998, Alter and Meunier, 2006, Faist, 2001; Tsebelis, 1990), and also occupies a central place in evolutionary theory within the bio-sciences⁴. I thus find it a potentially useful analytical/theoretical tool for my heuristic purposes. With the help of a chart, Figure 1 shows how the "nesting" between the welfare state and the EU could be achieved. Let me illustrate and discuss the underlying rationale and the various elements of this chart in some detail⁵.

Figure 1

As can be seen, the national welfare state is placed at the very centre of the chart. For responding to the big social risks of the life-cycle, the broad-based national insurance schemes remain today the most efficient and equitable institutions at our disposal. These schemes must be updated and modernized, of course, in order to respond to a host of endogenous transformations. But they must also be safeguarded as precious instruments not only for redistributive purposes but also for cohesion and legitimation purposes.

In the wake of half a century of supranational integration, the welfare state is already inserted within the economic spaces of the EU: space B consists of the Economic and Monetary Union, resting on free movement provisions, competition law, the fiscal rules of the Growth and Stability Pact – and, in the Euro-zone, a common currency and monetary policy. Space B has been the very epicentre of the opening waves of the integration process. We know that such waves were well-meant, so to speak, and that they have brought unquestionable advantages from an economic point of view. The EMU project was elaborated during the 1980s and 1990s in order to respond to the threats of stagnation and Euro-sclerosis, with a view to revamping “growth, competitiveness and employment”: the EU GDP is now significantly larger than it would have been without enhanced market integration. Liberalizations have made several goods and services more affordable to consumers (let us think of low-cost air fares), increasing the range of options available to them; in certain areas (e.g. health and safety) market integration has also brought about more consumer protection and higher labour standards. In addition, the tighter coupling between economic integration and national welfare states has prompted several countries to undertake much needed functional and distributive “recalibrations” of their social protection systems (Ferrera and Hemerijck, 2003; Ferrera and Gualmini, 2004).

As explained in the previous section, however, space B has also increasingly become a source of instability for national welfare state programs: its principles and policies are eroding the foundations of the “nest”, i.e. those closure preconditions that are necessary for sustaining social

solidarity over time from an institutional and political point of view. As convincingly argued by Fritz Scharpf, this process of erosion is largely driven by decision making rules that systematically favour negative over positive integration, but is also intensified by a sort of general pro-integration bias on the side of supranational authorities (and in particular the Court of Justice) “ that treats any progress in mobility, non discrimination and the removal of national obstacles to integration as an unmitigated good and an end in itself” (Scharpf, 2007, p. 15). In other words, the destabilising pressures of space B are linked to institutional and ideational dynamics that often push the logic of opening well beyond the functional and normative requirements (and overall rationale) of economic integration *per se*.

A strategy of reconciliation thus calls for the formation within the EU architecture of a second circle, which the chart in Figure 1 calls the EU “social space” and whose main function should be to safeguard or re-construct those institutional preconditions (the “ boundary configuration”) that underpin domestic sharing arrangements. To be sure, especially after the Amsterdam and Nice Treaties, various important steps have already been taken in this direction: in space C we now have a Charter of Fundamental Rights, hard laws on some common labour and social security standards and soft laws on employment, social inclusion, pensions and health care. In recent years, the Spring European Councils have also agreed on a number of grand “Pacts”⁶ that have reaffirmed the EU’s recognition of fundamental social objectives, its commitment to the “caring” dimension of Europe. These are all steps in the right direction, but, as I will argue in a minute, some key and strategic elements are still missing. Before discussing what is missing, let me however complete the description of the nested architecture of Figure 1.

As mentioned earlier, an institutional reconciliation between the welfare state and the EU implies not only mutual acknowledgement, as it were, but also some mutual concessions. A strengthened Space C can be seen as the concession that the EU makes to the welfare state, recognising the fundamental role played by nation-based sharing programs in enriching and stabilising citizens’ life chances. But the national welfare state must make concessions too. First, it must learn how to

live with (and hopefully take advantage of) some of the “horizontal” opening spurs coming from space B – a learning process that seems to be already under way, as we have seen. But the welfare state must also be ready to “open up” vertically, promoting the gradual formation of some post-national forms of social sharing. More specifically, Figure 1 indicates three new possible types of sharing spaces:

- 1) trans-national sharing spaces, centred on specific risks and occupational sectors and resting on novel functional alignments;
- 2) cross-regional sharing spaces, possibly addressing a plurality of risks or social needs and resting on new territorial alignments;
- 3) supranational sharing spaces, i.e. novel redistributive schemes directly anchored to EU institutions and based on EU citizenship (or denizenship) alone, i.e. without the filter of national institutions and politics.

In the “virtuous nesting” scenario envisaged by the chart, the spatial architecture of the EU must become more protective of the institutional core of the national welfare state, but at the same time it must make room and encourage innovation and experimentation on each of these three post-national fronts. What kind of institutional reforms, exactly, could be introduced in order to make progress in both directions?

Some building blocks for a more socially friendly EU

Let us first address the issue of how to introduce stronger protections for the core social schemes operating at the national level, enabling them to withstand the destabilising challenges originating from space B. As is well known, such challenges rest on the strongest base that the EU constitutional framework can offer: primary law, i.e. explicit and binding Treaty clauses on free movement and competition. In order to be effective, the institutional buffers which must be

provided by space C should rest on an equally strong legal basis. Identifying these buffers is far from easy and requires a delicate balancing act. The general goal is however sufficiently clear: the EU constitutional framework (in the wide sense) must be amended in order to explicitly define the content and the boundaries of “social protection” as a distinct and relatively autonomous space, and specify the limits of free movement and competition rules in respect of this space.

Ever since the landmark rulings of the ECJ in the 1990s (especially the above mentioned *Poucet-Pistre* and *Albany* rulings, which had to adjudicate on some foundational questions regarding the balance between “opening” and “closure”), we know that this goal has been on the EU agenda: not only the social agenda, but also the wider agenda of broad institutional reform, and some progress has indeed been made. A detailed reconstruction of the winding road of such progress from the Single European Act to the Lisbon Treaty would fall far beyond the scope of this article: let us therefore focus on the latter only. The Treaty on the Functioning of the European Union (TFEU) does contain a series of re-bounding provisions that – if the Treaty comes eventually into force- could significantly strengthen space C and offer a promising basis for a (more) virtuous nesting between social welfare and economic integration. Two provisions in particular deserve to be highlighted.

The first is Protocol 26 on services of general interests, included as an Annex to the TFEU (especially in the wake of Dutch, French and Belgian pressures). Article 2 of this Protocol explicitly says that “The provision of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non economic services of general interests”. As can be immediately appreciated, this is an important statement, that seems to grant to these services a sort of “constitutional” immunity from the opening logic of the integration process and in particular from the competition regime that pervades space B. The article is very short and its wording is not very precise. But, as specified by various Commission documents (see in particular EC, 2008a), non economic services of general interests definitely include “social services”, which in turn comprise the institutional core (and also some of the periphery) of national welfare

programs, namely 1) health care; 2) statutory and complementary social security schemes covering the main risks of life; and 3) personal social services (such as social assistance, employment and training services, social housing, childcare and long term care services).

The second promising provision of the Lisbon Treaty is art. 48 (TFEU). This article (which in “euro-treaty” parlance is known as the “social security emergency brake”, a term apparently coined by UK negotiators) recognizes to each member state the right to suspend the adoption of a legislative proposal related to the social entitlements of migrant persons if its implications are considered to negatively affect “important aspects of its social security system, including cost, scope, financial balance or structure”. If a member state requests the suspension, the matter is referred to the European Council where the proposal can be blocked⁷. Under the extant (i.e. pre-Lisbon) status quo, member states do have the possibility of ultimately blocking a proposal in this delicate sphere: the co-decision procedure that regulates legislation on the social security rights of migrants envisages unanimity for Council decisions. But a blockage that can be exerted (or threatened) at the very beginning of a legislative process – as in the new art. 48 procedure- is likely to be much more effective than a blockage that is attempted at its the very end, possibly after a lengthy and controversial conciliation process between Parliament and Council. Article 48 is, in other words, a second important innovation of the Lisbon Treaty that puts back into the hands of the nation state some “gating” powers in respect of its own sharing spaces and thus strengthens its capacity to respond to the destabilising potential linked –in this case- to free movement provisions.

The destiny of the Lisbon Treaty is still uncertain and even if the Treaty will eventually come into force, these two provisions will require time, intellectual and political mobilization, litigation and jurisprudence in order to become effective as re-balancing tools. But if we compare the current climate with the climate which prevailed at the time of the SEA there are some reasons for moderate optimism about the “virtuous nesting” scenario outlined in Figure 1. In particular, the greater role entrusted upon the European Council for the “emergency brake” procedure seems a

promising and reasonable innovation, as this institution is the most appropriate arena for complex “balancing” exercises involving contrasting goals of the integration process and different preferences on the side of member states.

But what about the other element of this scenario, i.e. the formation of post-national sharing spaces? On at least two of these fronts some signs of innovation and experimentation are already clearly visible.

As far as trans-national sharing spaces are concerned (space A1 in the figure) , the most significant development is the formation of the so called “cross-border institutions for occupational retirement provision” (IORPs). A directive adopted in 2003 has laid down the legal framework for the establishment of occupational pension funds covering workers of different member states⁸. Closely linked, as they are, to contributions, second pillar pension schemes incorporate limited amounts of redistribution and solidarity; they still are, nevertheless, recognizable sharing spaces, with the potential for activating a modicum of “bonding” among their affiliates. As mentioned above, the Commission’s doctrine already counts second pillar pension schemes among “social services of general interest” (EC 2008a) . A number of cross-border schemes were already operating prior to the 2003 directive, mostly based in the UK. The directive has however given a significant spur to new establishments of this kind. In the two years elapsed after the implementation of the directive (which entered into force in 2005), the number of cross-border pension schemes has increased by 25%. As of 2008, there are now 48 such schemes: the largest one, born after the directive and based in Luxembourg, covers workers in 11 different member states (CEIOPS, 2007).

These are very new developments on which reliable data are lacking and empirical research is urgently needed. It would thus be incautious and unwarranted to make bold evaluative statements. For the time being and for the purposes of this article, it is sufficient to conclude that the institutional landscape is in flux, that a new phase of trans-national experimentations in the field of social protection has clearly dawned and that the EU seems to be providing the correct incentives and supports.

The same holds true for the other front, that of cross-regional experimentations in providing jointly some types of services (space A2 in the figure). Here, especially in the wake of the INTERREG initiatives of the European Commission, a growing number of interesting experiences have been taking place during the last fifteen years, in the context of a wider process of sub-nationalization of welfare provision within the domestic arenas and the activation of what has been called “competitive region building” (Keating, 1998; McEwen and Moreno, 2005). Virtually all these experiences include a social policy component, typically in the field of health, employment or care services. And all of them have set up permanent institutional structures for the managing and monitoring of cooperation.

The EU has recently introduced a promising new instrument, the European Grouping for Territorial Cooperation (EGTC), aimed at facilitating economic and social cohesion through cross-border, trans-national or inter-regional initiatives (Regulation 1086/2006). A host of public and non public actors are allowed to join forces and establish a EGTC through direct agreements, within a general legal framework set up by the EU – a framework which recognizes legal personality to the “grouping”. Though not exclusively centred on social sharing objectives, this new instrument is likely to encourage the coming together of sub-national territories belonging to different member states and thus “open up” channels and opportunities for spatial reconfigurations above and beyond the established boundaries of nation states – including their social boundaries.

What about, finally, innovation and experimentation on the third front of post-national solidarities (space A3 in the figure), i.e. supra-national sharing schemes directly anchored to the EU? The last two decades have indeed witnessed an increasingly richer and imaginative debate on possible institutional “pioneers”, such as a pan-European minimum income scheme for the needy (dubbed as Euro-stipendium by Schmitter and Bauer, 2001), a child or birth grant payable to all (or needy) newly born Europeans⁹, or the establishment of a supranational social insurance scheme for migrant workers (a proposal originally put forward in the 1970s under the name of “13th state scheme” and recently resurrected by the French debate) (Lamassoure, 2008). Others have proposed

less ambitious “pioneers”, centred on binding regulatory standards (e.g. on minimum wages or, again, a minimum income guarantee) rather than on direct monetary transfers funded by the EU budget (for a review see Ferrera and Sacchi, 2007). At various points in time, concrete proposals in both directions have indeed surfaced within the EU social agenda, upon initiative of the Commission, but none of them has been able to muster sufficient political support in order to seriously enter the legislative process.

As we all know, a number of redistributive funds are already operative at the supranational level for broad social cohesion purposes. None of these funds and programs qualifies, however, as a genuine pioneer for supranational social sharing. The fault line that needs to be crossed is that which separates forms of territorial or inter-level redistribution from inter-personal redistribution. Even the last addition to the long list of EU “social policy” funds, the Globalization Adjustment Fund, has not made this quantum leap, as the Fund does not grant benefits to individual workers, but limits itself to transferring funds to the local-level collective actors that have applied for assistance (Novaczek, 2007). Crossing this critical fault line will not be easy from a political and institutional point of view, as witnessed by the experience of all historical federations in the XX century (Obinger, Leibfried and Casltes, 2005) . A more realistic target for the consolidation of Europe’s social space could possibly be the establishment of binding regulatory standards, of some “social snakes” (to use the jargon of the 1970s and 1980s) forcing the member states to loosely align themselves to a European “norm” regarding certain areas of social protection. The setting of precise and measurable targets within the social OMCs (a goal already on the agenda: see EC 2008b) could be the first concrete step in this direction.

Conclusion

This article started by suggesting that the national welfare state and the EU are probably the most salient and distinctive legacies that the XX century has bequeathed to Europe: two institutions that

have given an invaluable contribution to enriching and expanding the life chances of millions of ordinary people, in a context of economic growth, social security, cohesion and peace. The XXI century has however opened with some turbulence and tension regarding, precisely, the mutual relationship between these two institutions. As argued in the previous sections, this tension ought to (and can) be contained: the search for a strategy of institutional reconciliation must become a top priority for the political agenda. The challenge ahead of us is that of imagining and then engaging in the actual construction of a distinctive EU social model : not just and generically “European”, but an “EU” social model, resting on a well-designed and protective nesting of social sharing goals and practices within the constitutional framework of the Union. The prime institutional rationale behind this new model should be that of promoting a virtuous and dynamic balance between the logic of opening and the logic of closure, in order to effectively underpin the self-sustaining production of both individual opportunities and social “bonds”, i.e. the two sides of life chances European style.

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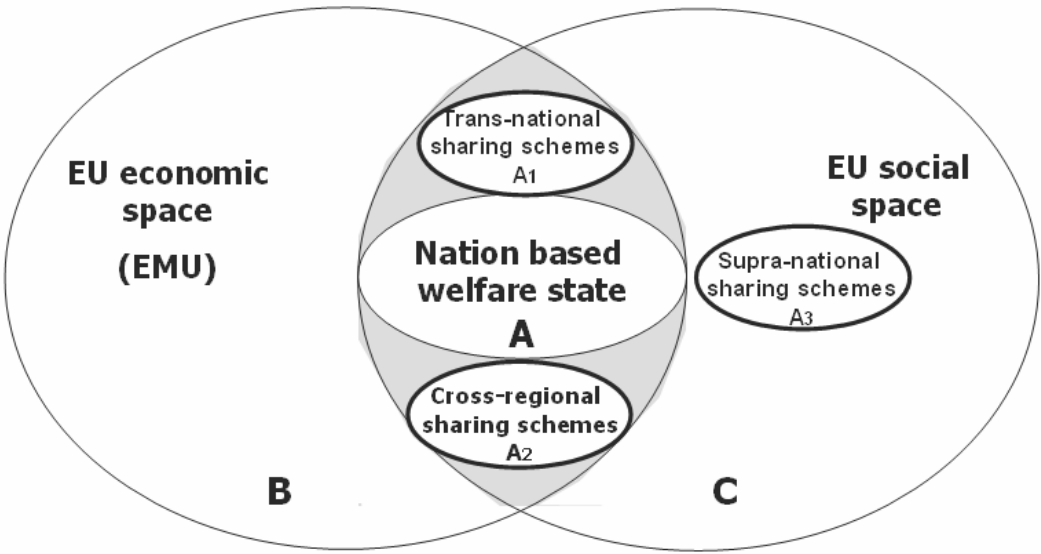
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Figure1
Nesting the welfare state within the European Union



Notes

¹ I have reconstructed and discussed this strand of scholarship in Ferrera, 2005. One of the most prominent Founding Father of this tradition is of course Stein Rokkan (Flora 1999).

² Outside the field of pensions (e.g in health care or education) the Court has been however less benevolent in upholding national rules of “closure”, especially in recent years (for a discussion, see Scharpf, 2007).

³ In the *Poucet-Pistre* joined cases (C-159-91 and C-160-91) the Court had to establish whether the state monopoly over social insurance in France was legitimate according to EU law. In its ruling the Court found that the freedom of service and competition norms could not be invoked to justify exit from mandatory public insurance schemes. In the *Albany* case (C-67-96) the Court had to establish whether a textile company in the Netherlands was obliged to pay the contributions requested by its industrial pension fund, as envisaged by collective agreements. The Court ruled in favour of the pension fund. These cases and the political contexts under which they occurred are reconstructed in detail in Ferrera, 2005.

⁴ Recent research in genetics has highlighted for instance the importance of “nested genes” and “nested coding processes” for evolutionary dynamics (eg. Yu., Ma and Xu, 2005). For a general discussion of the promising epistemological and theoretical links between the social sciences and the bio-sciences see Hollingsworth and Mueller, 2008 and Boyer, Greenspan, Mayntz, Nowothny and Sornette, 2008.

⁵ An earlier version of this chart is included in Ferrera (2005). I re-propose here a slightly modified chart : not only do I consider it as still useful heuristic tool, but my impression is that during the last three years a number of developments have made that nesting scenario more feasible, i.e. have brought it within an easier reach.

⁶ Pact on “Youth policies and youth mainstreaming” (2005); Pact on “Equal opportunities and work-life balance”, 2006; and Alliance on “Family policy”, 2007.

⁷ The European Council has four months for either referring back the draft legislative proposal to the Council (in which case the ordinary legislative procedure will continue) or requesting the Commission to submit a new proposal (in which case the act originally proposed will be considered as non adopted). There is also a simpler solution for the European Council: “taking no action”, which means that the proposed act falls without the need for further initiatives. This simpler option was not envisaged by the Constitutional Treaty and has been inserted during the Lisbon negotiations. A declaration agreed by all member states specifies that the European Council shall decide “by consensus” in the procedure envisaged by art. 48.

⁸ Directive 2003/41/EC of the European Parliament and the Council of 3 June 2003 “on the activities and supervision of institutions for occupational retirement provision”.

⁹ The proposal to establish an EU Capital Grant for Youth was presented by Julian Le Grand at a seminar of the Group of Social Policy Advisors to the European Commission, held in Brussels on September 8, 2006. See Barrington-Leach, Canoy, Hubert and Lerais, 2007.