

From Bending to Stressing National Interests?

The impact of reforms and enlargements on
EU negotiation between 1988-2008

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December 2008

NETHERLANDS INSTITUTE OF INTERNATIONAL RELATIONS
CLINGENDAEL

CIP-Data Koninklijke bibliotheek, The Hague

Berge, Mirte van den, Adriaan Schout

From Bending to Stressing National Interests? The impact of reforms and enlargements on EU negotiation between 1988-2008 / M.M. van den Berge and J.A. Schout – The Hague, Netherlands Institute of International Relations *Clingendael*. ISBN 978-90-5031-135-9



Linguistic editing by S.J.M. Habraken
Desk top publishing by Birgit Leiteritz

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Foreword

The reason for writing this study has been the departure of ‘our man in Brussels’, Frank Schumacher, who in the past 20 years has been Counsellor for Social Affairs at the Dutch Permanent Representation to the European Union. Below, I will briefly describe the EU’s development in the social area as relevant during Frank Schumacher’s time.

European cooperation was and is an essential condition for stability and prosperity in postwar Europe. In this context, the internal market acts as the driving force behind EU integration and as a source of growth, employment and prosperity for all Member States. During the years of the European Community, social policy in Europe was dominated by the development of the internal market and the free movement of persons within that market. It was aimed at removing barriers to the freedom of movement of workers, fighting material inequality, guaranteeing a ‘level playing field’ and preventing policy competition between Member States, as well as ensuring that the social security systems of the Member States were coordinated such that crossing borders would not imply loss of rights. In more recent years, this was complemented by the intensive dialogue between Member States in the field of employment policy and social policy.

Over the past decades, European cooperation has faced demographic developments such as migration, ageing and dejuvenation. Social life has changed in an almost revolutionary way as a result of technical modernisation, such as digitisation, miniaturisation and the use of materials. The political

and economic environment has altered considerably due to the changes in Central and Eastern Europe and South East Asia, new threats, and continuing internationalisation of the economy and globalisation of markets. As a consequence, the internal market in Europe has become part of more comprehensive markets. The free movement of workers within Europe has been complemented, and often been surpassed in terms of size, by large-scale migration to Europe from nearby and more distant regions. Instead of policy competition between the Member States of the European Union, there is now policy competition between the European model of the welfare state and socio-economic systems of an entirely new nature in Asia, India and Latin America. Therefore, the question must be faced how these changing circumstances and environments will affect social policy and how European cooperation in the social field should be shaped in the future.

The difficulty of reaching agreement about directives such as the amendment of the Working Time Directive, the Temporary Agency Work Directive and the Pensions Directive confirm not only that Member States do not always have similar solutions to social issues but also that it is very hard to converge the measures chosen to tackle them.

The developments that Europe and its Member States are currently facing do not prompt new uniform rules. Many directives from the past were inspired by the aim to create a 'level playing field' and uniform conditions within the internal market. At a time when the 'markets' in which European enterprises are competing are much more comprehensive than only the European Union, a 'level playing field' within the EU has only relative value. Policy competition whereby interplay results in social protection and security in the various Member States being adapted in a downward direction in order to attract company branches and activities, must be prevented. However, today, such policy competition threatens from countries outside the EU much more than from within it.

That is exactly why diversity within the EU is a European strength. It offers the possibility to examine different solutions and increases the strength of enterprises in competing in markets outside the EU where they face a variety of rules and constantly changing circumstances.

Although social policy and social security systems should therefore be adjusted to the changing circumstances first of all at Member State level, the European Union has an important role in this which is related to the fact each Member State may adapt policy and legislation but that the relevant developments and activities have long since ceased to be limited to the national economy. Each of the Member States may well adjust its own policy and legislation but none of them have yet an independent grip on the

economic phenomena and markets where interests have to be protected and social goals realised.

Therefore, if Member States merely act on their own, adjustments will be mainly of a defensive nature and imply a withdrawal vis-à-vis market forces that are impossible to resist for each Member State individually. Together, the Member States have more influence on developments in the world economy than individually; together, they can guarantee more scope for national policy than each Member State could achieve separately.

It is a constant challenge to strike the right balance between the diversity of national systems and a well-functioning and strong European Union, also at global level. It requires the right mix of coordination (where necessary), harmonisation (if necessary) and stimulation of cooperation at regional level. The importance of that choice is obvious but will have to be determined on a case-by-case basis.

The developments in Europe over the past 20 years also affect the way in which representatives of the Member States operate in Brussels. The European Union has gone through a number of life phases, which Frank Schumacher has personally experienced in Brussels. During all those phases, he has been able to function outstandingly in the interest of the Netherlands and the EU. He has operated in the midst of these developments, has helped to give them shape and has been capable of adapting to the changed circumstances. How exactly these life phases affect the negotiator is in fact not entirely clear, because as far as I know, no one has ever described how staff of Permanent Representations negotiate and their role in the playing field between the (capitals of) the Member States.

Working at the Dutch Permanent Representation is a privilege that not many people have experienced. Where the staff of the Ministry of Foreign Affairs is used to representing the Netherlands abroad, the staff of the national policy departments, such as the Ministry of Social Affairs and Employment, do not have that many opportunities to perform this important task. Frank Schumacher is one of those privileged staff members of the Ministry of Social Affairs and Employment. In 1988, he was assigned to the Dutch Permanent Representation in Brussels as Counsellor for Social Affairs. Frank Schumacher started working in Brussels at a time when Europe only counted 12 Member States, just after the accession of Spain and Portugal. In the 1980s, negotiating in Europe was, as one of the interviewees stated, at a stage where a discussion based on arguments could still be won in a working party of the Council. Many negotiators were dedicated people with their heart in the right place when Europe was at stake. They were to a certain extent 'believers'. This was the setting at the beginning of Frank Schumacher's assignment.

During the 20 years that he served in Brussels, many things changed in the setting of the work of the Permanent Representations. The number of Member States increased to 27. New Treaties came into force. The Commission made some changes in its way of working and in organising its work. The position of the European Parliament became stronger. And last but not least, the available information and communication technology changed.

Enough reasons to mark the farewell of Frank Schumacher after 20 years in Brussels with a seminar about the negotiating process in Brussels. Has it changed? How has it changed? Has it become better, or is the situation at the negotiating table worse than in 1988? Answers to these questions are not easy, in the first place because hardly any scientific research has been done on this aspect of EU life in Brussels, and secondly because negotiators do not often speak about the negotiating process. I would like to thank all the interviewees for sharing their experience with Mirte van den Berge and Adriaan Schout of the Clingendael Institute in the Netherlands, which enabled them to write a paper that sheds some light on these important questions.



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Preface

This study is written as a background document for the seminar ‘The Art of Negotiation in the EU’ organised in honour of Mr Frank Schumacher. For two decades, Mr Schumacher served as Counsellor for Social Affairs within the Working Party on Social Questions at the Dutch Permanent Representation (PermRep) in Brussels. There are not many national negotiators who have held such an important negotiating position, representing his government abroad, for such a long time and they are probably becoming increasingly rare. Most PermRep officials rotate back to the capitals after 3-5 years. One reason why Member States want to rotate positions in ‘Brussels’ was made abundantly clear by Mrs Thatcher, who rebuked Lord Cockfield, the architect of the ‘1992’ programme, for “going native” when she blocked his second term as Commissioner.

The experience of twenty years in European negotiations offers a unique opportunity to consider whether negotiating in the EU has changed. Clearly, the EU has changed in many ways since 1988, but has this affected the art of negotiation or is what defines a good international negotiator a more generic skill centred around building winning coalitions? Could it be that the influence of the individual negotiator has become much less? Moving beyond the qualities of the negotiator, the question also needs to be addressed of whether the role of the EU negotiators has changed, e.g. have the Brussels-based negotiators become more of a community of officials building ever stronger bridges between the Member States? Or, has the opposite happened and have the Member States become more reluctant in finding EU

compromises? These changes in the role of the negotiators may well indicate more profound changes in the nature of the decision-making process and, with that, in the nature of the EU. If the capitals gain in control at the expense of the influence of PermReps, then this suggests a sharpening of the EU's intergovernmental nature.

Evidently, the EU has changed. However, despite lengthier decision-making procedures, a growing role for the European Parliament and the multiplication of Member States, the academic literature now seems more or less to conclude that EU policy-making has by and large remained the same in terms of its abilities to produce output.¹ Frank Schumacher's farewell is a good opportunity to address the question of possible changes, and in writing this study we were happy to build on the personal experiences of officials who worked on the EU's social policy at national level, the Commission, the European Parliament (MEPs and administrators), the General Secretariat and non-governmental organisations.

When looking at the EU negotiation process in more detail, we see that there are major changes unfolding in the negotiations and that, although the changes and reform processes are far from crystallised, they may also have deep impacts on European governance more generally. As elaborated below, at least the Dutch Permanent Representation has become much less of an outpost of national ministries and control mechanisms have multiplied, the seniority of PermRep officials has dropped and international affairs units have become more horizontally interconnected within their departments. Similarly, as underlined in various interviews, the straightforward defence of national interests has become much less of a taboo. On the whole, this suggests that negotiating in the EU has become more difficult, with a stronger focus on national considerations and a bigger role for national control mechanisms. Over the past two decades – just to mention one technical aspect – new communication mechanisms have made it possible to directly monitor the negotiations and for the capital to give instructions to the negotiators in the meeting rooms in the Council building. As this study shows, there seem to be far fewer grounds for fearing that negotiators go native than twenty years ago, but this also leads to the question of whether this is good for the EU.

The purpose of this study is to identify possible trends in European negotiations. In doing so, we are fully aware that many changes are still in progress. Moreover, changes in European negotiations are the result of several

1) Dehousse, R., F. Deloche-Gaudez and O. DuHamel (ed.) (2006) *Élargissement: Comment L'Europe S'Adapte*; Settembri, P. (2007) *Surgery succeeded, has the patient died? – The impact of enlargement on the European Union*; Kurpas, S., C. Grøn and Kaczyński (2008) *The European Commission after Enlargement – Does more add up to less?*

important developments such as shifts in the position of coordinating units, bureaucratisation of decision-making processes and changes in political approaches towards the EU and social policy. Such momentous components of the EU negotiating process would deserve much closer examination. Therefore, the ambitions of this study do not go beyond identifying trends, and reporting on them for further discussion, and detecting possible changes in EU decision-making processes and governance.

We would like to thank the officials – see the list of interviewees in the Annex – who were so kind as to give us their time. Moreover, we would like to thank our editorial committee, Mr Lauris Beets, Mr Guus Borchardt, Mr Andrew George and Mr Henne Schuwer. Finally, we are very grateful for the cooperation of Mr Robbert Morée from the Dutch Ministry of Social Affairs and Employment who organised the seminar and supported us in this study.

Mirte van den Berge and Adriaan Schout

Introduction

This study marks the farewell of a remarkable figure in Dutch EU policy-making, Mr Frank Schumacher. Mr Schumacher is one of the last of the Mohicans serving for quite a lengthy period – from July 1988 to the end of 2008 – as Counsellor for Social Affairs in the Working Party on Social Questions at the Dutch Permanent Representation to the EU (PermRep). This period is characterised by historical changes in the European integration process – ‘1992’, enlargements, Treaty revisions, etc. Apart from institutional changes, these decades have also been characterised by a multiplication of national and European control mechanisms, such as the increased role of the European Parliament and national parliaments, the Europeanisation of ministries, etc.

Therefore, this occasion offers a good opportunity to assess the developments within the EU¹ in terms of how all of this has changed the negotiation processes and whether the changes in the negotiation processes have all been for the better. There are several reasons not to expect fundamental changes in the way Member States and EU institutions find their common grounds. As the EU integration process is unique in its kind and unprecedented, debates over the implications of changes have been a constant factor. However, notwithstanding reforms, institutions are inherently resilient to change. Even

1) Previously ‘EC’ of course, but in this study we will use the current name: EU.

with regard to one of the most significant changes in the past decades – the 2004 enlargement– it is not clear whether this has increased the number of cleavages within the EU. Some of our interviewees stressed it has been ‘business as usual’ while others found that cooperation between the Member States has become more complicated.

The study focuses on the EU negotiation process in the period 1988-2008. Given the context of the study – the farewell of Mr Frank Schumacher – the focus is on negotiations in the EU social policy field², and the Netherlands is used as an illustration in discussing the relation between Brussels and a Member State. Although the study focuses on the policy area of social affairs and employment, an analysis of the accomplishments of the EU social policy area is beyond the scope of this study. Whether the trends and debates addressed in this study would also hold for other policy areas and other Member States is up for discussion.

The study is based on 20 interviews and background papers. In addition, we had two meetings with the editorial committee which also provided in-depth insights into the debate on whether or not the EU’s social policy context has been reformed in major ways. In all, we were able to conduct up to 30 hours of interviews. The main findings are presented under headings 1) Bye-bye cowboy? The changing context of the EU negotiator, 2) Bye-bye cowboy? An alternative view: new cowboys have emerged because the EU has become stronger, 3) Exploring new policy instruments, and 4) The Dutch position in EU social policy and coalition building. To conclude, section 5 presents some final reflections on the developments observed and on the current situation in terms of output and legitimacy.

2) With the term ‘social policy’ we refer to all policy areas dealt with at the Dutch Ministry of Social Affairs and Employment, including employment policies and gender equality.

1 Bye-bye cowboy? The changing context of the EU negotiator

1.1 Introducing the cowboy

Some interviewees depicted officials in the PermReps working on social policy in the 1980s as ‘cowboys’, i.e. lone riders and policy entrepreneurs with visions and ideals about the EU. ‘Brussels’ officials – PermRep and Commission officials – were restrained by few institutional constraints and were able to “bend their national interest”. Informal processes flourished in EU negotiations. This does not suggest that the officials working at the PermReps were loose cannons working without strategies or tactics, but it underlines that the context in which the negotiators operated allowed them to colour the European political landscape to a greater extent than now. The – Dutch – PermRep had ample leeway in terms of defining agendas and national positions. Together with other Member States – for instance, the Gang of Four, i.e. the four likeminded Christian-Democrat ministers – and the Commission, it had an apparent influence in shaping the EU’s social policy. Examples of this influence include: the Social Charter (Social Protocol), the Working Time Directive, health and safety legislation and the formulation of negotiating positions in the Council in general.

Discussion box I

- 1) Is the cowboy image a true representation or a glamorisation of the old days?
- 2) How should this possible disappearance of such entrepreneurs in the context of EU policy-making be assessed?
- 3) If the cowboy analogy holds, does it only apply to the Netherlands or does it have a broader relevance?
 - a) Does the trend concern social policy or other policy fields as well?

1.2 The role of the PermRep: ‘from entrepreneurs to paper pushers’

At the end of the 1980s, the EU was a smaller and more homogeneous group – with the UK as the odd outsider – which allowed for easier ‘relation management’ including with the Presidency. Creating winning coalitions proved easier despite unanimity requirements. In addition, the actors involved were focused on European compromises rather than merely protecting national interests. As the coordination and control mechanisms in the capitals were less established, the official at the PermRep had more leeway in the search for European compromises. Moreover, the relationship between the PermRep and the capital could be characterised as a two-way street so that the PermRep could stress in the capital what would and would not be feasible in the writing of instructions – if they were put on paper.

Nowadays, the PermRep is more ‘house-trained’. The coordination process has been formalised and the negotiator gets detailed and written instructions from the capital. One interviewee now presented PermRep officials as “paper pushers”. Representation in the Council is now also more of a collective concern of both PermRep and capital: increasingly, experts from the Ministry of Social Affairs travel to Brussels to share their know-how with – or more directly supervise – the PermRep during the negotiations. Furthermore, there are now more representatives of the Ministry based in Brussels (1 in 1988, 4 in 2008).

While the number of officials at the PermRep expanded, the seniority of PermRep officials dropped. In parallel, supervision by the capital increased and instructions became stricter. The departments in the capital themselves became more aware of the EU’s importance and increasingly developed contacts with other capitals and in Brussels (sometimes even without informing the PermRep). With the increased monitoring by the capital, the

capital's need/willingness/ability to listen to the PermRep thwarted its full assessment of the EU playing field and of useful negotiation tactics. This development seems to have resulted in both a loss of flexibility of the national negotiating position and a loss of feel for how the national position fits into the wider European negotiations.

This may have reinforced the trend that negotiations at EU level changed from looking for European solutions to aiming at national derogations. In the early days “national interests were tabooed”. In contrast to the late 1980s and early 1990s when the negotiations were more aimed at convincing European colleagues, it is now much less possible to win debates in a Working Party or Coreper on the merits of arguments. The adjusted working methods in the Council – introduced in anticipation of the 2004 enlargement – have contributed to this shift, limiting speaking time in Council deliberations. With a reduction of the power of the argument, the informal coalition-building processes before and during the meetings have become more important.

Discussion box II

- 1) Is it a pity that the ‘Schumacher-type’ of negotiators are leaving the PermReps?
 - a) Is it a pity for Europe or for the Netherlands?
- 2) What is more important for a PermRep official nowadays: close links with the capital or profound experience in Brussels?
 - a) If both are considered important: has the balance changed from Europe-minded to national interests at the PermReps?
- 3) Is there a tension between control by the Ministry and the influence that the PermRep negotiators have in the EU?

1.3 The role of the Ministry: ‘from national to European’

Around 1990, the Ministry of Social Affairs had a small International Affairs Unit (‘Internationale Zaken’) with 5 FTE devoted to the EU (20 including international organisations generally). EU involvement or awareness within the Ministry was on the whole “isolated” in the International Affairs Unit (with the exception of some early European policy areas like health and safety at work and free movement of workers). The function of the International Affairs Unit shifted from “keeping the outside world out” and monopolisation of EU involvement within the Ministry, to its current focus on influencing the outside world through internal input and fostering the Europeanisation of the Ministry itself. What counted for the Ministry – and the Minister for that

matter – in the 1980s were national policies. The International Affairs Unit stood “with its back towards the rest of the Ministry”.

In the current situation, under the influence of the broadened scope of EU social policy, the introduction of the Open Method of Coordination (OMC) and the changed Dutch outlook on the EU in general, the Ministry is much more widely and deeply involved in European policies and processes. The role of the International Affairs Unit within the Ministry has changed to formalising coordinated instructions – coordination has become a more bureaucratic national process. This was partly influenced by the elaboration of national coordination structures (e.g. ‘BNC’ – the *fiche* used to gather the positions of all ministries early on when the Commission has presented its proposal). The coordination has been formalised also in relation to the involvement of top administrative and political levels. With this development, the negotiating instructions have also become stricter, leaving less room for the PermRep to find European solutions. In comparison to the 1980s the size of the International Affairs Unit has almost doubled as currently 12 FTE are devoted to the EU.

Furthermore, the increased interest within the Ministry in the European dimension of *national policy* has contributed to a more extensive consideration of the national context and to an increased appetite of national experts to take part in the negotiations or at least have close contact with the PermRep. Partly due to the gentle push by the International Affairs Unit of the Ministry, the European dimension is now further internalised in the national policy-making process.

It is surprising to note that, contrary to other Dutch ministries, the Ministry of Social Affairs has continued using the PermRep for representing the Dutch position in the Council Working Parties, whereas in other ministries the role of experts from the capitals as *porte-parole* has increased over this period. This role of *porte-parole* could strengthen the position of the PermRep vis-à-vis the capital.

Discussion box III

- 1) Has the increased awareness within the Ministry of the European dimension of national social policies improved the integrality of the Dutch negotiating position?
- 2) Is the current role of the International Affairs Unit the most effective and efficient for steering the PermRep?
- 3) Instead of relying on the PermRep, should experts from the capital more often act as spokesmen?

1.4 Coordination and communication: “the EU has become smaller”

When Mr Schumacher started in 1988, ‘Brussels’ was an outpost, also because communication was based on telex or fax and telephones were attached to a wall or a desk. The relative inflexibility of communication mechanisms created some room for the negotiator. The past two decades have seen new communication techniques in the form of mobile phones, SMS, BlackBerry, e-mail and video-conferencing. This allows much more detailed coordination beforehand and hands-on control even at the negotiations inside the meeting rooms.

Discussion box IV

- 1) Have the increased coordination, communication and control mechanisms contributed to lowering the level of seniority in the Council (Working Parties)?

1.5 Politics: assuming political control – but is this control effective?

1.5.1 Ministerial involvement: “a day in Brussels as a pleasant day out of the office”

There may have been direct contact with the Minister at the start of Mr Schumacher’s career at the PermRep, but ministers were generally less involved in EU social policy. This limited political involvement and presence added to the importance of the PermRep as policy entrepreneur. With less political salience of the EU at national level, ministerial involvement was even more person-dependent than it is now. This situation also implied that if a minister had a European agenda, the conditions were more rewarding for political entrepreneurs as, among other things, there were fewer Member States and the social agenda was still quite open.

The position of the minister within the ministry has changed. Now, decisions on strategies and positions regarding important EU dossiers are taken at a higher level within the ministry. While the political control of the national position has increased, the EU negotiation process has become less controllable for politicians. Due to, among other things, the increase in the number of states and the formalisation of agendas, individual politicians may suffer a relative loss of influence at EU level. This may contribute to less opportunities for European leadership and taking EU initiatives.

Discussion box V

- 1) Nationally, the Minister has assumed more control of EU policies, but has the role of individual ministers at EU level in fact become more symbolic?
- 2) If the control of the Minister has increased, does this facilitate the EU policy process?

1.5.2 National parliament: “parliament is interested in power, not in content”

The Dutch national parliament has become increasingly aware of the importance of the EU. Debates on the EU budget and European Social Fund subsidies, the perceived threat of the EU assuming a greater role in national social policies, rulings by the European Court of Justice on national social security schemes and other developments have triggered closer political control. The national parliament has been critical of the ‘interference’ of the EU in national social policy. This increased political dimension has stimulated the involvement of the Minister – and hence affects the political control of the negotiator.

As the level of information provided to parliament has increased, political debates could have been stepped up as well. However, as the interviews show, parliament’s focus is on stressing national competence. Parliament tends to be mostly reactive, predominantly concerned with the end result of European negotiations rather than trying to influence the Dutch position in Brussels in advance. As a number of (Dutch) interviewees stressed, it would be more beneficial in terms of legitimacy if the parliamentary debates were to be redirected towards the content of EU social policy and were more focused on the use of new instruments at EU level. Moreover, there seems to be ample opportunities for developing contacts with counterparts in the European Parliament and with national parliamentarians in other Member States and thus heightening the political profile of social policy-making in the EU.

Discussion box VI

- 1) The referendum in the Netherlands has underlined the need to reconsider the involvement of Dutch parliament in EU affairs. What next steps in EU social policy could usefully be taken?
- 2) To explain the limited parliamentary interest: are the possibilities that national parliamentarians have to influence European policies too limited?
- 3) Could the lack of interest of the national parliament in EU social policy be explained by a continuous downplaying of the importance of EU social policy in the light of existing national policies?
- 4) Does national parliamentary control fall behind the development of EU social policy and of the EP's position?

1.5.3 European Parliament: 'from sideline to centre stage...'

The role of the European Parliament in EU social policy has changed from activist adviser to co-legislator in most social policy areas. The widening of co-decision in social policy and the resignation of the Santer Commission in 1999 have changed the dynamics of negotiation, also in the Council: the EP can no longer be ignored. Mr Frank Schumacher has been one of the first to recognise and acknowledge this shift.

The increased role of the EP has complicated the negotiations and contributed to less predictable outcomes of the legislative process. In particular, Member States increasingly view a common position in the Council as a negotiating position vis-à-vis the EP: the Member States' bottom lines are thus harder to discern.

However, contrary to the developments in legislation, there are still major questions regarding the EP's role and capacities with regard to OMC processes.

Discussion box VII

- 1) Has the increased role of the European Parliament merely complicated negotiations?
- 2) The European Parliament has always pushed for a greater role for the EU in social policy. Has its position become more moderate with the extension of the co-decision procedure?
- 3) Both the European Parliament and national parliaments have limited interest in social policy OMC processes. How should democratic control of OMC processes be increased?

1.6 The role of the Commission: from visionary leader to bureaucrat

The Commission has changed in a number of respects. The Commission's personnel policy and its reformed working methods have restricted the possibilities for PermRep officials to be entrepreneurial. The new Commission personnel policy implies a reorientation of its staff: instead of builders of a common Europe, officials are developing into generalists with managerial responsibilities – from Europhiles to professionals.

The Commission's role in agenda setting is also professionalising: better internal planning and more horizontal control of internal deliberations reduce the flexibility of the agenda of the proposals once they are under negotiation in the Council and EP. A rolling planning and programming cycle has been introduced and there is greater concern for factual analysis ('Better Regulation'). In the early days, members of the Cabinets of Commissioners could work together – often informally – with Commission officials on initiatives. The Kinnock Reforms, among other things, formalised the Commission's procedures. Initiatives are now planned in rolling programmes and subject to hearings and integrated impact assessments. These developments have formalised operations between the Commission and the Council or PermReps of individual Member States. The Commission has, to some extent, become more inward-looking and the more presidential style of Barroso has further strengthened internal control.

With the greater internal control, national policy entrepreneurs have less privileged access to Commission decision-making. Possibly, with fewer fellow countrymen in the Commission, the PermReps may have fewer direct lines to the Commission. In addition, Commission proposals can no longer be informally amended during the negotiations between the Council and EP.

Today, the Commission's positions have become less flexible, also due to the internal control mechanisms.

Discussion box VIII

- 1) Have the Kinnock Reforms contributed to the Commission offering less visionary leadership?
- 2) Have concerns regarding legitimacy (better planning) and professionalisation decreased the flexibility of the Commission agenda and its position in negotiations?
- 3) Has the professionalisation of the Commission made it more difficult to influence the Commission?
 - a) If so, what could Member States do to optimise their relationship with the Commission?

1.7 Successive enlargements: from homogeneity to pluralism

Waves of enlargements have fundamentally changed policies, procedures, coalitions and instruments. The dynamics of EU negotiations have been altered by the introduction of new working methods in the Council. This has formalised procedures such as speaking time and has increased the need to coordinate positions in advance. Moreover, each accession coincided with new perspectives on (the need for) EU social policy. The 1973 accession of Britain (plus Ireland and Denmark) diversified the social models in the EU and broadened the spectrum of national positions within the Council. With the accession of Spain and Portugal in 1986, the number of critical Member States in EU social policy-making increased. The 1995 enlargement introduced the Scandinavian model of the welfare state and coincided with discussions on non-legislative instruments. In anticipation of the increased number of Member States resulting from the 2004 enlargement, working methods within the Council have been significantly altered. In addition, the accession of former Communist countries increased the different outlooks on the need for EU social policy and the scope of national societal problems. The importance of the 2004 enlargement, at least in the social policy realm, is reflected less in the sheer increase in the number of actors than in the fundamentally different background of the accession countries. The 2007 accession of Bulgaria and Romania is generally seen as a tidying-up of the 2004 'exercise' and, for the present, does not seem to have a major impact on the negotiation processes.

The 2004 and 2007 enlargements have not only increased the diversity of the national contexts to be taken into account at EU level but have also influenced negotiations as the representatives of the new countries are less likely to be policy entrepreneurs. This is partly due to the developments listed above: the ‘old’ Member States are also giving their representatives less leeway.

Discussion box IX

Generalising, the effect of the enlargements on the negotiations can be summarised as follows:

- decreased flexibility in the Council;
- formalised negotiations, more informal contacts outside the meetings;
- increased diversity between Member States;
- new Member States are less compromise-oriented;
- more impersonal negotiations;
- a shift from building a European superstructure towards “squaring the circle of 27 Member States”?

1.8 Intergovernmental trends in the Council

It is open for discussion whether the developments identified above are only caused by the enlargements or whether other factors may play even greater roles, but negotiators seem less focused on European compromises these days. One can observe a shift in attitudes in the negotiation of new European directives and regulations. At the end of the 1980s, the general goal was to build a European superstructure which would partly transcend national legislation. In the current political situations, the national context has to be accommodated to an increasing extent. As a result, the search for European compromises has become more complicated because of the attention for national details. EU negotiations have increasingly become an exercise of “squaring the circle of 27 national positions”. This has had a negative effect on the quality of EU legislation and has strengthened the role of the European Court of Justice (cf. section 2.4). The introduction of OMC can be seen in the perspective of accommodating the importance of the national policy context (cf. section 3).

One could also wonder whether the shifted focus in EU negotiations – from searching for European solutions to protecting national interests – has been the result of the current size and popularity of the EU or whether it could be ascribed to the state of integration in the policy field at hand. From the perspective of the Treaties, the ‘social policy area’ – including mobility of

workers, non-discrimination, etc. – has been nearly completed. In this respect, it could be no less than logical that the last hurdles are the highest and lead to an abundance of national derogations.

The growing role and the formalisation of the European Council has had a distinctive impact on the decision-making process. The European Council was introduced as an informal ‘chat around the fireplace’ by the Member States’ heads of government or state, setting out the general lines of the integration process. Nowadays, the role of the European Council is included in the Treaty and has partly taken over the tasks of the General Affairs Council. When the Member States are unable to reach agreement in the sectoral Council, the European Council is increasingly becoming a “sort of board of appeal”. This tendency to push problems to the highest political level may lead to less pressure on Member States to water down their national positions in the sectoral Councils.

Discussion box X

- 1) Has ‘bending your national interest’ lost ground to ‘stressing your national interest’ in EU negotiations?
- 2) Is the current difficulty to come to new legislation and the increased awareness of national derogations the result of the current level of integration of social policy – nearly completed from the perspective of the Treaty?
- 3) Has there been a trend in the Social Council to refer ‘hot potatoes’ to the level of the European Council?

Discussion Box XI

Concluding discussion on Section 1: bye-bye cowboy? (1)

The ‘bye-bye cowboy’ may imply less flexibility, more control and less vision. Does this imply a decrease in leadership in the EU at large?

- 1) Is there now less room for policy entrepreneurs?
- 2) Are the trends:
 - a) More intergovernmental control (changing role of the capital, IZ and PermRep)?
 - b) More control by all actors?
 - A widening number of actors?
 - A formalisation of processes?
 - c) Changing role of the Commission – Less visionary?
- 3) Is the flip side of “home interfering too much in the process in Brussels” decreased quality of the legislative output of the process (“squaring the circle”)?
- 4) What does this imply for the legitimacy of the process?
 - a) Better control?
 - b) Less ambition?
 - c) Increased concern for quality?

2 Bye-bye cowboy? An alternative view: new cowboys have emerged because the EU has become stronger

On the one hand, the development of European integration and social policy has marginalised the negotiator – bye-bye cowboy. On the other hand, there may be another trend: new cowboys may have emerged. In this line of reasoning one could wonder: in terms of entrepreneurial initiative, have the Member States lost out to ‘Brussels’ (particularly the Commission)?

Professionalisation and formalisation of the policy process in Brussels may have reinforced the position of ‘Brussels’. In this section, we will consider a number of Brussels-based actors¹: the Commission, the Presidency, the European Parliament, the European Court of Justice and EU-level NGOs.

2.1 The Commission: a professionalised actor with ‘better’ policies

The changes over the past two decades have not only decreased national representatives’ informal opportunities to cooperate with – and influence – the Commission, but in some respects they have also increased the Commission’s steering capacities. With the introduction of the Strategic Planning and Programming Cycle, proposals are better planned, and due the integrated

1) We are well aware that not all actors discussed in this section are physically based in Brussels; the term will be used as a metaphor to describe the actors discussed below.

impact assessments they are now better argued. Coordination within Commission services has also improved due to the Kinnock Reforms, the presidential style of Barroso, integrated policy procedures, etc. Moreover, the Commission is now probably also better tuned into the deliberations in the EP. Partly because of the strengthened coordination between rotating Presidencies (18-month agenda), the Commission and EP are now coordinating their work and organising (joint) hearings. With regard to human resources, the Commission is still in the favourable position that EU officials are selected through highly competitive '*concours*' and on the basis of high standards. In addition, the Commission has been active in broadening the number of actors involved in EU policy-making, which has also strengthened the weight of Commission output. In the area of social policy, the increasing involvement of social partners since 1985 has been illustrative in this respect.

2.2 Presidency: “from figurehead to key actor”

The role of the Presidency has become “infinitely more important than twenty years ago” and turned from “an administrative task” into a key political undertaking, both formally and informally. Today, the Presidency agenda is better coordinated and more consistent due to the cooperation in Presidency teams and the 18-month programme. Moreover, the role of the Presidency is now well imbedded in Brussels through close contacts with the Commission and key players in the EP, such as senior MEPs, committee chairs, rapporteurs and leaders of the political parties.

2.3 European Parliament: “it cannot be avoided any longer”

The European Parliament has strengthened its position vis-à-vis the Council. Shortly after the extension of co-decision to the main areas of social policy, the Council conducted “a policy of benign neglect”; the EP was seen as “a nuisance” rather than as a helpful contribution to the decision-making process. Nowadays, the relation between the EP and the Council has “matured” in terms of their role as co-legislators. The EP is now sometimes better able to reach agreement internally than the Council. The current revision of the Works Council Directive is an example of this development. The EP is now contacted more frequently by “the highest levels within the Member States” with the aim to influence its position. The EP’s influence is also underlined by the fact that the Council no longer sees its common position as a final product but rather as an input into further political negotiations. The importance of the EP as an actor in the policy-making process is further reflected by the increased interest which the social partners and social NGOs take in the institution.

2.4 European Court of Justice: “increasingly solving the problems of the Council”

The European Court of Justice (ECJ) has had a strong influence on the development of EU social policy. Over the years, Court rulings have been an inspiration for policy-making, with Member States urging the Commission to come up with proposals for new legislation or to reformulate existing legislation in order to respond to the ECJ’s interpretation. In its role as interpreter of both the Treaties and secondary legislation, the ECJ is filling the gaps left by the Council and EP when agreeing on political compromises. With the increased number of Member States and the nationalisation of positions in the Council, it is more and more difficult to reach a compromise on directives. This creates an increasing need for the ECJ to interpret policies. Member States differ in the extent to which they try to minimise the Court’s discretion. Yet, according to some, the Court rulings are the unintentional end result of the increasingly complex process of decision-making. More federalist-minded countries have, on occasion, been in favour of letting the Court decide, as it is generally more federalist than the Council.

There may, however, be growing resistance within the Council to letting political problems end on the steps of the ECJ. Moreover, it may be questioned whether the Court is willing to take up this role.

2.5 The role of NGOs: activist agenda pushers

The Commission has a friendly ear for Brussels-based NGOs. Their importance in formulating the agenda could be underestimated by the other parties. In addition, they possess the increasingly scarce commodity of real expertise as their personnel – contrary to the PermReps and rotating Commission officials – remain in position over longer periods.

2.6 Social partners: increased role in formal structures

The role of social partners in the EU social and employment policy-making process has increased over the last twenty years. The involvement of social partners at EU level is now more formally structured: from organising pre-Council meetings to discuss items on the Social Council agenda in advance, to having the possibility to come with autonomous binding agreements between social partners. In OMC processes, their role at national level is also stressed. However, the limited role of social partners in some of the 2004 Member States and the decrease in membership of trade unions in the ‘old’ Member States has raised questions on the representativeness of such membership.

Discussion box XII

- 1) Has the EU become less hospitable to cowboys?
- 2) Has 'Brussels' become stronger?
- 3) Should Member States invest more in regaining entrepreneurial control?
- 4) If so, how should this control be regained: what should be the consequences for national planning of EU policies, lobbying and negotiating?
- 5) What is the effect of the increased influence of 'Brussels' on the legitimacy of the EU?
- 6) Has the Strategic Planning Cycle and the Better Regulation agenda led to more balanced and legitimate proposals from the Commission?
- 7) Is the ECJ becoming more important to "square the circle"; if so, why?
- 8) Is there a contradiction: Member States assume more control in negotiating social policy but leave more discretion to the ECJ?

3 Exploring new policy instruments: “OMC has lost its bite”

With the successive enlargements, differentiation – economically and in terms of social models – increased. This has called for exploring new forms of governance. These calls for ‘soft law’ can be seen as part of a more general trend of government withdrawal and delegation of tasks to private actors. Social partners have also increased their role in the EU social policy-making process, with the compulsory consultation by the Commission and the possibility to opt for an autonomous collective agreement, i.e. the social dialogue. However, in the realm of social policy, OMC has been the most important trend. The first OMC processes were structured talks leading up to the European Employment Strategy (EES), in 1997. The EES process resulted from the fact that the EU had limited competence to tackle unemployment, while the problem was widely shared amongst the Member States and was perceived as being transnational (e.g. Renault Vilvoorde). In addition, certain (north-western) Member States were reluctant to extend EU competence in legislation. Another important aspect was the EMU process, which has served as an inspiration for and instigator of the OMC process. The model of guidelines and policy review was inspired by the Broad Economic Policy Guidelines and the road to monetary harmonisation. The EMU process and its strict limits on government spending also decreased the possibilities at hand for national governments to influence economic and labour market policies. In contrast to the Broad Economic Policy Guidelines, the Employment Guidelines are non-binding. This is also the case with other guidelines in the social policy realm which were developed later.

Taking stock of nearly a decade of OMC, the appreciation of the effects of OMC processes in the employment and social policy domain is mixed. Some point out the results in areas such as youth employment, participation of women and older people and ‘the comprehensive approach’ to tackling unemployment. Others stress OMC’s dependence on the willingness within Member States to learn from others, the difficulty to copy lessons across borders, etc. The view of “only innovations made in areas in the direction we were already heading” collides with the opinion “much has been achieved – more than visible at first sight – especially in the new Member States”. Overall, the OMC process is seen to have contributed to greater transparency of the situations in the Member States. There is agreement that the European Employment Strategy has been more effective than other OMC processes that were established in the broader social policy area later on, such as in the field of social inclusion and pensions – this can be partly attributed to the broader use of benchmarks and the larger number of links with EU legislation.

As the OMC processes matured, the role of the Commission in OMC increased and bureaucratised the process. This might have had an adverse effect on the commitment of some of the Member States. Moreover, having gone through OMC cycles, some conclude that “the instrument has lost its bite”. With the annual reviews monitoring and assessing the progress of the Lisbon agenda, some officials feel they are “running around a bit like hamsters in a wheel”.

Discussion box XIII

- 1) If the Lisbon process were to be changed into a bi-annual review, would that be more effective?
- 2) Given the current recession, which instrument would be most suitable to deal with challenges in the area of social and employment policies?
- 3) If Member States agree they are pushing the legislative borders in the Social Council, who is going to stop the process?
 - a) If we have a fully decorated Christmas tree, how can the Brussels machinery be stopped from adding decorative legislative proposals?
- 4) Has OMC lost its bite – or has it never had much of a bite to begin with?

4 The Dutch position in EU social policy and coalition building

4.1 Dutch EU policy: “from loyal Europeans to less reliable partners”

The developments in both Brussels and the capital as discussed above left their marks on the Dutch positions on EU social policy. In general, there used to be a recognition that “the EU is good” – although most officials considered the EU as “not really their business” (“een ver van hun bed show”). The Commission was seen as the defender of interests of small Member States and thus had to be strengthened. In the field of social and employment policy, too, the general outlook on European legislative proposals was “there is no harm in trying” (“baat het niet dan schaaft het niet”). This outlook was further reinforced by the fact that most EU social legislation involved minimum harmonisation with EU standards below the Dutch level. National implementation often involved ‘gold plating’, i.e. setting higher national standards. Also, the Dutch attitude towards the EU was characterised by a focus on the internal market and – more particularly – on removing trade barriers to competition. From the beginning, the Dutch have been conscious of the need to prevent “excessive decoration of the Christmas tree”, i.e. unnecessary harmonisation of the internal market.

Over the years, the Netherlands has become more critical of EU action, in particular with regard to the choice of policy instruments and financing. A change of government in the mid-1990s – intensified by high unemployment in the EU – modified the Dutch view on actions in the field of employment

and the country became a proponent of the EU Employment Strategy (EES). The Netherlands has been ambivalent with respect to the extension of OMC to other social policy domains, particularly from 2000 onwards with 'Lisbon'. The Dutch government applauded the emergence of OMC to accommodate increased differentiation within the Member States, but was hesitant regarding the vagueness of the goals set by the Lisbon agenda. Subsidiarity has been a focal point in the Dutch position since 2000, exacerbated by the 'no' in the Dutch referendum on the Constitutional Treaty in 2005.

With regard to the current Dutch position on OMC, a decade after it was established, the interviewees doubted how many really new ideas had resulted from the OMC processes. The Dutch perception seems to be that OMC has brought more to other Member States than to the Netherlands where "best practices were already the norm" – "they learned from us, what could we learn from them?".

Discussion box XIV

- 1) Has the Dutch position on the EU integration process changed from "there is no harm in trying" to "there is no harm in trying, then why try at all?"
- 2) Has the EU social policy moved from the internal market into the realms of the Christmas tree (OMC, marginal directives, etc.)?
- 3) Has the attitude of the Netherlands towards 'best practices' and OMC limited its ability to learn from other countries or has there indeed not been so much to learn?

4.2 Coalitions: "decreasing relevance"

In the early 1980s, the four countries with Christian-Democrat ministers (Germany, Belgium, Luxembourg and the Netherlands) formed a stable coalition, the 'Gang of Four'. The Gang of Four searched for European consensus; together they could influence EU policy substantially, for example in the Social Protocol in the Treaty of Maastricht and in a number of dossiers in the area of health and safety at the workplace. Relations with the Commission were close too. The importance of the Christian-Democrat coalition diminished after the 1995 enlargement when the Social Council was faced with a majority of Social-Democrat ministers.

Influenced by high unemployment across Europe in the second half of the 1990s, this political majority within the Council constituted a window of opportunity for EU action on employment. As the number of Member States

that were sceptical about the need for legislation had increased with the 1995 accession, EU competence was not stretched into new legislative powers at EU level. Instead, the ‘structured talks’ in the framework of the European Employment Strategy were introduced. The momentum of Lisbon provided ample opportunity to broaden this OMC process to other areas of EU social policy, e.g. social inclusion, pensions, healthcare and long-term care.

Meanwhile, the legislative process in the Social Council also progressed. Decision-making became increasingly difficult after the UK’s accession. The UK had an idiosyncratic social model in comparison to those of the other countries in the EU of twelve Member States. This led to clashes of different models. Although unanimity was no longer needed with the expansion of QMV (SEA, Social Protocol), it remained the norm. In addition to the two different models of social security and diverging views about the need for involvement of ‘both sides of industry’, there was disagreement on the financing of EU programmes and the need to look beyond legislation. Both issues were put forward by the Nordic countries in coalition with the Netherlands, Germany and the UK.

In the EU of 27 Member States we might see a shift in the importance of coalitions. Pre-meetings with like-minded countries have been a way to cope with the increased number of Member States and new working methods. Coalitions might differ from article to article. As the process of negotiation has become more pragmatic, the ability to build winning coalitions has become more important than shared political backgrounds.

Discussion box XV

- 1) Have coalitions become less important?
 - a) Due to enlargement, have small coalitions (like the ‘Gang of Four’) lost their relevance?
 - b) Due to enlargement, has the EU – and with that, the possibility to create winning coalitions – moved towards 2 or 3 basic models (the UK/new Member States versus Rhineland/ possibly Scandinavian models)?
- 2) Or, has the Netherlands lost the competence or willingness to foster coalitions?

5 Final reflections

In view of the above, the developments since 1988 may now demand reflection on the following:

- 1) What skills are now needed to negotiate in Brussels?
 - a) Are the skills that made Mr Schumacher influential at the time the same as those that negotiators newly joining PermReps need today?
- 2) Can small(er) Member States increase their influence in negotiations by ensuring seniority at the PermRep?
- 3) What should be the ideal number of years for an official to serve at the PermRep?
 - a) Four years, twenty years?
- 4) Has the 'power of ideas' (the possibility to convince others) decreased in importance due to, among other things, enlargement and formalisation of national positions?
- 5) Is the current focus on the national context and emphasis on subsidiarity the result of 'changed times' or a mere reflection of the last hurdles of the integration process?
- 6) If the influence of – individual – Member States has been reduced over time, does this suggest that they have adapted insufficiently to the changed conditions?

- 7) Which model for coordinating between the capital and PermRep is advisable?
 - a) Is there a model involving more control while safeguarding flexibility?
- 8) Have the changes that the EU has witnessed over the past two decades contributed to effectiveness and legitimacy in policy-making?

Annex – Interviewees

Pim van Ballekom	Dutch Permanent Representation
Lauris Beets	Dutch Ministry of Social Affairs and Employment [editorial committee]
Jos Berghman	Catholic University of Leuven
Bernard Bot	Meines & Partners, and formerly Permanent Representation and Minister of Foreign Affairs
Cees Burger	Dutch Ministry of Economic Affairs, and formerly Ministry of Social Affairs and Employment
Rob Cornelissen	European Commission
Jan Cremers	Member of the European Parliament, and formerly European Federation of Building and Woodworkers
Denis Crowley	European Commission
Jan Jacob van Dijk	Dutch Parliament, and formerly National Federation of Christian Trade Unions in the Netherlands
Gido ten Dolle	The House of the Dutch Provinces in Brussels, and formerly Dutch Ministry of Social Affairs and Employment
Andrew George	Council Secretariat [editorial committee]

Jos Kester	Dutch Ministry of Social Affairs and Employment, currently seconded to Dutch parliament
Panos Konstantopoulos	European Parliament Secretariat
Paul van Leeuwe	Dutch Scientific Council for Government Policy, and formerly Dutch Ministry of Social Affairs and Employment and Permanent Representation
Éamon Mcinerney	European Commission
Robbert Morée	Dutch Ministry of Social Affairs and Employment, and formerly Permanent Representation [editorial committee]
Odile Quintin	European Commission
Henne Schuwer	NATO, and formerly Permanent Representation [editorial committee]
Ans Seriese	Dutch Ministry of Social Affairs and Employment
Clive Tucker	Formerly Department of Work and Pensions and Department of Education and Skills in the United Kingdom
Adam Tyson	European Commission, and formerly Permanent Representation United Kingdom
Paul Windey	National Labour Council of Belgium, and formerly Belgium Permanent Representation

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