CHAPTER 6

SOCIAL POLICY

Member States are to ensure the social as well as the economic progress of their countries by common action to eliminate the barriers, which divide Europe.¹

Social Policy of the European Community is an “immature policy”.² It is one of the most neglected and marginalised policies of the Community. Though it is a separate policy, it stems from the economic activities and objectives of the European Community. Conventionally, social policy is defined as government action concerned with establishing and maintaining the welfare state for the benefit of its citizens, i.e. provide social security, health care, welfare services and social work, housing, community services and education.³ This was achieved traditionally by means of redistribution of resources and the direct reduction of disadvantage. This is not the case, however, with the European Community. There seems little willingness on the part of the rich to “transfer resources across the exchanges”.⁴ The dominant explanation for social policy provisions has tended to be economic. At the heart of the European Community’s social dimension is the aim of creating and completing the internal market. In other words, social policy is used as a tool for the creation of an

integrated and efficient market, and not as a corrective for the inequalities produced by the free market system.  

Because of the link between European Community social policy and the creation of the internal market through the establishment of an area within which labour may move freely, the social policy has tended to be "conceptualised as focused on employment".  

The obvious justification for taking social policy measures on the European level is to enhance labour mobility, and create a level playing field of competition for employers within the member states. In the process, emphasis has been on the individual in his/her working environment rather than on the totality of his/her social needs. In Eurospeak, "social Europe" means matters concerning workers' rights, and "social dialogue" means agreement between employers and labour interests. The Treaty of Rome deals at length with aspects related to employment – be it equal opportunities, vocational training, social security for migrant workers, or health and safety of workers. Beyond employment-related fields like housing, social service, public health or education, Community action has been patchy or non-existent. This can be attributed to economic pressures and to the opposition of Member States. It has been observed that member states resist the Community's involvement with social policy even when there are few economic costs involved. This is because Community action is perceived as a threat to the authority of the State and as weakening their sense of being masters of their own destiny.

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6 ibid, p.5.

Promotion of welfare can be on two levels, one, "individual" welfare provision, focusing on the entitlement of individuals to rights or claims to welfare, i.e. a basic standard of living, health care, social security, and so on. Two, "generalised" social programmes, which aim to create the external conditions of welfare for all in society, e.g., promoting employment, protection of environment, etc.\(^8\) Though the European Community is concerned with both "individual" and "generalised" social policy, it is more inclined and focused on the latter. This is again because of the attitude of Member States. The pattern of Member States' resistance to social policy provisions of the Community reveals that they may be broadly tolerant of the Community's active role in case of generalised social policy, say for instance environment policy, but would be cautious in case of an "individual policy" like extending civil rights to migrant workers.\(^9\)

Since the European Community's social policy lays emphasis mainly on free movement of labour, this chapter will focus on this aspect.

**Progress Towards A Common Policy**

The founding fathers of the European Economic Community (EEC) placed great faith in the *laissez faire* approach to economic and social policy. The assumption was that the establishment of the European Community would lead to increased competition which, in turn, would result in increased benefits. In time these benefits would 'trickle-down' to all other sectors of the EEC. Furthermore, the founding fathers were influenced by the Ohlin Report of International Labour Organisation experts, which

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\(^8\) Hervey, n. 5, p.3.

argued that there was no need for Community-wide social harmonisation. According to the Report, industry located in a high-wage country would not be at a disadvantage, as compared to industry located in a low-wage country, because higher wages naturally accompany greater productivity. “Differences in the general level of wages and social charges between different countries broadly reflect differences in productivity.” Moreover, the system of national exchange rates, which reflect general prices and productivity levels within states, tend to cancel the apparent advantage of low-wage countries.

The Ohlin Report’s overall approach was adopted by the Community. Hence, the failure to incorporate a broader commitment to social policy in the Treaty of Rome. However, the Treaty of Rome does chart out a social policy dimension, mainly because of two factors:

*The experience of the European Coal and Steel Community (ECSC).*

The High Authority of the ECSC had certain specific powers with regard to the social aspect. It had the right to consult employers and workers, obtain information from firms, and of such persons and groups to submit information to it. The High Authority’s powers extended to the area of living and working standards. It also had the power to prevent members from using reductions in domestic wages and social

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security levels in order to maintain a competitive position.\textsuperscript{13} Similarly, it had powers to promote social well-being, such as the power to invest and grant loans in the social field\textsuperscript{14} (which it did in case of housing schemes), promote research into occupational safety\textsuperscript{15}, and grant aid to help with the re-deployment of excess labour in coal and steel, or in other industries as well.\textsuperscript{16} The ECSC utilised these provisions in a very active way. When the decline in the coal and steel industries began, it provided grants for retraining and resettlement of workers on a large scale as well as to encourage plans for the renewed development of the old industrial areas of Western Europe at a very early stage, even before States could come to terms with these issues.\textsuperscript{17} Thus, the ECSC set a credible precedent for the EEC to follow.

\textit{The role of France}

Industry in France enjoyed an environment of liberal welfare policies as compared to other members of the Community. This included equal pay for men and women as well as social security benefits, wherein a greater proportion of the cost was paid by the employers rather than by the employees or by the government. Because the burden on French employers was particularly severe, the French government negotiated to include provisions for the immediate harmonisation of social costs of production, since it was feared that the high social charges would prejudice the competitiveness of French products in the Customs Union.\textsuperscript{18} France, therefore stressed the importance of

\begin{itemize}
\item \textsuperscript{13} Article 68, Treaty of Paris.
\item \textsuperscript{14} Articles 51 and 54, Treaty of Paris.
\item \textsuperscript{15} Article 55, Treaty of Paris.
\item \textsuperscript{16} Article 56, Treaty of Paris.
\item \textsuperscript{17} Collins, n.2, pp. 98-9.
\end{itemize}
levelling-up of wage rates and social security benefits, of deciding on the height of the common tariff to be erected against the rest of the world, and of establishing a fund to help industry in backward regions convert itself to more modern forms of production. As a consequence of French insistence, all these find mention in the Treaty of Rome. But France was not successful in obtaining an explicit agreement to harmonise social security burdens within a given time-span.

Nevertheless, the stress continued to be on areas related to employment. Wage, social security levels as well as social legislation were the main concern, not in terms of their normal justification but in terms of their effect on relative competitive positions. In other words, emphasis was on preventing industry in one country from having a competitive advantage over that of another.¹⁹

Industry in Germany was generally low cost, which was the reason why Bonn had no wish to impose French social charges on its industry. Germany opposed the French proposals. According to Ludwig Erhard, the German Economics Minister, the equivalence of wages and social charges was not a pre-condition of the market but a function of the productivity differences that create a market. Therefore, social harmonisation was at the end, and not at the beginning of integration.²⁰ On the other hand, Erhard thought it was more important to Europeanise the young people of the Member states rather than stressing on social harmonisation. He therefore called for a European university to encourage increased movement among young people.

¹⁹ Taylor, n.9, p.201.
²⁰ Collins, n.7, p.5.
For Italy, opening of labour markets to its emigrants was the major interest. Post-War Italy was faced with the twin problems of unemployment and international debt payments. The only solution to these problems was sustained emigration, which would take care of the unemployed while their remittances would solve the international payments problem. However, West European economies followed a policy of protection toward their national labour force aimed at maximising employment. No government would forego powers to regulate the access to its territory and to its labour market. Italy therefore, decided to deal with its unemployment problem at a multilateral level. It hoped that the ECSC would provide an answer to its problem. During the ECSC negotiations Italy demanded: (1) free circulation of workers; (2) complete liberalisation of access to the coal and steel labour markets of the Six; and, (3) the Community employment service be operated directly by the High Authority of the ECSC, so as to move towards a fully integrated labour market under supranational regulations. But the other five members opposed all these demands. The Benelux countries opposed increased mobility, while France and Germany stated that free circulation could be possible only for a very few highly skilled workers. This was a blow to Italy which hardly had any highly skilled workers. To Italy’s chagrin, the Treaty of Paris adopted this restrictive formulation. Regarding Italy’s demand for a fully integrated labour market, all the other five were opposed to it. The ECSC agreed on a restrictive interpretation; steel and coal workers with a specific qualification and at least two years experience could receive a European


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labour card to enable them to work in the other Member States, but only in their own sector.\textsuperscript{23} This actually amounted to a substantial restriction, rather than an implementation, of the freedom of circulation. The European Labour card consequently did not activate any significant migratory movement. Moreover, France and Luxembourg considered freedom of movement of labour only as a long-term prospect, when unemployment would be eliminated from the whole of Western Europe. Till then they had no intention of giving up national safeguards. Similarly, Belgium and the Netherlands refused to accept the mutual recognition of qualifications and the harmonisation of social legislation.

As a result, when the same six Member States got together to establish the EEC, Italy made sure that free circulation of labour found a place in the Treaty. Free movement of labour does find a place in the Treaty of Rome; but not in the form Italy had hoped it would be.

The Benelux countries had an agreement among themselves, dealing with free movement of labour, and were quite satisfied with it. They were not particularly interested in having an influx of labour from Italy into their countries. They preferred to focus on issues such as the necessity to study the progressive harmonisation of rules concerning hours of work, overtime and holiday pay. At Messina, the Benelux proposal was in fact acceptable to all. But the agreement was simply limited to study whether the harmonisation of such social provisions was indispensable or not.

\textsuperscript{22} Article 69, Treaty of Paris. The Article committed the Member States to lift every employment restriction based on nationality only for workers of proven qualifications.\textsuperscript{23} Romero, n.21, p.43.
**Social Policy In The Treaty Of Rome**

The Community social policy consists of four elements: 24

*Improvement of Living Standards*

Article 2 of the Treaty of Rome laid down the tasks of the Community. These included the promotion of “a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living ....” Thus a major preoccupation of the Community came to be the improvement of living standards, which had social as well as economic implications. But the question of how the improved living standards would manifest themselves was largely left to the Member States. 25 But as stated earlier, the Treaty implicitly mentions that the establishment of the Common Market along with free movement of goods, capital, services and labour will lead to economic development and prosperity. This in turn will trickle down to all sections of the population and ensure improvement in the standard of living. This explains the importance of the issue of free movement of labour in the European Community social policy.

*Free movement of people.*

The Treaty does not formally classify free movement of workers as social policy. But it recognises that free movement of labour is a basic social right. This in fact forms the main thrust of the European Community social policy, as many other social provisions are based on this right. In addition, under the Treaty, social policy does not involve

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financial handouts. The stress is on factor mobility. Articles 48-51 of the Treaty of
Rome deal with the right of free movement of workers.

"Freedom of movement for workers shall be secured within the Community by the
end of the transitional period at the latest." This freedom shall "entail the abolition of
any discrimination based on nationality between workers of the member states as
regards employment, remuneration and other conditions of work and employment." The Treaty, however, imposes certain limitations on the right "justified on the grounds
of public policy, public security or public health." There is no agreement among
member states on what constitutes public policy – should it be a Community policy or
should, individual national policies prevail. The Belgians and the Dutch felt that a
common employment policy was indispensable. This supranational approach was
however rejected by France and Luxembourg, and quietly discarded by Germany.
Germany, in turn, proposed to do away with all supranational elements and instead
base the transition on "systematically and progressively abolishing those
administrative procedures and practices and those qualifying periods" that regulated
the eligibility of foreigners for available jobs under the national permit system.
Consequently, Member States conveniently ensured that there would be no
Community planning in this regard. Moreover, the practical and crucial decisions on
the actual pace and scope of the transitional stages were deferred to the Council of

26 Article 48(1), EEC Treaty.
27 Article 48(2), EEC Treaty.
29 Articles 49(b) and (c), EEC Treaty.
30 Romero, n.21, p.53.
Ministers, where each government could use its veto power.\textsuperscript{31} The free movement of labour was further restricted by the condition—"accept offers of employment actually made". In other words, free movement is limited to demand-induced migrations alone. Article 50 calls for the establishment of a common programme to encourage the exchange of young workers. Article 51 concludes the chapter on the free movement of labour by specifying that the Council, acting by unanimous vote on the proposal of the Commission, shall establish a system to guarantee the inclusion of payment of all social security benefits earned within any member states.

\textit{Social Improvement and Social Harmonisation}

The third aspect of social policy is found in Articles 117 to 122. Their central theme is social improvement and social harmonisation. Article 117 stressed "the need to promote improved working conditions and an improved standard of living for workers" in order to make their harmonisation possible. This would ensue from the functioning of the Common Market and also from the "procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action."

Article 117 is the key article with respect to European Community social policy. But its impact has been minimal. Though the Article recognises the French argument for social harmonisation, it does not take any firm stand on the need for direct action on the matter. It provides no guidance on the "definition of equalisation of living and working conditions and also on whether more importance should be attached to the automatic working of the Common Market or on the conscious action under the

\textsuperscript{31} Article 49, EEC Treaty.
Treaty as a means of attaining this end." Similarly, there are no specific directions for members to follow or for the institutions. This in turn has been instrumental for the lack of progress of social goods as Member States fail to abide by them on the ground that proposals were beyond the scope of the Treaty.

Article 118 assigns the Commission the task of promoting close co-operation between member states in the social field. This especially pertained to employment; labour law and working conditions; basic and advanced vocational training; social security; prevention of occupational accidents and diseases; occupational hygiene; and the right of association, and collective bargaining between employers and workers. The key words here are "close co-operation", which does not necessarily ensure subsequent action. The Treaty does not specify any follow-up procedures nor were any precise standards formulated. Similarly, no thought was given to the possibility of issuing recommendations, regulations or directives in order to develop the process of standard setting for the subject matter of Article 118. Therefore, the prerogative of any progress in this field remained with the member states.

Article 119 called on member states to "ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work" while Article 120 called to "maintain the existing equivalence between paid holiday schemes." Both articles were incorporated to appease France. In Article 121, the Council, acting unanimously, was to ask the Commission to take steps in connection with the implementation of common measures particularly as regards social security for the migrant workers referred to in Articles 48-51".


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Articles 117 to 121, therefore, indicate that the Community responsibility is simply to promote collaboration with, and between, members in the social field. A single Community policy was never envisaged as no direct powers of intervention were provided for the Community institutions. Therefore, the system ensured member states their sovereignty and the right to safeguard their interests.

Social Fund

The fourth strand of Community social policy relates to the European Social Fund. Articles 123 to 128 deal with the Social Fund. The aim was to help workers with re-training and re-settlement when they became unemployed because of economic integration. Article 123 stated that the Fund “shall have the task of rendering the employment of workers easier and of increasing their geographical and occupational mobility within the Community”. The Fund is not intended to deal with unemployment in general but with unemployment brought about as a result of membership in the Community, which could be remedied by the physical movement of workers. The means emphasised were vocational re-training and re-settlement allowances – both based on worker migration, which again meant that it was up to the Member States, to ensure free movement of workers.

Five Phases Of The European Community Social Policy

The growth of European Community social policy can be divided into five phases: 35

Phase 1 (1957-72): Hervey terms this phase as one of “benign neglect”. Social action at the European level was very low key. The main emphasis was on free movement of

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33 ibid, p.23.
workers. The Treaty of Rome provided for the removal of physical barriers to the free movement of workers. However, numerous barriers arising from different national regulations continued to plague labour mobility. One such barrier was social security benefits. As Doreen Collins says, the more effective the social security scheme the bigger the obstacle to mobility because of the sacrifice of rights that it involves.\(^\text{36}\)

Moreover, reciprocal arrangements continued to rule in this area, and the Treaty considered social security an internal matter of the member state. Similarly, mutual non-recognition of qualifications and degrees was an effective barrier. Another impediment was lack of information about jobs to workers and about the available skills to the employers. This was used effectively by Member States to keep Community workers out of their national labour markets. For example, during 1964-65, while total foreign workers employed in Holland increased by 20 percent, workers from within the Community decreased by 10.5 percent. The Dutch government claimed that this was so because they did not have sufficient information regarding the number and qualifications of Italian workers available. However, when compared with figures for Belgium for the same period, where foreign workers decreased by 4.6 percent and Community workers increased by 46 percent especially with Italian workers increasing by 61 percent, Holland's argument sounds somewhat spurious.\(^\text{37}\)

Most of the member states suffered from shortage of labour during this period and consequently required labour from outside. Free movement of labour within the Community could have solved the problem, especially because Italy had a huge


reserve of unemployed workers. But Member States preferred workers from outside the Community. One reason could be that the Treaty required that Community workers be provided with the same treatment as national workers, whereas workers from outside the Community would be cheap and also not be eligible for equal treatment. The intra-EC labour flows fell from 60 percent in the 1960s to 20 percent in the 1970s.\textsuperscript{38} Moreover, the overwhelming part of labour migration in Europe was migration out of economic necessity. “The creation of the EEC does not seem to have changed the character or the composition of mobile labour; it is still mainly the unemployed and the unskilled, whose opportunity cost at home is nil, that move. Between 1961 and 1966, the number of new work permits issued to all nationals of the EEC countries amounted to 1.6 million and about three quarters of these were issued to Italians. This was a period of general scarcity of labour in the Community. Significantly of the 1.2 million Italians who obtained labour permits in that period, only half remained outside Italy in 1966.\textsuperscript{39} Another method deal with labour shortages could have been to provide vocational training to the non-skilled unemployed. For this to be effective, training standards across the Community needed to be harmonised so as to facilitate easy mobility. The provision was there in Article 128 of the Treaty of Rome but its wording was very weak.\textsuperscript{40} The Commission realised the need to promote harmonised vocational training. But the Member States rejected it saying that it was neither necessary nor required by the Treaty. In 1963, the

\textsuperscript{38} Tsoukalis, n.18, p.137.


\textsuperscript{40} Article 128 read ‘The Council shall, acting on a proposal from the Commission and after consulting the Economic and Social Committee, lay down general principles for implementing a common vocational training policy capable of contributing to the harmonious development both of the national economies and of the common market.’
Commission proposed the “General Principles for the Implementation of a Common Policy on Vocational Training” as required by Article 128. The European Parliament made the relevant changes and forwarded them to the Council for approval. But the Council changed the Commission’s version completely to suit the national governments and took a further two years to pass the watered-down version.⁴¹

As mentioned earlier, there was no compulsion on Member States to hire workers only from within the Community. The Commission, backed by Italy, argued that this was a necessary and logical consequence of the elimination of national discriminations. But the other Community members were not interested in this argument. Finally, all that the Commission and Italy could manage was a rather vague statement in Article 43 of Regulation 15, which read, “the member states will take account in their employment policy of the condition of the employment market of the other member states and will in consequence strive to provide priority to those workers ... coming from a member state with a labour surplus before having recourse to workers from third countries.”⁴²

Regulation 15 further stated that the movement of labour into another Member State would require the issue of a permit by that state of destination. Workers would be permitted to renew the permit for the same occupation after one year of regular employment. After three years they could renew their permit for any other occupation for which they were qualified and after four years for any kind of paid work. So, in effect, as Dennis Swann says, discrimination would continue for four years.⁴³

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⁴¹ O’ Grada, n.39, pp 89-91.
⁴² Cited in Dahlberg, n.37, p.313.
⁴³ Swann, n.24, p.179.
Furthermore, preference for work was always given to national workers, i.e., vacancies in the national labour market were compulsorily notified for three weeks in the job centres of the home country. It was only after this period, that offers of employment were transmitted to other member states.

Workers who actually migrated to other Community countries had to face numerous difficulties and discriminations. For example, they were not allowed to vote or stand for elections in the workers council. Regulation 15 guaranteed such workers' eligibility to vote in the elections but the member states refused to relent on the issue of their eligibility to stand for elections. This resistance was spearheaded by Germany's powerful DGB (Deutscher Gewerkschaftsbund) and representatives of the management. Germany had the maximum number of Italian workers. Its fear was that Italian workers could mobilise third country workers into a coalition that could easily take control of the workers' council. Finally, due to pressure from the Commission and the Italian government, Germany suggested that the Italian workers could be allowed to elect a personal representative for each firm who could be given access to the management to discuss grievances. This German suggestion was later adopted by Regulation 38/64/EEC. Similarly, workers had to suffer due to lack of proper housing facilities. Germany, for instance, made it mandatory that companies requiring Italian workers show the existence of appropriate housing for them. Though this requirement did encourage the construction of company houses, it worked as a barrier in most cases. In France, Community workers found themselves in ghettos of sub-standard

44 Workers councils generally handle certain grievances and have certain powers of consultation and decision regarding the working conditions for the plant for which they are elected.
45 Dahlberg, n.37, p.318.
46 Ibid.
housing. In Holland, they became eligible for housing only after one year. As a result, it was not possible for workers to take their families along with them.

Subsequently, the Commission felt that the provision of national priorities under Regulation 15 should be done away with, as it was nothing but discrimination against Community workers. However, this time France rejected the idea. A compromise solution was offered by Belgium and the Netherlands, which said that national priorities should be suppressed, but can be re-introduced for fifteen days in case surplus of manpower existed in certain areas or trades in their country. This became Regulation 38. Subsequently, France was seen to continuously declare nation-wide surplus in unskilled and lower-level business and office posts, thus invoking the fifteen days national priority of Regulation 38 in those very fields where the greatest Italian surpluses existed.47

Therefore, this period saw the Commission making several attempts at forging a Community social policy, but with limited success. The paltry importance that Member States gave to social policy is evident from the fact that between 1964 and 1967 there were no meetings of the Council to discuss social policy.48 This phase ended with the Conference of Heads of States and Government at The Hague in December 1969 expressing “the desirability of reforming the Social Fund within the framework of a closely concerted social policy”.49

47 ibid, p.327.
48 Taylor, n.9, p.203.
49 Ibid.
Phase 2 (1972-1980): The second phase began on an optimistic note, with many in the Community hoping to develop the "human face" of the European Community.\(^{50}\) In general, the Community was experiencing a period of growth and Member States were willing to step up social action. Moreover, many of the key member states had Social Democratic governments. Since they were keen to preserve their high levels of national protection, they tried to impose this on the rest of the Community.\(^{51}\)

The European Council Summit meet in Paris in 1972 reflected this mood when member states asserted the need for "vigorous action in the social field." The Summit agreed on a number of new principles such as co-ordination of employment policy, improvement of conditions of life, strengthening and co-ordinating measures for consumer protection, and closely involving workers in the progress of firms. It also called for a Social Action Programme.\(^{52}\)

This new enthusiasm appeared to give a major impetus to social policy but the results proved to be rather modest. The Social Action Programme was agreed to in 1974. It was based on three broad principles – full and better employment, improvement of living and working conditions, and worker participation.\(^{53}\) From these principles, the Commission formulated forty separate proposals. It tried to get these proposals

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\(^{51}\) Hervey, n.5, p.17

\(^{52}\) "Communiqué issued at Paris Summit", in *Bulletin of the European Communities*, (Luxembourg), 2/72.

\(^{53}\) "Social Action Programme", in *Bulletin of the European Communities*, 2/74.

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accepted by the Council in a single large vote, but failed. As a result, each proposal had to be debated individually and most of them were rejected.\textsuperscript{54}

There were great expectations from the Social Action Programme and it did start on a positive note. But within three years interest waned and member states preferred to look for "national" solutions to their problems. The first oil crisis in 1973, when crude oil prices quadrupled, and the second in 1979, when they doubled, brought steep rises in unemployment within the Community. The unemployment rate in the Community rose from 4.1 percent in 1975 to 7.7 percent in 1981.\textsuperscript{55} The demand on the Social Fund for dealing with unemployment and to provide job training kept increasing. With all Member States equally affected by unemployment and with individual governments unable to deal with the problem, it was hoped that a Community action would be forthcoming. However, as economic conditions deteriorated the States' interest in redistribution through the Community mechanism also declined. The richer states especially became increasingly reluctant to commit themselves to the provision of resources.

In 1979, the Commission suggested, in a preliminary draft, that 5.93 percent of the total budget be allocated to the Social Fund. But the Council slashed this down to 5.52 percent. Similarly, in 1981, the Commission proposed that 4.62 percent be allocated to the Social Fund, but the Council approved only 4.56 percent.\textsuperscript{56} These figures show the decline in importance of the Social Fund in the total budget as well as the Council's inclination to prevent any increase in the Social Fund at the expense of other


\textsuperscript{55} Eurostat, Europe in Figures (Luxembourg, 1992), pp. 120-23.
components, most particularly agriculture. Member States like France and the Netherlands, who were major beneficiaries of the Common Agricultural Policy’s European Agricultural Guidance and Guarantee Fund, were eager to protect their agricultural interests and would never agree to any kind of cuts in their benefits.\textsuperscript{57} Similarly, as demands on the budget increased, it was imperative that contributions to the budget also increased. However, any increase in the member states’ contribution to the Community’s ‘own-resources’ was opposed by Germany and Britain.\textsuperscript{58}

Britain, felt that she had been left carrying an excessive burden from the budget because of the dominance of the Common Agricultural Policy (CAP), from which Britain got very little because of the relatively small size of its agricultural sector. Hence, Britain demanded that this imbalance be corrected by way of rebates.\textsuperscript{59} Consequently, the UK rebates became a major component of the EC budget.

On the other hand, the desire to develop a human face saw the enactment of various social legislations, which actually touched the people.

a) Young people. In 1976 the Ministers of Education adopted an action programme in the field of education\textsuperscript{60} as well as a resolution regarding the measures to prepare young people for work and to facilitate their transition from education to working life.\textsuperscript{61} In 1977 the Commission recommended that young people under twenty-five who were

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\textsuperscript{56} Taylor, n.9, p.208.
\textsuperscript{57} See Chapter 2 on Common Agricultural Policy.
\textsuperscript{61} ibid, p.9.
unemployed or threatened with unemployment would be given vocational training. In 1978 the Council of Ministers extended the European Social Fund to include creation of new jobs for the unemployed under twenty-five. In 1977, the European Centre for the Development of Vocational Training was opened in Berlin. At the same time, a directive on the education of children of migrant workers was also adopted.

b) Women's Rights. In 1975 the Council approved a directive obliging member states to examine all national laws and regulations to determine whether they discriminated against one sex or the other. Any defects were to be corrected. In 1976 the Council agreed on a directive which provided for equal treatment of men and women as regards working conditions and access to employment and promotion. In 1978, a directive was adopted on equal treatment in matters of social security.

c) Improvement of living and working conditions. In 1977, directives were adopted regarding protection from ionising radiation, from the risks involved in the use of dangerous substances and from the hazards arising in connection with major structural accidents.

d) Mutual recognition of professional qualifications. In 1975 the Commission proposed a plan for harmonisation of study courses for various professionals. It resulted in the member states agreeing, for the first time, on the approximation of

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66 Swann, n. 25, p.219.
study courses for doctors and mutual recognition of the corresponding university certificates. Subsequently, it was extended to others in the health sector, agricultural, forestry and horticultural sectors and in mining, electricity, gas, oil and water industries. 67

e) Protection of workers' interest. In 1975 the Council adopted a directive on the approximation of laws concerning mass dismissals. In the same year, it also adopted a directive on the approximation of laws relating to safeguarding the rights of employees in the event of transfer of undertakings. 1980 saw the adoption of a directive on protecting employees in the event of an employer's insolvency. 68

However, as Professor Tsoukalis says these were "some bits and pieces of European social legislation which did not change the overall picture" and was at best "an exercise of minimum standard setting". 69 On other fronts touching the core of the member states' interest, there was much less to show. One such issue is that of industrial democracy. In the early days of the Community itself, the need was felt for a company law to combat US multi-national corporations. Germany linked any progress on European Company law with industrial democracy, since it had one of the strictest and most developed industrial relations. The fear in Germany was that industrial investment would shift to Southern Europe in search of lower labour costs and more flexible labour legislations. Such an eventuality would lead to an increase in unemployment in Germany. It would also result in the progressive erosion of the

68 Swann, n.25, p.219.
69 Tsoukalis, n.19, pp 141-42.
social and other benefits enjoyed by German workers. Bonn therefore insisted that the new European company law be set at a standard equal to or above the German standard. As a consequence, the first initiative at integrating industrial democracy in the European company law in the form of the 1972 Fifth Directive was proposed. The proposals made by the directive for the firms were identical to the German law. It said all firms with at least 500 workers should establish a system of two governing bodies—an executive and a supervisory board, and that one-thirds to one-half of the members of the supervisory body should comprise of workers. However, the proposal had to be shelved as the other member states rejected it. France and Italy, with very different systems of industrial relations, opposed the proposal outright. The employers groups and the trades union congresses were divided on the issue. In 1975 a modified version of the Fifth Directive was introduced. The difference between this new proposal and the Fifth Directive was that it would be a resolution and not a mandatory directive. Firms wishing to become EC-wide and adopt an EC legal character could voluntarily choose to comply with the statute. This proposal was also rejected.

Phase 3 (1980-1985): This was the least active phase in the history of European Community social policy. It was identified as a period of Euro-sclerosis, and the leading lady of this inactive phase was Mrs. Margaret Thatcher. The essence of ‘Thatcherism’ was based on the philosophy of deregulation of social and labour law. She came out hard on the regulatory practises of the Community. Her theory was that

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71 Geyer, n.53, p.133.
employers must be protected from the burdensome regulations and that the labour market must be made flexible for enterprises to flourish. There is the

.. need for Community policies which encourage enterprise. If Europe is to flourish and create the jobs of the future, enterprise is the key.... Central planning and detailed control don’t work, and personal endeavour and initiative do; state-controlled economy is a recipe for low growth, and free enterprise within a framework of law brings better results.

We certainly do not need new regulations which raise the cost of employment and make Europe’s labour market less flexible and less competitive with overseas suppliers. If we are to have a European Company Statute, it should contain the minimum regulations, and certainly we in Britain will fight attempts to introduce collectivism and corporatism at the European level – although what people wish to do in their own countries is a matter for them.72

In 1980, Commissioner Vredeling made a proposal to bring about industrial democracy at the European level. This proposal came to be known as the Vredeling Directive. The essence of the directive was information and consultation. It was observed that large firms, especially multinational corporations, made decisions without informing their workforce. The proposal was aimed at rectifying this by requiring firms with over one hundred employees to provide their workforce with relevant information (the firm’s financial and economic situation, production and investment strategies, etc.) on their activities at least once every six months. And, if a subsidiary refused to give out information, the employees had the right to directly request the information from the head office. The employees’ unions were also in favour of companies, especially European companies, adopting codetermination principles. They called for codetermination rules to be made legally binding on the

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companies and applicable to all member states of the Community. Mrs Thatcher had been fighting these kinds of regulations all the while and opposed the proposal vehemently. Similarly, the European and International Employers groups fought it fiercely. Subsequently, the proposal was shelved.

In 1983, a watered down version of the Vredeling directive was proposed. The number of firms that would be affected was reduced considerably as only subsidiaries with over a thousand workers would be involved. Further, they were required to give out employee-related information only annually and the employees would not have any right to consult the parent corporation. However, this version was also vetoed by Britain. Similar attempts were made again in 1986 and in 1989 but met the same fate and so the idea was shelved. There was hardly any social legislation enacted during this period. The Council blocked almost all Commission proposals.

Phase 4 (1986-1993): The hitherto neglected social policy got a new lease of life during this phase. While Mrs. Thatcher was busy blocking any action leading to “regulation”, President Francois Mitterrand of France was pushing his idea of a “European Social Area”. He got an able ally in the new President of the European Commission, Jacques Delors. Right from the beginning Delors stressed on the social dimension. “What will happen without this minimal harmonisation of social rules? What are we already witnessing? Member states and firms trying to gain an advantage

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74 Geyer, n. 54, p. 134.

over their competitors, at the cost of what can only be described as social decline.”

In 1985, the Commission brought out a White Paper on “Completing the Internal Market”, which stressed the need to do away with all barriers to the free movement of goods and services in order to proceed to “European Unity”. The stress on economic integration forced Delors to emphasise the need for social development too. “The creation of a vast economic area, based on the market and business co-operation, is inconceivable – I would say unattainable – without some harmonisation of social legislation. Our ultimate aim must be the creation of a European Social Area.”

In 1986, the Treaty of Rome was amended by way of the Single European Act (SEA). The Act touched the social aspect in two ways: (1) regional development, by way of economic and social cohesion (Articles 130a to 130e deal with the subject); and, (2) social regulation. Article 21 of the SEA (Article 118a, EEC) called for improvements and harmonisation of the “working environment, as regards the health and safety of workers”. Furthermore, any proposal in this regard would be adopted by the Council by means of qualified majority votes. Article 22 of the SEA (Article 118b, EEC) called for the development of dialogue between management and labour at the European level.

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79 Cited in Hervey, n.5, p. 20-1

A combination of all these factors brought about two major developments in the European Community social policy: (1) reform of the structural funds in 1988; and (2) the adoption of the Social Charter in 1989.

The 1988 reform of the structural funds was a significant development as until then it had been an impossible task. First of all, structural funds can be viewed as side-payments made by the more prosperous member states to the less prosperous ones to get their pet projects passed. Supra. For instance, the preliminary European Monetary System (EMS) proposal was accepted only on the condition, among other things, of "concurrent studies" of action in order to strengthen the economies of the less prosperous countries. The less prosperous countries then were Italy, Ireland and the United Kingdom. Italy and Ireland were willing to join the EMS on the condition of transfer of sufficient resources in their favour. Britain, on the other hand, viewed concurrent studies differently. It linked the inequity of the CAP and the budget question with EMS, and demanded that its financial burden be reduced by reforming the CAP. In other words, reform of the CAP would be the price for British entry into EMS. But Britain's hopes were crushed by the French insistence that CAP was non-negotiable and was not connected with EMS. As a result, Britain decided to stay out of the system.

Nevertheless, EMS proceeded without British participation and without any reform of the structural funds. But things changed by 1988 when with the accession of Greece,

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Spain and Portugal to the Community, the bargaining power of the less prosperous countries, or Cohesion countries as they are called, increased considerably. On the other hand, the share of the funds going to Italy and especially to Britain decreased. For instance, the British share fell from approximately one-quarter of the funds in the mid-1970s to approximately one-tenth by the end of the 1980s. Similarly, enlargement of the Community made France a net contributor, along with Britain and Germany, to the EC budget. These factors made the level of Community expenditures and its efficiency a political issue, especially for the big three. As a result, there was a political will in favour of reforms.

But the immediate reason for the 1988 structural reform was the Delors I package. One of the requirements of Delors I, among other things, was reform of the structural funds. The UK, France and Germany opposed and fought the doubling of structural funds right up to the final negotiations, while the Commission along with the Cohesion States held out for doubling of funds. Finally, it was Germany that gave in. Chancellor Helmut Kohl was willing to delve into Germany’s coffers to pay for a larger and more re-distributive budget. This was the price Germany was willing to pay in return for the adoption of the convergence criterion leading to the Economic and Monetary Union.

The second major development was the Social Charter. In 1989, at a meeting of the European Council in Strasbourg, the Heads of State and Government of eleven

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82 Laffan, n. 58, p.65.

83 ibid.
member states, excluding Britain, adopted the "Community Charter of the Fundamental Rights of Workers", in short the Social Charter. The Social Charter is a formal declaration and has no legal binding force. But it is supported by an action programme, which put forward forty-seven initiatives on various aspects of social policy.

Belgium first introduced the idea of a Social Charter during its Presidency of the EC in the first half of 1987. Belgium had by then adopted a similar Charter and presumably thought that if it was good for Belgium, then it should be good for Europe as well. However, an alternative explanation could be that "if the adoption of the Charter implied any economic costs for Belgium, it would be better if the same applied to the other EC partners in order to avoid any loss of competitiveness". The idea was supported by the successive Presidencies of France, Spain and Greece as well as by Germany but opposed fiercely by Britain.

In Britain, the government had adopted a deliberate policy to minimise the influence of the trade unions, generate employment through deregulation, greater flexibility in working time, limitation of the rights of part-time workers and easy dismissal of workers. The Commission's proposals threatened the British government's agenda and would have required massive restructuring. Moreover, Britain was highly dependent on foreign direct investment and had been projecting itself as a cheap production centre with low labour costs. As a result, Britain was successful in

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88 Tsoukalis, n. 18, p. 150.
attracting around 40 percent of all Japanese investments in Europe. The British government feared that the EC legislation would damage its economy and might reduce the MNCs’ attraction for their country. But, most important of all, Britain resented the way the Commission utilised the provision for qualified majority voting limited to health and safety issues, to secure directives on working hours, maternity leave and protection of young children. A major concern was that if the Commission could go that far under Article 118a how much further it might go using majority voting. Hence the British opposition.

Finally, the Commission introduced the proposal on “Social Charter on the Fundamental Rights of Workers” hoping that Britain would agree to it or would be forced to be the only one opposing the charter. Mrs. Thatcher rejected the proposal. But the other eleven signed it.

Phase 5 (1993 onwards): Once the Social Charter was agreed upon, there were demands from various quarters that it be included in the Treaty, i.e. have an Agreement on Social Policy or the Social Chapter in the Treaty. However, Britain was opposed to the idea. Britain’s reservations were made clear in John Major’s speech at the House of Commons:

Through qualified majority vote – not unanimity – the Community would have the power to determine social and working conditions. The Social Chapter would allow the Community to restrict part-time work, whether or not we agreed in this House. It could set a rigid framework for rules and conditions of employment, which would replace the rules developed in this country, a few areas, if any, would be exempt. Trade Unions across Europe could forge deals and translate them into

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Community law, over the heads of individual workers and without the involvement of the British Parliament.... Above all, the Social Chapter would mean that many who are now employed would be likely to become unemployed. Many without jobs would stay without jobs. The main right that workers would get would be the right to become unemployed.

I strongly support our membership of the Community, but I support a Community which does not intrude into areas that are properly the domain of the member states. That, I believe, is what the social chapter does. There is already concern across the House, not just on the Conservative benches, at the Commission's attempts to use health and safety powers for social legislation. We will oppose any abuse of these powers....

In order to break the ensuing deadlock, the President of the European Council presented a new text, containing compromises that would allow more specific and limited powers for the Commission, would respect subsidiarity, and would maintain competitiveness. In particular, the text restricted majority voting to health and safety, sex equality measures and employee information. As negotiations and bargaining continued, France along with a few other member states declared that they could not accept the revised text due to domestic reasons. In order to salvage the situation, the debate shifted to find a means whereby the eleven could adopt the Treaty amendments in some form. It was suggested that Britain sign the Social Chapter and then opt out of it as in the case of the EMU, or opt out of specific social laws and opt in again at a later stage. Britain refused to grant any further concessions, following which President Mitterrand threatened to go back to Paris. Finally, a compromise was reached whereby amendment to the Social Chapter was removed but attached as a protocol to the Treaty with the eleven opting in. Thus, though the Social Chapter was formally

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92 Forster, n. 90, pp. 92-3.
outside of the Treaty of Rome, for all practical purposes it was part of the Treaty and would use the Treaty procedures and institutions.

**Member States’ Attitudes in Practice**

Thus if a social dimension had been present in the European Community since its inception, then why is it that so few concrete measures have been produced in this respect. If individual Member States tend to place a great deal of emphasis on social policy at home, then why is it that the history of the European Community social policy is one of “frustrated attempts and diluted measures”. The answer to these questions rests with the member states and their tendency to impose limits on the Community social policy. It is but natural for member states to impose limits on the development of the Community social policy, as, along with foreign policy, social policy is one of the few remaining bulwarks of national sovereignty. For this reason alone national governments will do their best to protect it. But, it has been argued that social policy played an integrative role in the formation of the nation state in nineteenth century Europe and by that logic should do the same with the European Union. Unfortunately, the very success of the national welfare state sets limits to an expanded social policy competence of the Community. National elites have been prepared to surrender social policy to the European super state, if and only if a European social policy could be argued to be functional to economic goals that could

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not be achieved at the national level or if the risks of inadvertent spillovers were likely to be minimal.95

From the beginning, member states have ensured that their powers and rights remain protected and the Community's social policy competences remain limited. In the Treaty of Rome, social policy is only covered by a few articles (Articles 117 to 122), of which only Article 119, on equal pay between men and women, grants directly effective rights to individuals. Of the remaining articles, only Article 118a, added by the Single European Act, provides a legislative power. All other social measures have been adopted under the harmonisation and residuary powers articles, Articles 100 and 235.96 So, whereas there is a provision for social policy, there is also a "definite barrier to anything, which might sanction ... a demand that any progress in any part of the Common Market should automatically be translated into a Community norm as though it were a single state."97

Free Movement of Workers

Large internal migrations have been an enduring phenomenon in European economic history. In the nineteenth century, when Europeans were migrating in large numbers to overseas destinations, intra-European migrations were also quite significant. The peak of intra-European migrations was in the 1950s when 10.5 million migrants crossed borders, mainly from Southern to Northern Europe.98 When the European Community

95 Kees van Kersbergen, Double Allegiance in European Integration: Publics, Nation-States, and Social Policy, European University Institute, RSC Working Paper, No. 97/15.
96 Charlesworth and Cullen, n.93, p.385.
97 Collins, n.7, p.22.
was established, it created a conducive environment for labour mobility, as all barriers to movement were abolished and all Community workers were granted equal treatment as national workers. Though this should have increased intra-Community labour movement manifold, it was, however not the case. The total number of workers who had migrated from one EC-6 country to another prior to 1960 was 500,000. By 1960 this rose to 830,000 and remained almost stable till 1980. Since 1980, it has been steadily decreasing. It decreased to 650,000 in 1985;\(^9\) by 1987 it was around 454,400 (EC-12); and by 1990 it further reduced to 443,300 (EC-12).\(^{10}\) In 1984, about 4.3 million migrants lived in the EC-10, corresponding to about 5 percent of the total active labour force in these countries. Only one-fifth of the migrants living in the EC-6 destination countries came from another EC-6 member state, a further one-fifth came from the new member states of Portugal, Greece and Spain, and the rest were non-Community workers.\(^{11}\) Interestingly, prior to their membership, 19 percent of the labour force of Portugal, 9 percent of the Greek and more than 4 percent of Spanish workers were employed in the EC-9. However, since their membership there is a drop in the workers from these three member states.\(^{12}\)

One explanation given is that the two oil shocks caused an economic downslide in most countries and so there was no demand for cross border labour. However, once the crisis was over, one does not see a resumption of labour mobility. In fact, the

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\(^{11}\) Straubhaar, n.99, p.51

numbers went down further. Another explanation is that the industrialisation of Northern Italy was the reason why workers stopped migrating from Italy and, that this further induced Italian workers who had already migrated to return home.\textsuperscript{103} Also, the type of jobs available for non-nationals was in construction, public works, and mining or as domestic servants or seasonal workers in agriculture.\textsuperscript{104} Yet another explanation is that advertising agencies are to blame, as they have not done their job of advertising job openings beyond their regional and national boundaries. Further, obstructionist housing market policies have greatly increased the cost of moving.\textsuperscript{105} Others claim that trade and migration share a substitutional relationship. Thus, as commodity flows have increased within the Community, it has substituted for labour migration.\textsuperscript{106} Still others claim that it is the rate of inter-country migration among manual workers that is declining, but that among professionals and managerial workers it is increasing. This is because an increasing proportion of manual jobs are no longer in manufacturing but in services, where the ability to relate easily to others and to communicate, often in more than one language, is becoming important.\textsuperscript{107}

Though all these factors may have contributed to the reduction in the movement of workers in the Community, one cannot simply turn a blind eye to the role of the member states. It is a fact that member states impose barriers to the free movement of

\begin{footnotesize}
\begin{enumerate}
\item ibid, p.36.
\item Straubhaar, n.99, p.51.
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workers. For instance, unskilled workers are not allowed to freely compete across national borders either by legal or by union regulations. It may be true that the demand for unskilled labour has been replaced by demand for skilled professionals, but one must not ignore the fact that a large part of this migration takes place within multinational companies, as managers and skilled professionals are moved from country to country to gain experience or to tackle a particular job. It is also usually for a limited period of time rather than permanently. Otherwise, mobility among professionals is hindered by insufficient recognition of national diplomas and other bureaucratic obstacles. Further, lack of proper advertising can be viewed as a deliberate policy adopted by member states, and so also with lack of proper housing.

The number and variety of cases the European Court of Justice has to deal with is proof enough of the member states’ role in imposing barriers to free movement. A random study of the cases dealt with by the Court reveals that member states employ such means as – not recognising non-nationals as workers, not recognising their qualifications, invoking the exceptions to free movement provided for in the Treaty of Rome, or simply discriminating against non-nationals. In Lawrie-Blum v Land Baden Wurttemberg, Mrs. Lawrie Blum, a British national working in Germany, was refused permission to engage in a period of probationary teaching which would have qualified her for appointment as a teacher. She was refused permission because she was not a German national as was required by the law of the Land Baden Wurttemberg. When she took the case to Court, the Land argued that a probationary

1 Oman

109 Ibid.

109 Charlesworth and Cullen, n. 93, p247.
teacher was not a worker for the purpose of Article 48. In *Commission v Belgium,* it was noted that Belgium insisted that its nationals could enter for posts with Belgian local authorities or public undertakings like City of Brussels, Belgium National Railways Company, National Local Railways Company, etc., irrespective of the nature of the duties to be performed. Vacancies advertised by the railways for unskilled labour, loaders, plate layers, etc., by the City of Brussels for hospital nurses, children’s nurses, night watchmen, architects, plumbers, electricians, carpenters, etc., all required to be Belgian nationals on the ground that these were 'public service posts.' In *Adoui v Cornuaille* two French waitresses, working in a bar in Belgium and also working as prostitutes, were refused residence permit. Similarly, in *Josette Pecasting v Belgian State,* Ms Pecasting, a French national working as a bar waitress in Belgium, was refused residence permit on the grounds that “personal conduct which renders her residence undesirable for reasons of public policy. In Belgium she has worked in a bar, which is suspect from the point of view of morals... In France and Germany she has been reported for prostitution.” In both cases the Court held that member states cannot deny residence to non-nationals because of conduct which, when attributable to a state’s own nationals, did not give rise to repressive measures or other genuine and effective measures to combat such conduct.

In *Reina,* an Italian couple living and working in Germany, applied for a childbirth loan, which was state-financed. They were refused the loan on the ground that it was a

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113 Owen, n.111, p.177
discretionary loan payable under German law to German nationals living in Germany with the political purpose of increasing the number of Germans. In *Kurt Beeck v Bundesanstalt für Arbeit*, a German national working in Germany but living with his wife and children in Denmark, applied to the Employment Office for payment in respect of his second child, of half the German family allowance in accordance with Article 8(2) of the Federal Law on family allowances. But he was refused on the grounds that his wife was working in Denmark and receiving family allowances for their children according to Danish law. In *Echternach and Moritz*, children of German parents working in Holland, wanted to stay on in Holland after their parents moved back to Germany, to complete their education, as Dutch qualifications were not recognised in Germany. They were refused permission. The Court, however, ruled that such children could retain the "children of a family" status even when their parents — the workers — had returned to their home nation.

In *Reyners*, a Dutch national, born and brought up in Belgium, completed the normal Belgian legal education and subsequently applied to be called to the Belgian Bar, in order to set up practice. However, Belgian law closed the profession of lawyers to all except Belgian nationals. So, Reyners applied for dispensation from the nationality provision. This provision was limited to nationals of countries which themselves admitted Belgians to the profession. However, the Netherlands Bar was open only to Dutch nationals and so Reyners was refused approval for practice in

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115 Charlesworth and Cullen, n.93, p.250-51.

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Belgium. In *Gerhard Bauer v Conseil National de l'ordre des Architects*, Gerhard Bauer, an architect of German nationality applied to be registered on the list of trainee architects of the Association of Architects for the Province of Brabant in Belgium, but was not registered on the grounds that his qualifications were not as required by Belgian law. Belgian law required at least four years of study to be registered as a trainee. Bauer did have four years of study, only that it included two semesters of practicals, as followed in Germany. The Court ordered that practicals also be included in the study programme. In *Regina v Pieck*, Mr. Pieck, a Dutch national, employed as a printer in Cardiff, UK, left UK on 22 July 1978 and returned a week later, when the immigration authorities entered on his passport “given leave to enter the UK for six months.” When he crossed his six months stay in the UK, he was advised to send his passport to the Home Office with an application for further stay, which he did not do. He was later charged with the offence contrary to the Immigration Act 1971. The Court, however, specified that the requirement of obtaining a written ‘leave’ to enter the UK amounted to national restriction on freedom of movement. Similarly, in *Roux v The Belgian State*, Ms. Roux, a French national working in Belgium as a ‘self-employed’ waitress, was refused residence permit and ordered to leave the country on the ground that she was not self-employed but an employee, and all employees were required by Belgian law to be registered with the state social security scheme for employees. The Court said that such registration could not be used as a test whether a Community national qualified as enjoying such freedom of movement.

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119 Charlesworth and Cullen, n.93, p.253
There are numerous other cases with various other pretexts that Member States employ to keep non-nationals out of their countries. Even after the Single Market and the signing of the Maastricht Treaty, the number of such cases has not reduced.

**Free Movement of Persons**

As mentioned earlier, due to the economic nature of the Community, freedom of movement was limited to workers alone. However, the Maastricht Treaty changed that when it introduced the concept of free movement of all persons. The Treaty on European Union, for the first time, mentioned European Union citizenship. “Every person holding the nationality of a member state shall be a citizen of the Union”. The Treaty further granted certain rights to the citizen of the Union. “Every citizen of the Union shall have the right to move and reside freely within the territory of the member states...” Every citizen of the Union residing in a member state of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections and to the European Parliament, in the member state in which he resides, under the same conditions as nationals of that state.

Granting of political rights to non-national citizens of the Union was not received well by all member states. In the run-up to the French referendum on Maastricht, the General Secretary of the Rally for the Republic Party, France, Alain Juppe announced that European citizenship was ‘unacceptable’ and they would oppose changing of the constitution to give non-citizens a vote. Juppe went on to become the Prime

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121 Article 8a(1), TEU.
122 Articles 8b(1) and 8b(2), TEU.
123 Koslowski, n.100, p.378.
Minister of the country. A National Front candidate denounced European citizenship by calling attention to the threat posed by the British who had moved to France's Dordogne region, one of the most contested regions during the Hundred Years' War. Sentiments that had been bottled-up for years were released, which revealed that the old suspicions had not entirely disappeared.

At the core, however, was the fact that political rights to non-nationals raised the issue of political citizenship beyond nationality as well as questions about the future of the nation state and its articulation within the EU. Luxembourg asked for a "20 percent derogation" as it has a large resident population of non-nationals. Belgium also asked for a similar derogation as Brussels, being the centre of EU, houses numerous European civil servants. The Brussels area is also important because of the Fleming and Francophone opposition. Though Brussels and its periphery belong politically to Flanders, it also hosts important Francophone minorities, and the European civil servants are known to be more sympathetic to the Francophones. Similarly, in a unilateral declaration, Denmark announced that

Citizenship of the Union is a political and legal concept, which is entirely different from the concept of citizenship within the meaning of the Constitution of the Kingdom of Denmark and of the Danish legal system. Nothing in the Treaty on European Union implies or foresees an undertaking to create a citizenship of the Union in the sense of citizenship of a nation-state. The question of Denmark participating in any such development does, therefore, not arise.

124 ibid, p.378.
127 Martiniello, n.125, p.43.
Citizenship of the Union in no way in itself gives a national of another member state the right to obtain Danish citizenship or any of the rights, duties, privileges or advantages that are inherent in Danish citizenship by virtue of Denmark's constitutional, legal and administrative rules.\textsuperscript{128}

In Germany, discussing citizenship is terminologically very complex. German citizenship is intimately bound up with German nationality, which in turn is based on belonging to the German people. Non-nationals are free to work within Germany, but they have no rights. EU nationals have limited rights. The German law allows for the naturalisation process wherein if a person is able to demonstrate his German origins even if he does not speak the language or have any awareness of its culture provided he could show that his lack of knowledge resulted from oppression, he can obtain German nationality. However, in practice, there are tight controls applied on who gains entry and nationality.\textsuperscript{129}

Similarly, in France, the French constitution provides that only French nationals can hold the office of mayor. France showed no political will to change this provision in favour of the rights provided by the Treaty on European Union (TEU). The Council, as a result of France's reluctance to relent, in the final Directive stated that Member States could reserve the office of mayor or its equivalent to nationals.

The Directive regarding the right to vote and be elected in the municipal elections in the member state of residence was issued in December 1994 and was to be implemented by the 1st of January 1996. However, even in July 1996 Germany,

\textsuperscript{128} "Unilateral Declaration of Denmark, to be associated to the Danish Act of the Treaty on European Union and of which the eleven other Member States will take cognisance", in Church and Phinnemore, n.64
France, Greece, the Netherlands, Portugal, Spain and Belgium had done nothing regarding this.\textsuperscript{130}

\textit{The Social Chapter}

Member States with the background of a strong welfare state system were keen to have the Social Charter included in the Maastricht Treaty, or at least, to incorporate a strong social dimension into the Treaty. The Danish government in its memorandum stressed the importance of strengthening “the social dimension as a means of distributing the benefits deriving from the internal market,” and “enshrining workers basic labour social rights in the Treaty”.\textsuperscript{131} However, as mentioned earlier, Britain was opposed to any such move. In stark contrast to Britain, which openly opposed the Social Chapter, there were other Member States that projected themselves as supporters and forerunners to the cause of the Charter. But in reality, they were just taking the politically and ideologically convenient position. In other words, they engaged in “cheap talk” i.e. go along with the rhetoric even when there is no intention to implement the provisions.\textsuperscript{132} For example, Spain, the most supportive of European social policy, has large economic interests that would be damaged by higher community standards. The interests include employers and employment-oriented workers and unions. The very fact that these interests never mobilised themselves to protest against the government is proof that the government’s position was simply “cheap talk”. Similarly, when there were moves to bring most social issues under

\textsuperscript{130} Martiniello. n.125, p.42

qualitative majority vote, it was the Socialist government of Spain led by Felipe Gonzales that kept stalling and then demanded that special budgetary funds be created for the poorer member states as a precondition for acceptance. The other poorer nations also joined hands with Spain. Yet another example is that previously Britain had always opposed the payment on a pro-rata basis of social benefits to atypical workers and also to the Commission’s proposal of majority voting in this regard. Once the threat of British veto was no longer there, the eleven could have easily executed it. However, when the time came, the same opposition was made by Germany, Spain, Luxembourg, Ireland and Denmark.133

Most importantly, the Charter is purely declaratory and has no legal force. Its preamble makes a pointed reference to the principle of subsidiarity implying that limitations on the European Union’s authority to enact and enforce social legislation is inherent in it.134

The Social Fund

The ESF, the longest established structural fund, was set up by the Treaty of Rome (Article 123) to improve job opportunities in the Community by promoting employment and increasing the geographical and occupational mobility of workers. The original rules (Article 125) provided for grants to reimburse public authorities in the Member States half the cost of vocational training and resettlement allowances and grants to workers suffering a temporary drop in wages during restructuring.

133 Ibid., pp. 251-52.
operations in the enterprises. In the case of the conversion of an enterprise, aid was granted only when the government concerned had obtained prior approval from the Commission to the plan and the workers were fully employed again within six months. The objective was to assist workers moving from one region to another in search of work and those needing to acquire new skills in sectors undergoing modernisation or conversion of production methods. The limit to this provision is obvious: training and resettlement allowances are available only to those workers who had suffered a loss in wages due to restructuring of their enterprise. This effectively keeps out the general unemployed, training for the public sector and the self-employed.

Similarly, it was agreed at the outset that some member states would contribute more to the Fund than others. The assumption was that the wealthier states would contribute more and the poorer ones (in terms of unemployed) would be major beneficiaries, and thus the ESF was supposed to play a re-distributive role. In reality, this was not the case however. This was because the size of the Fund was left unspecified, while the proportions in which member states contributed were pre-determined. France and Germany contributed 32 percent each and Italy 20 percent. While it was assumed that Italy would be the major beneficiary, in actual fact it was Germany. Since the Fund operated by re-imburseing member states for 50 percent of approved national expenditure, the amount that each state received depended critically on the scale of its own training efforts. As a result, Germany became a net beneficiary, receiving over 40 percent of the Fund expenditure.\textsuperscript{135}

\textsuperscript{135} Purdy, n.134, p.284-85.
Since its inception, the role of the ESF has been reformed many times – in 1971, 1977, 1983, 1988 and 1994. The allocation to the Fund has increased and the priorities of the Fund have also changed over the years. The stress has moved to unemployment in general and unemployment among the youth in particular. The introduction of the fourth element, 1.15 percent of the member states' share of Community GNP, to the "own resources" has allowed for the doubling of structural funds in real terms.\textsuperscript{136} However, the point to note is that though the funds have increased in real terms, in proportion to the other components of the budget, the share of the ESF has decreased.\textsuperscript{137} The trends noticeable in the Community and also in the member states since the late 1980s are:

1) there is widespread pressure to cut public-sector deficits, which in turn has led to cuts in public spending in general and social spending in particular. This trend has been re-inforced with the convergence criteria of the economic and monetary union. For example, in France the "Plan for the Reform of Social Protection" or the Juppe Plan, presented to the French Parliament on 15 November 1995, was a declaration of intentions covering all areas of social security, with the main objectives being to save on the social insurance budget, especially in the health sector, and at increasing resources. In addition, a number of the proposed measures were meant to modify the organisational structure of social security with the intent of increasing state control


\textsuperscript{137} Taylor, n. 9, p.208.
over the system. Proposals for the reform of pensions for public-sector employees were also put forward. But they were abandoned as a result of the outbreak of the massive, nation-wide protest, led by the unions. As Bonoli and Palier stress, the strikes symbolised a protest not against the cuts per se but against the explicit intention of the government to increase its grip over social security and reduce the unions' influence over it. Though the government had to go back on most of its proposals, an important fall-out was the increase in government control over social security. The introduction of a role for the parliament is significant as the "parliament [will be] more inclined than the social partners to respect the Maastricht criteria, and thus make more substantial cuts in social programs." 139

2) There has been a shift, on the priority list, from labour to capital. It has been noticed that the incidence of government subsidies has shifted from labour to capital, in relative as well as absolute terms. There is a clear shift from universal to selective means-tested social protection schemes and also towards 'residual' welfare states. Similarly, there is a co-ordinated roll back of socially re-distributive policies "engineered by the ascendancy of representatives of mobile capital, neo-liberal parties and their affluent backers ... [and] the international financial agencies, the WTO and several other bodies." 140

3) Another trend noticed, especially in the 1990s, is that member states are reducing social spending as compared to a given level of wealth. For example, in the 1980s, the

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139 Ibid, p.327.
140 Alber and Standing, n.69, p. 101
social spending levels of Finland, Norway and the UK were closer to the trend line while that of Austria, Belgium, Denmark, France, West Germany, Luxembourg, the Netherlands and Sweden was 7 percent above the trend line. However, in the 1990s all these countries scaled down their social spending and brought their outlays closer to the trend line. Though there is an increase in social spending in absolute terms, what is disturbing is that in relation to the total available resources, social spending is reducing.

**Conclusion**

Social Policy is the policy adopted by a government for the welfare of its citizens—health care, housing, education, community services, and so on. These have always been under the exclusive domain of the nation state. The Treaty of Rome deals with Social Policy rather sketchily. It provides that Member States must work together for improved working conditions; have close cooperation in the social field; equal pay for men and women, etc. A closer look reveals that they are all related to workers and his working conditions. Since the EC is basically an economic community, its social policy too stems from its economic activities and objectives. In other words, the thrust is mainly on free movement of workers. The underlying aim is that the workers of the Community must be able to move freely within the Community, to take up jobs anywhere on the basis of job availability and their experience and qualifications. These workers should enjoy equal treatment as the national workers.

The figures for worker movements within the Community reveal a steady decline over the years. Because of availability of jobs and better job security in one's own country, the numbers migrating have come down. Also because, earlier unskilled labour and workers formed the major bulk of those who migrated. With manufacturing giving
way to the services sector, now it is the skilled professionals who move. But in the EC, while the number of non-EC workers has increased, the number of EC workers in other Member States has decreased. Similarly, once Spain, Portugal and Greece acceded to the EC, the number of migrations from these countries to other Member States fell sharply. Moreover, the ones that actually move have to face discrimination, like lack of proper housing, social security benefits, not being allowed to vote or stand for elections to workers councils, and so on. Mr. Tim, an Englishman working in Italy says he faces discrimination all the time. One example being, while all are supposed to have police verification done in Italy, only the non nationals have to undergo the same process every time he/she moves house. At the same time, Member States try to keep non-nationals out of their countries by either not recognising their degrees and qualifications or not advertising for the available jobs. They also resort to casting aspersions on the character of the person, as seen in the case of Ms. Pecasting.

Similarly, Britain was seen opposing the Social Charter and subsequently staying out of it. But the commitment of the eleven who had agreed to the Charter too is suspect as once Britain was not around to veto the social policy measures, they could have adopted them easily, but these very “supporters” of the Community social policy were seen to stall them. It implies that Member States simply resort to politically correct rhetoric or “cheap talk”. The lack of commitment is also visible from the reducing allocation to the Social Fund.

The Maastricht Treaty introduced the free movement of all people and also talked about EU citizens with rights such as voting and standing for elections to the

141 In an Interview in London on 16 October 2000.
European Parliament and municipal elections in the State of residence. But the Member States ensured that non-nationals would be kept out of contesting municipal elections. Moreover, in the recent times we see a rise in xenophobia in almost all Member States. Increasingly, nationalistic and extreme right wing political parties are gaining strength and even coming to power in Member States. This is an expression of the will of the people and that nation states continue to enjoy sovereignty in social policy, a vital tenet of its being.