

Karolina Zurek*

Euro Plus Pact: Between Global Competitiveness and Local Social Concerns

Abstract

This article attempts to approach the Euro Plus Pact as a new tool of economic governance in the European Union, and to provide a preliminary analysis of a number of selected aspects. The Euro Plus Pact gained a controversial reputation before its adoption. Polemics about who could or should join, which followed initial discussions on the Pact behind the closed doors of the Eurozone countries – and its rejection by a number of non-Eurozone members, who were in the end invited to join – have contributed to the biased reputation of the document. The author provides a brief overview of the provisions of the Pact and analyses their potential significance and impact in three different contexts. The Pact is considered, firstly, as a new governance tool; secondly, as an element of the wider EU economic governance reform programme; and, thirdly, in the perspective of the Social Europe debate. Through this multi-faceted approach, the author tries to ascertain whether the Pact may have a serious influence on the Member States' autonomy in the areas which it covers, or if this is all just much ado about nothing.

“...the Pact focuses primarily on areas that fall under national competence and are key for increasing competitiveness and avoiding harmful imbalances. Competitiveness is essential to help the EU grow faster and more sustainably in the medium and long term, to produce higher levels of income for citizens, and to preserve our social models.”¹

1 Introduction

Although seemingly philosophical and theoretical, a question about what future we want for the EU is in fact at the core of the reflection on the recent initiatives towards increased European competitiveness and their reception in various European Member States. We should seriously consider the questions of which expectations and values should guide the EU's direction when discussing political choices about the Union's future. Is the goal of the integration process to build a European economic superpower which can compete in the global market, or is it rather a political process of reconciliation, reintegration

and inclusion? Finally, to what extent can those goals be integrated into the agenda for the future of the EU?

A growing number of European proposals and undertakings provoke questions about the current direction of the integration process' development and its impact on prerogatives and competences of the Member States. What was initially designed as an economic Community with overarching objectives of market integration and trade facilitation seems to be transforming into something grander. This transformation, signalled and initiated already in the beginning of the 1990s in Maastricht, is

* Karolina Zurek is a Senior Researcher in Law at the Swedish Institute for European Policy Studies (SIEPS); email: karolina.zurek@sieps.se. The author wishes to thank Jonas Eriksson, Jörgen Hettne, Henrik Sikström, Anna Stellingner, and Daniel Tarschys for helpful and inspiring comments to the previous version of the text.

¹ European Council, 2011/ Conclusions/EUCO 10/11 of 25 March 2011, Annex 1.

now taking a new turn in the post-Lisbon European Union. The proclamation of the EU as a “Social Market Economy” in Article 3.3 TEU following the Lisbon Treaty seems to be transmitting a renewed promise of finding a way to embrace the social aspects of market integration: a new undertaking to couple the decoupled.

On the other hand, recent developments outside and within the EU have intensified efforts towards enhanced European competitiveness and stronger resilience to crises. Such developments gave rise to a range of strategic initiatives promoting growth, efficiency and financial stability. Their possible effect on the “social” sphere of regulation, however, causes concerns among the Member States with strong reliance on traditional welfare models, which fear the potential consequences for the internal division of competences under the historically founded social contract. Sweden’s resistance to the Euro Plus Pact is an example of such collision or incompatibility of competence distribution between the EU and the Member States on the one hand, and between contracting parties within a welfare state on the other. Thus, it is interesting to explore what really makes the Pact controversial and inviting of resistance.

2 The Euro Plus Pact: Soft integration of hard-core issues

The Euro Plus Pact, subtitled, “Stronger Economic Policy Coordination for Competitiveness and Convergence,”² is a product of a Franco-German effort for better economic policy coordination. Initially, it was referred to as the Competitiveness Pact, or later the Pact for the Euro; as such, it is designed as a more stringent successor to the Stability and Growth Pact,³ which received criticism for being implemented inconsistently.

The Euro Plus Pact disciplines the Member States of the European Union to make concrete commitments to a list of political reforms, which are intended to improve the economic and fiscal policy coordination, with a view of strengthening competitiveness and convergence. Hence, it controversially concentrates primarily on actions in

areas that fall under national competence of the Member States.⁴ The Pact was adopted by the Eurozone countries with participation of six non-Eurozone states, and remains open for other Member States to participate. However, the Czech Republic, Hungary, Sweden and the UK deliberately opted out of it, thus manifesting resistance towards extending the EU’s influence onto important, traditionally national policies, which the participation in the Pact entails.

Perhaps, if read optimistically and in isolation from other developments in the area of economic governance, the Euro Plus Pact would not make such a consequential impression. Hence, perhaps the criticism and resistance would not find such a fertile ground in some EU Member States. If, however, read and analyzed in conjunction with a number of other recent initiatives and undertakings, the firm and one-sided move towards economic strengthening seems much more significant and far-reaching. With this perspective in mind, the Euro Plus Pact positions itself in a wider spectrum of measures following the same market and productivity oriented path.

The Stability and Growth Pact,⁵ the European Semester,⁶ and Europe 2020⁷ all follow a similar rationale. If we consider their aggregated impact, the degree of influence on national regulatory systems may in fact build up into something significant. This paper is trying to investigate whether this significance is sufficient to justify the worried responses and critical voices expressed by political commentators following the adoption of the Pact.

The following section will provide a brief and simplified outlook at the provisions of the Pact. Its aim, however, is not to analyse the potential impact of every individual provision in depth; rather, it aims to provide an overall idea of the Pact’s undertaking.

2.1 The Essence of the Pact

The efforts for stronger economic policy coordination under the Euro Plus Pact shall be directed by four *guiding rules*:

² Ibid.

³ European Council Resolution 1997/ OJ C (97) 236/1/EC 17 June 1997, *Resolution of the European Council on the Stability and Growth Pact*.

⁴ On consequences of the divided sovereignty over Europe’s Economic and Monetary Union and its consequences, see N. Jabko, 2011. *Which Economic Governance for the European Union. Facing the Problem of Divided Sovereignty*. SIEPS Report No.2.

⁵ European Council Resolution, op. cit.

⁶ Economic and Financial Affairs Council, 2010/PRESSE 229/EFAC 7 September 2010, *The European Semester*.

⁷ European Commission Communication 2010/ COM(2010) 2020/EC 3 March 2010, *Communication from the Commission: EUROPE 2020. A European Strategy for Smart, Sustainable and Inclusive Growth*.

1. they should be in line with the existing economic governance in the EU and strengthen it while providing an added value. They should, thus, be consistent and coordinated with the existing instruments in the area. Yet, they should go beyond that scope by including concrete commitments and actions, supported by a timetable for implementation and included in National Reform and Stability Programmes, which will be subject to regular surveillance;
2. they will focus on priority policy areas that are essential for fostering competitiveness and convergence, concentrating on the actions where the competence lies with the Member States. In those selected areas, common objectives will be agreed upon at the Governmental (Heads of State) level, and participating states will pursue those objectives within their own policies with regard to their specific challenges at hand;
3. concrete national commitments will be undertaken each year by each participating Member State. Implementation of those commitments and progress towards policy objectives will be monitored politically by the Governments or Heads of State on a yearly basis; and, finally,
4. the Pact will fully respect the integrity of the Single Market, as all participating states remain committed to its development.

In line with those general guiding principles, Member States participating in the Pact commit to undertake all necessary measures to pursue a number of defined *goals*. They are to: a) foster competitiveness; b) foster employment; c) contribute further to sustainability of public finances; and d) reinforce financial stability.

Each participating state will individually develop and present the *specific national measures* it will undertake to achieve those goals. Although the choice of those specific actions remains a responsibility of each state, particular attention will be paid to the set of measures listed in the Pact.

Finally, progress towards the common objectives will be monitored on the basis of a set of *indicators* covering: competitiveness, employment, fiscal sustainability and financial stability. Participating states which face particular challenges in any of those areas will have to commit to addressing those challenges in a given timeframe.

For each defined policy objective, concrete policy commitments together with monitoring indicators are

foreseen. The following section gives an overview of the detailed provisions in each area.

2.1.1 Fostering competitiveness

The assessment of progress in the area of competitiveness will be performed on the basis of wage and productivity developments, as well as competitiveness adjustment needs. In order to examine whether wages are evolving in line with productivity, the Pact institutes the monitoring of unit labour costs (ULC). Development of ULCs in each country will be observed over a period of time and compared in relation to other Eurozone countries and main comparable trading partners. Assessment will encompass ULCs for the entire economy as well as for each major sector. As large and sustained increases in ULCs may have a negative effect on competitiveness, responding actions will be required, especially in countries facing significant difficulties in the area. Each country will be responsible for its specific actions, but particular emphasis will be placed on the following reforms:

1. Measures to guarantee development of costs in line with productivity, respecting national traditions of social dialogue and industrial relations, including:
 - reviews of wage arrangements, involving where necessary the degree of centralization in the bargaining process and the indexation mechanisms, while maintaining the autonomy of the social partners in the collective bargaining process; and
 - ensuring that wages settlements in the public sector support the competitiveness efforts in the private sector.
2. Measures to increase productivity, including:
 - further opening of sheltered sectors by eliminating unjustified restrictions of professional services and the retail sector;
 - improving education, research and development, as well as innovation and infrastructure; and
 - improving the business environment, particularly for small and medium-sized enterprises (SMEs), mainly through regulatory facilitation.

2.1.2 Fostering employment

Progress in the area of employment will be assessed with regard to two major indicators: long-term and youth employment rates on the one hand, and labour participation rates on the other. Although, as in all other areas, each country will be responsible for its specific actions, particular attention will be given to: a) reforms of the labour market promoting “flexicurity,” i.e., reducing

undeclared work and increasing labour participation; b) life-long learning; and c) labour related tax reforms (e.g., lowering taxes on labour to make work more profitable while preserving tax revenues), and measures facilitating participation of second earners in the work force.

2.1.3 Enhancing the stability of public finances

In this third focal area, and in particular with an objective of full implementation of the Stability and Growth Pact, particular attention will be paid to two groups of issues. On the one hand, it will concentrate on the stability of pensions, health care and social benefits; on the other hand, it will focus on national fiscal rules. The assessment will be guided according to the following issues:

1. Concerning the *sustainability of pensions, health care and social benefits*: assessment will be based on sustainability gap indicators, which are developed by the European Commission and the Member States to assess fiscal sustainability. They measure sustainability of debt levels based on current related policies, such as pension schemes as well as health care and benefit systems, while taking into account demographic factors. Reforms in this area could include:
 - Adjustment of the pension system to the national demographic situation (e.g., by aligning the effective retirement age with life expectancy); as well as
 - Limiting early retirement schemes and introducing targeted incentives to employ older workers (above 55 years old);
2. Concerning *national fiscal rules*: all participating Member States commit to aligning their respective national legislations with the fiscal rules set out in the Stability and Growth Pact. Member States remain free to choose the appropriate national legal means for adoption of those rules, provided they are sufficiently strong, binding and durable. National rules shall ensure fiscal discipline at both national and sub-national levels. Although each participating state will decide the exact formulation of the fiscal rules, the participators will have the opportunity to consult the Commission on each precise fiscal rule before its adoption, in order to ensure its compatibility with the EU rules.

2.1.4 Reinforcing financial stability

In this fourth and final remaining area within the direct focus of the Euro Plus Pact, two major issues will be considered, namely the financial sector supervision and tax policy coordination. Main actions on the respective fields shall be drafted in accordance with the following guidelines:

1. *Financial sector supervision*: with the financial sector being crucial for the overall stability of the Eurozone, a comprehensive reform of the EU regulatory framework for financial sector supervision has been launched. In the context of that reform, Member States commit to adopting EU compliant national legislation for banking resolution. Additional measures will include bank stress tests coordinated at the EU level, as well as the high level exchange of information about macro-financial stability and macroeconomic developments in the Euro area, which require specific attention. Additionally, for each participating state, the level of private debt for banks, households and non-financial firms will be monitored;
2. *Tax policy coordination*: although direct taxation remains a national competence, coordination of tax policies is a necessary element of enhanced economic policy coordination. In this context, Member States will engage in discussion on tax policy issues, specifically with regard to the exchange of best practices, avoidance of harmful practices and measures to fight fraud and tax evasion. Finally, the development of a common corporate tax base is seen as a revenue neutral method of ensuring consistency among national tax systems, which respects national tax strategies contributing, at the same time, to sustainability and competitiveness of European businesses. To that end, the Commission has presented a regulatory proposal on a common consolidated corporate tax base.⁸

2.2 Concluding the overview of the Pact's provisions

In closing the presentation of the Pact's provisions, I will also outline the intended mechanisms for its implementation and enforcements. In order to guarantee commitment and successful progress towards the common objectives, each year all participating states will agree at the highest level on a set of concrete actions to be achieved within 12 months. Although the selection of concrete political measures is left to the countries, it should be guided by the listed priority issues. The annual National

⁸ European Commission Proposal 2011/(CCCTB), COM(2011) 121/4/EC 2011, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base*.

Reform Programmes and Stability Programmes should reflect the national commitments and will be assessed by the Commission, the Council and the Eurogroup in the context of the European Semester.

3 Preliminary (im)Pact assessment

Having sketched briefly the main provisions of the Euro Plus Pact, I will now move to the preliminary analysis and speculate about the intentions of the document, as well as its potential implications. For that purpose, the following paragraphs attempt an initial study of the Pact in the context of three ongoing European debates: on new modes of governance, on the EU economic governance reform, and finally, on Social Europe. The choice of these three spectra was motivated by the willingness to highlight three important aspects of the document: its specific legal nature, its economic ambitions, and lastly, its potential social implications. These exact three characteristics were the most debated following the adoption of the Pact. Henceforth, the three-fold approach suggested here aims to emphasise those critical aspects of the document and facilitate their understanding in the broader perspective. It will, perhaps, also provoke some assumptions about the potential intended and unintended impacts of the Pact.

3.1 Voluntary participation – credible commitments?

The first interesting issue to examine is the legal nature of the Pact itself. The evaluation of what type of legal instrument it constitutes will be decisive for the nature of legal rights and obligations it creates. It will also signal its position in the hierarchy of legal sources and its relation to other regulatory instruments. Here, the legal situation is already far from clear. The Pact does not constitute any of the legal sources produced by the EU institutions in accordance with the Treaty, as it does not fit into any of the defined categories. The Pact is in fact an

established instrument of public international law. In the EU legal architecture, its legal nature and the procedure for its development and adoption classify it as a *per se* regulatory instrument, developed more in a framework of intergovernmental cooperation than in the framework of EU legislative decision-making. Probably the most fitting category to include this type of instrument will be the broad and flexible classification of new governance mechanisms.

Social policy is to a large extent a prerogative of Member States; additionally, according to the Treaty provisions and the subsidiarity principle, the Community Method was of limited application in the realm of social policy. Thus, not surprisingly, social policy was from its very initial moment seen as a good basis for commencing new governance experiments. New governance is an umbrella concept referring to various forms of governing in Europe, which diverge from the “classic” Community Method.⁹ Despite a large diversity of methods and approaches, new governance tools share a number of characteristics: (1) civil society participation and power sharing, (2) multi-level coordination and inclusion, (3) diversity and decentralization, (4) deliberation, (5) flexibility and revisability, as well as (6) experimentation, knowledge exchange and knowledge creation.¹⁰ Due to those specific features, the new governance techniques have been perceived by academics as well as by policy-makers as an opportunity for a new dimension in the EU integration, both with regard to the new impetus and form of cooperation, as well as with regard to new areas which were out of reach for the classic Community Method, but which could be covered by the new governance instruments. Among the new governance tools, the Open Method of Coordination (OMC) gained a particular standing in the social policy sphere, and was applied in areas such as employment policy, social inclusion, etc.¹¹

⁹ According to the definition presented in the Commission’s White Paper on Governance (2001), the Community Method is characterized by three features: the exclusive legislative initiative of the Commission; adoption of legislative and budgetary acts by the Council and the European Parliament, with the qualified majority voting in the Council; and the role of the European Court of Justice in guaranteeing respect for the rule of law. See: Commission Paper 2001/ COM (2001) 428 final/EC 2001 *European Governance – A White Paper*, p. 8.

¹⁰ See J. Scott and D.M. Trubek, 2002. “Mind the Gap: Law and New Approaches to Governance in the European Union,” *European Law Journal*, Vol. 8, (p. 5).

¹¹ For an extensive analysis of the OMC and its application in the field of social policy, see S. Borras and C.M. Radaelli, 2010. “Recalibrating the Open Method of Coordination: Towards Diverse and More Effective Usages,” SIEPS Report No. 7; M.J. Rodrigues, 2001. “The Open Method of Coordination as a New Governance Tool,” in M. Telo (ed.), *L’Evoluzione della Governance Europea*, special issue of ‘Europa/Europe’, No. 2–3, (pp.96–107); C. de la Porte, 2002. “Is the Open Method of Coordination Appropriate for Organising Activities at European level in Sensitive Policy Areas?” *European Law Journal*, Vol. 8, (p. 38); D. Hodson and I. Maher, 2001. “The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Coordination,” *Journal of Common Market Studies*, Vol. 39, (p.719); D. Chalmers and M. Lodge, 2003. “The Open Method of Co-ordination and the European Welfare State,” CARR Discussion Papers, No. 11; and D.M. Trubek and L.G. Trubek, 2005. “Hard and Soft Law in the Construction of Social Europe: the Role of the Open Method of Co-ordination,” *European Law Journal*, Vol.11, (pp.343–364).

A distinguishing feature of new governance tools, with regard to their impact and creation of obligations of Member States, is their soft character. New governance instruments are, as a rule, voluntary, more coordinative than purposive, and their application is based on mutual information exchange and mutual learning, rather than on stringent obligations, whose observance is monitored and enforced. This is both the weakness and the strength of new soft governance. Its openness, flexibility and leniency of its instruments make it more attractive to Member States, which can afford to be more daring and willing to commit. Hence, the coordinative effect and the mutual learning aspects of new governance mechanisms tend to be emphasized as successful. On the other hand, however, the soft nature of new governance tools as well as the specific lenient character of their obligations seriously limits the scope of their application. In all areas where credible commitment and stringent requirements are necessary to achieve the regulatory objective, soft new governance tools simply will not be useful.

Looking at the Euro Plus Pact against the background of the new governance debate provokes interesting observations. Contrary to the general comprehension of the Pact as a soft governance tool, thorough reading of its provisions suggests a rather different qualification. The nature of commitments induced by the Pact goes far beyond what the new governance tools are characterized by. Thus, it contradicts this first impression. To be more precise, on the surface, the Pact constitutes a soft regulatory instrument, open for participation on a voluntary basis. If adhered to, however, it imposes a number of firm, defined, time-restricted and verifiable commitments for participating states.

While most of the obligations are indeed of a general new governance type, because of their referral to consultations, best practices, benchmarking, indicators,¹² etc., a significant number of provisions demand concrete commitments, where specific objectives have to be achieved within a defined time-period, and participating states are subject to surveillance. Even if the concrete yearly commitments undertaken by the participating states are based on their own assessment of need and

abilities, and on their own planning of national reforms (“guided” by the objectives of the Pact), the National Reforms Programmes and Sustainability Programmes are submitted for assessment by the Commission, the Council and the Eurogroup. Hence, the commitments, in a way, become binding upon those states, irrespective of the fluctuations of the overall conditions. Consequently, if the national situation changes dramatically, which is not such an unlikely scenario in the troubled contemporary times of crisis, the Programmes will not be as easy to review, limit or withdraw from as any other, purely national, form of commitment. It is, in fact, unclear what consequences there would be in such situations.

Similar to many other “hybrid” governance solutions, which are not easily subsumed to a particular regulatory system with its structure of enforcement and jurisdiction, the situation of the Pact is unclear. Pointing to examples in close vicinity, the criticism of the Stability and Growth Pact stemmed exactly from the lack of efficiency and impartiality of actions against its breach.¹³ Nevertheless, in the reading of the provisions in question, especially bearing in mind the overall intention of the Pact to be seen as a more rigorous successor to the Stability and Growth Pact, one should not underrate the stringency of obligations based on concrete commitments undertaken by the participating states. Perhaps, in the case of the Euro Plus Pact, the way to commit the participating states more definitely to their obligations was planned exactly through combined internal (national) enforcement on the one hand, and the political pressure at the European level on the other.

3.2 Euro Plus Pact as an element of the New EU Economic Governance Programme

The second interesting perspective on the Pact is to look at it as an element of the larger European exercise in economic governance. Here, the focal question is about its role among other recent growth-promoting and financial stability-strengthening mechanisms undertaken in Europe, and a potential additional cumulative effect which would give the Pact a specific stronger meaning or impact.

¹² As a side remark, an interesting question to consider is to what extent the Euro Plus Pact follows the example of, and builds on the criticism towards, soft law instruments introduced in the crucial areas under the Lisbon Strategy. For a discussion on effectiveness of those instruments in fostering structural reforms see, for example: D. Ioannou, M. Ferdinandusse, M. Lo Duca, and W. Coussens, 2008. “Benchmarking the Lisbon Strategy,” *European Central Bank Occasional Paper Series*, No. 85.

¹³ See for example: M. Chang, 2006. “Reforming the Stability and Growth Pact: Size and Influence in EMU Policymaking,” *European Integration*, Vol. 28, No. 1, (pp.108-114); and M. Buti, S. Eijffinger and D. Franco, 2005. “The Stability Pact Pains: a Forward-Looking Assessment of the Reform Debate,” *Center Discussion Paper*, No. 2005-101, Center for Economic Research at Tilburg University.

In order to place the Pact in the context of the economic governance reform agenda, a brief and simplified overview of the reform framework will first be provided. The new EU economic governance programme is guided by three major objectives: to reinforce the economic agenda with closer EU surveillance, to safeguard the stability of the euro area and to repair the financial sector. In order for those three aspects to be adequately tackled, a number of initiatives were undertaken. Among them, it is valuable to mention new strategic policy documents, new legislation, new institutional architecture, new planning and surveillance mechanisms as well as supporting measures.

Henceforth, in the light of the reform agenda, the EU activities in the economic governance area will be guided by priorities agreed upon in the Europe 2020 strategy.¹⁴ Those activities will follow new regulations proposed as a new economic governance legislative package, referred to colloquially as a “six-pack.”¹⁵ The regulations will be implemented in accordance with the new working method referred to as the European Semester, which facilitates effective coordination of the Member States’ economic and structural policies with the EU considerations already at an early stage of their national budgetary processes. In order to diminish macroeconomic imbalances between states, a new surveillance mechanism was proposed to monitor national economies for emerging macroeconomic imbalances and to initiate corrective actions where necessary. Moreover, the Stability and Growth Pact will be significantly reinforced. With regard to the institutional structure, new agencies were established in the financial sector, to facilitate early detection of problems and proper supervision of financial institutions in Europe. Hence, the European System of Financial Supervisors (ESFS) was established to reinforce the European framework for micro- and macro-prudential supervision, which consists of three new European Supervisory Authorities (ESAs) for banking, insurance and securities markets; and the

European System Risk Board (ESRB) was created, which will monitor, identify and prioritise systemic risks to financial stability. Additionally, in 2013, the new permanent European Stability Mechanism (ESM) is supposed to replace the temporary support mechanism established in response to the 2010 crisis, namely the European Financial Stability Facility (EFSF), and assume the tasks currently fulfilled by the European Financial Stabilisation Mechanism (EFSM) in providing, where needed, financial assistance to euro area Member States. Finally, as a complementary element of this entire economic governance exercise, the Euro Plus Pact is intended to support national implementation of the reform, through the National Reform Programmes that will be adopted by the participating states.

A number of issues can be raised here, in order to decipher the potential impact of the Pact in the framework of the entire economic governance reform. There were speculations among the commentators about the conditionality relation between the Pact and the European Stability Mechanism provisions, which are annexed side by side in the same European Council Conclusions.¹⁶ Others point to the fact that the Pact may be missing a point by targeting issues which are in fact not the major problems in the current crisis situation, not addressing the problems such as the fragility of Europe’s banks or the need to deepen Europe’s single market for services; they also suggest that the promoters of the Pact are not really aiming at competitiveness but rather at political appeal.¹⁷ With support of economic analysis, it has been claimed that the competitiveness indicators applied by the Pact are in fact of limited use; also, the Pact can be seen as the means to provide clandestine protection of Eurozone creditors, who control the agenda setting and have the power to dictate solutions to more dependent members of the club. Along those lines, it is claimed that the Pact only targets problems which require action by the debtors, while it disregards important problems specific

¹⁴ European Commission, Communication, op. cit.

¹⁵ The legislative “six-pack”, which was voted by the European Parliament on 28 September 2011, and approved by the Council on 4 October 2011 includes: Proposal for a Council Regulation amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, COM(2010) 522 final; Proposal for a Regulation amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies COM(2010) 526 final; Proposal for a Regulation of the European Parliament and of the Council on the prevention and correction of macro-economic imbalances, COM(2010) 527 final; Proposal for a Council Directive on requirements for budgetary frameworks of the Member States, COM(2010) 523 final; Proposal for a Regulation on the effective enforcement of budgetary surveillance in the euro area, COM(2010) 524 final; Proposal for a Regulation on enforcement measures to correct excessive macroeconomic imbalances in the euro area, COM(2010) 525 final.

¹⁶ 2011. “‘Euro-plus-pact’ divides non-eurozone members,” *EurActive*, [Online]. Available at: <http://www.euractiv.com/en/euro-finance/euro-plus-pact-divides-non-eurozone-members-news-503526> [Accessed 10 August 2011].

¹⁷ 10 March 2011. “The divisiveness Pact. Plans for closer economic integration in the euro zone could cause trouble,” *The Economist*.

to the creditors, which should in fact be dealt with in the first place.¹⁸ The final important point which has not been highlighted in the commentaries following the adoption of the Pact, but which was emphasized in some national responses, was the degree of intervention of the Pact in the national regulatory competence spheres, such as taxation.

Considering all of the potential costs of such an undertaking, as well as possible risks to the national sovereignty of participating states, it may be doubtful whether the benefits to economic performance and competitiveness of the EU envisaged by the Pact will materialise to an extent sufficient to make the entire exercise worthwhile. In fact, at this point, neither can the effectiveness of the Pact and its potential benefits be guaranteed, nor can the national social costs of its implementation be estimated, which provides more room for ambiguity than for optimism. It may in the end turn out that the sceptical views of some economists, which portray the Pact as a one-sided crisis response instrument, rather than a reformatory competitiveness promoting tool, will prove correct.

3.3 Social impact of the Pact

The explicit proclamation in the Lisbon Treaty of the EU as a “Social Market Economy” has been interpreted by some as a signal of new impetus in Europe’s attempts to find ways of acknowledging social aspects of market integration. Throughout decades of common market building, the objectives of trade liberalization and strengthening of economic freedoms have been confronting national social regulations. In cases of conflicts, it has been rather common that economic and trade liberalization objectives were prioritized, which in turn influenced the national systems of social regulation, with the Court’s decisions in *Viking* and *Laval*, referred to below, being commonly quoted examples. Moreover, since, in the majority of cases, the objectives would take the form of judicial activism of the European Court of Justice (ECJ), they would be characterized as an exercise

in deconstruction or *negative integration*. This was particularly the case in those areas where no harmonizing EU regulatory action was politically available to replace the deregulated zones and provide for alternative positive integration. Furthermore, such activism seriously limits the capacity of individual Member States to solve problems via their national democratically accountable processes, while the decision making process at the EU level cannot make up for that loss and fill in the lacuna it itself created. In this established setup, it is principally the social regulation that is suffering. From that perspective, the reference in the Lisbon Treaty to the EU as a social market economy can only be interpreted as ornamental, as the regulatory context and situation have remained largely unchanged.¹⁹ There is, however, a slight move towards the understanding of the delicacy of social matters, and an internal call for restricting the ECJ’s straightforward approach to the application of primacy of the economic freedoms.

Milestone judgments in the cases of *Viking*²⁰ and *Laval*²¹ marked the new wave of judicial activism and intervention in national social contracts, as well as in systems of provision and protection of labour and welfare. They have been received with significant criticism for their disregard of the sensitivity of European social models and for taking advantage of the established EU bias towards protection of economic freedoms.²² The Lisbon Treaty seems to have equipped the critics with a new set of arguments. Interestingly, this new power setup is being taken up by the ECJ’s Advocates General, although so far it goes without the Court’s recognition. It is important, however, to hear from within the Court, that under the Lisbon Treaty, social protection is no longer to be understood as an exception, but be judged on an equal footing with the fundamental market freedoms. Hence, “(t)o the extent that the new primary law framework provides for a mandatory high level of social protection, it authorises the Member States, for the purpose of safeguarding a certain level of social protection, to restrict a freedom, and to do so without European Union law’s regarding it

¹⁸ See D. Gros and C. Alcidi, n.d. “Sense and Nonsense of the Euro-Plus Pact,” in: *Think Global - Act European. The Contribution of 16 Think Tanks to the Polish, Danish and Cypriot Trio Presidency of the European Union*, (pp.83-91). [Online] Available at: http://www.notre-europe.eu/fileadmin/IMG/pdf/TGAE2011_2b_GrosAlcidi_1_ [Accessed 02 September 2011].

¹⁹ See for example: F.W. Scharpf, 2010. “The Socio-Economic Asymmetries of European Integration or Why the EU cannot be a ‘Social Market Economy,’” *SIEPS European Policy Analysis*, No.10.

²⁰ Case C-438/05, *International Transport Workers’ Federation and Finnish Seamen’s Union v. Viking Line ABP, OU Viking Line Esti*, [2007], ECR I-10779.

²¹ *Laval un Partneri Ltd. v Svenska Byggnadsarbetareförbundet and others*, [2007], ECR I-11767, Case C-341/05.

²² L. Azoulai, 2008. “The Court of Justice and the Social Market Economy: the Emergence of an Ideal and the Conditions for its Realization,” *Common Market Law Review*, Vol. 45, (pp.1335-1356).

as something exceptional and, therefore, as warranting a strict interpretation.”²³ This shift of understanding, which creates an opposition within the institution itself, is already a significant step ahead and perhaps a move towards a more balanced approach in the “common market” – “social Europe” divide.²⁴

Against this background, a question to consider is how to position initiatives such as the Euro Plus Pact in the Social Europe debate, and how to judge their impact in this constellation. The Pact definitely interferes in national social contracts as well as sensitive systems of provision and protection of labour and welfare. It openly positions itself as focusing primarily in areas that fall under national competence. Therefore, it is important to judge whether it does this with due proportionality and sensitivity which are required in situations where an indirect breach, as soft as it may be, of the principle of enumerated competences occurs. The objectives of increased competitiveness and higher convergence are definitely important, but only if carried out in respect of the variety of Europe’s social models. Otherwise, there is a risk of striving for competitiveness at a cost of social welfare and national social regulatory balance, which would again “assign supremacy to economic freedoms over political citizenship.”²⁵

The Euro Plus Pact can be seen as a step on the national turf, which is probably why some Member States chose to opt-out. The step on national turf is performed not by means of negative integration through judicial activism, but more indirectly, through quasi-positive means. Namely, the Pact creates a situation where planning and implementation of national regulatory developments are steered by an external actor (the EU), instead of the state’s democratically accountable framework. Moreover, this external guidance is directed towards delicate and sensitive national regulatory spheres, such as labour or fiscal regulation. Hence, although the Pact underlines the “voluntariness” of participation, it does not warn enough about its consequentiality.

4 Conclusion: A Member State or a Welfare State – but can one still be both?

Increased European involvement in national policymaking can be observed in many areas, especially now during the time of economic crisis. In comments on the decision of the European crisis summit of 21 July 2011, it was underlined that extending European powers in the field of economic governance and growing EU influence on national policy decisions can be very risky. It will not lead to a true political union, which is more and more realized to be a necessity for a functioning monetary union; instead, it can lead to even deeper divisions within the EU.

Initiatives such as the Euro Plus Pact extend the European influence in domestic policy-making. Despite the declaration about “ownership” of the Pact by the participating states, the reality is that for those states, national activities undertaken in a number of important and sensitive areas will be subjected to external influence and control. Despite its voluntary and soft character, the Pact will result in a transfer of a portion of Member States’ national sovereignty to make independent decisions within their Treaty-reserved field of activity. It is difficult to presently judge whether actions such as an indirect transfer of supervisory powers to the EU institutions will result in serious consequences, and how serious the outcome of such actions will be. Only the factual implementation of the Pact will show how the EU and the participating states use the new dynamics, and how it affects those states which chose not to join.

Sweden’s cautious approach towards the Pact can be interpreted as a sign of resistance against deconstructing Swedish traditions of the social contract, as well as the Swedish model altogether. It seems that the Pact intervenes in areas which are so fundamental for the Swedish welfare state, that even softer governance methods are too much to accept. On the other hand, however, it falls into a wider realm. Already in commentaries following the *Laval* judgment, it was underlined that Sweden has to acknowledge the tensions between its “Swedish model”

²³ See opinion of Advocate General Cruz Villalón delivered on 5 May 2010 in *Vitor Manuel dos Santos Palhota and Others*, case C-515/08, judgment of 7 October 2010 not yet reported. It is important to emphasize again that the Court in its judgment does not take up this issue. For interesting comments see: Ch. Joerges, 2011. “Unity in Diversity as Europe’s Vocation and Conflicts Law as Europe’s Constitutional Form,” in: Ch. Joerges (ed.), *After Globalisation. New Patterns of Conflict and their Sociological and Legal Re-constructions*, RECON Report No15/2011, (pp. 87-88); and J. Snell, 2011. “Varieties of Capitalism and the Limits of European Economic Integration,” paper delivered for the conference: *The Reach of Free Movement*, University of Oslo, 18-19 May 2011, (pp. 16-17).

²⁴ See also G. Bertola, 2011. “Social and Employment Policy in the EU and in the Great Recession,” SIEPS *European Policy Analysis*, No.11.

²⁵ Ch. Joerges, “Unity in Diversity as Europe’s Vocation...” op. cit., (p. 91).

and its European commitments, keeping awareness of the limitations of both, as well as the possibility of instrumentalisation of EU law in internal Swedish power battles.²⁶ In this case, the cautiousness seems credible and genuine, and the existence of a conflict between some requirements of the Pact and the established domestic decision making processes must not be disregarded. Again, the extent of the factual impact of this potential conflict is difficult to estimate at this point.

More importantly, however, and irrespective of the decision of Sweden and a few other countries, it is important to consider the Euro Plus Pact as being a sign of the tendency towards an increasing role of the EU in the Member States, with the intention to increase the EU's influence in the world. Thus, it is interesting to return to the question somewhat provocatively posed in the introduction, regarding one of the goals of the common market integration. Namely, are we aiming to build Europe as an economic superpower? Or are we aiming to build a Social Europe as a union of diverse member states, which work together for prosperity and the wellbeing of its citizens? The Euro Plus Pact can be

seen as an example of such a dilemma. One important thing in the assessment of such situations is a simple cost-benefit analysis, or what the ECJ refers to as the proportionality test. What do we expect to gain and what do we risk losing? In the case of the Euro Plus Pact, an instrument of soft experimentalist governance with an insecure impact and unknown outcomes, this estimation is difficult to make. For a number of states, the risks seem to have outweighed a potential benefit. The time and the implementation process will show whether their cautiousness was warranted. It will also be interesting to observe how this division affects the development of initiatives proposed by the Pact in the participating states and in the EU as a whole. A careful preliminary impact assessment of the Euro Plus Pact suggests that, despite the important concessions that the participating states have made, there is no guarantee that its objectives will be fulfilled, or that reinforced crisis-resistance will materialise. It may, however, at least for some of those states, require stepping down in their domestic social policy and withdrawing from the political commitments they have undertaken towards their citizens.

²⁶ P. Mindus, 2012. "Theorising Conflicts and Politicisation in the EU," in: R. Nickel, A. Greppi (eds.), 2012. *The Changing Role of Law in the Age of Supra- and Transnational Governance*, Nomos, Baden-Baden, forthcoming.

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