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Barbier, Jean-Claude & Fabrice Colomb (2012): ‘EU Law as *Janus bifrons*, a sociological approach to “Social Europe”’, in: Barbier, Jean-Claude (ed.) EU Law, Governance and Social Policy, *European Integration online Papers (EIoP)*, Special Mini-Issue 1, Vol. 16, Article 2  
<http://eiop.or.at/eiop/texte/2012-002a.htm>.

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DOI: 10.1695/2012002

## EU Law as *Janus bifrons*, a sociological approach to “Social Europe”

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**Abstract:** On the basis of sociological research focused on actions and appreciations of “social policy” actors, this paper contends that, apart from the powerful constraint of macroeconomic governance, the main governance instrument has been hard law, even in an area where member states are deemed to have retained most of their jurisdiction (Leibfried and Pierson, 1995, Ferrera, 2005; Barbier, 2008). The sociological material is systematically cross-checked with legal literature and with material drawn from 26 EU law specialists. The authors focus on the relationship between EU law and “social law” (social protection, labour law and social services). The main finding is the confirmation of the jeopardization of systems of social protection in the “old member states”. On the other hand, though, the Court of Justice of the European Union and the Commission have been able to display continual advances on the subject of “fundamental rights”, thus producing key sources of legitimacy among various actors. With the classically documented support of big business and corporations, and the active support of non-governmental organizations in favour of expanding individual fundamental rights, the on-going dynamics of EU law seems to inexorably lead to the demise of the late 19<sup>th</sup> century born systems of social protection, as F. Scharpf argues. This deterministic analysis however does not take into account the current uncertainties about the role of actors.

**Keywords:** sociology; europeanization, governance; negative integration; legitimacy; lobbying; policy networks; welfare state; economic law; provision of services; EU social policy; Social Charter

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## Introduction

There is a consensus in the economic literature on European integration that the central determination of the systems of social protection is by macroeconomic policies (Begg 2012; Buti 2011; Orlean 2012; Rother *et al.* 2010). Developments since 2009 have highlighted even more the importance of this essential instrument of governance, with the explicit application of austerity packages spreading across the EU (Fitoussi *et al.* 2010).

But, in order to assess the influence exerted on “social policy”<sup>1</sup> by the European Union as an actor of a “multi-level” governance system, it is essential to focus on law. What was emerging twenty years ago (Leibfried and Pierson 1995) is all the more visible now. The consequences of the gradual Europeanization<sup>2</sup> of law for social protection and social rights are documented

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<sup>1</sup> “Social policy” is a shortcut, as are “welfare policy” or “the welfare state”. Empirically the scope of our research encompasses the entire systems of social protection, the systems of labour law, and the provision of social (often public) services.

<sup>2</sup> The Europeanization of law is the gradual transformation of national law through the incremental insertion into it of elements of EU law that merge with it. But in sociological terms, Europeanization includes the Europeanization of socialization processes of actors in law making.

by political scientists (Ferrera 2005; Scharpf 2009; Höpner 2011; Falkner *et al.* 2005, 2008; Martinsen 2009) and by legal research (Davies *et al.* 2005; Rodière 2008; Bercusson 2009). However, sociological approaches to the phenomenon have remained rare (Favell and Guiraudon 2011; Vauchez 2008). The present paper is an exploratory attempt to bridge this gap: it focuses on the role of actors, both at the national and the EU level, as they are affected by the implementation of EU law, but also as they participate in EU law making in various ways.

The central finding of our study<sup>3</sup> lies in the ambivalent role of EU law and the variable support it commands among actors across the European Union. New social rights have been added over the years for individuals and new freedoms for firms. Yet, at the same time, threats to social protection and collective entitlements have appeared because of the intrinsic asymmetry of EU law, and because of various spill-over effects. Actors are thus confronted with EU law as *Janus-faced*. One face promises opportunities, the other poses threats. Hence, there are two groups of actors of individuals, interest groups, or organizations: those that are and feel threatened and the ones relishing and using the possibilities opened up for them by EU law. The god Janus draws legitimacy resources from the latter, whereas it is bound to meet growing resistance from the former. This social process opens up to a political *bifurcation*. What we find in meeting actors and in discussing with legal scholars is increased politicization of EU law in the social domain: this is a rather new phenomenon for this policy area.

In this paper, we proceed in four steps. First, we describe our sociological approach and methods. In the context of a long-term research about EU integration in the social domain, we have been able to identify what we call the relevant “social actors” (actors of social policy). We find them in defined “spaces”, where EU law and governance are discussed: after B. Jobert (1998, 2003), we call these spaces *forums*. In some cases, we are also able to situate them in “arenas” where decisions are taken. As no research is able to cover the whole area of social policy coordination at the EU level, we chose to focus on case studies that we considered highly significant. Second, we turn to the special institutional characteristics of EU law, compared with the traditional situation of social policy in the national context. In the third section we deal with our central object, the ambivalence of EU law: in practice we explore it through themes that stemmed from the interviews and were cross-checked against the views of the legal scholars interviewed (and our review of the legal literature). Four aspects emerged as central: the subordinated status of social law at the EU level; the uncertain “implementation” of EU law; the tension between economic and social rights, and, last but not least, the ambiguities of EU social citizenship. Finally, in an exploratory manner, we conclude by identifying coalitions and how they align themselves around the two faces of

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<sup>3</sup> The study has entailed the coordination of a group of researchers in the context of an FP7 Project: Governance of Uncertainty and Sustainability, Tensions and Opportunities (GUSTO). See section one on methodology and reference list. The authors would like to thank Axel van den Berg for his help and support for the writing of the present paper.

Janus. This last reflection opens up a much broader theme: the comparative legitimacy of EU and national governments/governance.

## 1. A sociological view of relevant actors, observed in their forums and arenas

“Social actors”, i.e. actors involved in the implementation of social policy – chosen here in the broad sense (see note 1) – can play two main roles with respect to EU law. They are first concerned because they are the object/target of EU law application, which, after being transposed, is incorporated into national law. For actors in the social domain, EU law is something relatively new; as *national actors*, they are accustomed to national law and it is only because the reach of EU law has gradually extended into more and more areas of social policy (Rodière 2008; Hartlapp 2012; Barbier 2012) that they became gradually more aware of its importance. As a consequence, they have developed judgments and opinions about EU law, which express the second aspect of their relationship to it. In this position they criticize or, alternatively, praise EU law, they comply with it and promote it, or, alternatively, resist its implementation (for instance by resorting to non-application or to litigation) and try to influence its making. This role is not only observable, in national “spaces”: its main aspect takes place at the EU level, and the most common form it takes is *lobbying* in the EU levels *forums*. Hence, as table 1 shows, one should not assume a clear cut separation between “national” and “EU level” actors. *Apart from national administrations and the formal EU institutions*, sociologically, all the actors concerned by the application of EU law are in practice at the same time national actors<sup>4</sup> and *potential* participants in the EU-level forums (this is why table 1 has a similar list of categories at both levels). All actors also have a link to a personal/national history in one or more countries, even when they have acquired the role of participants in the “Brussels forums”. *Legal experts and the legal community* in general also act both at the EU and the national level.

Before describing in more detail how we draw the map of the actors we consider as “relevant” for the purpose of the present research, it is important to be more specific about what we call “forums” and “arenas”, the place where we meet them. We rely on B. Jobert’s essential distinctions (2003; 1998: 133-137). For him the formation of policies has a predominant cognitive and normative dimension: this is what he has called the role of the “*référentiel*” (Jobert 2003) – “frame of reference” - where ideas and interests are not strictly separable<sup>5</sup>. Actors participate in the formation of policies in three main types of forums: the “forums of political communication”, the “forums of policy communities”, and the “scientific forums”. Jobert distinguishes forums, where debate about policies is conducted, from arenas, where

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<sup>4</sup> National actors were mainly solicited in four countries: the Netherlands, the United Kingdom, the Czech Republic and France. Six German actors were interviewed. The national citizenship of actors “at the EU level” will not be specified.

<sup>5</sup> For readers more accustomed to English speaking literature, the closest approximation, from which however Jobert wants to take distance, would be the notion of “paradigm”, in Peter Hall’s terms.

only a small number of actors participate, strike compromises and make decisions (notably about legislation). How does this help for the present research? Leaving aside the « forums of political communication<sup>6</sup> », we concentrate our observation on the “policy communities forums”, where actors belonging to a particular area, or network of policy, meet. National “policy communities forums” in the area of social services, for instance, are not insulated from EU-level social services forums. In these forums we identify the relevant actors to interview. Understanding the role of the « scientific forums » in social policy is not a task we will deal with in the present article. However, as researchers who have been involved in evaluation studies, in consultancy, and in various scientific and dissemination activities over the last 20 years (Barbier 2008), we are aware that participation in these scientific forums provides highly informative long-term participatory observation from within: this position has many advantages for the identification of actors because policy communities forums and scientific forums overlap to some degree.

Now that we know what the “social actors” do with respect to EU law and where we can find them, it is easy to explain their typology, presented in table 1. We eventually come down to five types. *Types 3 and 4 group together the formal institutions* of the EU. Note that the Commission belongs to both: *in type 3*, the Commission is considered both for its administrative and legislative roles (it shares the latter with the Council and the European Parliament). *In type 4*, alongside with the Court of Justice of the European Union (CJEU, former ECJ), it is considered as the author of legal decisions. Four long (and essential) interviews were conducted with this type of actor, three with former *référéndaires* in the Court, and one with a legal specialist in the Commission administration<sup>7</sup>. *Types 1 and 2 group the social actors* who manage social protection (unions have a special role and cannot be confused with “NGOs”), who are providers of services (among them, commercial actors). Essentially we meet their representatives in professional organizations, but also some direct providers. Legal experts and scholars, and administrators of social policy provide the rest of our interviewees. Both at the EU and the national level, interviews with legal experts are essential: because the legal community is at the same time “implementing” EU law, discussing it and making it, its views are essential to cross-check with the declarations of the rest of interviewees. The legal community is now overwhelmingly transnational<sup>8</sup>. It is composed of the judiciaries of the member states, the legal professions, experts and professors, and, at the EU level, of course it includes the Court of Justice and its Tribunal of first instance, (with the “legal services” of the European Commission and the Council). The “validity of praetorian law<sup>9</sup> through specialized discourse within the legal profession” (Scharpf 1999: 193) constitutes a crucial condition of possibility of its strategic position.

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<sup>6</sup> For Jobert, such forums are the areas where the classic competition for the control of power takes place, in the context of electoral competition.

<sup>7</sup> For reasons of confidentiality, we cannot be more specific.

<sup>8</sup> In specialized areas of law, some communities have remained mainly national. This was for instance the case of the French labour law community (interview, February, 2010, law professor), but it is changing (law professor, November, 2011).

<sup>9</sup> Praetorian law, or judge-made law refers to case-law as opposed to laws and statutes passed in parliaments.

These actors are part of “interpretative communities” (Weiler 1991: 2438), and it is a sociological simplification to assume that they form a *single* community. Various professional groups are involved (Dezalay 2007; Vauchez 2008), and not only differentiated along national lines. However, there seems to be a consensus in the literature as to the fact that national judiciaries and especially courts have come to provide the main source of support for the CJEU (Schmidt 2006; Weiler 1991). Our interviews document this support as well as the sustained effort of the Commission to promote EU law and disseminate a common legal culture, especially in the “new” member states<sup>10</sup>. We also find that this “community” of communities is not insulated from social influences: “The European Judge cannot but be very ‘political’; he or she is also political in the sense that he or she takes an ‘activist’ position against member states’ ‘paralysis’” (interview, former *référéndaire*).<sup>11</sup>

The mere fact that, with time, the national judiciaries and the legal profession have come to support EU law and act collectively for its propagation and supremacy does not mean, as we will see, that this supremacy can be actualized without the support of other powerful social actors. In table 1, one notes that only three politicians were interviewed over the period of observation (2009-2012): one is a former French MEP and the other a former Commissioner (member of the first Barroso Commission); the third is a local politician in Paris. The material drawn from these interviews helped situating the context of interpretation but was not central. Finally, *Type 5* is also marginal for the present article: it is however relevant for the whole interpretation because language is important for the very existence of law.

What themes within social policy did we select? Here the choice was directly linked to the insertion of the present research within the FP7 project GUSTO, and the themes were social services of general interest, labour law and social policy coordination. The number of interviews mentioned in table 1 includes two case studies conducted in France, but does not include three other case studies conducted by colleagues in the Netherlands (Sol & van der Vos 2012), in the Czech Republic (Sirovatka 2012) and in the United Kingdom (see Koukiadaki, in the present issue). However, the paper has benefited from those case studies as reported in forthcoming publications referred to in the reference list. Finally, a last methodological remark is necessary. The findings presented in the three following sections are illustrated by quotations drawn from the interviews, and the general interpretation of the corpus of interviews is the result of their confrontation and validation through a constant discussion with legal scholars. Moreover, in the course of four years of research we have had the possibility of meeting some of our interviewees several times, and to cross-check their declarations at one point in time against what they had said before. As one of our interviewees in the DG Employment of the Commission noted in December 2010, forums are small worlds: “it’s a family, it’s a club, and they are always the same, rotating among themselves”.

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<sup>10</sup> Interview, magistrate, July 2010.

<sup>11</sup> February 2011. See also: interview, labour law professor, February 2010: “It is impossible to admit that there was no link at all between the substance of the Laval and Viking cases, and the national citizenship of the Judges in the Chamber of the Court”.

## 2. The foreignness of EU law: special characteristics

Law is part of the everyday life of citizens and meeting actors dealing professionally with EU law always brings to the fore a strong contrast with their idea of what law ordinarily is, namely “national law”. For instance, conducting the “evaluation” of the European Social Fund in France in the late ‘90s, we incidentally discovered that “partnership” was a central concept of EU law for the Structural Funds, which had practically no meaning in French law. “Additionality” was another one and French practitioners invented their own way of dealing with this alien concept, in contradiction with the official EU legal meaning. On the part of professionals, this provides a particular illustration of a more general phenomenon. All citizens in a particular polity are supposed to learn and know its law. “*Nul n’est censé ignorer la loi*” is the French way of putting it, which also points to the fact that at least educated groups<sup>12</sup> share a “legal consciousness” as part of their citizenship at the national level. Yet the situation is different with EU law, because, we learn when talking to EU law makers, it has to be foreign in principle.

Only a handful of our interviewees are conscious of this fact. European lawyer-linguists know that it is part of their task. “We try and avoid sticking too closely to national terms” report two lawyer-linguists interviewed in the Council’s administration<sup>13</sup>. They are officially instructed to choose legal concepts that are different from any counterpart notion in the national legal systems. Indeed guidelines prescribe lawyer-linguists and reviser lawyer-linguists to avoid terms too closely linked to the national legal orders (Piris 2006)<sup>14</sup>. It is more surprising that even experienced legal scholars are unaware of this<sup>15</sup>. Indeed, compared to national law, the possibility of a “common legal culture” is much more improbable with regard to EU law, which in principle is not grounded in any of the legal systems of the member states (Kjaer and Adamo 2011). The very fact that EU law is formulated and translated into many languages – 95% of texts are now originally drafted in English<sup>16</sup> - implies that it is written in a language cut from the ordinary legal consciousness, not only of the concerned actors, but also of citizens in general. A case in point here is the term “workers”, which is used in chapter 1 of Title IV of the Treaty (TFEU) (freedom of movement of workers), which means something different from the British legal term “worker”<sup>17</sup>. From interviews with members of the

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<sup>12</sup> Educated groups in western societies make up the majority of these societies (more than 80%). However, entire groups are excluded from knowledge of the law: this is for example the case of less educated young people.

<sup>13</sup> Interview, March 2011, EU Council.

<sup>14</sup> “En ce qui concerne la terminologie proprement juridique, il faut éviter les termes trop étroitement liés aux ordres juridiques nationaux”, Guideline 5.3.2, p. 19 of the *Guide pratique commun du Parlement européen, du Conseil et de la Commission à l’intention des personnes qui contribuent à la rédaction des textes législatifs au sein des institutions communautaires* (French version 2003).

<sup>15</sup> At a Copenhagen conference on social services (May 2011), a specialist of competition law confesses to the audience that he “still has problems” with the term “undertakings” used in EU law instead of the more common term “firms” or “companies”.

<sup>16</sup> Interview, EU Council, March, 2011.

<sup>17</sup> Accordingly the French version “*les travailleurs*” is distinct from the mainstream French “*salariés*”; the German version, for its part, has “*die Arbeitskräfte*” instead of the German classic “*Arbeitnehmer*”.

Court<sup>18</sup>, we get the clear impression that this *legal and linguistic* strategy is part of the collective goal to build a *sui generis* legal order. No wonder then that, as we will see in the following section, the general puzzlement at the term “social services of general economic interest” is constantly documented, and even more in the “new” member states: in the Czech Republic, “the concept is still studied”<sup>19</sup> (see also Sirovatka 2012). In a way, some form of common “misfit” with the classic term (i.e. *public services*), is incorporated ex-ante into the legal system.

Apart from these basic linguistic problems (Kjaer and Adamo 2011), certain characteristics of EU law immediately stand in contradiction with the principles generally taken for granted in national law. They can be summed up easily in a comparative way. First, the elaboration of EU law takes much more time than national law does (Falkner *et al.* 2005, 2008). In EU *forums and arenas*, the process generally starts with the Commission drafting EU legislation (Directives or Regulations) after rounds of consultations. Certainly not all the Directives took as long to adopt as the Working Time Directive - three years between the Commission’s proposal and the final passing in 1993. Through a very long chain of actions, this process can be followed up to the point when enforceable legal decisions have binding effects. By comparison, in the member states, the process generally starts by proposals for legislation put before their parliaments, to be eventually implemented through decisions by tribunals and by their administrations.

Second, at the national level, the public discussion of law happens in public spaces (*nazionale Öffentlichkeiten*) through the media, in parliaments, etc., and the debate extensively relies on political communication. A special form of political communication – spin – is organized by politicians for the purpose of marketing their ideas and persons to potential voters. Here we meet the third type of Jobert’s forums, “political communication forums”. None of this has strict equivalents or counterparts at the EU level. EU law has quite different characteristics: despite the increasing role of the European Parliament, it is predominantly a “judge-made” or “praetorian” type of law (Scharpf 1999). Despite the flowering forms of Europeanization in every domain (Favell and Guiraudon 2011), there exists no equivalents for national public spaces for debating and for a distinct, identifiable legitimizing process within a polity and a political community via its own political language. The lack of a clear process takes many forms that the actors, both at the national and at the EU level, keep experiencing in their mundane dealings with EU law. “How to assess the legitimacy of the various NGOs that are supposed to represent us in Brussels?” asks a French director of a social association, “these people focus on commas and dots, they are trapped in their own ‘circus’ in Brussels”<sup>20</sup>.

In the last section of this paper, we come back to the difficult question of comparing EU and national law with respect to the empirical consequences of these basic characteristics upon the

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<sup>18</sup> For reasons of confidentiality we will not be more specific about the identification of the four persons interviewed in 2010 and 2011.

<sup>19</sup> Legal scholar, May 2011, Copenhagen conference on social services.

<sup>20</sup> Interview, March, 2011.

existence of a “democratic deficit” at the EU level. As many have convincingly argued (Schmidt 2006), democracies experience similar limits at all “levels”. Generally in political science, another form of legitimacy, different from “input legitimacy” is supposed to exist: “output legitimacy”, to use F. Scharpf (1999)’s notion. However, in sociological terms, the objectification of legitimacy is definitely more empirically complex. Beyond the general features that we have just reviewed, let us now turn to the actors’ experience when it is focused on social policy.

### **3. The overarching asymmetry between economics and “the social”**

Disconcerting features of EU law only recently reached actors and citizens with respect to their social rights and social policies: the French and Dutch referendums and the debate about the 2006 Service Directive are essential milestones and our research takes place just after this period. The combined effect of negative integration on the one hand, and spill-over effects on the other took time to really bite in the “social” domain (Ferrera 2005; Barbier 2012; Martinsen 2009), where positive integration has always been the hardest to promote. We will now review four dimensions that have emerged as significant for social actors and at the same time were considered relevant by the legal scholars interviewed: the subordination of national law, the uncertain process of implementation, the opposition between economics and solidarity and the limited hopes opened up by the Charter of Fundamental Rights and “social citizenship” at the EU level.

#### **3.1. Subordination and the practical consequences of EU law supremacy**

NGOs and unions, as well as non-profit providers in the older member states, are disturbed by an immense contrast: social protection institutions seem essential to them, a key element of the ordinary functioning of European societies, both politically and economically. Social law is at the heart of society, because it is able to identify deserving individuals to organize redistribution on a legitimate basis. At the EU level these realities are only seen as *legal exceptions* while funding for reasons of solidarity is marginal. “The EU tends to see citizens as consumers on a market for indistinct services, but the associations have always made economic things their own way, which is different and not recognized legally”, says a specialist of social services in a French NGO<sup>21</sup>. In this respect, the contrast emerges not only between the national legal orders and the EU’s, but also between the EU legal order and other international standards (Bercusson 2009; Supiot 2009; Akandji-Kombé & Leclerc 2001; Roman 2010). Contradictions remain among different legal orders and “it is odd that the European Social Charter – Council of Europe – does not feature among the sources of EU

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<sup>21</sup> Interview, May, 2010.

law”, a German law professor tells us<sup>22</sup>. The legal community is divided, a French law professor observes, especially with regard to the increasing role of economics in law: “Economics is a fragile discipline, which is rejected by many legal scholars. Its intellectual value remains poor and ends up as contradicting the proportionality principle”<sup>23</sup>. For a specialist of human rights, and their internationalization, famous lawyer Mireille Delmas-Marty, the EU legal order had no real consistency because of its fragmentation between the various pillars introduced by the Maastricht Treaty (2006: 264). She expressed her regret that respect for human rights could not be invoked legally as part of a European public order against market rules and applicable to firms (2004: 151-152). For their part, national legal systems derive their consistency from the fact that under an autonomous constitutional order, they are covering all areas of law. Consequently, because of their long history and embeddedness in the social reality of member states’ legislation, social rights and collective entitlements are fully recognized by the courts of the country and are a constitutive part of the legal system. These rights have legally binding effects and are fully “justiciable” at the national level. This is not the case for social rights at the EU level, for instance for the right to collective action (Bercusson 2009). “The right to strike is fundamentally jeopardized at the national level by the potential legal contestation of employers that draw arguments from EU law on freedoms of movement. This is especially visible in the United Kingdom<sup>24</sup>”. Similarly, the fear of local authorities to be seen as trespassing EU law leads them to increase their recourse to cumbersome tenders, thus disadvantaging small associations<sup>25</sup>.

At the EU level, the role of social law (labour law and social protection) has remained marginal because it always was to remain, at least officially, the preserve of member states’ jurisdiction. The initial, economic logic of the founding act has continuously informed subsequent developments. While the social dimension has, since 1957, been addressed more extensively<sup>26</sup> (de Schutter 2004), economic and social rights are still not treated similarly in EU law, even after the formal adoption of texts establishing social rights.<sup>27</sup> Social rights are only taken into consideration to the extent that they might be affected by the functioning of the market (or, conversely, affect the market’s functioning). Especially in the founding members of the EU, EU social law is thus often considered as marginal and sometimes, futile. This is for instance the case, observes a unionist, for legislation on working time, “the basics of legislation are national, and what we have in France is difficult application, but only in certain sectors<sup>28</sup>”. EU “social legislation” often appears as if concentrated on general principles of little *actual consequence*, because of lack of “justiciability” (Roman 2010). This

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<sup>22</sup> Interview, April 2011.

<sup>23</sup> Interview, February, 2010.

<sup>24</sup> Interview, unionist, Brussels, March 2011.

<sup>25</sup> Interview, Brussels NGO, February 2012.

<sup>26</sup> For instance: in the important domain of anti-discrimination legislation.

<sup>27</sup> E.g., the Community Charter of Fundamental Social Rights for Workers, adopted in 1989, and the European Charter of Fundamental Rights, which deals with social rights in Chapter IV (Solidarity), adopted at the Nice Summit in December 2000.

<sup>28</sup> Interview, French unionist, June 2011.

is the case for the long list of rights that feature in the chapter “Solidarity” of the European Charter of Fundamental rights<sup>29</sup>. “There is a lack of innovation in the legal services of the Commission, but one needs to find new legal principles for protecting national social arrangements” a legal specialist in the Commission notes<sup>30</sup>. Seen through the EU legal angle, these rights remain de-contextualised, de-territorialized and, thus far at least, have never constituted a serious legal basis for upholding *justiciable collective rights* for a majority of European citizens, who are covered by their own national legislation.

### 3.2. The vagaries of implementation: what about actual rights?

Further, actors are dismayed at the extremely long and unpredictable process of implementation of EU law: only the strongest actors able to summon sufficient financial resources and well inserted in EU forums and, even more, in arenas, are able to use this feature of EU law to their advantage. The main instrument is lobbying, but litigation is another well-known one. The interminable revision of the Working Time Directive is a case in point here, which took 5 years and failed to pass. Unions are not able to wait for such long spans of time and they can only rely on their national regulations, but they fear difficult problems in the future especially with regard to social protection schemes<sup>31</sup>. In social protection and public as well as non-profit services, actors who contest the extension of EU competition law (because services are deemed to be of an “economic” nature, see Koukiadaki, this issue), have been waiting for the European Commission to introduce specific rules, but up to December 2011 there was no result<sup>32</sup>. As a result, from the asymmetric point of view of EU law, social care or childcare services are still seen as comparable in principle with large service networks (the railways, electricity). It is one of the topics on which the legal community appears to be divided (Krajewski *et al.* 2009), but where private firms implement apparently successful strategies in order to delay any adoption of new provisions and increase their market share. Particularly in the Netherlands, the case of social housing is a controversial but typical case in point (Sol & van der Vos 2012).

More generally, as far as “implementation” of law is concerned, the process at the EU level is decidedly more arcane, obscure, uncertain and risky than the already obscure, specialized and

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<sup>29</sup> General principles of the *Charter of Fundamental Rights* (referred to by article 6 of the Treaty) include: workers’ rights to information and consultation in the undertaking; collective bargaining and action; access to placement services; fair and just working conditions; prohibition of child labour and protection of the young; family and professional life; social security and social assistance; healthcare; access to social services of general interest (SSGIs); environmental protection; consumer protection.

<sup>30</sup> Interview, February 2011.

<sup>31</sup> Interview, unionist, March 2011.

<sup>32</sup> Several interviews with representatives of French and German non-profit organisations, October 2010. A large literature is devoted to the matter. See for instance Krajewski *et al.* (2009). See also Barbier (2012) for the failed attempts of cooperation between social actors in France and Germany in the late 1990s. As this paper was being revised, on the 20<sup>th</sup> of December 2011, a new set of legislation was brought forward by the Commission (see later).

uncertain process at the national level. This situation is, *inter alia*, the outcome of the length of the chain of actions that take place from the initial drafting to the eventual application (Hartlapp, 2007; Falkner *et al.*, 2005). A situation can easily prevail whereby, unless explicit litigation is started, EU law may remain a “dead letter” as Falkner and Treib (2008) have observed for Central and Eastern European countries (cf. Sirovatka 2012). Actors in the social protection and non-profit organisations whose representatives we met in France and Germany reported that they had little if any “grip” on the law-making process, all the more so as there is no homogenous “public space” available in which to develop their usual strategies. “The national adaptations of EU law are much more opaque than the counterpart processes for national law: associations were kept in the dark for instance, by the French government with respect to the transposition of the 2006 Service Directive”<sup>33</sup>. The fragmentation of the numerous forums and arenas where decisions are prepared and eventually taken may even lead to division within and among NGOs according to their fields of intervention<sup>34</sup>, which sometimes results in the fragmentation of issues debated in the European Parliament<sup>35</sup>. At times, this goes so far as to make EU law preparation and adoption appear as “*un procès sans sujet*” (a process without a subject): this is what a specialist in a French ministry, directly involved in the judicial discussions of case-law tells us: “EU law is in the life of everyone of us, but no one really draws the consequences; this is the “steamroller” of EU law<sup>36</sup>”. It is striking to listen to high level officials in the national administrations<sup>37</sup> especially and directly concerned with the application of EU law, reporting that the whole process is beyond the control of its direct actors. A somewhat deterministic reading of recent jurisprudence in social matters (Scharpf 2010; Supiot 2009) also lends support to a view of EU law as a complex social process without identifiable authors<sup>38</sup>. This impression is reinforced when careful analysis of the production of legal texts shows that it is extremely difficult, if possible at all, to identify anything equivalent to the “legislator’s intention” that exists at the national level (Kjaer and Adamo: 104; 109) and this situation is reinforced by the “foreignness” of EU law for ordinary citizens.

### 3.3. Economics vs. solidarity: individual vs. collective, mobile vs. immobile

When we meet social actors, they most often link this to a perception of EU law as being “economic”. NGOs for instance are deemed to be “undertakings” and to deliver “social

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<sup>33</sup> French NGO, social services expert, May 2011.

<sup>34</sup> Multiple interviews, French associations, September 2009, October 2010, March 2011.

<sup>35</sup> A case in point in this respect has been the creation of a special EP group dealing with situations of extreme poverty (promoted by the NGO ATD Quart Monde), as opposed to mainstream poverty action (interview, French association, March, 2011). Element confirmed by another interview with the EU level correspondent of the same NGO, April, 2011.

<sup>36</sup> Interview, legal expert, French ministry, February, 2011.

<sup>37</sup> Several interviews (September-December 2010) in the social ministries and in the Foreign Ministry in Paris.

<sup>38</sup> Offe has noted that governance is often seen as a process without a subject: (2009: 550) “something happens, but nobody has done it and would thus be responsible for the result”.

services of general economic interest”, whereas in most countries they have historically been considered as contributing to public services (Koukiadaki this issue). “It is really a paradox that we, associations, are now part of economic law”, says a specialist of social services in a French NGO<sup>39</sup>. This perception certainly does not contradict a significant part of the legal literature. In the economic view actively promoted by the CJEU (Neergaard 2009), market provision of social services is always *a priori* seen as *the* best outcome. In the words of one of the Commission’s legal specialists, the best and most efficient way of providing social services consists in the universal recourse to “vouchers” that allow consumers to buy their services from whatever providers they choose<sup>40</sup>. “Economization” of law is stressed by many lawyers. When it comes to “public goods”, for instance, of which social protection is traditionally a part of- the CJEU uses a predominantly economic mode of reasoning (Neergaard 2009: 44-47; Deakin and Sakar 2008; Prosser 2005; Supiot 2005; 2009). As a consequence, individual rights are privileged *for individuals, but also for firms*, and *collective* entitlements are disregarded (Camaji 2008) when not directly combated, or considered as *an exception to the rule*, only legitimate in certain cases. The CJEU is active in promoting mainstream economic ideology that combines the promotion of the market for reasons of efficiency and transparency with the promotion of “fundamental rights”. It is certainly not by chance that in its case-law this court has taken to the habit of declaring the freedoms of movement “fundamental freedoms”, an expression that does not feature in the Treaty. In strategic terms the court thus strives to put “fundamental rights” (as inherited from national legal systems and the international norms of the ILO and the European Convention on Human Rights) (Roman 2010), and allegedly “fundamental” economic freedoms on the same symbolic footing. This equivalence is directly challenged by a significant part of the legal literature, and the actors we meet are well aware of this contentious aspect of EU law. The majority of non-profit providers of social services or social benefits have had great difficulty, especially in certain countries (notably France, Belgium and Germany<sup>41</sup>) to finally accept that the services they provide are “economic”. Some still resist the qualification, as for instance the ETUC<sup>42</sup>.

What strikes social actors even more, in contrast to national law, is that, in spite of the rhetorical presence of “solidarity” as a legal notion, there is little if any, *effective substantive* “solidarity” at the EU level. To put it more strongly, “solidarity” is the essential legal category that allows for exceptions to “economic law”. The famous 1993 Poucet-Pistre rulings constitute a key reference in this respect, because this case-law has historically established (actually, created) the criteria of what can be seen as a typical social programme that is exempted from complying with competition rules. Ironically, far from being protected by the market, social protection is thus “sheltered *from* the market” (Koukiadaki this issue).

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<sup>39</sup> Interview, May, 2010.

<sup>40</sup> Professor J. B. Cruz, conference on social services, Copenhagen, May 2011.

<sup>41</sup> Interview, French association, February, 2010; German association, May, 2011. See also Barbier (2012).

<sup>42</sup> Interview, February 2010, ETUC. Since 2008, the ETUC made a proposal for a “Social Progress Clause” Protocol aiming at counterbalancing the asymmetry between “social” and “economic” rights.

This encapsulates the crucial *de facto* opposition existing in EU law between individual rights and collective entitlements. The fact should be stressed that two crucial pillars of social security, two essential tenets of the classic welfare state, namely “state” pensions and “state” healthcare are depending not on any provision of primary law, but on the fragile ground of a 1993 ruling that could be reversed (Driguez 2010). Non-profit providers of social services and their organizations report the fears they experience and the dangers they see as a result of the gradual extension of the reach of EU law to the continuity and quality of the services they most often deliver to vulnerable people: “With the inadequate levels of obligations for tenders, there is a growing fear of losing the contracts, thus a danger for the continuity and quality of services<sup>43</sup>”. They tell us that they feel powerless in this domain, because the only action possible is through lobbying and mobilizing in forums where “rules for representation are obscure”<sup>44</sup>. At worst, debate occurs only as a result of litigation, as in the Laval and Viking cases or in the 2010 “Commission versus Germany” case where national arrangements negotiated between social partners were threatened by the application of EU legislation on economic freedoms<sup>45</sup>. “Negative” notoriety of EU law has thus recently provided the main opportunity for debating social policy across the Union. In contrast to the promotion of economic thought, the attention paid by EU institutions<sup>46</sup> to “solidarity” is limited (Barbier 2008; Ferrera 2005).

### 3.4. The ambiguities of European citizenship and the limits of the Charter

Apart from the well-known public support accorded to the freedom to travel (see Eurobarometer surveys), our “social actors” often do not really see the advantages of European citizenship materialize when it comes to collective entitlements and social services. Among our interviewees, though, numerous NGOs fighting for the promotion of individual rights see them clearly and are keen on using litigation strategies<sup>47</sup>. National organizations are often taken aback, however, when they experience contradictions between goals that are pursued together in a national context: for instance, the struggle against poverty and the support for social protection schemes<sup>48</sup>. They are also happy to obtain protection of their national systems purely on a national basis, with little consideration for the systems in other member states<sup>49</sup>. In fact, since its inclusion in the Maastricht Treaty, European citizenship has unfortunately remained, *de facto*, the preserve of only a limited number of citizens in Europe i.e. those who are *able and willing to move*. This is very clearly illustrated in the formulation

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<sup>43</sup> Interview, French NGO, September 2010.

<sup>44</sup> French NGO, March, 2011.

<sup>45</sup> Interview, ETUI, March 2011.

<sup>46</sup> Interview, DG Employment, December 2010.

<sup>47</sup> As one French NGO member reports (January 2010), it has been easier so far to introduce litigation on the basis of the Convention of Human Rights, but his association expects new openings from the future extension of implementation of the Charter of Fundamental Rights (article 6 TEU).

<sup>48</sup> French NGO, interview, February 2009.

<sup>49</sup> German NGO, Interview May 2011.

of the treaty: the only classic social rights presented in it are those of migrants (art. 21.3 TFEU). In fact, one dimension that is perhaps difficult to understand for non-specialists, and the citizens themselves, is that EU law in the area of citizenship targets situations of movement between member states (Rodière 2008: 195; 265). One aspect of anti-discrimination is linked directly to movement – that is the prohibition of discrimination on “grounds of nationality”. However, other aspects are much more encompassing, because they concern all the most common grounds for discrimination (“sex, gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation”) (article 19 TFEU). Here again, the ambiguous “Janus-faced” nature of EU citizenship appears: on the one hand, it pertains to fundamental rights. But on the other hand, all the major components of EU citizenship *de facto* concern citizens who are keen on moving and do actually move, except the right to vote for the European parliament<sup>50</sup>. The main exception in terms of significant European influence on social and labour rights has been equality between men and women, because of the unexpected spill-over effects of the initial provisions in the Treaty of Rome (namely, ex-article 119, Davies *et al.* 2005). The great majority of the 26 legal experts we have interviewed since the 2009 implementation of the Lisbon Treaty share the view that the reference to the Charter of Fundamental Rights (its article 6 TEU) will not substantially modify this situation in the future. “Despite face saving exercises concerning some member states, the legal status of social rights is not modified by its reference in the new Treaty”<sup>51</sup>. The protection of the right to strike, however, is explicit in article 28 of the Charter, and unionists aim at influencing the application of law on this subject through systematic monitoring and intervention in legal cases before national jurisdictions<sup>52</sup>. As was already the case before the adoption and the reference to the Charter, in matters of Human Rights, the Court of Justice’s case-law referred to legal sources originating in Member states’ legislation and constitutions, as well as to the European Convention of Human Rights.

Finally, the overall impression documented among our actors in the first and second groups of table 1 is *legal uncertainty* as to the future sustainability of healthcare and pension systems, of labour law and collective agreements and of social services of general interest, i. e. public services. This also includes a majority of the legal experts among the interviewees, but for lawyers, “legal security” is a concept pertaining to their trade, what French law for instance calls “*sécurité juridique*”<sup>53</sup>. When sociologists, on the other hand, deal with legal uncertainty or insecurity, they are using a different notion that encapsulates the perceptions of actors.

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<sup>50</sup> The number of people working in a country different from their own is estimated at between 1 and 2 % of the working age population.

<sup>51</sup> Interview, official, Council, March, 2010.

<sup>52</sup> Interview, ETUC, February, 2010.

<sup>53</sup> The French “*Conseil d’État* speaks of *qualité et prévisibilité de la loi*” in its *Rapport public* (2006). Craig and de Burca, about “legal certainty” (2008: 555).

#### 4. Conclusion: the bifurcated legitimacy of the EU legal order

What conclusions can we draw from this exploration of the views and actions of social actors with regard to their relationship to EU law? The confrontation of their points of view with in-depth discussion with legal experts (as well as taking stock of focused case law in social services and labour law) shows that the fears of social actors cannot be dismissed as imaginary. The sociological approach is able to document this. As the French president of an influential non-profit organization told a conference organized by the SSIG lobby group in Paris “there exists real or alleged legal uncertainty”<sup>54</sup>. The range of actors that we have interviewed for the present exploratory study is obviously not representative of the full variety of social actors in the EU and national forums and arenas we have been targeting. The main bias of our survey is with regard to the Central and Eastern member states, despite the findings drawn from the Czech case studies (Sirovatka, 2012). A different bias has also been inherent to the angle chosen by the authors of the present paper: a limited number of interviews of commercial actors have essentially been used here as a “mirror” for the perceptions of traditional social actors, the non-profit and public ones. This second bias however is somehow mitigated by the consideration of the UK, Dutch and Czech cases studies, where private for-profit provision of services is considerably higher than in most old member states: as Koukiadaki writes in the present issue, “even in the UK”, legal uncertainty prevails. All in all, the significant material collected draws a picture of endemic contestation by social actors, fears for their future work as non-profit service providers, fears for the future of their national labour law. Because of its exploratory nature, the material is nevertheless insufficient for a comprehensive discussion of the overall legitimacy of EU policies in the areas of social legislation. Yet it is interesting to consider in that it points to two essential conclusions.

##### 4.1. Expected and unexpected alliances in the forums and arenas

First, EU law is far from being only legitimized by the legal discourse articulated by a small group of judges and lawyers. Support originating from commercial actors is documented at the national and the EU-level by the literature on European integration (Schmidt 2006; Scharpf 1999) and confirmed by our survey. “The growth of private provision in long-term care for the elderly is a result of legislation favouring more competition” a French for-profit firm tells us<sup>55</sup>. Two German lobbyists and a German law professor concur in praising the situation in this sector in their country: the “flexibility of services for the elderly has been greatly increased since the reform of *Pflegeversicherung* which introduced competition”, they observe<sup>56</sup>. Less expected, *a priori*, we also document support by NGOs at the EU level.

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<sup>54</sup> Collectif SSIG, A New Deal, the Almunia-Barnier “package”, Paris, February, 2<sup>nd</sup>, 2012.

<sup>55</sup> Interview, French long term care provider, September 2009.

<sup>56</sup> Interviews, January 2012, March 2011, September 2010.

Strongly supporting individual rights, the legal community, for its part, seems to be united, while, on the other hand, a minority of it points to the destabilizing of collective arrangements (Supiot 2009; Bercusson 2009; Guinard 2009), or to the inconsistency of the EU legal order. Some of our interviewees in the legal services of the Commission<sup>57</sup> report their preference for devising correcting mechanisms, in line with the normative aim of trying to “nest” the systems of social protection (Ferrera 2009), put forward by political scientists or by lawyers (Bercusson 2009). Unions and social security actors are dismayed<sup>58</sup>. In times of crisis, they are joined by new political actors<sup>59</sup>.

But one of our main empirical findings is that NGOs and various advocacy coalitions enter in essential alliances with the legal community because they share the substantive project of promoting individual rights of a variety of groups, with the key support of the European Commission. The quest for this type of legitimacy was visible from the early stages in the life of the Court of Justice. This provided it with a key resource, “moral high ground”: the gradual extension of reference to “human rights”, or “fundamental rights” on the other hand has disturbed the traditional references of traditional social actors, more accustomed to dealing with social rights, social protection and social services. An essential challenge for future sociological studies of the Europeanization of law is to identify *the changing social forces supporting/opposing the legitimacy of EU law in its ordinary functioning*. A wealth of literature has insisted on the well-documented fact that economic interests and big firms are at the forefront of this support, and play a key role (Scharpf 1999; Streeck 1998). But what is less stressed in general, is that, apart from the overall liberalizing of the economy, consistent with the promotion of powerful cross-national economic interests, EU law has also decidedly promoted and safeguarded some rights of individuals from a *liberal equality* point of view, against classic *raison d’État*: A case in point is the prominent position of the “anti-discrimination” principle in EU law, which features, along with the principle of equality between men and women, in the Treaty on the same level as European citizenship (article 2 TEU, articles 18 and following TFEU). Anti-discrimination is at the same time an excellent illustration of the Janus-faced nature of EU law. It is certainly not by chance that its passionate defence is part of all the texts written by former judges of the ex-ECJ. Nor is it surprising to see how the European Commission has eagerly attached its political communication to this aspect of EU politics<sup>60</sup>. Nor is it by chance that the first Report on Fundamental Rights (2010) established by the Commission enumerates a list of individual

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<sup>57</sup> Interview, Commission, June, 2010.

<sup>58</sup> In order to counteract moves by member states, by employers or by the Commission, EU-level union representatives have started devising strategies of litigation in the hope of achieving a more balanced consideration of social rights as against economic freedoms (interview, ETUI, September, 2010; see also Bercusson 2009).

<sup>59</sup> An interesting case in point is Jérôme Vignon, the former Director of Social Cohesion in the DG Employment and Social Affairs, now retired. In the SSIG conference already mentioned above, addressing the Commission, he declared to the audience “Has the moment not arrived today, with the huge deficit of provision in social housing and childcare, for the EU to create new social safeties” (February, 2<sup>nd</sup>, 2012).

<sup>60</sup> The promotion of the rights of the Roma people led to various conflicts between member states and the Commission.

situations that EU law is especially organized to protect: the rights of women to equality, the special situation of the Roma people, the rights of the disabled. Along the same lines, it is also quite logical that the Court and the Commission concur in defending the cause of marginal and excluded people: people asking for assistance, irrespective of their citizenship rights (Ferrera 2005), poor people, homeless people, and so on and so forth. The otherwise uncertain legitimacy of EU law, often criticized for its privileging powerful economic interests has found a key basis for indispensable balance there. We just have to read Judge Mancini's plea to understand the logic of this support, when, with the hindsight of 30 years of case-law, he drew a list of individuals that had nominally benefited from the implementation of EU law – all chosen, note, in the realm of anti-discrimination:

“They will do well to look closely at the Court's case law and remember how many of Europe's citizens have benefited directly of the Court's rulings. They will for example remember the Belgian air hostess who claimed the right to the same rate of pay as her male colleagues [Defrenne –case 43/775, (1976)], the British nurse who objected to being compelled to retire several years earlier than a male [Marshall – cases 152/84 (1996)], the German woman who was prevented from getting a job as a canteen assistant at Cagliari university by a practice of discriminating against non-Italians [Scholz – case 419/92 (1994)], the French student who wanted to study cartoon-drawing at an academy of fine arts in Belgium and was required to pay a fee not imposed on Belgian students [Gravier – case 293/83 (1985)], the Greek hydrotherapist who asked only that his name should not be distorted beyond recognition, when transliterated by an over-zealous German registrar of marriages [Konstantinidis – case 168/91 (1993)] and above all the millions of consumers who are the direct beneficiaries of a common market founded on the principles of free trade and undistorted competition. What citizen of Europe has not been assisted in some way by the rulings of the European Court in Luxembourg?” (2000: 193).

This points to the existence of a rarely stressed alliance in favour of active support for EU law's legitimacy: on one hand, large economic interests motivated by the extension of the frontiers of the market, and, on the other, groups of citizens who have a particular stake, and pursue the particular advocacy of a cause. For instance, an objective and paradoxical alliance exists between the EU Commission, presently promoting the interests of the homeless people, the NGO that leads this advocacy coalition in Brussels (FEANTSA<sup>61</sup>), and the private for-profit providers of housing across the member states. This coalition stands directly against the interests of social housing corporations in the Netherlands – who, according to statistics and to the Commission's view – are “abnormally” aimed at rich or middle class households<sup>62</sup> (Sol & van der Vos 2012). A similar political stance was presented in February 2012 by an

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<sup>61</sup> European Federation of National Organisations Working with Homeless People. A comparable social policy NGO is the EAPN, European Anti-Poverty Network, whom representatives in France and at the EU level we interviewed in March 2011. Normative and political conflicts abound among the EU level NGOs.

<sup>62</sup> We refer here to the case, pending (in 2011) before the CJEU, that opposes the Dutch government to the Commission, with regard to what the Commission sees as a “manifest error” of the Dutch government in defining what is “general interest” in the area of social housing. Interviews in the Commission, December, 2010; April, 2011.

official from DG Competition, when, in a conference, she said that when it came to “upper class housing for the elderly”<sup>63</sup>, the social character was doubtful. Another case concerns the NGOs promoting a better recognition of extremely rare diseases which were very active in the coalition of actors that eventually achieved the adoption of the 2010 Directive on cross-border healthcare<sup>64</sup>. A more systematic review of this phenomenon is called for.

#### 4.2. Contestation and uncertainty

Secondly, social actors – the unions, the non-profit providers of services, the key actors in the traditionally “public” provision of social security benefits – have hardened their defiance and contestation of the EU master discourse. They are certainly not inactive and they are being increasingly heard, as the referendums have shown (Barbier 2008). More recently, a case in point has been the project of a renewed extension of the single market. The 2010 Monti Report to the president of the Commission is typical because it exemplifies a new consciousness among political arenas in Brussels: “Member states, political groups and stakeholders”, it writes, are “conditional supporters” and it notes that “a re-launch of the single market is likely to meet serious opposition”<sup>65</sup>. The problematic situation is exacerbated by doubtful, if not negative, economic outcomes, the understanding of which goes far beyond the theme of the present paper (Fitoussi *et al.* 2010). The economic crisis provides a context where uncertainty keeps increasing and EU and national elites appear divided. The moving and dynamic context in which we find our interviewees does not resemble an inexorable development just led by de-contextualised law, as F. Scharpf seems to conceive of it (2010). Recent new proposals for legislation regarding the services of general economic interest put forward in December 2011 by the EU Commission provide an illustration of the fact that, however incremental, margins of manoeuvre are still available to actors in the social domain<sup>66</sup>. Nevertheless, with the hindsight of the previous 20 years (Barbier 2008, 2012) nothing is secured and initial “social” hopes in the new Lisbon treaty (Ferrera 2009) have failed so far to materialize decisively.

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<sup>63</sup> SSIG conference, February, 2<sup>nd</sup>, 2012.

<sup>64</sup> Interview, March, 2011, French ministry.

<sup>65</sup> “A New Strategy for the Single Market”, that was to be followed by a Communication of the Commission in 2011 (COM 2011 206 final 13.4.2011).

<sup>66</sup> At the moment of writing (December 2011), after more than 7 years since the Herzog report to the European Parliament, these proposals seem to take into consideration some of the claims put forward by non-profit providers of social services (revision of the so-called “Altmark package”).

**Table 1: Relevant actors' relationship to EU law and content of semi-structured interviews**

| Actors   | Number of interviews | Relationship to EU law and participation in EU law-making (soft and hard)  | Topic (basis for semi-structured interviews)   |
|--|----------------------|--|--|
| <b>“National” actors in national forums and arenas (1)</b> | 61                   |  |  |
| Commercial actors/businesses                               | 6                    | Apply law/resist law/ act for developing their share/litigate/negotiate with public/lobby authorities            | Influence of EU law, role of competition and government  |
| NGOS, associations and non-profit (social services)        | 20                   | Apply law/resist law/negotiate with public/act for protecting their share/lobby national authorities             | Influence of EU law (public procurement, services directive, state aid), role of private competition and change, quality of services; OMCs |
| Unions   | 5                    | Look for EU resources to use in national forums and arenas/lobby national authorities                            | Multilevel union action, evolution of labour law (national and EU); OMCs   |
| Public authorities and ministries                          | 20                   | Negotiate/transpose/adapt/link to EU law decision/accommodate lobbies  | Strategy with Commission, understanding and applying law, negotiation with actors, overall provision and change; OMCs                      |
| Legal experts :(social services)+ labour law+ EU law       | 9                    | Explain law; litigate on behalf of actors; apply law; interpret; create and discuss; work with authorities/lobby | Understanding of EU law; dynamic development; articulation of norms; role of legal categories; hard and soft law                           |
| Politicians  | 1                    | Use of EU law and EU policy resources  | Role of the EU/ and local politics   |
| <b>“National” actors in the EU forums and arenas (2)</b>   | 27                   |  |  |
| - Commercial actors  | 2                    | Lobby  | Current situation of sector and EU law; actions  |
| - NGOs   | 5                    | Lobby  | Current situation of sector and EU law; actions  |

|   |    |  |  |
|---|----|--|--|
| - Unions  | 3  | Lobby  | Current situation of social policy, labour law and social services, union action                                       |
| - Legal scholars  | 17 | Interpret, create law; work with formal institutions, participate in forums and in EU arenas; lobby for EU law formulation | The EU legal order; specific topics being negotiated; understanding EU legal categories; hard and soft law; innovation |
| <b>Formal institutions of the EU (3)</b>  | 12 |  |  |
| Council and EU Parliament (Politicians)   | 2  | Participate in EU politics and as EU “legislators”   | Specific interviews  |
| Commission as executive and administration  | 10 | Administer, negotiate, accommodate lobbies, politicize issues, communicate, write texts                                    | Law making process; present adaptation of governance of social policy (specific topics), soft and hard law             |
| <b>Formal institutions of the EU (4) CJEU and Commission as legal authorities</b> | 4  | Take decisions and legal rulings, create case law  | The making of EU law, EU and national law articulation; EU legal order; evolution of primary law                       |
| <b>Persons involved in the translation of texts (EU institutions) (5)</b>         | 6  | Explain, interpret, translate, communicate   | Role of EU languages; organization of language policy for legislation  |

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