

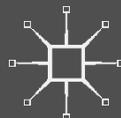
Palgrave Studies in European Political Sociology

Welfare Markets in Europe

The Democratic Challenge
of European Integration



Amandine Crespy



Palgrave Studies in European Political Sociology

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Welfare Markets in Europe

The Democratic Challenge of European
Integration

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Palgrave Studies in European Political Sociology
ISBN 978-1-137-57103-8 ISBN 978-1-137-57104-5 (eBook)
DOI 10.1057/978-1-137-57104-5

Library of Congress Control Number: 2016944034

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Preface

The effects of EU integration on the provision of welfare services is a topic which can sound specific and, in some respects, quite dull. In my view, it is a fascinating issue to investigate one of the biggest puzzles contemporary political science has to offer, namely the intertwined dynamics of capitalism, democracy and European integration. My interest for what is often called ‘public services’ also comes from the deep belief that their more or less solidaristic nature is an indicator of social cohesion and a feature which has distinguished Europe from other parts of the world: But for how long will this last? Unfortunately, the topic is not in fashion, neither in the public nor in the academic debate, where the study of welfare marketization is too scattered between law, public administration and political economy with few exchanges among scholars from these separate realms of academia. I hope that this book can make a useful contribution to the knowledge of the genuinely *political* dynamics shaping the fate of welfare services in Europe.

Over the years, I have benefited from the support of many persons and institutions who/which have made this achievement possible. The *Université libre de Bruxelles*, especially the *Centre d'étude de la vie politique* and the *Institut d'Etudes Européennes* have provided a very stimulating and friendly atmosphere to research, teach, work and live. Much of the research conducted for this book was supported by funding from the Belgian *Fondation nationale de la recherche scientifique*. The first seeds of

this project were sown at Harvard University during my visiting fellowship at the Center for European Studies, where I had useful exchanges with Peter Hall and Andrew Martin.

I would like to thank particularly Vivien Schmidt, whose work has been a great inspiration and who has actively supported me in all my endeavours since the early days. I am very happy that our collaboration and friendship are ongoing.

The last steps towards turning my work into an actual book have benefited tremendously from a stay in the UK and two fellowships at the European Institute of the London School of Economics and Political Science, and the School for Politics and International Relations at Queen Mary University of London, where substantial parts of the manuscript were drafted. It has been extremely useful to present early versions of the project at seminars at Cambridge University (thanks to Chris Bickerton), the London School of Economics and Political Science (thanks to Sarah Hobolt) and Royal Holloway (thanks to Kaat Smets). I am grateful to Louisa Parks, Paul Copeland and Matthew Watson for their very encouraging feedback, their friendship and great collaboration on other projects. I would like to thank Benjamin Braun for his help with some pages, Michael Strange for generously sharing some of his interview data with me and Leonard Seabrooke for suggesting the present title of the book.

Finally, I would like to express my gratitude to all the colleagues, friends, relatives and others, who have heard much about this book and have given me the energy to pursue this endeavour.

Contents

1	Introduction: Welfare Markets, Democracy and European Integration	1
2	European Integration as Marketization	33
3	Resistance to Liberalization	71
4	The Elusive Pursuit of Social Europe	113
5	The Contentious Global Agenda for Services	151
6	Welfare Services in Times of Austerity	189
7	Conclusion: The Marketization and Politicization of Welfare Services: Old and New Dynamics	229
	Index	255

Acronyms

ACTA	Anti-Counterfeiting Agreement
ATTAC	Association pour la taxation des transactions financières
BEUC	Bureau européen des unions de consommateurs
CEEP	<i>Centre européen des entreprises à participation publique</i> [European Centre for Enterprises with Public Participation]
CELSIG	<i>Comité européen de liaison sur les services d'intérêt général</i> [European Liaison Committee for Services of General Interest]
CETA	Comprehensive Economic and Trade Agreement
CFDT	Confédération Générale du Travail
CGT	Confédération française démocratique du travail
CSC	Confédération des syndicats chrétiens
DG	Directorate General
DG ECFIN	Directorate General for Economic and Financial Affairs
DG EMPL	Directorate General for Employment and Social Affairs
DG MARKT	Directorate General for Internal Market
DGB	Deutscher Gewerkschaftsbund
ECB	European Central Bank
ECI	European Citizen Initiative
ECJ	European Court of Justice
ECT	European Constitutional Treaty
EDF	Electricité de France
EMU	Economic and Monetary Union

x Acronyms

EP	European Parliament
EPP	European People's Party
EPSU	European Public Services Union
ESF	European Social Forum
ETF	European Transport Federation
ETUC	European Trade Union Confederation
EU	European Union
FGTB	Fédération générale des travailleurs de Belgique
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IG BAU	Industriegewerkschaft Bau-Agrar-Umwelt
ITF	International Transport Federation
MAI	Multilateral Agreement on Investment
MEP	Member of the European Parliament
MP	Member of Parliament
NESGI	Non-Economic Services of General Interest
NGO	Non-governmental organization
NHS	National Health Service
PCF	Parti communiste français
PES	Party of European Socialists
PIIGS	Portugal, Italy, Ireland, Greece, Spain
PS	Parti socialiste
PSI	Public Services International
SGEI	Services of General Economic Interest
SIGI	Services of General Interest
SPA	Sociaaldemocratische Partij. Anders
SPD	Sozialdemokratische Partei Deutschlands
SSGI	Social Services of General Interest
TFEU	Treaty on the Functioning of the European Union
TISA	Trade in Services Agreement
TTIP	Transatlantic Trade and Investment Partnership
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICE	Union of Industrial and Employers' Confederations of Europe
WTO	World Trade Organization

List of Figures

Fig. 2.1	The marketization of public services	38
Fig. 2.2	Types of service activities in EU law	53
Fig. 3.1	Number of articles referring to the services directive in the Belgian daily press	93
Fig. 3.2	Number of articles referring to the services directive in the French daily press	94
Fig. 3.3	Number of articles referring to the services directive in the German daily press	94
Fig. 6.1	Spending on public services (in % of GDP) in the EU	194
Fig. 6.2	Reduction of deficit and spending in public services (in % of GDP) between 2009 and 2013	196

List of Tables

Table 2.1	Sectoral liberalization directives in the realm of services of general interest	42
Table 5.1	Commitments to liberalization from EU countries under the GATS	163
Table 5.2	GATS-free zones and motions signed by local authorities in the EU	170
Table 6.1	Deficit reduction (in % of GDP) between 2009 and 2013	192
Table 6.2	Recommendations related to welfare services by the Commission and the Council in 2011 and 2015	204
Table 6.3	Union mobilization from 2010 to 2013	212

List of Boxes

Box 4.1	Proposal for a Framework Directive on services of general economic interest, groups of the socialists and social democrats in the European Parliament (contents)	130
Box 4.2	Contents of the common quality framework for social services (contents)	138
Box 5.1	EU-US Joint statement on public services	179

1

Introduction: Welfare Markets, Democracy and European Integration

As the latest crisis of financial capitalism which broke out in 2008 in the USA put the European banking sector in turmoil, its rescue by public funding caused public debt to skyrocket in the overwhelming majority of European countries. Since then, the policies of austerity implemented across Europe have strongly targeted the welfare state(s). Of course, countries receiving financial assistance from the so-called Troika (the European Central Bank, the European Commission and the International Monetary Fund) have experienced the most radical debasing of their social model as drastic cuts in public spending was a condition for their financial rescue. In Greece and Portugal, this has notably translated into large-scale privatization plans which included the sale of companies in the sectors of energy, transport and post as well as public infrastructures such as ports, railways or motorways. In Italy, 120,000 schools teachers have been laid off since 2008, and public funding of universities has dramatically decreased. Vulnerable economies in Central and Eastern Europe have taken drastic measures; like in Bulgaria, where the budget for hospitals fell by 24 % in 2009 with many public hospitals being closed or privatized. A total of 380,000 people lost their right to free healthcare as a result of changes in the Public Health Act adopted in January 2010 (PSIRU 2011). In Ireland

too, the austerity plan adopted in response to the bank crisis has brought about a degradation of healthcare services and the adoption of a plan for privatization of the sector by 2016. But the debasing of welfare services has not only affected the most vulnerable economies in Europe. In the UK, a country which is not directly involved in the salvage of the euro, the government has implemented a major plan of austerity since the conservatives came to power in 2010. The viability of the National Health Service (NHS) has been hotly debated and is cause of much concern, as creeping privatization has been ongoing over the past years. The funding of schools is equally problematic as needs increase. Even Germany, the economic hegemon of the European Union (EU), adopted the 'package for the future' in June 2010, the largest austerity plan in the post-war period. Similar concerns about the sustainability of public funding of healthcare and education under austerity are being debated. France, under the socialist President Francois Hollande, first resisted austerity. The creation of 60,000 jobs in the *Education nationale* was a main theme of Hollande's presidential campaign, and the French government has assured that this would not be questioned. In 2014, the government nevertheless adopted a plan foreseeing €50 billion cuts in 2015–2017, including €20 billion from the funding for healthcare and other social expenses. In Belgium and France, public funding of culture or public broadcasting has been significantly reduced. Besides the consequences of 'fiscal consolidation', some problematic aspects in the liberalized network industries have been more salient as the crisis hit societies. The price of energy, in particular, has significantly increased in proportion to stagnating or decreasing wages. Similarly, the affordability of housing has become problematic in many European countries, thus putting pressure on social housing policies. In a nutshell, in the vast majority of European countries, people have witnessed a significant deterioration of welfare over the past five years or so. This is due mainly to the dramatic decrease of available public resources, but the problematic effects of ongoing marketization also raise issues with regard to the quality and affordability of services for citizens. In the face of increased pressure from the markets, international financial institutions and the EU to tackle the brutal increase of public debt, EU countries have responded mainly in two ways: cuts in public spending leading to retrenchment and cuts in investments, on the one hand, and the further

marketization of funding and/or provision in an increased number of policy sectors, on the other. The creeping privatization of healthcare is certainly one common trend across the continent. But marketization affects most areas, including education and social care. Against this backdrop, this book asks, how did we get here?

In order to understand the situation which characterizes welfare in Europe today, one must take a step back and look at the broader developments which have affected public services over the past three decades. Welfare services are understood here as an encompassing notion covering all services which are deemed essential with regard to public interest and social cohesion (communications, transport, energy, post, culture, education, health and social care, housing, etc.) provided by public, private or mixed undertakings.¹ While these services would be defined as *services publics* in French or *öffentliche Daseinsvorsorge* in German, it amalgamates three distinct notions in English, namely the provision of public utilities, services relating to what is understood as the welfare state, and the public sector (run directly by the government). Every term reflects a particular conception of the State, and historically rooted institutional and legal systems ruling the provision of such services (Dyson 2009). In order to encompass the multinational diversity of welfare services in Europe, a new term has been coined in the EU treaties and law: SGI, which can be further defined as ‘economic’, ‘non-economic’ or ‘social’. As explained in the following chapter, political struggles have crystallized in the issue of the definition(s) of such services. In spite of national specificities, the main trend across national boundaries has been a process of marketization; that

¹While recognizing that terminology issues have been part of the political struggles under study, the book does not seek to take a position on this matter. The term ‘welfare services’ has several advantages compared to other notions. It is sufficiently broad to encompass a whole range of services but less bureaucratic than the ‘indigenous’ notion of services of general interest (SGI) forged in EU law. The latter will nevertheless be used in reference to EU policy making. The notion of welfare services does not reflect any particular culturally biased conception and does not presuppose whether these services are or should be provided by public authorities, the private sector or mixed organizations and arrangements. Moreover, the term ‘welfare’ indicates that, traditionally, such services have been a key component of the welfare state in Europe. However, while most authors in the field of social policy and comparative welfare state reform tend to focus on *benefits* (unemployment benefits and pensions in particular), this book makes a contribution on the issue of *services*. This is particularly important insofar as the future of the welfare state is arguably perceived as increasingly oriented towards the provision of services as opposed to cash transfers, as the debate on social investment suggests.

is a re-commodification through the transformation of social relationships between providers and citizens redefined as customers. This often implied the introduction of competition between providers that pursue profit making. At first sight, the EU seems to have only a tenuous link with welfare services. Like the bulk of social policy, they remain the prerogative of states, and are thus shaped by national politics and budgets. Yet, as this book argues, EU integration has acted as a catalyser with regard to the marketization of welfare services. The neoliberal restructuring of capitalist economies that occurred at the global level and translated differently was filtered by individual national trajectories. Notwithstanding, regional integration in Europe has shaped policy making in the realm of welfare services in significant ways, especially through EU competition law and liberalization directives. In the face of the current crisis, the EU only provides marginal financial or regulatory support for sustaining quality welfare services, but exerts significant pressure on national governments left with reduced resources due to the enforcement of austerity.

The purpose of this book is not to map policy developments and market-oriented reforms undertaken by national governments or to provide a top-down account of Europeanization which would trace the (differentiated) impact of EU integration on various sectors and/or in various European countries. Nor does it attempt to assess the efficiency and relevance of marketization by looking at policy outcomes. Rather, this book looks at the marketization of welfare services as a matter epitomizing the tensions between capitalism, democracy and EU integration at the turn of the twenty-first century. Regional integration in Europe has strongly disrupted what Maurizio Ferrera (2005) called 'the boundaries of welfare' by opening national spaces for the purpose of market making while supranational forms of 'welfare making' have remained largely embryonic. As the following chapters of this book show, the marketization of welfare has continuously generated resistance and contestation from within societies. Such resistance has been mostly expressed at the local and national level. Yet, as relevant policies have increasingly been enforced from the EU level, contentious citizens and organizations have sought to address and influence decision makers in the EU institutions. The politics of welfare services is therefore an area that shows how social conflict is dealt with in a traditionally technocratic supranational system

of governance. The issue of how the EU deals with contestation over political and social change has crucial implications for its legitimacy as a political order.

This puzzle calls for going beyond established disciplinary boundaries between political economy, neo-institutional approaches to European integration, and the sociology of contentious politics. It is inspired by scholars who look at how EU integration shapes the inextricably intertwined development of capitalism and democracy in Europe (Scharpf 1999; Schmidt 2006; Schäfer and Streeck 2013; Schmidt and Thatcher 2013a). Fundamentally, the book therefore addresses the following questions: *What has been the role of the EU in the marketization of public services? And to what extent has contestation mattered in that regard?* The originality of this research is therefore to investigate both EU policy making in relation with welfare services and the contentious politics surrounding them. The book traces the history of the marketization of welfare since the launch of the internal market programme in the late 1980s until today's era of austerity. It especially investigates three key contentious debates which occurred in the decade between the mid-1990s and the mid-2000s, namely the debate on the regulation of welfare services at supranational level through an EU Framework Directive, mobilization against the EU Services Directive adopted in 2006, and the protest campaign against the General Agreement on Trade in Services (GATS) adopted by members of the World Trade Organization (WTO). It is argued that the EU acted as a catalyser for the marketization of welfare services partly, but not only because of its institutional (and legal) features. This echoes the well-established argument that the institutional setup and working of the EU exhibits a structural asymmetry which favours pro-market forces (Scharpf 1999, 2010; Höpner and Schäfer 2010). Another crucial part of the story, though, is that resistance to marketization could, to a large extent, be contained. Thus, besides an institutional approach to EU policy making, a sociological approach is used to investigate politicization, especially coalition building and discursive framing: this helps to explain how EU policies and politics have been conducive of continuous marketization. While the advocates of regulated capitalism (mainly left-wing political parties, associations, Non-governmental organization (NGOs) and unions) could occasionally hamper neoliberal policy making, they lost the battle of ideas

over the long term, and the marketization agenda could never be stopped or reversed. In a nutshell, this book argues that the EU is inclined but not *bound* to be neoliberal due to structural factors. The prevailing of pro-market policies is also due to the fundamental political and ideological weakness of the coalitions of actors promoting a more regulated capitalism as a means to foster social cohesion. Today, marketization and austerity are two sides of the same coin, as the lack of public resources to fund welfare services is regarded by most European decision makers as a main justification for pushing the marketization of welfare further.

1 EU Policies and the Transformation of Capitalism

1.1 Welfare Services and the Rise of Neoliberalism

The provision of public utilities and services has been one of the areas most affected by the neoliberal restructuring of the European economy. Undeniably, the rise of services in the economic structure of developed countries has been a major development of capitalism since the industrial revolution. The principles underlying the provision of public goods and services have been deeply affected by this transformation. While significant variation across countries persists, Europe has been witnessing a common and ongoing process of marketization in a large number of public utilities and social services sectors. This means that these services are increasingly provided by markets, and no longer by public authorities themselves. Correspondingly, they have been increasingly submitted to the rationales of competition and profit making. However, the State still remains responsible for the regulation and, in case of serious market failure, for the allocation of these services. Thus, developments affecting the provision of public services epitomize the neoliberal restructuring of the European economy. This process, which has been accelerating since the 1980s, has been underpinned by the principles of ‘liberalization, privatisation, commodification, regulatory reforms, and delegation to non-majoritarian institutions such as “independent” regulatory agencies and central banks, plus individual responsibility, competition, and enterprise’

(Schmidt and Thatcher 2013b). These reforms have gone hand in hand with a belief in the desirability of intensifying free trade on a global scale, and the rejection of state interventionism and Keynesian demand-side policies, as well as with major welfare state and labour market reforms (Hay 2004).

The Single European Act of 1986, which paved the way for a common European market, implied pursuing the opening of national markets, and subsequent suppression of the traditional monopoly on the part of national 'historical' operators in a number of sectors such as energy, telecommunications, broadcasting, transport and post. These changes have been shaped to an important extent by the case law of the European Court of Justice (ECJ), which had to rule on conflicts between national regulation and the principle of free competition that underpins the whole project of market integration in Europe (Baquero Cruz 2005). In EU secondary and primary law, the concept of SGI has emerged in order to deal with the provision of public utilities and services across Europe. Meanwhile, it remains a changing and contested legal category (van de Gronden 2009).

Whether stemming from public or private providers, welfare services today represent a substantial part of the economic activity in Europe, generating about 26 % of the EU's Gross Domestic Product (GDP), occupying 30 % of the workforce and attracting about 6 % of all investments (CEEP 2010). From a global perspective, the EU is home to very competitive firms in these sectors. For that reason, SGI have been seen by European decision makers as a major driver for improving the competitiveness of the European economy, both internally and externally. On the one hand, the liberalization of utilities and social services sectors within the European market has been considered as a way to increase the productivity of large firms in the network industries (telecommunications, transport, energy). On the other hand, it has been part of the process of welfare states' reform, especially as far as social services are concerned. In that perspective, competitive European firms would then be able to enter foreign markets outside of the EU under the auspices of the provisions for services liberalization promoted by the WTO. All in all, modernization through market liberalization and privatization has put the boundaries between the State and the market into question.

From the point of view of national societies, the liberalization of SGI did not proceed without drawbacks. As research has shown, productivity gains in the liberalized sectors mostly occurred at the expense of employment levels, while levels of employment and pay conditions account for a decrease (Flecker and Hermann 2012). Service quality and affordability often turned out to be problematic a few years after the opening of sectors to competition, especially as far as less privileged households are concerned (as opposed to the big industrial consumers). When services provision is transferred to the private sector, it is often difficult for public authorities to design regulatory policies in a way sufficient to preserve the public interest (Petretto 1998). Furthermore, the EU institutions have failed to live up to their claimed objectives in respect of fostering inclusiveness and consultation when designing policies in the realm of SGI (Clifton and Diaz-Fuentes 2010). Most interestingly perhaps, scholars have shown that the marketization of welfare services is not sociologically neutral. While better-off and educated citizens are relatively satisfied by a broader choice of services, even at higher prices, this is not the case for citizens with lower income and cognitive resources (Van Gyes et al. 2009).

1.2 Negative and Positive Integration

Like other policy areas, the developments pertaining to welfare services show that, to a large extent, the process of Europeanization has gone hand in hand with one of neoliberalization. From an analytical point of view, however, the notion of neoliberalism is too broad and versatile. In this regard, the seminal distinction introduced by Fritz Scharpf between positive and negative integration is particularly useful in order to understand how marketization has become institutionally embedded with regional integration. Inspired by the theory of international trade (Tinbergen 1954), the distinction between negative and positive integration was introduced in European studies by Scharpf in the late 1990s (Scharpf 1999). Negative integration implies horizontal integration through the removal of national tariffs and regulations, which are seen as obstacles to the building of a single European economic space; in that sense, it is essentially market enabling. The building of the common market ruled

by the four freedoms enshrined in the Treaty of Rome (free circulation of goods, people, capital and services) is the typical illustration of the logic of negative integration. Positive integration, in contrast, involves the setting up of common policies and instruments at the European level and is geared towards market correcting. Such instruments can be distributive as well as regulatory, as in the case of the common agricultural policy. Politically, negative integration is mostly associated with the rise of neoliberal global capitalism—it is, for instance, the main policy device used by the WTO—while positive integration would contribute to the regulation of capitalism, or the building of a social market economy at the supranational level.

Of course, the distinction between positive and negative integration should not be seen in a cartoonish fashion. Empirically, these two types of policy change are not mutually exclusive. In fact, most EU policies account for a policy mix containing elements of both negative and positive integration (removal of national regulatory barriers and former policy practices accompanied by new policy instruments). In the realm of welfare services, liberalization directives include both deregulation, that is the suppression of specific national regulation in order to open national markets to (foreign) competition, and provisions aiming at re-regulating markets at the supranational level in the form of a so-called public service obligation, which obliges one provider at least to take in charge the continuity of public service even if it is not profitable. Thus, it is the ‘thickness’ of such re-regulation (clarity of EU legislation and legal security, capacity to constrain economic actors, ability to actually serve users’ interests and protect their rights, effectiveness of implementation on the ground, etc.) and the existence or absence of common policy instruments (regulatory bodies, sources of funding, etc.) which eventually determine whether a specific policy contributes rather to positive integration or negative integration. However, as noted by Scharpf (1999, p. 44), the rationale behind negative integration is that, according to the theory of economic comparative advantage, the internationalization of trade leads to economies of scale and a decrease in prices resulting from competition, thus generating welfare gains which make market correction unnecessary. In this perspective, regulation is rather seen as an instrument of protectionism and a source of distortion in competition. While negative integration is used in

virtually all regional and international trade agreements, positive integration implies a deeper degree of integration with more evident distributive and political aspects.

Beyond its heuristic relevance, the crucial point in Scharpf's compelling book is that it connects types of integration with the conditions for democratic politics to shape the economy. His argument is that, 'the institutional capacity for negative integration is stronger than the capacity for positive integration, interventionist policies and the interests they could serve, are systematically disadvantaged in the process of European integration' (1999, p. 49). According to Scharpf, 'national polities find themselves under conditions of a "competition among regulatory systems" that may prevent all of them from maintaining market-correcting policies that were previously supported by democratic majorities' (ibid., p. 3). Such disembedding of the economy from political processes has eventually undermined the democratic legitimacy of policy making at both the national and regional level.

The explanation put forward by Scharpf for the prevailing of negative integration is essentially of an institutional nature. On the one hand, the supremacy and direct effect of European law on the legal order in the Member States has led to the constitutionalization of competition law which focuses on market creation through free competition. On the other hand, the strong institutional position of the ECJ and the European Commission, mainly based on their ability to use EU law, has allowed them to fight and win political battles against Member States reluctant to market opening. Insofar, integration through the market and integration through law have overlapped in significant ways. This has been especially the case with the liberalization of network industries and utilities (transport, energy) in the early days of the Single Market. The other side of the coin is the weakness of positive integration, often hampered by the need to find a consensus among Member States' governments in the Council. The diverse constellation of interests as well as the need for unanimity or large majorities empowers veto players willing to prevent European policy making and maintain the status quo. Agreement on the type of interventionist, market-correcting policies among national governments are all the more unlikely in that they may have 'fundamentally conflicting views regarding the proper role of public policy *vis-à-vis* market forces and regarding the role of European policy *vis-à-vis* the

nation state' (ibid., p. 78). More recently, Scharpf reiterated his argument by claiming that the EU 'cannot be a "social market economy"' (Scharpf 2010).

Scharpf's argument is essentially institutionalist and structuralist as his work puts the stress on the fundamental asymmetry between negative and positive integration which characterizes the set up and functioning of the EU. On the one hand, the power of the non-majoritarian institutions, in particular the legal prerogatives of the EU Commission (1999), or the role of the ECJ. In this regard, he questions the legitimacy of its *Kompetenz-Kompetenz* and the need for a conflicts law (2010; see also Joerges 2009a). On the other hand, the functioning of the Council is grasped through his earlier concept of 'joint decision trap' (Scharpf 1988): under de facto unanimity, Member States' preference for maintaining their own institutional arrangement drives decision making to the status quo. Although he recognizes that not only interests but also norms and ideas prevailing among certain actors shape the politics of negative and positive integration (1999, p. 66), he tends to treat them as fixed properties and does not investigate them as such. Interests and ideas at the national level are conceived in a stylized fashion by referring to social market economies versus liberal market economies.

By combining an institutional analysis inspired by Scharpf's work with a sociological approach focused on politicization, this book aims to shed light on the fluidity of multi-level politics, possible changes in Member States' positions, and the way in which ideational battles are actually fought within the institutional setting of the EU, including in relation to global politics. Discursive institutionalism and the sociology of transnational collective action both provide useful tools in this regard. The rationale underlying this approach is that today's EU finds itself in an era characterized by a 'constraining dissensus' (Hooghe and Marks 2009) where politicization matters. The continuous strengthening of the European Parliament (EP)'s legislative competences means that it now provides important channels for contentious politics. Strategically, the EP has consistently asserted itself by stressing its role of representation and transmission of citizens' and civil society's grievances. Moreover, national governments have to deal with the effects of such politicization in the domestic realm. This book therefore taps into the broader question of democracy in Europe by asking to what extent contestation and conflict over welfare can shape decision making at the supranational level.

2 EU Politics Between Technocracy and Democracy

2.1 From Consensus to Conflict

The marketization of welfare is not dealt with here primarily as a matter of economic change and policy making. The key aspect of interest is that this kind of policy change has continuously triggered contestation. Chapter 3 shows that, to a great extent, mobilization against the restructuring of public utilities and the privatization of, for example, care services or transport has been local or circumscribed to specific sectors, and protest has typically been organized by workers unions. However, two main trends have developed over time. On the one hand, such protest has involved an increasingly wide range of actors, NGOs, local citizen groups and the like. On the other hand, large organizations have tried to go European by coordinating their action through transnational networks, forums and platforms in order to influence policy making at the EU level. Perhaps more than any other policy area, public contestation over the tensions between market making and citizen welfare can be seen as a ‘stress test’ for the EU, which has historically developed as a technocratic entity but has become, at least since the Treaty of Maastricht, a would-be democratic polity.

It is now commonplace to claim that the EU displays a deep deficit of democratic legitimacy. Many political scientists have concentrated on the institutional causes of such a deficit by comparing the EU with national or federal democratic polities (Beetham and Lord 1998; Thomassen 2009) or by claiming that the EU’s sources of legitimacy should be redefined against new standards related to its capacity to deliver efficient public policy (Majone 1998; Scharpf 1999). In order to go beyond the institutional debates, I have argued that a main problem undermining democratic politics at the level of the EU lies in its political culture, which aims mainly at generating consensus and is biased against the expression of conflict (Crespy 2014), especially for those actors who contest the project of integration through the markets. The aversion towards conflict and the pursuit of consensus is historically carved in the anatomy of the EU,

characterized by functional integration *à la* Monnet and the consensus-driven community method. Besides representation through the continuous strengthening of the EP (Costa and Magnette 2003), enhancing participation and deliberation has been thought of by European elites as a way to enhance the democratic legitimacy of the EU.

Yet, the rise of deliberative democracy in the 2000s has also mainly been geared towards technocratic and consensus-based—as opposed to conflict-based—forms of deliberation within the various EU organs and bodies (e.g. comitology, inter-parliamentary cooperation or constitution-making bodies) or the institutionalized ‘civil dialogue’. When engineered by the EU institutions themselves, experiments such as deliberative polls among randomly selected citizens are bound to be turned into instruments of political communication geared towards the staging of intercultural consensus (Aldrin and Hubé 2011). In spite of pleas for enhanced citizen participation, deliberation has been encapsulated within epistemic communities of national experts and NGO representatives at the elite level, thus generating strong socialization effects among the ‘professionals of Europe’ within the EU microcosm in Brussels. This is not to say that contentious politics do not exist in the EU.

Historically, social conflict has been a main driver of democratization (Tilly 2004). Over the past fifteen years, scholars of social movements have studied the adaptation of collective action to the Europeanization of policies and interest representation (Imig and Tarrow 2001a; Balme and Chabanet 2002, 2008; Ruzza 2004; Della Porta and Caiani 2009). The contribution of these organizations to the democratic legitimation of the EU is ambiguous. On the one hand, contemporary transnational social movements can be seen as a laboratory of transnational deliberative democracy where the multicultural nature of deliberation in the EU is being managed (della Porta 2005; Dörr 2008). Moreover, as they are targeting the EU institutions, they also tend to acknowledge the EU as a political centre. On the other hand, these movements have often had a radical stance towards the EU as they have mainly pictured the EU as a neoliberal technocracy. For this reason, they have for most of the time been kept out of the realm of legitimate EU politics. The main result of the institutionalization of the ‘participatory norm’ (Saurugger 2009) has therefore been the creation of an exclusive—as opposed to

inclusive—political sphere with insiders and outsiders, the latter being kept out to maintain the consensus over integration through the market.

The picture is more mitigated as far as trade unions are concerned. The European Trade Union Confederation (ETUC) has tried to maintain itself as a contentious insider incorporated into the institutional system through the social dialogue and, at the same time, able to endorse more conflict-based forms of involvement. However, specialists of industrial relations have underlined both the potential for reviving European democracy through transnational mobilization (Erne 2008; Gajewska 2009) and the problems related to national divergences and ideological as well as financial dependence of the ETUC on EU institutions (Gobin 1997; Martin and Ross 2001; Wagner 2005). Overall, the EU's functioning displays a structural bias against the traditional actors of industrial democracy as well as newer forms of contentious politics which are critical of neoliberal policies (Bieler 2010). Focusing on transnational campaigns on EU policies which have involved social movement organizations as well as unions, Parks' work (2015) nevertheless shows a subtle and interesting articulation of consensus and conflict: it is precisely because the eruption of conflict remains the exception in the consensus-oriented EU politics that political (as opposed to technical) campaigns are more likely to impact decision making. To do so, though, it also needs to resonate within national political spaces rather than remaining confined to the 'Brussels bubble'.

By looking at contention over the marketization of welfare services, this book further investigates the role of contention with regard to the democratization of the EU polity. Insofar, it is in tune with a recent body of literature which shows how contentious politics and politicization are constitutive of a pan-European public sphere, thus contributing to the democratization of the EU polity (de Wilde and Zürn 2012; Trenz et al. 2014; Statham and Trenz 2015). These authors, nevertheless, show that politicization is not directly conducive of the legitimation of the EU polity. Rather, contestation is more likely to bring about a more acute delegitimation in the short and medium run which translates into increased Euroscepticism, diffuse discontent towards political authority, and a greater polarization between the winners and the losers of integration. While this literature focuses on politics and the contestation of the

EU as a political order, there are good reasons to think that the policy dimension plays a crucial role, as the crisis of the Eurozone or the refugee issue has shown. Democratic legitimacy does depend not only on the possibility for expressing dissent but also on the actual possibility to trigger responsiveness from the political authorities and thus shape policy making. By focusing on the marketization of welfare, the study presented here therefore investigates the policy dimension; more particularly, one that may affect the less well-off citizens, namely the potential losers of denationalization.

2.2 Politicization Through Coalition Formation and Framing

This book argues that, notwithstanding the key role of the institutional features of the EU, the prevailing of marketization in the realm of welfare services is also due to the fact that resistance could be to a large extent contained. Insofar, it is demonstrated that the neoliberal agenda has been to a certain extent impeded by occasional politicization, but has nevertheless remained at the core of policy making in the EU.

In older works on European integration, this concept was often understood as one of increased salience of the left–right cleavage in EU politics (Hix and Roland 2006). More recently, however, it has been rather understood from the point of view of the formation of a European public sphere through the expression of political contention over EU matters and criticism towards the EU itself. At the outset, politicization can be identified as a consequence of the increased authority of the EU; that is its continuously enhanced capacity to decide, formulate and enforce public policy (de Wilde and Zürn 2012). However, de Wilde and Zürn point out that it is not an automatic process; rather, there is a need for an opportunity structure conducive of politicization; that is settings which allow for a type of public debate which will result in raising awareness, bring about mobilization, and eventually polarization on EU-related matters. In a compelling fashion, Statham and Trenz (2015) put forward that politicization occurs through three mechanisms: a ‘polarization of actors’ relations’, ‘modes of public perceptions and resonance’ and

'legitimation'. Building on these insights, the present research investigates these three dimensions by looking at coalition building, discursive framing and responsiveness in policy making. While converging with the above-mentioned literature, the sociology of collective action, on the one hand, and discursive institutionalism, on the other, provide useful tools to do this. They have in common that they put the emphasis on coalitions and discourse, by looking at how both are shaped by institutions or, more precisely, by the institutional settings in which actors coalesce or oppose through coalitions and discourses. Both bodies of literature also offer insights into whether such processes of politicization contribute to enhancing or strengthening the legitimacy of the EU.

First, politicization occurs through polarization and the formation of opposed coalitions. The term coalition will be used to identify a diversified set of collective actors who are mobilizing on the same issue and, although they may have divergent secondary objectives as well, share a number of objectives in the policy making process. Unlike advocacy coalitions as defined by Sabatier (1988), these coalitions are not specific to a policy subsystem, and they may not share a large set of normative and causal nor common resources. They rather emerge progressively on an issue. While they have a transnational dimension, they are different from transnational social movement organizations (Della Porta and Diani 1999; Tarrow 2001) because they may include agents belonging to political institutions such as members of the EP (MEPs) or regional and national governments. In that sense, they come closer to the concept of transnational advocacy coalitions defined by Keck and Sikkink as 'networks of activists, distinguishable largely by the centrality of principled ideas or values in motivating their formation' (Keck and Sikkink 1998). The loose heteroclite coalitions which have emerged in the context of EU policy debates therefore have a strong strategic dimension rather than a shared identity. With regard to welfare services, the opposition between advocates of the neoliberal project for the EU, on the one hand, and those of a more regulated form of capitalism in the form of a supra-national social market economy, on the other, has been identified by many scholars of the EU (Hooghe and Marks 1997; Copeland 2014). Interestingly, these coalitions do not completely overlap with the left-right cleavage because diverse national economic and political cultures,

on the one hand, and ad hoc dynamics on particular issues, on the other, allow for the fluidity of EU politics. Here the formation of contentious coalitions opposing marketization policies is especially scrutinized.

Taking into account institutions is key since the emergence of coalitions is shaped by the necessity to rally the relevant allies in a given institutional setting.² Two main characteristics of the EU institutional setting are relevant here. The first key feature of the EU is its multi-level and transnational nature. Scholars who have studied the transnationalization of mobilization and protest have put forward a useful typology to distinguish between the activation of (a) loosely institutionalized transnational networks like those of the global justice movement (transnationalization), (b) more formal supranational channels provided by the EU polity such as neo-corporatist and parliamentary actors (supranationalization) or (c) national channels such as political parties, parliaments and governments (internalization or domestication) (Balme and Chabanet 2002, p. 185; also Imig and Tarrow 2002; della Porta and Caiani 2009).³ In this regard, the book shows that the impact on decision making is greater when all three modes of mobilization are combined. The second crucial institutional feature which shapes coalitions in today's EU is the role of the EP. As mentioned before, the rise of the EP has been a result of the continuous parliamentarization of the EU. The role of the EP is key not only because it has been, from the outset, a 'deliberating assembly' (Costa 2001) thus introducing a sense of democratic debate in the technocratic EU polity; it has also progressively become a powerful and efficient legislative body, notably due to the introduction and continuous rationalization of the procedure of co-decision (Costa et al. 2015). Co-decision between the Council of the EU and the EP was introduced with the Treaty of Maastricht and have conferred upon the latter the power to shape,

²The term institutional setting used by Schmidt (2008) is preferred to the much discussed concept of political opportunity structure which has been conceptualized in the context of nation states (Kriesi et al. 1995) and has been criticized notably for its static and structuralist bias (Koopmans 1999). For a relevant adaptation to the context of the EU, see Parks (2015, Chap. 2).

³A fourth mode of Europeanization identified dis-externalization; that is the mobilization of European actors and targeting of EU institutions for protesting over a national issue. Insofar as this book focuses on European debates, externalization will not be dealt with. It is also worth noting that Imig and Tarrow (2001) and later della Porta and Caiani (2007) have shown that domestication remains, at the quantitative level, the most significant mode of contentious politics in Europe.

amend or even reject legislation. Moreover, the MEPs have sought to reinforce their weak linkage to citizens by strategically profiling themselves as the most legitimate (because elected) representatives in the EU, and the main interlocutors of organized civil society in Brussels and elsewhere (Costa 2006; Costa and Saint Martin 2009). The issues pertaining to SGI in the EU internal market—such as services liberalization or re-regulation (Chaps. 3 and 4)—are decided in the framework of the legislative procedure of co-decision. The importance of parliamentary deliberation therefore opens ‘discursive opportunities’ (Koopmans and Statham 1999) for actors challenging policy makers. The fact the EP has proved to be both a target as well as an ally in many debates has significantly influenced the form and strength of contentious coalitions.

The second dimension of politicization investigated pertains to the role of ideas and discourses, and how contentious actors are able to create resonance for a particular issue and influence public perceptions. The role of ideas is particularly relevant insofar as welfare services can be regarded as fundamentally ideological issue. In tune with discursive institutionalism, the role of ideas in politics is best grasped through discourse conceived as a dynamic interactive process among actors, rather than as a structure determining power relations from the outset. These reciprocal relations can be best understood through the concept of framing. Inspired by the work of Erving Goffman (1974) on the schemata of interpretation constructed by individuals to make sense of the world surrounding them, the concept of frame has been widely used by both scholars interested in the role of culture and identities in social movements (Benford and Snow 2000) and students of public policy studying how actors shape debates about what is at stake with a given issue (Daviter 2007; Baumgartner and Mahoney 2008). Frames are tools for mobilization and persuasion which

assign meaning to and interpret relevant events and conditions in ways that are intended to mobilize potential adherents and constituents, to garner bystander support, and to demobilize antagonists. (Snow and Benford 1988, p. 198)

It does so in suggesting what is *in* and what is *out* of a frame, that is through which particular lens or from which angle a specific policy

proposal should be assessed. As we will see with debates on welfare services, discourse may be a cement for coalitions to hold together by sharing catch-all frames loose enough to include actors and organizations with divergent identities or ideological views (Oliver and Johnston 2000; Westby 2000), thus shaping the nature and size of a coalition. Discourse is also more likely to be politically efficient if it builds on master frames, such as 'Social Europe' or 'democracy', which have already been invoked in past debates and are more likely to resonate within the public sphere.

Compared to other constructivist approaches, the added value of discursive institutionalism is to put the stress on how different institutional settings are conducive to different types of discourses and frames. Schmidt (2006, 2008) has distinguished between 'coordinative' discourse used among elites and policy makers, and mainly based on cognitive arguments, and 'communicative' discourse directed at the broader public and relying to a larger extent on the appeal to values and normative arguments. She has further argued that in 'compound' polities such as federations of the EU, coordinative discourse tends to prevail. Indeed, the technocratic nature of the EU emphasized above has led to a bias towards the former where expertise is a crucial resource. Yet, it would be simplistic to separate politics-based debates from expertise-based debates. On the contrary, the book shows how politicization in the EU consists to a large extent of the empowerment of contentious actors with expertise (Radaelli 1999), and the use of expertise and communication to translate technical problems into political arguments aimed at mobilizing support. Thus, various institutional settings will allow actors to frame counter-discourses more or less successfully.

Finally, the third dimension of politicization suggested by Statham and Trenz is that of legitimation. Yet, politicization does not automatically contribute to enhancing the legitimacy of the EU. In this regard, most scholars of politicization focus on criticism of the EU as a political order or polity. In contrast, the assumption here is that decisions over policies resulting from contention are key with regard to legitimation. In other words, politicization and conflict can only enhance the legitimacy of the EU if policy makers prove responsive when deciding on particular issues thus providing tangible outcomes responding to contestation. In turn, if citizens can express disagreement but receive no response from EU

authorities, this is not likely to feed legitimation: on the contrary. The European Citizen Initiative introduced with the Treaty of Lisbon is a good illustration of how a procedure which allows voice but generates no response in terms of policy making can only make a poor contribution to the legitimation of the EU. In respect of welfare services, responsiveness and legitimation are assessed by locating particular episodes of contention in the historical developments of policy making. This allows to assess not only the short-term effects of contestation but also the possible discrepancies with further policy developments in the long run as some ideas and policy recipes may find their way back onto the EU agenda ‘through the back door’.

3 The Contentious Politics of Welfare Services

3.1 Research Strategy

This book combines the study of policy making and resistance by looking at both long-term trends in policy making as well as particular episodes of contention. So far, the relation between welfare services and EU integration has been dealt with by specific strings of research. The role of legislation and case law over SGI has been extensively tackled by specialists of EU law, with a strong focus on competition policy and jurisprudence (Prosser 2005a, b; van de Gronden 2009; Hatzopoulos 2012). Scholars of public policy have focused on a top-down Europeanization perspective showing how market liberalization has been enforced in the various sectors and member countries of the EU (Schneider 2001; Krautscheid 2009; Bauby 2011; Schmitt 2013). Finally, a series of studies and reports have been commissioned and/or financed by the EU institutions or public services trade unions. While extremely informative, these studies are mainly empirically driven and deal, again, only with the impact of liberalization at the national level (CIRIEC 2004; Keune et al. 2008; Flecker and Hermann 2012). On the other hand, there is an abundant literature on the global justice movement and the ‘eurocritical’ mobilization of organizations like the L’Association pour la taxation des transactions financières (ATTAC) and arenas such as the European Social

Forum (Imig and Tarrow 2001a, b; della Porta 2004, 2006; della Porta and Caiani 2007). But the stress here is on organizational features and the internal issues within the movements rather than on their impact or on the nature of the policies which are contested. With a few exceptions (Parks 2015), the literature on contentious politics has therefore been mainly interested in investigating mobilization as a contribution to new forms of democracy at the supranational level, rather than as resistance to policy change induced by EU integration.

This book bridges the gap between these various bodies of literature with an approach which is original in at least three respects. First, while most scholars interested in welfare services have studied the developments of policy and law in the field, this book focuses on contentious debates and the way in which the contestation of marketization could be contained. At a broader level, Nicolas Jabko (2006) has, for instance, demonstrated how 'the market' has been the key idea and frame used by different actors in order to pursue different strategic aims by promoting integration through the market. In that sense, this book does not focus on successful processes of legitimation or successful policy making, but rather on what has been contested, did not succeed, and fed a process of delegitimation of EU integration. Second, instead of focusing on specific sectors, the emphasis lies on broad, intersectoral contentious debates where ideas about the role of market, the State, the EU and so on rather than the specifically sectoral and technical considerations underpinning actors' positions. Andy Smith (2006) has noted the marked fragmentation of the EU into separate sectoral realms favouring disconnected compromises and the depoliticization of the 'government' of the EU. Studying the politics of welfare services as a broad, intersectoral issue allows to analyse the interactions over time between the routine functioning of the EU and *moments* of politicization where policy issues are dealt with in political arenas of 'intersectoral mediation' (ibid.) such as the EP, the Council and national public spaces. Third, the analysis takes multi-level politics seriously as it considers the national, EU and global dimension of contention over welfare services. While European politics are at the centre of the analysis, it pays attention to how national debates and actors, on the one hand, and global policy agendas and contentious politics, on the other, have shaped the marketization of public services

and the politics thereof. When looking at specific interactions and coalition building, multi-level politics are nevertheless not conceived as three distinct 'layers' of politics. On the contrary, horizontal issue networks and ad hoc coalitions shed light on the interpenetration of agency at all territorial levels.

In addition to the long-term approach of policy making and resistance pertaining to welfare services since the late 1980s, the book provides a more in-depth account of three key contentious episodes relating to welfare services which have been at the centre of the EU political agenda between 1997 and 2007, namely the debates on the EU Services Directive and the EU Framework Directive on SGI, and contestation against the GATS. These episodes are the only and key contentious debates which occurred at European scale; insofar, it would be misleading to speak of 'case selection' as the book does not adopt a comparative methodology between cases. Rather, the approach is historical/narrative as these episodes constitute the empirical flesh for studying contention over welfare services in connection with EU policy making. In this regard, the decade under examination has been a turning point which sealed the fate of welfare services in the current era of austerity. Since 2007, no significant, salient debate has emerged over welfare services: neither on the EU agenda nor in the wider public sphere.

The analysis relies on a variety of sources. In order to reconstitute the dynamics of marketization through policy making, all the chapters rely on the specialized literature and empirical studies over policy developments in various SGI sectors. EU law is also an important source, encompassing EU treaties, legislation and jurisprudence of the ECJ analysed in the academic literature on EU law. In addition, official documents from EU and national institutions are also used to shed light on policy making. Finally, press articles were useful to reconstruct political processes or account for some actors' positions in the debates.

The three above-mentioned debates are too different in their nature and scope to replicate one single protocol of research, so they were investigated according to their own internal logic, with the stress remaining on politicization through coalition formation and framing. Coalition formation at the scale of the EU (or globally) was scrutinized through the involvement of left-wing associations, NGOs and think tanks (such as ATTAC, Oxfam,

the World Development Movement and Corporate Europe Observatory), political parties (radical left, social democrats and greens), trade unions (the ETUC and European Public Services Union [EPSU] in particular) and political institutions, including EU institutions as well as national governments and parliaments.

When looking at the role of national politics in internal European debates (Chaps. 3 and 4), it was impossible to take the then 25 Member States into consideration. Moreover, contention was not present everywhere but only in countries where the issue of public services acquired some visibility. Hence, the choice was made to focus on the main players in the debates and countries where contention was most present, namely France and Germany, at least for three reasons. First, these countries both have a long tradition of provision and funding of welfare services by authorities, yet are contrasted from an organizational and institutional point of view. More importantly, these two countries have a decisive weight in EU politics (even more so in the pre-2004 EU), and many key protagonists in the debates over welfare services have been French or German. Thus, such a focus was more fruitful than, for example, one on the UK, whose representatives in the EU institutions consistently take pro-market positions. Nevertheless, references and data relating to further countries and actors were also used where relevant. As far as the study of the anti-GATS debate in Chap. 6 is concerned, attention laid on contention in the global arena, on the one hand, and its repercussions in the European political arena, on the other. This included looking at overlapping networks of NGOs as well as at the Commissioners for Trade as decision makers in charge of the negotiations in the WTO.

The study of discourse is based on a diverse set of sources, including documents of institutions (such as transcription of speeches and press releases), documents published by political parties, trade unions and civil society organizations on their websites, and minutes of the plenary sessions at the EP. Following Schmidt (2008), the qualitative frame analysis used looks at both 'cognitive ideas' relating to specific policy issues and involving a certain degree of expertise (e.g. the country of origin principle), as well as on 'normative ideas' appealing to values and which are often connected to broader policy programmes and public philosophies (Social Europe or democracy). In terms of content, the methodology

adopted is rather inductive and adopts the two-dimensional conceptual grid. Thus, two types of frame are investigated: on a horizontal axis, those related to the respective scope of action and the moving boundaries between public authorities (may they be national states or the EU) and the market, that is the discourse of market building and general interest; on a vertical axis, frames related to the appropriate levels of governance and moving boundaries between local and national authorities and to the EU; this includes, for example, framing in terms of democracy or subsidiarity.

The written sources are complemented by 52 semi-structured interviews conducted mainly in Berlin, Brussels and Paris between 2008 and 2013 with actors involved in these debates within political parties, trade unions and civil society organizations. An additional series of three interviews conducted by Michael Strange⁴ in 2005 with prominent figures of the anti-GATS campaign are also used in Chap. 5. All interviews were used for tracing events and collecting factual information about coalition formation and actors' motivation. They were not used for frame analysis purposes. In brief, the amount and diverse nature of the material collected on the matters under scrutiny offers both a long-term historical account of debates as well as a close up on three key debates with a more in-depth analysis of the institutional and discursive dynamics of contention in the multi-level EU polity and beyond.

3.2 Content of the Chapters

Following this introduction, the various chapters shed light on the different aspects related to the politics of welfare services. Chapter 2 sets the scene by looking back at the process of marketization since the 1980s and explaining how it has been pursued through negative integration in the EU. This chapter mainly considers the institutional and legal aspects of negative integration by stressing the overlap between integration through

⁴I would like to express all my gratitude towards Michael Strange from Malmö University for his openness about sharing his interview transcripts with me. Unfortunately, unlike practices in quantitative research, it is rare that scholars working with qualitative data, especially interviews they have conducted themselves, are prepared to share it.

the market and integration through law. In other words, it examines how the agenda for building the Single Market through liberalization directives has been embedded in the progressive elaboration of primary law in successive treaties, and decisions on the conflicts between national regulation and the protection of general interest, on the one hand, and the construction of a supranational Single Market through competition law, on the other. It then enlarges on the policy outcomes of marketization in the realm of welfare services and the larger academic debate about the neoliberal nature of the EU.

The three following chapters deal with a different aspect of policy making and follow a similar pattern explaining: (a) the established rationale and policy decisions, and contentious debates pertaining to marketization; (b) one key contentious debate showing to what extent politicization and contestation has affected policy making; and (c) how the recent developments account for a the continuation of marketization.

Chapter 3 looks at the main forms of negative integration; that is the agenda for services liberalization and how it has been contested by advocates of regulated capitalism. A particularly relevant case study is the controversy over the Services Directive also known as the ‘Bolkestein directive’. The protest over the EU Services Directive was prominent between 2000 and 2004. The complex issue of services liberalization was politicized by a loose left-wing coalition involving political parties, the alterglobalist association ATTAC, and the trade unions in several Member States and at the EU level. After two years of mobilization, the Commission’s proposal for services liberalization was substantially amended, and the reach of liberalization and deregulation substantially limited, especially as far as SGI are concerned.

Chapter 4 turns to a different strategy of resistance to marketization, namely the promotion of positive integration in the realm of welfare services. A turning point in this regard was the debate on a Framework Directive for re-regulating SGI at the EU level. Between 2000 and 2007, this issue was actively discussed among European decision makers with various communications and Green and White papers issued by the European Commission. In parallel, the Party of European Socialists and the ETUC launched a campaign. This campaign echoed long-standing claims expressed by France for such re-regulation, since the French

government had obtained the introduction of a reference to SGI within the Amsterdam Treaty in 1997. In spite of such mobilization for positive integration in the realm of public services, preferences, notably among German decision makers, prevented an agreement within the Council of Ministers and the EP. The campaign led by the ETUC also lacked substantial support from member organizations in several countries. As a result, the debate ended in deadlock, and the European Commission never submitted any legislative proposal; the re-regulation of SGI as such was abandoned.

Chapter 5 deals with the way in which European and global political agendas are intertwined by looking at services liberalization in international trade. In terms of contention, the chapter examines mobilization against the GATS—which promotes services liberalization globally. As in the case of the EU Services Directive, the impact of liberalization on welfare services provision was a main trigger of contention. The anti-GATS campaign launched by NGOs throughout the world triggered echoes within the EU institutions and in several EU Member States. The pursuit of market opening in sectors such as water distribution, healthcare and education was criticized by many associations and national and European politicians. While market opening resulting from these negotiations has, for various reasons, remained limited, the chapter also shows that services liberalization has been pursued in various bilateral trade agreements after mobilization waned, including the recent Transatlantic Trade and Investment Partnership (TTIP) and Trade in Services Agreement (TISA).

Finally, Chap. 6 provides an account of the developments brought about by the response to the financial and debt crisis which broke out in 2008. It explains the consequences of fiscal austerity on welfare services across Europe. Furthermore, the ambiguous nature of the EU post-crisis governance framework, the European Semester, is explained in relation with social policy in general and welfare services in particular. The current constellation has also affected the dynamics of contention in a way that is not conducive of coordinated Europeanized protest against the debasing of welfare services. As long as a discourse is prevailing in which ‘there is no alternative’ to austerity, marketization will be pursued as a main policy solution for sustaining—if in a way which does not ensure social cohesion—provision of welfare services across Europe.

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2

European Integration as Marketization

More than any other domain, the developments which have affected welfare services epitomize the ways in which capitalism in Europe has changed over the past three decades. This involves not only the functioning of the market but also the institutions regulating the economy and the underpinning values thereof. Insofar, we are dealing here with dynamic processes which have brought about slow yet deep structural transformations. On the capitalism side, the developments affecting the provision of welfare services reflect the moving boundaries between the State and the market, a process which has been widely understood as the neoliberalization of European economies (Hay and Wincott 2012; Schmidt and Thatcher 2013a). While states had been, in the post-war era, responsible for the funding and the provision of welfare services, an increasing number of tasks have been transferred to markets thus leading to a recommodification of services which have shifted from the realm of welfare services to the realm of competitive markets. On the EU integration side, policy making affecting welfare services has raised debates about the respective prerogatives of the EU and its constitutive Member

States for regulating the economy. At first sight, welfare services have remained a competence of the Member States for at least two reasons. First, the EU lacks the budgetary means for conducting distributive welfare policies; second, this is so because there is a consensus on the fact that welfare policies have a strong social and cultural dimension and should therefore be decided by local and national authorities which, unlike the EU, enjoy deeply historically rooted legitimacy (Barbier 2008). However, there has been a ‘spill over’ of EU policy making towards the realm of welfare (Haas 1958). This well-known concept used by scholars to describe the functional dynamics of EU integration implies that economic policy and social policy are bound to remain closely intertwined. Because the EU has historically developed as an *economic* community, the EU institutions, in particular the EU Commission, were attributed strong competences for achieving the building of a common unified European market. The gradual extension of the scope of the market to areas which were formerly managed by public authorities has implied increasing encroachment of EU internal market and competition rules over national traditions pertaining to the provision of welfare services. This has concerned not only regulatory but also distributive aspects as the EU competition policy monitors public funding (i.e. state aids) of services activities in the Single Market. Politically, this has been possible not because there was an ideological consensus on the liberalization—and subsequent privatization—of welfare services but because, as Jabko has argued, in the 1980s and 1990s the ‘market’ became the overarching and multi-faceted idea used by the various political players in order to pursue actually contrasting projects of EU integration (Jabko 2006). Insofar, the far-reaching liberalization and privatization of welfare services can be seen as a more or less unintended consequence of integration through the market. By focusing on welfare services, this chapter echoes and substantiates F. Scharpf’s argument that negative integration has prevailed due to an overlap of integration through the market and integration through law, notably through a combination of ‘judicial deregulation and legislative liberalization’ (Scharpf 2010, p. 11).

This chapter starts with a presentation of the ways in which the provision of welfare services has been affected by the neoliberal restructuring in

Europe, mainly through a process of recommodification or marketization. Then, it is explained in greater detail how EU integration has shaped this process through the efforts to build a common market based on competition as its main underpinning principle and through versatile legal controversies and arrangements settled through constitutional law, legislation and the jurisprudence of the ECJ. Finally, the chapter offers an account of what we know about the consequences of marketization and ends with going back to the broader debate as to whether EU integration equals neoliberalization.

1 Creating Markets: The Recommodification of Welfare Services

1.1 The Dimensions of Marketization

The share of services—as opposed to agriculture and industry—in European economies has been continuously increasing over the past decades and stands for about 50 % of the labour force today. The rise of services in advanced capitalist economies reflects the main transformation since the industrial revolution. Understood in the broad sense, welfare services involve the provision of public utilities and services, including various social services, healthcare, education and culture. Whether stemming from public or private providers, these services today represent a substantial part of the economic activity in Europe, generating about 26 % of GDP, occupying 30 % of the workforce and attracting about 6 % of all investments (CEEP 2010). Over the past two decades, welfare services have undergone a strong process of marketization, that is, the recommodification of services which were considered as rights and basic needs which the State had to care for regardless of market functioning. Marketization can be defined as ‘a change in transactions, through the introduction or intensification of price-based competition’ (Greer and Krachler 2015, p. 216). In the realm of welfare services, marketization relies on a triangular model whereby the provision of welfare services is mediated by an intermediate welfare services

provider distinct from the State; by doing so, marketization turns the citizen into a consumer, marginalizes the relationship between the citizen and the State and economizes the relationship between the State and the public service provider (or producers), as the former becomes the purchaser (through tendering) of services from several providers or producers which compete for market shares (Freedland 2001). A case in point illustrating this process is the reform of the British NHS in the early 1990s which created an internal market in which the government is purchasing services from various providers. There have been significant differences in the scope, pace and form of marketization across countries and sectors. However, a number of common trends shed light on the fundamental changes which have occurred. Everywhere in Europe, the marketization of welfare services has occurred through liberalization, privatization and deregulation. Liberalization means that markets are open to competition among several providers beyond national boundaries. In the post-war era of the twentieth century, public transport, telecommunications, energy and water distribution, education, health-care and so on were provided either directly by public authorities and administration or by large national companies integrated in the state apparatus which enjoyed a monopoly. Liberalization has put an end to public monopolies and introduced competition, hence creating markets in areas where the State used to provide services to users. Liberalization has been partly accompanied by privatization, that is, the transfer of services provision from public to private companies. In the specialized literature, this is referred to as ownership structure. Today, most sectors nevertheless exhibit coexistence between public and private providers. This raises problems related to market regulation and the conditions in which several providers can offer different products on competitive markets, while still addressing the public interest at stake and offering quality services to differently endowed categories of users. The role of the State has shifted from that of provider to that of regulator or market organizer. The end of national monopolies has meant deregulation in the sense that the regulations ruling provision by public companies (notably over prices) had to be adapted within the framework of competitive

markets. As we will see below, a degree of re-regulation has occurred at the supranational level (through EU directives). One example is the so-called universal service obligation in the Postal Directive which has to be endorsed by one provider, usually the former national company enjoying monopoly, in order to ensure that the post continues to be delivered on a regular basis to all parts of the territory. As explained by Hermann and Verhoest, ‘the focus of regulation has shifted from governing the whole process of service provision to regulating particular aspects of the service supply chain or to partially controlling outcome’ (Hermann and Verhoest 2012, p. 20). In fact, new forms of regulation concentrate on organizing competitive markets through, for example, unbundling the management of network infrastructure and the provision of services so that new private competitors can be granted the right to use a network and provide services. Designing effective regulation is often problematic and control on outcome has proved to be limited (Petretto 1998). Obligations related to the public interest dimension of services are not defined and enforced in a systematic way across the various sectors, and they are not imposed upon all providers. The creation of independent regulatory agencies has created complex networks for horizontal and vertical coordination between national, European and international regulators. The maturation of this new governance has often been followed—after an initial phase characterized by the assertiveness of the newly set up agencies—by the coming of age, at a later stage, of regulatory capture, that is, of collusion between regulatory authorities and business reflected notably in the frequency of revolving doors practices (Coen 2005). All this explains that liberalization is often critically seen as a type of policy change bound to bring about deregulation in the sense of decrease in the capacity of public authorities to effectively protect the public interest once markets have been created.

Welfare services in Europe have therefore witnessed a multi-faceted process of marketization (illustrated in Fig. 2.1 below) where the monopoly of the public sector has been put to an end at the benefit of the private sector, hence featuring a shift from the realm of public law to that of private law.

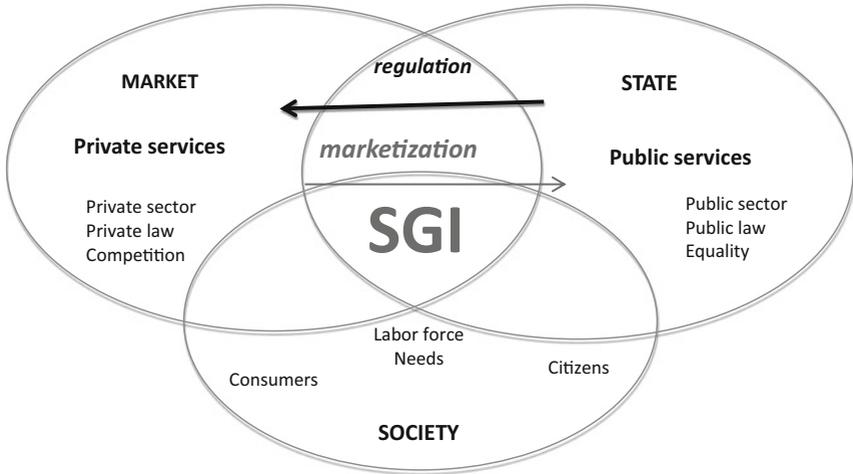


Fig. 2.1 The marketization of public services

1.2 The Neoliberal Restructuring of Political Economies

This policy impulse aiming at market creation reflects a major paradigm witnessed by Europe's political economies from the late 1980s onwards. The perceived failure of Keynesianism in the late 1970s paved the way for the rise of neoliberalism (Campbell 1997). Although neoliberalism is little more than a label encompassing an eclectic set of ideas which has taken various—and sometimes contradictory—forms across time and space, its influence on public policy over the past three decades in Europe can be summarized by a set of principles identified by scholars of political economy:

1. A confidence in the market as an efficient mechanism for the allocation of scarce resources.
2. A belief in the desirability of a global trade regime for free trade and free capital mobility.

3. A belief of the desirability, all things being equal, of a limited and non-interventionist role for the state and of the state as a facilitator and custodian rather than a substitute for market mechanisms.
4. A rejection of Keynesian demand management techniques in favour of monetarism, neo-monetarism and supply-side economics.
5. A commitment to the removal of those welfare benefits that might be seen as to act as disincentives to market participation (in short, a subordination of the principles of social justice to those of perceived economic imperatives).
6. A defence of labour market flexibility and the promotion and nurturing of cost competitiveness (Hay 2004 cited in Schmidt and Thatcher 2013b, p. 5).

While the developments pertaining to labour markets and social benefits have attracted more attention among scholars, the provision of welfare services has been to a large extent overlooked. Yet, they epitomize the deep transformations involved with the rise of neoliberalism, namely the role of the state in the context of international competition, the prominence of the market and the theoretical conceptions of labour and welfare. Neoliberalization in the realm of welfare services has meant that the former rationale for public monopolies has become less and less relevant. In the post-World War II era, the role of the State in the provision of welfare services was typically focused on the role of basic services with regard to social cohesion, the need to secure economies of scale and the ‘rationalization’ of natural monopolies and public investment (Keune et al. 2008a, p. 14). In the era of globalization, technological change, the rise of transnational financial markets and the circulation of capital flows have further undermined the pertinence of national services provision in the framework of state monopolies. In contrast, administrations and public companies have been increasingly perceived as less capable of ensuring an efficient allocation of resources than markets and, similarly, less capable of ensuring efficient regulation than independent regulators endowed with more expertise (Petretto 1998, p. 103). Several authors have also noted that the ideational shift and the slow yet ongoing neoliberalization of Europe’s political economies has had broader implications with regard to the marketization of welfare services

(Chambat 1990; Keune et al. 2008a). It has translated into the end of demand-oriented and debt-friendly macroeconomic policy and the rise of the 'sound money' paradigm. In this context, the leitmotif of welfare services 'modernization' became the main narrative justifying the political will to reduce public spending as deficits had become a main concern in many countries. The introduction of the new public management principles and internal deregulation of welfare services have aimed at increasing the efficiency of welfare services, while the privatization of large public companies has often been seen by governments as a means to quickly provide state revenue.

All this has gone hand in hand with a change in the philosophy and normative principles underpinning the relationship in the provision of these services to society. The idea that services should be provided to all citizens on an equal basis in order to respond to society's basic needs has given way to competition among providers in respect of winning market shares and attracting consumers. The connection between welfare services and citizenship (Freedland and Sciarra 1998) was progressively replaced by the connection between services and economic performance. The services which used to be understood as merit goods (Musgrave 1959)¹ or even fundamental rights have been increasingly recommodified and considered as parts of mass consumption. In this perspective, users' welfare is achieved if prices can be decreased through technological adaptation, competition and the reduction of labour costs. In tune with neoliberalism and new public management, the focus now lies on service to the public, that is, on consumer choice between various competitive services rather than on the equal provision of welfare services to all citizens (Van Gyes et al. 2009). Insofar, there has been a movement of convergence towards neoliberal capitalism across the Western world, and the marketization of welfare services (including liberalization, privatization and deregulation) has been a global and not solely a European trend (Haque 2001). Notwithstanding, the unique experience of economic and political integration undertaken by the Europeans has heavily contributed to

¹A merit good is a commodity which is considered as necessary to respond to basic needs and should therefore be provided regardless of individuals' capacity or willingness to pay.

accentuate this policy direction through particularly effective regulatory and legal mechanisms.

2 European Integration Through the Market and Through Law

2.1 Building the European Single Market Through Legislation and Competition Policy

The adoption of the Single European Act in 1986 is often seen as the re-launch of the European project which had (arguably) been stagnating throughout the 1970s. By setting as its objective the actual enforcement of the four freedoms (the free circulation of persons, goods, capital and services) enshrined in the 1957 Treaty of Rome, the Treaty paved the way to Europe's most tangible achievement, namely the creation of an internal (or single) market among the members of the then Economic Community. The liberalization of network industries (telecommunications, transport, gas and electricity, postal services) has been a cornerstone of this agenda through the adoption of a number of sectoral directives. At the outset, the liberalization was mainly focused on large producers and consumers in industry. The main purpose of liberalization was to end the monopolies, notably by separating the operating of the infrastructures and networks from production, distribution and supply. As reported in Table 2.1, these directives have included a revision clause, ensuring that, progressively, the entire set of activities in a given sector would be open to competition. Over the course of the 1990s and 2000s, liberalization has reached individual consumers in most sectors, thus driving enforcement of the free circulation of services across Europe.

The intertwined dynamics of technological change and globalization has often been a main driver of this process. This was particularly the case in telecommunications and broadcasting services, where the convergence due to digital technologies and internationalization called national monopolies into question. The EU Commission has been a strong policy entrepreneur, promoting the liberalization of network industries. This

Table 2.1 Sectoral liberalization directives in the realm of services of general interest

Sector	First EU directive	Latest texts adopted
Air transport	First air transport package Regulation 3975/87/EEC, Regulation 3976/87/EEC, Directive 87/601/EEC	Third air transport package Regulations 2407/92, 2408/92 and 2409/92
Telecommunications	First telecom package 88/301/EEC	Telecom reform package 2006/136/EC, 2009/140/EC
Broadcasting	Directive 'Television without frontiers' 89/552/EEC	Directive on the pursuit of television broadcasting activities 2007/65/EC
Railways	First railway package Directive 91/440/EEC	Fourth railway package (2016) COM(2013)25
Electricity	First energy package 96/92/EC	Third energy package 2009/72/EC
Gas	First energy package 98/30/EC	Third energy package 2009/73/EC
Postal services	First Postal Directive 97/67/EC	Third Postal Directive 2008/06/EC
Local urban transport	Regulation 1370/2007 Tendering and attribution of contracts and concessions	Regulation 1370/2007 Tendering and attribution of contracts and concessions
Healthcare	2011/24/EU Patients' rights in cross-border healthcare	Idem

has sometimes led to major inter-institutional struggles and resistance from the Member States. In telecommunications, the decision by the Commission to use its exclusive competence in competition policy (based on Article 90 of the Treaty on the European Community) to impose competition has been contested by several governments but eventually supported by a ruling of the ECJ (Schmidt 1998; H eritier 2001). In the case of electricity, the Commission decided, for political reasons, not to use its exclusive competence. Debates have been lengthy and politically difficult

as Member States, especially France and Germany, were keen to preserve their contrasting organization of production and supply (Matlary 1997). However, the dynamics of the multi-level negotiations coupled with the example of liberalization in the UK brought about a change of the major players' position among the Member States and within industry (Eising and Jabko 2001). In the railway sector, a main objective has been to separate the management of the infrastructure, on the one hand, and services related to freight and passengers, on the other. The stress has been put on the creation of a truly unified European railway network through the suppression of technical barriers to harmonization. With regard to competition for passenger services, liberalization has remained limited mainly as a result of the still dominant position of large national companies. As mentioned above, sectoral liberalization directives include clauses on 'universal service' or 'public service obligation' aimed at ensuring accessibility, equality, continuity, security and affordability. It is in the domain of postal services that obligations related to the public nature of services have been defined in the most comprehensive and ambitious way. However, this did not prevent a major change in the nature and quality of services provided with, for example, many post offices closing and a sensitive rise in prices in several EU countries (Hermann et al. 2008). Water distribution is one sector where no liberalization directive has been adopted. Rather, directives for ensuring high levels of water quality have been adopted on the basis of the EU's competence for the protection of the environment and public health. This is notably explained by the fact that in all countries of the EU, water is distributed locally with no cross-border interconnection at stake. In spite of attempts by the European Commission to steer liberalization in this realm, resistance to liberalization among MEPs, Member States governments and various interest groups has been important enough to deter any policy initiative (Bauby 2011, pp. 139–142).

Besides the sectors which have been addressed by sectoral liberalization directives, a significant number of welfare services are located today in a grey area in the sense that they are not the object of specific sectoral legislation. Notwithstanding, liberalization can occur (or has already partly occurred) as a result of other provisions in EU law, especially competition policy. This is, for example, the case in education, cultural services,

social housing, complementary social protection schemes and a myriad of welfare and social services. In this respect, three sets of rules come into consideration. Firstly, the EU Services Directive² adopted in 2006 after heated debates (as we will see in Chap. 4) resulted from a consensus on the idea that the provision of services across national borders had to be encouraged. In so doing, the purpose of the directive was to facilitate access for foreign providers through administrative and regulatory ‘simplification’ (read deregulation). In the original draft, all services were included in the scope of application including welfare services, except those covered by sectoral directives. As a result of contestation emanating from left-wing political parties and unions, the final draft of the directive includes an exception for a number of welfare services, namely health-care, broadcasting, social housing, childcare and support for families and persons in need as long as they are provided or supervised by the State (Article 2.2). This closed list thus leaves a number of services in the realm of possible liberalization, notably when they are provided by private providers. Undisputedly, competition within the internal market is the rule, while the exemption from competition rules is the exception.

Secondly, as part of its exclusive competence for competition policy, the EU Commission exercises a control of state aids for all services falling under the scope of competition within the internal market. State aids can be defined as any form of (mainly financial) support from public authorities to an undertaking. While state aids to business are normally prohibited, the provision of welfare services can enjoy an exemption. In that case, the Commission monitors whether such support is proportional to the task of general interest carried out and does not involve any ‘overcompensation’ which would distort cross-border competition within the internal market. In other words, the states are allowed to compensate companies only for tasks pertaining to service to the public (such as longer opening hours, coverage of territory or prices established on users’ income criteria) and which they would not carry out if they were to consider their commercial interest only. On the basis of the *Altmark*

²Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

jurisprudence from 2003,³ the EU Commission has developed a complex set of rules to decide whether state aids can be granted in the name of welfare services or not.⁴ For public financial support to SGI to be compatible with the EU competition policy, aids must be (a) provided to companies which are formally entrusted by public authorities to a clearly defined mission of public service, (b) that the amount of the financial compensation for these tasks must be calculated in advance on the basis of clear criteria, (c) that the compensation should not exceed the cost of the public service mission and (d) that these costs should be calculated according to the functioning of a well-run and efficient enterprise. When aids are deemed unlawful, they must be reimbursed. In 2012, the Belgian provider of postal services Bpost, for example, had to pay about €300 million of compensation back to the Belgian federal state due to overcompensation of the actual cost of public service obligation. In contrast, the Commission decided in March 2015 to allow a £640 million funding package from the British government to support the national network of Post Office Ltd. The Commission assessed that the subsidy would only support the provider in facing the costs involved with its mission of general interest through services such as the payment of social benefits, basic banking services or the maintenance of post offices and mail delivery in rural areas. The interpretation of rules in respect of state aids has thus produced conflicting, and sometimes surprising results. In 2007, the Commission decided to scrutinize the tax exemptions granted by the Italian state to the Vatican as a possible matter of state aid. This decision was then attacked by Italy's ministers for EU affairs (Wernicke 2009a, p. 127). Beyond anecdotal cases, the application of state aid rules has crucial implications for the financing of a whole range of welfare services. In 2005, two associations representing private hospitals in Brussels launched a procedure calling on the EU Commission to examine whether there was financial overcompensation on the part of the Belgian state for the public service obligation carried out by five public hospitals

³ Case C-280/00 Altmark Trans GmbH, 24 July 2003.

⁴ These rules are known as the 'Monti-Kroes package' (from the name of the former Commissioners for competition Mario Monti and Nelly Kroes) from 2005. For a comprehensive overview (including on the recent reform), see Szyzszak and van de Gronden (2013).

in the capital city.⁵ Recently, the EU Commission has revised the regime of state aid rules and addressed numerous criticisms. Local and regional public authorities who often struggled with the complexity—and sometimes even a degree of legal uncertainty—of the EU rules have complained about the intrusion of the EU in the provision of mainly local welfare services which bear no consequence for European cross-border trade. The revised package of EU rules (dubbed the Almunia package) adopted in 2011 and 2012 provides for clearer and more flexible rules, especially as far as small-scale local services are concerned, by setting a threshold under which public funding cannot be regarded as a state aid. However, a number of problems remain, especially as far as the formal act of entrustment by public authorities, the method for calculating the cost of compensation for public service obligations, the articulation with public procurement rules or the definition of social services are concerned (van de Gronden 2013) (see also Chap. 4, Sect. 3.1).

To the extent that an increasing number of services are delegated from public authorities to separate providers, public procurement is a third type of horizontal rules which affect welfare services provision. In 2014, the Council and the Parliament adopted new rules on public procurement for various social services and utilities, as well as new rules on the award of concession contracts.⁶ A main objective has been to ‘boost fair competition’ within the internal market by enlarging the possibilities for smaller companies or foreign providers to win public procurement bids by more transparent procedures (2014). Insofar as governments’ procurement expenditures stand for 18% of the GDP, the liberalization of public procurement is seen as a means to boost trade and competition in the internal market. In tune with the consumer-centred perspective,

⁵The case is still pending. Whereas the Commission has decided in 2012 that there was no need to investigate the lawfulness of aids to the Belgian public hospitals, the General Court has ruled that a formal procedure should be open as the state aids under examination could well be incompatible with competition policy.

⁶Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC; Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

increased competition shall 'ensure best value for money' to European taxpayers (*ibid.*). However, according to the Belgian socialist rapporteur Marc Tarabella, a majority of MEPs has sought to avoid that the 'most economically advantageous tender' means the lowest price at the expense of efficient regulation (*ibid.*). As a result, environmental and social aspects are taken into consideration in the new legal framework, including instances of subcontracting. Furthermore, public authorities remain free to choose whether welfare services shall be provided in-house or outsourced to private providers. However, the general philosophy of the new EU framework has raised fears regarding possible incentives for privatization in certain domains. While water distribution has been totally excluded from the scope of application of the new rules on procurement, obligatory social security services now do fall under its scope, which means that they could be outsourced and privatized where Member States decide to do so.

Although it does not specifically target welfare services, the building of the European common market has tremendously affected their provision by extending market principles and rules to virtually all service activities. In this framework, exemption from competition rules should remain an exception and therefore requires derogations. Change has mainly occurred through the sectoral liberalization of public utilities, horizontal services liberalization and rules on state aids and public procurement in the framework of competition policy. In these domains, the EU Commission enjoys strong competences and sometimes, as in competition policy, exclusive discretionary competence. Insofar, it has performed the role as an active policy entrepreneur, pursuing the achievement of a unified common market as well as a neoliberal agenda focused on the competitiveness of EU firms on global markets. However, this process has not happened without frictions. In fact, ever since the early days of the European Community in the 1950s, a tension has existed between market competition and the protection of public (or general) interest. This has been reflected not only in the development of primary law related to SGI in the successive European treaties but also in the way the ECJ has ruled on particular cases featuring such conflicts.

2.2 Primary and Case Law Between Competition and General Interest

Due to the European tradition of regional integration through law, political conflicts over the respective scope of market competition and state protection of the general interest have translated into legal controversies concerning the distinction between *economic* and *non-economic services*. This distinction is crucial because it determines the application of EU Treaty rules to services activities, in particular competition policy. Technical aspects have often obscured the fundamental issues at stake in the policy debates at the EU level. Legal scholars specialized on these issues agree that the intrinsically political—not to say ideological—nature of this debate has prevented any clear and satisfactory legal settlement of when, how and why EU competition should or should not apply to welfare services. The various labels designating different categories of services have developed in an erratic fashion across primary, secondary and case law since the origins of European integration. These developments have fed a very profuse body of legal literature, to which it is impossible to do justice here (Krajewski 2003; Prosser 2005b; Rodrigues 2006; van de Gronden 2009; Hatzopoulos 2012; Szyszczak and van de Gronden 2013). The main argument in this chapter is that legal provisions could not provide answers to conflicts of values, and most of the time they even failed to provide legal security. Rather, changing legal definitions have been instrumentally and/or ideologically shaped by political debates. Thus, they have changed as the sphere of the markets has extended at the expense of public law and the public sector, as depicted in Fig. 2.1.

The specific role of welfare services with regard to social cohesion was recognized in the Treaty of Rome which founded the European Economic Community in 1957. From the outset, the treaties have not really succeeded to strike an impossible balance between competition and general interest. Article 90 EC⁷ stipulated that ‘services of general economic interest’ (SGEI) should be subject to the competition rules enshrined in the Treaty only insofar as it does not impede them in the

⁷This article was then for a long time known as the Article 86 of the Economic Community Treaty (ECT) and it is now Article 106 of the Treaty on the Functioning of the European Union (TFEU).

accomplishment of their task. This calls for two observations. First, the reference to SGEI means that welfare services of a non-economic nature are left untouched by the Treaty provisions, while those of economic nature must be considered in the framework of the Treaty. Second, in the latter case, the articulation between the three different paragraphs in Article 90 gives a priority to competition which shall be the rule rather than exception where restriction to competition can be acceptable if it is necessary to protect missions of general interest. After remaining dead letter for about three decades, these provisions acquired a new significance when a vast liberalization programme was launched by the 1986 Single European Act. No later than in the early 1990s, conflicts between market competition and the protection of general interest arose where the ECJ had to decide what constitutes an economic activity subject to Treaty rules in a number of famous foundational cases.⁸ As mentioned above, a key issue in competition policy affecting welfare services is the lawful nature of financial public support, or compensation, to services providers which carry out tasks of general interest (also called universal service or public services mission). Jurisprudence is versatile by nature, hence difficult to assess. According to Prosser (Prosser 2005a), the Court took a pro-market approach by prompting integration through competition (in the pioneer sectors for liberalization such as telecommunications and air transport rules) in the 1970s and 1980s. This first phase has nevertheless been followed in the 1990s by a second period where it issued a series of judgements giving Member States a greater autonomy in supporting welfare services.⁹ The judgement *Altmark* mentioned above provided a broader framework defining the parameters for a legitimate government support to SGI. In February 2014, a judgement on the large scope of public support for social housing in the Netherlands settled the famous ongoing case (since 2002!) in a way which asserts the autonomy of the Dutch government to define the importance of the social housing sector which may not be reserved to the most vulnerable section of the

⁸ *Höfner* (C-41/90), *Corbeau* (C-320/91), *Amelo* (C-393/92), *Albany* (C-67/96), *Deutsche Post AG* (C-147/97).

⁹ See in particular the cases C-320/91 *Corbeau*, 19 May 1993; and C-393/92 *Almelo*, 27 April 1994.

population (defined by an income threshold).¹⁰ Throughout the intricacies of EU law, the decisions of the ECJ have been consistently ambivalent. On the one hand, the Court has adopted a very wide definition of the notions of ‘undertaking’ and ‘economic activity’ encompassing virtually all services offered on a market regardless of whether on the part of a public or private organization. This consequently opened up a very wide scope for the application of competition rules contained in the EU Treaty. On the other hand, however, the Luxembourg judges have used different arguments related to specific cases in order to preserve Member States’ capacity to regulate SGEI. Thus, they seemed to aim at middle ground, putting competition and general interest on an equal footing (Baquero Cruz 2005). In fact, it seems that the ECJ has avoided ruling in an irrevocable way by giving clear-cut contours to Treaty provisions on this matter; rather, it left enough leeway for the legislator to decide on the deeper political and ideological dilemmas involved (Baquero Cruz 2005; Wernicke 2009b; Hatzopoulos 2012), namely ‘the tensions (...) made more acute by the fundamental differences between the underlying values of competition law as the legal expression of open markets on the one hand, and rights and social solidarity, on the other’ (Prosser 2005a, p. 544). The consequence of this unsettled situation has been that various political actors were able to invoke different legal arguments present in case law in order to legitimize their normative positions.

In this regard, the debates leading to the adoption of the Treaty of Amsterdam in 1997 can be seen as a milestone. In its Communication from 1996 (1996), the European Commission had worked forward a clarification between economic and non-economic service activities by dealing for the first time with the category of SGI as being not necessarily economic (as opposed to SGEI). As a result of a debate led notably by France (Héritier 2001), the Treaty agreed by the Amsterdam intergovernmental conference included a new Article 16 recognizing ‘the place occupied by services of general interest in the shared values of the Union as well as their role in promoting social and territorial cohesion’ and calling

¹⁰ See C-132/12 P—*Stichting Woonpunt and Others v. Commission*, 27 February 2014. With this judgement, the ECJ cancelled a decision of the Commission from 2009 which aimed at imposing upon the Dutch government to establish an income threshold for selecting the beneficiaries of social housing.

the Community as well as Member States to ensure that their missions could be fulfilled. Contrasted interpretations have been given to the practical effect of this new provision beyond its political and declaratory value. As it stated again that the SGI tasks should be promoted ‘without prejudice’ to competition rules and ‘within the scope of application of the Treaty’, it did not clarify the question of priority of competition over general interest or vice versa.

The last constitutional episode of the SGI legal saga occurred with the adoption of the Lisbon Treaty, which entered into force in 2009 and includes three new provisions on welfare services. Again, these provisions constitute an ambivalent legal response to unsettled political battles. First, the Charter of Fundamental Rights annexed to the Treaty (and which has legal binding force) acknowledges access to SGI as a fundamental right. However, this provision is rather symbolic and it is dubious that it can have any impact on hard competition rules. Second, and most importantly, a new Article 14 TFEU gives the EU institutions a clear legal basis (in the second paragraph of the article) to issue legislation on SGEI if they wish to do so. At first glance, this seems to be a response to those who have long advocated the adoption of an EU framework directive re-regulating all SGI at the EU level in order to re-establish a balance to liberalization policies (a debate which is tackled in Chap. 5). However, it is argued that the article conceived centralized regulation only as an alternative to decentralized regulation resulting from the shared competence between the EU and the Member States, that is, the EU being responsible for the enforcement of competition rules while the Member States define the conditions for the operation of SGEI in the constraining framework provided by the Treaty (Hatzopoulos 2012). And in fact, the lengthy debates surrounding possible legislation on SGI have ended in deadlock, leaving the situation in a status quo (see Chap. 4, Sec. 2). Light may be shed on this by examining the third new provision introduced in the Lisbon Treaty, namely the Protocol No. 26 on SGI. Article 1 of the Protocol puts a strong emphasis on subsidiarity (i.e. Member States’ competences) by mentioning ‘the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users’ as well as ‘the diversity between various services of general economic interest and

the differences in the needs and preferences of users that may result from different geographical, social or cultural situations'. In addition, Article 2 offers the first explicit recognition of non-economic SGI in EU primary law without, however, defining further the content of this category.

So what should we conclude from all this? Controversies about legal categories have reflected the very much conflicting nature of SGI regulation.

Meanwhile, two new terms had been crafted to deal with different categories of welfare services. First, the above-mentioned Services Directive mentioned non-economic services of general interest (NESGI), a fairly redundant notion in the sense that core government services have always been excluded from EU Treaty rules. Second, the social services of general interest (SSGI) were acknowledged by the EU Commission in communication from 2007. These two categories have no constitutional treaty-based recognition and the boundaries among the various SGI concepts remain blurred. Typically, social services are not considered a priori as non-economic. The Commission has recently confirmed this point of view by explaining that:

whether a service which a Member State considers to be of general interest is of an economic or a non-economic nature has to be determined in the light of the case law of the ECJ ... In any case, it will not be possible for Member States to consider all services in a specific field, for example all education services, as non-economic services of general interest. (European Commission 2007a, p. 11)

These legal and policy developments therefore lead to a situation where the scopes of application of EU competition and market rules have continuously been extended leaving only a small number of core government services in the realm of non-economic services, while network industries are virtually fully liberalized and today their belonging to the sphere of the market is no longer contested. In between, a vast number of welfare services remain a grey area and hence potentially 'liberalizable' (see Fig. 2.2). A good example is provided with services related to mandatory social security schemes, which had been long considered as a non-economic service and a core governmental task. In the recently revised

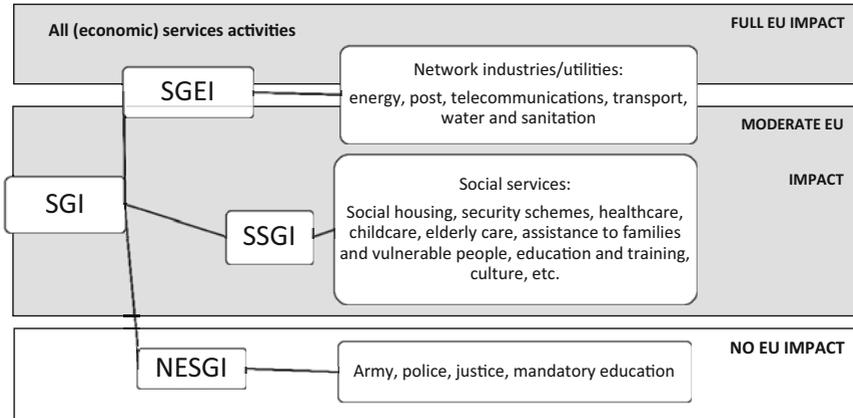


Fig. 2.2 Types of service activities in EU law

directive on public procurement, it was nevertheless included in the list of services which could be outsourced, which would bring about a displacement in the realm of market activities subject to EU competition rules. As Hatzopoulos has interestingly pointed out, this implies a shift from the historic national logic of welfare *system* to a logic dealing with individual services where even the notion of sector becomes irrelevant (2012, pp. 95–96). The ongoing marketization of various services has thus almost mechanically widened the scope of EU law and competences. The pro-regulation camp (left-wing and social democratic parties, governments from countries with a strong tradition of regulated capitalism, trade unions and interest groups representing the sectors affected) has increasingly lost political weight and an increasing number of Member States have adopted a defensive position by trying to limit more clearly the competences of the EU institutions.

In a nutshell, this section has echoed F. Scharpf's argument that the legal and institutional features of the EU have served to promote negative integration. The purpose of this book is not to assess whether the rationale behind marketization is economically well grounded or to demonstrate why marketization is 'wrong'. Rather, it is assumed that decisions affecting the allocation of resources within society (in the form of public goods) are bound to affect various social groups in a way that reflects a

certain balance of powers between them. The dominant discourse about marketization is well known: its proponents depict it as a process of modernization which enhances efficiency hence benefits to consumers in the form of lower prices for better services. The following section looks into evidence which contradicts this narrative. The purpose is to provide elements for understanding the reasons for political disagreements and the motives invoked by the advocates of a more regulated capitalism to resist the ongoing trend towards marketization. The often complex and mixed evidence on the effects of marketization only confirms that the debate on welfare services certainly has a strong political—if not ideological—dimension, hence the primacy given to politics in this book.

3 Neoliberalism, EU Integration and Welfare Services

3.1 The Contentious Outcomes of Marketization

As pointed out in the introduction, the purpose of this book is not to assess the ‘impact’ of EU policies on the provision of welfare services. National governments certainly have a large leeway to mediate the effects of Europeanization and, insofar, the outcomes of reforms will depend on local, regional and national decisions and on the way in which various public authorities have implemented EU policies and regulations. For that reason, the final picture is necessarily mixed and differentiated across Europe due to various historical backgrounds and policy legacies, on the one hand, and different reform course and political trajectories, on the other hand.

Following Bauby (2011), one can distinguish four ‘worlds’ of welfare services in today’s Europe. In unitary and centralized States like France and the UK, large national public monopolies were established after World War II and defined centrally, even though provided on a regional or local basis. France in particular represents an own archetype of *service public*, a specific legal concept which has long implied the application of a specific type of law and has been a core element of the French social model. Besides large national companies for telecommunications,

transport and so on, the French model also frequently involved delegation and concessions to private companies in other sectors such as water distribution. A number of European countries (such as Spain, Portugal or Belgium) come close to this model. In continental federal states, such as Germany and Austria, the provision of welfare services is traditionally largely decentralized. The *Länder* retain important competences for the regulation of *öffentliche Daseinsvorsorge* (public essential services) and local authorities have important implementation powers. The markets are extremely fragmented with thousands of providers ranging from small local to larger regional undertakings. In Scandinavian countries, a strong local autonomy goes hand in hand with a demanding conception of welfare services funded by high levels of taxes and rooted in local communities. Lastly, in Central and Eastern European countries, the model of ubiquitous and free-of-charge welfare services during the Communist era was rejected after the transition to capitalism and the different countries have followed various paths with regard to the reintroduction of a notion of ‘public services’ in their legal system and to the degree of centralization of competences in this area.

Most importantly, different countries have also followed different trajectories due to political cycles over the past two decades. The UK, for example, is the only country where there has been a strong shift from entirely public structures to entirely private structures. France, on the other hand, has tended to politically resist liberalization and delay market opening in order to protect its large national companies and indeed to promote their strategic and commercial interests in a now transnational market. The policy changes affecting labour markets have also had a strong impact on employment levels and work conditions. Between the mid-1990s and the mid-2000s, the British government conducted a re-regulation in some respects, whereas in Germany working conditions and wages in the services sector have rapidly deteriorated as a result of the Hartz reforms conducted under Gerhard Schröder (1998–2005). In Denmark and Sweden, higher levels of competition and privatization can now be observed in many sectors as these processes were introduced at a fairly early stage compared to other EU countries. However, as pointed out by Thörnqvist (2008), since these services used to function fairly well prior to liberalization, it is difficult to assess the added value

of the transformation. In this respect, it is important to stress that in Scandinavia the negative effects of liberalization policies observed elsewhere have been attenuated by continuing high levels of regulation and funding. All of this therefore points to the key role of efficient regulation at all levels of government in order to manage the impact of economic change on workers and users of welfare services.

In spite of ample national and sectoral variation, a modest body of research and studies attempted to detect common trends in assessing the effects of EU policies on welfare services in a more holistic way. From 1997 and 2007, the EU Commission conducted an evaluation of the performance of network industries providing SGI.¹¹ Independent research has showed that, in the face of complex or inconclusive results, the assessment by the Commission was often over-optimistic or methodologically biased (Clifton and Diaz-Fuentes 2010). The negative corollary effects of liberalization policies have been pointed out in a modest number of studies conducted by scholars either for the EU Commission itself (CIRIEC 2004; Griffith and Harrison 2004) or promoted by trade unions (Keune et al. 2008b) and, more recently, in the framework of pan-European research projects (Frangakis et al. 2008; Flecker and Hermann 2012).¹² In spite of significant sectoral and national variation, a number of common trends can be observed with regard to competition, productivity, employment, wages and working conditions, and service quality and consumer satisfaction. A first, main observation is that liberalization policies did not necessarily lead to the establishment of significantly more competitive market structures, that is, where services are offered by a large number of different providers. In sectors and countries where there was a monopoly, the market may have been opened to competitors but only to a limited extent, as in the postal sector or railway transport or in the electricity supply in Poland and the UK. In countries where the markets were traditionally very fragmented, mainly federal countries, or in sectors like local public transport, there has been, in contrast, a trend

¹¹ For the latest evaluation report, see European Commission, Horizontal evaluation of the performance of network industries providing services of general economic interest, SEC(2007) 1024, 12.07.2007.

¹² See also the website of the project 'Privatization of Public Services and the Impact on Quality, Employment and Productivity', www.pique.at, date accessed 15 November 2014.

to market concentration. All in all, there is a convergent trend towards a limited number of providers, namely large—multinational—firms which are taking over local and smaller providers, may they be emerging private companies or the former national monopolist. While in the neoliberal thought competition among providers is the main mechanism through which consumers' demands for more choice and lower prices can be met, convergence towards (private) oligopolies is not very likely to reach that objective. Prices tend to drop in the initial years following market opening, but they can also be outstripped in a second phase. Moreover, price decreases tend to benefit large consumers in industry rather than households.

Gains in efficiency and productivity are another main argument put forward by the proponents of welfare services marketization. However, a common result of all studies is that productivity gains are to a large extent due to cuts in jobs and wages subsequent to marketization. These effects cannot be disentangled from real efficiency gains due, for example, to better production processes or technology. Adjustment to competition almost systematically brings about redundancies by the former national monopolist. Sometimes, as in the postal or electricity sector in Germany and Sweden, firms have considerably reduced employment at home but expanded abroad. Furthermore, this is linked to a sensitive deterioration of employment and pay conditions. In particular, new private competitors offer much less attractive work contracts than public companies. The pay gap between public and private companies can range from 16 % to 50 % as in the postal sector in Germany (Keune et al. 2008a, pp. 27–30). New organization and management methods have considerably increased pressure on workers. In France, a wave of suicides among the employees of the former public telecommunications operator France Telecom in 2010 raised awareness among the public and the political class about the extreme pressure for increased productivity put on the labour force under post-privatization managerial conditions.

As far as benefits for consumers are concerned, results are also mitigated with much variation across countries and sectors. In some sectors, like transport or postal services, some quality aspects related to time are more important while in other sectors, like energy or hospitals, costs have become a concern for users. Beyond such variation, however, a survey

conducted across six European countries¹³ points out two very interesting conclusions (Van Gyes et al. 2009). First, a small majority of users seem to be globally satisfied with SGI provision. While comparing countries where specific sectors are most or least liberalized, the survey nevertheless shows that similar or inversely contrasted levels of satisfaction can be expressed. In other words, users can be equally satisfied or dissatisfied with services provided by the public or the private sector in highly competitive or uncompetitive settings. Second, the level of satisfaction and users' general assessment displays a strong class dimension. Users with lower income and lower education level tend to be less satisfied with the liberalized provision of SGI than citizens with a higher social status. While the latter tend to be more demanding towards the service quality, the former are dissatisfied with high prices. Correspondingly, liberalization as a policy programme enjoys stronger support among better-off households. This means that the paradigm based on consumer choice is sociologically biased at the expense of modest households who find it hard to gather the relevant information to make the best choice. All in all, a report elaborated by the European Commission which reviews the findings of three pan-European research projects (funded by the Commission itself through the sixth framework programme of the EU) on the liberalization and privatization of SGI concludes that:

finds that most of the positive effects expected did not materialize at all or were very minor (...) these processes have had adverse effects on the European Social Models they resulted in lower social cohesion in access to good-quality public services. (Loefer et al. 2012, p. 3)

Interestingly, the recent theory driven study by Gingrich (2011) brings politics back in. The argument is that the nature and outcome of marketization is shaped by inherited market structure, on the one hand, and political parties' strategies aiming at pleasing their constituencies, on the other hand. She explains how, fundamentally, 'markets vary in how they place costs on users and in how they distribute power among (a) the state, (b) users of services, and (c) new producers of services' (ibid., p. 3).

¹³ Austria, Belgium, Germany, Poland, Sweden and the UK.

Looking at health, education and elderly care in England, Sweden and the Netherlands, her book shows that while right-wing parties tend to favour producers and certain categories of users, left-wing parties have promoted reform preserving state control and the interests of different categories of users. This implies different types of reforms according to inherited market structures in various sectors. Interestingly, she notes that:

while, theoretically, economic analysis could offer a rationale for a particular amount of cost-sharing between public and private, in practice externalities are difficult to measure and the countervailing problem of moral hazard means that there is no single perfect balance between public and private financing. (ibid., p. 9)

Ultimately, right-wing and left-wing parties have both pursued the marketization of public services to ‘reshape the state to achieve their long run ideological purposes and their electoral aims’ (ibid., p. 7).

While sidelining the normative debate about whether marketization is good or bad, Gingrich therefore points to the essentially political nature of such reforms. This provides a rationale for the focus on contentious politics as policy making results from expected outcomes in terms of empowering various segments within the economy and society. At the same time, comparative research at a larger scale points to the role of EU integration as a common driver for marketization policies. Looking at privatization in all EU countries since the 1980s, they find that the form, pace and sectoral trend can all be connected to EU integration. Thus, they find that the influence of the EU is more explanatory than ideological matters (and, e.g. to model role of the UK as a pioneer) or idiosyncratic national patterns. They conclude that:

privatization was not an EU policy but, paradoxically, an unintended consequence of EU integration, since, though privatization is distinct from liberalization and deregulation, in practice many EU governments used privatization as a tool to accelerate liberalization in the face of European legislation. (Clifton et al. 2006, p. 752)

By shifting the focus from the national to the supranational level of governance, this book aims to shed light on the role played by EU integration

in the broad process of welfare services marketization which has occurred throughout Europe. Like other issues—such as, for example, labour market reforms—welfare services marketization calls the hotly debated question: Is the process of EU integration mainly a process of neoliberalization?

3.2 Is the EU Bound to Be Neoliberal?

The EU has been famously qualified by thinkers of the global justice movement as the Trojan Horse of global neoliberalism on the European continent. This question is not only a matter of radical politics. In academia as well, scholars of political economy and European studies have formulated different answers as to whether EU governance has a neoliberal added value or whether the policies adopted at European level merely reflect the trends which can be observed at the regional, national and global levels. While political economists and institutionalist scholars have provided different assessments, the sociological approach adopted in this book aims to bring politics back in.

Within the literature about the transformation of European capitalism, five strings can roughly be distinguished which have brought various insights into the causes, nature and degree of neoliberalization in the EU. Neo-Gramscian scholars, among whom many originate from the ‘Amsterdam school’ (Overbeek 2004), contend that European integration is historically and by nature a hegemonic project centred on marketization. This can be explained by the restructuration of capital at the global level and the shift in class power relations (Holman et al. 2004; Bieler 2015). They argue that the success of the hegemonic neoliberal European project is not due to a process where the neoliberal paradigm has been unilaterally and unambiguously imposed upon national societies. On the contrary, it has built on the capacity of neoliberal forces to absorb and neutralize competing paradigms, that is, mainly the project of a supranational social market economy promoted by social democracy (van Apeldoorn 2002; Bieler 2005; van Apeldoorn et al. 2009; Horn 2012).

Scholars in international political economy have been interested in the rise of neoliberalism in Europe as the ideational dimension of EU

integration. They have considered the EU as a regional entity embedded in a global environment dominated by the rise of neoliberal ideas and discourses (Crouch 2011; Blyth 2013). They have shown how the economic imperative linked to globalization and Europeanization has been constructed in political discourses and instrumentally used by national decision makers in order to legitimize the adoption of neoliberal reforms (Hay and Rosamond 2002). Upstream of the political process, experts and epistemic communities have also worked for the justification and the diffusion of reforms responding to the levels of competitiveness called for in global competition (Radaelli 1998). At the same time, several authors have stressed that regional integration in Europe exerted a much higher pressure on welfare States than globalization due to the liberal orthodoxy enforced in the framework of the European Monetary Union and the use of constraining legal instruments by the European (de)regulatory State (Hay et al. 1999; Hay and Wincott 2012). This perspective has been supported by historical studies of the ideological roots of European integration (Denord 2008; Denord and Schwartz 2009).

The institutional dimension of EU integration lies at the core of the research conducted by the ‘German school’, which focuses mainly on institutionalist arguments. As discussed in detail in the introductory chapter, Scharpf demonstrates that, due to political disagreements and institutional discrepancies among the Member States, on the one hand, and to the weight of non-majoritarian institutions (Commission, European Central Bank [ECB], ECJ and regulatory agencies) which do not depend on the electoral process, on the other, the EU should be seen as inclined by nature towards market liberalization and deregulation (Scharpf 1999). This structural trend was accentuated by the role of the ECJ, which has often favoured the logic of free movement and competition over national social regulation, especially with regard to labour market integration and the free movement of workers (Höpner and Schäfer 2010). Several authors have therefore claimed it was this structural asymmetry that precluded the EU from realizing a (supranational) social market economy (Scharpf 2010). Hence the necessity of preventing the EU from encroaching on the national regulatory capacity through a stricter delimitation between national and European institutions, the Commission and the ECJ in particular (Joerges 2009a).

In contrast, other scholars who have been interested in both ideational and institutional aspects have put the neoliberal nature of the EU into perspective. They have often stressed the persistence of different varieties of capitalism in Europe (Hall and Soskice 2001; Schmidt 2002; Hall and Thelen 2009). Beside Anglo-Saxon liberal capitalism, corporatist and Statist economic traditions have adapted yet survived. Insofar, Europeanization did not result in uniformization (Schmidt 2002). It has also been argued that, in a Polanyian perspective, the EU contributes not only to an offensive movement of the markets towards society but also to a countermovement aimed at re-embedding the functioning of markets in social regulation, for example, through non-discrimination policies (Caporaso and Tarrow 2009). Furthermore, the deepening of EU integration, for example, with the creation of a common currency, displays a process of centralization which can be likened to the construction of a political centre rather than to the triumph of anti-State neoliberalism (Jabko 2006, 2010).

Finally, over the past decade a critical sociological approach to EU integration has developed. It has focused on agents and the study of Europe 'from below'. This approach has been particularly prominent in the French-speaking academic realm. The emphasis has been placed on the diffusion of the market paradigm, or *référentiel*, through practices shaping public policy in various sectors such as agriculture (Jobert 1994; Fouilleux 2003), research (Bruno 2008), monetary policy (Fontan 2013), social policy (Gayon 2013) or labour market reforms (Caune 2014). The sociological approach consists of explaining policy outcomes through everyday agency within the EU institutions, the use of expertise, framing and reframing by EU and national actors, or the diffusion of ideas across networks, including international organizations like the Organization for European Cooperation and Development (OECD). More recently, this approach has been used to examine to what extent neoliberal policy recipes were discussed and negotiated among agents at the national and EU levels involved in the making of EU policies (Crespy and Ravinet 2014). Going back to an institutionalist argument, it is argued that the complexity of the various procedures and institutional settings for EU policy-making constrains the power of neoliberal ideas, as many actors

with contrasted views and interests become involved throughout the various stages of the policy cycle from agenda setting to implementation.

These developments have generated research investigating how and why a new European synthesis between ordoliberalism and financial neoliberalism appears more strengthened than questioned in the current European 'great recession' (Crouch 2011; Schmidt and Thatcher 2013a; Braun 2015). This has made the project of a more 'social Europe' more elusive than ever (Crespy and Menz 2015b). Compared to previous debates, there seems to be a convergence to acknowledge that, while austerity is an old policy concept (Blyth 2013), the European response to the crisis in the Eurozone and beyond makes its enforcement upon European societies more stringent and more centralized at the same time.

The deep transformations in the provision of welfare services are certainly one area where the combined effects of neoliberalism and European integration on European societies are most tangible. The following chapters aim to explain how we got there by going back to the key political debates which sealed the fate of policy making in the realm of welfare services at the level of the EU. As it has been explained in greater detail in the introductory chapter, institutional factors à la Scharpf certainly play a role in the continuous supremacy of negative integration over positive integration. However, such factors do not have a deterministic effect on political outcomes. The sociological approach here focuses on contentious politics and looks into how ideational factors as well as the interactive unfolding of contentious politics resulted in the relative containment of resistance against welfare services marketization. By taking multi-level politics seriously, this book seeks to avoid a simplistic account of a top-down impact of the EU decisions. National politics, governments' decisions but also global policy agendas and debates are all intertwined in today's European politics.

4 Conclusion

This chapter has not sought to establish an account of Europeanization as the enforcement of neoliberalism from the top upon national societies. Rather, it has located the contribution of the EU to the marketization of welfare services in the broader landscape. On the one hand, we

have witnessed a global neoliberal restructuring of capitalist economies which has shaped a broad ideational context where competitive markets are seen as most effective means for the allocation of resources including the provision of services which entail a strong public interest dimension. On the other hand, outcomes of policy implementation are strongly mediated by national institutional and policy legacies in the various 'worlds' of welfare services across Europe. Distinctive political trajectories make a difference, too. Notwithstanding national and global factors shaping marketization, this chapter has shed light on the distinctive ways in which regional integration in Europe has contributed to accentuate marketization. This can be mainly explained by the fact that, for historical reasons, European integration has mainly taken the form of negative integration focused on the building of a common European market through the opening of national markets (liberalization), the abolition of incompatible national regulation with competition law (deregulation) and the competition between former national monopolist companies with new private providers (privatization). This powerful marketization dynamic has been underpinned by integration through law with the use of liberalization directives, the enforcement of competition law (notably the curtailing of state aids) and judgements of the ECJ in case of conflict between national regulation and EU law. The Europeanization of SGI provision also accounts for a dynamic of positive integration, since EU legislation and case law account at ensuring the provision of 'public services obligations'. However, this form of re-regulation has proved rather weak, vague and there has been little evaluation or control of actual implementation. The chapter has therefore substantiated, by focusing on welfare services, Fritz Scharpf's argument that negative integration has prevailed in the EU mainly through an overlap between integration through the market and integration through law. However, the broader debate on European integration and neoliberalism shows that such policy developments do not follow a deterministic logic. Rather, they are the result of politically contentious debates and decisions. The way in which the concept of SGI has been shaped and reshaped in the successive EU treaties, for example, is an illustration of this. Thus, the following chapters of this book will investigate further the politics of SGI and show how resistance against marketization has been vocal yet relatively contained since the end of the 1990s.

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3

Resistance to Liberalization

Due to the failure of political integration as early as the 1950s—notably with the rejection of the European Defence Community by France in 1954—the European Community has been mainly geared towards economic integration. This was reflected in the nature of the Treaty of Rome adopted in 1957 with the establishment of the ‘four freedoms’ (circulation of goods, services, capital and people) as the cornerstone for building a common market. Insofar, the genealogy of European integration is intrinsically liberal (Gillingham 2003; Denord and Schwartz 2009). As explained in the previous chapter, liberalization policies have been at the heart of the re-launch of EU integration since the adoption of the Single European Act in 1986. The opening of national markets to foreign competitors and the end of national monopolies has been particularly evident in sectors which have a general interest dimension (energy, transport, post, etc.) and had been protected from competition under the regime of mixed economies in the post-war era. Originally, liberalization only affected the industrial segments of markets and infrastructures. Progressively, however, the scope of liberalization has been extended

to services to the wider public. This has gone hand in hand with the acceleration in the 1990s of treaty revisions extending the scope of EU competences, on the one hand, and the rise of the politicization of EU matters, on the other. According to N. Jabko, the process of market integration re-launched in the late 1980s can be seen as a ‘quiet revolution’, while ‘market reform reached deep into economic and social structures’ (2006, p. 6). As Jabko deals with the consensus on market making among national governments, resistance within societies is overlooked. This leads him to overemphasize the consensual nature of EU politics and neglect the genuinely conflict-laden nature of integration through the market.

The marketization of welfare services has rarely been at the centre of the political debate. Rather, it has been a slow and ongoing process related to broader policy agendas such as the modernization of the welfare state at the national level, the creation of the Single Market and fiscal discipline required by the Monetary Union at the EU level, or the liberalization of trade in services at the global level. These policy agendas have been accompanied by narratives serving to justify the disengagement of states from the provision of welfare services. As the effects of liberalization policies have become even more visible at the local and national levels, contestation has flourished. In fact, the marketization of welfare services has been regularly, albeit only occasionally, contested at all levels of governance over the past two decades. Insofar, it has been something of a quiet revolution.

The first section in this chapter gives an overview of various forms of contestation vis-à-vis the marketization of welfare services in the form of industrial action, sectoral mobilization coordinated at the European level and, more recently, broader ad hoc coalitions gathering unions and various citizen groups or NGOs. The chapter then turns to the most contentious debate ever related to EU legislation, namely the heated conflict surrounding the Services Directive between 2004 and 2006. It is shown how salient politicization could result in softening the deregulatory and liberalizing nature of the proposal. Finally, the third section surveys policy developments in the realm of public policies to show that the marketization agenda has been sustained.

1 Something of a Quiet Revolution

1.1 Industrial Action

Contestation has most of the time occurred at the local, regional and national level where unions are traditionally strong in the public sector and have been the typical opponents of EU liberalization policies. Such mobilization has sometimes been seen as the defence of vested corporatist interests (working conditions sometimes perceived as privileges) at the expense of users and consumers (Hermann et al. 2012). Most of the time, contention emerged when liberalization had already been decided at the EU level long beforehand, and then later translated into restructuring plans and/or privatization on the ground. While industrial action and contestation related to pay or restructuration, for instance, are constant phenomena, contestation does not systematically or explicitly target EU policies as their cause.

In the transport sector, adaptation to the liberalization and deregulation of air transport brought about intense—yet fragmented—industrial action among workers of historically national airlines. In many countries, unions resisted the degradation of working conditions (France, Italy, Ireland, Portugal), while in others (Germany), unions and management worked together towards a competitive adaptation in the context of the new European Single Market (Warhurst 1995). Eventually, scholars found that ‘although there is evidence of “functional convergence” (...) under the pressure of regime competition, most notably in terms of policies designed to maximize labour use, minimize labour costs and enhance service quality (...), the response of labour and the strategic use of institutional and organizational capacities at specific moments during the process of economic restructuring have influenced both the process and outcomes of liberalization and (re)regulation’ (Martinez Lucio et al. 2001, pp. 51–52), as illustrated by unions’ mobilization in the restructuring of British Airways and the Spanish Iberia.

The same holds in the telecommunications sector. In Germany, due to strong internal coordination and relatively high levels of membership Ver.di could to a certain extent shape the process of outsourcing the

activities of Deutsche Telekom to T-Mobile (Doellgast 2008). However, a comparative study shows that, while decentralized bargaining combined with labour fragmentation led to an erosion of German unions' influence, 'French unions were more successful in establishing encompassing bargaining structures and reducing pressures for pay differentiation, due to state support for the mandatory extension of agreements and unions' strategic focus on centralizing bargaining' (Doellgast et al. 2009, p. 373). Orange, successor to the monopolist France Telecom, was privatized in 2004 and now has market shares in several European markets. In other countries, the marketization of telecommunications triggered larger public contestation. The privatization of Portugal Telecom in 1997 and the related restructuring (including redundancies, outsourcing, increased pressure for heightened productivity, etc.) led to collective action, targeting the government through demonstrations and marches to Lisbon's stock exchange, the symbol of the new owner of the company (Eurofound 1997a).

Following the first energy package of 1996–1998 and the second package in 2003, the energy sector (gas and electricity) underwent a similar process of restructuring throughout the continent. While unions were involved in discussing the contours of this process, it often gave rise to contestation. In Sweden, the plan announced by the energy group Vattenfall to dismiss 1000 of its 8000 employees by 2000 caused major opposition among the unions, although the main sectoral union SEKO had actually negotiated the conditions of the plan with the company (Eurofound 1998). Meanwhile, Vattenfall has become a main European player with significant market shares in Germany, Poland, the Netherlands and the UK. In Central and Eastern Europe, the privatization of the formerly publicly owned assets under Communism has similarly led to the privatization of public utilities through sales to foreign—mainly West European—companies. In Poland, for example, the liberalization and privatization agendas have been continuously contentious (Eurofound 2006, 2007). In successive governments, the Ministry of Finance proceeded with the restructuring of the sector in order to increase its value before selling shares of the new companies to foreign investors. Meanwhile, reactions from trade unions ranged from negotiation to protest. In the mid-2000s, the pro-market government's plans for

privatization were contested and temporarily stalled. At the same time, the European Commission was taking legal action against Poland due to the country's failure to implement EU law related to the liberalization of energy markets (*idem*). In February 2011, the union SNZZ Solidarity organized a protest action during the official visit of the French President Sarkozy in Poland to protest against the takeover of 51 % of the company Enea by the French provider Electricité de France (EdF). In 2004, a series of protest actions culminating in a national day of action in Sofia were led by the Bulgarian unions to protest against the government's policy for restructuring the energy sector in the run-up to the country's accession to the EU (Eurofound 2004).

In the postal sector, while the adoption of EU liberalization directives (1997 and 2003) has not been very visible politically, the delayed effects brought about by government or corporate plans in response to a changing environment triggered strong mobilization among workers. In Germany, where the government had undertaken early steps towards liberalization in the early 1990s, the transposition of the First EU Postal Directive in 1998 sparked contestation—with 50 cities being disrupted by short strike actions and about 23,000 postal workers marching in the streets of Bonn (Eurofound 1997b). Yet, the following progressive privatization—starting in 2000 and reaching majority private ownership in 2005—did not trigger major conflicts. In France, the number of strike days has steadily increased since 1997 with the level of conflict reaching a peak in 2010.¹ In 2009 and 2010, the level of social conflict skyrocketed as a response to the decision of the French government to change the legal status of La Poste from a public enterprise to an undertaking under private law. This decision was made in response to the adoption of the Third Postal Directive in 2009 and aimed at adapting the French provider to the conditions of the foreseen full liberalization. Although 100 % of the company's capital was to remain in state ownership, the change in legal status was seen as paving the way for future privatization. In Belgium, Bpost staged a major strike in February 2011 in response to a new strategic plan aiming at a deep reorganization of the firm in order to

¹ Cf La Poste, *La Poste : rapport social annuel*, cf. www.fr.wikipedia.org, date accessed 24 June 06 2015.

cope with a now very competitive environment against the background of sinking levels of mail activity. The level of conflict should nevertheless not be overemphasized. In his survey of the marketization of postal sectors in several European countries, Brandt (2007) finds that the process has been conflictual only in Belgium, and rather consensual in Austria, Germany, Poland, Sweden and the UK.

There would be hundreds of examples of how unions at the regional or national level have reacted to the indirect and often delayed consequences of ongoing marketization policies connected with the integration of the European Single Market throughout the 1990s and the 2000s. Occasional protest and industrial action aiming at preserving levels of employment and favourable pay and working conditions alternated with resignation. In some countries or sectors, consensual politics paved the way for strategic partnerships with management to shape companies' competitiveness in the European market. In any event, unions have had to acknowledge that, in the medium and long run, liberalization and privatization were inevitable; not only because it allowed states to raise revenue but also because market integration constituted a new inescapable environment in the context of European integration. This occasionally paved the way for mobilization beyond national borders in order to address policy issues arising at the EU level of governance.

1.2 Transnational Coordination

The transnational coordination of contestation emerged in the 1990s mainly—albeit not exclusively—at the sectoral level. The liberalization of rail passenger and freight transport offers a good example of the dynamics of contention as well as the significant obstacles it meets at both the ideological and organizational level. According to Hilal, three distinct stages of mobilization in the railway sector can be identified (Hilal 2009). When the first railway package was adopted in 1991, a gap among trade unions appeared which—roughly speaking—overlapped North–South differences in terms of conception of the State, public services and industrial relations. Whereas German and Nordic trade unions engaged with the reform processes in order to negotiate the best conditions for workers,

unions in France and southern Europe attempted to resist marketization through adversarial strategies and conflict. In countries where national governments had already undertaken liberalization and privatization, such as the UK or the Netherlands, the new EU legislation was not perceived as a threat. During a second phase from 1996 to 2004, transnational coordination started to be seen as a response to the negative impact of liberalization policies which had become more visible in many EU countries. Unions in Scandinavia and Germany realized that the hardly negotiated compromises with their respective governments were called into question as new steps towards liberalization and deregulation were decided at the EU level. The European Transport Federation (ETF) was pivotal in developing transnational mobilization networks but also direct links with representatives within the EU institutions. As Hilal reports, unions

experimented numerous forms of action: two marches in Brussels in 1996 and 1998, one euro-strike in 1998, a “train of cooperation and solidarity” from Brussels to Turin in 2001 and then transnational demonstrations in railway stations from this date, coupled with a gathering in Lille in 2004, where the coming European Railway Agency was to be established, and a gathering in front of the European Parliament in Strasburg in 2005. (2009, p. 64)

Since the mid-2000s, however, the railway sector has witnessed a third stage where the unions have reverted to national strategies in order to manage the consequences of marketization. This perhaps resulted from the observation that the effects of contestation on policy making at the EU level seemed very limited. Unlike the transport sector, other liberalized public utilities sectors do not have a dedicated European federation which coordinates transnational action. The EPSU is the Brussels platform for all welfare services. It engages more with advocacy campaigns than protest and adversarial industrial action. Its priorities include the monitoring of European works councils in welfare services companies, anti-tax fraud, the impact of international trade agreements or the right to water.

Alongside unions’ activities, broader left-wing networks focused on welfare services have also emerged over the past decade. In the aftermath

of the protest against the EU Services Directive (examined in detail in the following section of this chapter), a European network for public services was set up at the 2006 European Social Forum (ESF) in Athens. The network was composed of about 30 NGOs, unions and political groups from Austria, Belgium, Finland, France, Italy, Greece, Sweden, Switzerland, the Netherlands and the UK (Strickner 2008, p. 363). The network's common statement 'Another Europe with public services for all' claims that the participating organizations assert their

commitment against the principle of neo-liberalism and therefore to open a new step of struggle with the aim of deciding at both European and national level the cultural, social, political and institutional conditions for the definition and the regulation of services designated to guarantee universal access to fundamental rights, entrusted by public authority and administration, and free from any consideration of liberalization, privatisation and harnessing by private funds.²

Participating organizations also committed themselves to creating a national coordination for public services in their respective country. In France, a network of committees for the defence and the development of welfare services emerged between 2005 and 2007 that counts about 22 regional groups. A national platform for the defence of public services still exists, but it is unclear whether it is connected to the European network. It is difficult to find evidence that the European network for public services has emulated at the local level elsewhere in Europe. The network had sustained activity in its early days with a meeting in Brussels in 2007 and at the Malmo ESF in 2008, where mobilization and the search for alternatives were redirected more specifically towards the defence of public water distribution (Strickner 2008, p. 369). There is no evidence of further activity of the European network for public services as such after one last meeting in 2010 in Berlin.

In conclusion, the climax of transnational contestation of EU policies and their effects seems to have now passed. As pointed out by Hermann et al. (Hermann et al. 2012, pp. 154–156), the declining representativeness

² European Social Forum, 'Another Europe with public services for all', available at www.fse-esf.org, date accessed 11 May 2015.

and legitimacy of industrial action in the narrow sense has often been politically exploited by the proponents of marketization. In the realm of welfare services, the decrease of union membership has accelerated as a result of privatization and outsourcing. The fragmentation of the workforce has therefore left traditional contentious actors weaker from both an organizational and a political point of view. Besides transnational coordination on a European scale, an additional strategic response from the unions has been to engage at the local and national level and open to partners within civil society (NGOs, associations) that had been key in transnational coordination (see Chap. 3, Sect. 2).

1.3 Ad hoc Coalitions and Local Causes

As liberalization directives have been revised every three to five years in order to prompt market opening, competition and concentration have intensified, thus increasingly impacting not only workers but also the nature of the services provided to the public. While large international coordination seems to know an ebb tide, a trend towards intense local mobilization at an earlier stage with the objective of preventing liberalization has been an ongoing phenomenon over the past decade. Among the ‘usual suspects’ such as the unions or left-wing movements, such broader coalitions have also involved local communities and ad hoc citizens’ groups.

Healthcare has been a sector where the contestation vis-à-vis privatization has intensified over the past few years. Healthcare has not been impacted by EU liberalization policies in the same way as utilities and transport sectors. The Directive on patients’ rights in cross-border healthcare from 2011 aims at opening the boundaries of national healthcare systems by offering guarantees to patients who seek health services in other EU countries to be reimbursed at home (Sect. 3 in this chapter). Most crucially, however, the exponential rise in the demand for affordable healthcare within European societies combined with the erosion of state revenue has made the funding of healthcare a major issue for all governments. EU integration has contributed to tightening this financial straightjacket through various routes—including the convergence

towards The European and Monetary Union (EMU), and more recently, the response to the 2008 financial and debt crisis (this is analysed in greater detail in Chap. 6). As a result, many governments have undertaken the restructuring and/or privatization of healthcare services and hospitals with negative consequences in terms of work intensification and service quality. Such policies have been vigorously contested by coalitions of local or national actors. In Britain, a platform called ‘Keep our NHS public’ which gathers various NGOs and groups, including the UK’s largest union Unison, was set up in 2005 in order to fight against the creeping privatization of the NHS. The launch statement claims that ‘At the heart of the changes is the creation of a market that welcomes profit-driven international corporations who answer to shareholders, not patients.’³

In Central and Eastern Europe, several radical government initiatives have met strong resistance. In Hungary, Poland and the Czech Republic in particular, governments have sought to privatize healthcare services and insurance in the course of the 2000s (Lóránt 2009). In Hungary, a two-year-long campaign against the government’s plans to privatize healthcare facilities (hospitals) and services led to a referendum which took place on 5 December 2005. Sixty-five per cent of the voters opposed privatization and the proposed law was also turned down by the Constitutional Court (Hermann et al. 2012, p. 157).

The call for local or national referendums has become a new tool used by coalitions of workers and professionals’ unions, citizens groups and NGOs for preventing or reversing privatization in various utility sectors (Hermann et al. 2012, pp. 161–163). In 2008, for example, through a referendum in Leipzig (Germany) a citizens’ network branded APRIL prevented the planned privatisation of the local gas and electricity provider. Similar local referenda over the privatization of water and energy supply were held in Hamburg and Berlin (Blanchet 2015) and showed strong support of German citizens for the public management of utilities. In 2003, a majority of Slovenians rejected the privatization of railways and telecommunications in two referenda (Ibid., p. 157). In Italy, a national referendum was held in June 2011 which included two questions on water

³Keep our NHS public, ‘Launch statement. Keep our NHS public’, available at <http://www.keepournhspublic.com>, date accessed 12 May 2015.

provision. Over 95 % of the voters rejected the proposal to privatize the water supply; they also opposed a change in regulations which would make water supply a profit-making activity. The movement against privatization was born in Tuscany with the creation of local committees after the takeover by the French multinational company Suez had led to a strong increase in the price of water distribution. The first Alternative World Water Forum which took place in Florence in 2003 also contributed to the emergence of the movement (Bieler 2014). In the more centralized France, such initiatives have sometimes come from decision makers themselves. In 2007, the municipal council of Paris, under the authority of the socialist mayor Bertrand Delanoë, voted for the ‘remunicipalization’ of the water supply after more than 20 years of private management by the multinationals Veolia and Suez.

2 The Services Directive Success Story

2.1 The Relative Misfortune of Radical Liberalization

The EU Services Directive is undeniably the most contentious piece of European legislation in the 50-year-long history of European integration. It triggered an unprecedented wave of contestation across Europe and it stands out as the first instance where (a) contestation occurred prior to the adoption of a directive by the legislators of the EU, namely the Council of ministers and the EP, and (b) the first instance where the EP amended the proposal put forward by the EU Commission to an extent never experienced before. The Services Directive has also prompted an extraordinary amount of academic literature as it has been studied to illustrate various aspects of the economic and political functioning of the EU.⁴ This heated debate cannot be seen as a typical case reflecting the everyday functioning of the legislative process in the EU; yet, it shows that despite the technocratic

⁴Lindberg (2010), Messerlin (2005), Nicolaidis (2007), Nicolaidis and Schmidt (2007), Parks (2015), Gajewska (2008), Bieler (2009), Hix and Noury (2009), Miklin (2009), Chang et al. (2010), Magnette and Papadopoulos (2010) and Grossman and Woll (2011).

and bureaucratic trends in EU politics, politicization can occur at the scale of the EU multi-level polity and shape decision making. In fact, it can be argued that precisely because the routine of EU politics is usually more geared towards bureaucratic processes, politicization and conflict are more likely to be effective (Parks 2015).

The draft Service Directive was proposed by EU Commission in January 2004, after years of preparation by the Directorate General (DG) for the Internal Market (known as DG MARKT) then supported by the cabinet of Commissioner Frits Bolkestein, an openly neoliberal and Eurosceptic Dutch politician famous for his controversial statements against a dangerous multicultural and over-regulating European super State. While services liberalization had been on the EU agenda since the proclamation of the Lisbon Strategy in 2000, the eventual proposal had a strong neoliberal flavour: it proposed the horizontal (as opposed to sectoral) far-reaching liberalization and deregulation of all service activities in the EU. The complexity of its legal and practical ramifications left many experts puzzled. The conjunction with the enlargement towards eight (and soon ten) new Member States in Central and Eastern Europe triggered contestation *vis-à-vis* what was perceived by the proponents of regulated capitalism as a major neoliberal offensive. The liberal coalition supporting the Commission proposal comprised the Conservative Group of the European People's Party (EPP) in the EP with its shadow rapporteur, the Briton Michael Harbour, the European employers' association Business Europe and a number of Member States including the UK, the Netherlands, Spain, and all the new recently accessed countries from Central and Eastern Europe with Poland, Hungary and the Czech Republic, and Latvia being particularly vocal about it (Copeland 2014, pp. 62–68). On the other hand, the regulatory coalition included the radical left and the greens, the unions including the ETUC, the alter-globalist movement and virtually all NGOs within the organized civil society, and progressively a majority of social democrats. The latter concentrated their criticism on two bones of contention.

The first was the 'country of origin' principle, a radical version of mutual recognition whereby service providers could trade services in any EU country while abiding only by the regulations of the country where the company has its headquarters. Insofar as service provision implies

workers' mobility, this was seen by the regulatory coalition as an incentive for firm relocation to countries with weaker regulation and labour costs, and subsequent social, regulatory and wage dumping.⁵ The second key problematic aspect of the Bolkestein proposal was its very large scope of application which encompassed virtually all services (except those explicitly excluded) including most SGI. As explained in Chap. 2, the distinction between economic and non-economic SGI is the key factor which determines the application of competition law but, at the same time, this distinction remains a 'grey area' in the jurisprudence of the ECJ (Rodrigues 2006). In this regard, the Services Directive proposal did not provide a clear definition of SGI in order to clearly define the scope of application of the directive. Although the proposal claimed that it did not target SGI, it was unclear to what extent service providers in areas such as healthcare, non-mandatory education, social services and so on were to be submitted to EU competition rules, and to what extent state-funded activities would be viable under the Services Directive regime. Many lawyers therefore considered that this piece of legislation would accentuate rather than alleviate the 'legal uncertainty' already surrounding SGI and competition law (Hatzopoulos 2007). Pro-regulation actors suspected the Commission (or, more specifically the DG MARKT and F. Bolkestein) of attempting to foster liberalization and privatization of welfare services through the back door as foreign providers would be allowed to establish themselves even where sectors were not open to competition in the name of the free circulation of services.⁶

After two years of politicization and public contention, the directive proposal was substantially amended in the first reading of the EP in February 2006, and adopted later the same year with the agreement of the Commission and the Council. Thus, the German social-democrat rapporteur Evelyne Gebhardt, who was hostile to the Bolkestein proposal, obtained a compromise on a softened version of the directive. This was

⁵ For example, interview with a former Secretary General of Fédération générale des travailleurs de Belgique (FGTB), Brussels, March 2008. This was also reinforced by the fact that the articulation with the Posted Workers Directive, which guaranteed a core of minimum social rights (notably pay and holiday time) in the receiving country, was unclear in the original proposal of the Services Directive.

⁶ Interview with representative of EPSU, Brussels, September 2008.

widely seen as a main political and symbolic victory for the pro-regulation camp, and a result of public contestation, given that liberal forces backing the proposal initially constituted a majority across EU institutions, including national governments at the outset. As far as SGI are concerned, and from a policy-making point of view, the outcome was more mitigated. A key victory was the explicit exclusion of healthcare from the scope of application of the directive as well as culture and broadcasting. However, the amendment proposed by Gebhardt to exempt all SGI was not adopted. Instead, and at the initiative of the Belgian socialist and co-rapporteur Anne van Lancker,⁷ complicated ‘safeguard clauses’ were adopted which stipulate that the directive does not aim to liberalize or privatize SGI (Article 1). The final version of Article 2 creates a new category of SGI, NESGI which includes the police, justice, mandatory schools and security. This provision is, however, redundant as these services are State prerogatives which as such are not covered by EU law. The same article also includes a limitative list of services which are excluded from the Services Directive: ‘social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State’. A majority of MEPs voted to keep non-mandatory education or cultural services included within the scope of application.

Ultimately, the rule is that all SGI which have potentially an economic nature are submitted to the liberalization regime set out in the Services Directive. The final version of the legislation was criticized by a number of lawyers and experts of SGI. It does not provide any attempt to clarify the status of SGI vis-à-vis competition law, and arguably creates additional interpretation issues (Manin 2007; Pellegrino 2007). When considering the various combinations of different articles and clauses in the directive, SGI can be regulated by seven different legal configurations (Van den Abeele 2007, pp. 27–28). Insofar, contestation and resistance to liberalization only prevented EU legislation from opening the door to the liberalization of healthcare and core social services provided by the State. However, a clear definition of SGI and exemption from the market logic and competition law remains clearly denied.

⁷ Interview with Anne van Lancker.

2.2 The Ever Broader Coalition Against 'Bolkestein'

The success story of the Services Directive is one of a critical minority being able to eventually gather a broad coalition and see its claims endorsed or, to borrow Tilly's and Tarrow's terms, 'certified' by a majority and key actors within the decision-making process (Tilly and Tarrow 2007, p. 215). Two institutional aspects shaped the process of coalition building in a decisive fashion, which can both be thought of as the political opportunity structure or the institutional setting of the EU (cf. 1.2): the first aspect is the involvement of the EP as a co-legislator on an equal footing with the Council of Ministers under the procedure of co-decision; the second is the activation of all channels of politicization and mobilization in the EU multi-level polity. Drawing on a typology elaborated by students of the Europeanization of collective action (Imig and Tarrow 2001a, b; Balme and Chabanet 2002; della Porta and Caiani 2007), it is possible to observe that resistance to the Services Directive operated simultaneously through three types of channels: transnational, supranational and domestic.

From the outset, opponents of the directive within unions and the alter-globalist movement understood that, facing a closed, neoliberal-minded Commission and a majority of pro-liberalization governments within the Council, the EP (and the two left-wing-minded rapporteurs) had to be a key ally for the directive to be rejected or significantly altered.⁸ For most MEPs, the conflict and its resolution was an instance of a twofold institutional and political assertion picturing the EP as the most democratic and socially minded institutions of the EU. When the compromise was adopted in 2006, E. Gebhardt claimed that

The European Parliament has proved its strength with today's vote and demonstrated that it is the best protector of citizens' rights. By putting people at the heart of policy, after tough negotiations we have now succeeded

⁸ Interview with a representative of the Belgian public services union CGSP, Brussels; Interview with a former representative of Institut Emile Vandervelde; interview with a representative of ETUC; interview with an activist at ATTAC Wallonia-Brussels; interview with representatives of ATTAC France; interview with a representative of the German Trade Union Confederation (Deutscher Gewerkschaftsbund [DGB]), Berlin, October 2008.

in structuring freedom of services in Europe along social and equitable lines. This has enabled us to clear the way to a more social and united Europe.⁹

Inside as well as outside of the EP, the coalition progressively expanded to a wide range of actors and organizations ranging from the radical left, alterglobalist associations and greens to the social democrats and even pro-regulation conservatives and liberals in Belgium, France and Germany (mainly).

Transnational networks within the alterglobalist and labour movement were key in making the legislative piece contentious. Critical assessments of the Services Directive proposal originated from whistle-blowers within Belgian socialist circles and organizations of the Belgian Social Forum, which includes all Belgian unions and NGOs such as Oxfam. The socialist think tank Institut Vandervelde launched the online petition and website Stopbolkestein. With 80,000 individual signatures, the endorsement of over 300 organizations in ten European countries, Stopbolkestein became the platform for rallying contestation across transnational activist networks.¹⁰ The initial contestation gained an important echo through the ESF at the 2004 meeting in London, where the Belgian Social Forum organized a workshop dedicated to the ‘Bolkestein directive’. At this occasion, contacts were established with numerous organizations of the radical left such as the French Ligue communiste révolutionnaire. The general assembly of social movements closing the forum agreed to call for a large anti-Bolkestein rally in March 2005.¹¹ The anti-Bolkestein campaign was also strongly endorsed by the coordination of the ‘ATTACs of Europe’ who organized specific activities, notably in connection with the ratification of the European Constitutional Treaty.¹² The strength of transnational channels of contestation lies in the convergence between NGOs

⁹ Party of European Socialists, ‘Evelyne Gebhardt: Game, set, and match to the Services Directive. Way clear for a more social Europe’, communiqué de presse, 15 November 2006, www.socialist-group.eu, date accessed 26 November 2009; also interview with Evelyne Gebhardt, MEP, Brussels, June 2008.

¹⁰ Interview with a former representative of Institut Emile Vandervelde, Brussels, March 2008.

¹¹ Interview with a representative of the French Ligue communiste révolutionnaire; interview with a representative of ATTAC Wallonia-Brussels.

¹² Interview with representative of ATTAC Deutschland, Berlin, May 2007.

and radical groupings within the alterglobalist movement, on the one hand, and unions, including both radical and more centrist unions such as the French *Confédération française démocratique du travail* (CFDT) or the German union confederation DGB, on the other. In spite of divergence of views,¹³ the convergence in action climaxed in the demonstration on 19 March 2005 in Brussels which gathered about 50,000 people.

In the course of 2004, resistance to the Services Directive proposal extended from weakly institutionalized networks to the supranational channels available in the EU multi-level governance, mainly political groups in the EP and the ETUC. Originally rather quiet on the issue, ETUC progressively endorsed a leadership role coordinating union contestation vis-à-vis 'Bolkestein' in Brussels. Likewise, MEPs belonging to the left-wing political parties were also highly involved in the diffusion and politicization of the conflict. The members of the Confederal *Group* of the GUE/NGL were very active in feeding mobilization both in their country on the ground and in the EP;¹⁴ especially the French communist F. Wurtz, who was the President of the group, or the German MEP from *die Linke* Sarah Wagenknecht. In November 2004, the two co-rapporteurs of the two EP committees in charge, E. Gebhardt (internal market and consumer protection) and A. Van Lancker (employment and social affairs), organized a public hearing where a range of lawyers, unionists and experts expressed their views on the directive proposal. As a result, E. Gebhardt concluded in her working document from December 2004 that 'the Commission should be invited to either withdraw its proposal or to substantially re-work on it' (European Parliament 2004). On the day prior to the demonstration of March 2005, a conference co-organized by ATTAC Wallonia-Brussels and the group GUE/NGL in the EP gathered representatives of unions, ATTAC and various NGOs as well as A. Van Lancker. The anti-Bolkestein coalition was then at its strongest.

¹³Two issues divided the most radical and the most centrist organizations: first, whether to call for the rejection or substantial modification of the Services Directive proposal; the second was the upcoming French referendum on the ratification of the European Constitutional Treaty and the division within the left between pro- and anti-ECT (with ETUC clearly supporting the ratification). Interview with two representatives of ETUC, Brussels, September 2007 and April 2009.

¹⁴Interview with Francis Wurtz, MEP, Brussels, May 2008; interview with Sarah Wagenknecht, telephone, February 2008.

However, the high level of politicization in this debate was also—if not foremost—reached through domestic channels, a process referred to as ‘internalization’ or ‘domestication’. While the issue was first addressed by organizations of the (radical) left, their purpose was to reach central decision-making institutions such as parliaments and governments. In Belgium, it is the French-speaking Socialist Party in government which to a large extent instigated mobilization.¹⁵ In addition to the Stopbolkestein campaign, this prompted a declaration by 110 socialist mayors against the directive as well as a resolution adopted unanimously in the House of Representatives in June 2004 asking the federal government notably to ‘confirm its demands with regard to the protection of SGI’ (Chambre des représentants de Belgique 2005).

In France, the debate over the Services Directive was closely intertwined with the referendum campaign over the ratification of the European Constitutional Treaty. The ‘Bolkestein directive’ acted like an engine for the *campagne du ‘non’* led by a myriad of groupings, parties and unions of the radical left, including the Communist Party, ATTAC and the alterglobalist think tank Fondation Copernic. The campaign peaked in early 2005, where hundreds of local committees for a ‘no of the left’ can claim to have organized about 1500 public meetings where the Services Directive was systematically discussed.¹⁶ Although split on the issue of the Treaty ratification, the Socialist Party (in the opposition) took an official position critical of the proposal. The Services Directive was very instrumentally used by the dissidents in the party who campaigned against the Treaty.¹⁷ As the ‘no’ campaign climaxed two months before the referendum in March 2005, the conservative government and President Chirac called vigorously for a substantial revision of the Services Directive proposal.

Germany displayed a similar, if delayed, politicization process with the anti-Bolkestein coalition progressively expanding from the radical left

¹⁵ Interview with a former representative of the Institut Emile Vandervelde, Brussels, March 2008.

¹⁶ Interview with a representative of the Ligue Communiste révolutionnaire, Paris, June 2008; interview with a representative of the Communist Party, Paris, June 2009; interview with a representative of the Fondation Copernic, Paris, February 2007.

¹⁷ Interview with Henri Emmanuelli, MP, Paris, June 2009. Former Prime Minister Laurent Fabius was also a main opponent to the ECT within the Socialist party, see (Crespy, 2008).

to the *Sozialdemokratische Partei Deutschlands* (SPD), the then party of Chancellor Schröder. While mobilization started in 2004 within ATTAC and a broader network of left-wing NGOs called *Europa von unten* (Europe from the bottom), mobilization was more difficult to feed. This can be explained by the historical hostility between the neo-socialists of die Linke and the SPD, on the one hand, and the reluctance—still important at the time—among the media and political establishment to criticize the EU and its policies, on the other.¹⁸ In this regard, Sigrid Skarpelis-Sperk, the rapporteur of the Bundestag on the Services Directive, acted as a key mediator of contention. A figure on the left wing of the SPD, and a critic of Chancellor Schroeder's neoliberal reform agenda, Skarpelis-Sperk was well known among activist networks previously mobilized against services liberalization by the WTO.¹⁹ When Skarpelis-Sperk discovered that the Services Directive had already been approved by the Bundestag through an automatic procedure without discussion, she formed a broad coalition with left-wing activists and unions and succeeded in eventually rallying the whole of the SPD parliamentary group against the directive. Thus, the Bundestag eventually adopted a resolution asking the government to take a critical stance on several aspects of the directive proposal, including the inclusion of SGI. Put under such pressure, the Chancellor had no choice but to reverse the initial support of Germany for the directive in the Council, and joined President Chirac in his call for a revision of the Commission proposal.

Finally, the Waxholm controversy which broke out in 2004 in Sweden also played a crucial role in the politicization of the Services Directive Europe-wide (Woolfson and Sommers 2006; Menz 2010). The conflict opposed the Latvian company Laval un Partneri, which was working on the construction of a school in the Swedish village of Waxholm but refused to abide by the Swedish collective agreements fixing pay and working conditions. As the Swedish construction union took action to block the construction site, the ECJ was called on to rule on possible

¹⁸Interview with Angelika Schwall-Duren, Madrid, December 2008; Interview with Sigrid Skarpelis-Sperk, MP, Berlin, December 2008.

¹⁹Interview with Sigrid Skarpelis-Sperk; interview with a representative of Industriegewerkschaft Bau-Agrar-Umwelt, Berlin, November 2008; interview with a representative of Ver.di, Berlin, July 2009.

obstruction to the freedom to provide services.²⁰ This controversy was seen as a blatant illustration of the conflict between EU law and national values and regulations involved with the Services Directive. It caused a diplomatic crisis between Sweden and Latvia, a vocal member of the liberal coalition supporting the Bolkestein version of the directive. Thus, while starting as a minority of left-wing activists and whistle-blowers, pro-regulation actors critical of the Commission's proposal for services liberalization progressively gathered a broad coalition of organizations, institutions and governments across the whole political spectrum of the EU.

2.3 Social Versus Neoliberal Europe

The discursive dynamics of politicization in the conflict over the Services Directive can be analysed from three perspectives: the individual actors who contributed to politicization by providing cognitive and normative arguments underpinning the framing of the issue in the public debate; the way in which the framing of the issue was shared beyond national borders; and the dynamics of resonance in the national public spheres which had an impact on decision making.

In a discursive institutionalist perspective, the politicization of the Services Directive occurred through a successful conjunction between a coordinative discourse focused on cognitive aspects and specific policy issues articulated among elites and decision-making circles, on the one hand, and communicative discourse which appeals more broadly to values and normative aspects in order to reach out to the wider public, on the other. Broadly speaking, the framing of the Services Directive was rooted in the proclaimed need to defend the existence or possibility of a 'social Europe' against a ubiquitous 'neoliberal Europe'. In the networks of the alterglobalist movement, a number of individuals can be depicted as activist-experts: they possess a highly specialized knowledge on EU

²⁰ In the judgement *Laval un Partneri* of 18 December 2007, the ECJ ruled in favour of the Latvian company arguing that the right of unions to take collective action cannot infringe on competition rules and the principle of freedom to provide services, a decision which caused much resentment among unions and specialists of EU law.

and global policies, and are able to provide for a ‘translation’ of complex technical and legal matters in order to bring to the fore the political issues at stake. This is, for example, the case of Raoul-Marc Jennar, the frontman of Oxfam Belgique and the leader of *Unite de recherche, de formation et d’information sur la globalisation* founded in 2000 by the sociologist Pierre Bourdieu. Jennar provided one of the early analyses of the directive proposal in which he denounces a ‘new neoliberal aggression of the European Commission’ (Jennar 2004). Similarly, Thomas Fritz, a main figure of the NGO scene in Berlin, produced assessments where he explained why, if adopted, the Services Directive would put ‘national regulation under tutelage’, ‘cause chaos among legal systems’, ‘attack healthcare systems’, encourage a race to the bottom and ‘wage dumping and social security fraud’ and, thus, why it should be seen as the expression of ‘anti-democratic market radicalism’ (Fritz 2004). Thomas Fritz participated in many public gatherings, was heard at the EP and published a contribution on the Services Directive in a German journal for political science (Fritz 2005).

The polarization between the pro- and anti-Bolkestein coalition appeared as early as June 2004. One particular episode triggered contention in Brussels. When interviewed on-air by the Belgian public radio, the spokesperson of Commissioner Bolkestein, Jonathan Todd, referred to the flyers prepared by the Belgian trade unions for the very first anti-Bolkestein demonstration in Brussels as far right propaganda of the National Front. This triggered an unusual personalization of the debate whereby Frits Bolkestein was depicted as the embodiment of a neoliberal Europe. This was reflected in powerful visual frames and the mottos used by, for example, ATTAC Deutschland: ‘Bolkestein-Frankenstein’, or the ‘Bolkestein-Hammer’ which destroys the European social systems. Although the figure of the Polish plumber was an invention of the French far right, it echoed the concerns of unions which reject the logic of competition among workers based on labour costs:

3.42 euro/hour: this is the cost of a Latvian worker. The Bolkestein directive does not arrive randomly at the same time as the enlargement. A Latvian worker ‘costs’ 3.42 euro per hour, a Czech 4.48 euro, a Pole 4.48, a Slovene 8.98. The average in the ‘old’ EU-15 is 23 euro per hour. The Bolkestein direc-

tive offers a flag of convenience to companies of the least demanding countries. Whether they are native to these countries or relocated. (FGTB 2004)

This aspect accentuated the polarization between the liberal and the regulatory coalitions. In a cheeky move, Frits Bolkestein claimed in the press that he wished there were more Polish plumbers as it was a difficult service to find where he lived in the north of France (Marchand 2006, p. 22). A few days later, power in his French villa was cut-off by unionists of EdF. As a response to the anti-‘Polish plumber’²¹ campaign in France, the Polish government launched a humoristic communication campaign where models posed as plumbers and nurses.

More fundamentally, the success of the framing based on social Europe lies in the fact that it was largely shared beyond national borders. When looking at a wide corpus of documents issued by ATTAC, unions and left-wing political parties in Belgium, France and Germany, all account for similar frames.²² As far as cognitive arguments and specific public policy issues are concerned, the prominent themes are dumping, welfare services, the ‘country of origin’ principle and the necessity for control by national authorities. Regarding broader, more normative frames, all organizations of the regulatory coalition addressed the issues of deregulation, competition and the need for harmonization. Social Europe, neoliberal Europe and democracy can be depicted as the ‘master frames’ in this discourse (Snow 2004), that is, broad frames which are relevant among

²¹ It must be underlined that the expression emerged from the far right was first reported in the press in a statement of the sovereignist leader Philippe de Villiers. In the corpus examined here, focused on left-wing organizations, the expression only appears once. It is the statement of Frits Bolkestein himself which created a snowball effect in the French press. In fact, the controversy embarrassed the French opponents of the Services Directive because it gave the movement an anti-European and xenophobic flavour they resented. In the German and Belgian press or documents, other similar characters such as Estonian architect or Portuguese workers could be found.

²² This corpus is composed of 206 documents posted on the website of the following organizations: ATTAC Wallonia-Brussels, ATTAC Vlanderen, ATTAC France, ATTAC Deutschland, Fédération nationale des travailleurs de Belgique (FGTB), Confédération des syndicats chrétiens (CSC), Confédération générale du travail (CGT), CFDT, IG BAU, Ver.di, DGB, CES, Parti socialiste (PS) Belgium, Sociaaldemocratische Partij. Anders (SPA), PS France, PCF, Die Linke, SPD, GUE/NGL, PES. Twelve documents per organization were selected over four distinct sequences of the debate from January 2004 to December 2006 in proportion with the total number of documents produced by each organization for each sequence. For a more detailed analysis of this corpus relying on descriptive statistics, see (Crespy, 2012).

several contentious episodes. Indeed, we will see that these frames also play a key role in the debate surrounding an EU Framework directive on SGI (Chap. 4) and in the contestation of the GATS (Chap. 5). The criticism towards a neoliberal EU is nevertheless more present in the discourse of the most radical organizations (such as ATTAC), while it tends to be more discrete in Germany and in the documents of organizations at the EU level (ETUC and Party of European Socialists [PES]). The ideas of social Europe and democracy therefore have a key strategic function as they allowed the cementation of a heteroclitic discursive coalition comprising organizations with diverse ideological preferences—ranging from the anti-capitalist radical left to the centrist and, in some respects, liberal German social democracy.

Finally, the political effectiveness of politicization in this debate lied in the fact that communicative discourse was framed and conveyed through the national media. Figures 3.1, 3.2 and 3.3 show that, roughly speaking, the national debates display similar patterns. The intensity of

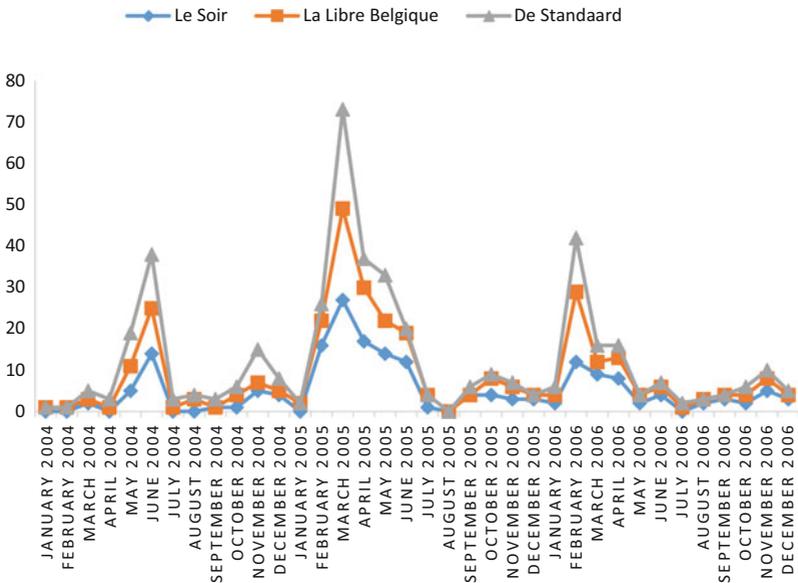


Fig. 3.1 Number of articles referring to the services directive in the Belgian daily press

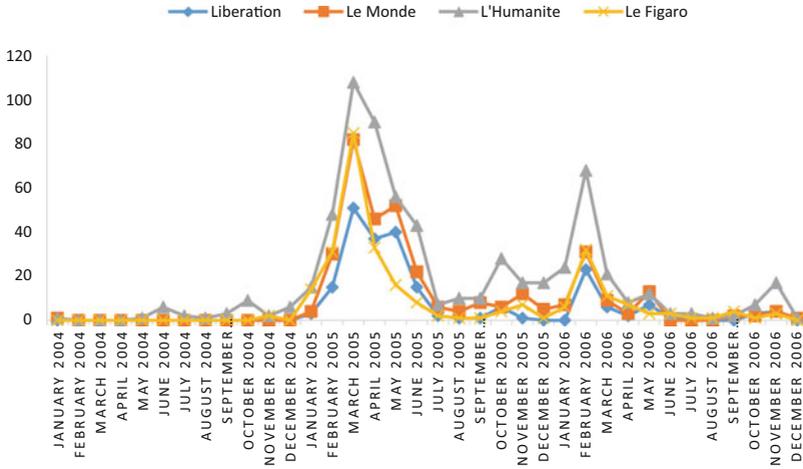


Fig. 3.2 Number of articles referring to the services directive in the French daily press

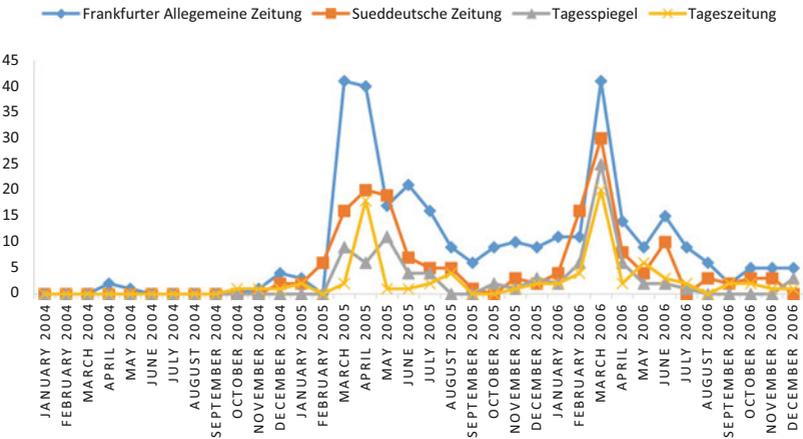


Fig. 3.3 Number of articles referring to the services directive in the German daily press

the debate was greatest in France, slightly weaker in Belgium and the weakest in Germany. Its salience nevertheless shows similar patterns as it was greatest in all three countries both in the spring of 2005 in connection with the ratification, and in February 2006 when the compromise between liberals and regulators was forged during the first reading in the

EP. In addition, we can observe a first wave of politicization in May–June 2004 in Belgium, which reflects the pioneer role of Belgian actors and organizations in politicizing the issue as depicted above.

The power of discourse combined with the ‘internalization’ of contestation and the effectiveness of resonance in the national public spheres contributed to (re)shaping governments’ positions to a large extent. In Belgium, while the liberals did not dare opposing the critics of ‘Bolkestein’ in the face of public mobilization,²³ no agreement could be found between the socialists and the liberals within the federal coalition government and, ironically, Belgium eventually abstained during the vote in the Council.²⁴ In France, the ‘no’ campaign permeated the discourse of political actors across the entire political spectrum. By the first semester of 2005, framing in terms of ‘social dumping’, ‘European social model’ and even ‘(neo)liberal Europe’ had been taken over by conservative politicians. President Chirac took a radically critical stance towards the directive proposal by denouncing it as a ‘threat to the European social model’ and intervening in several occasions in the deliberations in the EU institutions. In Germany, Chancellor Schroeder spectacularly reversed the position of the federal government which, under the auspices of the liberally minded Federal Minister of the Economy Wolfgang Clement, was initially very supportive of the Services Directive. After the public campaign of the left, the Chancellor also certified the ‘social dumping’ frame.²⁵ The French–German coalition eventually found support from the then Luxembourgish Prime Minister then holding the Council Presidency, Jean-Claude Juncker, and even the President of the EU Commission, Jose Manuel Barroso, who both called for the ‘preservation of the European social model’ and to prevent a ‘race to the bottom’.²⁶ At the meeting of the European Council in March 2005, the heads of states and government officially called on the Commission to revise its proposal.

In conclusion, contestation of the Services Directive proposal offers a remarkable example of relatively successful politicization where transnational coalition building through both national and European channels,

²³ Interview with Camille Dieu, member of the House of Representatives (PS), Brussels, June 2008.

²⁴ Interview with a Diplomat 1, Brussels, January 2008.

²⁵ Widerstand gegen geplante EU-Dienstleistungsrichtlinie’, *Spiegel*, 15 February 2005, ‘Paris et Berlin veulent remplacer la Directive Bolkestein’, *Le Monde*, 26 April 2005.

²⁶ ‘Le débat sur la Directive Bolkestein domine le sommet de Bruxelles’, *Le Monde*, 22.03.2005.

and effective communicative discourse reaching the wider public could shape decision making to a significant extent. The issues of liberalization of welfare services and workers' mobility were effectively framed by calling for a social Europe and democratic Europe where citizens have their say.

3 The On-Going Liberalization Agenda

3.1 Sectoral Liberalization: Old and New Frontiers

The previous section has shown that contestation vis-à-vis the Services Directive can be regarded as a success story from the point of view of the advocates of regulated capitalism in Europe. Yet, it has also been implied that this victory was, in some respects, mainly political and symbolic. With regard to the liberalization and regulation of welfare services, the configuration left by the adoption of the Services Directive in December 2006 remains highly ambivalent. As shown above, a majority of decision makers within the Commission, the Council and the EP objected the recognition of a single, unified category of SGI. In fact, the Services Directive accentuated the existing fragmentation by introducing new categories—such as the NESGI—which only served to further restrict the scope of services which cannot be affected by EU competition law to those services which are regarded as core state prerogatives (social security, police, justice, etc.). Similarly, the conclusions of the European Council meeting in March 2005 reflect fundamental ambiguities with respect to the marketization of welfare services: the claim that ‘effective services of general economic interest have an important role to play in a competitive and dynamic economy’ can be understood in different ways. On the one hand, it seems to stress the key role of SGI and thus address the directive’s opponents concerns; on the other hand, the terms ‘effective’ and ‘competitive and dynamic economy’ seem in tune with the modernization through marketization narrative. Against this background, the aftermath of the ‘Bolkestein’ debate is characterized by ongoing initiatives at the EU level for bringing forward sectoral liberalization. It has been argued that, in the context of the legitimacy crisis of the EU, the EU Commission was

‘shifting narratives’ towards greater attention paid to citizens’ concerns and calls for a European ‘social market economy’ (Lianos and Gerard 2012). However, little evidence can be found for substantiating the rhetoric pampering which accompanies the Commission’s current approach to the Single Market. Recent initiatives for ongoing sectoral marketization through liberalization rather point to the continuation of previous patterns of policy making and resistance. We look at two areas which epitomize the old and new frontiers of marketization policies: transport networks (railway in particular), on the one hand, and healthcare services, on the other.

A typical area where sectoral liberalization has been carried forward over the past few years is that of transport networks which were at the core of the Single Market Act, the strategy put forward by the European Commission in 2011 to revive the Single Market policy agenda. Hence, a main objective is to further market integration in the realm of both transport (maritime, rail and air) and energy (electricity and gas). Railway transport remains one area where there has been much resistance to market opening as incumbent operators (read former national companies) have attempted to maintain their monopoly on passenger transport. With the Single Market Act, the Commission therefore proposes to tackle such persisting ‘market fragmentation’ by putting forward a fourth railway package. The underpinning market rationale remains the same, namely that competition leads to more efficiency and hence lower costs for consumers and taxpayers (or states):

Open domestic rail passenger services to operators from another Member State to improve the quality and cost efficiency of rail passenger services (...) Experience in Member States which have introduced market opening for domestic passenger services shows that competition in rail transport led to important efficiency gains, in particular in incumbent railway undertakings. This led to substantial savings in public funding for rail services under public service contracts, which could reach 20–30%. (European Commission 2012, p. 6)

The fourth railway package (2013a) was put forward by the EU Commission in January 2013. Its adoption is still pending at the time of writing (most legislative pieces composing the package are still waiting for a first reading by the Council), mainly because this crucial step for

accelerating the liberalization of railway transport causes much political debate. The two main contentious aspects of the Commission's proposal have been the obligatory and full unbundling of the infrastructure manager and the services provider, on the one hand, and the obligatory competitive tendering for railway transport services, on the other. Both measures aim at improving the possibilities for foreign providers to enter domestic markets. Both provisions met much resistance. Unbundling was fought by railway companies which still operate with a relatively integrated model for managing infrastructure and services, and they enjoy the support of their national government. The *Deutsche Bahn* is known to have led a particularly aggressive campaign against the proposal, leading Angela Merkel to exert direct pressure on the Commission (Perier 2014). Germany was supported by other Member States including France, Luxembourg or Poland or the Netherlands. At the meeting for the first reading in the Council, the Dutch minister summarized concerns over the entry of private providers alongside historical railway companies by saying that 'The Netherlands did not support mandatory tendering, and wanted to avoid the situation in which private operators could "cherry-pick" profitable lines to operate'.²⁷ Compulsory tendering met similar resistance. In a joint event and press release, the EP, the European Economic and Social Committee, and the Community of European Railway and Infrastructure Companies (the platform gathering nearly all companies dealing with passenger railway transport) claimed that investment and not competition was the key issue with regard to quality of service (European Economic and Social Committee 2013). In the same vein, railway transport unions gathered in the powerful European Transport Federation (ETF) denounced the 'ideological' approach of the EU Commission:

We criticise in particular that competition in public rail passenger transport will become compulsory for all EU Member States but social conditions and protection of staff will be left to the decision of the local authorities without any obligation. The European Commission confirms once more its ideological approach: a yes to market opening but no to the protection of workers' social conditions. (ITF 2013)

The ETF initiated strike action in October 2013 and a demonstration in front of the EP building in Strasbourg which gathered about 3000

²⁷ 'Ministers discuss 4th railway package', *The Parliament*, 10 October, 2014, available at www.theparliamentmagazine.eu, date accessed 10 June 2015.

transport workers from 14 countries on the day where MEPs were discussing the package (ETF 2014). The report adopted by the EP in its first reading addresses many of these issues; for example, by maintaining the freedom for national authorities to award welfare services directly or through tendering, and constraining welfare services operators (whether public or private, domestic or foreign) to abide by local or national regulation of working conditions. An in-depth understanding of the issues surrounding marketization through liberalization does not consist of opposing public and private operators in a cartoonish way. In June 2014, 250 Swedish workers followed a strike call initiated by the main union SEKO: they protested against the plans of their employer who foresaw to lay them off and re-employ them under worse pay and working time conditions. Interestingly, the company contemplating such practices is Veolia, a large French company which recently entered the fully liberalized Swedish market and whose majority stakeholder is none other than the French State.²⁸ While the European Commission repeatedly cited the UK and Sweden as examples of successful liberalization, two Swedish researchers conducted a survey finding that 70% of Swedes are favourable to the re-establishment of state monopoly over rail transport.²⁹

Similar to railway transport, postal services have undergone gradual marketization through liberalization since the first directive from 1997. The Third Postal Directive was proposed in 2006 and eventually adopted in 2008. Although conflict-laden resistance seems to have waned, there was much debate about the right parameters for marching towards full liberalization, that is, the suppression of the ‘reserved area’ (i.e. letters and parcels up to 50 grams) which remained under the monopoly for national/former public providers. A northern coalition of Member States having engaged sooner with opening to competition (Germany, Finland, Sweden, the UK and the Netherlands) opposed a southern coalition which considered full competition as a threat to their national operator and users’ interests (Belgium, France, Greece, Hungary, Italy, Poland, Spain). The compromise consisted delaying full liberalization from 2009

²⁸ ‘Les raccourcis de la CGT sur la grève des cheminots suédois’, *Le Monde*, 16 June 2014, www.lemonde.fr, date accessed 10 June 2015.

²⁹ ‘Swedes want state railway and rent market’ (Svenskarna vill ha statlig järnväg och marknadshyror), *DN Debatt*, 07.06.2014, www.dn.se, date accessed 10 June 2015.

to 2011 (and 2013 for countries with specific geographical issues) and a more flexible approach to state aid for funding the cost of the universal service obligation (delivery of mail at least once a day, five days a week on the whole territory). Yet, it remains to be seen whether funding would be sufficient for ensuring appropriate universal service (given that private operators do not want to contribute to compensation funds) and whether competition will not lead to further social deregulation through wage dumping rather than productivity gains and technological innovation. The proponents of competition have consistently considered the financial compensation and social standards as obstacles to fair competition. A recent report and data from Eurostat shows that, indeed, the postal sector has lost a fourth of its labour since 2004, which is only partially offset by job creation by new (private) incumbents and the development of new activities notably in relation with e-commerce (WIK Consult 2013). The same consultancy report, which serves as a basis for the mandatory review by the EU Commission of the implementation of the Postal Directive, does not include any in-depth evaluation of service quality on the ground, especially in terms of prices. Yet, its main conclusion is that market forces ensure adequate level of services quality and that regulation should be relaxed regarding: (a) the legal requirements for designating one universal service provider; (b) enabling a more flexible definition of universal service; (c) phase out the regulation of prices by national regulators. While the postal directives have often been cited as an example of re-regulation at the EU level, it remains to be seen whether, after achieving its liberalization agenda, the EU Commission will engage in a deregulation agenda for the postal sector in the years to come.

While rail transport and postal services constitute the known territory of marketization in the EU, healthcare has emerged as a new frontier which reaches out deeper into peoples' lives and cultures. Accordingly, the adoption of pioneering EU legislation in this realm has been politically sensitive. Prior to a Commission's directive proposal in 2008, the EU only affected healthcare policies through the coordination of social security systems in the event of patients' cross-border mobility. Typically, this was always closely connected to the building of the Single Market and the related increasing free movement of people. The main policy mechanism is the granting by national governments of a prior authorization for

patients who seek healthcare abroad but should be reimbursed by their social security scheme at home. In a series of judgements³⁰ at the end of the 1990s and early 2004s, the ECJ nevertheless challenged the Member States' prerogative to refuse such an authorization—deeming, for example, that the wish to contain costs and maintain the balance of national healthcare systems could not systematically be invoked to deprive patients from treatment abroad (Greer 2009). The role of the Court, like in many other welfare services sectors, contributed to accentuating negative integration in the realm of healthcare since its decisions consisted of opening national boundaries and limiting national governments' regulatory capacity in the name of the patients and workers' freedom of movement (or mobility) within the EU Single Market. Hence, 'the ECJ's jurisprudence created the legal framework for actual market exchanges in an area in which such exchanges had not existed before'. In 2008, and following the exclusion of healthcare from the Services Directive, the EU Commission adopted a directive proposal for the application of patients' rights in cross-border healthcare.³¹ While patients' mobility is still a relatively limited phenomenon today, the contentious nature of the directive proposal stems from a clash of paradigm between individual rights related to cross-border healthcare, on the one hand, and welfare states based on national solidarity, on the other (Ferrera 2005). In other words, the theme of 'patients' needs' or 'rights' seems to converge with the consumer choice paradigm.

The debate over the directive proposal proved contentious. In the EP, critics were to be found mainly on the left side of the assembly (including the radical left GUE, the greens and the social democrats of the S&D) who contested the 'market approach'³² reflected by the Commission's proposal. These objections crystallized in the demand for a dual legal basis, that is, for the directive to be grounded not only on the Article 95 TFEU,

³⁰ See cases Decker, C-158/96; Smits et Peerbooms, C-157/99; Muller-Faure, C-385/99; Watts, C-372/04.

³¹ Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare, COM(2008)414, 2 July 2008.

³² Minutes of plenary session of the European Parliament, Strasbourg, 23 April 2009. See speeches by Bernadette Vergnaud, MEP, draftsman of the report for the committee on internal market and consumer protection; Dagmar Roth-Behrendt, speaker on behalf of the PES; Claude Turmes, speaker on behalf of the Green/ALE; Kartika Tamara Liotard, speaker on behalf of GUE/NGL.

which guarantees market freedom, but also on Article 152 TFEU on health. A second demand was that Member States' governments retain a large regulatory capacity, that is, the ability to issue—or indeed refuse—prior authorization for non-nationals to seek healthcare, especially in the case of hospital care or long-term treatment. The aim of possible restriction is to maintain a tight control on planning and costs within national systems. After these points were still contentious in the early stages of co-decision, the directive was eventually passed in 2011. While the final draft could garner broad political support, the radical left remained suspicious that 'those who have the most money will be the first to access the places with the largest and cheapest supply of care'.³³ It therefore remains to be seen whether fears of an emerging 'medical tourism' will become a reality. While cross-border healthcare only stands for approximately 1 % of expenditure in the EU today, the scarce information we have on travel patterns and recent trends seems to indicate a movement from Western to Central and Eastern Europe, as well as a rapid increase in the number of individuals seeking healthcare abroad (Smith et al. 2012). In conclusion, the post-Services Directive debates show the continuation of sectoral liberalization with a relatively sustained level of public debate and contention which nevertheless only marginally affects the overall direction of the marketization agenda.

3.2 Public Procurement

In contrast with restructuring in the sectors such as railway transport, which enjoy visibility and have potential to bring about medium to high levels of politicization and public debate, public procurement appears as a dull and technical topic which is dealt with at the level of low-profile, day-to-day bureaucratic politics of the EU. Yet, rules on public procurement determine the conditions in which public authorities (at all levels of governance) can award a contract for a firm to carry out a service on their behalf. While not all services provided through public procurement are welfare services, public procurement rules de facto interact with the way

³³ Minutes of plenary session of the European Parliament, Strasbourg, 23 April 2009, speech by Kartika Tamara Liotard, speaker on behalf of GUE/NGL.

in which (and the legal form under which) public authorities will entitle a specific firm to provide economic or non-economic SGI.

From the outset, the liberalization of public procurement has been part of efforts to create a European Single Market³⁴ at the end of the 1980s, as specific national procurement rules were seen as main non-tariff barriers reflecting protectionist attitudes of national governments willing to prevent foreign firms from entering the markets linked to public procurement. Hence, the economic rationale behind the liberalization of public procurement is that:

Integration of public markets, through the principles of transparency, non-discrimination and objectivity in the award of public contracts, will bring substantial savings to the public sector, rationalize and allocate more efficiently human and capital resources and increase the productivity and competitiveness of European firms. (Bovis 2012, p. 148)

In 2011, the EU Commission put forward a series of three directive proposals—on public procurement, public procurement in the sectors of water, energy, transport and postal services, and on public concessions—aiming at updating the legislation from 2004 and further integrating related markets in the EU.

Under the auspices of Commissioner Michel Barnier, the Commission's proposal did not have a strong neoliberal flavour. Barnier was appointed in 2010 as a successor to Fritz Bolkestein, who ended up being a political scarecrow, and Charlie McCreevy, the former 'avowedly neoliberal' Irish Minister of Finance (Phelan 2007, p. 38). His appointment resulted from strong French lobbying in order to push for more regulation of financial markets. As part of the Single Market Act strategy, the proposal on public procurement rules foresaw a 'light' liberalization regime for social services with a 'limited cross-border dimension' such as services to the person. Thus, a number of social, health and educational services would only be submitted to public procurement rules when the value of the contract exceeded €500,000.

³⁴ See Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.

The rapporteur on two of the three directives included in the legislative package on public procurement was Marc Tarabella, a member of the Belgian francophone Socialist Party, well known for his leftist positions within the European social democratic family. Tarabella proved very successful in strengthening the regulatory aspect of the piece by excluding the contracts between public authorities and public enterprises from the directive's scope of application, by raising the threshold for the application of public procurement rules to social services to €750,000 and by making respect of social and environmental regulation (including collective agreements) central in the new legislative framework: the notion of 'lowest cost' for a service is complemented by the notion of 'most economically advantageous' on the basis of criteria which include qualitative, environmental and social considerations. In turn, public authorities shall not award contracts to undertakings which do not comply with their obligations with regard to environmental, social and labour law (including in the case of outsourcing); finally, abnormally low offers should be controlled on this basis. One ambiguous point which triggered contentious discussions seems to have remained in the final version of the directive: compulsory social security services are included in the list of the services covered by the directive. Since services for the payment of welfare benefits are clearly bound to generate possible contracts over €750,000, this would mean that, if granted to a firm through a contract, such services would necessarily be submitted to rules of competitive tendering. In order to avoid this, the EP report included amendments in Article 1 stating that:

4. This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the decision of public authorities whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 TFEU and Protocol No 26.

5. This Directive does not affect the way in which the Member States organise their social security systems.³⁵

³⁵ Directive 2014/24 EU of the European Parliament and of the Council of 26 February 2014 on public procurement, Official Journal of the European Union, L 94/65, 28 March 2014.

Still, the directive adopted in February 2014 was considered overall as rather progressive and welcomed by the ETUC. Thus, in the case of recent policy making in the realm of public procurement, liberalization was accompanied by a fair level of re-regulation. While public procurement is a rather technical issue which did not trigger contention beyond the EU institutional arena, a moderate EU Commissioner avoided polarization and pro-regulation actors within the EP were able to impose their views.

4 Conclusion

This chapter has investigated the dynamics of policy making and resistance by focusing on negative integration in Europe, that is, marketization through liberalization. This mainly involved the opening of national markets to foreign competitors and the end of monopolies for historical providers. Since the revival of the Single Market in the late 1980s, the marketization of welfare services has been something of a quiet revolution. Industrial action led by workers' unions has been the most traditional form of contestation *vis-à-vis* EU liberalization policies. It was most of the time circumscribed to specific sectors, and occurred when decisions had already been made. Whether at the national level, or coordinated at the European scale, like in railway transport, it has had a very limited impact on policy making. After 2000, however, unions started to form broader contentious coalitions with NGOs and associations—often part of the alterglobalist movement. This occurred at the EU level in the framework of the ESF or, more recently, at the local level, where marketization and privatization—for instance, of hospitals or water distribution—have been hotly contested, and often prevented or reversed.

At the EU level, the conflict over the Services Directive between 2004 and 2006 stands out as the most contentious episode in the history of EU politics. The case study of contestation shows that the complex issue of services liberalization has been successfully politicized by a loose left-wing coalition involving political parties belonging to both the radical left and social democracy, the alterglobalist association ATTAC and the trade unions in several Member States as well as at the EU level. The formation of

this coalition created polarization against the EU Commission, especially on the part of Frits Bolkestein who became the embodiment of a neoliberal Europe. In the heated context where the European Constitutional Treaty was rejected by referenda in the Netherlands and France, this coalition could progressively extend to the mainstream of the political spectrum and, eventually, reach a majority position. This process of coalition building went hand in hand with the use of all available channels for mobilization in the EU multi-level polity, namely transnational networks of the alterglobalist movement, supranational organizations such as the ETUC and groups in the EP, and the domestic route via national parties, parliaments and governments, notably in France and Germany. The EP proved to be a key player for the anti-Bolkestein coalition; not only a target for contentious groups but also an ally. The discourse framed by the coalition was very effective from a political point of view. Opponents to the Services Directive succeeded in going beyond the technical coordinative discourse dealing with the intricacies of services liberalization to forge a communicative discourse which widely resonated within several national public spheres in Europe. This discourse heavily relied on well-known frames and normative arguments invoking the necessity to defend a social Europe against a neoliberal Europe, to safeguard public services and the capacity of states to regulate services markets.

For the first time in the history of the EU, the political system of the EU was fairly responsive to contestation. Main decision makers endorsed the discourse on social Europe and, after two years of mobilization, the Commission proposal for services liberalization was substantially amended by the EP and the reach of liberalization, especially as far as welfare services were concerned, was contained. In the long run, though, responsiveness has proved more limited. Reviewing more recent initiatives and reactions to them, the last part of the chapter shows a mitigated picture where the long-established trends in policy making continue against the backdrop of relatively low politicization. On the one hand, the EU Commission and a majority of Member States' governments in the Council have pursued the marketization agenda in all areas of SGI as well as through the regulation of public procurement. It is striking that sectoral directives which contain clauses for their periodical revision provide a sustained, almost mechanical dynamic of marketization and

enjoy a fairly solid consensus for ever tighter market integration. While this is obvious in sectors where liberalization has been ongoing for about two decades, it is also striking that marketization is now reaching new frontiers—such as healthcare—which affect even more sensitive areas of citizens lives. Behind the narrative of patients' rights to mobility, EU legislation has started to open national boundaries of healthcare systems based on solidarity. Although national governments still enjoy a strong regulatory capacity in this regard, this has a strong potential for promoting market logics and actors within an internal market for healthcare.

The study of liberalization and resistance to it in today's EU calls for a nuanced assessment of the interactions between positive and negative integration. Fritz Scharpf's work essentially focused on the ways in which the Commission and the Court were able to use the institutional and legal features of the EU to impose a market-making agenda enforced through negative integration. This chapter has shown that the generalization of co-decision had, to a certain extent, reshaped EU politics as parliamentary politics have opened possibilities for politicization and conflict-based deliberation. The EP is almost systematically the channel through which pro-regulation ideas and propositions are voiced. It is also a target and an ally for civil society groups which have the possibility to mobilize transnationally. Over the years, though, the majority of the EP has continuously shifted to the right, thus expanding support for market-making policies. However, the majority–opposition dynamics within the EP still work on an ad hoc basis in a way that is permeable to contestation within civil society and politicization in national public spheres. While jurisprudence is usually rather versatile, the EU Commission always offers a particular interpretation of it when it proposes legislation. This is influenced by the political climate of EU politics, on the one hand, and by the ideological inclinations and agendas of individual Commissioners, on the other. In sum, institutional and legal constraints can no longer be regarded as the sole, structural drivers of EU policy making. Ideological battles and discursive dynamics that make the multi-level politics of the EU play an important role in shaping the particular positive–negative integration policy mix over different issues. While the marketization agenda has consistently been accompanied by varying levels of contention and resistance, it has still never ceased to be the dominant policy agenda ever since its inception.

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4

The Elusive Pursuit of Social Europe

Resistance to marketization and liberalization is one way to understand the contentious politics of welfare services in the EU. Another way to analyse this issue is to study endeavours to promote the re-regulation of welfare services at the EU level as a counterbalance to negative integration. Where pro-market policies could not be avoided, another way for pro-regulation actors to tackle the negative backlash effects on welfare services has been to promote the adoption of market-correcting policies. In other words, in order to determine whether the EU is bound to be neoliberal, it falls short to demonstrate that resistance to negative integration was not strong enough to stop the pro-market agenda. It is also crucial to understand why alternatives failed. Ironically, although the notion of ‘social market economy’ was only recently introduced into EU primary law with the Treaty of Lisbon, the EU has never been so far from embodying this notion. When the treaty entered into force in December 2009, the EU had just entered the post-financial crisis era. The euro crisis, that is a financial and bank crisis leading to a crisis of the Eurozone and to a larger economic and social crisis in the EU, apparently only constitutes a critical juncture. In fact, the crisis has only served to accentuate the existing trends and asymmetries within the EU. In that sense,

it confirms a departure from the Delorsian project of building a supranational social market economy (Crespy and Menz 2015b). While it never excluded integration through the market, the political project of a ‘social Europe’ embodied a social democratic concept of integration rooted in regulated capitalism differing distinctly from the neoliberal project for Europe (Hooghe and Marks 1997).

According to Scharpf (1988), the weakness of positive integration can be explained by what he called the ‘joint-decision trap’: national governments generally want to preserve or upload their own institutional arrangements, thus leading to deadlocks in the Council. Moreover, non-majoritarian institutions such as the Commission and the ECJ, who are weakly accountable towards constituencies, can more easily overlook popular demands for market correction and use their institutional supremacy in EU governance to promote integration through the market.

This explanation fits only partially with the politics of welfare services. As we will see in the first section in this chapter, since the mid-1990s pro-regulation actors have succeeded in obtaining increasing recognition of SGI in EU treaties. However, the ambiguous provisions included in the Treaty of Lisbon point to a change of mood in EU politics—both in terms of ideas and in power relations. In the second section, a focus on the debate surrounding a possible EU Framework Directive on SGI between 2000 and 2007 sheds lights on these political dynamics. Ultimately, as demonstrated in Sect. 3, the failure of pro-regulation actors to garner sufficient support for an EU policy of welfare services based on positive integration has left them with weak policy alternatives as well as weak contentious politics circumscribed to sectoral issues.

1 Advocacy for the Constitutionalization of General Interest

The coalition of actors promoting the re-regulation of welfare services formed in the first half of the 1990s. Initially, the alliance between the social partners, namely the European Centre for Enterprises with Public Participation (known under the acronym CEEP) and the ETUC, was key with regard to claims coming from civil society. In the political arena,

re-regulation of SGI has been forcefully promoted by France, supported by the small but influential Member State Belgium, and other countries mainly from the South (Italy, Spain). The coalition could also rely on supporters within the EP. However, as we will see in the following section, the support of the assembly as a whole eroded over time. The main achievement of the coalition was the multifaceted recognition of SGI in subsequent EU treaties. However, this process of constitutionalization has remained ambiguous, and is ultimately yet another reflection of the battle of ideas over welfare services in Europe.

1.1 The Amsterdam Treaty: The 'Social Europe' Factor?

In 1996, the inclusion of a new article on SGI contained in the Treaty of Amsterdam marks the first political victory for the advocates of SGI regulation. In fact, CEEP calls for the re-regulation of welfare services going back to the mid-1980s became stronger in the course of the 1990s as liberalization policies became more assertive in EU policy making. This took the form of a proposal for a 'charter for services of general interest'. At the time, the idea of a charter distinguished itself from the Anglo-Saxon conception of such charters which aims at formalizing the principles of new public management and is strongly geared towards consumer choice and consumer rights (Clifton et al. 2005). The idea behind the charter advocated by CEEP and ETUC was to flank EU market building policies with a social dimension. The purpose of the charter would therefore be to formulate general principles which would be protective of the societal role of welfare services vis-à-vis competition policy. CEEP advocated the charter during the 1996 intergovernmental conference which led to the adoption of the Treaty of Amsterdam. The following claims were, for example, expressed at a public hearing convened by the EP in 1996:

Now the principles of competition are being given precedence over the consideration of public service protection in the text of the Treaty, in implementing directives and in the case law of the Court of Justice of the European Community (...) However, the debate is not over. CEEP proposes that a

European charter of services of general economic interest be produced to clarify the rules proposed by this new Treaty article 94 (objectives and obligations, Community policy), leaving the Member States free to decide on the activities which form part of "services of general economic interest". The charter would also stress the necessary regulation to be enforced by an independent administrative body or an operator who can provide sufficient guarantees. Lastly, the charter would envisage the establishment at Community level of an observatory with the remit of assessing services of general economic interest. (European Parliament 1996)

The activities of CEEP were largely supported and shaped by the French campaign for the re-regulation of welfare services at the EU level. According to Héritier (2001), the recognition of SGI in the Treaty of Amsterdam is, to a large extent, the result of French activism both at domestic and European level and in various institutional arenas, including the EP and the intergovernmental conference. Since the inception of liberalization policies, France was the country to put up the most resistance. From 1993 onwards, domestic actors, mainly public service technocratic elites, became active within networks such as the *Réseau services publics* and generate public debate by organizing conferences on welfare services and Europe (Bauby and Boual 1993). The major social unrest in the winter of 1995 provided a heated political context. Triggered by a reform of the pension system put forward by the government, the protest paralysed the country (as it was accompanied by a strike of transport workers) and blame was largely attached to the 'Europe of Maastricht' for threatening the French social model (Contamin 2005). Against this backdrop, the French networks expanded to Brussels and organized the first European forum of social actors for SGI, which gathered about 200 participants in November 1994. At this forum, the European Liaison Committee on Services of General Interest (CELSIG) was created. The Committee's front men were an academic, Pierre Bauby (Science Po/Paris VIII), and a formerly highly profiled representative of the trade union CGT, Jean-Claude Boual, who became the Secretary General of CELSIG. CELSIG engaged with active advocacy targeting the intergovernmental conference by organizing, for example, two forums in February and October 1996.

At the time, it gained significant support from the European Commission, notably via the former French Prime Minister and Commissioner for

Science, Research and Technology, Edith Cresson. In the run up to the intergovernmental conference, the CELSIG promoted three points: first, to strengthen the legal recognition of SGI in the EU Treaty, notably through a connection with fundamental rights; second, to encourage cooperation among Member States; third, to conduct impartial and regular evaluation of policies in the realm of SGI (CELSIG 1996). In addition to that of the EP, the CELSIG–CEEP–ETUC coalition also received the support of the European Commission. This support materialized in a communication issued as the intergovernmental conference was running in September 1996 (European Parliament 1996). The communication acknowledges that SGI reflect shared values in Europe and that access should be ensured at the Community level through the concept of ‘universal service’; it also suggests that the intergovernmental conference leads to the inclusion of a mention on the Union’s ‘contribution to the promotion of services of general interest’ (p. 15) in Article 3 of the treaty on the values of the EU. However, the Commission also makes explicit that this would not constitute a legal basis for legislation. Finally, the Commission entered into a commitment to develop tools for conducting the evaluation of policies in the various SGI sectors.

At the intergovernmental conference, two coalitions clearly opposed: on the one hand, France, Belgium, Italy and Spain made various propositions to achieve legal recognition of the role of SGI in EU primary law. Whereas the UK supported deregulation of SGI, Sweden, the Netherlands and Germany had more ambiguous positions, hoping to shift the blame for unpopular reforms at home to Europe (Héritier 2001, pp. 836–837). Eventually, the Amsterdam Treaty incorporated a new Article (future Article 16 EC) stating that:

Without prejudice to Articles 77, 90 and 92, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

The political breakthrough achieved on SGI with the Treaty of Amsterdam must be seen in the broader political context. In 1997, the social democrats were in government in 12 out of 15 member countries of the EU. European social democracy seemed to be going through a major modernization process under the influence of Tony Blair and the *third way*, and its German variant forged by Gerhard Schroeder, the *Neue Mitte*. While more traditionally socialist, the French Prime Minister Lionel Jospin equally embraced a liberally minded version of social democracy. In retrospect, the Treaty of Amsterdam can only be seen as a very ambivalent political moment. On the one hand, following up on the Delors years at the head of the EU Commission, the treaty seemed to constitute an important step towards the establishment of a social market economy at the EU level. Under the impetus of social democratic leaders, the Social Protocol¹ created with the Treaty of Maastricht was incorporated into the EU Treaty after the UK agreed to abandon its original opt out. In addition, a new chapter on employment was included in order to coordinate macro-economic strategies and tackle unemployment. The European Employment Strategy inaugurated a new form of soft governance which would later be formalized as the open method of coordination. On the other hand, the late 1990s appear as a missed *rendez-vous* with 'Social Europe'. The political momentum, clearly favourable to the social democrats, eventually resulted in no major breakthrough in terms of advancing a policy programme grounded in positive integration. For many scholars of social democracy in Europe, this is due to the ideological and programmatic change within social democracy as well as to the specific institutional structure of the EU (Moschonas 2005, 2009; Marliere 2010). These dynamics are reflected in the debates surrounding welfare services. While being a political victory for the pro-regulation coalition, the inclusion of Article 16 EC does not alter the ambiguous and fragile balance established by Article 86 between general interest and competition. The following treaty revisions will only accentuate this legal and political contradiction.

¹ The Social Protocol was signed in 1992 and builds on the European Social Charter of 1989. It included among others provisions on European work councils, social dialogue between management and unions, and the possibility to transform decisions reached at the EU level into legally binding collective agreements.

1.2 The Constitutional and the Lisbon Treaties as Empty Shells

After the adoption of the Treaty of Amsterdam, the pro-regulation coalition kept up the level of mobilization inside as well as outside institutional arenas. The political momentum seemed favourable towards a more socially minded agenda. In December 1997, the EP adopted a new resolution calling on the Commission to adopt a charter laying down the principles for SGI in Europe and to put forward a green and a white paper envisioning the type of legislation which would be necessary to breathe life into the principles and values enshrined in the Treaty of Amsterdam. At the same time, the Commission started to conduct a systematic evaluation of the functioning of SGI in the EU from a market and consumer point of view, as well as at a sectoral and cross-sectoral level. The evaluation tools were designed in conjunction with the CEEP and the Initiative for Public Utilities in Europe, another French-based interest group advocating EU regulation in this realm (Clifton et al. 2005, p. 430). From 1997 onwards, the Commission also made extensive use of the Eurobarometer to evaluate consumers' satisfaction with the access, quality, price, information and so on of welfare services. While significant sectoral and national differences can be observed, the data provide evidence of an overall convergence of satisfaction levels across the EU, including candidate countries of Central and Eastern Europe (*ibid.*).

Against this backdrop, CEEP and ETUC sustained their action advocating the adoption of a charter for SGI. They issued a proposal in 2000. The text reflects a broad approach since it covers the consumer rights aspect of SGI, their organization, as well as the issue of democratic participation.

In parallel with the proposition of the charter, both organizations, together with France and Belgium, proposed to include an article dedicated to welfare services in the Charter of Fundamental Rights. After the unsatisfactory intergovernmental process which led to the adoption of the Treaty of Nice, the Union was occupied with a constitutional process aimed at settling a number of dilemmas prior to the foreseen Eastern enlargement. In 1999, a gathering of representatives of the Member States, members of the national parliaments, MEPs and one representative of the

European Commission was convened to draft a Charter of Fundamental Rights. In spite of strong divisions on the issue, the representative of the French government, Guy Braibant, used his position as a member of the *praesidium* to obtain the introduction of an article on SGI (Deloche-Gaudez 2001). Article 36 of the Charter stipulates that:

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Though SGI seemed to be making their way into EU law, the actual provisions agreed upon foresaw the recognition of welfare services mainly at the discursive level. In fact, the legal power of the Charter of Fundamental Rights remained uncertain for many years as, although adopted in 2000, it did not become legally binding until its attachment to the Treaty of Lisbon which entered into force in 2009. Throughout these years, ETUC (and CEEP) have consistently advocated that the Charter should be incorporated into EU primary law.

The question of an explicit legal basis for the EU to regulate SGI therefore remained a loophole in EU law and a claim from the pro-regulation coalition. The same alliance between civil society groups, ETUC, France and Belgium, and the same logic of influence prevailed during the work of the European Convention on the Future of Europe empowered to elaborate a draft constitution for the EU. An Article III-122 in the European Constitutional Treaty was to replace Article 16 EC with a crucial addition, specifying that 'European laws' should determine the principles enabling SGI to 'fulfil their mission'.

However, the iterations of the doomed European Constitution did not result in such a clear victory on the side of the advocates of SGI regulation at the EU level. The provisions which were finally agreed upon and introduced in the Treaty of Lisbon reflect once again the endless struggle between pro and anti-EU regulation. Two points in particular deserve to be mentioned. First, the term 'European law' did not survive the constitutional debacle. In the Lisbon Treaty (or TFEU), Article 16 on SGI stipulates that:

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

On the one hand, the article now provides, as did the Constitutional Treaty, the long demanded legal basis allowing the EU to legislate and regulate SGI. But the political meaning of the article is more difficult to interpret. While the issue of introducing a legal basis has been contentious among European decision makers, the legal instrument eventually selected is that of regulations. Unlike directives, regulations do not require transposition acts in national law and are directly enforceable. Insofar, regulations are more constraining and prevent national legislative debates. This seems to be very much at odds with the ten-year-long debate on a possible Framework Directive (see Sect. 2) which would have left ample leeway for the Member States to interpret and transpose EU enacted principles into their national legal order. Whereas ETUC and other civil society actors have viewed this article as a victory to their cause, more critical unions are sceptical that the mention of a regulation (and not a directive) will make the use of the legal basis impossible in practice.² The second novel aspect in the Treaty of Lisbon is Protocol 26 on SGI. While, at first sight, the protocol seems to strengthen the status of SGI in the Treaty, a careful reading shows that the stress is clearly on subsidiarity. The protocol mentions ‘the wide discretion of national, regional and local authorities’, ‘the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations’, and claims that ‘the provisions of the treaties do not affect in any way the competence of Member States on SGI’. Again, from a political point of view, the protocol thus seems to counterbalance the introduction of a legal basis by making any direct legislative action or regulatory policy of the EU very contestable. Overall, the Treaty of Lisbon reflects

²Interview with a representative of the Belgian Confederation Générale des Services Publics (CGSP), Brussels, February 2008.

that, compared to the constitutional debates of 1999–2000, the political balance of power has tilted to the side of those defending the status quo, that is the absence of positive integration in the realm of welfare services. In fact, this is completely consistent with the controversy over a Framework Directive on SGI which went on from 2000 to 2007 and ended in deadlock.

2 The Unborn EU Framework Directive on SGI

2.1 Impossible Re-Regulation

Between 2000 and 2007, an intense debate about a possible Framework Directive on SGI took place against the backdrop of the pro-regulation coalition's mobilization described above. The purpose of such a directive was to specify how the principles of equality in access to welfare services, their availability, affordability, quality and so on could be put into practice and how they should be coexist with EU competition law. In other words, the directive would have established permanent derogations to competition in the name of said principles. While the Services Directive constitutes a horizontal legal framework aimed at liberalizing and (to some extent) deregulating, the Framework Directive would have represented its positive integration pendant by re-regulating SGI at the EU level. The notion of Framework Directive (or 'horizontal legal framework') implied that, in tune with the principle of subsidiarity, a large leeway should be left to the Member States to determine the practical arrangements for reaching the agreed goals. Following its initial communication from 1996, the Commission published a second communication on SGI in 2001 which remains vague about the possible adoption of a directive. Referring to the conclusions of the European Council of 2000, it acknowledges that 'the changes currently under way point to the need for a proactive stance on general interest services, which incorporates and goes beyond the approach based on the single market' (European Commission 2001, §57); it also mentions the CEEP–ETUC Charter. At the same time, the market approach is ubiquitous, as the Commission

proposes to ‘make the best out of market opening’ and focuses strongly on consumer protection. As far as legislation is concerned, it only goes as far as saying that it will ‘continue to follow the practice of preparing for changes in the regulatory framework through the issue of a Green Paper accompanied or complemented by further stages of public consultation’. The Green Paper, published three years later in 2003 (European Commission 2003a, b, c), served to consult all stakeholders, that is public authorities at all levels of government, private and public enterprises, interest groups, unions and so on, on a number of issues involved with the regulation of SGI, especially the idea of proposing a piece of legislation. In the Green Paper, the Commission mentions that a Framework Directive could be compatible with sectoral rules; but it stresses at the same time that a general framework would necessarily be limited and ‘based on the common denominator of different services with very different characteristics’, on the one hand, and on the other hand that the treaty did not provide a solid legal basis for the EU to legislate (as this legal basis would only be adopted with the Treaty of Lisbon). The White Paper issued the following year concludes that the Commission considers it appropriate not to proceed with a legislative proposal at this point in time but to re-examine the issue at a later stage. While the adoption of the Services Directive in 2006 contributes to accentuating the market approach to SGI, leaving a number of open questions, in a communication from 2007 the Commission confirmed that there will be no Framework Directive for re-balancing liberalization as the issue had clearly disappeared from the agenda.

Thus, how can we explain the lack of will on the part of the EU Commission to propose a Framework Directive on SGI and leaving such a lengthy political debate in a deadlock? In spite of arguments claiming the political decline of the Commission, we have argued elsewhere that it still remains a key entrepreneur (Crespy and Menz 2015a). Especially under the regime of co-decision, its monopoly for initiating legislation enables it to shape the political agenda to a large extent. However, the EU Commission cannot be regarded as a monolithic actor, and changing political moods as well as internal power relations play an important role. Actors concurred in stressing that the contentious debate over the Services Directive acted as a political trauma for the EU Commission,

who wanted to avoid the politicization of SGI by proposing another broad, horizontal legislation at any price.³ Soon after, the dossier of SGI was transferred from the DG MARKT to the General Secretariat because it was deemed too sensitive politically and Commissioner McCreevy, the successor of Frits Bolkestein, did not want to deal with it after the experience of the Services Directive. Thus, paradoxically, the fear of politicization prevented the Commission from engaging with a political balancing act towards re-regulation. Nevertheless, this does not mean that the Commission's approach is not shaped by a prevailing political approach. As a former senior official put it:

The point of view of the Commission is consistently the following: economic integration, the integration of markets is good for Europe and for living standards. It is better to have more competition and impede parochialism and nepotism. This is always the trend in local authorities: for political reasons, they always tend to favour local services providers (...) Competition and the introduction of the market in some sections of public services is the only way for ensuring increased efficiency and the survival of the public sector.⁴

However, it would be cartoonish to think that the Commission alone decided of the fate of the Framework Directive on SGI. In reality, it was reluctant to propose such legislation because it concluded that support among the Member States as well as within the EP was insufficient to guarantee the success of a significant move towards positive integration.

2.2 The Institutional Obstacles to Coalition Building

The evidence collected on the debate shows that institutional obstacles prevented the formation of a broad, intersectoral coalition supporting a Framework Directive like the one which fought against the Services Directive. As a consequence, only the supranational channels for mobilization, namely

³ Interview with a representative of CEEP, 14 March 2013; interview with a former senior official from the European Commission, 31 May 2011.

⁴ Interview with a former senior official from the European Commission, Cambridge (MA), May 2011.

political groups of the EU and unions, in the EU engaged with the debate. In contrast, the transnational networks of civil society and the domestic route via national parties, parliaments and governments, remained silent.

A first explanation echoes Fritz Sharpf's analysis which stresses the diversity of institutional arrangements in the Member States as well as the role of veto players as main obstacles to positive integration. When looking at the diversity of national arrangements and the political inertia they entail, it is interesting to focus on France and Germany: mainly for three reasons. First, both countries are major players in EU politics and, a fortiori prior to the enlargement of 2004, they accounted for a large share of the votes in the Council. Second, they have contrasted institutional regimes and traditions in the realm of SGI and, roughly, stand for two different models in the EU. Both have a strong tradition of involvement of public authorities in the provision and strong protection and regulation of SGI. But whereas France displays a centralized system with large, national operators traditionally owned and regulated by the government, the German Federal Republic is more a decentralized system with multiple regional operators and competences located at the level of the *Länder* or the municipalities. Third, French and German actors have largely occupied the scene during the debates on SGI at the EU level. For example, French and German contributions together represented 40 % of all responses received by the EU Commission in its public consultation over its Green paper on SGI (respectively 23 and 17 %) (Moudjed 2004).

A second important explanation brings more novel insights as it deals with the role of entrenched sectoral policies at the EU level as an impediment to intersectoral coalition building. It is in tune with the argument made by historical institutionalists that 'policies shape politics': in other words, established policy practices 'affect the social identities, goals and capabilities of groups that subsequently struggle or ally in politics' (Skocpol 1992, p. 58). As explained in the previous chapters, EU policy in the realm of SGI has, since its origins, taken the form of sectoral liberalization directives. This has led actors to shape their preferences along sectoral lines. As a result, as claimed by Smith (2006), the 'sectorising of the government of Europe' entails a pro-liberalization bias which favours specific pro-market interest groups over pro-regulation actors, such as political parties and unions which stand for diffuse citizens' interests.

As far as national positions are concerned, a first group of countries, namely Ireland, the UK, Finland, Denmark, the Netherlands, Sweden and Italy, was more oriented towards marketization and competition, and therefore opposed to more regulation. In contrast, Germany, Austria, Portugal, France and Belgium were more geared towards a higher protection of SGI as part of their national social model, but diverged on whether such protective regulation should be located at the regional/national or EU level (Becker 2005, p. 25). While France's position was always supportive of more regulation of SGI, Germany had always had a more reserved position, mainly for subsidiarity reasons. Evidence about the positions of both governments shows how institutional conservatism and the defence of traditional models rooted in historical conceptions of the State (Dyson 2009) translate into political inertia and a 'joint-decision trap' (Scharpf 1988). Germany has been a major veto player with regard to a further involvement of the EU in SGI regulation. During the discussions on SGI at the Laeken European Council in 2001, the German government expressed concerns about a potential European framework. In the 2003 consultation on the Commission's Green Paper, it strongly expressed its position against a legislative proposal and argued that:

Community regulations are specific to certain sectors and can only be considered in sectors of general economic interest which, due to their size and their connection, have a significant weight at the European level. Additional regulation must be justified in detail regarding a sectoral context or sectoral specificities. The Community must justify that the sector in question fulfils the conditions, that a Community competence exists, and that proposed measures are compatible with the principle of subsidiarity.⁵

The position was to a large extent motivated by the strong objection of the German *Länder*, which hold important competences on SGI in the German federal system. The reflections of the Commission in its White Paper from 2004 similarly provoked a strong opposition from the *Bundesrat*, which considered that there was 'neither a European

⁵Stellungnahme der Bundesrepublik Deutschland zum Grünbuch zu Dienstleistungen von allgemeinem Interesse der Europäischen Kommission KOM(2003)270, September 2003 (translated from German by the author).

competence, nor a need' for such a move (Bundesrat 2004, §6). A further illustration of this position was provided as in 2007 the call by the mayors of ten major European cities for the protection of public services was not signed by Klaus Wowereit, the social democratic mayor of Berlin. This makes the debate over SGI a case in point for a double joint-decision trap due to the role of veto players at both the regional and federal level in Germany.

Officially, France has always supported stronger regulation by the EU; but a closer look at various actors' statements shows that positions in the debate over the Framework Directive on SGI were more ambivalent. The government actually stressed that a general framework should not contradict existing sectoral rules. In addition, large public companies in the utilities sector (such as *France Télécom*, *La Poste*, EDF, GDF) claimed that they joined in calls for an EU framework, but suggested at the same time that detailed regulation should remain specific to each sector and that, in the same vein, the definition of universal service obligations should not be established at the intersectoral level and that the calculation of costs generated by the provision of universal services was very complicated (Moudjed 2004, p. 8). Thus, the preference for limited sectoral rules seemed to be pervasive even among those who had claimed to support a Framework Directive. Hence, the Social Protection Committee, which gathers representatives of Ministers for social affairs and of the EU Commission and advises the Employment and Social Affairs Council, never expressed a clear stance on the issue and preferred to ignore it.⁶

The same sectorizing of preferences can be observed at the EU level. A study conducted by Mangenot and his colleagues⁷ in 2004–2005 highlights 'structuring sectoral logics related to genuine specificities, as well as agents' logics related to their respective place' (Mangenot 2005, p. 155), thus suggesting that the sectorizing of governance cannot be disentangled from politics. The interviews conducted revealed that ETUC

⁶Interview with a representative of CEEP.

⁷The study includes a series of 16 interviews with representatives of European platforms of providers (railway, post, gas, electricity, audiovisual), regulation authorities (telecommunications, audiovisual, post), of the DG Competition, Internal Market, Transport and Energy of the European Commission, of ETUC, UNICE, CEEP BEUC and the European Economic and Social Committee.

(pro-Framework Directive) and the Union of Industrial and Employers' Confederations of Europe (UNICE, now BusinessEurope) had clearly contrasted positions, namely for and against the directive. But the *Bureau européen des unions de consommateurs* (BEUC, the European Consumer Organization) and CEEP had more nuanced, intermediate positions. Most importantly, all European umbrella organizations of services providers and regulators proved to be 'opposed to the existence of general provisions, not seeing any added value with regard to existing detailed sectoral rules' (ibid., p. 168).

In turn, the representatives of more diffuse interests, namely trade unions and political parties, found it difficult to gather sufficient support for a Framework Directive on SGI. ETUC and the PES led in 2006–2007 parallel campaigns in order to persuade the Commission to take action and propose a Framework Directive. In November 2006, ETUC launched a petition demanding a 'strong regulatory framework' (i.e. a directive) for 'high-quality public services accessible to all'. The petition could be both signed on paper or on the dedicated website www.petitionpublicservice.eu, and the ambition was to garner one million signatures. In spite of the strong involvement of the French CGT, the German DGB and Ver.di (the German union for services) (Kowalsky 2008), the campaign ended up being disappointing since the one million target could not be achieved. On 17 November 2007, ETUC symbolically handed about 500,000 signatures to the President of the EU Commission on the day before it was to publish a new communication on SGI (ibid., p. 348). At that time, though, it was already known that the Commission was not ready to change its course of action, which triggered criticism by ETUC, its Secretary General John Monks claiming that 'the Commission is negative and short-sighted if it does not respect the essential role of public services and accord them adequate protection from market forces' (ETUC 2007a). In addition, the petition was supported by a declaration of the mayors of ten European capitals,⁸ claiming that:

the mayors of European capital cities warn against following the route of privatisation alone. The joint declaration states that the European Commission must stop continually pushing the privatisation-liberalisation

⁸ Amsterdam, Brussels, London, Luxembourg, Lisbon, Nicosia, Paris, Sofia, Tallinn and Vienna.

of public services as the answer. In opposition to this neo-liberal approach, the mayors who have signed the declaration, together with the ETUC, propose a European framework directive to guarantee services and support their prime mission of cohesion and solidarity, as well as making them affordable to all. (ETUC 2007b)

When the petition was officially closed, it was signed by about 700,000 people.⁹ Typically, the distribution of signatures in the various EU-Member States is very unequal with Romania, France and Belgium, accounting for about 50 % of all signatures, while Central, Eastern and Northern countries (including Scandinavia and the Baltics) show very low levels of commitment (Kowalsky 2008, p. 357).

In the view of EPSU,¹⁰ the level of mobilization was weakened by the fact that a ‘European legal framework’ is an abstract topic for grassroots members on the ground. Moreover, a possible contradiction between the Framework Directive and sectoral rules also impeded support, for example, in the postal sector. Fundamentally, in countries where welfare services are well developed and performing, unions have expressed concern that rules at the EU level would contribute to the deterioration rather than the improvement of standards on the ground. In this respect, the adoption of the Services Directive had a very negative impact on the will to re-regulate: like, for example, in Belgium, where most political and social actors have traditionally been in favour of positive integration in social matters. Positions are now more defensive as pro-regulation actors think that they should ring-fence their own system against possible negative effects of EU rules. In parallel with the ETUC petition, the PES set up a working group—including MEPs, lawyers and representatives of EU institutions, public authorities and civil society—which elaborated an actual legislative proposal for a Framework directive on SGI¹¹ (see Box 4.1).

⁹ Interview with a representative of EPSU.

¹⁰ Ibid.

¹¹ Socialist Group in the European Parliament, ‘A new impetus for public services in Europe—Ensuring legal certainty, local autonomy and citizens’ rights’, available at <http://www.socialistsanddemocrats.eu/> (20 July 2015)

Box 4.1. Proposal for a Framework Directive on services of general economic interest, groups of the socialists and social democrats in the European Parliament (contents)

CHAPTER I GENERAL PROVISIONS

Article 1—Subject

Article 2—Scope

Article 3—Definitions

Article 4—Shared responsibility of the Member States and the European Community

Article 5—Relationship with other provisions of Community law

CHAPTER II TRANSFER OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 6—Free choice of operation method

Article 7—Direct operation

Article 8—Outsourced operation

CHAPTER III OPERATION OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 9—Common scope of public service obligations

Article 10—Considerations of individual objectives

CHAPTER IV FINANCING OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 11—Power of Member States to provide financing

Article 12—Financing methods

Article 13—Granting of special or exclusive rights

Article 14—Granting of public service compensation

Article 15—Assistance from a public services fund

Article 16—Establishment of a tariff averaging system

CHAPTER V CONTROL AND REGULATION OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 17—Authority responsible for control

Article 18—Forms of regulation

CHAPTER VI USERS' RIGHTS, QUALITY AND EVALUATION OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 19—Users' rights

(continued)

Box 4.1 (continued)

Article 20—Policy on quality

Article 21—Evaluation

Article 22—Public consultation and participation methods

CHAPTER VII FINAL PROVISIONS

Article 23—Transposition into national law

Article 24—Entry into force

Source: www.socialistsanddemocrats.eu, date accessed 20 July 2015

The socialists demanded that a Framework Directive should be adopted along with—or prior to—the Services Directive. It was published in February 2007 and transmitted to the Commission President Barroso. However, while reflecting the official position of the group of the social democrats in the EP, the proposal did not enjoy unanimous support among the social democrats at the national level. Again, the German social democrats, especially those in the *Bundesrat*, proved very reluctant: for them, welfare services at the local and regional level in Germany were never part of the European internal market and any EU regulation of the SGI would only hollow out the regulatory competences of local authorities.¹²

To conclude, there is evidence that the established sectorizing of policy making and politics in the realm of SGI and reluctance to transfer more powers to the EU (that is the defence of subsidiarity) among powerful veto players (namely Germany or the German *Länder*) concurred to thwart the efforts of a pro-regulation coalition made of civil society organizations, trade unions and an important fraction of the social democrats. However, the following section will show that these institutional obstacles were reinforced and discursively constructed in ideologically driven political debates.

2.3 The Marriage Between the Market and Subsidiarity

In the debate over a Framework Directive on SGI, the weak regulatory coalition failed to frame a consistent and pan-European communicative

¹²Interview with a representative of CEEP.

discourse appealing to broad values and able to resonate within national public spheres. The framing of the issue mainly took the form of coordinative discourse circumscribed to circles of policy makers in Brussels. The Framework Directive was not discussed in the national press or by national political parties, unions or NGOs. Even in Brussels, civil society organizations did not engage with a broad public campaign and debate on the issue. The four debates which took place in the plenary session of the EP on the Commission's document between 2001 and 2007¹³ are therefore the main instances where discursive exchanges over the issue can be observed. The speeches held in the plenary by MEPs from the main political groups, namely the PES and the EPP, offer good material for analysing how discursive interactions have shaped decision making over time. Deliberation within the EP is of a hybrid nature: debates in the plenary sessions of the EP are directed to the general public, and therefore constitute the archetype of communication discourse which relies on norms and values; at the same time, however, the EP remains fairly remote from national constituencies. Debates among MEPs often tap into coordinative discourse grounded in sophisticated cognitive arguments and aim to reach various epistemic communities and decision makers involved in policy formulation. In this debate, it appears clearly that the former was much thinner than the latter. With regard to the State-market regulation axis, the invocation of the general interest was the main normative frame used to argue for the need of EU regulation of SGI, while the market frame proved to be a much more powerful. Notwithstanding, most of the debate focused on cognitive arguments related to the EU-Member States governance axis through frames such as subsidiarity and the opposition between sectoral and horizontal regulation.

As demonstrated in the previous chapter, the involvement of the EP is key component of the institutional setting for actors resisting liberalization and marketization policies by providing a supranational channel and an arena for mediating contention. The section shows how the support of the EP has decreased over time as the framing through the market and subsidiarity has progressively prevailed over that in terms of general interest. The struggle between sectoral regulation and a horizontal regulation

¹³Langen report, session of 13 January 2001; Herzog report, session of 13 January 2004; Rapkay report, session of 26 September 2006; Hasse Ferrera report, session of 12 March 2007.

(a Framework Directive) interestingly shows that the institutional constraints—such as the role of national policy traditions or the sectorizing of EU policy making—do not mechanically shape coalition formation. Rather, they are constructed discursively by actors and underpinned by their ideas about the relations between the respective role of the State, the market and the EU.

While the conservatives of the EPP are relatively favourable to the possible adoption of a Framework Directive in the discussions of the Langen report in 2001, their position changed over time towards a firm and durable opposition. The debate over the Rapkay report in 2006 represents the climax of the debate over SGI. The session was particularly long with a significant increase in the number of MEPs taking the floor (47 in 2006 as opposed to 28 in 2004 and 27 in 2007). This debate took place only six months after a compromise was found over the Services Directive in February 2006, and the conservatives made clear that this compromise clearly contradicted and prevented the project of adopting a Framework Directive.¹⁴ The discourse emanating from both groups shows a tension between the role of the market (and the fact that SGI belong to the realm of the market and cannot be simply extracted from it), on the one hand, and the need to protect general interest, on the other. However, logically, framing in terms of general interest and the European social model were more present in the discourse of the PES, while the market frame is more salient in the speeches held by EPP members. Accordingly, references to a Framework Directive are to be found more frequently in the speeches of the former than in those of the latter, but both groups discuss the relevance of the sectoral approach to similar extents. Furthermore, the theme of subsidiarity is raised more by the conservatives than the social democrats (although it is far from ignored by them). Beyond inter-party variation in discourse, differences along national lines can also be observed: the market, the sectoral and the subsidiarity frames are more present in the German discourse (regardless of parties), while the Framework Directive and general interest frames are more likely to be invoked by the French.

It is particularly interesting to point out two aspects in particular: first, the dynamics over time and, second, the internal contradictions of the

¹⁴Jozsef Szajer (PPE), 16 September 2006.

framing by the social democrats. Whereas the position of the EPP seems to crystallize in a fairly coherent fashion on the themes of the market and subsidiarity, the discourse of the PES supposed to channel the demands of the pro-regulation coalition in the decision making process displays an insolvable tension. The presence of the market frame increased between 2001 and 2006, suggesting a quasi conversion of the social democrats to the conservative discourse and ideas. Several speeches reflect the dilemma between the market and general interest:

Here I would like to avoid a misunderstanding. The purpose is not to have the market and competition on the one hand and services of general interest on the other. Services of general interest can very well be provided by market tools in a competitive framework.¹⁵

However, not all social democrats share this point of view:

In my view, the issue of economic or non-economic general interest is the conflict line between the advocates of a social market economy and those of a neoliberal market economy¹⁶

This question is also disturbed by the issue of subsidiarity, which becomes an increasingly dominant frame over time. While it is typically initiated by the EPP and German MEPs, it becomes pervasive in the speeches by PES and French MEPs. In fact, the inconsistency of the social democrats' discourse on the SGI is due to various ways of understanding the equation between the market, general interest and subsidiarity: there is a clash between a defensive and an offensive position. For most German social democrats (which also echoes the position of the MEPs from Austria or Northern Europe), protecting subsidiarity equals protecting welfare services:

In our view, the important matter in our debate about services (...) is that our strategy must find the right balance between the requirements of the internal market, and what we, social democrats, know and accept, and the necessity to

¹⁵ Bernard Rapkay (PES), 13 January 2004.

¹⁶ Proinsias de Rossa (IDEM), 13 January 2004.

protect citizens by strengthening local and regional institutions which are best able to ensure the principle of subsidiarity in services provision¹⁷

In contrast, for the French (as well as the Belgians and MEPs from Southern Member States), subsidiarity is important but does not protect local authorities from the powerful logic of competitive markets:

European integration must go further by respecting diversity, by it must be grounded in a number of common values related to social justice, equality, and solidarity. We can define a common framework for European public services. This can be only considered through competition because we know that the benefits that society receives from public services must be considered in terms of education, health, security and cohesion among Member States and their citizens.¹⁸

Thus, the social democrats' discourse has been very ambivalent in the battle of ideas: it shows a global dynamic of withdrawal on subsidiarity in the name of a more social Europe; but at the same time, by converging with the discourse of the conservatives, it delegitimized the proposal of re-regulating SGI at the EU level.

The direction taken by deliberations within the EP, that is eroding support for the Framework Directive, has been key in leading the debate into deadlock. Facing divided Member States and the absence of a strong majority supporting a legislative proposal within the EP, the Commission came easily to the conclusion that there was insufficient political support for such a bold move towards positive integration in the aftermath of the heated debate on the Services Directive. Institutional constraints, such as the sectorizing of EU governance and regulation, are underpinned by more fundamental political positions which can be observed through the discursive dynamics of political deliberation. As a senior official of the EU Commission summed up, 'Sectorizing may have played a role, but I wonder to what extent. If the Commission President and MARKT wanted a horizontal text, they could have done it.'¹⁹ Ironically, when the

¹⁷ Martin Schulz (PES), 26 September 2006.

¹⁸ Françoise Castex (iDEM), 26 September 2006.

¹⁹ Interview with a former senior official of the European Commission.

Treaty of Lisbon was adopted and finally provided the EU institutions with an explicit legal basis for regulating SGI, the debate was already over from a political point of view. The recurrent invocation by the unions and other interest groups of Article 16 TFEU, the Charter of Fundamental Rights or the Protocol on SGI received no echo among decision makers. The following section examines the configuration emerging from the failure of mobilization for positive integration.

3 The End of Contentious Politics?

3.1 The Sectoral Withdrawal on *Social* Services

After the adoption of the Services Directive and the impossibility of putting a Framework Directive on the legislative agenda, the SGI regulation as a broad, intersectoral and political issue was abandoned. Instead, policy makers engaged with a further fragmentation of the notion of SGI, which meant a further sectorizing of policy making. This sectorizing was reflected in four ways: (a) the forging of and focus on the category of SSGI; (b) a reform of state aid rules directed at SSGI; (c) the introduction of soft law in the realm of SSGI; and (d) the corresponding sectorizing of interest representation.

After the contentious debate over the Rapkay report on the Commission's White Paper on SGI in 2006, the dialogue among the EU institutions was recalibrated: since a majority of decision makers were not favourable to a general framework, it was clear that network industries were definitely regarded as belonging to the market realm and regulated through sectoral liberalization directives. Hence, the perimeter of the debate was to be confined to the myriad of—potentially local—social services which were less compatible with a market approach. To this end, the notion of *social* services of social interest was created: it covers complementary social security schemes, social assistance to persons in need, employment and training services, social housing and long-term care; healthcare is dealt with separately. Typically, while network industries and sectoral liberalization is handled by the Commission's DG MARKT, SSGI would remain the parameter of DG for employment and social affairs

(DG EMPL). In a communication appended to its strategy for ‘The internal market for the 21st century’ from 2007, the Commission nevertheless reasserted the exclusive market approach even to SSGI. First, it made clear that the category of SSGI did not overlap that of non-economic SGI which only covers ‘traditional state prerogatives such as police, justice and statutory social security schemes’ (European Commission 2007b, p. 4) and remains outside of the scope of application of EU law. Rather, ‘social services can be of an economic or non-economic nature depending on the activity under consideration’ (ibid., p. 5).

From a policy making point of view, the main initiative of the Commission has been a commitment to address criticism from local and national public authorities by relaxing competition rules (i.e. state aids) applicable to SSGI. The reform of the so-called Monti-Kroes package from 2005 took until 2012 to be implemented in the incarnation of the Almunia package. Although it is too early to assess the effects of the reform, the new rules provide more flexibility for local and social SGI, mainly by granting them derogation from notifying public financial support to the Commission; but at the same time, they also bring about more complexity in other respects. More particularly, the more stringent control by the EU Commission on the definition of SGI, on whether it is provided in an efficient way from an economic point of view, and to what extent public compensation may distort cross-border competition is contentious, and shows that the line between Member State and EU competences remains blurred (van de Gronden 2013).

In addition to the revision of state aids rules, soft law has been introduced. The forum on SSGI was created and held for the first time in Lisbon in 2007. It brought representatives from all EU institutions together with interest groups and stakeholders. At the first forum, the Commissioner for employment and social affairs, Vladimir Spidla, stated boldly that, sooner or later, the EU would adopt a Framework Directive on SGI. He was contradicted by the Commission President himself soon after. The second forum was held in France in a context where the French government had fully abandoned its claims for a horizontal framework on SGI,²⁰ and the Commission still denied that competition rules were problematic.

²⁰ Interview with an official of the Belgian federal government.

The fact that an official from DG MARKT was displaced to DG EMPL to deal with SSGI is telling in this regard. The third forum on SSGI could only be organized because of the 2010 Belgian Presidency's activism. The main output of the forum was the elaboration of a common quality framework for SSGI, which constitutes a set of rules (see Box 4.2) that can be adopted and implemented voluntarily by the Member States.

EPSU has underlined that the EU Commission advocated non-mandatory quality standards but made no proposition as to how the existing legal provisions (the Charter of Fundamental Rights, the Protocol 26 on SGI and the Article 14 TFEU) could be used in order to tackle

Box 4.2. Contents of the common quality framework for social services (contents)

INTRODUCTION

THE CONCEPT OF SOCIAL SERVICES

QUALITY PRINCIPLES FOR SOCIAL SERVICES

Overarching quality principles for social service provision

Quality principles for the relationships between services providers and users

Quality principles for the relationships between services providers, public authorities, social partners and other stakeholders

Quality principles for human and physical capital

ELEMENTS FOR A METHODOLOGY TO DEVELOP QUALITY TOOLS

Definition

Scope

Validity

Cross-country comparability

Data availability

Responsiveness

Conclusions

Source: European Commission, www.ec.europa.eu, date accessed 29 November 2015

problems related to SGI provision (EPSU 2012). The Belgian Presidency, together with some MEPs (notably Proinsias De Rossa, rapporteur on SSGI), tried to relaunch the political dynamic on SGI and had secured the support of all major political groups within the EP for the creation of a high-level group on SGI.²¹ But the initiative met with the resistance of most Member States as well as the Commission. Since the third forum on SSGI under the Belgian Presidency, no further presidency of the Council has agreed to organize the forum again.

This circumscription to the issue of SGI to SSGI was clearly accompanied with a similar sectorizing of interest groups as well as an adaptation to the marketization of their activity. After the adoption of the Services Directive, the third sector organizations and groups which had campaigned for the adoption of a Framework Directive on SGI decided to set up a lobby, called *Collectif SSGI*, focused on SSGI, which they claim as a major strategic move:

The *Collectif SSIG* arose from the now general awareness that the rhetoric assertion of subsidiarity and the non-economic nature of social services was now behind us and that there was no other choice than collectively enter the fortress of European law to achieve the recognition of our specificities (...) and with one common objective: sectoral clarity. (SSIG 2006, pp. 8–9)

Since then, the idea has grown among the representatives of the sector that they had to adapt and find their place in the market framework provided by the EU, as the following statement shows:

After working for eight years on this issue and lobbying for a Framework Directive, I now think that this claim makes no sense (...) Representatives of SSGI are convinced that they are right, like union members, but they are in the clouds, they don't stick to reality. They spend very little time in Brussels (...) But there has been significant change: at the outset, they were not even aware that they are *economic* actors (...) organizations that provide social services *are* economic actors, market actors.²²

²¹ *Idem.*

²² Interview with a consultant for *Collectif SSIG*, Brussels, 9.09.2010.

Similarly, a main representative asserts:

At the time, I thought that a Framework Directive was the way to discuss SGI as a global issue. We did not master all the instruments, all the intricacies of EU law. Meanwhile, there has been a recognition of SSGI, much progress has been made since then. Today, the consolidation of a single directive would be impossible. There are different legal bases. The incorporation in a single legislation would be too difficult. It is difficult to see what its added value would be.²³

Thus, there is evidence that even the most pro-active advocates of a global re-regulation of SGI have over time converted to sectoral integration, relying on the market paradigm and enforced through the intricacies of EU law. This is in tune with the literature on the professionalization and bureaucratization of interest representation in the EU (Saurugger 2008).

3.2 The Bastions of Resistance

The aftermath of the debate on the unborn Framework Directive on SGI only revealed the political weakness of the pro-regulation camp. In addition to sectorization of interest presentation, new ways for advocating the protection of welfare services emerged. Two initiatives must be mentioned here: (a) the creation of an intergroup on public services in the EP; (b) and the ‘Right2water’ campaign led by the unions.

The EP intergroup on public services was created in 2009: after the debacle of the long campaign for a Framework Directive and the clearly visible lack of majority support within the EP, setting up the intergroup enabled the remaining minority to gather its forces and have an institutionalized platform from which to carry on mobilizing on the issue of welfare services. Intergroups are thematic networks which gather MEPs and representatives of interest groups. They meet on a regular basis at the EP and constitute a platform for advocacy in particular policy areas. It was then chaired by the French socialist Françoise Castex, assisted by eight vice-presidents from the Liberals (ALDE), the Greens (Greens/ALE), the

²³ Interview with a representative of Housing Europe and CEEP.

left (GUE/NGL) and the conservatives (EPP), and supported by a further 44 MEPs from these groups. Fifty representations of local authorities and NGOs were furthermore partners of the intergroup. The objective of the intergroup was, on the one hand, to keep the issue of SGI visible on the political agenda by, for example, demanding that the legal framework for SGI should be revised and brought in tune with the new provision provided by the Treaty of Lisbon (notably Article 14 TFEU) or a revision of state aid rules; on the other hand, the purpose was to stimulate practical progress on the ground, for example, by asking how the common quality framework should be implemented.²⁴ The Belgian Presidency of the Council in 2010 provided a favourable political context for the intergroup's activism. However, its activity seemed to decline over the course of the legislature. The intergroup was nevertheless reconstituted with the new EP legislature starting in 2014 with a new chair, the French Jean-Paul Denant (S&D), and under the label 'Collective goods and public services'. The less salient mention of SGI or SSGI may suggest the intention to take distance from the EU jargon and broaden the debate. One of the first issues for raising contentious debates has been the Trade in Services Agreement (TISA), the successor of the General Agreement on Trade in Services (GATS).

A second strand of advocacy has been the use of the European Citizens' Initiative (ECI) by the unions, EPSU in particular. Introduced by the Treaty of Lisbon in order to stimulate citizen participation, the ECI relies on the idea that, if a petition is signed by at least one million citizens in at least one quarter of the EU's Member States, the Commission must address it by issuing a legislative proposal (provided that the treaty confers the EU the competence to legislate in the policy area in question). EPSU launched an ECI calling on the EU Commission to legislate and secure access to water under the label 'Right2water' in 2012. This campaign was part of the broader strategy of ETUC in the aftermath of the failed debate on the Framework Directive and the wake of the financial and debt crisis of 2008. This strategy was meant to respond to 'growing concerns about neoliberal tendencies' in the EU, with the policy on welfare services being reduced to a main question of derogation to

²⁴ Intergroup Public Services, 'Activity report 2010', www.services-publics-europe.eu, date accessed 20 March 2012.

competition rules (ETUC 2008). With regard to the current institutional setting, the EU Commission clearly seemed less open to pro-regulation civil society organizations, and new provisions related to SGI in the Treaty of Lisbon (Article 14 and Protocol 26) remained a dead letter. Alternative ways for reaching out policy making should therefore be found; notably by combining continued claims for a horizontal legal framework with sectoral action (ETUC). The campaign on water and the use of the new treaty provision on ECI is a good illustration of this strategy. Moreover, it goes back to a tradition of claiming the granting of rights rather than making technical arguments about EU regulation.

Although officially launched in 2012, EPSU's campaign goes back to a decision from 2009 and more broadly to the involvement with the issue of water distribution since the early 1990s.²⁵ It is also part of a wider, global movement claiming a right to water by the Public Services International supported by the United Nations (UN), rather than a campaign strictly confined to EU politics (United Nations 2015). The framing of the campaign clearly took issues with the market approach to public goods by claiming that 'Water and sanitation are a human right! Water is a common good, not a commodity!'. The collection of signatures occurred in 2012 and 2013 through multiple events, including cultural events linked to local struggles against privatizations as well as global forms of mobilization such as the World Water Forums and the World Social Forum. The campaign had great resonance in Germany where the campaign was showcased on television in a famous programme featuring a comedian. Linkage with the EU Concessions directive and plans for privatization of water distribution at the local level in Greece or Portugal further increased the salience of the campaign (Parks 2014). Building on the fact that water was recognized as a human right by the UN in 2010, the rights frame was prominent in this campaign, and the notion of 'public good' provides linkage with long-standing debates on welfare services. It was accompanied by the anti-market frames calling for regulation and immunization from EU competition law (*ibid.*). The campaign can be deemed a success since the one million target was largely exceeded: 1.9 million signatures were officially approved through the ECI process and presented to the

²⁵ The account of the campaign provided here is based on Parks (2014).

EU Commission. Yet, the response in terms of policy making can be seen as rather disappointing since the EU Commission only committed to strengthen its sectoral water policy (and regulation) but not to propose new legislation extracting the water sector from the functioning of the internal market based on competition. To this end, it launched a public consultation which may result in the revision of the Drinking Water Directive from 1998 (98/83 EC). The Commission's response to the first successful ECI (European Commission 2014) is typical of the dialogue of the deaf which goes on between the EU Commission and the pro-regulation actors. While the latter demand that welfare services be dealt with an alternative frame to that of the market, the former ensures that efficient regulation within the framework of the internal market is possible. Typically, the Commission reminds that EU sectoral re-regulation in the Drinking Water Directive from 1998 has ensured a high quality of water as well as sufficient access to all. In tune with the principle of subsidiarity, all decisions regarding the management and ownership structure of water distribution (whether privatized, out-sourced or 'in-house'), on the one hand, and all decisions regarding affordability and pricing, on the other, are left entirely up to Member States' authorities (*ibid.*, p. 5). Here, though, it must be underlined that such decisions are regulated by EU rules on public procurement and concessions which have been previously discussed. Marketization combined with consumer protection rules is therefore considered by the EU Commission as the best approach to welfare services:

EU internal market rules fully respect the competence of public authorities to ensure the required quality service standard (...) These rules aim at increasing transparency, ensuring non-discrimination and enable citizens to get the best value for their money they pay through fees or taxation. (*ibid.*, p. 5)

The study of the dynamics of advocacy for re-regulation and policy making in the realm of SGI shows that by 2007 the favourable momentum for a positive integration agenda had run out of steam. In the following years, pro-regulation activism in the last bastions of resistance to marketization within as well as outside the EU institutions (including national governments) has

only led to adjustment of EU policies at the margins. This has contributed to confirm rather than question the anchorage of welfare services in the market paradigm and institutional framework.

4 Conclusion

This chapter has analysed the continuous mobilization of pro-regulation actors striving for positive integration in the realm of welfare services in order to re-balance the marketization and liberalization policies historically entrenched with EU integration. From the 1990s onwards, a coalition including the unions, diverse interest groups advocating the protection of SGI from detrimental effects of EU competition policy, and a number of Member States' governments—mainly France, Belgium and some Southern countries such as Spain or Italy—has obtained a significant recognition of the necessity to protect welfare services vis-à-vis competition. Following the breakthrough with the Treaty of Amsterdam and the inclusion of a new Article 16 acknowledging SGI, the provisions included in the Treaty of Lisbon (and inherited from the Constitutional Treaty) are more ambiguous: while an explicit legal basis is provided for the EU to legislate and regulate SGI (Article 14 TFEU), the stress is clearly put on subsidiarity, which seems to discourage EU-positive intervention. This reflects the changing political power relations and balance of ideas in the course of the decade under scrutiny (i.e. from the mid-1990s to the late 2000s) as epitomized by the intertwined debates on the Services Directive and on the Framework Directive on SGI.

The campaign by pro-regulation actors in favour of an EU directive re-regulating SGI at the EU level shows how endeavours towards positive integration have remained, to a large extent, unfruitful. The building of a broad and strong coalition was impeded by entrenched policy practices. On the one hand, echoing the argument made by Scharpf and others, the diverse institutional arrangements and historical conceptions of welfare services have favoured political inertia and precluded agreement for pushing positive integration among the Member States. On the other hand, practices entrenched in EU policy making have also played a key role which is less often detected. The sectorizing of policy making and

negative integration inherited from the liberalization agenda contributes to shape interest formation on a sectoral basis, thus leaving the representatives of more diffuse and intersectoral interests (mainly unions and political parties) without the support of crucial sectoral actors (regulators, large companies and so forth). As a consequence, neither the transnational networks of civil society nor the pro-regulation actors within domestic arenas engaged with the campaign. The coalition advocating an EU Framework Directive was therefore limited to supranational actors, mainly the PES Group in the EP and the ETUC. Even within these organizations, support was limited as the issue was divisive. Similarly, support from MEPs for such a directive considerably eroded over time, leaving the Commission without substantial support for a legislative initiative.

Furthermore, institutional constraints were reinforced by and constructed in the battles of ideas, and the desirability of an EU Framework Directive as opposed to sectoral rules was to a large extent constructed discursively in deliberations. First, the debate was mainly confined to the supranational arena in Brussels, the framing of the issue relied mainly on coordinative discourse and complex cognitive arguments, while communicative discourse invoking the general interest remained very thin. Such a framing therefore proved not able to bring about large-scale resonance among grassroots citizens or within national public opinions. Looking at the debates in the EP, the pro-regulation camp has clearly suffered from its own internal inconsistencies and the rise of the pro-market and pro-subsidiarity discourse among the social democrats in particular. It is not surprising given the continuous shift of majorities to the right among national governments, determining the composition of the Council and Commission, and the EP. But the weakness of the positive integration agenda is also due to the weakness of the pro-regulation camp itself. The debates actually reveal the paradox of EU integration: while a re-balancing act was deemed necessary by the pro-regulation camp after the adoption of the Services Directive, the latter brought about a growing suspicion that EU policy making is only about liberalization and privatization. This has led a substantial part of the left to adopt a defensive position evident in the almost exclusive focus on subsidiarity and the will to curtail the action of the EU as much as possible. This position is fed by the—arguably illusory—notion that market issues and welfare services

with cross-border relevance must be dealt with at the EU level, while the regulation of social issues must occur at the national, regional and local levels and remain more protected from market mechanisms. This defensive position has gained much ground within the German social democracy (Egle 2011, pp. 37–38) which is powerful within EU institutions, the EP in particular.

From a theoretical perspective, the chapter has demonstrated that legal—including constitutional—provisions can only be seen as tools which can potentially be mobilized by political entrepreneurs. However, the broader ideological environment, power relations between the different political camps, and discursive battles shape *in fine* whether and how such provisions will effectively be used (or not) for policy making. This seems to confirm the idea that the institutional features of the EU cannot be regarded as structural constraints bearing mechanic effects on the shape and nature of integration. In the same vein, the notion that horizontal regulation can be used for liberalization and deregulation (Services Directive) but not for re-regulation (Framework Directive) is an ideologically motivated discursive construction. Since 2007, the debate on a global re-regulation of SGI has clearly faded, thus leaving SGI regulated by competition policy only accompanied by relatively insignificant soft policy measures. Contention-based campaigning is now limited to either institutionalized consultation or campaigning on sectoral issues—like the ECI claiming a human right to water and sanitation—situated in broader, global campaigns. The following chapter therefore turns to the connections between contentious politics in respect of welfare services in the EU and the global contentious agenda on welfare services at the global level.

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5

The Contentious Global Agenda for Services

Since the 1990s, the EU has been a main advocate of a new agenda to bring forward services liberalization, notably in the framework of the GATS signed by member countries of the World Trade Organization (WTO). Europe's comparative advantage in the realm of services is at the core of the European narrative about competitiveness. In times of slow growth and high unemployment, the further liberalization of trade was presented as the engine of Europe's growth. Although, in theory, international trade agreements should not affect the provision of public services, the intricacies of WTO law (or provisions in bilateral and regional agreements), on the one hand, and EU law, on the other, have been conducive of the continuous marketization of welfare services. As an important number of welfare services have witnessed a certain degree of liberalization and marketization within the EU over the past two decades (e.g. utilities, postal services, transport), this has progressively enlarged possibilities for trading in policy sectors which have a general interest dimension. The EU Commission, upon whom was conferred by the treaties the exclusive competence to negotiate in the name of the EU in international trade talks, has consistently advocated reciprocal market opening in these sectors with non-EU partners. Through the connection

between the internal market and external trade, EU policies have therefore acted as a catalyst for the marketization of SGI both within and outside of Europe. This has contributed to making the EU a 'conflicted trade power' (Meunier and Nicolaïdis 2006).

Thus, the dynamics between capitalism, democracy and European integration in connection with welfare services cannot be understood by looking at the EU in isolation from the developments in global policy making and politics. Yet, the literature remains divided between scholars of international relations, who study global politics but pay little attention to EU internal policies and governance, on the one hand, and specialists of EU and comparative politics, who rarely look at external policies and international organizations, on the other hand.¹ This is particularly true as far as welfare services are concerned. This chapter therefore brings novel insights by taking multi-level politics seriously and complementing the classic perspective on the dynamics between negative and positive integration by examining the role of policy making at the global level. It is argued that the dynamics of negative integration at the global and European level have been mutually reinforcing, not only due to institutional and legal mechanisms but also for political and ideological reasons. Ever since its inception in the 1990s, the global agenda for services liberalization promoted by the EU institutions and other Western countries has brought about resistance. Contestation by pro-regulation coalitions at the global and European scale led to the politicization of welfare services in international trade. Although, for different reasons, the actual marketization through trade of SGI has remained limited so far, renewed initiatives and agreements have covered an increasing number of sectors such as energy, healthcare or education.

The first section of this chapter provides an account of the ways in which the global and European agendas for negative integration are intertwined from a legal, institutional and ideational point of view, and how a neoliberal policy agenda has been promoted by the EU Commission with regard to SGI. The second section examines the campaign by civil society and political actors against the inclusion of welfare services in the GATS. By studying coalition formation and discursive battles in Europe

¹ For an exception, see, for example, Xiarchogiannopoulou and Tshouras (2014).

and globally, the effects and limitations of such resistance to the global liberalization of welfare services are demonstrated. Finally, the third section of the chapter explains how, after the demise of the GATS, welfare services have remained a contentious issue in relation with the trade agreements promoted by the EU, either bilaterally (such as the TTIP) or multilaterally (like the TISA).

1 The Internal–External Policy Equation: Welfare Services, the Internal Market and Trade Policy

1.1 The EU’s Long-Standing Commitment to the Global Liberalization Agenda

Since the rise of multilateral negotiations in the 1990s, the EU has been a driving force behind a rising agenda promoting trade liberalization in general, and services liberalization in particular. In 1994, the Uruguay round of negotiations was closed by the creation of the WTO. The concomitant extension of the General Agreement on Trade and Tariffs (GATT; Maatsch and Gattig) from 1947 to services—with the signing of the GATS—was a result of European activism going back to the 1980s. On the one hand, networks of experts, notably via the Organisation for Economic Cooperation and Development (OECD), were promoting the opening of national services markets as the new driver of international trade and growth. These new epistemic communities across Europe were made of government personnel, international agencies, firms as well as journalists or academics who had ideological or economic motivations for extending free trade to the new realm of services (Nicolaidis and Drake 1992). On the other hand, private corporate interest groups close to the European Commission were emphasizing the competitiveness of European firms in this context. In 2001, the Doha round was launched with a strong emphasis on services. For the USA, EU countries and increasingly emerging economies like India, the significant importance of services in their economy means that this is a domain where they can

compete globally and gain market shares abroad (Hoekman et al. 2007). Besides financial and business services, the EU has large competitive firms in a number of sectors which touch upon welfare services, including telecommunications, energy, environmental services (water distribution, air pollution), and increasingly human-resource intensive services such as health services. In these sectors, the EU has consistently claimed strong so-called offensive interests, that is, seeking market openings in other regions of the world, developing countries in particular (2011b). Throughout the 1990s and 2000s, the important potential gains involved with services trade were seen by powerful economies as a means to offset potential losses due to further liberalization in agriculture (Young 2007).

More broadly, market liberalism—as a policy practice and as a discourse—is a key instrument for the EU to exercise its influence on the global stage (Rosamond 2013). More than any other policy realm, however, the issue of welfare services in international trade negotiations epitomizes the tension at the heart of the EU's 'embedded liberalism' compromise. Fundamentally, this compromise involves a fundamental dilemma between the promotion of market liberalization abroad and the resentment of liberalization's social impact in the European domestic arenas (Meunier and Nicolaïdis 2006) or even a desire to promote the 'European social model' abroad. In fact, the EU has pursued an instrumental strategy, trying to prompt developing countries to open their markets to European firms while protecting its own welfare services through legal provisions. Thus, on the one hand, globalization is at the centre of the narrative-driving liberalization in Europe. Liberalization of public utilities has been advocated by interest groups within the technology-oriented industries, which have gained influence on the European institutions by organizing transnationally (Bartle 2005). This is reflected in the relationship of the DG Trade of the European Commission with various interest groups. Traditionally, DG Trade has been close to large corporations, which provide significant input to the EU trade policy (Woll 2006). In 1999, the creation of a Brussels-based lobbying platform specifically dedicated to services, the European Services Forum, was promoted by the EU Commission, notably through Leon Brittan who was successively Commissioner for competition (1989–1993), for trade (1993–1995) and for external relations (1995–1999). In contrast, relations with NGOs dealing with global issues (trade, poverty,

development, etc.) are mostly limited to formal consultation procedures (Kohler-Koch and Finke 2007).

Globalization has therefore been used discursively to construct an imperative of competitiveness where liberalization within the internal market is seen as a means to make EU firms stronger. Negotiations in the WTO and the need to offer concessions to trade partners have also been invoked to create pressure for market opening. On the other hand, a number of welfare services have been protected from far-reaching liberalization by EU rules (as it will be explained in the following section).

Due to various disagreements between the Western trade powers and the so-called BRIC countries (Brazil, Russia, India and China), the Doha round remained largely unfruitful. Neither did the agenda for services liberalization make a spectacular step forward. Against this backdrop, the EU has nevertheless continued to actively promote services liberalization. Its comparative advantage in this domain is at the core of the European narrative about competitiveness. In times of slow growth and high unemployment in the mid-2000s, the further liberalization of trade was presented as the main engine of Europe's competitiveness. This was the main theme of the 'Global Europe' agenda promoted by the British Commissioner for trade policy, Peter Mandelson, in 2006. Here again, the internal and external liberalization of services have been mutually reinforcing. When analysing 'Global Europe' in relationship with the debate over the EU Services Directive, a circular reasoning appears, whereby access to markets abroad can stimulate the EU's competitiveness while, at the same time, it is the completion of the internal market which would make European firms more competitive on global markets (Hay 2007). Beyond the ideological and discursive commitment to the global liberalization agenda, the next section examines the institutional and legal devices which have served the promotion of this agenda.

1.2 Institutional and Legal Mechanisms for Enforcing Liberalization

The European Commission, and in particular its DG trade, has championed the neoliberal agenda depicted above. Echoing the analysis of the institutional and legal drivers of negative integration made by Scharpf,

the status of welfare services in international trade shows that this was possible notably due to the Commission's institutional power position underpinned by a set of legal provisions. Most interestingly, the EU Commission had used the dynamic nature of these provisions in order to ensure the supremacy of international liberalization over national regulation. This is particularly evident when looking at (a) the progress of the policy realm where the Commission enjoys an exclusive competence to negotiate international agreements and (b) the intricacies and inconsistencies of EU and WTO law with regard to the definition and legal status of welfare services.

The ability of the Commission to promote (and require) market opening in SGI sectors has spectacularly strengthened over time. This resulted to a large extent from ideational and political change among the Member States: while a majority of governments deemed that welfare services should be excluded from trade negotiations in the mid-1990s, by the mid-2000s they had agreed to include almost all sectors in such negotiations. Moreover, the Member States exert control over the Commission's competence as they agree on a predefined negotiation mandate defining the line to follow for the EU as a whole. Insofar, the developments in trade policy echo the dynamics which have been analysed in the previous chapters on internal policy issues. Initially, the exclusive competence to negotiate international trade agreements conferred upon the Commission by the EU treaties excluded all services—and welfare services in particular. As the global agenda moved on to services with the adoption of the General Agreement on Trade in Services (GATS) in 1994, the extension of what was then Community's exclusive competence was challenged by several Member States, including France, the UK and Germany (Meunier 2005). Asked to give an opinion on the matter (Opinion 1/94), the ECJ suggested that the Community's competence should be differentiated depending on the services to be handled: services supplied across borders would fall under the scope of the Community's exclusive competence, but all other services would remain under sole control of the Member States. However, this approach was modified with the Treaty of Nice in 2001, which established a shared competence between the EU and the Member States for cultural and audiovisual, educational, social and health services. Moreover, agreements in these policy areas would have

to be decided in the Council unanimously instead of by qualified majority. Finally, the Treaty of Lisbon put an end to the shared competence area and generalized the EU's exclusive competence to all services sectors. However, the unanimity rule in the Council was maintained for cultural and audiovisual services

where these agreements risk prejudicing the Union's cultural and linguistic diversity' and 'in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them. (Article 207.4 of the Lisbon Treaty)

Hence, while granting the Commission very large room for manoeuvre, the Member States solely maintained the possibility to veto an agreement should their vital interests be threatened (Krajewski 2009, p. 194). The developments in EU primary law have therefore progressively extended the possibility for the Commission to include welfare services in its trade policy agenda.

In parallel, the changes in the definition of welfare services and those services which would fall in or out of international law have also underpinned a dynamic of increased liberalization.

A main feature of the GATS is that it represents a very encompassing agreement since it defines and covers four modes of service provision:

- 'Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail)
- Consumption abroad refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a services
- Commercial presence implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains)

- Presence of natural persons consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers)’ (WTO, no date).

At the outset, the GATS took a so-called carve-out approach to welfare services with a clause that excluded services supplied in the ‘exercise of governmental authority’, defined as services which are supplied neither on a ‘commercial basis nor in competition with one or more service suppliers’ (Article I:3 (b) and (c) of GATS).² Hence, a narrow conception of welfare services has prevailed where public administration, justice, police and military activities were explicitly excluded, but network industries, social services and healthcare, as well as culture and education remained ‘liberalizable’. In addition, the GATS contains a ‘public utilities clause’ referring to a (non-limitative) list of services such as research and development, environmental and health services, as well as transport, where it is possible for members to exclude specific activities in subsectors. Thus, in the view of the UNICE (today BusinessEurope), virtually all services fall under one of the four provision modes, including communications, post and courier, healthcare and social services, environmental, energy and transport services (UNICE 2000).

It therefore appears that the categories used in WTO law reflect a restrictive approach to the definition of welfare services, on the one hand, and do not overlap the categories of economic, non-economic or social SGI in EU law. As a result, almost all services can become candidates for further liberalization in one context or another. This has effectively enabled the Commission to play a double game in cases where SGI no longer fell under the scope of services provided in the ‘exercise of governmental authority’ due to having been progressively marketized within the EU in the framework of the internal market, and could therefore be proposed for market opening at the global level. More generally, this process reflects the legal theory of implied competence in EU law whereby the EU should enjoy external competencies in the policy areas where it enjoys internal competencies. This dynamic has been at play during the

² Crafted in the GATS, this definition has also been used for economic partnerships with Caribbean countries (2008), and in free trade agreements with South Korea (2009) and with Peru and Columbia (2011) as well as Canada (2014).

Doha round from 2001 onwards. However, it has also triggered contention, and the Commission has made use of the existing protective provisions on welfare services. While it has been a tool for advancing a negative integration agenda, the ways in which EU law has been used and reshaped over time shows that it is actually a field of political and ideological battles.

2 The Protest Campaign Against the GATS

2.1 Softening the Social Impact of Trade Liberalization

The extension of trade liberalization, and trade in services in particular, has gone hand in hand with contention over its social impact on national societies. When analysing the wave of mobilization against the GATS from its start in 2000 until it faded around 2007, it is not an easy task to trace its impact on decision making or outcomes. A main reason is that, in the framework of international negotiations, no particular institution or government can be held politically responsible or pressured for reversing decisions. While the WTO is merely a bureaucratic agency responsible for organizing negotiations, its 140 member governments do not feel responsible for the direction of the negotiations as a whole. In the EU, although it mainly implements a mandate granted by national governments, it is the European Commission which has been the main target of criticism: this follows from its exclusive competence to negotiate with trade partners and the neoliberal spirit of DG trade. As politicization has grown within the EU, the Commission had to respond to concerns expressed by a coalition of pro-regulation NGOs and political actors. However, responsiveness has been rather punctual and limited. Be that as it may, the long-standing commitment of the EU to a far-reaching agenda for services liberalization was never fundamentally questioned, as the rest of this chapter will show.

The failed summit of Seattle in 1999 where a broad group of NGOs claimed that the WTO negotiations for trade liberalization represented a threat for social cohesion and democracy remains a key landmark for

the history of the global justice movement. Against this background, members of the WTO nevertheless went ahead with a new round of talks labelled 'GATS 2000' in order to reinvigorate and expand the agreement signed in 1994. The possible effects of the GATS in some sectors of general interest were nevertheless a bone of contention even prior to the Seattle protest. As early as the mid-1990s, France and Canada, together with activists in the realm of culture, vigorously opposed the inclusion of cultural products (audiovisual services) in international trade negotiations. This was a way to resist the strong US commercial interest in the field—resulting from new technologies and digital convergence which made cross-border trade increasingly easy—and to what was perceived as Anglo-Saxon cultural hegemony.³ The defence of the so-called cultural exception resulted in an overall carve-out of audiovisual services from the GATS. It also resulted in a counter-battle with the initiation (mainly by Canada and France) of a UNESCO (United Nations Educational, Scientific and Cultural Organization) convention on cultural diversity which was signed in 2005 (Kelsey 2008, pp. 148–153).

Following up on the protest in Seattle, a broad transnational coalition of think tanks and NGOs launched a campaign against the GATS with a petition called 'Stop the GATS Attack Now!'. The petition received the support of approximately 500 organizations in more than 60 countries. In 2002–2005, water distribution became a focal point, rallying these many actors around a common cause. The debate became emotional when private companies were accused of skimming off profitable market segments while abandoning distribution in poor rural areas by cutting off distribution when customers failed to pay or by failing to ensure water quality, which led to the resurgence of deadly water-borne diseases (*ibid.*, p. 133). The marketization of education was also a main concern. Activists addressed the WTO personnel directly with a letter to Heads of WTO delegations, the Chair of the negotiations on services, the Chair of the General Council and the Director General Supachai Panitchpakdi

³This led France to withdraw unilaterally from the Multilateral Agreement on Investment negotiated among members of the OECD, aiming at liberalizing investment, and which raised similar concerns over the domination of US investment in key sectors of general interest.

and, from 2005, Pascal Lamy.⁴ Given the bureaucratic nature of an organization such as the WTO, the campaign triggered an unusual reaction from the WTO staff, who subsequently published a booklet with the title *GATS—Facts and fiction*,⁵ addressing the concerns raised by the coalition and even citing and responding to quotes from individual activists and organizations. Beyond discursive engagement, however, the campaign produced no specific policy result.

Between 2002 and 2005, the EU, and especially the Commission, had become a main target of the water campaign. It was accused by activists of speaking a double language, as leaked documents about the EU's requests provided evidence that the Commission was promoting the interests of the large European companies by including water distribution in the talks, while holding a reassuring discourse on welfare services (Corporate Europe Observatory 2003). Pascal Lamy, who was then the EU Commissioner for trade (before he was appointed General Director of the WTO in 2005), diffused protest by ensuring that the GATS was offering sufficient ways to protect welfare services, and that the EU Commission would be vigilant on the issue. He argued that:

the GATS' flexibility leaves WTO Members with considerable freedom to design their commitments: the GATS does not enter into the definition of public services, their mission, their organisation or the way they are financed. I'd like to keep it that way. That's why I am not in favour of creating a carve-out for public services in the GATS: a carve-out would require 146 WTO members to agree on a definition of public services. Such a definition would necessarily be too limited for Europe which tends to have a rather more expansive view of the notion of public service than many other WTO Members do. (European Commission 2003b)

Contention led the EU Commission to step back, especially on the issue of water distribution. Several internal documents provide evidence that, in 2002, both the EU Commission and large corporations were concerned about the 'water war' campaign (Deckwirth 2006). For exam-

⁴ 'Stop the GATS power play against citizens of the world!', Open letter by 148 NGOs, Geneva, 15 June 2005 ; Civil society organizations sign letter protesting GATS negotiation rules, 1 June 2008.

⁵ Available at www.wto.org, date accessed 5 August 2015.

ple, in 2003, the German company RWE (Thames Water) announced that it was no longer supporting the inclusion of water in GATS negotiations. In 2005, it even asked the Commission to withdraw its requests in the sector. In 2005, the revised EU position on the GATS abandoned the privatization of water for human use. Although Lamy's successor, the Briton Peter Mandelson, held more neoliberal views on trade liberalization, he also had to be responsive to protest. When the EU made its revised offers and requests in the Doha negotiations round in 2005, he claimed that

The offer is also tailored in a way that ensures that public services within the EU are fully safeguarded and no commitments are proposed in the areas of education, health and audiovisual services. It has been prepared in close consultation with the European Parliament, the Member States and EU civil society. (European Commission 2005)

A major outcome of protest is that, while sewage and sanitation services fall under the GATS in the category of environmental services, water distribution has not been included in the WTO classification of water, and no member has ever made commitments in this domain. It is very difficult to assess the impact of the GATS on welfare services at the national level. A main reason for this is that the GATS, as argued by Arena (2015), is deeply 'agnostic' towards public or welfare services in the sense that it does not recognize a specific category of services with special societal goals. Therefore, it is up to the member countries to pay specific attention in their commitments. Table 5.1 shows that the EU as a whole has made commitments to liberalize its markets in 5 of the 11 sectors falling under the scope of GATS and which can be considered to have a general interest dimension, namely communications, education, environment, healthcare and social services and transport.

Table 5.1 shows that commitments from the EU to market opening in SGI sectors remained modest in certain respects—but not insignificant in others.

The countries listed have made further commitments in addition to that of the EU's. It is mainly countries from Central and Eastern Europe (including Austria) and the Baltics, as well as—in a more limited number

Table 5.1 Commitments to liberalization from EU countries under the GATS**Communication**

All subsectors	EU , FI
Courier	AT, CZ, EE, ES, HR, LV, LT, PL, SI, SK,
Telecommunications	AT, BG, CY, CZ, EE, EU , HR, FI, HU, LV, LT, PL, RO, SE, SK, SI

Education

All subsectors	EE
Primary (private)	AT, BG, EE, EU , HU, LV, LT, PL, SK,
Secondary (private)	AT, BG, CZ, EE, EU , HR, LV, LT, PL, SK, SI
Higher	AT, BG, CZ, EE, EU , HR, HU, LV, LT, PL, SK, SI
Adult	AT, BG, CZ, EE, EU , HR, HU, LV, LT, PL, SK, SI

Environment

All subsectors	
Sewage	AT, BG, CZ, EU , HR, HU, LV, SE, SK, SI
Refuse disposal	AT, BG, CZ, EU , FI, HR, HU, LV, SE, SK, SI
Sanitation	AT, BG, CZ, EU , HR, HU, LV, SE, SK, SI

Healthcare and social services

All subsectors	EE, HU
Hospital	AT, EU , HR, LV, LT, PL, SI
Other human health services	AT, HR, SI
Social services	AT, BG, EU , HR, LV

Transport

All subsectors	
Maritime	EE, EU , FI, HR, HU, LV, MT, SI
Water ways	CZ, EU , HU, LV, SK
Air	AT, BG, CZ, EE, EU , FI, HR, HU, LV, LT, PL, RO, SE, SK, SI
Rail	BG, CZ, EE, EU , HR, HU, SE, SK, SI
Road	AT, BG, CZ, EE, EU , FI, HR, HU, LV, RO, SE, SK, SI

Source: WTO database, www.i-tip.wto.org (7 January 2016)

AT, Austria; HU, Hungary; BE, Belgium; IE, Ireland; BG, Bulgaria; IT, Italy; CY, Cyprus; LT, Lithuania; CZ, Czech Republic; LU, Luxembourg; DE, Germany; LV, Latvia; DK, Denmark; MT, Malta; EE, Estonia; NL, The Netherlands; EL, Greece; PL, Poland; ES, Spain; PT, Portugal; EU, EU, including all its Member States RO, Romania; FI, Finland; SE, Sweden; FR, France; SI, Slovenia; HR, Croatia; SK, Slovak Republic; UK, United Kingdom

of sectors—Finland and Sweden. Commitments are most far-reaching in the most marketized sector, namely telecommunications and transport. But the liberalization of education and health (mainly hospitals and within social services, convalescent and rest houses, old people's homes) is clearly on the rise. Yet, these sectors still exhibit lower levels and numbers of commitments than other sectors such as business, distribution, finance or tourism. EU Member States made extensive use of all exemptions possibilities allowed by the GATS provisions,⁶ thus leading to the conclusion that 'in spite of the potentially far-reaching effects of GATS trade disciplines on public services, WTO members are afforded ample opportunities to tailor those effects to their need' (Arena 2015, p. 46). All in all, the marketization through international trade has been a consistent endeavour of the EU but has globally remained cautious.⁷

Then, in 2006 and 2008 the Doha round stalled. This was mainly due to divergence between the 'Quad' (the EU, the USA, Japan and Canada), on the one hand, and the so-called BRICS countries (Brazil, Russia, India, China and South Africa) on the other. While the talks remained largely focussed on agricultural and industrial goods, governments proved reluctant to make commitments in the realm of services. Yet, the EU remained strongly committed to pushing services liberalization forward. Peter Mandelson's strategy—branded 'Global Europe' from 2006 onwards—stresses that services liberalization is a main driver for increasing the EU's competitiveness. As will be demonstrated in greater detail in the last section of this chapter, the EU continued to promote the same agenda after the failure of the Doha round, notably through bilateral free trade agreements and, since 2013, with a new WTO agreement on services known as TISA. To conclude, it appears that resistance to the global liberalization of welfare services through the GATS has slowed down the endeavours of the EU championed by the DG trade of the European Commission. This has been reflected in limited commitments

⁶Exemption from the GATS disciplines can take multiple forms such as the non-application of the most favoured nation principle, the clause related to the 'exercise of government authority', rules on government procurement, general and security exemptions, or limitations with regard to the sectoral scope or the modes of provision. Cf (Arena 2015).

⁷The fact that no dispute settlement as ever been triggered in this realm further accounts for the low level of activity and/or conflict in this regard.

in SGI sectors, although the legal situation, the exact nature and the schedule of some commitments remain unclear. Moreover, some commitments have not yet had major practical outcomes, but rather leave the door open to large-scale marketization if private providers choose to use GATS provisions, for example, in healthcare or education.

2.2 Embedded Global and European Coalitions

While the GATS was signed in 1994, its politicization from 2000 onwards relies on the activism of a loose international coalition of NGOs and think tanks which became entangled in contentious multi-level EU politics. Referring to the concepts applied by the scholars of the Europeanization of collective action, three main channels for mobilization, namely transnationalization, supranationalization and internalization, were activated in the campaign under study as global and European networks were intertwined. Logically, because the EU constitutes a much more institutionalized context than the arena of global politics, a connection with institutional politics has occurred as the EU Commission (and to a lesser extent the Council) has been made accountable for the European stance towards welfare services in the GATS.

From the outset, the coalition contesting the GATS was coordinated at a transnational, global level and built on previous mobilization against the North American Free Trade Agreement and the OECD's Multilateral Agreement on Investment (MAI). In the aftermath of the mobilization at the Seattle WTO summit in 1999, the American-born French activist from ATTAC Susan George wrote pioneering analyses linking the MAI and the GATS. The critical engagement of the unions gathered in Public Services International (PSI), which has its headquarters in Geneva like the WTO, with trade negotiations was also key; the PSI published two pioneering studies in June 1999 dealing with health and education.⁸ At the same time, activists within the British NGO World Development Movement also started to study the potential effects of commitments at

⁸ Interview 2 with activist 3, conducted by Michael Strange, London, April 2005. The two publications mentioned were entitled 'The WTO and the GATS: What is at stake for public health?', and 'The WTO and the Millennium Round: What is at stake for public education?'.

the WTO on welfare services in both developed and developing countries. Within the global network *Our World is not for Sale* which criticizes the WTO and includes 251 organizations throughout the world today, a number of organizations—such as Friends of the Earth, Public Citizen, Third World Network, Focus on the Global South, Polaris Institute, several groups from France and the Brussels-based Corporate Europe Observatory—were willing to raise awareness about the specific services issues involved with the GATS.⁹ In 2001, the petition ‘Stop the GATS Attack Now!’ was launched by a large platform of international NGOs. At the same time, an online platform called GATSwatch was set up by the European Corporate Observatory, a Brussels-based watchdog on collusion between political institutions (especially the EU Commission) and large corporations, and the Transnational Institute, an advocacy organization based in Amsterdam which aims at bringing academics and activists together. The Canadian think tanks Polaris Institute and the Canadian Centre for Policy Alternatives were key to providing expertise on GATS issues. While the former leaked documents concerning the EU’s commitments in the negotiations, the latter published in 2002 a 113-page study with the title ‘Facing the facts—a Guide to the GATS debate’.¹⁰ The Canadian Scott Sinclair and the Dutch Erik Wesselius have become prominent expert activists specialized in issues of liberalization, welfare services and corporate interests. Like an activist expressed, the gathering expertise

is about making government officials aware that we knew at least as much about GATS as they did, because their standard response whenever anything came in was “You don’t understand GATS”.¹¹

Although the global dimension remained, to a large extent, limited to developed countries (including Australia, New Zealand and Canada), the activists from the coalition attempted to involve civil society organizations and contacts were established with actors in India, Bangladesh or Africa. In the Netherlands, for example, they have been invited to explain

⁹ Interview with activist 1, conducted by Michael Strange, London, April 2005.

¹⁰ Available at www.policyalternatives.ca, accessed 5 August 2015.

¹¹ Interview 2 with activist 3, conducted by Michael Strange, London, April 2005.

to Dutch decision makers why market opening under the GATS is problematic for welfare services in their country.¹² Thus, as Strange stresses (Strange 2011), the transnational anti-GATS campaign does not rely on a single specific coalition of organizations but rather on several overlapping networks which converged on a common discourse and criticism of the WTO negotiations.

The global transnational network has had a specific European declination called ‘Seattle to Brussels’ which was set up in April 2000 and now has 52 member organizations in 15 European countries.¹³ The purpose of the campaign was to reach the wider public by using the specific knowledge on policy sectors and the legal mechanisms of the GATS and translate it in a broader political message about ‘how to protect public services’.¹⁴ The focus on EU policy (especially trade) goes hand in hand with the activation of more institutionalized supranational channels available in the EU, the unions and political groups in the EP in particular. Whereas the PSI has had a long engagement with issues related to the WTO, the ETUC is very well structured and active in Brussels. EPSU regularly targeted the GATS as a threat to welfare services, and called for democratic control—notably through the EP—of trade negotiations (EPSU 2003c). In the anti-GATS campaign, the ETUC played the role of mediator, involving the PSI in meetings with the EU Trade Commissioner in 2003 (EPSU 2003b), and connected various issues related to water across various levels of mobilization (EPSU 2003a). Due to the neo-corporatist dimension of EU governance, ETUC systematically targets the EU Commission even by engaging with protest action, such as for instance the demonstration held in front of the Commission’s DG Trade headquarters on 19 March 2007. The EP became involved in the contentious debate as well. As early as October 2002, a call was launched by a group of over 70 EP members from the radical left, the greens and the social democrats, supported by a small group of Member States’ parliamentarians. This coalition presented itself as the European branch of the informal trans-governmental inter-parliamentary network created at the

¹²Interview 2 with activist 2, conducted by Michael Strange, London, March 2005.

¹³Interview with activist 1.

¹⁴Interview 2 with activist 2.

World Social Forum meeting in Porto Alegre the same year. The coalition denounced the inconsistency of EU trade policy: ‘Why ask others to open their public services within the WTO framework, if we think this is bad for ourselves?’¹⁵ It supported the idea that welfare services should be preserved worldwide as part of ‘social models’, and that democratic parliamentary control over WTO negotiations should be preserved. In 2003, the EP adopted a resolution calling upon the Commission (in particular Pascal Lamy) not to support measures for public services liberalization, and to ensure that the states’ regulatory capacity (including the right to impose universal service obligations upon providers) would not be undermined or circumvented (European Parliament 2003). In 2005, a new EP resolution even

asks that the liberalisation of services of public interest be approached cautiously, asks that services related to health, education and the audio-visual sector be excepted and also those which concern people’s basic needs, such as water and energy, as it is inappropriate to demand that the developing countries liberalise these services in a way which will lead to their being dismantled. (European Parliament 2005, §22)

As in the controversy about the Services Directive, the EP therefore proved to be an ally for the anti-liberalization coalition. In terms of the issues as well as the networks involved, the anti-Bolkestein coalition drew directly from the campaign against the GATS at the European as well as at the national level.¹⁶

Similar to the contestation of the Services Directive, the strength of the anti-GATS campaign was due to the internalization at the national and local level as numerous local authorities have aimed to persuade governments (i.e. the Council) and the Commission to change their attitude towards welfare services in the negotiations. One of the most active campaigns was initiated by WDM in the UK. At the outset, WDM which

¹⁵ European branch of the International Parliamentary Network, ‘GATS: Parliamentarians’ call to Oppose the Liberalization of Public Services under the WTO’s Aegis and for Transparency and Democratic Control of Negotiations in Progress’, 22 October 2002, www.france-attac.org, date accessed 20 July 2015.

¹⁶ Interviews with activists 2 and 3, conducted by Michael Strange, London, March and April 2005; interview with Sigrid Skarpelis-Sperk, MP, Berlin, December 2008.

was perceived as more radically critical than other larger, well-established NGOs in the country developed its GATS critique mostly in connection with wider, European and global networks. Like activist explains

A lot of UK groups weren't willing to accept that there was a problem with GATS. And, I think, were nervous about, when you start to oppose the GATS, you're actually opposing quite a fundamental ideology about how the market works, and where the market stops. And I think until that point, a lot of NGOs refused to take a position on actually there are places where the market shouldn't go. Which is not that radical, but it was seen to be quite radical. And so, there was resistance, I think, from a lot of the mainstream NGOs. I would name them as CAFOD, as Oxfam, as Christian Aid. And they sort of had quite a strong position in the trade work in the UK.¹⁷

Progressively, however, WDM succeeded to aggregate a larger coalition when Save the Children, Oxfam and People & Planet took the GATS critique on board. This allowed the GATS critiques to access to the UK Trade Network, a platform of NGOs close to the political establishment which embraced contestation of the GATS to a limited extent.¹⁸ The campaign nevertheless took off with many activities aiming at lobbying local authorities as well as members of Parliament (MPs). Although collaborations with the unions did not go far, UNISON provided strategic opportunities for establishing contacts with decision makers as well as the media. Most remarkably, the anti-GATS coalition succeeded in gathering significant support for an early day motion, a formal instrument in British democracy which allows for a specific motion to be submitted to and debated in the House of Commons. In 2001, 262 MPs signed an early day motion asking to 'ensure that there is an independent and thorough assessment of the likely impact of the extension of the GATS on the provision of key services both in the UK and internationally'.¹⁹ The lobbying work was run to a large extent by the Trade Justice Movement and links

¹⁷Interview with activist 1.

¹⁸Interviews with activists 1 and 2, conducted by Michael Strange, London, March and April 2005.

¹⁹Campaigning leaflet, <http://www.gatswatch.org>, date accessed 19 November 2015.

were prominent with MPs from Labour and the Liberal Democrats.²⁰ The motion was a very concrete expression of support to the anti-GATS coalition which could then be used by activists in public debates with Pascal Lamy to show how great the concerns about the GATS were in the UK. The campaign also led the Department of Trade and Industry to launch a consultation on the GATS, which was imitated in Sweden and, eventually, by the EU Commission. If the active campaign in the UK served to add other concerns raised by other Member States' governments, in turn, the European nature of the coalition and access to information from outside the UK was also in many ways useful for the British activists to 'hassle' their own government.²¹

Thus, by 2004, when the European Social Forum took place in London, the GATS was already fairly present on the political agenda and the forum served to amplify contestation.

Building on the successful practices used in the anti-MAI campaign,²² NGOs critical of the GATS proactively contacted local authorities. In several European countries, hundreds of municipalities and local authorities in several European countries have declared themselves 'GATS-free' zones (see Table 5.2), and passed motions critical of the negotiations emphasizing the protection of welfare services. This strategy was particularly successful in Austria, where 280 local governments declared themselves against the GATS.

Table 5.2 GATS-free zones and motions signed by local authorities in the EU

Austria	280 declarations of municipalities (including Vienna)
Belgium	171 motions against GATS
France	600 local governments (including Paris) passing motions asking for a moratorium of the GATS negotiations and/or declared GATS-free zones
Italy	Genoa, Ferrara and Turin passed motions
Spain	City Councils in Andalusia, Extremadura and the Basque Country have declared themselves GATS-free zones
UK	26 local governments have passed motions

Source: Adapted from Verger and Bonal (2006, pp. 60–61)

²⁰ Interview with activist 1.

²¹ Ibid.

²² Interview 2 with activist 2.

The local governments resisting the GATS came together in the European Convention of local governments against the GATS and in support of welfare services: the campaign gathered over 1000 municipalities in 2005 (EPSU 2005). The Convention met three times: 2004 in Bobigny (near Paris, France), 2005 in Liège (Belgium) and 2006 in Geneva (Switzerland). Local resistance, in turn, impacted national politics. In Germany, the red-green majority in the Bundestag adopted a resolution asking the federal government to speak out against the EU requests for liberalization in the water sector (Deutscher Bundestag 2003). Following a vivid campaign led by the NGO 11.11.11 in 2002 and 2004, the Belgian Parliament passed two accordant resolutions (Chambre des représentants de Belgique 2002, 2004). The contestation focussed on the EU demands for developing countries to open their markets to European corporations, especially with regard to water distribution. In the Council, several Member States including the UK and others expressed concerns about EU requests on water but did not receive sufficient support among other governments (Deckwirth 2006). In France, the conservative majority in the *Assemblée nationale* rejected several motions put forward by the socialists and the greens on the GATS (Assemblée nationale 2003). There was suspicion that the French government was supporting the interests of large French corporations in the water sector. Thus, transnational and supranational mobilization, internal or domestic channels of resistance led the EU Commission to revise its requests and commitments on welfare services (and water distribution in particular) in 2005.

2.3 Democracy versus Markets

While the EU Commission has been, to a certain extent, responsive to the transnational contestation against the GATS, the dynamics of politicization in the anti-GATS campaign rather account for the continuous coexistence of contrasted ways of framing services liberalization in the WTO. Whereas the transnational coalition of NGOs framed the GATS as a threat to democracy and regulation, the main frames used by the EU Commission are that of development and competitiveness. The analysis put forward here relies on a set of 37 documents (retrieved

online) relating the discourse by the main protagonists of the controversy, namely NGOs and unions, on the one hand, and the two successive EU Commissioners for trade, namely Pascal Lamy (1999–2004) and Peter Mandelson (2004–2009), on the other. The documents were selected as accounts of discursive interactions both in the global and in the European arena. The corpus includes civil societies petitions, open letters, statements, press releases, resolutions, briefings and so on as well as documents of the EU Commission and Commissioners' speeches, including those made at hearings or plenary sessions of the EP.

The democracy frame put forward by the anti-GATS coalition served to articulate mainly three ideas: (a) services liberalization is a threat to the publicness of welfare services and considerably constrains the regulatory capacity of states; (b) liberalization only serves the commercial interests of multinational corporations; and (c) the way in which WTO negotiations are carried out is undemocratic. The petition 'Stop the GATS attack now!' launched in March 2001 claims that after Seattle the new negotiations aim to

expand global rules on cross border trade in services in a manner that would (...) newly constrain government action taken in the public interest world wide. These talks would radically restructure the role of government regarding public access to essential social services world wide (...) and that the chief beneficiaries of this new GATS regime are a breed of corporate service providers determined to expand their global commercial reach and to turn public services into private markets all over the world. (GATSwatch 2001)

Beyond communicative discourse calling for fundamental public values, the coalition also aimed at developing a well-grounded coordinative discourse grounded in cognitive arguments and expertise in order to enjoy credibility in policy analysis. A good example is the book-long *Facing the Facts: a guide to the GATS* published by the Canadian Center for Policy Alternatives in 2002. At the same time, most organizations aimed at making the issues involved intelligible to the broader public. For example, in 2004, the Polaris Institute issued a *Classroom Guide to the GATS*, explaining in simple terms how services liberalization in the

WTO benefits large companies at the expense of welfare services, especially in developing countries. The idea that ‘the GATS agreement serves as a window of opportunity for strong business interests with no due regard for general human needs and development’ (PSI 2001) was hammered in by the various actors in the coalition.

The legitimacy of the WTO as an agent of democratic global governance was clearly contested:

Initiated in February 2000, these far-reaching negotiations are aimed at expanding the WTO’s General Agreement on Trade in Services [GATS] regime so as to subordinate democratic governance in countries throughout the world to global trade rules established and enforced by the WTO as the supreme body of global economic governance. What’s more, these GATS 2000 negotiations are taking place behind closed doors based on collusion with global corporations and their extensive lobbying machinery. (GATSwatch 2001)

From 2002 onwards, the EU Commission became a main target and was criticized for its duplicity in the public debate, especially in connection with the water issue:

The European Commission, in an attempt to steer free of public opposition in Europe, has recently announced that the EU does not intend to make any (additional) GATS commitments itself in public service sectors like culture, education, health and water. Trade Commissioner Pascal Lamy explained that “services of collective interest in the EU are preserved. In this way we ensure that the WTO is used to defend and promote the European model”. At the same time, the leaked requests make clear just how aggressively the EU is promoting the offensive interests of European water giants, corporations that have proved unable to fulfil the drinking water needs of the world’s poorest. (Corporate Europe Observatory 2003)

In contrast to the discourse articulated by the anti-GATS coalition, the markets are at the centre of the framing of the issue by EU Commissioners. Two ideas are prominent: (a) services liberalization is beneficial to the

EU's competitiveness; (b) but at the same time it also serves to the economic development of the South; and (c) contestation is ill-informed and detrimental to negotiations. Thus, Pascal Lamy admitted that 'the EU has its own offensive interests in these negotiations, since about 70 million Europeans are employed in commercial services' (European Commission 2003c) and that 'political backing to this negotiation is also crucial for EU services companies' (European Commission 2004). Yet, services liberalization is consistently connected to the issue of development:

progressive liberalization is inherently good for development. I emphasize the progressive nature liberalization at a rate that each country can handle in terms of its domestic and international competitiveness etc. Contrary to popular belief, the WTO does not propose free trade, whatever that rather abstract notion is. (European Parliament 2002)

For Pascal Lamy, the WTO is a tool which can serve his personal conception of 'managed globalization' (Meunier 2007) since it leaves sufficient regulatory freedom to national governments to design adequate regulation and, hence, protect welfare services (2003a). Peter Mandelson accounts for a more traditionally neoliberal view on the GATS, deploring that 'there is a concerted attempt to dilute proposals that already lack ambition' (European Commission 2005) and that 'to lose even a modest deal on services trade would mean foregoing the developmental benefits of foreign investment and the global flow of skills and experience to the developing world' (European Commission 2006b).

Both Commissioners clearly dismissed the concerns raised by the anti-GATS coalition as ungrounded *doxa*, and engage in a justificatory and defensive discourse. When heard and questioned in the European Parliament, Pascal Lamy stressed that the leaks about the commitments by the EU were detrimental at this stage of the negotiations, and that the Commission had never departed from the mandate it was given and which included the protection of welfare services. Addressing the coalition directly, he claimed:

Contrary to received wisdom, the WTO serves as a necessary and effective bulwark against "savage" liberalisation (...) No commitments are being

proposed in the area of education and health. And we are not proposing commitments in the area of audio-visual services. (I am pleased that even ATTAC is now recognising that at least in this respect, the Commission has actually done what it said all along it would do! What is rather ironic, though, is that they cry victory over the fact that we actually stuck to our mandate...). (European Commission 2003b)

More aggressively, Peter Mandelson denounced the coalition by saying that

When respectable Left wing politicians take the streets against the EU Services Directive, and fuel unjustifiable fears of the Polish Plumber; or when leaders take up the cause of economic patriotism and imply that the EU's fundamental freedoms and competition rules shouldn't apply to their country, they are playing with fire. They not only undermine the openness of markets that should be the driver of innovation, growth and jobs. They also put in doubt the very basis on which European integration has been built. (European Commission 2006a)

In sum, the discursive interactions during the anti-GATS campaign display a rather confrontational dynamics of contrasted frames and counter-frames. This is consistent with the fact that, as will be demonstrated in the following section, the agenda on services liberalization has been consistently pursued by decision makers in the EU after the failed Doha round at the WTO.

3 Contentious Free Trade in and Beyond the WTO

3.1 Free Trade as Solution to the Crisis

Since the tacit death of the WTO Doha round in 2008–2009, the EU has pursued its agenda of services liberalization through so-called preferential trade agreements, either bilaterally, multilaterally or regionally. Agreements were, for example, signed with South Korea in 2010, with

Columbia and Peru in 2012, and Ecuador in 2015. At the time of writing, talks with countries of the Association of Southeast Asian Nations and the negotiations over the Comprehensive Economic and Trade Agreement (CETA) with Canada are being finalized. The aim of such agreements is to overcome the obstacles met in the WTO and reach not only quicker but also deeper integration (Horn et al. 2010). Services—among which some SGI—are clearly at the core of this process. Four areas lie at the core of recent developments in trade policy: an increasing focus on removing non-tariff barriers, that is, deregulation; liberalization of services (including the recognition of professional qualifications in order to facilitate the movement of people providing services); the securitization of private investment through procedures (called investor-state dispute settlement) which enable private companies to contest state regulation; and the liberalization of public procurement, that is, the opening of concessions and contracts granted for the provision of goods and services by public authorities to foreign providers. In addition to provisions on public procurement in various trade agreements, in 2011 the Plurilateral Government Procurement Agreement was signed by 42 WTO members. Public procurement, therefore, offers a further illustration of the internal-external policy dynamics promoted by the Commission (and the theory of implied powers) mentioned earlier, whereby, on the one hand, any area which is liberalized within the internal market can then be liberalized globally through trade policy and, on the other hand, the pressure resulting from international trade negotiations can be used to prompt and legitimize liberalization within the EU. Accordingly, the Plurilateral Government Procurement Agreement has been negotiated both by the Commissioner for trade, Karel de Gucht, and by the Commissioner for the internal market, Michel Barnier.

Yet, there is also a trend to emulate or protect European regulatory standards through trade agreements. In the CETA, for example, provisions can be found which ensure that Canadian products imported into the EU abide by food safety-related and environmental regulation as well as provisions which exclude health, education, social services, water collection, purification and distribution, and audiovisual services from deregulation measures. Furthermore, the establishment of international standards (like in the telecommunications or postal sectors) or the

inclusion in trade agreements of the norms of the International Labour Organization do not exclude the possibility to use trade policy to promote re-regulation globally (Krajewski 2011).

The financial and debt crisis which has affected the EU since 2008 has only served to reinforce the liberalization agenda promoted by the EU Commission. A first move by Karel de Gucht, the Commissioner for trade since 2009, has been to make alarmist statements about risks of a return to protectionism.²³ But the main argument has been that, in times of slow domestic demand and non-existing resources for demand-driven policies, the further liberalization of trade was the only remaining engine for boosting Europe's growth and, eventually, rescuing its welfare systems. In turn, the competitiveness imperative in global competition was used as a justification for 'structural reforms' in Europe mainly geared towards the reduction of labour costs (De Ville and Orbie 2014). The trade policy of the EU is therefore strongly geared towards an agenda promoting market expansion, not only to new regions of the world but also to new policy areas, including welfare services. Some caution towards the protection of European (and national) regulation can nevertheless be detected. This is to a large extent due to the occasional, yet vivid, politicization of trade policy.

3.2 Old Wine in New Bottles: Contesting the TTIP and TISA

The currently most contentious trade agreement is undeniably the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA. Negotiations have been on-going, mainly in secrecy, since 2013. While the EU Commission has claimed that the agreement would generate growth and jobs, suspicions have been rising, on both sides of the Atlantic, that a range of provisions would be beneficial to large corporations at the expense of the capacity of states to regulate markets in the name of public interest. Contentious debates have focussed on a few areas. Surprisingly, the most visible issue has been the politicization of the

²³ See, for example, 'EU trade policy in times of protectionism', Roundtable with the Centre for European Political Practical Excellence, Brussels, 28 March 2012.

otherwise highly technical investor-state dispute settlement, which allows private investors to contest the lawful nature of national regulation. It has been seen as a serious threat for states' regulatory capacity. Interestingly, this has impacted also on the negotiations with Canada since, in the wake of public protest on the TTIP, the French and German ministers for trade issued a joint statement asking the Commission to revise the investor-state dispute settlement enshrined in the CETA, with German diplomats claiming that Germany could reject the treaty (Euractiv 2014, 2015). Second, opponents to the TTIP have claimed that the foreseen deregulation (i.e. removal of non-tariff barriers) would harm consumers, with regard to, for example, food safety and genetically modified organisms, or the environment. The fate of welfare services has been a third bone of contention since healthcare, education and culture have been main targets (notably of US commercial interests) over the past 20 years. Opponents of the TTIP see 'the risk that European health, education and other welfare services will be partly privatized and contracted out to US corporations' (Crouch 2014, p. 177). For Crouch, as for many observers, both the nature of the negotiation process and their substantive content are 'a textbook example of trends towards post-democracy' (ibid.), that is, the insulation of policy making from democratic politics and its subordination to the interests of large multinational corporations at the global scale.

Drawing on the history and established networks of transnational contestation against the MAI, GATS or, more recently, the Anti-Counterfeiting Agreement (ACTA), a new global campaign has been on the rise. Beyond established links with Canadian organizations, the campaign against the TTIP has featured new transatlantic cooperation between civil society organizations in the USA and Europe (Strange 2015). In Europe, the campaign was mainly coordinated by the 'Seattle to Brussels' network, with Friends of the Earth Europe and the European Corporate Observatory playing a key role. The network launched an online petition 'Stop TTIP and CETA' which has been signed by more than 2.35 million people at the time of writing (July 2015).²⁴ The initiative is also meant to be a European citizen initiative. While taking into account the multiple policy dimensions involved with the TTIP,

²⁴ See <http://www.s2bnetwork.org/>

the framing has again been centred on the undemocratic nature of the negotiations. Repeated leaks of the draft agreements in 2014 and 2015²⁵ have fed concerns about the potential implications of the agreement for welfare services.

A controversy broke out about possible attacks on the NHS in the UK, whose government has been otherwise very supportive of the TTIP. The controversy led the UK Trade Minister, Lord Livingston, to insist that publicly funded health was excluded from the agreement. In a letter responding to his request, the current Commissioner for trade Cecilia Malmström answered that it was always up to national governments to decide whether they wanted to open sectors to private competition, use outsourcing or bring services back into the public sector and that, even

Box 5.1 EU–US Joint statement on public services

European Commission Statement

Joint Statement

Brussels, 20 March 2015

The following statement was issued after a meeting held today in Brussels by EU Trade Commissioner Cecilia Malmström and the US Trade Representative Michael Froman:

Ambassador Froman and Commissioner Malmström discussed the important role public services play in the USA and the EU.

They confirmed that US and EU trade agreements do not prevent governments, at any level, from providing or supporting services in areas such as water, education, health and social services.

Furthermore, no EU or US trade agreement requires governments to privatize any service, or prevents governments from expanding the range of services they supply to the public. Moreover, these agreements do not prevent governments from providing public services previously supplied by private service suppliers; contracting a public service to private providers does not mean that it becomes irreversibly part of the commercial sector.

(continued)

²⁵ See, for example, [www. http://www.ttip-leak.eu/](http://www.ttip-leak.eu/), date accessed 22 July 2015; <http://leaksource.info/>, date accessed 22 July 2015.

Box 5.1 (continued)

Ambassador Froman and Commissioner Malmström also noted the important complementary role of the private sector in these areas. Private sector activities can improve the availability and diversity of services, to the benefit of people in the USA and the EU. Defining the appropriate balance between public and private services is up to the discretion of each government.

Finally, Ambassador Froman and Commissioner Malmström also confirmed that EU and US trade agreements do not impede governments' ability to adopt or maintain regulations to ensure the high quality of services and to protect important public interest objectives, such as the protection of health, safety or the environment. The USA and the EU are following this same approach in TTIP and TISA.

Source: website Europa: www.europa.eu, date accessed 13 November 2015

though EU public procurement rules applied, healthcare was never part of trade agreements on public procurement. The end of the letter nevertheless mentioned:

It is crucial to remember that there is a thriving private market for health services in the EU. This sector is a key European strength and it is important that the EU trade policy helps to enable our health services companies to access international markets like the US, as well as to encourage competition on the EU side. (European Commission 2015b)

In order to alleviate the concerns over welfare services, the EU and the USA issued a joint statement on public services in March 2015 (see Box 5.1)

In June 2015, the EP passed a first crucial resolution on the TTIP. While activists had hoped that, like in other instances, the EP would support their grievances, they deemed the resolution ambiguous and disappointing

(especially regarding the investor-state dispute settlement). Still, the EP took a clear stance on welfare services by calling on the Commission to

build on the joint statement reflecting the negotiators' clear commitment to exclude current and future Services of General Interest as well as Services of General Economic Interest from the scope of application of TTIP, (including but not limited to water, health, social services, social security systems and education), to ensure that national and if applicable local authorities retain the full right to introduce, adopt, maintain or repeal any measures with regards to the commissioning, organisation, funding and provision of welfare services as provided in the Treaties as well as in the EU's negotiating mandate; this exclusion should apply irrespective of how the services are provided and funded. (European Parliament 2015, p. vii)

However, the CEEP stressed that the position of the EP on public procurement did not guarantee that the new legislative package on public procurement, which is considered as protective of governments' regulatory capacities, would be fully intact.

The trade unions—both the PSI and ETUC—were key in bringing the issue of welfare services to the fore in the campaign. Moreover, they provided linkage between the TTIP and another agreement on services, the TISA, which as the successor to the GATS is in discussion among about 50 WTO members since 2012. In April 2015, Wikileaks made public online the draft of the agreement, which had previously been kept very secret. On the basis of the leaks, Scott Sinclair and Hadrian Mertins-Kirkwood from the Canadian Centre for Policy Alternatives published a substantial report endorsed by the PSI which bore the title *TISA versus Welfare services*. Critics made clear that healthcare, social services, education and culture were at the heart of the negotiations. Trade unions have made efforts to develop expertise in order to understand the implications of free trade agreements such as TTIP, TISA and CETA (EPSU 2015). The European Trade Union Committee for Education has also been quite vocal in rejecting the TISA. And, although somewhat less visibly, the TISA has also been contested by organizations such as Attac Deutschland (2015).

4 Conclusion

Since the mid-1990s, the global agenda for services liberalization has proved contentious among a number of NGOs and political parties and movements which struggle against the neoliberal nature of globalization and advocate maintaining the practice of allowing public authorities (at all levels of governments) to regulate markets in order to protect general interest. Although the representativeness has often been questioned, resonance within national public spheres and frequent involvement of national parliaments suggest that such contestation reflects concerns felt among a non-negligible section of European societies. The possible impact of free trade agreements on welfare services has continuously been a bone of contention in this regard. This chapter has argued that the opponents of far-reaching free trade have had to face a powerful dynamic in policy making where the intertwined global and European agendas for services liberalization have been mutually reinforcing. In tune with the institutionalist analysis of the supremacy of negative integration in the EU, the commitment of European decision makers to advancing the liberalization and marketization of services, including a number of SGI, has been supported by a set of institutional and legal provisions. Most importantly, the progressive enlargement of the Commission's exclusive competence to negotiate trade agreements, on the one hand, and the increasingly restrictive definition of welfare services in EU and WTO law, has allowed the EU Commission to pursue a dynamic liberalization agenda. However, this book also argues that institutional and legal mechanisms are necessarily underpinned by powerful ideational dynamics. While criticism over policy making mostly targets the Commission, one should not forget that the room for manoeuvre it enjoys is constrained by the balance of ideational power among the Member States as the Commission is always tied politically to the support of a majority of Member States in the Council. Insofar, the nature of the Commission's (neoliberal) entrepreneurship is a faithful reflection of the changing ideas and political preferences among national governments (Crespy and Menz 2015a).

The campaign against the GATS, which took place roughly between 2000 and 2007, provides evidence that the Commission has softened its approach regarding SGI in the face of politicization and resistance. The anti-GATS campaign was characterized by the loosely coordinated

mobilization of overlapping networks both globally and Europe wide. In Europe, mobilization accounts for the activation of all available channels in the EU multi-level polity. European NGOs from the alterglobalist movement created a European platform called ‘from Seattle to Brussels’, thus indicating the continuity of their action from the global into the European realm. The campaign was also supported by the supranational actors: more particularly the ETUC and EPSU and, to a lesser extent, some MEPs. While the EP adopted a resolution asking welfare services to be safeguarded from trade liberalization, it was less key than in debates discussed under the procedure of co-decision. With regard to internalization, local and regional governments, or national parliaments, took a critical stance towards the GATS, sometimes declaring the creation of ‘GATS-free zones’ in their constituencies.

Contrasted discursive frames have consistently clashed in a powerful process of politicization. While the pro-regulation coalition framed a strongly resonating communicative discourse relying on the invocation of state regulatory capacity for defending public interest and democracy, the EU Commission, in contrast, has consistently stressed that free trade was the source of competitiveness in Europe and of economic development elsewhere. Contestation has nevertheless led the EU (Commission and Council) to abandon their offensive interests and requests for market opening in the sector of water distribution in particular and, more generally, to adopt a modest approach to liberalization in all SGI sectors covered by the GATS. Yet, it would be wrong to say that the anti-GATS discourse has prevailed in the long run. While the appeal to democracy and global justice can strongly resonate in particular instances, the neoliberal framing claiming that trade liberalization is a powerful source of growth, employment and competitiveness for Europe has not truly been challenged.

Since the GATS negotiations stalled around 2007–2008, a new generation of (bilateral, multilateral and regional) free trade agreements has flourished which aim at pushing liberalization further, especially in the realm of services. Some of these agreements, such as the CETA, TISA and, more famously, TTIP, have been vigorously politicized and contested. All in all, the themes, discourses and strategies adopted have not changed much since 2000. With regard to welfare services, the main novel aspect is undeniably the rapid degradation of public finances and

the exacerbation of austerity policies in Europe in the aftermath of the 2008 financial crisis, a topic dealt with in the next chapter.

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6

Welfare Services in Times of Austerity

This book started with the—somewhat gloomy—observations on the effects of the recent financial crisis on welfare services (or SGI) to suggest that, in order to understand how we got there, we need to look at the trends towards the recommodification of welfare services which have been ongoing over the past two decades. This chapter reiterates the idea that, indeed, marketization and austerity are two sides of the same coin: as public resources have become increasingly scarce, marketization is seen as an alternative in order to curtail public expenditure by shifting costs from the government to users recast as consumers. It is also widely believed that marketization results in more efficient management of such services hence allowing for cost containment. A consensus among European decision makers on austerity—that is, fundamentally, the ‘reduction of public spending’ (Blyth 2013)—prevailed long before the financial crisis hit USA and unfolded as a crisis of sovereign debt in Europe. This is because a central principle of the Economic and Monetary Union (EMU) as it was conceived in 1992 is that ‘sound’ public finance is the cornerstone of monetary integration. The so-called Maastricht

convergence criteria enshrined in the Stability and Growth Pact of 1997 limits government deficit to 3 % of GDP and public debt to 60 % of GDP. Hence, the 'Brussels–Washington' consensus existed long before it became the 'Berlin–Washington' consensus on the need for austerity policies (Fitoussi and Saraceno 2013). More or less explicitly, and along with labour market reforms, cuts in welfare services have been understood as part of 'structural reforms'. In a study from 2002 on public sector reforms in ten European countries, Hemereijck and Huiskamp (2002) found that the road to EMU put public finance under pressure for future member countries (as well as for those which had not yet decided). This translated into the stabilization or slow, but steady, decrease of expenditure for the public sector in a context characterized by increased needs in numerous sectors, not least education and healthcare. While decentralization allowed for change in employment regimes and industrial relations, internal and external privatizations were meant to raise efficiency (for the former) and generate state revenue rapidly (for the latter) in a context where capital mobility has increasingly brought about fiscal competition and the decline of tax revenue. The crisis which has affected the EU as a result of the global financial crisis originating in the USA in 2008 has only reinforced the ideational and institutional strength of austerity, thus putting welfare services in the eye of the storm.

This chapter first presents data showing the impact of the crisis on welfare services across Europe, and reflects on the consequences thereof. In the second section, the new governance framework for macro-economic governance in the EU is presented with an emphasis on the increasing subordination of social policy objectives to fiscal discipline. A main argument here is that EU institutions, through the European Semester, leave national governments facing contradictory objectives, aiming at quality welfare services with reduced financial resources. Finally, the last section turns to the issue of contestation with observations that contestation against austerity in general, and cuts in welfare services in particular, have been unequally distributed across Europe but, more importantly, it has been weakly coordinated at the European scale. Consequently, austerity remains the dominant ideational frame for this crisis. For welfare services, this means that marketization is, more than ever, the sole alternative in the face of rapidly rising inequalities within European societies.

1 Budget Discipline and Welfare Services

1.1 Targeting Welfare Services¹

A first glance at levels of deficit and deficit reduction (see Table 6.1) shows an interesting picture of differentiated situations across the EU. In a first group, we find countries which strongly reduced their deficit from four to eight points between 2009 and 2013,² either because they were under the constraint of financial assistance programmes of the EU and the IMF (Latvia, Ireland, Romania, Portugal, Spain), or out of self-motivated policy programmes (Lithuania, Slovakia, the UK, the Czech Republic, Austria). Ireland, for example, which received a bail out of €85 billion from 2001 to 2013, experienced a succession of eight austerity budgets between 2009 and 2014 which have amounted to €28 billion (i.e. 17 % of GDP) in spending cuts and tax rises.³ As early as 2009, the UK, which has been fully independent from financial support and is not a member of the Eurozone, set the target of saving £9 billion a year for a total of £35

¹ Surprisingly, it is not easy to find systematic comparative analyses on the impact of fiscal discipline on welfare services. A main reason is that welfare services do not constitute a category as such. When looking at raw data on public expenditure and government deficit, it is very difficult to disentangle social policy in the form of services from benefits in the form of transfers (social security, unemployment benefits, help to families, housing, etc.). Most scholars who have assessed the impact of the crisis on welfare states have focused on what is more traditionally understood as ‘structural reform’ standing for a significant share of government expenditure, namely labour market reforms and pension reform. For example, looking at 11 EU countries, Hermann (2014) finds that all of them have, in one way or another, cut the level, duration or access of unemployment benefits, decreased pensions, liberalized labour markets and changed the rules of collective bargaining. Finally, it should be underlined that Eurostat data is systematically expressed in percentage of GDP. Therefore, in some countries, data does not show a significant decrease in public spending in welfare services sectors (except in the most indebted countries such as Greece or Ireland), but one must keep in mind that in most countries, the GDP dropped strongly in 2009–2010, and after that it has stagnated in most countries. This means that, even if in terms of GDP, financial support for welfare services did not decrease significantly, it has actually decreased or stagnated in real terms in a period where needs among the population have increased, thus bringing about a deterioration of the situation on the ground. In addition to raw data, this section uses more focused analyses of the data provided in reports elaborated by political institutions such as EU Commission and the OECD, or assessments by specialists of social policy.

² 2009 was taken as a reference for the first year following the financial crisis of 2008. Yet, most austerity measures and their impact have only been visible later in the following years. 2013 is the last year for which Eurostat data is available for all EU Member States.

³ ‘The eighth austerity budget’, *The Economist*, 13 October 2013.

Table 6.1 Deficit reduction (in the unit of measure is % of GDP) between 2009 and 2013

	Deficit in 2009	Deficit in 2013	Deficit reduction
Latvia	90	07	83
Ireland	139	58	81
Romania	89	22	67
Lithuania	91	26	65
Slovakia	79	26	53
United Kingdom	108	57	51
Portugal	98	48	50
Czech Republic	55	12	43
Spain	110	68	42
Austria	53	13	40
Bulgaria	42	09	33
Poland	73	40	33
Netherlands	55	23	32
France	72	41	31
Germany	30	-01	31
Belgium	55	29	26
Italy	53	29	24
Hungary	46	25	21
Estonia	22	02	20
Denmark	28	11	17
Luxembourg	05	-09	14
Malta	33	26	07
Cyprus	55	49	06
Croatia	58	54	04
Finland	25	25	00
Sweden	07	14	-07
Slovenia	59	149	-90
EU 28	NL	32	
Greece	NL	123	

Source: Eurostat

billion by 2014 through wide-reaching measures. These included: selling government buildings and the privatization of state-owned enterprises such as the Royal Mail; contracting out some welfare services; taking 'efficiency measures' in health, education, transportation, local government; privatizing jails and restraining salary increases to public sector workers; cutting 10,000 jobs in local authorities in 2010; cutting 350,000 jobs in the central public sector between 2010 and 2014 (Baskoy, p. 15).

Starting with a very low level of deficit, Germany belongs to a middle group of countries which have followed, although less drastically, the same

policy direction by reducing their deficit between 2 and 3.5 points. In June 2010, the German government adopted the largest austerity plan of the post-war period. The so-called package for the future (*Zukunftspaket*) foresaw cuts amounting to €80 billion—that is, 0.8 % of GDP—by 2014. The plan included job cuts in the public sector, and the controversial suppression of some long-term unemployment benefits and subsidies to families. In contrast, France delayed action until the November 2011 where the government under Nicolas Sarkozy adopted the first austerity plan aimed at saving €65 billion by 2016. The plan mainly foresaw a tax increase, but also attempted to contain healthcare and pension-related costs, and implement cuts in aid to families. Meanwhile, France has adopted two further austerity plans since the election of the socialist François Hollande in 2012. In April 2014, the austerity plan put forward by Prime Minister Valls foresaw cuts amounting to €50 billion: €18 and 11 billion will be respectively cut from the central government's and local authorities' expenses, €10 billion from the budget of national healthcare insurance, and €10 billion from further social expenses.⁴ Finally, a last group of EU Member States displays very low deficit reduction, either because their deficit was already very low in 2009 or because effort was limited, with Sweden and Slovenia even increasing their deficit over the period.

Figure 6.1 below shows the extent to which EU countries have reduced their expenditure for welfare services between 2009 and 2014. Whereas a first group of East European and Baltic countries (plus Ireland) implemented drastic cuts, Scandinavia and continental Europe still spend the most on welfare services. While having reduced their expenses to a relatively significant extent, Poland, Germany and the UK remain at a middle level of expenditure in the EU landscape.

Reviewing fiscal consolidation measures in 13 EU Member States⁵ between 2008 and 2012, researchers found that the overwhelming majority of them had implemented measures such as freezing hiring and pay, reducing wage and staff in the public sector, as well as proceeding to

⁴ 'Valls : l'effort de 50 milliards n'est 'pas un plan d'austérité', *Libération*, 16 April 2014.

⁵ Belgium, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Slovenia, Spain and the UK.

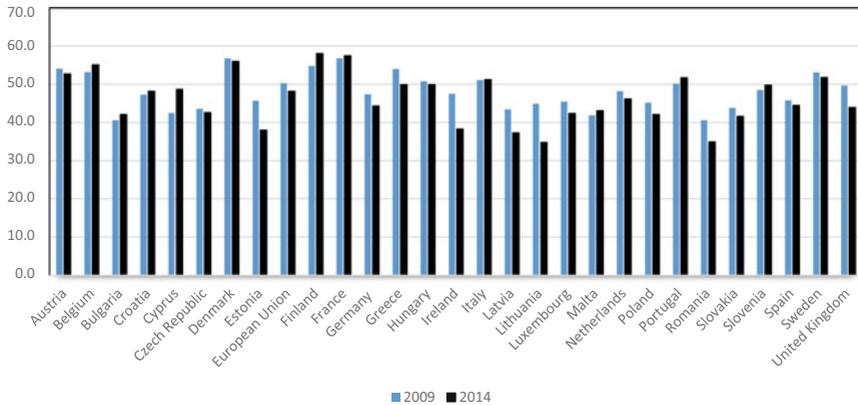


Figure 6.1 Spending on public services (in % of GDP) in the EU [The following categories have been included: communication, waste management, waste water management, housing and community amenities, housing development, water supply, health, medical equipment, outpatient services, hospital services, health services, recreation, culture and religion, cultural services, broadcasting and publishing services, education, secondary education, post-secondary non-tertiary education, tertiary education, education not definable by level, social protection, old age, family and children, housing, unemployment, social exclusion. The data includes social benefits (but excludes pensions) because it is very difficult to disentangle benefits in cash transfers from benefits in the form of services. Moreover, no data is available on the expenditure on social benefits for 2013. Yet, we know that, due to rising numbers within the population, transfers related to unemployment or healthcare have been difficult to contain. The data for 2012 shows that their share of GDP has indeed continued to grow in most countries (except in the Baltic and some Central or Eastern European states). We can, therefore, assume that public services as such have been strongly hit when total expenditure has decreased.].

Source: Eurostat

make cuts in health, education, social and welfare services and infrastructure (Kickert et al. 2013, p. 19). Different governments have targeted different sectors. While, for example, cuts in the public administration have been particularly important in Lithuania and Estonia, cuts in health-care have the focus in Belgium and Spain. In Ireland 'the total volume of cuts in health services outweighs all other spending cuts (...) and the largest proportion of cuts affected cultural and arts policies, which were cut by 65%' (ibid., p. 22). In 2012, Lehndorff and his colleagues describe cuts in Italy, Spain and Hungary, Austria and Germany as 'severe', and speak of a 'great shock' in the UK and a full-scale 'recommodification' of welfare services in Ireland. They note:

In Germany, to select the alleged role model, the deficiencies of public investment in education and other crucial social services are striking, given that this country has no other 'raw materials' than the skills of the people living in it. (Lehndorff 2012, p. 21)

By combining data from Table 6.1 and Fig. 6.1, it is possible to compare the extent of cuts in welfare services and that of deficit reduction as accounted for by Fig. 6.2. This gives an idea of the politics of austerity, that is to how different governments have prioritized the sustainability of quality welfare services or, on the contrary, targeted them compared to cuts in other sectors of public expenditure (e.g. defence) or increase of state revenue through tax.

Germany has, for example, cut its deficit and spending in public services in relatively balanced proportion, while Belgium, Croatia, Cyprus, France, Portugal and Slovenia have reduced their deficit but not their level of spending for public services. At the other end of the spectrum, the decrease in spending for public services has been overproportionate in relation with deficit reduction in Estonia, Lithuania, Luxembourg and the UK. Bulgaria and Finland have known an increase of both their deficit and spending for public services. Comparing, for example, policy responses to the crisis in Belgium and the UK, it seems that traditional policy trajectories (or varieties of capitalism) adopted in different countries matter more than institutional constraints stemming from the EU (or Eurozone) governance. On the side of the most

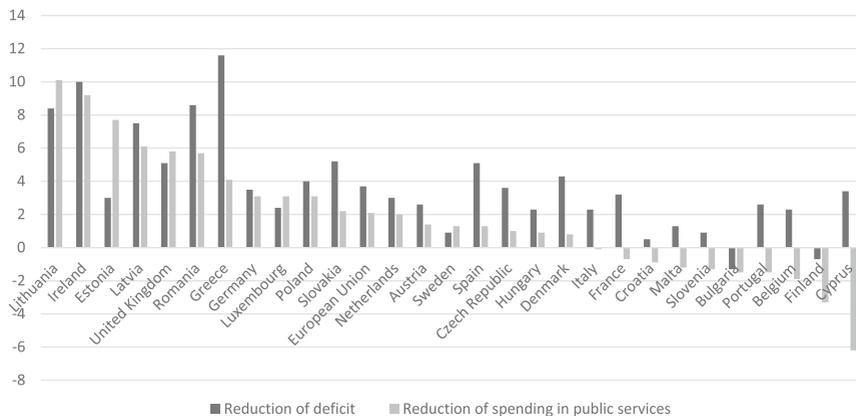


Figure 6.2 Reduction of public deficit and reduction of spending in public services (in % of GDP) from 2009 to 2014.

Source: Eurostat

affected countries, this argument is supported by a comparison between the Baltic countries and Ireland, where welfare services have been very much affected, on the one hand, and Portugal, Italy or Spain, where they have been to a much lesser extent affected, on the other. Hence, even in a context of strong pressure to abide by fiscal discipline, governments retain a room for manoeuvre which they have, de facto, used in order to undermine or safeguard the level of financial and human resources dedicated to welfare services.

1.2 A Counterproductive Strategy

From a broad perspective, the debasing of welfare services in the name of ‘fiscal consolidation’ has had two sets of negative consequences: (a) it has exacerbated the deterioration of social cohesion; (b) it prevents the implementation of a modernizing agenda on social investment.

The targeting of welfare services for reducing deficits is bound to be counterproductive in a context of economic recession. Where the share of expenses for welfare services (as a share of GDP) has been stagnating

or decreasing (with GDP itself stagnating or decreasing), needs within the population have, on the contrary, been strongly accentuated. Due to skyrocketing levels of unemployment, a significant part of the population has found itself deprived of income, and having to rely on benefits and welfare services. Furthermore, in many countries such as Spain, Ireland, the UK and others, the crisis has been a direct consequence of the poor regulation of housing markets which have left people without homes, expelled as a result of incapacity to pay or, more simply, with a very low disposable income once unaffordable housing is paid for. Pressure of migration from abroad or concentration in large cities has accentuated needs for healthcare, schools and transport infrastructure. While politicians across the board have acknowledged that social benefits and welfare services serve as a main 'stabilizer' to cushion the effects of economic depression, policy measures have nevertheless contributed to undermining this beneficial effect.

In most countries, poverty levels have been on the rise. In 15 out of 28 EU countries, the number of people at risk of poverty (after social transfer) has increased since 2009, sometimes dramatically (Croatia, Slovakia, Greece, Hungary, Slovenia) or significantly (France, Germany, Luxembourg, Malta, Sweden).⁶ As early as 2011, Frazer and Marlier conclude in a report on behalf of the DG employment and social affairs of the European Commission that, in spite of a lack of data, it is clear that

One of the key impacts on services highlighted is the loss of jobs in areas like health, education, social housing, police, prisons and the arts. However, this has not been the case in all countries. Housing and related services emerge as one area which has been particularly adversely affected by the economic and financial crisis in several Member States. This is often reflected by increases in evictions, increases in homelessness, growth in waiting lists for social housing, and increased debts in relation to key utilities such as heat and water. (Frazer and Marlier 2011, p. 6)

⁶ Eurostat, 'People at risk of poverty after social transfer', <http://ec.europa.eu/eurostat/>, accessed 21 August 2015.

In over 57 % of the European regions (Nuts 2) for which data is available, the number of hospital beds has decreased between 2009 and 2012 (and supposedly even more so in the following years, especially in the Southern and Eastern periphery). In the vast majority of EU countries, the share of the population reporting unmet medical examination or treatment has increased since 2009.⁷ Similarly, the number of severely deprived people has increased since the outbreak of the crisis, sometimes to a dramatic extent as in Cyprus, Greece, Hungary, Ireland, Italy, Malta and the UK.⁸ In fact, as a recent report of the OECD stresses, ‘economic hardship (is) felt most acutely among low earners and youth’, as households at the lower end of the spectrum have lost a much larger share of their disposable income than the better-off. Insofar, austerity has accelerated a long-term trend at play, namely the rise of inequalities within European societies. Combined with social transfers, welfare services are a main component of the European social model(s) which contribute to compensating for a lower income. Insofar, one can only echo the claim of Philipp Schmitter that ‘the vision of Europe as the site of an alternative form of “social capitalism” has been seriously tarnished by the crisis’ (Schmitter 2012, p. 26 cited in Hermann 2014, p. 10).

A second aspect of the issue is that the safeguarding of welfare services is not only a thing of the past, expressing a desire to maintain at all costs the welfare state of the twentieth century: austerity policies which lead to the dismantling of welfare services have also precluded the emergence of a modernizing agenda focused on social investment. Promoted in academic circles over the past few years, the concept of social investment was embraced by the European Commission with an initiative from 2013. The central idea of modernization through social investment is a necessary shift from social insurance and money transfer to an active welfare state providing services (education and training, healthcare, family policy and childcare and so on) which enable individuals to increase their human capital (Esping-Andersen 2010).

⁷ Eurostat, ‘Self-reported unmet need for medical examination or treatment’, <http://ec.europa.eu/eurostat/>, date accessed 21 August 2015.

⁸ Eurostat, ‘Severely materially deprived people’, www.ec.europa.eu/eurostat, accessed 21 August 2015.

Therefore, although it is never framed in these terms, high-quality welfare services are the key component for the coming of age of social investment. Yet, what we have witnessed over the past few years is the cut of social benefits combined with insufficient or absent investment in such services. Public investment has in fact decreased appreciably since 2009: for example, from 2.6 to 1.7 % of GDP in the UK, from 4.5 % to 1.4 % of GDP in Spain and from 2.9 % to 2.1 % in the EU 27 (EPSU 2013, p. 13). In its 2015 Annual Growth Survey, the EU Commission identifies the lack of investment in Europe as a main concern and claims that

Member States with fiscal room for manoeuvre need to invest more. All Member States, but in particular those with more limited fiscal space, should ensure an efficient use of resources, prioritise investment and growth-related expenditure in their budgets, getting more investment out of EU Funds at their disposal and creating an environment more conducive to investment by private actors. (European Commission 2015a, p. 7)

Yet, it seems that the general mantra focused on deficit ban and debt reduction leaves governments with no leeway for investing in policies geared towards the future. In fact, a recent study of the European Commission on social investment brings evidence that countries whose welfare states are most robust historically and have been most resilient throughout the crisis (essentially Scandinavia and continental Europe) are those where social policy is most compatible with the social investment agenda (Bouget et al. 2015). At the European level, the European Commission's initiative for social investment, which urges the Member States to invest in education, training and healthcare and so on, is supported neither by legal instruments nor by financial resources, with the exception of some part of the European Social Fund. Therefore, it is not very surprising that exhortations for social investment do not result in much result on the ground.

2 Austerity Europe: Opaque Governance and Ambiguous Politics

2.1 The Absorption of Social Policy in Economic Governance

Due to high economic interdependence across the continent, the choice for austerity has been increasingly coordinated at the supranational level. Reforms of the EMU in response to the financial crisis can be regarded as a new cycle of centralization in the EU. The new mechanisms which make governance more stringent do not only concern monetary policy or economic integration. An increasing number of social policy issues have been submitted to stronger European surveillance, with the effect of a greater subordination of social policy to economic policy and fiscal discipline. This is notably a result of the increasingly hybrid nature of EU governance. While called ‘coordination’, the European Semester also involves a number of stringent and legally binding procedures. It is not clear to what extent social policy, which formally remains a national domain of competence, should be affected by such mechanisms. Though indirect, the post-crisis governance has a very real impact on welfare services.

Since 2010, fiscal discipline across Europe is steered through a cycle of macro-economic surveillance called the European Semester. Within this framework, the EU Commission monitors the economic and social situation in the Member States and formulates so-called country-specific recommendations which outline the nature of reform which should be undertaken by national governments. These recommendations are endorsed (and sometimes amended) by the Council thus ensuring collective oversight of reform. The policy guidelines should then be taken into consideration when drafting national budgets which should comply with EU rules on deficit. The new governance framework also involves potential sanction mechanism in the form of an excessive deficit procedure whereby the Commission can propose to the Council to enforce financial sanctions in the case where Member States fail to take ‘corrective action’ to tackle excessive deficits. The excessive deficit procedure, therefore, embodies the hardening of the rules enshrined in the Stability and Growth Pact, which

was mainly soft law and relied on the good will of the Member States. In this new constellation, the surveillance and sanction powers conferred upon the Commission are significant (Closa 2014; Dehousse 2015). At the time of writing (2015), an excessive deficit procedure is opened against nine Member States: Croatia, Cyprus, France, Greece, Ireland, Portugal, Slovenia, Spain and the UK. Seventeen further Member States have had to face an excessive deficit procedure in the recent past. So far, no procedure has gone as far as to impose sanctions against a member State. In this regard, it appeared that there is room for manoeuvre for political negotiations. It is striking that two of the largest Member States, namely France and the UK, have had procedures opened since 2009 and 2008 respectively, and have obtained from the EU Commission a respite until 2017 to bring their deficit back below 3 % of GDP, that is a longer delay than other EU countries. All in all, the European Semester accounts for a new blend between soft and hard law (Armstrong 2013).

In this new landscape comprising hybrid forms of governance, social policy has been increasingly subordinated to economic policy and, more precisely, fiscal discipline. In fact, the functioning of the European Semester has been in a constant state of flux and has witnessed many changes since its inception in 2010: in a first phase, the European Semester absorbed (and neutralized) existing policy making on social policy. Copeland and Daly show how the existing Open Method of Coordination on social inclusion as well as the poverty and social exclusion target agreed upon in the framework of Europe 2020 have rapidly been overshadowed by the focus on budget discipline of the European Semester (Copeland and Daly 2015). In a second phase, social policy has been tied into the European Semester. This has resulted from a counter-mobilization of social actors. Lazlo Andor, then Commissioner for Employment and Social Affairs, promoted the elaboration of ‘the social dimension of the monetary Union’, as reflected in a communication from 2013 (European Commission 2013c). As result of a struggle between DG EMPL and DG for Economic and Financial Affairs (DG ECFIN), two different scoreboards were included in the so-called macro-economic imbalance procedure, whereby a series of socio-economic indicators are monitored and an ‘alert mechanism’ can be launched should the situation in certain Member States give cause for concern (Vanheuverzwijn 2014).

The macro-economic imbalance procedure now includes the monitoring of unit labour costs, the activity rate for different age groups (notably young people), the people at risk of poverty or social exclusion rate (including after social transfer), the rate of severely materially deprived people, the rate of people living in households with very low work intensity and so on. Scholarly assessments are divided with regard to the possible implications of this trend. Copeland and Daly (2015) find that the scoreboard brings no novelty and is nothing more than ‘an analytical tool’ to secure the Commission’s ‘measurement right’, but does not entail sanctions if Member States fail to comply with the social benchmarks. This echoes the view of the ETUC. Bekker (2014) on the contrary, stresses that some socio-economic issues addressed in the country-specific recommendations may be linked to the sanction mechanism embedded in the European Semester. For Zeitlin and Vanhercke (2014), changes in the practical functioning of the European Semester since 2011 can be seen as a ‘socialization’ of macro-economic governance. This has been reflected in the greater involvement of social policy actors (including the drafting of the country-specific recommendations), on the one hand, and in the continuous increase of recommendations related to social policy, in particular poverty and social inclusion, healthcare and pensions.

Hence, according to them, these developments should be seen

not only as a response by the Commission and other EU institutions to rising social and political discontent with the consequences of post-crisis austerity policies, but also as a product of reflexive learning and creative adaptation on the part of social and employment actors. (Zeitlin and Vanhercke 2014, p. 3)

However, the greater involvement of social policy actors or the greater inclusion of social policy issues in the country-specific recommendations gives no indication as to the nature and direction of reform promoted at the EU level. In other words, it does not automatically mean that the Commission and the Council support progressive or socially minded policies implying a rebalancing of fiscal austerity towards more socially sensitive budget politics. Hence, for the time being it is not entirely clear to what extent the post-crisis economic governance shall shape national

social policy. Various actors within EU institutions seem torn apart between two objectives: enforcing the control of social policy expenditure in order to enforce budgetary austerity, on the one hand; and the desire to monitor the effects of austerity on European societies in order to make sure that they do not spin out of control, on the other. These contradictions and dilemmas are evident when looking at how welfare services are being addressed in the framework of the European Semester.

2.2 The European Semester: To Spend or Not to Spend?

This section focuses on the country-specific recommendations issued by the Commission and the Council every year. While most authors focus on what the EU advocates in terms of labour market reforms (including unemployment benefits and activation policies) and pension reforms, the purpose here is to assess to what extent and in which way macro-economic coordination at the EU level affects welfare services. Although they remain theoretically a matter of national choice, the European Semester undeniably aims at shaping national reform trajectories. A close look at the recommendations reveals evidence that the Commission and the Council do not only seek to influence the general outcome of national budgets, namely to what extent they are in balance; but they also give clear instructions as to how budgets should be structured, that is what type of spending or expenditure should prevail over others. Table 6.2 below shows that, in some respects, the injunctions formulated by the EU institutions are contradictory as they advocate to spend and not to spend at the same time, leaving national governments faced with difficult budgetary dilemmas regarding how to square the circle of austerity. For practical reasons, instead of 28 Member States, the table includes a selection of seven Member States which are both inside and outside the Eurozone, large and small, countries from the ‘core’ and countries from the periphery, countries with or without an ongoing excessive deficit procedure. As an attempt to focus on welfare services as such (as opposed to benefits), the table does not include recommendations related to unemployment benefits or pension reforms.

Table 6.2 Recommendations^a related to welfare services by the Commission and the Council in 2011 and 2015

	'Don't spend!'		'Spend!'	
	General budget	Welfare services	Welfare services	Social investment in welfare services
France	2011	Bringing the deficit down from 7 % of GDP in 2010 to 3 % in 2013		Public employment service
	2015	Ensure effective action under the excessive deficit procedure and a durable correction of the excessive deficit by 2017	Further cost-containment measures in healthcare	
Germany	2011	Implement the budgetary strategy for the year 2012 and beyond	Further steps to enhance the efficiency of public spending on healthcare and long-term care	Increase the number of full-time childcare facilities and all-day schools
	2015			Adequate expenditure on education Investment in infrastructure, education and research
Latvia	2011	Bringing deficit down to 5 % of GDP	Cuts in public sector nominal wage and employment	Availability of training, requalification and activation measures

(continued)

2015	The projected structural deficit of 2.2 % of GDP in 2016 exceeds the appropriate safety margin with respect to the 3 %-of-GDP rule	Vocational education and training Accessibility to healthcare
Poland	2011 Implement the measures announced in the draft 2012 Budget Law and take additional measures of a permanent nature if needed	Lifelong learning strategy, enhance apprenticeships and dedicated vocational training and education programmes for older workers and low-skilled workers. Childcare Energy generation capacity Railway infrastructure Vocational education and training Early childcare services
2015	Achieve a fiscal adjustment of 0.5 % of GDP towards the medium-term budgetary objective both in 2015 and 2016	

(continued)

Table 6.2 (continued)

		'Don't spend!'	'Spend!'
		General budget	Welfare services
			Social investment in welfare services
Portugal	2011	Reduce the Government deficit to below €10,068 million (equivalent to 5.9 % of GDP based on current projections) in 2011, €7645 million (4.5 % of GDP) in 2012 and €5224 million (3.0 % of GDP) in 2013	Reduce the number of services while maintaining quality of provision Reduce costs in the area of education Limit staff recruitment in public administration Control costs in health sector
	2015	Achieve a fiscal adjustment of 0.6 % of GDP towards the medium-term budgetary objective in 2016	Fiscal consolidation must be underpinned by increased efficiency and quality of public expenditure at all levels of public administration
Slovenia	2011	Achieve the 2011 deficit target, underpin the 2012 deficit target with concrete measures and implement the necessary consolidation rigorously	Training for young people Increase the digitization of services in charge of labour market matching. Adequate coverage of social assistance Effectiveness of the public employment service

(continued)

2015	Ensure a durable correction of the excessive deficit in 2015, and achieve a fiscal adjustment of 0.6 % of GDP towards the medium-term budgetary objective in 2016	By end of 2015, adopt a healthcare and long-term care reform	Increase the employability of low-skilled and older workers
United Kingdom	2011	Implement the planned fiscal consolidation aiming at a deficit of 6.2 % of GDP in 2012–2013	Employability of young people Childcare
	2015	Ensure effective action under the excessive deficit procedure and endeavour to correct the excessive deficit in a durable manner by 2016–2017	Boosting public and private investment Education and training for young people Affordable, high-quality full-time childcare

Source: European Commission, www.ec.europa.eu, date accessed 19 November 2015

^aThe recommendations examined are those endorsed by the Council (as opposed to the draft recommendations formulated by the Commission only). The recommendations for Latvia and Portugal from 2011 are those spelled out in the two memorandums of understanding agreed in respectively 2009 and 2011

Although it is difficult to draw general conclusions from recommendations which are, by nature, specific to particular national configurations, three points can be underlined. First, contrary to what one may think, the country-specific recommendations addressed to national governments contain not only recommendations for cutting expenditure but also for increasing expenditure in certain areas. While this may be interpreted as a general strategy for modernizing welfare services and fostering a strategy of social investment, it is put into perspective by the fact that objectives for budget discipline appear overarching. If the quantity of text and the order in which items appear in documents are taken as indicators for policy priorities, it is clear that recommendations relating to budget discipline and cuts occupy the greater part of the exercise and always come before other types of recommendations. This means that the pressure for reducing expenditure is such that national governments are across the board led to prioritize cuts over investment. This is even more so in view of the fact that, going back to the issue of hybrid governance, exceeding limits of deficit and debt can trigger sanction mechanisms, while recommendations for spending have no legally binding character. And this, indeed, is reflected in the fact that, in most countries, the recommendations for spending in certain areas of welfare services made in 2011 are reiterated in 2015, thus indicating that no or insufficient government action has been taken. Moreover, the EU discipline seems to be particularly far-reaching. It is for example striking that in 2015 Latvia finds out that a deficit level of 2.2 % of GDP, while lower than the 3 % limit, is still considered to be above the 'safety margin'. Another interesting aspect is that recommendations for spending are not limited to countries which have lower levels of deficit at the outset: even highly indebted countries (except for Portugal) are being advised to spend more in order to tackle some of their most important structural problems, such as lacking education systems or high levels of poverty. As far as the nature of cuts or expenditure is concerned, it clearly appears that EU institutions have a vision of social investment centred on labour markets. Besides unemployment benefits and pension reforms, most exhortations to reduce spending concern healthcare and long-term care as well as public administration. Implicitly, these areas are seen as non-productive or not growth-oriented, which is arguable both from a normative as from an economic point of view. In contrast, services in education, training

and childcare are considered as good investments because they increase the ‘employability’ of certain categories of people, mainly long-term job seekers, young people and women. Finally, a growing concern over the consequences of lacking investment can be observed: in 2015, the consequences of fiscal discipline are visible in the lack of investment, whether in countries which are still fairly heavily indebted (such as the UK) or in those which appear as models of fiscal discipline (such as Germany). This can be seen as further evidence that the systematic prioritization of cuts over spending is inefficient from a policy point of view.

In sum, we may conclude that social problems are not being entirely overlooked in the European Semester, and a will to redirect public expenditure towards the modernization of welfare services through social investment (or a certain conception thereof) can be detected. However, the pressure to reduce deficits is such that it makes it impossible for national governments to square the circle, and makes modernization illusory. At the end of the day, it seems that the course taken by national governments depends, on their political orientation and variety of capitalism, on the one hand, and on their political weight and capacity to negotiate delays and room for manoeuvre, for fiscal consolidation on the other. In this regard, it is clear that countries under financial assistance programmes enjoy no space for limiting retrenchment. This, in the long run, is more likely to increase, rather than decrease, the gap in economic and social policy performance with other EU countries.

3 In Search of European Contentious Politics

3.1 Weak European Coordination

Contentious politics pertaining to the debasing of welfare services cannot be considered in isolation from the wider contestation against austerity policies which have been targeting European welfare states and industrial relations in the post-financial crisis context. When drawing the big picture, it appears that protest at the national level has been confined to certain countries and has had limited results, on the one hand, and that, on the other hand pan-European coordination has been weak.

Logically, protest has been most vigorous in the countries which have known drastic austerity plans. Everywhere, workers unions were part of the protest, especially the public sector workers who have been a main target of austerity plans and the conditionality attached to financial assistance from the 'troika' (IMF, ECB and EU Commission). Greece, of course, constitutes an extreme case. Between 2010 and 2013, the public sector union Anótati Diíkisi Enóseon Dimósiön Ypallílon (ADEDY), for example, took part in about 40 general strikes (PSI 2013). Not much changed afterwards, and the last general strike was conducted against the agreement found in July 2015 for the ultimate rescue avoiding a 'grexit' from the Eurozone. In Spain, a first austerity package adopted by the Prime Minister Zapatero in 2010 triggered strike action in the public sector. Every area has been affected by the cuts. In 2013, over 1000 musicians staged concerts in 16 Spanish cities in order to protest against cuts in support for orchestras and tax increases on cultural products. In March 2015, the education sector was massively mobilized in a strike against policies fostering privatization and cutting grants for underprivileged students. Since 2010, recurring mobilization in specific sectors was illustrated by symbolic colours: 'health care employees organised a white protest wave (*marea blanca*), education employees a green wave (*marea verde*) and employees of the public administration a black one (*marea negra*)' (Köhler and Caleja Gimenez 2013, p. 15). The improvement of welfare services and the fight against privatization has also been central in the protest movement which was initiated on 15 May 2011 by citizens claiming to be *Indignados!* (Dhaliwal 2012). In Portugal, massive demonstrations against austerity that gathered hundreds of thousands of people across the country in September 2012 were triggered by a call from a small group of activists. They were followed a few weeks later by two other demonstrations organized by the main union *Confederação Geral dos Trabalhadores Portugueses*. Belgium and France, countries which were never under financial assistance and only enforced austerity measures with delay, also witnessed repeated demonstrations and protest actions against austerity. In November 2012, 30,000 people supported by unions as well as student and pensioner organizations rallied in Ljubljana to protest against austerity. Since 2009, repeated protest actions took place in Ireland: they have been led by public sector workers, students, the Occupy movement

or the movement ‘Ballyhea Says No’, a group of protesters who, from March 2011 onwards, have been performing a ‘no bailout march’ every Sunday after the mass in the village of Ballyhea located between Cork and Limerick. In contrast with the myth of a widely accepted neo-liberalism in the Baltic countries, Latvia witnessed large scale demonstrations since 2008, 2009 and up until 2015 involving notably healthcare workers, farmers and teachers (Sommers 2014). The list would be endless as virtually every EU country has witnessed contestation against austerity. Yet, such protest has been rather ineffective in stopping austerity policies and has had little or no impact on governments’ decisions across Europe.

This is (arguably) due to the fact that, while austerity has been defined as a political line at the EU level—with fiscal discipline being enforced through even more stringent policy instruments—protest was only very weakly Europeanized. For example, while a European network for welfare services was set up in 2006 in the framework of the European Social Forum (see Chap. 3, Sect. 1.3), no such transnational network could be detected in the post-crisis context. Although the ‘troika’ was taken as a target in the countries under financial assistance programmes, demonstrations and protest actions were mainly directed against national governments and national austerity plans. European transnational networks did not play a significant role. In France, for example, a national movement for the defence of welfare services continued to be active, with a demonstration in 2015 in Guéret, but the website of the movement displays no content related to Europe since 2011.⁹ This is not to say that, more generally, nothing happened at the scale of the EU. Over the past decade, the ETUC has expressed an increasingly critical stance towards EU policies and rejected for the first time an EU treaty when Member States agreed upon the Treaty on Stability, Coordination and Governance, known as the ‘fiscal compact’. A main claim of ETUC was that

The need for economic governance is being used as a means of restricting negotiating mechanisms and results, attacking industrial relations systems and put downward pressure on collectively agreed wage levels; to weaken social protection and the right to strike and privatise welfare services. The

⁹ See <http://www.convergence-sp.org>, date accessed 19 November 2015.

Table 6.3 Union mobilization from 2010 to 2013

	Transnational	National/decentralized	Motto	Participation
29 September 2010	Demonstration in Brussels: participation of 30 European organizations	Demonstrations in 12 European cities	'No to austerity—priority for jobs and growth!'	100,000 ^a people in Brussels
10 March 2011	Demonstration in Brussels: mainly Belgian organizations + Euro-demonstration on 9 April 2011 in Budapest	Various uncoordinated demonstrations in March and April: London, France, Spain, Germany	'No to austerity plans in Europe'	NL
29 February 2012 & 14 November 2012		Decentralized European day of action: demonstrations in Spain, Paris, Brussels, Lisbon and Athens Decentralized European day of action and solidarity	'No to austerity, for a social Europe, for fair pay and for jobs' 'Enough is enough! Alternatives do exist. For employment and social justice!' 'For jobs and solidarity in Europe. No to austerity'	50,000 people, 45 organizations from 22 countries ^b NL

(continued)

14 March 2013	European Trade Union Action	Various uncoordinated demonstrations throughout March in Austria, Germany, Greece, Latvia, Poland, Portugal, Spain, UK	NL	NL
	Demonstration in Brussels with participation of union leaders from: Germany, France, Italy, Greece, Portugal, Spain, UK			

Source: ETUC, www.etuc.org

^aAccording to Joël Decaillon, Deputy Secretary General of ETUC, 'Après la journée d'action et l'euro-manifestation du 29 septembre 2010 à Bruxelles', *Espaces Marx*, www.espaces-marx.net, date accessed 19 November 2015.

^bRTBF, 'Budapest: 50,000 manifestants pour une Europe plus sociale', www.rtbf.be, accessed 15 November 2015.

ETUC actively resists these attacks, which, cumulated over the years, will dismantle a social model which is unique in the world. The wrong and socially harmful German initiatives such as Agenda 2010 or increasing the retirement age should not be imposed on other European countries. (ETUC 2012)

While the PSI and EPSU have systematically supported mobilization of national unions, the main pan-European form of mobilization has been the European days of action called by the ETUC since 2010. Table 6.3 gives indications as to the nature of union mobilization for the European days of action organized between 2010 and 2013. Looking at the various actions, we can suppose that, due to declining centralized mobilization in 2011, the European confederation decided to call for decentralized actions in 2012, as opposed to rallies in Brussels (or elsewhere).

In fact, at its 2011 congress in Athens the ETUC adopted a proposal for a pan-European strike, an ambitious plan which was planned for the European day of action of 14 November 2012. Scholarly assessments vary with regard to the success of this action day. Dufresne and Pernot (2013) stress that, for the first time in the history of the labour movement, an inter-sectoral transnational strike took place in six European countries.¹⁰ They nevertheless point out that participation in the European day of action was differentiated across three clusters of EU Member States: southern countries which were largely striking; France and central and eastern European countries where many workers and people rallied for demonstrations; and northern European countries where unions organized meetings and mainly symbolic actions aimed at expressing solidarity towards the countries hit by the crisis. In fact, it is difficult to find a trace of the 2012 European day of action in the media. Rather, it is manifestations of violence in Spain and elsewhere which attracted their attention.¹¹ There is no indication that European days have been organized by the ETUC after 2013. Over the past year, ETUC and EPSU have focused to a large extent on protest against the TTIP. Although it is fair for them to surf on the new wave of discontent towards global capi-

¹⁰ Belgium (French-speaking part), Greece, Italy, Lithuania (transport sector only), Portugal, Spain.

¹¹ 'Europe's day of anti-austerity strikes and protests turn violent—as it happened', *The Guardian*, 14 November 2014, www.theguardian.com, accessed 26 August 2015.

talism, which the TTIP embodies, workers' rights and welfare services do not seem to be the prevailing subjects of concern in the debate. To sum up, although workers have mobilized Europe-wide to a fair extent, it has been difficult to articulate and coordinate a European, transnational contestation against austerity in general, and attacks on welfare services, in particular.

Beyond traditional organizations of the labour movement, the main new aspect of contentious politics in relation with the financial crisis has been the eruption of spontaneous movements such as Occupy, the Indignados or smaller local groups and actions led by ordinary citizens and young people who were not necessarily involved in political activism prior to the crisis. A group of scholars have called these movements 'subterranean' in order to illustrate their underground nature as opposed to established forms of contentious politics led by unions or well-known associations and NGOs (Kaldor et al. 2013). Although the calls for the protection and even the development of welfare services are very much present in the discourse of these new movements, their claims relate in the first place to the quality of democracy. The common ground of all the movements which have flourished since 2008 is a call for new forms of democracy which radically differ from 'politics as usual'. This implies a deeply rooted hostility towards representative institutions and established organizations such as political parties and unions, which are often seen as confiscators of democracy. From an organizational and cultural point of view, these groups are mainly local and cherish horizontality, internal democracy, autonomy and creativity. A second key aspect is that Europe appears to be almost irrelevant, not only as a topic but also as an arena for mobilization. While the 'troika' has been a main target of such anti-austerity movements, the EU appears amalgamated into the compound of multinational banks and international organizations which have significant power but are democratically unaccountable. Contrary to former movements, the EU institutions are not being specifically targeted as decision-making political bodies. This is a major difference compared with the global justice movement, which had endeavoured to build another Europe by making transnational networks the laboratory of a transnational, European democracy. A consequence of all this has been an overall poor degree of transnational coordination. The *Indignados* or

the movement *Democracia real ya!* (real democracy now) were emulated in Portugal, Greece and France but transnational coordination was weak. Prolonging the many marches throughout Spain, a small contingent of *Indignados* undertook to march to Brussels, starting in July in Madrid and arriving in Belgium in October. On their way through France and Belgium, the activists collected claims and grievances in the ‘book of the people’, an 8-page document dealing (in three languages), among other things, with democracy, the environment, politics, social policy and human rights.¹² In this book, the defence of welfare services and stopping privatizations is one of the many claims made. The book was supposed to be handed in symbolically to the European Parliament, but the group of 30 activists who intended to enter the building of the Parliament was stopped by the security services. Eventually, a group of seven could meet MEPs. Interestingly, the then Commissioner for Employment and Social Affairs, Lazlo Andor, tried to set up a meeting with the activists in Brussels, possibly in the square where they planned to camp, given that there would be ‘a minimum of things to talk about’, for example, EU policy in the area of unemployment and jobs.¹³ Yet, there is no evidence that such a meeting ever took place. According to Pianta and Gerbaudo (2013):

The relevance of Europe in all these actions appears to be minimal. In the original policy platform of the main Spanish group, *Democracia Real Ya*, the only direct mention of the European Union is the request for ‘compulsory referenda on laws imposed by the European Union’. There is no talk of more or less integration and any other reform at the European level. Another measure with continental repercussions is the request to introduce the Tobin Tax on financial transactions, petitioning against banks’ malpractices and tax havens. The platform also asks for substantial welfare reforms such as the reintroduction of a euro subsidy for those out of work, but all these requests are made at the national level. The assemblies, the other main actor in the *indignados* movement, only managed to approve a

¹² ‘Marche des indignés à Bruxelles. Cahier de doléances. Marchas Indignadas in Brusselas. Libro de los pueblos. The indignant marches to Brussels. Book of the people’, <http://www.mediapart.fr/files/LibrodePueblosFV.pdf>, date accessed 28 August 2015.

¹³ ‘EU commission willing to meet ‘Indignados’ in Brussels’, *EUobserver*, 14 October 2011, <https://euobserver.com/social/113947>, date accessed 18 August 2015.

minimum consensus document which was the product of a very tortuous process of elaboration and is not very substantive in terms of policy proposals.

The connection between the movement and EU decision making was weak. At the main rally on the 15 October 2011, approximately 7000 people marched through Brussels: while the march passed near to the EU headquarters in the Schumann area, the loudest manifestations of protest were directed at the symbols of economic and financial power as demonstrators threw shoes at the old stock exchange building in the centre of Brussels (*Bourse*) or expressed hostility when passing by the buildings of large international banks.¹⁴ In addition to relatively low numbers, the march to Europe attracted only scant media attention outside of Brussels. Examining the various forms of diffusion of anti-austerity protest, social-movements scholars conclude to a shift, from *thick* transnational movements illustrated by the global justice movement to *thin* transnational mobilization reflected in anti-austerity movements (Mattoni and della Porta 2014). Insofar, there is clearly a departure from a model of contentious politics in Europe based on articulated policy demands made in the framework of coordinated transnational networks in conjunction with established organizations (parties and unions) and targeting EU institutions as the relevant locus of power and decision making. While the broad austerity agenda has been increasingly coordinated at the EU level, the possibility to resist the direct and indirect targeting of welfare services has been largely precluded in such a broader environment for contentious politics. This has been furthermore underpinned by the dominant discourse interpreting the crisis.

3.2 The Triumph of 'TINA'

Chapters 3–5 in this book have showed that contentious debates exist where there is not only a high salience of a particular issue, but also where democratic debate relies on conflicting discourses and frames articulated

¹⁴'7000 Indignés manifestent à Bruxelles', *RTBF*, www.rtbf.be, date accessed 28 August 2015.

by opposed coalitions in order to make sense of political events. The lack of contestation in the face of the weakening or dismantling of the welfare state (including welfare services) in many EU countries is rooted in the nature of the discourse which has prevailed in the Eurocrisis. This discourse is rooted in a striking paradox: instead of transnational left-right conflict lines, the crisis has been mainly framed as a matter of national debt, thus articulating conflicting national identities and interests; at the same time, however, the policy responses to the crisis advocated by the powerful EU countries and the EU institutions have been legitimized through austerity discourses which are similar beyond borders. The paradox is only apparent, though, if we think that national leaders have sought to talk to the people but also to the markets (Schmidt 2014). With regard to welfare services, the outcome is that the promoted neoliberal austerity favours cutting public expenditure over increasing revenue in order for states to control their deficits and debts. With public expenditure being the main problem, it is therefore only logical that cuts in welfare services appear as an inevitable solution for tackling the debt(s). Since the outbreak of the crisis, the German Chancellor, Angela Merkel, has embodied the power relations embedded in this straightforward justificatory discourse, which can be summarized in one motto: ‘there is no alternative’ to austerity.

A starting point for the paradox identified is that the politics of the crisis have been only very weakly articulated in terms of left and right. Instead of a transnational ideology-based debate, we have witnessed the emergence of a consensus on austerity and neoliberal policy responses. In the initial period of crisis management in 2008–2009, the bankruptcy of Lehman Brothers and the major turmoil which it provoked in the global economy led many voices to question the effective and moral foundations of global financial capitalism, its disconnection from ‘the real economy’, and the disastrous consequences of recurring crashes. In this first period, the Occupy movement and many left-wing movements and parties framed identities on a transnational class cleavage: taxpayers versus the banks, the 99 % versus the 1 % of powerful wealthy. Movements and unions claimed ‘we won’t pay for their crisis’. As several scholars have noted, though, as the crisis unfolded in Europe, in a second sequence from 2010 onwards, the shared diagnosis which emerged thereafter as the

dominant interpretation displays a striking reversal of the causal unfolding of events: while public debt skyrocketed due to the rescue of the financial sector by national governments, the excessive levels of public debt have then been designated as the main cause for the European debt crisis (Blyth 2013; Fitoussi and Saraceno 2013). In fact, the deep roots of the crisis were to be found in the malfunctioning of the global and European banking system, cheap loans, housing bubbles and the deficiencies of economic governance in the Eurozone. Thus, as Blyth put it, European governments were ‘twelve-months Keynesians’ as they have re-capitalized major banks with tax payers’ money. But from 2010 onwards, the Greek case provided the opportunity for a turn to austerity. While Greece was an outlier regarding the dubious management of public finance and the amount of loans granted by foreign banks, the question of the bailout brought about a framing of the crisis which not only shifted the blame on government spending, but also led to a renationalization of identities: politicians and the media only spoke about the Greek debt, the Irish debt, the Portuguese debt and the like. This was facilitated by the fact that, indeed, high levels of debt had different causes in various countries. Paradoxically again, this was ignored as all highly indebted countries were labelled with the infamous acronym PIIGS (standing for Portugal, Italy, Ireland, Greece, Spain). National framing has been reinforced by media coverage, which has forcefully echoed the manifestations of hostility among the peoples of Europe, the most striking being the representations of Angela Merkel as a Nazi in Southern Europe. More generally, national framing is encouraged by the structurally fragmented public sphere in Europe where, if the salience of European issues has increased over time, the ways in which they are framed remain contrasted from one country to the other. Thus, the transnational functional (or class-based) cleavage opposing Keynesians to neoliberals was turned into a cleavage opposing creditor states versus indebted states (Maatsch 2014). This, in turn, has heavily served to reinforce a political and cultural cleavage between North and South. Thus, with regard to the causes of the problem, the transnational dimension has been downplayed, and policy problems as well as identities have been mainly articulated along national lines.

Regarding policy solutions, on the other hand, austerity has clearly developed not only as a homogeneous policy solution (‘one austerity fits

all'), but also as a justificatory discourse with characteristics shared beyond national borders. In the 'European core', this has occurred through a relative convergence between French Keynesianism and German ordoliberalism (Crespy and Schmidt 2014) towards the common frame of 'stability', which entails 'sound' public finance. Although without linkage to the common currency, the crisis in British politics has been mainly framed as a 'crisis of debt' with similar implications regarding budgetary and fiscal discipline (Hay 2013). In the periphery, austerity plans have been legitimized through discourses which have emphasized the inevitability of the adopted measures. Studying justification discourses of the Italian and Spanish governments, Borriello (2014) shows how leaders, in their speeches, naturalize the economy in ways which appeals to common sense. The medical metaphor, for example, has been widely used: the economy is attacked by a disease (toxic assets) and needs a diagnosis and a treatment which may be painful but will eventually provide oxygen and make the economy healthy again and so on. A geological metaphor is used in a similar vein. All these discourses have contributed to the supremacy of the austerity discourse by feeding the idea that 'there is no alternative'. Thus, the austerity discourse is highly problematic from a democratic point of view because it tends to abolish politics, that is, the (contentious) debating of collective choices.

A specific diagnosis, that is the interpretation of the causes of the crisis, is necessarily prescriptive in that it implies a certain set of solutions. As far as welfare services are concerned, the focus on debt and detrimental public spending as the main problem was only likely to reinforce the idea that inefficient welfare services have become too costly for European countries which need to improve their competitiveness in the globalized economy. Far from being new, as we have seen in the beginning of this chapter, this idea was already present since the inception of the EMU in the early 1990s. Against this backdrop, a main discursive device has been strengthened and has served as a conceptual bridge between austerity and cuts in welfare services: that of 'structural reforms'. While a very catch-all term, the meaning of structural reforms involved three main aspects: the liberalization of markets, the last bastion being services markets; the flexibilization of labour markets; and the reducing of public spending in the realm of social policy in particular, and the reduction of tax on business as

a source of revenue (Lebaron 2014). Welfare services are being affected by all of these three dimensions: on the one hand, they should be liberalized and—totally or partly—privatized; on the other hand, public funding to welfare services should be cut.

Eventually, the final consequence of this logical chain of policy prescriptions is that, if public resources have become insufficient for ensuring the continuity of welfare services, further marketization should be a main alternative. This is evident in the discourse articulated by the European Commission in its policy documents. In its communication on social SGI from 2006, it claims that social services are not for profit. But at the same time, they are seen as a main area of economic activity.

Social services constitute a booming sector, in terms of both economic growth and job creation. They are also the subject of an intensive quest for quality and effectiveness. All the Member States have embarked upon modernization of their social services to tackle the tensions between universality, quality and financial sustainability. (European Commission 2006c, p. 5)

With the theme of modernization, the stress is put on cost-effectiveness:

At a time when public authorities are confronted with the need for fiscal consolidation, it is essential to ensure that right framework is in place so that high-quality services can be provided as efficiently and cost-effectively as possible. (European Commission 2011a)

As mentioned earlier in this chapter, the focus on fiscal discipline has made social investment illusory. But it should be underlined that the EU Commission does not conceive of social investment solely (or primarily?) as public investment. Modernization goes hand in hand with marketization as the role of private actors should be enhanced, as explained in the package on social investment from 2013:

Resources for social policies are not limited to those from the public sector. A non-negligible part comes from people and families. In addition, non-profit organisations provide social services on a substantial scale. These range from homeless shelters, support for the elderly, people with disabili-

ties, to advice centres on social benefits in general. Social enterprises can complement public sector efforts, and be pioneers in developing new markets, but they need more support than they are receiving now. The for-profit parts of the private sector would need to be further encouraged to use the potential of social investment through, for instance, a healthy and secure social and working environment. This is not limited to Corporate Social Responsibility alone and includes for example on the job training, in-house childcare facilities, health promotion and accessible and family-friendly workplaces. (European Commission 2013b, p. 5)

It is also striking that the Commission stresses the role of the not-for-profit sector. This implies to promote a logic of charity over a logic of institutionalized welfare state. However, in many instances not-for-profit organizations in the social sector are dependent on public funding in one way or another: it is, therefore, fallacious to envisage that they would take on more tasks in a period of austerity.

4 Conclusion

The purpose of this chapter was to show how the financial crisis which broke out in 2008 has exacerbated the trends which have characterized policy making and contentious politics pertaining to welfare services in the EU since the 1990s. As demonstrated in the previous chapters, these trends mainly consist of the decrease of public resources dedicated to welfare services, further marketization in the various sectors at stake and the containment (or even weakening) of contestation in the face of such policies. A first step has been to provide evidence of the repercussions of fiscal discipline on the public funding of SGI. A main observation is that welfare services have not only been undermined in countries under financial assistance (and conditionality) in the Southern, Eastern and Northern (Ireland) periphery. The comparison between the extent of deficit reduction in general and the decrease of spending for welfare services shows that in countries such as Germany, Poland or the UK, welfare services have had to bear the cost of deficit reduction to an extent which is more important than in other EU countries. When looking at the role of the

EU, it appears that the new framework for budgetary and economic coordination is both opaque and ambiguous. An important aspect is that, while rules on deficit and debt have been made more stringent (by turning soft law into hard law), social policy is now being closely monitored through the European Semester. It is not clear whether this is more likely to raise attention on the social impact of austerity or, on the contrary, to accentuate the subordination of social policy to fiscal austerity. As far as welfare services are concerned, the EU institutions—in their country-specific recommendations—admonish the Member States to spend less, but to invest the modernization of welfare services at the same time—thus leaving national governments facing intractable budgetary dilemmas. The contestation of austerity policies has been most vigorous in countries most hardly hit by the crisis. At the same time, it has been very weakly coordinated at the European scale. While trade unions have been further weakened by and divided over the crisis (with large influential confederations not engaging in protest), the new movements such as Occupy, the Indignados and so on, have settled for European coalition building and claims making. This has led to the supremacy of the austerity discourse which frames the crisis as a result of excessive public spending and government profligacy. Against the backdrop of fiscal discipline, further marketization is seen a means to sustain welfare services.

As the legitimacy of EU integration has been further eroded by the politics of the crisis, initiatives towards more positive integration have become even more marginalized on the European agenda. The European Semester does not easily match the conceptual categories of positive and negative integration. While it has nothing to do with market opening, it also does not contribute to elaborating common policies for economic and social coordination. Thus exhortations of the EU institutions in favour of social investment, for example, have brought about no result as they are supported by no specific policy instrument and no financial resources from the EU budget. Rather, it can be regarded as a new form of constraining centralization. Against this backdrop, the further opening of national markets and/or a greater involvement of the private sector in the realm of SGI is clearly identified as a solution to compensate for the lack of public investment in healthcare, education, energy, transport and social services. As a consequence, a two-tier system of SGI is slowly

emerging, with residual services targeting the most vulnerable financed by the state, and other services (of low or high quality) offered by private providers to those who can afford it. This is arguably more likely to further exacerbate, rather than alleviate, the dynamics of growing inequalities within European societies.

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7

Conclusion: The Marketization and Politicization of Welfare Services: Old and New Dynamics

Welfare services understood in the broad sense, or services of general interest as labelled by the EU, are not often at the centre of political or academic debates. Yet, they constitute a key feature of welfare states across Europe. Besides benefits in terms of social transfers, welfare *services* are at the core of social policy, encompassing areas such as education, health-care, the provision of basic goods like energy, telecommunications and transport, as well as providing support to various categories of people in need, including families and the elderly, jobseekers or the poorest fringe of society. Yet, they tend to be debated and dealt with merely in a fragmented manner in various policy fields, and specific sectoral and territorial contexts. This is particularly striking in the current era of austerity in Europe where welfare services have been a main adjustment variable under the pressure of fiscal discipline. Though occasionally vocal, sporadic protest failed to bring about responsiveness from decision makers. Nor has it triggered a broader political debate on how to maintain and modernize welfare services under the constraints of financial capitalism mediated by the EU regime. While welfare services have developed in various institutional forms and to varying extents—thus reflecting the European diversity of national traditions and histories—they constitute a key component of the

European social model(s). From a normative point of view, a satisfactory provision of SGI is desirable because it mitigates the inequalities within societies. There is a wide consensus among European decision makers (including in the EU institutions) over the fact that welfare services contribute to a large extent to social cohesion in Europe. And as a matter of fact, they have played a great part in cushioning the effects of the recent financial crisis which has unfolded since 2008. From the point of view of economic efficiency, the level of quality of welfare services and of equality in access are positively correlated with high productivity, GDP per capita. A symbol of the post-war welfare state, the existence of collective management of services responding to society's basic needs continues to be regarded as a key factor of progressive politics and policy making, not only in Europe: in USA, President Barack Obama has left his political imprint on a reform dubbed *ObamaCare*, which aims at ensuring that healthcare insurance is accessible and affordable for all Americans. In Europe, despite consensus on the need for accessible quality, most policy areas of general interest have been the target of policy reforms undertaken in most EU countries during the current era of austerity. This is in contradiction with the paradigm of social investment which has emerged as a way to envisage the modernization of European welfare states (Hemerijck 2011; Morel et al. 2011). Although the various philosophical foundations as well as political uses of social investment can be debated, it has the merit of trying to shift the focus from *ex post* distribution of benefits to *ex ante* investment in individuals' capabilities through services. SGI, such as education and vocational training, childcare, healthcare and so on, has a key role to play in this regard. Yet, the overwhelming majority of EU countries are stuck in a blind strategy, coordinated at EU level, focused on fiscal discipline and deficit reduction, and thus obstructing the perspectives for modernization through social investment. What we observe cuts in public resources dedicated to welfare services and the implementation of policies which tend to accentuate their marketization through mechanisms such as liberalization, outsourcing or privatization.

Against this backdrop, this book proposes to tackle two intertwined research questions: What has been the role of the EU in the marketization of welfare services? And to what extent has it been shaped by political contention and the contestation of neoliberal policies? The endeavour

pursued here is grounded in a twofold assumption. In order to understand the current state of play, it is necessary to examine the trends which have characterized developments in the realm of welfare services over the past two decades or so; in turn, the restructuring of welfare services over the past 30 years epitomizes the relations and the tensions between capitalism, democracy and European integration. Through the issue of welfare services, this book, therefore, aims to make a contribution to broader debates, in particular those surrounding the socio-economic nature of the EU—Is it bound to be neoliberal?—and that of its democratic nature—Is the EU bound to be technocratic in the sense that politicization and conflict are to be systematically impeded or ignored? This puzzle emerges from the triangular relations between capitalism, democracy and EU integration. Inspired by scholars situating the EU in a socio-historical long-term perspective (Bartolini 2005; Ferrera 2005), the second assumption underpinning this research is that, while the fate of capitalism and that of democracy are inextricably linked to each other, the process of European integration has altered the ways in which both interact. In other words, the institutionalization of regional integration in Europe has disrupted old patterns and shaped new—still emerging—ones with regard to the ways in which states and markets, politics and policies are intertwined. Although the reverse is also true, politics shape policies, this means that policy outcomes cannot be considered in isolation from which groups are involved in decision making, whose voice is being heard and whose interests are represented.

Because they touch upon redistribution and the very fabric of a more or less unequal society, welfare services are a policy area where the interactions between capitalism, democracy and European integration can be particularly well observed. This nevertheless poses numerous challenges for political scientists to which this book has tried to respond in three ways. First, by tracing the intertwined developments of both policy making and contentious politics since the European Community started to affect the provision of welfare services in the late 1980s; second, by offering a more focused study of the three contentious episodes which occupied the political scene in the crucial decade between 1997 and 2007, namely the contestation of the EU Services Directive, the debate over an (unborn) EU Framework Directive on SGI, and the protest

against the GATS in the context of global trade policy; third, while the bulk of the literature over welfare services focuses on specific sectors, or local/regional/national settings, this book has proposed to look at the marketization of welfare services as a broad intersectoral issue in order to identify the fundamentally political ideas and patterns of behaviour guiding policy making and contentious politics. Relying on a diverse range of written sources and semi-structured interviews, the study has particularly focused on the process of politicization by scrutinizing coalition building in relation with the role of ideas and discourse. It is argued that the EU has been a significant catalyser for the advancement of privatization in the realm of welfare services. This echoes the established argument that the legal and institutional characteristics of the EU empower the proponents of pro-market policies. However, it is demonstrated that another significant explanation lies in the way in which contentious politics and battles of ideas unfolded in the 1990s and 2000s. To a certain extent, coalitions of left-wing associations, NGOs, unions and political parties were able to politicize liberalization policies, and contestation contributed to slowing down the neoliberal agenda. Yet, occasional politicization was never sufficient to significantly impede, stop or reverse said agenda. This, it appears, is mainly due to the ideational weakness of the pro-regulation camp, and especially among its most central decision makers in the EU polity, namely the social democrats. The following pages offer an overview of the findings of this research before presenting new political challenges which also constitute new research avenues.

1 The EU and Marketization: An Ongoing Love Story

1.1 A Structural Bias?

Many scholars have critically contended that the EU exhibits a structural bias, empowering pro-market actors and neoliberal ideas. This argument has been made by scholars of political economy (Bieler 2005; van Apeldoorn et al. 2009; Bieler 2015), social policy (Barbier 2008), or those adopting an ideational, historical (Denord (2008); Denord and Schwartz

2009) or even legal approach of European integration (Joerges 2009a, b). Scharpf (1999, 2010) has compellingly theorized that, in the EU, negative integration (market making mainly through liberalization) was facilitated by the legal and institutional power position of non-majoritarian institutions such as the Commission and the European Court of Justice (ECJ), while positive integration is strongly impeded by institutional and ideological divergences among the Member States and the resulting joint decision trap. This, he concludes, prevents the EU from embodying or achieving a (supranational) *social* market economy. To a certain extent, this is illustrated by the politics of welfare services in the EU. Looking back at policy making in this realm since the relaunch of the Internal Market in the late 1980s, it is clear that decision makers have used regional integration to embrace and accelerate the neoliberal restructuring—occurring on a global scale—of European mixed economies which had emerged in the post-war era. In this regard, the significance of the EU's role stems from the overlap between integration through the market and integration through law.

On the one hand, the European Commission has used its political leadership and institutional powers in two ways. First, by promoting the Single Market agenda and using its competences sometimes in an adversarial way by taking legal action to overcome Member States' reluctance to embrace liberalization. This has resulted in the adoption of liberalization directives in the areas of transport (air, railway and urban transport), energy (gas and electricity), telecommunications and broadcasting, and, more recently, healthcare. As they originally only affected producers and industrial consumers, all these directives include a clause foreseeing revisions which has secured the continuous expansion of marketization of the services offered to the public. Moreover, the EU Commission has used its strong exclusive competences in the field of competition policy to curtail the intervention of governments through states aid, that is, financial support to former monopolistic enterprises providing these services. This has left unresolved issues surrounding the most efficient and fair ways to accommodate the rules of competitive markets with adequate funding for the provision of a quality, affordable and often unprofitable 'universal service' by one provider.

On the other hand, these tensions between competition and general interest were particularly reflected and shaped by the way in which SGI

was dealt with in primary law, that is, the EU treaties, on the one hand, and the jurisprudence of the ECJ, on the other. From the first mention of SGI in the treaties of Rome in 1957 up to the last provisions included in the Treaty of Lisbon adopted in 2008, the EU primary law exhibits a continuous ambiguity as to whether competition rules should prevail over general interest and social cohesion or the other way around. Increasingly, conflicts have not only concerned the balance between market freedom and state regulation, but also the extent to which the EU is able to affect SGI. While the Treaty of Lisbon provides, with a new Article 14, a clear legal basis for the EU to legislate, and possibly re-regulate, a number of SGI, it also includes a Protocol on SGI which strongly stresses subsidiarity, that is, the autonomy of Member States to organize SGI provision. The problem with the current equilibrium is that it left the EU solely with the capacity to act through competition policy and, in turn, national states do not have the possibility to escape the competition and market rules which are bound to affect the provision of welfare services. As far as the ECJ is concerned, it can be said that jurisprudence has been consistently versatile. After an initial period of pro-market integrative rulings in the 1970s and 1980s, the Court issued, during a second period in the 1990s and 2000s, a series of judgements giving Member States greater autonomy in supporting public services (Prosser 2005a). This was notably reflected in the famous *Altmark* case that provided a framework defining the parameters for a legitimate government support of SGI. Since every judgement relies on specific fine legal arguments, the political implications often remained unclear. The consequence of this unsettled situation has been that various political actors were able to invoke different legal arguments present in case law in order to legitimize their normative positions.

This suggests that the institutional and legal features of the EU do not have a mechanical or automatic effect on policy making. While the ECJ appears either trapped in legal doctrine or sensitive to changing moods in the broader political environment, the increasing involvement of the EP in policy issues related to the Internal Market (e.g. public procurement) has opened the way for politicization. This has contributed to weakening the relative strength of non-majoritarian institutions in the EU. From a theoretical point of view, the neoliberal bias of the EU should not be seen as structural: rather, it is renegotiated and redefined in every debate

on every specific issue, a process which could be observed across several policy areas as broader characteristics of the ‘fabric’ of EU policies (Crespy and Ravinet 2014). As far as welfare services are concerned, the nature of new legal provisions adopted over the successive treaty changes should in the first place be seen as the result of actors’ struggles, and before said rules become potential constraints. The recognition of the role of SGI for social cohesion in a new article of the Treaty of Amsterdam in 1997 was, for example, a victory for a coalition composed of a number of interest groups (mainly the Centre européen des entreprises à participation publique (CEEP), Comité européen de liaison sur les services d’intérêt général (CELSIG) and European Trade Union Confederation (ETUC)) and Member States championed by France. Similarly, the progressive recognition of various labels such as *non-economic* or *social* SGI has been a result of actors’ mobilization for recognition of the specificities of such services in the hope of a greater protection vis-à-vis competition law. Despite sustained contention over the regulation and funding of welfare services, the agenda geared towards marketization has continuously prevailed.

1.2 The Current Issues on the EU Marketization Agenda

The pursuit of sectoral liberalization entrenched in the various sectoral directives first adopted in the 1990s has been dully carried on, with resistance waning as the logic as well as the consequences of liberalization have been increasingly accepted by users, workers and political representatives. This, however, did not prevent contentious debates from taking place in the European arenas as directives have been re-signed, with various groups of Member States looking for a compromise between a neoliberal approach and the defence of national providers’ interests or a more regulation-friendly philosophy in terms of quality, price and labour issues. Further steps towards liberalization have nevertheless been adopted with a third postal directive (adopted in 2008), a third energy package (adopted in 2009) and fourth railway package (still pending). These directives aim at increasing the level of competition by facilitating access for new, private as well as foreign operators to national markets. The example of the postal sector is interesting because full liberalization

has now been in place (at least at the regulatory level) since 2011 and because it is often cited as an example for re-regulation at EU level with the obligation for Member States to define a universal service. While the impact of liberalization on funding, quality and price still remains uncertain, a recent study carried out for the European Commission suggests to engage with deregulation with regard to universal service designation, definition and price control.

Another interesting aspect of this broad agenda is the expansion of marketization to new policy territories. Healthcare offers a prominent example of how policy sectors which were so far believed to be at the core of national, socially rooted welfare states, are progressively being reframed and restructured in the framework of the EU single market. A directive from 2011 was adopted on the grounds that 'patients' rights' to be reimbursed should be granted when they seek treatment abroad. This can be seen as a first step towards the opening of the national boundaries of healthcare systems. While operating through the frame of individual rights, this first incursion of the EU in the field of healthcare occurs against the background of increasing flows of medical tourism and emerging large multinationals in the hospital sector.

Finally, public procurement has been another area where the EU seems to push for liberalization. In 2011, the EU Commission proposed to update the existing legislation from 2004 in order to generalize competitive tendering and increase market shares of foreign providers in markets linked to public procurement. Under the auspices of French Commissioner Barnier and EP rapporteur Tarabella, the new provisions are protective of welfare services since they exempt contracts up to 750,000 (thus excluding a number of small-scale welfare services) and include qualitative, environmental and social considerations (including collective agreements) in the definition of the most 'economically advantageous' offer. It should be noted, however, that the EU Commission proves to be active on the issue of public procurement in a context where, similar to what happened with trade services in the 1980s, networks have been particularly active in promoting more competition in the realm of public procurement; for example, the revision of the Government Procurement Agreement of the WTO in 2014. This, again, points to the consistent strategy of the EU Commission (investigated in Chap. 5), which consists of pursuing marketization within the EU and globally in a parallel fashion.

While concluding to a quiet, but vigorous pursuit of the EU's marketization agenda, it is interesting to note the ambivalent use of the diversity across national landscapes in Europe. On the one hand, diversity appears unproblematic when technological and societal change (e.g. the use of electronic instead of postal mail, mobility for seeking cheaper treatment abroad) is invoked to argue that marketization is bound to bring users more 'choice'. On the other hand, though, diversity in terms of national traditions or implementation measures is invoked by policymakers to obscure the effects of said marketization on societies in terms of price, quality or unequal impact on various social groups. In contrast, several research projects carried out by independent academics (ironically funded by EU money) have shed light on important issues in the way welfare services are provided today. Their findings, nevertheless, seem to remain unheard and unable to trigger contentious debates between neoliberal-minded policymakers and their contenders, be they in the realm of institutional or contentious politics.

As far as protest and contentious politics in respect of welfare services are concerned, today's climate is clearly characterized by the weakness of protest, and a disaggregation of the coalition which had been fighting liberalization from the mid-1990s to the mid-2000s. Interest groups active in the realm of welfare services clearly embraced both the sectoral fragmentation of SGI in EU policy making and the market frame as a means to achieve a better recognition of the specificities of social SGI (various services and assistance to people in need) *vis-à-vis* competition law. This strategy was not completely unsuccessful since the EU Commission revised the 'Monti-Kroes package' defining the legal framework for lawful state aid in 2011, and relaxed the conditions for small-scale social services to be funded by public money. Since the end of the decade of grand debates over SGI (1997–2007), remaining signs of activism on the topic from pro-regulation actors has taken two main forms. In the EP, where a group of Members of European Parliament (MEP) promotes an intergroup on 'Collective goods and public services' first created in 2009 and refounded after the 2014 election of the EP. The intergroup functions as a forum and contributes to maintain a certain level of salience of the critical debate over SGI regulation in the EU. Second, following up on an ongoing UN campaign, the ETUC (and its member EPSU) have picked on the new European Citizen Initiative introduced in the Lisbon Treaty and launched a campaign for

the recognition of water as a universal good ('Water and sanitation are a human right! Water is a common good, not a commodity!'). The purpose was to lead the Commission to place water outside of the market realm and thus prevent any future liberalization directive (or EU commitment through international trade agreements). The million signatures collected in 2012 and 2013 were submitted to the Commission, which responded with a dull argument stressing the performance of the EU regulatory framework regarding water quality and the autonomy of the Member States to decide upon the conditions of distribution whether through public or private operators.

As mentioned above, the EU Commission, with clear backing of the Member States, has continued to catalyse liberalization through a two-fold internal-external strategy which consists of encouraging the shaping of the EU single market for and through international trade. In the past few years, EU level and transnational contentious politics have crystallized on the latter. The failure of the WTO Doha round acted in 2008–2009 paved the way for a new generation of bilateral, multilateral or regional agreements between the EU and several countries or regions in the world. The activism of the EU Commission in this area has sparked protest from various transnational networks, as well as the unions, with the potential impact on welfare and public services being one of several bones of contention. Along with the agreement with Canada (CETA), the TTIP has become the main subject of contention in EU politics for the past three years and is being fought by a large international coalition of NGOs and citizens' associations. With negotiations between the EU and USA being conducted in secrecy, while their content is partly revealed by Wikileaks, the acronym TTIP has become the symbol for a non-democratic neoliberal agenda. In spite of reassuring gestures made by the EU Commission—which for example issued a joint statement on public services with the US—the TTIP feeds diffused concerns over a general weakening of states' capacity to regulate markets and control multinational corporations, notably in areas of public interest such as food and environmental regulation as well as all public services. Although the agreement and surrounding critique have both been much more reticent than for TTIP, another agreement, the TISA, was signed in 2012 and should relaunch services liberalization, with healthcare, education

and culture being clearly involved as main areas where further liberalization and market expansion can be achieved.

Finally, a last aspect of the current marketization agenda in the EU is visible in a context where austerity and marketization are two sides of the same coin. In the aftermath of the financial crisis of 2008, many EU governments have been left with considerably reduced resources as a result of the salvage of their banking sector, or offensive attacks from the financial markets, or both. This has resulted in measures aimed at reducing public spending in various areas including welfare services. As a response to the destabilization of the Eurozone, the macro-economic governance of the EU has been restructured and forcefully redirected towards the enforcement of fiscal austerity. However, in the face of a rapid degradation of social cohesion in many parts of Europe, the EU institutions have not been entirely deaf. The result is a certain political schizophrenia of the Commission's and Council's so-called country-specific recommendations, whereby Member States' governments are admonished to reduce their deficit but increase expenditure in areas such as childcare, employment service, education and research and so on. It is nevertheless clear that deficit reduction with more stringent EU rules is the overarching priority. A consequence for welfare services is that, given increasingly poor public funding capacities, the new European narrative frames the modernization of welfare states and services in terms of cost-effectiveness and increased involvement of private actors in the 'for profit' provision of said services. Where the 'for profit' logic should be inadequate, the Commission mentions the non-profit sector and the logic of volunteering and charity from 'people and families' as a last resort.

2 The Power and Limits of Politicization in the EU

While establishing that the pursuit of marketization should be seen as a dominant policy agenda which has been sustained in the long run in the framework of the EU, the book shows how politicization can nevertheless contribute to shaping that agenda. More specifically, actors and organizations which oppose far-reaching liberalization and deregulation

have been able to publicize their concerns in a way which has brought about some kind of response among policymakers. Drawing on the recent literature on the topic (de Wilde and Zürn 2012; Statham and Trezn 2015), this book has examined the process of politicization in relation with welfare services by examining two main mechanisms: coalition building and framing. The approach adopted was inspired both by the sociology of collective action (transnational social movements in particular) and discursive institutionalism, as both strings of literature offer tools to analyse how political agents form coalitions in certain institutional settings and frame policy issues in a way which can resonate and produce effects in terms of decision making and policy change.

2.1 Coalition Building

The debate over the Services Directive (2004–2006) (Chap. 3) offers an example where a loose and broad coalition formed to contest the very neoliberal flavour of the directive put forward by Commissioner Bolkestein. The actors forming this coalition—that is NGOs and associations of the global justice movement, political parties of the radical and social-democratic left, and the unions—used successfully two features of the institutional setting which characterized the contentious episode: the multilevel nature of the EU polity, on the one hand, and the key role of the EP under the co-decision procedure (now the ordinary legislative procedure of the EU), on the other. Transnational networks within the global justice (or alterglobalist) movement—notably ATTAC but also unions politically close and practically involved in the movement—played a pioneer role in politicizing the issue at an early stage, notably through events like the European Social Forum and their informal ties across national borders, thus launching an ‘anti-Bolkestein campaign’ in a context where France held a referendum on the European Constitutional Treaty. Along with the transnational mode of Europeanization of collective action, the domestic route (domestication) was used in concomitant way. In countries where the debate was most vivid (Belgium, Germany and France) socialist and social-democratic parties, including those in government (like in Belgium and Germany), took a critical stance towards the Commission’s proposal, thus following the early mobilization of parties of the radical left. This was accompanied by resolutions passed in national parliaments reshaping governments’

positions in the Council. Finally, the supranational route, consisting of using the most institutionalized channels of the EU polity, in particular the EP and the influence of the ETUC, was also activated.

This links to the second key aspect of the institutional setting under co-decision: the role of the EP as a co-legislator. Through the simultaneous activation of the multiple channels of Europeanization, an anti-Bolkestein coalition could form which, albeit loosely, enlarged over time. This coalition succeeded in altering the minority/majority positions on the Commission's original proposal which contribute to attenuating the effects of negative integration enforced through the Services Directive on welfare services. Many MEPs within left-wing political groups (the Gauche Européenne Unitaire/Nordic Green Left (GUE/NGL), Greens/European Free Alliance (Greens/EFA) and Party of European Socialists (PES) at the time) were actively involved in the politicization on the ground in their home country. In addition, the two rapporteurs (the Belgian socialist Anne van Lancker and the German social democrat Evelyne Gebhardt) rapidly embraced the concerns of the anti-Bolkestein coalition. Thus, the EP became both the key ally of the coalition and the institutional arena in which critical claims could resonate and be channelled. And in fact, for the first time in the history of EU politics, it is the EP which in its first reading forged a political compromise and redrafted to a large extent the much criticized proposal of the Commission.

Protest against the GATS (2001–2007) (Chap. 6) offers an illustration of how the struggle against negative integration was led at the global scale through the contestation of free trade agreements which aim at making welfare services tradable commodities and create new market opportunities for competitive multinational corporations. Here, the institutional setting of the global arena is of course looser, with patterns of accountability being diluted when opaque negotiations take place under the auspices of international organizations such as the WTO. In the framework of the EU, it is characterized by the exclusive competence of the EU Commission, and weak involvement of the EP.¹ In the aftermath of the foundational climax of protest against trade liberalization in 1999 in Seattle, a loose international coalition, made of overlapping global and

¹ This has changed since the entry into force of the Treaty of Lisbon. The EP now has the possibility, through the assent procedure, to accept or reject free trade agreements. This plays a crucial role in the debate about the TTIP.

European networks, launched a campaign and a petition labelled 'Stop the GATS attack now!' In 2002–2005, contestation crystallized on the issue of water distribution, an area where the EU Commission pursued offensive commercial interests, notably in developing countries. Similar to mobilization against the Services Directive, transnational, supranational and domestic channels were activated in the formation of the anti-GATS coalition. In the absence of co-decision, however, they were less dense and their impact was bound to be more diffuse. Transnational networks featured prominently in the Canadian think tanks Polaris and Centre for Policy Alternatives, while the coalition was coordinated at European scale through the 'Seattle to Brussels' network. Contestation also occurred through domestication at the national level as several local governments and authorities declared themselves 'GATS-free' zones. However, this did not translate into a critical stance of national parliaments or governments. While some expressed 'concerns' about the possible effects of the GATS on welfare services both at home and in developing countries, the nature of the negotiation mandate was given by the EU Commission. Finally, the supranational route for mobilization was also activated. The ETUC and EPSU took defensive action in conjunction with the PSI, but the impact was less significant than in the case of the Services Directive since the links between international trade agreements with public services and workers' rights are less direct than those with single market legislation. Moreover, the EP adopted two resolutions critical of the GATS. However, these were only non-legislative resolutions which were not legally binding for the EU Commission. In addition, to reactions of high WTO officials dismissing the claims of the anti-GATS coalition as 'myths', the EU Commission responded to contestation by engaging with the arguments made by the GATS opponents. It also displayed moderation of its policy for commitments concerning welfare services in WTO negotiations, especially as far as water distribution and sanitation is concerned. While it remains very difficult to evaluate which commitments were made or materialized into actual market expansion through the GATS, welfare services still constitute an important commercial interest for EU-based firms and have never been explicitly excluded from international trade negotiations. Meanwhile, by the late 2000s the Doha round had broken down for reasons which are mainly unrelated to services liberalization.

The debate on a possible Framework Directive for regulating SGI at the EU level (2000–2007) (Chap. 4) offers a contrasted example, shedding light on the obstacles facing the advocates of the logic of positive integration through re-regulation at the EU level in the realm of welfare services. The objective was to define common principles regarding SGI delegation, provision, financing, regulation and control, as well as provisions regarding users' rights. Coalition formation took place at the stage of discussions preceding a possible proposition by the Commission and the formal launch of co-decision. Insofar, it involved the same institutions and actors as the Services Directive debate and took place partly at the same time. The core of the coalition comprised organizations integrated in the supranational governance of the EU, the PES and the ETUC, in particular with the former elaborating a draft Framework Directive on SGI, while the latter organized a petition-based campaign calling upon the European Commission to propose such legislation. Yet, the transnational networks of the global justice movement were not involved in these actions and never articulated their own specific proposals for re-regulation of welfare by the EU.

Beyond co-decision, two further institutional obstacles hampered the formation of a large and vocal coalition including organizations both at the national and European level. The first illustrates what Scharpf referred to as 'the joint decision trap'. Due to their diverse traditions and institutional arrangements for regulating welfare services, the Member States' governments did not lend support to a Commission's proposal. Facing a coalition of more market- and competition-oriented states (mainly in Northern Europe), continental states diverged on whether the EU or the national state is more able to grant the appropriate protection for SGI. Germany in particular, and its *Länder* which hold key competences over SGI, turned out to be a crucial veto point and consistently opposed a Commission's initiative. A second obstacle lies with the entrenched sectorizing of EU policy making with regard to SGI. Many actors, including large French companies who were supposedly supporting the French position in favour of re-regulation at the EU level, expressed concerns regarding the compatibility between the existing sectoral regulation and a Framework Directive, and many questioned the added value of the latter. Thus, the established policy practices in the sectorized mode constituted

a main obstacle to the formation of a broad intersectoral coalition articulating a demand for positive integration.

In a nutshell, the findings on coalition formation in the third contentious episode under scrutiny reveal that the actors critical towards the marketization of welfare services have proved able to form broad, even if loosely coordinated, coalitions. They have achieved this by simultaneously activating various channels for contesting marketization policies at European scale, including when it is intertwined with a broader process of politicization at the global level. In the framework of EU politics, it appears that co-decision and a firm involvement of the EP are key to producing outcomes in terms of decision making. When decision making procedures and accountability patterns are more blurred (like in the case of international agreements such as the GATS at the time), the effectiveness of contestation and even the possibility to assess such effectiveness becomes more difficult. In the case of positive integration, though, the involvement of the European Parliament (EP) was not sufficient to secure firm support for a Framework Directive on SGI. Additional institutional factors came into play: not only national institutional diversity hampered coalition formation, but also the entrenched sectorizing of EU policy making. Institutional aspects shaping coalition formation only shed light on one part of politicization. The ways in which the policy issues pertaining to welfare services were politicized through ideas and discourse are closely related to coalition formation and also played a key role with regard to decision makers' responses to contestation.

2.2 Framing

The opponents of the original proposal for an EU directive liberalizing all services (including welfare services) successfully created a polarization through discourse. They claimed the necessity to defend the possible existence of a 'social Europe' against the rampant 'neoliberal Europe'. Such framing encompassed more specific elements of discourse such as wage and social dumping or attacks on 'public services'. By invoking 'social Europe', they used a well-established master frame which had been forged in the public debate surrounding EU integration since the 1960s.

The effectiveness of this discourse can also be explained by the fact that a small number of activists had the necessary expertise to analyse the intricate policy issues related to services liberalization and translate them into political terms, thus articulating the coordinative discourse perceived as legitimate in EU politics with a broader, normative discourse.

From a strategic point of view, this discourse presented several advantages. First, the frame 'social Europe' had been an identity marker for all left-wing parties and movements (including the social democrats) since the early 1990s and was clearly linked to the Delorsian project for building a European *social* market economy. Thus, the motto 'social Europe' was broad enough (and without any need to further specify its policy content) to rally a large coalition. At the same time, advocating the defence of 'social Europe' prevented the coalition from being called anti-European, especially at the early stage when contestation was mostly initiated by movements of the radical left (such as ATTAC), and given the viral spread of the 'Polish plumber' metaphor launched by the far right. Interestingly, the 'neoliberal' Europe they denounced was not only represented by the European Commission as an institutional entity, but also by the loudly neoliberal (and Eurosceptic!) Dutch politician Frits Bolkestein, which subsequently enabled the type of personification of the debate that is known in national politics.

All this contributed to a broad resonance of the campaign in the national media thus feeding the domestication (or internalization) of the conflict and mobilizing national actors (parties, local authorities, national parliaments, unions, etc.). This was amplified by the simultaneous campaign for the ratification of the European Constitutional Treaty in 2005 in France. Furthermore, the 'social Europe' frame could easily be shared across national borders as it had various cultural declinations in different countries. As the controversy developed, the consensual idea that the 'European social model' should be protected against the possible detrimental effects of liberalization and competition was taken over by prominent decision makers, including conservatives like J. Chirac or J.-C. Juncker.

The simultaneous debate surrounding a Framework Directive on SGI offers an illustration of how the lack of coherent framing contributes to the failure of a campaign aimed at balancing marketization policies with an agenda for re-regulation at the EU level. The lack of polarization

between framing through 'general interest' and framing through 'the market' weakened considerably the pro-regulation coalition, as a dominant fringe of the social democrats did not want to fully immunize SGI from the logic of competition within the internal market. Due to a lack of consistency of the discourse of the social democrats, counter frames progressively took over throughout the various debates. Along with the idea that SGI were part of the market, the issue was increasingly framed through the idea of subsidiarity. Whether their objective was to promote or, on the contrary, slow down marketization, an increasing number of actors were persuaded that national regulation was more desirable as opposed to a deeper involvement of the EU. This was the case of German representatives in the EU institutions along with their Dutch and Scandinavian colleagues. Over time, even some French MEPs, the most fervent advocates of re-regulation by the EU, ended up invoking subsidiarity.

Such difficulties in finding an ideological and discursive agreement on the policy content of 'social Europe' had clear consequences in terms of coalition building, resonance and responsiveness. Uncertainty and distrust in the added value of more EU regulation did not only prevent the active involvement of transnational networks of the alterglobalist movement; it was also an obstacle to internalization through the mobilization of national parties and unions. As a result, resonance of the debate surrounding a Framework Directive did not reach national public spheres. The dull coordinative discourse shaped in Brussels focused on the respective advantages of horizontal versus sectoral regulation. It never really translated into a broader, normative debate framed through the notions of general interest and solidarity and clashing with the values of competition and profit which underpin the market frame. This eventually meant that there was no political pressure on the Commission to act coming from the broader public sphere.

Finally, contestation of the GATS illustrates how politicization can take place in the broader setting of global politics. Interestingly, many civil society organizations or individual activists and politicians were involved in contentious networks concerning the GATS in the first place; in this context they gathered expertise on services liberalization which they were able to use later in the debate over the Services Directive. Insofar, the discursive linkage between the GATS and the Services Directive

served to illustrate the idea that the EU is a 'Trojan horse' of the neo-liberal globalization in Europe. The main frame which was opposed to the market—here referred to by the interests of multinational corporations—was that of democracy. The GATS was framed as a threat not only to the publicness of welfare services but more broadly to the regulatory capacity of states; according to the anti-GATS coalition, this was made possible by the undemocratic nature of international trade talks at the WTO. The international campaign backlashed in EU politics as the European Commission was attacked for its double talk on welfare services. Under pressure from the public and the mobilization of local authorities in many EU countries, it ensured that welfare services markets would not be open to international competition; but at the same time, it was still seeking market opening for European companies in developing countries. Protest crystallized on water distribution, an area where private companies' predatory behaviour had led to serious prejudice for deprived people in a number of countries.

As in the case of the Services Directive, an efficient combination of expertise-based coordinative discourse with a strong appeal to values through the main frame of democracy brought about a fair level of resonance in the wider public sphere. The EU Commission, which was the main target of the European campaign due to its strong competences for negotiating trade agreements, engaged discursively with the critiques of the GATS; it also limited its commitments and requests at the WTO in the realm of welfare services, especially with regard to water. Yet, the two successive Commissioners in charge, Pascal Lamy and Peter Mandelson, articulated a consistent counter framing of the issue: from the point of view of the European Commission, services liberalization (including welfare) is a win-win game which is beneficial not only with regard to the EU's competitiveness, but also to economic development in third countries. Moreover, the Commissioners, like WTO officials, considered that contestation was fed by ungrounded information and scaremongering. The ongoing controversy surrounding the TTIP shows that the two conflicting framings of international trade—namely the market versus democracy—have remained vigorous and conducive of politicization.

To sum up, the study of the three interrelated contentious episodes pertaining to welfare services from the mid-1990s to the mid-2000s offers

insights which complement the classical institutionalist explanation for the supremacy of negative over positive integration. The institutional factors examined shed light on how coalitions contesting liberalization can successfully adapt to the multilevel nature of the EU and mobilize transnational, supranational and national networks simultaneously in order to ensure that contestation achieves a high level of resonance. Furthermore, along with the diversity of national institutional arrangements and cultures, an additional obstacle to positive integration was identified. The strong sectorizing of EU policy making impeded the formation of a wide coalition of actors advocating the re-regulation of welfare services on a horizontal, intersectoral basis. Last but not least, the study highlights the importance of efficient framing of particular policy issues. Efficient discourse relies to a strong degree on polarization, and a translation of technical issues in political terms that appeals to broad values. In debates on welfare services, 'social Europe' and democracy have proved efficient vectors of resonance and politicization, capable of countering the power of the discourse based on the market and competitiveness.

These findings show that, in spite of significant institutional constraints that favour market making, the EU is not *bound* to be neoliberal and technocratic. When coordinated transnationally and discursively consistent, coalitions of actors generating democratic contentious debates can shape decisions and policy making. Since the turn of the century, though, it appears clearly that the EU has been an arena where the dominant political forces have not promoted the regulation of capitalism and democracy at the European scale. By successfully framing the latest crisis of financial capitalism as a problem of public debt, these forces have only reinforced their ideological and discursive power position.

3 The Worrying Future of Welfare in Austerity Europe

3.1 Problematic Regulation and Funding

As shown in Chap. 6, welfare services have been a main target of austerity policies enforced as a response to the financial crisis. Insofar as the crisis has been successfully framed as a crisis of public debt, as opposed to a

crisis of the financial markets incurring excessive private debt, cuts in the public sector have been legitimized as a necessary evil. This also means that an increasing number of welfare services are slowly shifting to the realm of the market. Marketization is seen, not least within the EU institutions, as a vector of efficiency and as an alternative source of funding in a context where public resources for welfare are dramatically diminished.

It is difficult to generalize since policy outcomes remain strongly shaped by the economic situation of individual countries (not least their debt level) as well as by the ways in which national politics mediate the larger trend towards marketization. In the highly indebted countries receiving financial assistance from the EU and IMF (namely Southern Europe, parts of Central and Eastern Europe and the Baltics, and Ireland), the cuts in education and healthcare have started to show significant effects on general welfare. In many countries, the increasing taxes on energy and poorly controlled housing markets have made these basic needs unaffordable for large sections of the population. In countries in better economic and budgetary shape, policy outcomes depend on the traditional robustness of the welfare state as well as on political orientations of governments in power. In an increasingly marketized environment, the issue of appropriate means for regulating the relations between private providers and users—who are increasingly seen as consumers rather than citizens—is crucial.

Against this backdrop, there is a blatant lack of systematic assessment of marketization policies in the realm of welfare services. Because many policy measures have been recently adopted (like the leap to full liberalization in the postal sector), or only partially implemented (like in railway transport), the effects of full competition are not visible yet. The key question of appropriate funding and regulation is, at this stage, still wide open. With its clause on the universal service, the postal sector was a main example of socially minded re-regulation at the EU level. Yet, it remains to be seen whether the envisaged means for appropriate funding in a competitive environment, whether lawful state aid or compensation funds, are viable in practice and able to ensure adequate protection of the general interest, especially in terms of service quality and affordability.

Beyond sectoral and national diversity, three main trends can be detected. First, the debasing of public welfare services and their ongoing privatization or marketization have been largely counter-productive with regard to social cohesion in Europe. While it is widely acknowledged that they perform an

important role as stabilizers in times of crisis, austerity has brought about job cuts, thus feeding the already skyrocketing levels of unemployment. In turn, austerity has also implied a more difficult access to basic welfare services above all for the newly impoverished groups of unemployed people. Secondly, while marketization through competition is presented as a means to decrease the cost of services, it arguably contributes to shifting costs from the community to individual users in the long run. In a number of sectors, competition means the replacement of national monopolies by multinational oligopolies; in the absence of tight regulation, competition often remains limited, and the general interest easily becomes hostage to profit making. Furthermore, different social groups do not deal equally well with the paradigm of consumer choice which implies a wider—but hardly transparent—offer of services. The range of services also widens in terms of quality to offer more choice. The emerging picture is therefore one of a two-tier system where the most vulnerable and less resource-endowed groups have access to basic services provided or subsidized by the state in a non-profit logic, while wealthier sectors of societies will (have to) pay for better services to enjoy a higher level of welfare. Elementary as well as higher education is a case in point. Ultimately, the dualization in welfare services becomes a vector fostering the social reproduction of inequalities rather than social cohesion. In that sense, the marketization fits in the broader picture of rapidly rising social inequalities in Europe.

The third trend which can be detected concerns the role of the EU. At the outset, the role of the EU was mainly related to negative integration through the building of the Single Market and competition law. The post-crisis framework for macro-economic governance, namely the European Semester, has offered an additional, if more indirect, route through which the EU contributes to shaping welfare services by means of stringent constraints on national budgets and fiscal policy. The healthcare sector is paradigmatic of the combined effects of negative integration and fiscal discipline. On the one hand, the necessities of the single market, notably the free movement of people and services, constitute a first step towards the opening of national welfare states through EU regulation. This goes hand in hand with the emergence of a market for health services at the European scale. The sector is also considered by EU decision makers as a source of competitiveness among large European firms and should, as such,

not be excluded from the EU trade policy, as the recent controversy over the TTIP shows. On the other hand, healthcare has become a component of ‘structural reforms’, a mantra of EU governance. A significant number of country-specific recommendations issued by the European Commission (and endorsed by the Council) in the framework of the European Semester address the weight of healthcare on national budgets and admonish the Member States—not least large countries with a traditionally strong public healthcare such as France, Germany or the UK—to take measures aiming at ‘cost-effectiveness’.

Thus, if the EU is moving beyond the scope of the regulatory State (Kelemen 2013), a positive agenda in the realm of welfare is still pending. In 2013, the European Commission adopted a communication putting forward a ‘social investment package’ initiated by its DG for employment and social affairs. In doing so, it embraced the concept developed in academic circles over the past few years for promoting a progressive modernization agenda for European welfare states. Yet, the limited resources involved in the package (part of the European Social Fund) and the prominence of fiscal discipline as an overarching objective has meant that social investment has clearly not been a priority, neither in the EU institutions nor in the Member States. The fact that social investment is totally absent from the Investment Plan for Europe put forward by J.-C. Juncker in July 2015 clearly illustrates that social investment is still far from the top of the European agenda.

3.2 The Rise of Social Nationalism

As far as the politics of welfare services are concerned, the democratic challenge seems greater than ever. In the broader context of the crisis, the ubiquitous idea that ‘there is no alternative’ to austerity has remained widely unchallenged among the established political elites in power. Large scale protest has been the response to drastic cuts in welfare services in several countries. But as the EU has entered a phase of prolonged austerity, resignation has replaced contestation. This happened in a context where the alterglobalist movement has been declining, thus giving way to new forms of spontaneous and less organized contentious movements

such as Occupy and the *Indignados*. These movements have proved to have a great mobilization potential among the lost generation of the young unemployed deprived of perspectives. Yet, their strong anti-establishment and radical values have precluded any convergence with the established—and partially discredited—unions and political parties of the moderate left. The large scale contestation of the TTIP shows that the capacity for mobilization still exists, but the post-crisis opaque EU governance combining new forms intergovernmentalism with supranational federalism has not offered a point of crystallization for the defence of welfare services. In national politics, the new left embodied by Podemos and Syriza has not been able to prevent the enforcement of ‘structural reforms’ and fiscal discipline. And social democrats in power—notably François Hollande, Matteo Renzi and the German SPD—have embraced the austerity agenda and discourse.

Meanwhile, the scenario where a two-tier, dualized system for the provision of welfare services would be self-reinforcing due to a likely erosion of the sociological basis supporting a universal welfare state has set in. As middle classes are increasingly paying for higher quality private services themselves, the incentives for them to contribute to the funding of welfare through tax will diminish. In rapidly changing European societies under the pressure of immigration, social segregation will then increasingly overlap with ethnic segregation, with the poor sections of society being composed, to a great extent, of immigrants. This, again, is more likely to act as a deterrent, rather than an incentive, for middle classes to support collectively funded welfare services.

As a matter of fact, a new kind of democratic challenge is coming from the right. Across Europe, the opening of the ‘boundaries of welfare’ (Ferrera 2005) is triggering a reaction with calls for a new closure in the face of increasing immigration flows from within as well as outside the EU. The British debate over a possible exit from the EU offers an interesting illustration of this reaction. Along with other issues, a key demand of Prime Minister Cameron is to impose a waiting period of four years before intra-EU migrants can access benefits. This responds to a widely spread public perception that immigrants (mainly from Central and Eastern Europe) are a threat to the British welfare state. The NHS is at the centre of that debate, with claims that Poles and Romanians use the

EU rules on free movement to come to Britain temporarily and seek free healthcare, an abuse made possible by the European health insurance card which is ‘being handed out like confetti’.² The funding of the NHS and the objection by a majority of Britons to further privatization was at the centre of the general elections campaign of May 2015. In many European countries, far-right parties have used this argument and exploited xenophobic prejudice against immigrants, pictured as people who seek to take advantage of ‘the system’. Thus, fears related to the degradation of welfare and the deconstruction of its historical institutions is fuelling a new type of social nationalism which consists of blaming immigration instead of austerity. While the social question has been closely intertwined with the progress of democracy throughout the history of Europe, it is clear that both are now also inextricably linked to the fate of European integration.

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Index

A

austerity, 1, 2, 4–6, 22, 26, 29, 63,
184, 189–224, 229, 230,
248–53
Austria, 55, 58n13, 76, 78, 126,
134, 162, 170, 191, 192,
195, 213

B

banks, 1, 2, 6, 45, 61, 113, 157,
215–19, 239
Belgium, 2, 55, 58n13, 75, 76, 78,
86, 88, 92, 92n22, 94, 95,
99, 115, 117, 119, 120,
126, 129, 144, 163, 170,
171, 192, 193n5, 195, 210,
214n10, 216, 240
budget, 1, 4, 191–206, 208, 223, 250
Bulgaria, 1, 163, 192, 195

C

campaign, 2, 5, 24–6, 80, 86, 88,
92, 95, 98, 116, 128,
132, 140–2, 144, 145,
152, 159–65, 167–71,
175, 178, 181–3, 237,
240, 242, 243, 245, 247,
253
capital, 9, 38, 39, 41, 46, 60, 71, 75,
103, 128, 138, 190, 198
capitalism, 1, 4–11, 16, 25, 33, 40,
53–5, 60, 62, 82, 96, 114,
152, 195, 198, 209, 218,
229, 231, 248
Central and Eastern Europe, 1, 55,
74, 80, 82, 102, 119, 162,
214, 249, 252
civil society, 11, 18, 23, 24, 79, 82,
107, 114, 120, 121, 125,
129, 131, 132, 142, 145,

- 152, 161n4, 162, 166, 178, 246
- coalition, 5, 6, 15–20, 22, 24, 25, 72, 79–83, 85–93, 95, 99, 105, 106, 114, 115, 117–20, 122, 124–31, 133, 134, 144, 145, 152, 159–61, 165–75, 183, 218, 223, 232, 235, 237, 238, 240–8
- cognitive, 8, 19, 23, 90, 92, 132, 145, 172
- communicative discourse, 19, 90, 93, 96, 106, 145, 172, 183
- competition, 4, 6–10, 20, 25, 34–6, 39–57, 61, 64, 71, 73, 79, 83, 84, 90–2, 96–100, 115, 118, 122, 124, 126, 127n7, 134, 135, 137, 142–4, 146, 154, 158, 175, 177, 179, 180, 190, 233–7, 243, 245–7, 249, 250
- competition law, 4, 10, 25, 50, 64, 83, 84, 96, 122, 142, 235, 237, 250
- competition policy, 20, 34, 41–5, 46n5, 47–9, 115, 144, 146, 233, 234
- competitiveness, 7, 39, 47, 61, 76, 103, 151, 153, 155, 164, 171, 174, 177, 183, 220, 247, 248, 250
- conflict, 4, 11–15, 19, 64, 72, 75–7, 82, 85, 87, 89, 90, 99, 105, 107, 134, 164n7, 218, 231, 245
- constitution, 10, 13, 35, 51, 52, 80, 86, 87n13, 88, 106, 114–22, 144, 146, 240, 245
- Constitutional Treaty, 52, 86, 87n13, 88, 106, 120, 121, 144, 240, 245
- contention, 14, 15, 19–24, 26, 73, 76, 82, 83, 89, 91, 102, 105, 107, 132, 146, 159–61, 178, 182, 230, 235, 238
- contentious politics, 5, 11, 13, 14, 17n3, 20–6, 59, 63, 113, 114, 136–44, 146, 209–22, 231, 232, 237, 238
- coordination, 37, 73, 76–9, 86, 100, 103n34, 118, 200, 201, 203, 209–17, 223
- coordinative discourse, 19, 90, 106, 132, 145, 172, 245–7
- council (of ministers), 26, 81, 85
- culture, 2, 3, 12, 18, 35, 53, 84, 158, 160, 173, 178, 181, 194, 239
- Czech Republic, 80, 82, 163, 191, 192
- D**
- debt, 1, 2, 26, 40, 80, 141, 177, 189, 190, 199, 208, 218–20, 223, 248, 249
- democracy, 1–26, 60, 92, 93, 105, 118, 146, 152, 159, 169, 171–5, 178, 183, 215, 216, 231, 247, 248, 253
- demonstration, 74, 77, 87, 91, 167, 210–14
- Denmark, 55, 126, 163, 192
- deregulation, 9, 25, 34, 36, 37, 40, 44, 59, 61, 64, 73, 77, 82,

- 92, 100, 117, 146, 176,
178, 236, 239
- discourse, 16, 18, 19, 23, 24, 26, 54,
61, 90, 92, 93, 95, 96, 106,
132–5, 145, 154, 161, 167,
172–4, 183, 215, 217, 218,
220, 221, 223, 232, 244–8,
252
- discursive, 5, 11, 16, 18, 19, 24, 90,
93, 107, 120, 131–3, 135,
145, 146, 152, 155, 161,
172, 175, 183, 220, 240,
246–8
- diversity, 3, 51, 121, 125, 135, 157,
160, 180, 229, 237, 244,
248, 249
- domestication, 17, 17n3, 88, 240,
242, 245
- E**
- Economic and Monetary Union, 189
- education, 2, 3, 26, 35, 36, 43, 52,
58, 59, 83, 84, 135, 152,
157, 158, 160, 162–5,
165n8, 168, 173, 175–9,
181, 190, 192, 194, 195,
197–9, 204–8, 210, 223,
229, 230, 238, 239, 249,
250
- electricity, 41, 42, 56, 57, 74, 80, 97,
127n7, 233
- energy, 1–3, 7, 10, 36, 42, 46n6, 53,
57, 71, 74, 75, 80, 97, 103,
127n7, 152, 154, 158, 168,
205, 223, 229, 233, 235,
249
- enlargement, 82, 91, 119, 125, 182
- Estonia, 92n21, 163, 192, 193n5,
195
- Euro, 2, 77, 91, 113, 212, 216
- European Central Bank, 1, 61
- European Commission, 1, 10, 24–6,
43, 50, 52, 54n11, 58, 75,
91, 97–9, 116, 117, 120,
122, 123, 124n3, 124n4,
127n7, 128, 135n19, 137,
138, 143, 153–5, 159, 161,
162, 164, 173–5, 179, 180,
197–9, 201, 207, 221, 222,
233, 236, 243, 245, 247,
251
- European Council, 95, 96, 122, 126
- European Court of Justice (ECJ), 7,
10, 11, 22, 35, 42, 47, 49,
50, 50n10, 52, 61, 64, 83,
89, 90n20, 101, 114, 156,
233, 234
- Europeanization, 4, 8, 13, 17n3, 20,
54, 61–4, 85, 165, 240, 241
- European Parliament, 11, 44n2,
46n6, 77, 85, 87, 101n31,
101n32, 102n33, 104n35,
116, 117, 121, 129n11,
130, 162, 168, 174, 181,
216, 237, 244
- European Semester, 26, 190, 200–9,
223, 250, 251
- European social model, 58, 95, 133,
154, 198, 230, 245
- European Trade Union
Confederation, 14
- Eurozone, 15, 63, 113, 191, 195,
203, 210, 219, 239
- expertise, 19, 23, 39, 62, 145, 146,
166, 172, 181, 247

F

finance, 74, 103
 financial crisis, 113, 184, 189, 190,
 191n2, 197, 200, 209, 215,
 222, 230, 239, 248
 Finland, 78, 99, 126, 163, 164, 192,
 195
 fiscal discipline/austerity/
 consolidation, 72, 190,
 191n1, 196, 200, 201, 206,
 209, 211, 220–3, 229, 230,
 250–2
 framing, 5, 15–20, 22, 24, 62, 90,
 92, 95, 132–4, 142, 145,
 171, 173, 179, 183, 219,
 240, 244–8

G

general interest, 3n1, 24, 25, 42, 44,
 45, 47–54, 71, 114–22,
 132–4, 145, 151, 160n3,
 162, 181, 182, 229, 230,
 233, 234, 246, 249, 250
 Germany, 2, 23, 43, 55, 57, 58n13,
 73–7, 80, 86, 88, 89, 92–5,
 98, 99, 106, 117, 125–7,
 131, 142, 156, 163, 171,
 178, 192, 193, 193n5, 195,
 197, 204, 209, 212, 213,
 222, 240, 243, 251
 globalization, 39, 41, 61, 154, 155,
 174, 182, 247
 governance, 5, 24, 26, 37, 59, 60,
 72, 76, 87, 102, 114, 118,
 127, 132, 135, 152, 167,
 173, 190, 195, 200–9, 211,
 219, 239, 243, 250–2

government(s), 4, 10, 11, 16, 17, 23,
 40, 42, 43, 46, 53, 54, 59,
 63, 72, 74, 77, 79, 80, 84,
 85, 88, 90, 95, 100–3, 106,
 107, 114, 125, 126, 143–5,
 156, 159, 164, 168, 170,
 171, 174, 179–83, 190,
 195, 196, 199, 200, 203,
 208, 209, 211, 219, 220,
 223, 233, 239, 240, 242,
 243, 249
 Greece, 1, 78, 99, 142, 163, 191n1,
 192, 197, 198, 201, 210,
 213, 214n10, 216, 219

H

healthcare, 1–3, 26, 35, 36, 42, 44,
 53, 79, 80, 83, 84, 91, 97,
 100, 101, 101n31, 102,
 107, 136, 152, 158, 162,
 163, 165, 178, 180, 181,
 190, 193–5, 197–9, 202,
 204, 205, 207, 208, 211,
 223, 229, 230, 233, 236,
 238, 249–51, 253
 Hungary, 80, 82, 99, 163, 192,
 193n5, 195, 197, 198

I

ideas, 5, 11, 16, 18, 20, 21, 23, 38,
 61, 62, 93, 107, 114, 115,
 133–5, 144, 145, 172, 173,
 182, 232, 244
 ideology, 169, 218
 immigration, 252, 253 mobility

- institutionalism/institutionalist, 11,
16, 18, 19, 60–2, 90, 125,
182, 240, 248
- instrument, 9, 13, 48, 61, 88, 121,
140, 154, 169, 199, 211, 223
- intergovernmental, 50, 115–17, 119,
252
- internalization, 17, 88, 95, 165, 168,
183, 245, 246
- internal market, 5, 18, 34, 36, 44,
44n2, 46, 82, 87, 101n32,
107, 127n7, 131, 134, 137,
143, 152–9, 176, 233, 234,
246 Single Market
- investment, 2, 3n1, 7, 26, 35, 39,
98, 160n3, 165, 174, 176,
177, 195, 196, 198, 199,
204, 206–9, 221–3, 230,
251
- Ireland, 1, 73, 126, 163, 191,
191n1, 192, 193, 193n3,
195–8, 201, 210, 219, 222,
249
- Italy, 1, 45, 73, 78, 80, 99, 115, 117,
126, 144, 163, 170, 192,
193, 195, 196, 198, 213,
214n10, 219
- J**
- jurisprudence, 20, 22, 35, 45, 49,
83, 101, 107, 234
- L**
- labour costs, 40, 73, 83, 91, 177,
202
- labour law, 104
- labour markets, 7, 39, 55, 60–2,
190, 191n1, 203, 206, 208,
220
- labour mobility, 83, 96, 101
- labour movements, 86, 214, 215
- Latvia, 82, 89, 90, 90n20, 91, 163,
191, 192, 204, 207, 208,
211, 213
- liberal, 11, 61, 62, 71, 82, 84, 90,
92, 93, 95, 129, 170
- liberalism, 78, 154, 211
- liberalization, 4, 33, 71–107, 113,
151, 220, 230
- Lithuania, 163, 191, 192, 193n5,
195, 214n10
- Luxembourg, 50, 95, 98, 128n8,
163, 192, 195, 197
- M**
- macro-economic (policy,
coordination), 118, 190,
200–2, 239, 250
- Malta, 163, 192, 197, 198
- mobility, 38, 83, 96, 100, 101, 107,
190, 237
- mobilization, 5, 12, 14, 15, 17,
17n3, 18, 20, 21, 25, 26,
72, 73, 75–9, 85, 87–9, 95,
106, 119, 122, 124, 129,
136, 142, 144, 159, 165,
167, 171, 183, 201, 210,
212, 214, 215, 217, 235,
240, 242, 246, 247, 252
- movement, 13, 14, 16–18, 20, 21,
23, 40, 60–2, 79, 81, 82,

85–7, 90, 92n21, 100–2,
105, 106, 142, 160, 165,
169, 176, 182, 183, 210,
211, 214–18, 223, 240,
243, 245, 246, 250–3

N

negative integration, 8–10, 24, 25, 34,
53, 63, 64, 101, 105, 107,
113, 145, 152, 155, 159,
182, 223, 233, 241, 250

negotiation, 23, 26, 43, 74, 85,
153–6, 159, 160, 161n4,
162, 165–8, 168n15,
170–4, 176–9, 181, 183,
201, 238, 241, 242

neoliberalism, 6–8, 38–40, 54–64

Netherlands, 49, 59, 74, 77, 78, 82,
98, 99, 106, 117, 126, 163,
166, 192, 193n5

Non-governmental organization
(NGOs), 5, 12, 22, 23, 26,
72, 78–80, 82, 86, 87, 89,
105, 132, 141, 154, 159,
160, 161n4, 165, 166,
169–2, 182, 183, 215, 232,
238, 240

normative, 16, 19, 23, 40, 50, 59,
90, 92, 106, 132, 208, 230,
234, 245, 246

O

open methods of coordination, 118,
201

P

parliament, 11, 13, 17, 18, 23, 44n2,
46, 46n6, 77, 85, 87–9,
98n27, 101n31, 101n32,
102n33, 104n35, 106, 107,
116, 117, 119, 121, 125,
129n11, 130, 162, 167,
168, 168n15, 169, 171,
174, 181–3, 216, 237, 240,
242, 244, 245 European
Parliament

petition, 86, 128, 129, 141, 160,
166, 172, 178, 242, 243

Poland, 56, 58n13, 74–6, 80, 82, 98,
99, 163, 192, 193, 205,
213, 222

polarization, 14–16, 91, 92, 105,
106, 244, 245, 248

politicization, 5, 11, 14–22, 25, 72,
82, 83, 85, 87–90, 93, 95,
102, 106, 107, 124, 152,
159, 165, 171, 177, 182,
183, 229–53

Portugal, 1, 55, 73, 74, 126, 142,
163, 191, 192, 195, 196,
201, 206–8, 210, 213,
214n10, 216, 219

positive integration, 8–11, 25, 26,
63, 64, 114, 118, 122, 124,
125, 129, 135, 136, 143–5,
152, 223, 233, 243, 244,
248

postal services, 41–3, 45, 46n6, 57,
99, 100, 103, 151

poverty, 154, 197, 197n6, 201, 202,
208

private provider/sector, 3n1, 7, 8,
35–8, 44, 47, 58, 64, 98,
165, 179, 180, 222–4, 249

productivity, 7, 8, 56, 56n12, 57, 74,
100, 103, 230

protest, 5, 12, 17, 17n3, 25, 26,
74–8, 99, 116, 159–75,
178, 209–11, 214, 214n11,
217, 223, 229, 231, 237,
238, 241, 247, 251

public sector, 3, 37, 38, 48, 73, 103,
124, 179, 190, 192, 193,
204, 210, 221, 222, 249

public services, 3, 5, 6, 20, 21, 23,
26, 38, 49, 55, 56n12, 58,
59, 64, 76, 78, 78n2, 85n8,
106, 124, 127–9, 129n11,
130, 135, 140–2, 151, 161,
162, 164, 165, 167, 168,
168n15, 172, 179, 194–6,
234, 237, 238, 242, 244

public utilities, 3, 6, 7, 12, 35, 47,
74, 77, 119, 154, 158

R

railway, 1, 42, 43, 56, 76, 77, 80, 97,
98, 98n27, 99, 99n29, 102,
105, 127n7, 205, 233, 235,
249

referendum, 80, 87n13, 88, 240

reform, 3n1, 4, 6, 7, 36, 42, 45n4,
54, 55, 59–62, 72, 76, 89,
116, 117, 136, 137, 177,
190, 191n1, 200, 202, 203,
207, 208, 216, 220, 230,
251, 252

regulation, 5, 34, 73, 113, 152, 197,
232

re-regulation, 9, 18, 25, 26, 37, 55,
64, 100, 105, 113–16,
122–4, 140, 143, 146, 177,
236, 243, 245, 246, 248,
249

resistance, 4, 5, 15, 20–2, 25, 42, 43,
63, 64, 71–107, 113, 116,
139–4, 152, 153, 164, 169,
171, 182, 235

resolution, 85, 88, 89, 119, 168,
171, 180, 183

resonance, 15, 18, 90, 95, 142, 145,
182, 245–8

responsiveness, 15, 16, 20, 106, 138,
159, 229, 246

restructuring, 4, 6, 12, 34, 38–41,
64, 73–5, 233

Romania, 129, 163, 191, 192, 252

S

Single European Act, 7, 41, 49, 71

single market, 10, 25, 34, 41–7, 72,
73, 76, 97, 100, 101, 103,
105, 122, 233, 236, 238,
242, 250

Slovakia, 191, 192, 197

social democracy, 60, 93, 105, 118,
146

social democrats, 23, 82, 86, 101,
118, 130, 131, 133–5, 145,
167, 232, 245, 246, 252

social Europe, 19, 23, 63, 86n9, 90,
92, 93, 96, 106, 113–46,
212, 244–6, 248

social investment, 3n1, 196, 198,
 199, 204, 206, 208, 209,
 221–3, 230, 251

social market economy, 9, 11, 16,
 60, 61, 97, 113, 114, 118,
 134, 233, 245

social model, 1, 54, 58, 95, 116,
 126, 133, 154, 168, 198,
 214, 230, 245 European
 social model

social policy, 3n1, 4, 26, 34, 62, 190,
 191n1, 199–203, 209, 216,
 220, 223, 229, 232

social services, 6, 7, 35, 44, 46, 52,
 53, 83, 84, 103, 104,
 136–40, 158, 162–64, 172,
 176, 179, 181, 195, 221,
 223, 237

societies, 2, 4, 8, 60, 63, 72, 79, 159,
 172, 182, 190, 198, 203,
 224, 230, 237, 250, 252
 civil society

soft law/governance, 118, 137, 201,
 223

solidarity, 50, 75, 77, 101, 107, 129,
 135, 212, 214, 246

sovereignty, 92n21, 189

Spain, 55, 82, 99, 115, 117, 144,
 163, 170, 191, 192, 193n5,
 195–7, 199, 201, 210,
 212–14, 216, 219

Stability and Growth Pact, 190, 200

state aids, 34, 44–7, 46n5, 64, 100,
 104, 136, 137, 141, 237, 249

structural reform(s), 177, 190,
 191n1, 220, 251, 252

Sweden, 55, 57, 58n13, 59, 74, 76,
 78, 89, 90, 99, 117, 126,
 163, 164, 170, 192, 193, 197

T

tax, 20, 45, 55, 77, 143, 190, 191,
 193, 195, 210, 216, 219,
 220, 249, 252

trade agreement(s), 10, 26, 77,
 151, 153, 156, 158n2,
 164, 165, 175–7, 179–3,
 238, 241, 241n1, 242,
 247

trade policy, 153–9, 168, 176, 177,
 177n23, 180, 232, 251

trade unions, 14, 20, 23–5, 53, 56,
 74, 76, 85n8, 91, 105, 116,
 128, 131, 181, 213, 223

transnational, 11–14, 16, 17, 39, 55,
 76–9, 85, 86, 95, 106, 125,
 145, 160, 165–7, 171, 178,
 211, 212, 214–19, 238,
 240, 242, 243, 246, 248

transnationalization, 17, 165

transport, 1, 3, 7, 10, 12, 36, 41, 42,
 46n6, 49, 53, 55–7, 71, 73,
 76, 77, 79, 97–100, 102,
 103, 105, 116, 127n7, 151,
 158, 162–4, 192, 197,
 214n10, 223, 229, 233, 249

Treaty of Amsterdam, 50, 115, 116,
 118, 119, 144, 235

Treaty of Lisbon, 20, 113, 114, 120,
 121, 123, 136, 141, 142,
 144, 157, 234, 241n1

Treaty of Maastricht, 12, 17, 118

Treaty of Rome, 9, 41, 48, 71

U

unemployment, 3n1, 118, 151, 155,
 191n1, 193, 194, 197, 203,
 208, 216, 250

United Kingdom, 163, 192, 207
universal service, 37, 43, 49, 100,
117, 127, 168, 233, 236,
249

V

values, 16, 19, 23, 33, 48, 50, 90,
117, 119, 132, 135, 172,
246–8, 253

W

wage(s), 2, 55–7, 83, 87, 87n14, 91,
100, 162, 163, 193, 204,
211, 244

welfare state, 1, 3, 3n1, 7, 61, 72,
101, 191n1, 198, 199, 209,
218, 222, 229, 230, 236,
239, 249–52

World Trade Organization, 5,
151