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**SOCIAL MODELS: AN EU
FORECAST**

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THE JEAN MONNET SEMINARS

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SOCIAL MODELS: AN EU FORECAST

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As French newspapers related: *“everybody talks about it, but nobody clearly knows what it consists in”* (L’Express, November 3rd 2005). Thus was condemned the so called “French social model”.

At the same time, Mr. Gunter VERHEUGEN, vice president of the EU’s Commission declared in some other French newspaper: *“There is no European social model. Each and every country runs its own traditions”* (Le Monde, September 3rd 2005).

Despite those affirmative positions, it still remains possible to describe some constant guidelines of French social policy in order to discover some “model”. Those are: Welfare state, high level of social protection, equality, strong or very strong regulated social relationships.

So composed, the “French social model” is obviously a political idea, maybe also an economic one, but never juridical. It mainly exists in French politics to justify numerous State regulations in the market economy.

This includes:

- strong State involvement in economic affairs (of which the current EADS case is an example, leading French people to claim State help).
- binding social security financed both by taxes and contributions.

Also, the European Community runs its own and particular policy in the field of social matters, probably also leading to identify its proper “social model”, maybe also in a quest of European identity.

So do the other European Member states to which the French social model might usefully be grim-faced.

French Social Model and Other Welfare States’ Systems

Following the welfare state ideology, the “French social model” rests on the “dé-marchandisation” of several economic matters, which consists in taking parts of economic production out the market economy.

Social security and employment policies here provide the most significant illustrations.

The Example of Social Security

Contemporary French social security was born in 1945, through an October 4th 1945 ordinance, promptly strengthened by law n°46-1146 (May 22nd 1946) generalizing the ordinance.

In the mid 90s, regulatory instruments were made in France with the aim of decreasing the level of social security expenses. This led to the adoption of the 1996 ordinances, and later the 2003 and 2004 laws respectively reforming retirement and health maintenance systems.

Despite this, and by way of contrast, one sees at the same time the increase of social assistance, financed by taxes. In this context are to be mentioned the July 29th 1998 law against exclusion in the particular field of housing; also the July 27th 1999 law on universal medical care that placed health care on the basis of non-contributory welfare payments, as well as the December 13th 2000 law on solidarity.

Those policies could be considered as following some Nordic examples, given by Denmark, Finland and Sweden, where high tax

levels are coordinated with employment strategies. Actually, both are not so well coordinated in France.

As compared with other social models, the French social policies may also be assessed in terms of efficiency.

French social security, especially the health and care branch, shows a constant deficit average of € 8 million since the year 2000. As to the retirement branch, all studies anticipate an annual € 50 million loss from the year 2020, and € 100 million from the year 2040. Due to welfare payments, all branches suffered drastic cuts since the middle 90s.

However, and in the particular field of medical care and insurance, the United States' HMOs (Health Maintenance Organization) provide original and efficient health services to each private member, in accordance with pre-paid even though collectivist plans.

In Europe, countries like Italy, Spain or even Germany have reached a high level of efficiency through decentralization in medical care organization, which gives local coherence and squandering avoidance.

In the field of medical health and care it may be mentioned that Canada, since the early 90s, has begun the total privatization of the involved entities.

Naturally, this is not in favour of promoting the welfare state ideology.

Against this ideology are also to be mentioned the recent European Court of Justice case law and the EU Commission's position on the social security monopoly.

In a 2006 Communication (COM(2006) 177, April 26th 2006) dedicated to the enforcement of the Lisbon Agenda, the EU Commission indicated (point 2.2.3-“Market regulations”) that the services internal market (art.49 ECT) allows each European citizen

to affiliate and contribute to any authorized foreign and private insurance company in the field of social security. This means free competition in the field of social protection, and illegality of any national or even public monopoly. This was confirmed the ECJ in the famous “Watts Case” (aff. C-372/04, May 16th 2006, point 92).

Of course, the French authorities do their best to keep those principles out of the mind of the population, threatening both employers and employees with criminal consequences in case of any attempt at escaping the French social “monopolies”.

At the same time, in 2004, France, which had in the 90s affirmed a strong policy of decentralisation, adopted some important reforms that established central authorities in the managing of care, regulations and redundancy payments.

With regard to the EU Commission’s declarations, such a re-centralization of French social security goes in the opposite direction. Indeed, the above-mentioned 2006 Communication (point 1.2 “General need for quality and modernization”) explicitly assesses the following targets:

- Introducing benchmarking methods in the quality controls of social security
- Decentralization to local or regional level
- Progressive transfer to the private sector in a competing environment

Yet, the French system which, in terms of efficiency, was described by the WHO in 1997 as the best in the world, still remains only the most expensive.

This French social security “model” (which represents in fact no model for anyone but the French administration) may be usefully compared to the British one, also built on welfare state principles.

The British NHS (National Health Service) was set up in 1948, following the Beveridge report. It grew through three main stages from an integrated and strongly centralised system to a quasi-

competition market model based on users-to-health providers contracts. Then, the NHS went to the present “cooperation model” through the Primary Care Trusts (PCT) set by Tony Blair’s policies. This NHS provides free care, financed by taxes. No contribution or user fee is charged to the patient.

Most observers speak of a relaunch under Blair of the NHS, introducing competition mechanisms, opening up to private finance and insurance, and through those liberal methods the reducing of delays, improvement in the use of public funds, free choice for the patient and global modernization of the care branch.

(Sources: www.ladocumentationfrancaise.fr/dossiers/assurance-maladie_europe, 2007; French Ministry of Finance and Economy, Missions économiques, “[Système, infrastructures et services de santé au Royaume-Uni](#)”, 26 mai 2004).

The Example of Employment Policies

Although the 50s and 60s saw growth in most of the west, those times also brought French workers to a high level of employment and job security. They were also times of a big leap in labour costs.

In France, the 80s and following decades have been focused on flexibility, leading to part-time work and fixed term contracts that enhanced the workers’ feeling of employment insecurity.

In fact, facing the high level of labour costs that social policy had brought, governments tried to propose other, and less costly, forms of employment. At the same time, due to economic crisis and high labour costs, unemployment rose. From the 80s to the late 90s, unemployment grew in France from 4% to 12%, and the State’s debt from nil to over 1 000 million €.

Also, since the early 90s about 10% of children leave school without any qualification or skill. And as jobs became themselves a scarce commodity, the French socialist governments set out to share them out. This is how France was led to settle a global system of work sharing, aiming at sharing employment through the

reduction of working time. Thus was set the dogma according to which working time reduction is necessarily equivalent to creating jobs. In the years 2000 to 2002, and although other European countries (like Germany) were involved in working time enhancement, France reduced the working week from 39 to 35 hours a week on the basis of the so called “negotiated working time decrease”, which in fact was not negotiated at all. In the European reality, France’s 35 hour week corresponds to part-time work in many other Member States.

At the same time, this socialist ideology of work-sharing led France to think about retirement reform. There, the ideologists were torn between the utopia that career-shortening should create jobs (especially for young people) and the economic reality that predicted short-term collapse of all retirement organizations, due to the disappearance of contributors. In 2003 important reforms in the field of retirement were adopted (Law no. 2003-775, August 21st 2003), that mainly led to higher contributions rather than career management, except in the case of the civil servants (over 5 million, 1 million in the education branch). For the latter, a longer working life in envisaged, aiming at equivalence with private sector workers’ careers. Flexibility as regards the retirement age of civil servants’ has been debated, and rejected by both unions and governments. Actually, for private sector workers, the new regime envisages early retirement in exchange for extra contributions charged on the employer. Additional and complementary regimes, binding (civil servants) or not, are added in order to finance the present contribution-based retirement (Law no. 2003-775, art.76), and hypothetically aiming at enhancing the contributors’ future rights when they reach the age of retirement. Of course, this ignores the ECJ’s prohibition on any social security monopoly.

Basically, it looks like the French governments simply count on miraculous growth, and still wait for it, to solve the model’s inefficiencies.

Different is the example given by the British experience. This country presently shows regular growth, a very low rate of unemployment (about 5%), and a high level of national product by

inhabitant. Under Tony Blair's government, specific efforts were made in education and health. Also, the "Welfare to work" policy has produced great results on solving unemployment, and provides sufficient resources to poor people until they get a new job. This "Welfare to work" policy in some ways belongs to the Nordic "Flexsecurity" experience, that had been run in Denmark or Sweden.

They combined ease of layoff with social protection and job-finding opportunities.

The opt-out exception that had been managed for Great-Britain in the corpus of Directive no. 93-104 (art.18) authorizes employees in the name of flexibility and self-determination to voluntarily opt out of the limit of 48 hours a week. As a paradox to French dogmas, this voluntary increase of working time brings results in solving unemployment. On the occasion of the last EU enlargement (2004), the Commission started studies on the opt-out mechanism in order to manage old Member States 'industries' competitiveness. New Member States like Poland declare themselves already in favour of an opt-out mechanism in the field of working time. Some old Member States already practice the opt-out system, in specific occupations (health in France, Germany and Spain; hotel business in Luxembourg ...). A proposal for a Directive was made by the Commission to the EU Parliament in May 2005. The European Parliament adopted the amendments that tended to generalize the opting out system. Of course, all left political and anti-liberal movements mobilized against the project, in the name of a "social model" for once led by the French.

But this debate clearly illustrated a basic opposition between an Anglo-Saxon cultural model (individual contract based), and the 'Continental' one that tends to collective governance.

For instance, the US does not have any federal working time regulations, and nor does Japan. And the US' national product per inhabitant remains 25% higher than that of France, with no more than 5% unemployed.

Prospective Studies on the French Social Model

How can the French social model react in the face of economic change? In the face of globalization, economic change and social crisis, the “French social model” did not in fact react at all.

A key example is the right to strike. In 2001, Eurostat established a comparative study about strikes in some ten European countries. The study clearly showed that although France is the country where trade unions are the least representative, France is also the country in which most strikes happened between the years 1995 and 2001. This so called “French social model”, that gave strong authority to trade unions in workers’ defence, now allows them to paralyse the whole country. Recently again (March 2007), a group of fewer than 30 persons blocked the petrol terminal in Marseille for about ten days, threatening the whole country with a petrol shortage, while simply fighting for keeping a monopoly for themselves.

As unemployment grew since the 80s, the reduction of working time had never clearly brought satisfying answers.

Low wage policies were also tried, and that contributed to increasing the number of poor workers. In that particular context one could mention the recent Eurostat studies (2003) establishing France as the European country with the highest number of poor workers. At the same time, no French government ever imagined reducing the average 50% tax rate, applied as a deduction from wages.

Mainly, the crisis of the “French social model” is due to its inability over the past 25 years to solve social difficulties.

Huge expense was incurred, which impaired the economy and dragged down investment in productivity and growth, but never solved the problem of social insecurity.

A recent study for the French Senate (March 2007) shows France’s national product per inhabitant as being on average 26% lower than that of the US, and equivalent to the Italian.

In these conditions future prognostications cannot be optimistic.

At the present time, inequalities in France may also be mentioned. They have grown in fact in dramatic proportions. But not mainly, as is usually said, due to pay inequality between men and women or between young and old, or French and non-French nationals. Inequalities in France mainly consist in supporting a few privileged workers (civil servants or assimilated, assured of never losing their jobs, being quite well paid and often going on strike) coexisting with the most numerous other workers from private industry, submitted to the whole inefficiency of the “French social model”, even though holding it alive for the happy few.

In short, we can now say that the “French social model” has failed, and thus cannot be presented as an efficient or followable model. It makes no argument that France will not succeed alone in coping with such difficulties and stasis. In that point of view, there is in fact no prospective to be made about the “French social model” succeeding on its own. Its future seems therefore strongly interrelated to the EU’s construction. It is in fact noticeable that the EU’s social profile does not appear so different from the French one.

The recent, and above mentioned study of the French Senate (March 2007) showed EU’s national product also about 25 % lower than that of the US.

But one of the main significant distinct features of EU social policy as compared to the French is to strongly hold in realistic view economic matters. EU policies clearly understood that the economy has to be brought under control in order to finance the social side, and not the contrary. For that purpose, the European Council of Lisbon in March 2000 adopted the guidelines for employment aiming at making the EU “*the most competitive and dynamic knowledge economy in the world*”.

Is this leading to an EU social model?

Which Social Model for the EU?

Despite Gunter Verheugen's declarations, some experts acknowledge an existing or "under construction" European social model, improving the EU's specific identity.

For the ETUC (European Trade Unions Confederation), an EU social model exists, which consists in: "*a vision of society that combines long-lasting economic growth and improved working and living conditions*".

In the quest for this model, some key targets may be observed, that notably lead to a global level of life improvement, economic progress and growth in the respect of human rights. Therefore, efficiency and productivity have to increase. This leads to higher employability, as well as longer working time and careers, disregarding the French counterexample. All life-long vocational training and certificate courses are also reported as targets in the matter of economic and social progress.

This target was formulated since Council Recommendation no. 2002/178 of February 18th 2002, completed with Council Decision no. 2002/177 taken the same day, both adopting new guidelines for employment. At the same time, those instruments explicitly admitted the necessity of tax reform with the purpose of reducing labour costs.

Therefore, means and tools can be introduced on several points, allowing us to consider the European Social Agenda 2005-2010 as a representation of the future EU social model. As regards principles, the EU's social agenda (EU Commission 2005) has been adopted as a way of modernizing and developing the EU's social model, especially by improving employment quality and social security modernization.

All of this leads to very diverse ambitions including:

- A European strategy for employment (2005) that supposes an increase in European social funds dedicated to employment and competitiveness.

This strategy involves workers' skill development programs and employability improvement in order to keep people at work for as long as possible throughout their life.

Therefore a new industrial relations dynamic appears, supported by social dialogue which is the most likely to improve technical social legislation. Health and safety at work are also to be improved with the benefit of a new strategy 2007-2012.

- Reinforcing the settlement of the European labour market, to which the year 2006 was officially dedicated.

For serving this particular target a special Directive has been promoted on April 2004 (Dir. No. 2004/38/CE, April 29th 2004) which brings very important reforms in the field of free movement for EU citizens. This text provides the "*right of Union citizens and their family members to move and reside freely within the territory of the Member States*", and makes it effective, while distinguishing three different stages of EU citizens' migration. The first period offers to each EU citizen an unconditional stay on any Member State's territory for three months. The second period provides for conditional stay between the limits of three months to five years. And the third period offers permanent stay after five year of continuous (non-interrupted) stay on a Member State's territory.

- Social security modernization is also presented as a key point of the EU's social agenda, introducing to this particular field the "Open Coordination Method" (OC method) that belongs to the soft law process and was initiated in the 1997 strategy for employment. In this field, the EU Commission and Council adopted guidelines on the basis of which the Member States settled national reform plans. For example, in France this led to

the Law of May 4th 2004 reforming social dialogue and improving certificate course and vocational training.

This OC method supposes a political coordination framework without juridical control from the EU's institutions. Therefore, the EU's institutions define targets, and the Member States remain free to choose appropriate policies, binding or not, to serve those targets. The coordination framework fully respects the Member States' independence and sovereignty by giving each of them the charge of defining the appropriate tools for serving common aims. The success of the OC method in the field of employment justifies its running now in the field of social security.

- Diversity and non-discrimination promotion complete the social agenda, dedicating the year 2007 to this specific theme. Thus we saw the adoption of Directive no. 2006/71/CE of July 5th 2006.

This new directive can also be considered as a very important one, reforming almost 30 years of social law in the field of equality, and including in the corpus of law the huge amount of case-law of the European Court of Justice, which has been very creative in this matter.

Then again, this 2006 directive reforms some equality concepts with which, actually, the French Constitution is not necessarily compliant. In the recent past, France's "*Cour de Cassation*" (equivalent to Supreme Court) used to reject the concept of indirect discrimination (réf. ECJ "Defrenne Case" aff. C-82-70, May 27th 1971; ECJ "Jenkins Case" aff. C-96/80, March 21st 1981). It finally accepted it through some discrete judgments (April 9th 1996; February 12th 1997; December 19th 2000). But the French Constitutional Council recently declared unconstitutional some systematic positive discrimination led by the Equality Law (n°2006-340, April 23rd 2006).

Positive discrimination, which is also promoted by the new 2006/71/CE Directive, appears in fact to conflict with the

French Declaration of Human Rights 1789 (art.1, art.6), the French Constitution's preamble 1946 (art.3) and the present French Constitution 1958 (art.1). This prohibits quota policies, and also parity - which is in fact nothing but high-level quotas.

In the past, France's social model led to condemnation by the ECJ (aff. C.197/96, March 13th 1997, Rec. p. I-1496) for having maintained women's prohibition of night-work, in accordance with ILO no. 89 convention (1948). Following this judgment, France denounced this ILO convention, which Nordic countries had already quitted.

So, the social model as run in France was already outdated in 1997.

The Fight against Poverty and the Promotion of Social Inclusion

In the European Social Agenda 2005-2010, the year 2010 is to be dedicated to social inclusion. Constant efforts have already been made in the EU policy in this area over the whole period of the European project. Directive no. 2000/78/CE (November 27th 2000) gives the general framework in favour of equality of treatment in the matter of employment and work.. Directive no. 2000/43/CE (June 29th 2000) deals with enforcing the equality principle by combatting discrimination on grounds of race or ethnic origin. Both measures obviously feature in the matter of social inclusion and poverty reduction.

More recently (August 29th 2006), Madame Catherine Colonna, French minister of European affairs (and member of a supposedly liberal government) proposed the establishing of a European minimum wage through social dialogue. In this field, recent studies show the uselessness of such policies. Indeed, Eurostat 2005 established that 18 Member States out of 25 had minimum wage legislation. Those who did not were Finland, Denmark, Sweden, Germany, Italy, Slovenia and Cyprus. Most of them are reputed to be the both the most protective and the most dynamic economies in Europe.

France, that has adopted a minimum wage legislation is now reputed the Member State where the largest number of poor workers live.

Of course, and besides general objectives, the European community produced its own, and voluminous, substantive social law, dealing with individual and collective labour relations. In any event, an “EU” social model should only exist by distinguishing itself from other social models. On that point of view, the key differences do not lie in the areas of the fight against social exclusion or the promotion of equality, which can be observed from several States and policies around the world.

The main specificity of the EU’s social model lies in a particular way of building the society of the future, combining both soft law (like the above-mentioned Open Method of Co-ordination experience) and social dialogue, strongly involved in the legislative process and set to a European level.

Indeed, no other country or international organization has ever before so completely shared the legislative initiative with trade and employers’ unions. None have *a fortiori* admitted social partners to seize the legislative process while running, write law themselves, and then return the written law to be enforced by the institutions. This is what happens in the EU, since a social protocol added to the Maastricht Treaty (February 7th 1992) and codified by the Amsterdam Treaty (October 2nd 1997, art.136 to art.139 ECT).

In that way, France has adopted a recent regulation on social dialogue through law no. 2007-130 (January 31st 2007) “modernizing the social dialogue”, that introduces into the French Labour Law Code (art. L.101-1) the obligation for the legislator of first consulting the social partners in any social initiative.

In the EU, this social dialogue is already efficient enough to be a full part of the institutional process, through scheduled or non-scheduled dialogue. The scheduled European social dialogue started in 1984 on an EU Commission initiative with the so called “Val Duchesse” annual dialogue, in which the Commission and the

representatives of workers' and employers' interests participated. Since 2003, a "tripartite social summit for growth and employment" annually replaces the Val Duchesse dialogue with the addition of the EU Council as a participant. The non-scheduled dialogue is activated each time the EU Commission initiates a social legislative project (art.138 ECT), or each time the social partners do so (art.139 ECT).

As a concrete result, this European co-legislative dialogue has already produced several European regulations, such as:

- European framework agreement of June 6th 1997 on part-time work
- European framework agreement of March 18th 1999 on fixed term employment contracts
- European framework agreement of July 16th 2002 on teleworking
- European framework agreement of October 8th 2004 against stress

Most of these agreements became European law by being transformed into binding directives.

Still it remains noticeable that those agreements might also be self enforceable by the local (national) social partners. Thus was enforced in France the European framework agreement of July 16th 2002 on teleworking (National Interprofessional Agreement July 19th 2005).

As a conclusion, we can observe Europe's strong, and ancient, will for building an economic but regulated market. This target, in a liberal Europe, can only be reached largely by coordination, with some binding harmonisation.

In this regard, several EU experts assess that the Open Method of Coordination is the new and preferred way for accessing the next level in the EU's construction. And this seems especially true in this new union of 27 Members States.

Despite, and specifically in the framework of a European “constitution”, the price to pay for serving such ambitions will certainly suppose the decrease in ‘sovereignty’ of some Members States. And this can partly explain the failure to ratify the EU’s Constitutional Treaty (rejected in France by a May 25th 2005 referendum).

Indeed, the European construction announces the diminution of the specific powers of the Members States as often judged by the ECJ:

- ECJ “Francovich case” (aff. C-6/90 and C-9/90, November 19th 1990): State’s responsibility towards citizens for failure to implement or to properly implement a Directive.
- ECJ aff. C-94/95 and C-95/95, July 10th 1997: retroactive - directive’s enforcement since transposition into national law.
- ECJ aff. C-241/94, September 26th 1996: treaty-incompliant Members State’s participation to finance employment saving plans in case of private companies’ bankruptcy.

As to sovereignty the assertion of legal personality for the EU by the Constitutional Treaty was intended to establish its capacity to enter into international processes and treaties in its own right.

This also fully justified the creation of an EU foreign ministry, competing with those in the Member States.

The building of an EU’s migration policy has also led to a decrease of national powers in this field.

By the way, this Constitutional Treaty was also rejected, in France at least, because of the EU’s continuing failure to prove its ability to solve employment and economic crises.

So, and as far as we can guess, success in building the European Union of the future will also depend on its ability to propose a new social model, which some people have already anticipated by calling it “the European social model”.

In this perspective, one can mention a report on the EU social model recently brought to the European Parliament, and whose title was “*A European social model for the future: a unity of values with a diversity of systems*”. According to this report, the European Social Model “*reflects a common set of values, based on the preservation of peace, social justice, equality, solidarity, the promotion of freedom and democracy and respect of human rights*”. The report also underlined that social policies, when appropriately designed, “*cannot be regarded as a cost but, instead, as a positive factor in the EU’s economic growth*”. Still it insists on “*Urgent need to reform to preserve the model*”.

This report was adopted on September 6th 2006, opening the way for a wide range of future changes.