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The emergence of New Economic Governance and its impact on Services of General Economic Interest

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Abstract

This paper evaluates the impact of austerity measures on national social protection mechanisms and on the European Social Model. The study is based on an in-depth analysis of austerity measures adopted in Italy and Portugal and the evolution of several indicators, such as unemployment rates and the percentage of citizens at risk of poverty.

The analysis demonstrates that measures adopted in the field of new economic governance have had an impact on the organization and provision of SGEIs and have affected the solidity of the national welfare state. It will be argued that in this context the promotion of a social dimension of the EU requires innovative methods for the regulation of new economic governance.

Key-words

New Economic Governance, Services of General Economic Interest, European social model



1. Introduction

The development of European Economic Governance, and the promotion of austerity policies, whilst addressed mainly at national budgets, entailed a social dimension as well, occasioning a general decrease in the level of protection of social rights linked to public services such as health, social assistance and education.

The paper's research develops in two parts. In the first part the focus is on the impact of austerity measures on the protection of social rights at the national level, especially in Portugal and Italy. These two countries have been selected as they represent the two main Union approaches to the financial crisis: on the one hand, Portugal benefited from financial assistance from the EU under specific economic policy conditionality, set out in the Economic Adjustment Programme, signed on 2011. On the other hand, the case study of Italy is interesting in order to question the impact of austerity measures adopted in the field of macroeconomic surveillance. The study will focus on the country-specific recommendations addressed to Italy in 2013 and 2014.

The second part of the paper questions whether austerity measures subsequently impact on national public policies and the current division of competences between the Union and Member States (MS). In the field of public services, the notion of 'Services of General Economic Interest' (SGEIs) is an exemplar of the interaction between MS' competences and EU law. Indeed, the role national welfare policies play in meeting social needs was taken into consideration by the Union legislator through the introduction of SGEIs, defined as

'economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention.'¹

In an acknowledgement of their role, SGEIs enjoy derogations in the application of the 'rules contained in the Treaties, in particular to the rules on competition' (Article 90(2) EEC, now Article 106(2) TFEU). The notion of SGEIs may also extend to include Social



Services of General Interest, such as social security systems covering the main risks of life, depending on their economic nature. Both categories are then included in the broader category of Services of General Interest.

What is relevant for this study is the division of competences set by Protocol 26 TFEU, where it is recognised that

‘the essential role and 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’ represents a shared value of the Union (Article 1, Protocol 26 TFEU).

The originality of the study is found in the research question of the second part of the article, namely if austerity policies have limited the margin of discretion enjoyed by MS in the organisation of SGEIs.

2. The new European Economic Governance

This section aims at demonstrating that social services, traditionally excluded from the sphere of European regulation and left to MS competence, can be indirectly influenced by new economic governance in terms of budgets, policy objectives and the quality of service provided.

New European Economic Governance is the result of the measures adopted in the EU legal order and by the Eurozone MS through international treaties. The impact of this new governance on national policies aimed at protecting social rights varies according to the object of the measures adopted. It is therefore necessary to identify the four pillars that compose new economic governance.

Originally economic governance was structured in two main pillars (de Streeck 2013: 455-456): budget surveillance established in 1997 by the Stability and Growth Pact^{II} then reformed in 2005 and 2011^{III}, and the Open Method of Coordination (OMC) set by the ‘Lisbon strategy’ in 2000, which took the form of instruments aimed at promoting the coordination of national socio-economic policies.



The sovereign debt crisis not only necessitated the introduction of two new pillars, but also changed and strengthened the two previous mechanisms, particularly in the field of budget surveillance. The two new pillars comprised macroeconomic surveillance, established in 2011 and governed by two regulations^{IV} which are included in the ‘Six Pack’, and financial assistance, initially granted through a ‘temporary rescue mechanism’^V originating in the European Financial Stabilisation Mechanism (EFSM)^{VI} and the European Financial Stability Facility (EFSF). From 2011, these tools were replaced by the European Stability Mechanism (ESM),^{VII} an ‘intergovernmental organisation under public international law.’^{VIII} The establishment of the ESM signalled a shift from actions inspired by necessity and urgency, to a more stable mechanism. Moreover it can be observed that new economic governance is the result of a combination of EU law and international instruments, where EU institutions are nonetheless empowered with new functions; factors which contribute to the complexity of the overall system.

This study will focus on the macroeconomic surveillance and the financial assistance, as the ‘budget surveillance pillar’ is primarily linked to the single area of the respect of limits set for public expenditure and debt.

2.1. Macroeconomic surveillance and country-specific recommendations

The Macroeconomic Imbalance Procedure (MIP) is aimed at monitoring, and if necessary correcting, macroeconomic imbalances, and functions in two phases. The first phase consists of ‘an alert mechanism which works as a filter’ and consists of ‘a scoreboard with early warning indicators put in place by the Commission’, such as ‘current account balance in per cent of GDP’, ‘net international investment position’, ‘changes in the house price index’ and ‘unemployment rate.’^{IX} In the case of ‘serious imbalances, the corrective arm of the procedure requires the Member State to put in place a detailed policy plan to achieve their correction and provides means to effectively enforce it.’^X

The second phase involves the adoption of country-specific recommendations by the European Council, that contain measures on a

‘broad range of topics: the state of public finances, reforms of pension systems, measures to create jobs and to fight unemployment, education and innovation challenges, etc. “that each country” should adopt over the coming 18 months.’^{XI}



The proper implementation of country-specific recommendations should not be considered in terms of legally binding acts, but in terms of political pressure on national governments and incentives in order to avoid the ‘Excessive Deficit Procedure’ (Article 126 TFEU).

In the country-specific recommendations addressed to Italy in 2013 and 2014, a tendency in favour of increasing competition can be noted, which implies the adoption of liberalisation measures in the field of public services. From this perspective it was suggested that to

‘ensure the proper implementation of the measures aiming at market opening in the services sector,’ MS should ‘remove remaining restrictions in professional services and foster market access for instance in the provision of local public services where the use of public procurement should be advanced (instead of direct concessions).’^{xii}

This tendency towards the opening of the markets can also be observed in the field of network industries.^{xiii} Moreover in the field of local public services, the Commission called on Italy to ‘rigorously implement the legislation providing for the rectification of contracts that do not comply with the requirements on in-house awards by 31 December 2014.’^{xiv}

In respect of social services, the 2013 recommendations acknowledged that

‘the risk of poverty and social exclusion, and in particular severe material deprivation, are markedly on the rise, while the social protection system has increasing difficulties coping with social needs since it is dominated by pension expenditure.’^{xv}

As a consequence, demands were made of the Italian government to ‘ensure effectiveness of social transfers, notably through better targeting of benefits, especially for low-income households with children,’^{xvi} and in the proposal for the 2014 recommendations the Commission added that the government should



‘address exposure to poverty and social exclusion, scale-up the pilot social assistance scheme, in a fiscally neutral way, guaranteeing appropriate targeting, strict conditionality and territorial uniformity, and strengthening the link with activation measures.’^{xvii}

In short, in the field of public services the recommendations addressed to Italy identify open and competitive markets as a core element for increased competitiveness needed to create the necessary conditions to start a process of economic recovery and national growth.

Nonetheless considering that the recommendations were adopted in the context of the MIP and that the object of the indicators was not especially addressed towards verifying the level of liberalisation of markets, a lack of justifications can be observed with reference to the eleven indicators on which the MIP is based.^{xviii} In fact the content of country-specific recommendations does not appear as a direct consequence of the MIP, but rather seems to be the result of highly discretionary and political choices, which should require an in-depth motivation.

It is important to highlight two key elements: first, country-specific recommendations can have an impact on the management of SGEIs. Second, the content of the recommendations is not an automatic consequence of imbalances identified during the MIP, which grants the Commission a wide margin of discretion in drafting recommendations, not counterbalanced by a requirement to give justifications on how policies will promote macroeconomic stability in MS. In other words, the recommendations do not show their causal link with the ‘warning indicators’ that should guide the evaluation of the Commission in the context of the first phase of Macroeconomic Surveillance.

Indeed the final document approved by the Council does not expressly refer to specific macroeconomic imbalances, and regarding public services it prescribed general policies to Italy aimed at promoting further liberalisation.

2.2. Financial assistance and the conditionality clauses

The fourth pillar of new European economic governance is financial assistance, which can be granted as a measure of last resort in order to restore economic and financial stability in a MS, and at the same time to avoid the spread of the debt crisis to other MS, in



order to guarantee the stability of the single currency. However, the Treaty of Maastricht established the ‘no bailout clause’ that prohibits the Union and MS from being

‘liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project’ (Article 125 TFEU).

Therefore in the absence of an amendment to the ‘no bailout clause’ the establishment of a ‘permanent stability mechanism’, such as the ESM,^{xix} required the adoption of an international treaty and the amendment of Article 136 TFEU.

The granting of such financial assistance is subject to ‘strict conditionality’ (Article 136(3) TFEU), which means that the MS has to adopt a program of macroeconomic structural reforms negotiated with the Commission, together with the European Central Bank. These measures are embedded in a ‘Memorandum of Understanding’ (MoU) and their implementation is subject to constant surveillance and, where necessary, to modifications.

As with the country-specific recommendations, the MoU does not entail a transfer of competences from the MS to the ‘Troika’ of the Commission, the ECB and the IMF, and it is not an international treaty. Notwithstanding the absence of a legally binding nature, the implementation of the MoU should however be considered as a necessary step in order to obtain financial assistance.

2.3. The impact of austerity measures on public services in Portugal

The measures adopted in the granting of financial assistance granted to Portugal give an example of the consequences on the margin of discretion enjoyed by MS in the provision of SGEIs.

On April 2011, the Portuguese government asked for financial assistance from ‘the EU, the euro area MS and the International Monetary Fund (IMF).’^{xx} This request led to the negotiation of an ‘Economic Adjustment Programme’ where the Troika agreed to grant an assistance package of ‘€78 billion (EU/EFSM – €26 billion, Euro area/EFSF – €26 billion, IMF – about €26 billion)’^{xxi} under several conditions established in the MoU, including



the reduction of 'Government deficit to below EUR 10,068 million (equivalent to 5.9% of GDP based on current projections) in 2011, EUR 7,645 million (4.5% of GDP) in 2012 and EUR 5,224 million (3.0% of GDP) in 2013.'^{XXII}

Besides the general request for a reduction of the deficit, the MoU provided for a series of specific reforms aimed at reducing government expenditure, therefore affecting some public services.

In the light of the EU's definition of Services of General Interest (SGIs), the areas involved in this austerity strategy can be divided in two categories: the first is composed of SGEIs, such as energy, telecommunication, transport, postal service and water supply; the second includes some elements of social services, such as health care, unemployment benefits and education.

In the first category of services the MoU called for a substantial programme of liberalisation of State owned enterprises (SOEs), with the aim of 'reducing the Government's financing needs, stimulating competition and attracting foreign capital.'^{XXIII} The programme of privatisation addressed a number of service areas: transport (ANA, TAP and CP Carga), energy^{XXIV} (GALP, EDP, and REN), communications and postal^{XXV} (Correios de Portugal) and insurance (Caixa Seguros). This strategy was in line with a privatisation programme in the public sector which began in the 1990s, considered one of the most extensive of any MS (Clifton et al. 2003: 70).

In the case of the water supply sector

'instead of selling the company Águas de Portugal (AdP), as a whole it was agreed to first restructure the water and waste branches before selling the waste management holding (EGF) and considering opening up water activities to private capital and management.'^{XXVI}

In the second category, social services, one of the major areas concerned in the structural reforms promoted by the Troika was the public health care system. In this sector, the MoU called for a general cut in public expenditures of €550 million for 2012 and of €375 million for 2013. Besides this general objective, the MoU indicated specific measures to be adopted in order to reform the health care system, such as increasing co-payments (called moderating fees or *taxas moderadoras*) paid by patients. The Portuguese government



agreed with the Troika's proposal of the introduction, by September 2011 of: a) 'a substantial revision of existing exemption categories, including stricter means-testing in cooperation with Minister of labour and social affairs;' and b) an 'increase of moderating fees in certain services while ensuring that primary care moderating fees are lower than those for outpatient specialist care visits and lower than emergency visits.'^{XXVII}

In order to comply with the first requirement, the government reformed the rules on co-payment, on the one hand raising 'the threshold for exemption due to low income' (Rodrigues 2014: 5) to a monthly household income of €628.83 per adult, which also included self-employed persons. On the other hand,

'exemptions were severely limited for members of other groups,' such as 'people with certain chronic conditions who are currently only exempt from paying fees for healthcare services directly related to their condition; firemen and blood donors who are now exempt for primary care only; older people (aged 65 and older) who previously paid only 50% of the co-payments and who now pay the full amount, unless they are exempt due to other reasons' and unemployed persons, who under the previous regulation enjoyed an automatic exemption if they were 'registered at employment centres, as well as beneficiaries of the Minimum Guaranteed Income (*Rendimento Social de Inserção*)' (Rodrigues 2014: 5).

As a consequence the increased number of patients exempt from co-payments because of low income contributed to an increase in the total number of people exempt from the co-payment (see Table 1). Nonetheless in a context of high level of unemployment, this category appears to be the most affected.

	2006	2014 (a)
Low income	1,692,617	3,051,882
Unemployed and their relatives	207,438	92,426
Pregnant women and children below 13	1,501,210	1,396,426
Incapacity to work	3,861	150,487
Firemen	160,606	25,716
Blood donors	34,225	113,706
Chronically ill	572,019	890,120
Other		9,223
Total	4,196,737	5,729,986

Table 1: Patients exempt from co-payments^{XXVIII}



The second measure contained in the MoU aimed at the regulation of the value of co-payments in order to encourage ‘the use of primary over emergency care’ (Table 2) (Rodrigues 2014: 4).

	2007	2011	2012	2013	2014
Emergency care					
Central hospital	8.75	9.60	20.00	20.60	20.65
Primary care facility	3.40	3.80	10.00	10.30	10.35
Outpatient care					
Central hospital	4.30	4.60	7.50	7.75	7.75
Primary care facility	2.10	2.25	5.00	5.00	5.00

Table 2: Co-payment for emergency and outpatient care (Euros)^{xxx}

Moreover the MoU required the government ‘to cut substantially (by two thirds overall) tax allowances for healthcare, including private insurance.’^{xxx}

Even if some of the measures were part of national policies started before financial assistance was received, such as those aimed at facing the ‘disproportionate use of emergency care’ (Rodrigues 2014: 6), from the point of view of this research it is interesting to note that the austerity measures imposed by the Troika limited MS discretion in establishing the amount of the co-payment for emergency and primary care and in identifying the categories of people that enjoy an exemption from the co-payment. As will be analysed in the following paragraph, it is relevant to interpret the regulation of services imposed by the Troika in the light of the provision of the Treaties.

The MoU included demands for a reform of the ‘unemployment insurance system.’^{xxxI} The Portuguese system of insurance comprises two types of benefit, ‘one is purely contributory (‘subsídio de desemprego’ – SD) and the other is means-tested (‘subsídio social de desemprego’ – SSD)’ (Pedroso 2014: 23). While the first, SD, is based on the contributions paid by the beneficiary, the second, SSD, is granted ‘to the poorer unemployed if they do not qualify for the SD or when the period for which the beneficiary can receive the SD is over’ (Pedroso 2014: 23).

During the first period of the crisis, from 2009 to 2011, the general approach adopted by the government was aimed at enhancing the access to these benefits.^{xxxII} The agreement



in the MoU determined a drastic change in the policy of the government. Indeed the MoU called for a reduction of the

‘maximum duration of unemployment insurance benefits to no more than 18 months,’ limiting the ‘unemployment benefits at 2.5 times the social support index (IAS) and introducing a declining profile of benefits over the unemployment spell after six months of unemployment (a reduction of at least 10% in the benefit amount).’^{xxxiii}

In order to diminish the impact of these measures a reduction in the ‘necessary contributory period to access unemployment insurance from 15 to 12 months’ was established and the Troika asked the government to adopt ‘a proposal for extending eligibility to unemployment insurance to clearly-defined categories of self-employed workers providing their services to a single firm on a regular basis.’^{xxxiv}

In times of crisis, characterised by high rates of unemployment and economic recession, social benefits such as unemployment subsidies and the ‘minimum guarantee income’ play a fundamental role in protecting the more vulnerable groups of civil society. As shown by Table 3, the introduction of the measures envisaged in the MoU resulted in a drop in the percentage of persons obtaining unemployment subsidies among the unemployed, decreasing from 68.3% in 2009 to 43% in 2013.



	2006	2007	2008	2009	2010	2011	2012	2013
Poverty rate (total)	18.1%	18.5%	17.9%	17.9%	18.0%	17.9%(b)	18.7%(b)	NA
18-64 years old	15.2%	16.3%	15.8%	15.7%	16.2%	16.9%(b)	18.4%(b)	NA
65+	25.5%	22.3%	20.1%	21%	20%	17.4%(b)	14.7%(b)	NA
Anchored poverty rate (total)(a)	NA	NA	NA	17.9%	19.6%	21.3%	24.7%(b)	NA
18-64 years old	NA	NA	NA	15.7%	17.7%	20.4%	23.7%(b)	NA
65+	NA	NA	NA	21%	21.6%	20.1%	22.4%(b)	NA
No. of unemployed (1000)	427.6	447.9	426.6	527.5	600.8	703.2(c)	855.3	872.6
Of which receiving unemployment subsidy (d)	67.9%	55.7%	61.1%	68.3%	49.0%	44.9%	46.6%	43.0%
No. of beneficiaries Minimum Guaranteed Income (1000)	332.3	369.8	418.3	486.8	526.4	448.1	420.0	360.4
Average monthly benefit (Euros)	79.86	82.59	87.61	92.59	87.70	89.17	83.71	87.11

Source: PORDATA, 2014 based on data from INE and Ministry of Solidarity, Employment and Social Security, INE, 2014b.

Notes: (a) Poverty rate calculated using the poverty threshold for 2009 updated for inflation, i.e. accounting for changes in the median income that is used to calculate the 'standard' poverty rate.

(b) Provisional value.

(c) Break in series for unemployed people.

(d) Data include those receiving unemployment insurance and social (means-tested) unemployment benefit.

Table 3: Evolution of income and social protection^{xxxv}

Another social service affected by the MoU was 'education,' where the MoU imposed a reduction of costs 'with the aim of saving EUR 195 million.'^{xxxvi} As a consequence 'the government cut education spending to 6.7 billion EUR - back to the level of 2001 - and down from a peak of 8.6 billion EUR in 2010' (Minder 2013). Despite the adoption of these measures the IMF remained critical of the Portuguese education system, and in 2013 still considered it 'overstaffed and relatively inefficient by international standards,' suggesting that Portugal make it 'more flexible and limiting the State's role as a supplier of education services.'^{xxxvii}

The amount of public expenditure in the area of education was reduced from €8.7 billion in 2010, to €6.6 billion in 2013. These cuts led to a reduction in 'the number of PhD and postdoctoral fellowships awarded by the country's principal funder, the Science and



Technology Foundation (FCT),’ that ‘fell by 40% from 2012 to 2013, and the 2014 budget for fellowships fell by 16.5%’ compared to the previous year (André 2014).

Finally, financial assistance to Portugal represents an interesting case study because the Portuguese Constitutional Court, as well as Italian and Greek ones, declared some of the national austerity measures unconstitutional (Cisotta 2014). According to the Court, the ‘suspension of the additional holiday month of salary or equivalent for Public Administration staff’ enshrined in the ‘State budget Law for 2013’ violated the principle of equality ‘compared to persons who earn income in the private economic sector.’^{xxxviii} Despite the urgent and exceptional situation that related to the financial crisis, following the proportionality test the Court found that the measure imposed an unequal treatment of civil servants in comparison to private sector workers.

Even if this judgement did not entail a direct evaluation of the MoU, and did not refer the question to the European Court of Justice for a preliminary ruling, nonetheless its importance can be found in two aspects. Firstly, it expressly stated that this kind of measure has a relevant impact on general principles, such as the principle of equality, even if adopted in a context of necessity and urgency. Secondly, the legality of the restrictions to these principles was assessed in accordance with the principle of proportionality, which indirectly recalls the influence of the European legal order. The importance of the role played by general principles, allowing this ruling to talk the same language used by the Court of Justice, demonstrates that this decision is not strictly linked to the application of specific national rules.

3. The role of social protection systems and of the European social model under new economic governance

3.1. The consequences of new economic governance on social protection systems

In order to complete the study, it is necessary to assess if austerity measures entailed a ‘social cost’ in terms of effects on the level of protection of social rights.

Traditionally the three main functions of social policy are

‘social investment (primarily linked to the allocation of resources), social protection (primarily linked to the distribution function aimed at securing adjustments in the



distribution of income and wealth, considered in a very broad sense covering in particular distribution of incomes over the life course) and stabilisation of the economy' (Bontout et al. 2013: 5).

During economic crises characterised by a drop in GDP, economic recession and high levels of unemployment, social protection systems can contribute to limiting both social and economic consequences of the situation. On the one hand, such systems mitigate 'the social shock and limit increased poverty' (Vaughan-Whitehead 2014: 18). On the other hand,

'social protection expenditure provides for automatic stabilisation of the economy in bad economic times, since expenditure generally increases and thus partly compensates for the initial decline in households' disposable income following the decline in market income' (Bontout et al. 2013: 13).

During the first phase of the recent crisis national governments tended to invest in social protection mechanisms; in 2009, expenditure in this sector increased by around 7% in the EU (Bontout et al. 2013: 14). This growth is mainly attributed to 'increases in unemployment expenditure, but also in health and disability as well as in old age and survivors expenditure and to a lower extent [to]...an increase in family and social exclusion and housing expenditure' (Bontout et al. 2013: 14) (see Figure 1).

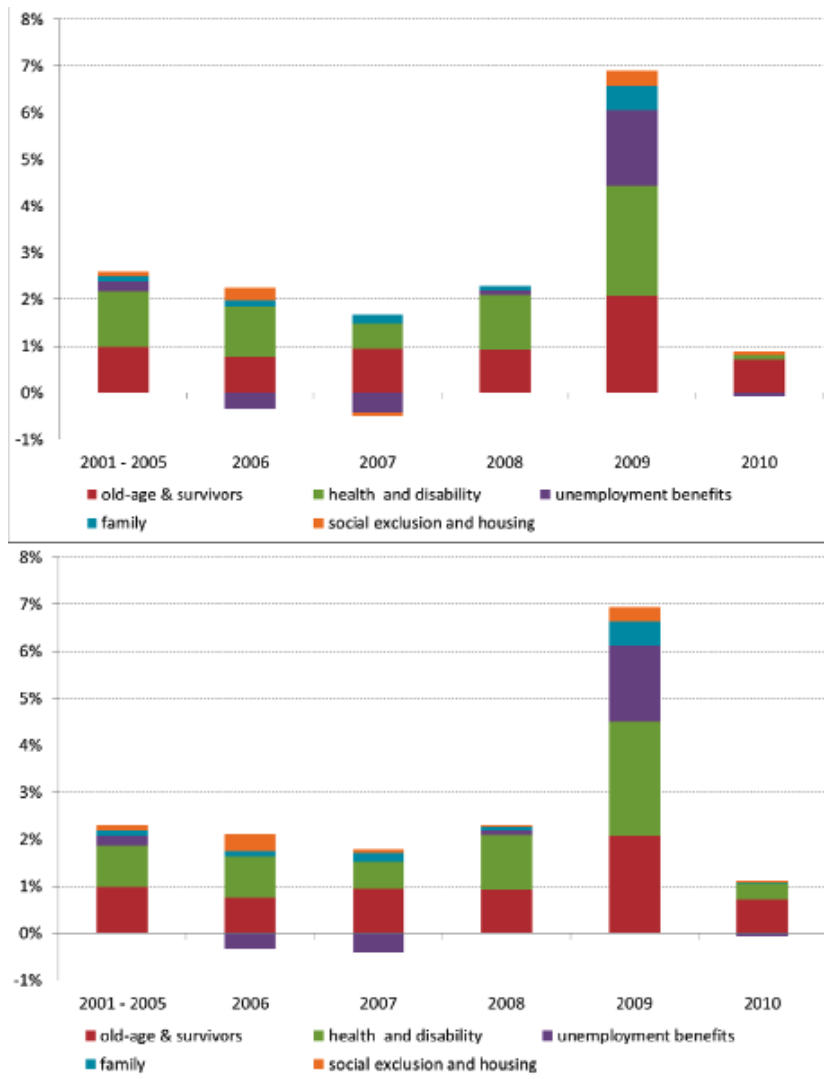


Figure 1: Contribution to real growth of social expenditures in EU27 and EA17 (2001-2010)^{XXXIX}

Portugal is an interesting example, where social expenditure increased significantly in 2009, in particular compared to the period between 2001 and 2005. It then rapidly decreased in 2010 (Figure 2). This can be attributed to the attempts of the newly elected government to cope with the State deficit, which in 2009 amounted to 10.2% of GDP (compared to 3.6% in 2008).^{XI}

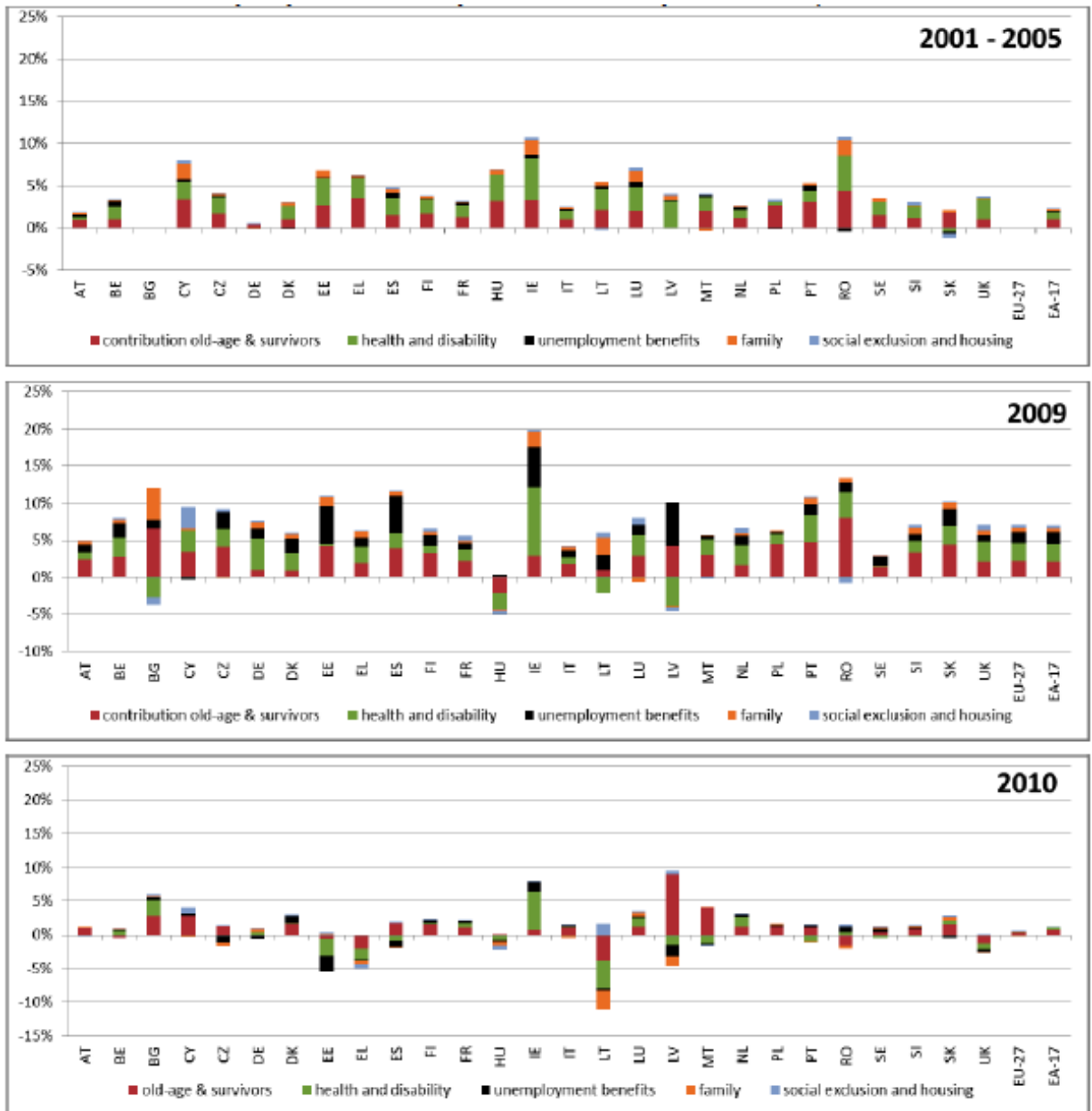


Figure 2: Growth in (real) social expenditures in Europe 2001-2005, 2009 and 2010^{XLI}

In relation to Italy, a Caritas 2014 report noted that the Italian ‘social welfare system is not well placed to deal with the impact of the crisis, nor of the austerity measures.’^{XLII} Among the factors taken into account in this assessment was the absence of a ‘nationwide minimum income system,’ as this leaves ‘some workers, such as those on temporary contracts, with no safety net if they lose their jobs.’^{XLIII}

The first aspect to be considered is the growth in the unemployment rate, especially since 2010 (Table 4). Among the States that are members of the OECD, Portugal ‘is one of



the countries in which the increase in the unemployment rates has been greatest since the start of the crisis (along with Greece, Spain, Ireland, Italy and Slovenia).^{XLIV}

GEO/TIME	2007	2008	2009	2010	2011	2012	2013
EU (28 countries)	7,2	7,0	8,9	9,6	9,6	10,5	10,8
Portugal	8,1	7,7	9,6	11,0	12,9	15,9	16,5
Italy	6,1	6,8	7,8	8,4	8,4	10,7	12,2

Table 4: Unemployment rates by age (15-74 years old)^{XLV}

Young people represent one of the categories most affected by this increase in unemployment, which raises major concerns. According to recent findings, 28.5% of young adults in Portugal and 29.6% of young adults in Italy are unemployed (Table 5).

GEO/TIME	2007	2008	2009	2010	2011	2012	2013
EU (28 countries)	12,1	12,0	15,6	16,6	16,8	18,2	18,7
Portugal	13,8	13,2	15,3	17,6	21,7	27,4	28,5
Italy	14,5	15,3	18,3	20,2	20,5	25,2	29,6

Table 5: Youth unemployment (15 - 29 years old)^{XLVI}

The picture appears even bleaker when the increase in the numbers of young people who are neither in employment nor education or training (NEETs) is taken into account. This is particularly true for Italy, where the rate of NEETs is above 20% of the young adult population, though similar rates are visible in Bulgaria and Greece.

These figures are particularly relevant for the present study as they call into question the role of social protection mechanisms, which have traditionally been central in preventing those who are unemployed from falling into poverty.

The portion of the population considered ‘at risk of poverty or social exclusion’ in Portugal appears to be stable and in line with the European average. In Italy, however, where in 2012 that portion amounted to almost 30% (Table 6), it presents serious concerns.

GEO/TIME	2007	2008	2009	2010	2011	2012	2013
EU (28 countries)	:	:	:	23,7	24,3	24,8	:
Portugal	25,0	26,0	24,9	25,3	24,4	25,3	:
Italy	26,0	25,3	24,7	24,5	28,2	29,9	28,4

Table 6: People at risk of poverty or social exclusion 2007-2013^{XLVII}



People who are unemployed run a higher risk of falling into the category of those considered ‘at risk of poverty or social exclusion’. In 2012 almost 34% of unemployed people in Portugal were at risk of poverty, and in Italy the figure stood at 38% (Table 7).

GEO/TIME	2007	2008	2009	2010	2011	2012	2013
EU (28 countries)	:	:	:	34,0	35,0	35,3	:
Portugal	37,3	35,6	35,0	35,7	34,2	35,6	:
Italy	36,1	34,9	33,3	32,9	36,8	38,3	36,7

Table 7: People at risk of poverty or social exclusion - Status not employed persons^{XLVIII}

Finally, a particular source of concern is the increase, especially since 2011 in Italy, in the numbers of those who can be described as severely materially deprived, or, in other words those with ‘living conditions severely constrained by a lack of resources.’^{XLIX} Indeed, Italy registered an alarming increase in this group, with figures almost doubling from 6.9% to 12.4% in the three-year period from 2009 to 2013 (Table 8).

GEO/TIME	2007	2008	2009	2010	2011	2012	2013
EU (28 countries)	:	:	:	8,4	8,9	9,9	:
Portugal	9,6	9,7	9,1	9	8,3	8,6	10,9
Italy	6,8	7,5	7	6,9	11,2	14,5	12,4

Table 8: Severely materially deprived people 2007 - 2013^L

The policies adopted in Portugal following the MoU were not exempt from criticism, as demonstrated by the advisory opinion on the ‘Proposta de Grandes Opções do Plano para 2012-2015,’^{LII} by the Conselho Económico e Social (CES), a ‘constitutional body for consultation and social concertation.’^{LII} The CES underlined the weakness of measures in crucial areas such as health and education, raising concerns about the role the State was playing in social and territorial cohesion. It stressed the need to fully examine the consequences of budget cuts in times of economic adversity.^{LIII}

The CES also expressed concerns regarding the extended programme of privatization taking place in Portugal, given that changes to public services may have major consequences for both the economy and society as a whole. In many cases the measures concern companies that provide services of general interest, which have a strategic importance for the country. According to the CES, particular attention should be paid to the quality of, and access to, public services, as well as to the State’s ability to intervene in the management of the economy.^{LIV}



As the long-term effects of austerity measures are still unknown, the analysis of their impact can only be partial at best, and continued evaluation over time will be necessary. It will, for example, be of interest to monitor the long-term consequences of the co-payment reform currently being carried in the Portuguese public health sector.

3.2. The protection of social rights under the European welfare approach

The definition and the role of the European Social Model in the process of European integration have been extensively discussed. The European Social Model has been presented as a ‘weak’ counterpart of the market-making process, arguing that the predominance of the market-making approach undermines the protection of fundamental rights. Nevertheless, it has been pointed out that economic and social cohesion has been part of the European project since the Treaty of Rome. Moreover, the adoption of the Charter of Fundamental Rights and the growing body of European legislative acts on social protection has placed doubt on the market-oriented approach to fundamental rights, in favor of a social dimension of the EU.

Space precludes a discussion of constitutional theories on the concept of the Welfare State, and the different models of social protection adopted by the legal systems of the various MS, but it is necessary to underline that social rights require public action aimed at guaranteeing an adequate standard of living. In this respect, together with civil and political rights, social rights are fundamental to the concept of ‘citizenship’ (Marshall 1950: 10-11). One of the differences between civil and social rights is that the latter can only be achieved and protected through the involvement of the State, which determines expenses. This means that social rights must, by definition, have a financial impact on national budgets.

Even if the competence to set the ‘content, scope and organization of welfare policies remains within national competence in the EU *as long as* the exercise of that competence does not contradict EU law’ (Martinsen 2013: 54), and even though welfare policies have always been perceived as a national prerogative, there has been a marked emergence of welfare as a dimension of the debate at European level. MS’ reluctance to delegate competences in this particular field was not sufficient to prevent a process of (negative and positive) integration with reference to social policies. Indeed, both the principle of freedom of movement and competition law have challenged the traditional link established at national level between entitlement to social services or benefits, and citizenship. Justified



by the need to remove obstacles to the creation of the internal market, the European legislator has begun to adopt harmonization measures with particular reference to employment rights and non-discrimination. Notwithstanding the absence of a specific social competence, the gradual adoption of such measures 'has led to the imposition of an increasing number of positive social obligations on MS'(O'Leary 2005: 57).

Furthermore, the social dimension of the European integration process has been strengthened with the adoption of the Lisbon Treaty. On the one hand, this established the binding nature of the Charter on Fundamental Rights, where an entire Title is devoted to the principle of solidarity. On the other, the inclusion of 'solidarity' among the EU's values, and of 'social justice' among EU's objectives, represents an important recognition of the social dimension of the Union.

These arguments explain why the impact of austerity measures on the protection of social rights is relevant not only at the national level, but also at European level.

New economic governance has also affected the process of social integration at European level as the adoption of loan conditions has led to a fragmentation in the level of protection of social rights at national level.

What is more, the emergence of a welfare dimension has been challenged by new economic governance. Evidence shows that the social cost of the economic crisis would have required stronger intervention of the State through public services (Caritas Europa, 2014). Such stronger intervention would have contributed not only to stabilising the economy, but also to social protection, by fostering a more inclusive growth, in line with the Europe 2020 strategy.

The fundamental role played by SGIs in the economic and fiscal crisis has also been recognised by the Commission, which pointed out that

'in areas such as health care, childcare or care for the elderly, assistance to disabled persons or social housing, these services provide an essential safety net for citizens and help promote social cohesion.'^{Lv}

The Commission also recognised the importance of SGIs 'in the field of education, training and employment' as factors that could contribute to the 'growth and jobs agenda.'^{Lvi}



Despite such statements, the response of the Troika to the economic crisis has been criticised for a ‘failure to integrate economic and social policies, and a lack of a longer-term commitment to an inclusive society, which in turn is necessary to building a sustainable economy.’^{1.VII}

The debt crisis ‘generated a radical transformation of social policies as a way to curb the deficit and with the willingness to enhance competitiveness’ (Vaughan-Whitehead 2014: 48).

From the point of view of national social services new economic governance has on the one hand contributed to shifting the balance between social needs and budget constraints in favour of the latter, and on the other, limiting the role of social security mechanisms in a period when their intervention was more necessary than ever.

A more prudent approach would have been for austerity measures to have respected the fundamental nature of SGEIs, as ‘shared values of the Union’, and their ‘central role in promoting social and territorial cohesion’ (Article 14 TFEU). Indeed, the right to access services of general economic interest for the purpose of ‘the social and territorial cohesion of the Union’ is recognised in the Charter of Fundamental Rights (Article 36).

It has been observed that the broad notion of SGI ‘may be examined under two competing socio-economic models’: the first refers an ‘ordoliberal perspective, [where] SGI may be seen as derogation from the Treaty provisions on competition’ (Lenaerts 2012: 1249) and, as such, subject to a strict interpretation; the second considers SGI

‘as the symbol of the European social model, according to which Member States try to counter market forces which, in the absence of any public control, would prevent certain groups – for example, persons facing financial and economic difficulties or who are geographically isolated – from having access to SGI’ (Lenaerts 2012: 1249).

The data presented in the previous section and the content of the measures adopted in the context of new economic governance demonstrate that, between these two main models, the ‘exception’ interpretation now predominates. Indeed, as a consequence of the implementation of austerity measures, the ‘European Social Model’ ‘has been subject to a much more generalized calling into question’ (Degryse et al. 2013: 5).



Having considered the role of the European Social model ‘as [a] cushion [for] the social shock of the crisis’ (Vaughan-Whitehead 2014: 48) and the right to have access to SGEIs, the approach adopted by new economic governance appears to lack a concrete understanding of the ‘social’ role of public services and the consequences of limiting access to SGEIs, for example with reference to those excluded from the co-payment benefit in Portugal.

4. The fragmentation of the notion of SGEI in the EU legal order

4.1. The new definition of the margin of discretion enjoyed by MS in the organization of SGEIs

In the EU legal order the concept of SGEIs is to be found in the middle of several conflicting forces, such as that between State intervention and market forces.

The relevance of SGEIs in the EU legal order is two-fold. On the one hand, they have an economic dimension, which relates to the role of the EU aimed at promoting internal market integration and competition. On the other hand these services assume importance ‘given the place’ that they occupy ‘in the shared values of the Union as well as their role in promoting social and territorial cohesion’ (Article 14 TFEU). Moreover ‘access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union’ is now enshrined in the Charter of Fundamental Rights of the European Union (Article 36).

In this perspective SGEIs ‘form an essential element of the European model of society’, since they contribute to increasing the ‘quality of life for all citizens and [assist them] to overcome social exclusion and isolation.’^{LVIII}

In relation to the division of competences between the Union and its MS, discretion in their definition therefore lies with national public authorities.^{LIX} The Court of Justice recognised that MS enjoy ‘a wide discretion not only when defining an SGEI mission but also when determining the compensation for the costs, which calls for an assessment of complex economic facts.’^{LX} In other words, ‘neither the ECJ nor the EU legislator are entitled to second-guess the determinations made by national authorities as to whether a service is of general interest, unless the latter commit a manifest error of assessment’ (Lenaerts 2012: 1258).



Besides the concept of ‘general interest’, usually associated with ‘public interest’ (Malaret Garcia 1998: 57), the definition of what is considered to be a SGEI calls into question the notion of ‘economic activity’. As a general principle ‘the economic constitution of the Treaty, only applies to economic activities’ (Hatzopoulos 2011: 2). The qualification of an activity as economic or non-economic is therefore one of the prerequisite steps in determining whether the EU or its MS have competence, and for this reason it acquires constitutional relevance (Hatzopoulos 2012: 38). Social services of general interest could also be considered SGEIs provided that they are economic in nature.

If we agree on the assumption that it is the economic nature of the service that represents a core factor in determining whether a certain public service of general interest falls under the scope of application of EU regulation of SGEIs, *a contrario* it could be argued that the application of EU rules to public services would imply the presence of an ‘economic nature’ in the service. This assumption would then imply that, in the application of EU acts in the field of new economic governance to certain social services traditionally excluded from the field of application of EU law, this would not only extend the field of application of EU law, but could entail as well a broader interpretation of ‘economic nature.’ In other terms such broader interpretation would extend to include the consequences of the provision of the service on the national budget.

Moreover this new approach does not take into account the margin of discretion of MS in the definition of the economic or non-economic nature of these services of general interest. Indeed there is no possibility for MS to invoke the social nature of a service, or indeed to present an argument of ‘manifest error’ in the Troika’s assessment of the nature of the service.

New economic governance seems to provide a third interpretation of public services regulated by EU law, that in the case of Portugal appears broader than the one applied by the Court in the field of competition and internal market. Indeed, the MoU is also addressed to services such as unemployment benefits and co-payment benefits in the health and education sectors, which traditionally do not involve economic activity carried out by an ‘undertaking’, as understood in competition law. Those activities are in fact inspired by the principle of solidarity, funded from social security contributions and subject to public control.^{LXI}

It should not be excluded that this new approach, limited to new economic



governance, could have consequences on the definition of SGEIs, making the boundaries between economic and non-economic activities more uncertain, in favour of the first one.

Even if the argument that the impact of MoUs on the definition of SGEIs could be rebutted by maintaining that regulation is the result of an intergovernmental agreement, and that it therefore should not to be considered as an EU act, financial assistance and its conditionality is nevertheless part of the European economic governance. A new interpretation of SGEIs not only does not support the identification of a common approach, it contributes to the fragmentation of the notion of SGEIs in general.

By extending the ‘economic’ nature of certain services and therefore providing a new definition of SGEIs, the provisions of MoUs have narrowed down the discretion enjoyed by MS in this area. In the light of previous remarks on the ‘intergovernmental’ nature upon which MoUs are based, it will be interesting to observe if this interpretation will influence the Court of Justice and contribute to an evolution of the notion of SGEIs in the EU legal order, or if this will remain an isolated case.

4.2. New economic governance and the emergence of an original approach towards SGEIs

New European economic governance has not only had an impact on the definition of SGEIs, it has also changed the approach towards SGEIs in general.

The definition of the ‘economic’ nature of services in the area of competition and internal market is influenced by various elements, such as the principle of solidarity, the exercise of public authority, and the definition of a service provided for remuneration. However the exact impact of services on national budgets has not traditionally been an area of concern for EU law.

In sharp contrast to this, under new economic governance the ‘economic’ notion seems to be linked to the financial sustainability and efficiency of the service provided by the State. In this perspective austerity measures have introduced a new approach to SGEIs, comparable to approaches adopted under competition and internal market law.

The intervention of the Troika in several public services has been criticized, as ‘ideally, policy decisions should be guided by a focus on enhancing value in the health system rather than on identifying areas in which cuts might most easily be made.’¹¹¹

With reference to SGEIs already regulated under EU law, such as energy, transport,



postal services and electronic communications, the measures adopted in the context of new economic governance are in line with the general aim already pursued, i.e. a ‘gradual, controlled opening to competition.’^{1LXIII} Nevertheless, less attention is paid to the regulation of ‘universal service’ (Davis and Szyszczak 2011: 159), that is ‘the provision of a defined minimum set of services to all end-users at an affordable price.’^{1LXIV}

The approach of new economic governance reinforces the ‘implicit assumption that SGEIs will always gain in quality through the introduction of competition, that the reduction of exclusion of limits to competition will always rebound in better public services’ (Zeitlin 2005: 207; Sauter 2007: 12).

Once again, the predominance here of a competitive aspect has been criticised: ‘the pursuit of “full competition” as the most desirable of ends takes for granted that there is no trade-off between competition and services of general economic interest, including their social and territorial functions’ (Zeitlin 2005: 209).

5. Conclusions

The process of ‘Europeanization’ of public services, and their increasing assimilation into the sphere of influence of EU competition and internal market rules, has been counterbalanced by the recognition of their role in the construction of a ‘European social model’.

The sovereign debt crisis could be seen as a new phase in this process. As has been shown, new economic governance enlarged the sphere of influence of EU law in public services, placing a strong focus on the financial implications of the provision of these services.

The analysis carried out has demonstrated that measures adopted in the field of new economic governance have not only limited the role of national social protection mechanisms, but could also have an impact on the definition of SGEIs. In all of these respects, new economic governance represents a decisive development in the process of ‘Europeanization’ of public services.

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¹ Communication from the Commission to the European Parliament, the Council, the European Economic



and Social Committee and the Committee of the Regions, A Quality Framework for Services of General Interest in Europe, 20 December 2011, COM(2011) 900 final, p. 3

ⁱⁱ Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, [1997] O.J. L 209; Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, [1997] O.J. L 209.

ⁱⁱⁱ Council Regulation (EC) No 1055/2005 of 27 June 2005 amending Regulation (EC) No 1466/97, [2005] O.J. L 174; Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97, [2011] O.J. L 306; Council Regulation (EC) No 1056/2005 of 27 June 2005 amending Regulation (EC) No 1467/97, [2005] O.J. L 174; Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97, [2011] O.J. L 136.

^{iv} Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances (adopted on the basis of art. 121(6) TFEU), [2011] O.J. L 306; Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, [2011] O.J. L 136, (adopted on the basis of art. 136 TFEU together with art. 121(6) TFEU).

^v <http://www.efsf.europa.eu/about/index.htm>

^{vi} Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, [2010] O.J. L 118, (adopted on the basis of art. 122(2) TFEU).

^{vii} The international Treaty establishing the European Stability Mechanism (ESM) was signed on 11 July 2011 by the ‘finance ministers of the 17 euro-area countries’ (http://ec.europa.eu/economy_finance/articles/financial_operations/2011-07-11-esm-treaty_en.htm). The Treaty was signed after the adoption of the European Council Decision 2011/199/EU of 25 March 2011, that amended Article 136 TFEU, [2011] O.J. L 91.

^{viii} <http://www.esm.europa.eu/index.htm#>

^{ix} European Commission, *Scoreboard for the Surveillance of Macroeconomic Imbalances*, Occasional Paper 92, February 2012, on http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp92_en.pdf, pp. 3 - 5.

^x *Ibidem*, p. 3.

^{xi} http://ec.europa.eu/europe2020/europe-2020-in-your-country/italia/index_en.htm.

^{xii} Council of the European Union, Recommendation for a Council Recommendation on Italy's 2013 national reform programme and delivering a Council opinion on Italy's stability programme for 2012-2017, 19 June 2013, 10640/1/13, on <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010640%202013%20REV%201>.

^{xiii} Council of the European Union, Recommendation for a Council Recommendation on Italy's 2013 national reform programme and delivering a Council opinion on Italy's stability programme for 2012-2017, Recommendation n. 6.

^{xiv} European Commission, Recommendation for a Council Recommendation on Italy's 2014 national reform programme and delivering a Council opinion on Italy's 2014 stability programme, Recommendation n. 8.

^{xv} Council of the European Union, Recommendation for a Council Recommendation on Italy's 2013 national reform programme and delivering a Council opinion on Italy's stability programme for 2012-2017, recital 16.

^{xvi} *Ibidem*, Recommendation n. 4.

^{xvii} European Commission, Recommendation for a Council Recommendation on Italy's 2014 national reform programme and delivering a Council opinion on Italy's 2014 stability programme, Recommendation n. 5.

^{xviii} Those indicators are: the current account balance, the net international investment position, the export market shares, the nominal unit labour cost, the real effective exchange rates, the private sector debt, the private sector credit flow, the house price index, the general government sector debt, the unemployment rate (European Commission, *Scoreboard for the Surveillance of Macroeconomic Imbalances*, pp. 4 - 5).

^{xix} Treaty Establishing the European Stability Mechanism, 2 February 2012, recital 1).

^{xx} http://ec.europa.eu/economy_finance/assistance_eu_ms/portugal/index_en.htm.

^{xxi} *Ibidem*.

^{xxii} Memorandum of Understanding on Specific Economic Policy Conditionality, signed the 17 May 2011,



- on http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf, p. 2.
- XXIII According to the Commission 'by January 2014, the accumulated proceeds from privatisations amounted to about EUR 8.7 billion', the Economic Adjustment Programme for Portugal - Eleventh Review, European Commission, DG for Economic and Financial Affairs, Occasional Papers 191, April 2014, on http://ec.europa.eu/economy_finance/publications/occasional_paper/2014/pdf/ocp191_en.pdf, p. 29.
- XXIV Memorandum of Understanding on Specific Economic Policy Conditionality, points 5.1 and following, pp. 25 and followings.
- XXV *Ibidem*, points 5.16 and following, pp. 27 and following.
- XXVI The Economic Adjustment Programme for Portugal - Eleventh Review, p. 30.
- XXVII Memorandum of Understanding on Specific Economic Policy Conditionality, p. 17.
- XXVIII Rodrigues Ricardo, et al., 2014, *Impacts of the crisis on access to healthcare services: Country report on Portugal*, European Centre for Social Welfare Policy and Research, p. 5.
- XXIX *Ibidem*, p. 4.
- XXX Memorandum of Understanding on Specific Economic Policy Conditionality, p. 17.
- XXXI *Ibidem*, p. 21.
- XXXII Among the measures adopted by the government it could be mentioned the extension of the SSD for the persons that 'were due to lose the benefit that year'; the reduction of the contributions required for the SD 'from 450 days to 365 days'; the increase of the SD 'by 10 % for families with children in which both parents were unemployed and for single-parent families', *ibidem*, p. 23.
- XXXIII Memorandum of Understanding on Specific Economic Policy Conditionality, p. 21.
- XXXIV *Ibidem*, p. 21.
- XXXV Rodrigues, Ricardo, et al., 2014, *Impacts of the crisis on access to healthcare services: Country report on Portugal*, p. 10.
- XXXVI Memorandum of Understanding on Specific Economic Policy Conditionality, point 1.8, p. 3. At the same it is established that the Government shall 'continue action to tackle low education attainment and early school leaving and to improve the quality of secondary education and vocational education and training, with a view to increase efficiency in the education sector, raise the quality of human capital and facilitate labour market matching' (Memorandum of Understanding on Specific Economic Policy Conditionality, point 4.10, p. 25).
- XXXVII International Monetary Fund, IMF Country Report No. 13/6, January 2013, *Portugal: Rethinking the State—Selected Expenditure Reform Options*, on <http://www.imf.org/external/pubs/ft/scr/2013/cr1306.pdf>, points 70 and 77, pp. 60 and 62.
- XXXVIII Portuguese Constitutional Court, ruling No. 187/13, 5 of April of 2013, on <http://www.tribunalconstitucional.pt/tc/en/acordaos/20130187s.html>.
- XXXIX Bontout Olivier, et al., 2013, *Social protection budgets in the crisis in the EU*, European Commission Working Paper, 01-2013: 15.
- XL Eurostat, (2014).
- XLI Bontout Olivier, et al., 2013, *Social protection budgets in the crisis in the EU*, European Commission Working Paper, 01-2013: 16.
- XLII Caritas Europa, *The European Crisis and its Human Cost – A Call for Fair Alternatives and Solutions*, Report 2014, http://www.caritas.eu/sites/default/files/caritascrisisreport_2014_en.pdf, p. 44.
- XLIII *Ibidem*, pp. 44-45.
- XLIV *Ibidem*, p. 52.
- XLV Eurostat, (2014).
- XLVI Eurostat, (2014).
- XLVII Eurostat, (2014).
- XLVIII *Ibidem*.
- XLIX This means that they 'have experienced at least 4 out of 9 following deprivations items: cannot afford i) to pay rent or utility bills, ii) keep home adequately warm, iii) face unexpected expenses, iv) eat meat, fish or a protein equivalent every second day, v) a week holiday away from home, vi) a car, vii) a washing machine, viii) a colour TV, or ix) a telephone', Eurostat, (2014).
- ^L Eurostat, (2014).
- ^{LI} Conselho Económico e Social, Parecer sobre Proposta de Grandes Opções do Plano para 2012-2015, approved the 8 November 2011, http://www.ces.pt/download/967/Parecer_GOP_2012-2015.pdf.
- ^{LII} <http://www.ces.pt/>.



^{LIII} *Ibidem*, paragraph 46, p. 22.

^{LIV} *Ibidem*, paragraph 47, pp. 22-23.

^{LV} Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Quality Framework for Services of General Interest in Europe*, Brussels, 20.12.2011, COM(2011) 900 final, p. 2.

^{LVI} *Ibidem*, p. 2.

^{LVII} Caritas Europa, *A Study in the Impact of the Crisis and Austerity on people with a Special Focus on Greece, Ireland, Italy, Portugal and Spain*, Report 2013, p. 5.

^{LVIII} Green Paper on Services of General Interest.

^{LIX} ECJ Case T-289/03, *BUPA*, [2008] ECR II-741, par. 165.

^{LX} *Ibidem*, par. 214.

^{LXI} ECJ Joined Cases C-159/91 and C-160/91, *Christian Poncet v Assurances Générales de France and Caisse Mutuelle Régionale du Languedoc-Roussillon*, [1993] ECR I-637; ECJ Case C-218/00, *Cisal and INAIL*, [2002] ECR I-691, par. 43-48; ECJ Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01, *AOK Bundesverband*, [2004] ECR I-2493, par. 51-55.

^{LXII} *Health systems and the financial crisis*, EUROHEALTH, European Observatory on Health Systems and Policies, 2012, vol. 18, n. 1, on http://www.euro.who.int/data/assets/pdf_file/0005/162959/Eurohealth_Vol-18_No-1_web.pdf, p. 6.

^{LXIII} For example in the postal service, Directive 2008/6/EC of the European Parliament and the Council of 20 February 2008, amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, [2008] L 52, recital 1.

^{LXIV} Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002, on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), [2002] L 108, recital 4.

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