

SOCIAL MARKET ECONOMY AND ITS ENEMIES*.

di Giovanni Luchena**

1. Social market economy, as it is known, is as a model of regulated market economy¹ in which public intervention and free competition are placed at the same level, that is to say that State and market are considered to be as complementary. In short, social market economy is «based on a market economy and the maintenance of a social – and later also ecological – balance»².

The program of the Ordo group was founded on the idea of realizing full benefits of a free market economy preventing or avoiding its disadvantages and drawbacks such as destructive competition, market failures and concentration of economic power, but, above all, anti-social outcomes of market dynamics. The aim is, above all, to promote State

* Sottoposto a referaggio.

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¹ K. ZWEIG, *The origins of the German Social Market Economy. The leading Ideas and their Intellectual Roots*, Adam Smith Institute, London and Virginia, 1980; P. HÄBERLE, *I diritti fondamentali nelle società pluraliste e la Costituzione del pluralismo*, in M. Luciani (ed.), *La democrazia di fine secolo. Diritti-Eguaglianza-Nazione-Europa*, Roma-Bari, 1994, 135 ss.; H. SIEBERT, *Germany's Social Market Economy: How Sustainable is Welfare State?*, Paper presented at the American Institute for Contemporary German Studies, The Johns Hopkins University, Washington, May 28, 2003, available at: <https://www.ifw-kiel.de/das-ifw/organisation/siebert/siebert-pdf/Washington2003.pdf>; C. JOERGES, F. RÖDL, "Social Market Economy" as a European model?, EUI Working paper, Law, Badia Fiesolana, San Domenico (FI), n. 2004/8, available at: www.iue.it; E.S. PHELPS, *Economic Dynamism and the "Social Market Economy": Are they Reconcilable?*, in 2007 Annual Ludwig Erhard Lecture – 50th Anniversary, Initiative Neue Soziale Marktwirtschaft, Berlin, October 12th, 2007, available at: <http://www.columbia.edu/~esp2/ErhardLectureBerlin2007Oct12FriLast.pdf>; J. AHRENS, *Transition towards a Social Market Economy? Limits and Opportunities*, *Ordnungpolitische Diskurse – Discourse in Social Market Economy*, Diskurs, 2008-5, <http://econpapers.repec.org/paper/zbwopodis/200805.htm>; M. Wörsdörfer, *On the Economic Ethics of Walter Eucken* (2010). Konrad Adenauer Stiftung (ed.) 2010, 60 Years of Social Market Economy. Formation, Development and Perspectives of a Peacemaking Formula; Konrad Adenauer Stiftung, Sankt Augustin, 20-41, available at: <http://ssrn.com/abstract=2354440>; F.W. SCHARPF, *The asymmetry of European integration, or why the UE cannot be a "social market economy"*, in *Socio-Economic Review*, 2010, 8, 211, available at: <http://ser.oxfordjournals.org/>; M.F. RESICO, *Competing models of capitalism and the Reorganization of World Economy after the Financial Crises*, available at:

http://www.uca.edu.ar/uca/common/grupo83/files/Marcelo_ResicoWorld_Economy_Meeting.pdf; F.L. PASINI, *Economic Stability and Economic Governance in the Euro Area: What the European Crisis can Teach on the Limits of Economic Integration*, in *Journal of International Economic Law*, 2013, 211 ss.; L. CASELLI, *Social Market Economy and Economic Democracy: the Trade Unions' Role*, in *The EuroAtlantic Union Review*, vol. 1, n. 1, 2014, 17-26.

² C WELZEL, R. VEHRKAMP, *Social market economy 2.0. An Appraisal in the Light of Current Reforms*, available at: http://www2.gtz.de/wbf/4tDx9kw63gma/2_04_WelzelVehrkamp.pdf.

intervention towards economic and productive fields that can allow to create the best conditions for a long-lasting period of wellness and to build a strong economic system³.

Hence, free economy and social progress should be walking together thanks to actions and measures determined by the public power, a combination between «free market whenever economically justified and elements of social balancing»⁴.

This way of conceiving economy was a newfound model, the well-known “third way”, which looked at the State not as an enemy but as an ally and a qualified partner. The considerable role of politics in economy – as acknowledged in many of the post-war social Constitutions, such as the Italian one – was regarded as a means of guarantee for workers, the unemployed and the poor. It’s a model that still steers political and economic German approach: «[t]he model of social market economy does more than any other public and economic order to comply with the Christian perception of men, which can contribute to its moral compass and to the necessary continuous evolution of the concept»⁵.

Thus, the substantive aim of social market economy can be synthesized as follows: free play of entrepreneurial forces is guaranteed by the State and social balance is endeavored by all public authorities, according to the competencies established by the Constitution.

The social market economy principle is considered to be a sort of mix amongst liberalism, ordo-liberalism, democratic socialism and the social doctrine of the Church⁶: «a middle road between the excess of unregulated capitalism and the scourge of communism»⁷.

We should consider social market economy as the German variant between social liberalism and neoliberalism: while the first one stresses its attention in balancing individual liberty and social justice, the second concentrates on government spending reduction and supports extensive economic liberalization. Mixing the two approaches generates economic policies based, on the one hand, on legitimating an active role of government in facing social issues such as poverty, health care and education, and, on the other, on assuring freedom of trade and competition.

³ M. BORCHARD, *L’economia sociale di mercato alla luce della crisi economica internazionale*, in *Crisi, sussidiarietà ed economia sociale di mercato*, Camera dei Deputati, Roma, 2009, 26-28.

⁴ L. FUNK, *The Social Market Economy at Sixty: Path Dependence and Path Changes*, available at: www.kas.de/upload/dokumente/2010/06/60_Years_SME/funk.pdf, 96.

⁵ M. VOGT, *Towards a European social market economy*, available at: www.kaththeol.uni-muenchen.de, 1.

⁶ J. RIEGLER, *Eco-social market economy as a European Innovation*, in *Agric. Econ. – Czech*, n. 49, 2003, 101; D. CIRAVEGNA, *For a New Humanism in the Economy*, in *The EuroAtlantic Union Review*, vol. 1, n. 1, 2014, 51-79.

⁷ A. HEISE, Ö. GÖRMEZ-HEISE, *The Social Market Economy Revisited: The German Variety of Capitalism in Retrospect*, in *Izmir Review of Social Sciences*, Vol. 1, n. 1, July 2013, 6.

The expression of social market economy is also considered to be an «idealand»⁸: as a matter of fact, the Lisbon Treaty only introduces a «general trend towards a more serious commitment on the part of the E.U. to becoming more social oriented»⁹. But those commitments are often more petition principii than concrete policies to enhance social growth and protection.

The concept of social market economy has changed reasonably because of the social and economic alteration triggered by globalization and particularly by the worldwide financial crises that influenced international, European and state *modus agendi*¹⁰.

Anyway, despite the new challenges arising from the above cited elements, social market economy is considered to be the very «reasonable means of achieving a balance within society that is capable of tempering the ecological and social burdens of increased international competition»¹¹.

The «highly competitive social market economy», as established in article 3 of the Lisbon Treaty, shows a clear pervasiveness of “the market” rather than “the social”: monetarism and financial conservatism policies have become the new credo of a *novus ordo* based on the *lex mercatoria*.

Social market economy is the chosen economic system for the European Union since the 1993 Maastricht Treaty enforcing market competition.

If we analyze the economic policies of the last two decades we barely notice the endorsement of a monetarist approach rather than a social oriented policy. Structural funds were to represent the European instrument for achieving the economic and social development of the weaker countries; the new European social model¹², participatory and inclusive, is still a distant goal; European parties are virtually nonexistent and social conflict is played only at a national level. Europe is perceived as an enemy of the

⁸ L. AZOULAI, *The Court of Justice and the Social Market Economy: the Emergence of an Ideal and the Conditions for its Realization*, in *Common Market Law Review*, n. 45, 2008, 1335.

⁹ D. FERRI, M. MARQUIS, *Inroads to social inclusion in Europe's social market economy: the case of State aid supporting Employment of Workers with Disabilities*, in *European Journal of Legal Studies*, vol. 4, issue 2, 2011, 48, available at: www.ejls.eu.

¹⁰ A. ANDREANGELI, *EU Competition Law in Time of Crisis: between present challenges and a largely unwritten future*, in *The Competition Law Review*, Vol. 9, Issue 2, July 2013, 91-118.

¹¹ WELZEL, R. VEHRKAMP, *Social market economy 2.0. An Appraisal in the Light of Current Reforms*, *supra*, p. 1.

¹² B.P. TER HAAR, *The growing potential integration capacity of the *acquis* of the European Social Model*, *European Integration online Papers (EIoP)*, Vol. 13, Art. 26, available at: <http://eiop.or.at/eiop/texte/2009-026a.htm>, 1-31.

European citizens and there's a growing distrust in Europe as an institution.

When Europe found itself in the midst of the crisis it took its decision with its "old" method, i.e. the intergovernmental one. The choices could only be those of financial rigor and control of public spending. All those decisions have alienated citizens from Europe.

The political question that has risen in the last months, especially as a result of the recent European election, is how to come out from the financial and economic crisis. Austerity policies have been the strategy adopted so far. A new political awareness is now pervading European Union member States and political actors are trying to change the way of facing the worst crises occurred in Europe since 1929.

"Functional" Europe has been the political fil rouge of the EU: no more State intervention, state aids under Commission control, public services under market rules, privatizations, monetary policies, Fiscal compact, all forms of social interventions are submitted to the competition rules endorsed in the Treaties.

Every country has tried to give strong responses to the crises. The Federal government of Germany, just like France and Great Britain, has put together two rescue packages for the banks assuring them an injection of many billions and at the same time has introduced package rules to stimulate the economy¹³. European central bank has "saved" some countries by bankruptcy (Greece) and has financially supported those countries such as Spain that needed financial injection of capitals¹⁴.

So far, no measures have been taken to face unemployment, to contribute to the development a new European social model, to promote policies in order to build a sort of a social New Deal for European people. Foremost principles of social market economy are now set aside because of the inner enemies of the European union economic strategies.

2. Financial control policy endorses a severe restraint in employing public finance: it means to realize a contractionary monetary policy. Indeed, this means to reduce state power of intervention in economy that is to say to reduce social policy objectives including

¹³ M. HELLSTEIN, C. KOENIG, *The European Commission's Decision-making on State Aid for Financial institutions – Good Regulation in the Absence of Good Governance?*, in *European Competition Law Review*, vol. 34, issue 4, 2013, 207 ss.

¹⁴ L. FERRARO, *La crisi finanziaria e lo Stato autonomico spagnolo*, in *Rivista AIC*, n. 4, 2012, 1-9, available at: www.associazionedeicostituzionalisti.it.

employment¹⁵, housing and education policy. This is a true characteristic of social market economy that seems to keep “the social” apart.

To be sure, the reduction of public expenses has become a necessary task above all in those public administrations (both central and local) accused of being inefficient and too expensive

as a whole. Anyway, the much debated anti-deficit policies have provoked high social costs in those countries with low growth rate, substantially accepting a high level of unemployment, beyond natural rate.

Indeed, the State cannot be reduced to spectator of poverty and growing inequality. History shows that without state presence warranting social security and social rights there is neither progress nor democracy.

Once closed the pages written by the *État providence*, regulatory state has taken its place¹⁶. The introduction of the European law has reduced the presence of the State in economic fields sacrificing its “natural” task of protecting social rights; the erosion of State sovereignty has contributed to reduce internal margins of intervention; political coordination by the European Commission has hardly reduced to the minimum the state power of determining autonomous agricultural and industrial strategies.

European authorities policies basically were to control budgets, thus slashing social rights, a true conquest of law and civilization. It happened that states couldn't spend anymore to protect social rights¹⁷ and at the same time they are claimed to solve financial problems by asking to pay more taxes. Anyway, anti-crises responses have to be realized by state members but are controlled by the European Commission and the European Central Bank. On the one hand, the State is called to reduce its power of spending; on the other hand, it is asked to solve the problem of unemployment.

This is probably one of the reasons why the European Commission, for instance, has recently promoted the modernization of state aids rules even to favor state intervention: the new regulation system has opened the doors to a more flexible and ex post control. Sin

¹⁵ R. SANCHEZ SALGADO, *'From 'talking the talk' to 'walking the walk': Implementing the EU guidelines on employment through the European Social Fund'*, *European Integration online Papers (EIoP)*, Vol. 17, Article 2, 2013, available at: <http://eiop.or.at/eiop/texte/2013-002a.htm>, 1-26.

¹⁶ S. CASSESE, *La formazione e lo sviluppo dello Stato amministrativo in Europa*, in S. CASSESE, P. SCHIERA, A. VON BOGDANDY, *Lo Stato e il suo diritto*, Il Mulino, Bologna, 2013, 37.

¹⁷ P. BILANCIA, *Il governo dell'economia tra Stati e processi di integrazione europea*, in *Rivista AIC*, n. 3, 2014, 7, available at: www.associazionedeicostituzionalisti.it.

ce the beginning of the economic crisis the Commission has authorized a growing number of state aids: from 202 legally granted aids to 636 in 2007 and to 964 in 2009¹⁸. The new state aid legal framework for 2014 is to modernize state aid rules and to change the balance of state aid control. One of the most important tasks of the new legal system aims at shifting state aid control from the Commission to the member states through an enlarged and simplified general block exemption regulation. It's a way to make states more responsible before both European institutions and markets in implementing aid schemes and ensuring efficient internal control.

The new general block exemption regulation n. 651/2014, for instance, simplifies rules as far as incentive effect, proportionality check, and transparency are concerned. With these measures, we believe we can deal with, at least in part, the economic crisis through direct aid to support employment policies, for small and medium-sized enterprises and so on.

Some doubt, however, it is legitimate to rise since it actually does not change the essence of the political control of state aid that remains one of the most effective tools of competition policy. It is not enough, in fact, in the increasing cases in which this regulation excludes prior notification to establish greater openness in favor of granting economic support measures. Not even raising the thresholds reduces the power of control of the Commission. The ex-post control is likely to be increased and, in any case, the conceptual assumptions of the modernization project are among its basic objectives, the reduction/control of public spending and competition policy, namely to control the possible distortion that may be produced as a result of excessive aids.

Indeed, a new approach is needed for Europe, rethinking a social market economy "purified" by the obsession of a high level of competition. This means not to give up to control high expenditure state levels but to improve social policies that may rise up employment and social protections.

3. One of the problems of the political strategy adopted by European institutions to face international crises is the absence of inter-State solidarity¹⁹.

¹⁸ D. FERRI, M. MARQUIS, *Inroads to social inclusion in Europe's social market economy: the case of State aid supporting Employment of Workers with Disabilities*, *supra*, 49

¹⁹ A. MORRONE, *Crisi economica e integrazione politica*, in *Rivista AIC*, n. 3, 2014, 5-6, available at: www.associazionedeicostituzionalisti.it, believes that, in spite of the "tricks" of the Court of Justice in interpreting the "No-Bailout" clause of article 125 TFUE (judgment *Pringle*, case 370-12) the financial support provided by MES is compatible with the Treaty. «Abstracting from the case, we can say that an

Instead of adopting measures to support the economy, the decisions made by the European authorities were to reduce public expenses and controlling public finance (the so called “austerity”) representing the ending point of a strategy addressed to compress social expenditure²⁰.

Indeed, this should not be appreciated as a surprise. After all Europe is not a confederation of states with normal mechanisms of fiscal federalism and a central government constitutionally invested of providing a permanent form of interstate distribution²¹ but it's just an organization basic ally built to comply with the market.

Basically the European Union should operate to reconstruct non-competitive and suffering economies of the southern Eurozone instead of insisting on austerity and reforms²². In other words, EU has failed to build a jointly liable community and has shown its weakness when a politic al direction in economy was necessary. The leading countries (that is to say the economic ally strongest ones) didn' t want to enhance a European common ground founded on the basis of solidarity presumably because of the inner politic al and electoral state interests.

The recent European elections have shown that many parties (mainly for domestic political reasons) have chosen to lead campaigns in the direction of anti-european slogans, particularly addressed against euro. At the beginning of the crises the proposal to mutualize debts through eurobonds was the signal of an “inner war” amongst member states to maintain their positions in the European economic scenario.

European solidarity is far from being realized because of a sentiment of isolation felt by the northern countries that feel encircled by inefficient and spendthrift southern ones: giving to other countries is perceived as a single state deduction rather than as common policy to help Europe as a whole.

Moreover, the politic al and economic discouraging performances of some of the member states have confirmed the idea (particularly supported by Germany, Finland and so on) that

original European interstate solidarity responsible principle takes form, which has a special meaning of its own in the current economic and financial crisis». In fact, «the Court found that the “no-bailout” clause was not intended to prohibit all forms of financial assistance by the Union or the Member States»: C. KOEDOODER, *The Pringle Judgement: Economic and/or Monetary Union?*, in *Fordham International Law Journal*, vol. 37, 2013, n. 1, 121.

²⁰ G. ALLEGRI, G. BRONZINI, *Sogno europeo o incubo? Come l'Europa potrà tornare ad essere democratica, solidale e capace di difendersi dai mercati finanziari*, Fazi Editore, Roma, 2014, p. 107.

²¹ C. OFFE, *L'Europa in trappola. Riuscirà l'Ue a superare la crisi?*, Il Mulino, Bologna, 2014, 42.

²² C. OFFE, *supra*, 63.

austerity should be going forth. Further burdens on national budgets have been imposed as a counterpart for the creation of the new emergency authorities leading to a paradox consisting in “punishing” the aided countries with harder economic measures, clearly incompatible (and may be incoherent) with European cohesion and solidarity principles²³.

The decisions adopted for Greece, for example, have been taken beyond European law.

The consequential Memorandum of Understanding between the Greek government and the Commission establishes an obligation of reducing public expenses and indicates the cuts to realize in the future. It also conditions Greece to realize structural reforms in labor market and public health. This is not the way to solidarity but a hegemonic approach aiming at tightening the knot.

European economic governance has another structural and thus inner limit that is a non-democratic legitimacy. While the Lisbon Treaty has favored a strong form of cooperation amongst member states, a parallel hybrid form of government took place: the so-called “Trojka system” is governing economic processes without involving European Parliament (now consigned to a marginal role)²⁴ and submitting state Parliaments to its decisions. That’s why the so-called “Spinelli Group” is trying to restore dignity to the only elected European institution that is the European Parliament²⁵.

4. In these circumstances, can social market economy principle be considered a (hopefully temporary) European illusion?

It seems that “the social” is still a forthcoming objective of the European Union and not a “constitutional” task. «For the “Social Market Economy” to function properly, a new balance is needed in which the state is granted stronger management functions so that it can – independent of special interests – foster institutional arrangements and implement macroeconomic policies that make the best possible use of the nation’s comparative advantages»²⁶.

May-be the social market economy to function properly needs a true “European Constitution” with its «safeguards against the excesses of power in both private and

²³ G. ALLEGRI, G. BRONZINI, *Sogno europeo o incubo?*, *supra*, 22.

²⁴ P. BILANCIA, *Il governo dell’economia tra Stati e processi di integrazione europea*, *supra*, p. 8.

²⁵ See its *Manifesto* at: www.spinelligroup.eu.

²⁶ A. HEISE, Ö. GÖRMEZ-HEISE, *The Social Market Economy Revisited: The German Variety of Capitalism in Retrospect*, *supra*, 13.

public forms»²⁷. Such a model, in fact, could work in countries whose Constitution has set as a barrier to the market drifts. These banks, more or less high, more or less strong, serve to ensure that the market does not break social cohesion. A strong welfare state could function in the absence of pressure from outside. Globalization and the creation of the single currency have shaken the external stability exposing national states to storm surges caused by the financial markets²⁸.

Facing the present challenges, the concept of social market economy should evolve in at least three directions.

First of all, «the model of social market economy needs to be based on a strong welfare state, especially in the light of the current economic and social challenges»; second, «[e]ducation is the key for successful economic development in resource-poor countries»; third, «[i]nstitutional reform and an eco-social market economy model on a global scale is the prerequisite for the survival of our civilization»²⁹. These proposals, suggested for Germany, can also be taken as an example to take Europe afloat as a whole.

Other Funk's statement can be a useful synthesis to point out that «[s]uch a new approach should place the emphasis on political and economic participation through social inclusion and gainful employment, on equality of opportunities through improved access and incentives for education and lifelong learning better ways to combine work and family and more efficient forms of dealing with financial resources as well as improved education in this matters»; moreover, it seems not compatible with social market economy that «huge profits in very risky businesses are privatized while as soon as losses occur the losses become public»³⁰.

To be sure, this is not quite an original assert considering the contents of social constitutions. It may be a new auspice to change policies, which is the very problem of the European Union.

Note also that the aims of a broader and deeper attention to social problems are currently allocated on the basis of the needs of controlling public finances. In this respect, the same states have given up, in a sense, to play their political role of security for the weaker social

²⁷ D. FERRI, M. MARQUIS, *Inroads to social inclusion in Europe's social market economy: the case of State aid supporting Employment of Workers with Disabilities*, *supra*, 51.

²⁸ See the reconstruction and the analysis made by G. GUARINO, *Cittadini europei e crisi dell'euro*, Editoriale scientifica, Napoli, 2014, 59 ss.

²⁹ M. VOGT, *Towards a European social market economy*, *supra*, 9.

³⁰ L. FUNK, *The Social Market Economy at Sixty: Path Dependence and Path Changes*, *supra*, 98

classes substantially favoring the address lines of financial markets and institutions of monetary control.

These brief remarks scarcely do justice of an unprecedented challenge for Europe as a community.

It's likely that the coming years will be dedicated to the reconstruction of the social bases of the European Union in a sort of post-functional approach based in particular on democratic legitimacy and a stronger solidarity between Member States, considering that the idea of social market economy foreshadows «an extremely flexible economo-political model based on the fundamental principles of freedom and social justice...that can be adapted to the steadily changing economic and social situation»³¹. Above all, by increasing EU competences as far as “the social” is concerned, in order to establish a social supranational polity in a «communauté de destin» based on an authentic and concrete «modèle social commun»³².

This could probably also return greater consensus on the European institutions, so far seen as the enemy of the achievements of constitutionalism.

Abstract: Questo breve contributo prende in esame alcune delle cause che impediscono all'Unione europea e alle altre istituzioni della crisi di applicare la parte “sociale”, per dir così, del modello dell'economia sociale di mercato, fra cui le politiche di austerità e la mancanza di solidarietà politica fra Stati nella particolare situazione di emergenza finanziaria.

Abstract: These short notes examine some of the causes that inhibit the European Union and the other international institutions (such as MES) to find a balance between the need to protect the competitive market and the protection of social rights.

Parole chiave: economia sociale di mercato – austerità – modello sociale europeo – diritti sociali – solidarietà interstatale

³¹ 31 P. SCHALLENBERG, T. BERENZ, *Social Market Economy for Europe?*, in *Church and Society*, n. 387, 10, translated from German by Mrs. A. Elmendorf-Pfeifer, Dusseldorf, available at: www.ordosocialis.de,

³² P. DEFRAIGNE, *Fédérer l'Eurozone sur un model social commun*, in *Revue du Droit de l'Union Européenne*, n. 2, 2013, 231.

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