

Social policy in the European Union: state of play 2018

Edited by

Bart Vanhercke, Dalila Ghailani and Sebastiano Sabato

Social policy in the European Union: state of play 2018

Nineteenth annual report

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Quoting this publication: Vanhercke B., Ghailani D. and Sabato S. (eds.) (2018)
Social policy in the European Union: state of play 2018, Brussels,
European Trade Union Institute (ETUI) and European Social Observatory (OSE), 196 p.

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Brussels, 2018
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Print: ETUI Printshop, Brussels

D/2018/10.574/25
ISBN: 978-2-87452-504-9 (print version)
ISBN: 978-2-87452-505-6 (electronic version)

Report commissioned from the European Social Observatory, asbl by the European Trade Union Institute and the European Trade Union Confederation.



The ETUI receives financial support from the European Union. The European Union is not responsible for any use made of the information contained in this publication.

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Acknowledgements

Social policy in the European Union: state of play 2018 is the product of a collective effort. We are grateful to Cécile Barbier, Stefan Clauwaert, Stéphanie Coster, Francesco Corti, Maurizio Ferrera, Dalila Ghailani, Max Koch, Ramón Peña-Casas, Slavina Spasova, Laurent Vogel and Mathijn Wilkens for producing high-quality submissions and accepting several rounds of (internal and external) review comments under tight time constraints.

Denis Bouget, Christophe Degryse, Béla Galgóczi, Anton Hemerijck, Manos Matsaganis, Frank Vandenbroucke and Fritz von Nordheim made important contributions, scrutinising the draft chapters, along with the book editors, in a critical yet constructive manner. The textual as well as substantive suggestions by Richard Lomax were essential for improving consistency and readability. The authors of the respective chapters naturally take full responsibility for any remaining errors and for the views expressed in this volume.

On the organisational side, we are indebted to Valérie Cotulelli and Eric Van Heymbeeck for formatting and ultimately producing the text.

We should also like to thank Rachel Cowler, who has been responsible for the translation from French; Richard Lomax for English-language editing; and Edgar Szoc for the translation from English to French as well as French-language editing.

Maria Jepsen and Philippe Pochet from the European Trade Union Institute and Denis Bouget (OSE and ETUI) provided essential input in the various stages of this publication. We thank them for their enduring support which has led to the publication of this nineteenth annual report on social policy in the European Union.

Preface

Responses to the 2008-2009 economic and financial crisis have, for several years, been dominated by fiscal consolidation requirements, creating pressures on national social protection systems. Increasingly however – as the economic and social costs of these policies have become more apparent and as domestic political pressures have increased – some EU players have started to pay more attention to the contribution of social policy measures to overcoming the crisis. Over the past few years, there has indeed been a growing awareness of the consequences of non-action for certain social challenges, including child poverty, the alarming number of young people ‘not in employment, education or training’ (NEETs), the disadvantaged position of women in the labour market and the divergence in living standards across the EU.

While some of the ‘old’ social challenges facing EU countries continue to weigh heavily – including population ageing and social exclusion of specific groups – the chapters of the present volume show that the ‘post-crisis’ era has also brought new challenges for social and employment policies. For instance: *how can social protection for those working in new forms of employment* (e.g. driven by the digitalisation of the economy) *be enhanced*; and *how can we ensure job quality and work-life balance in the context of new production models*?

The ageing of our societies implies more pressure on younger generations, who are finding it difficult to access stable, good-quality jobs and are often employed in non-standard forms of employment. After peaking at 23.7% in 2013, youth unemployment is decreasing, but is still above the level observed in 2008 (15.6%). Gender gaps in the labour market remain a key challenge. The female employment rate is 11% below that of men, and women in the EU suffer a significant pay gap (16.3% in 2015) as they tend to be employed in lower-paid sectors (European Commission 2018: 8). Another major set of policy challenges results from migration, both within the EU and from outside. An EU-wide survey conducted in 2015 and 2016 on migrants and minorities (EU-MIDIS II) shows that immigrants and ethnic minorities face widespread discrimination in all areas of life, especially employment (FRA 2017)¹.

These and other major demographic changes (e.g. increased intra EU mobility) will pose major challenges for the development of social protection and social inclusion

1. Higher rates of discrimination are experienced by Roma respondents and respondents with Sub-Saharan or North-African backgrounds, with low feelings of attachment to the country they live in and lower trust in public institutions (FRA 2017). Survey conducted in 2015 and 2016.

policies in EU Member States. National social protection systems in the EU perform among the best – in terms of legal and effective access to benefits for the population – in the world (ILO 2017). Nevertheless, they are increasingly facing the challenge of reconciling adequacy of social protection with financial sustainability, including for the self-employed and non-standard workers. In 2016, 23.5% of the EU population was assessed to be at risk of poverty or social exclusion. This share has decreased for the fourth consecutive year, and, in 2017, is approaching its lowest level of 23.3%, recorded in 2009. This percentage, however, conceals considerable variations between the EU Member States (from 13.3% in the Czech Republic to 35.6% in Greece and 40.4% in Bulgaria). The share of people facing severe material deprivation fell from 9.9% in 2012 to 7.5% in 2016, showing an improvement in living standards. Again, considerable differences exist between Member States (from 0.8 % in Sweden to 22.4% in Greece and 31.9% in Bulgaria)².

In spite of the positive trend, there is no room for complacency: the EU remains far from achieving the Europe 2020 target of reducing the number of Europeans living in or at risk of poverty or social exclusion by 20 million compared to 2008. Although declining in percentage, the total number of people at risk of poverty or social exclusion has *increased* in the EU: 118 million people were in this situation in 2016, about 800,000 more than in 2008 (European Commission 2018).

Starting from these formidable challenges, the first part of *Social policy in the European Union: state of play 2018* starts off with an analysis of the ‘high-level’ political developments in 2017, assessing to what extent they are able to accommodate the EU’s economic, social and environmental objectives. In the aftermath of the shockwaves created by the planned British exit from the EU, existential debates about the future of (social) Europe characterised 2017, leading to a sharpening of the profile of the EU’s social dimension, but underlining the deep divisions among the Member States regarding the way forward. Sixty years on, as this 19th edition of *Social Policy in the EU* demonstrates, the EU’s social dimension is truly at a crossroads, requiring long-term reflection on the future of the EU. This volume contributes to this reflection by addressing this question: *does the European Pillar of Social Rights constitute a game changer for the EU’s social dimension?*

While the previous edition of this annual book suggested that differentiated integration might be a plausible way forward for the European project after Brexit (Vanhercke *et al.* 2017), developments in the EU in the past year show that there is very little appetite for the idea of such a ‘coalition of the willing’ taking the lead. While the scenario of Brexit spurring further disintegration cannot be completely discarded, the chapters of this book suggest that *incrementalism* – a slow process of interaction and mutual adaptation among a multiplicity of actors – will continue to drive European integration for the time being. The European Pillar of Social Rights (EPSR), serving as the EU’s new social policy framework, is an example of such incremental yet significant progress: while the solemn proclamation of the Pillar already had *some* tangible impact, it has

2. Eurostat: Severe material deprivation rate by tenure status [ilc_mddd17].

the potential of contributing to a more ambitious future ‘European Social Union’. The implementation of the Pillar can however not be constrained to purely ‘social’ policies: increasingly the focus will have to shift to ‘eco-social’ policies which do more than pay lip service to environmental concerns in social policy debates.

The second part of the volume describes and discusses the ‘day-to day’ policy development that took place during the past year in the social domain. These include the first steps in the implementation of the EPSR (pointing to a new EU legislative and soft governance agenda in the making), labour market issues and access to social protection of the self-employed, the impact of the digital transition on job quality and recent developments in the area of health and safety.

In Chapter 1, Maurizio Ferrera makes a plea for the construction of a fully-fledged European Social Union (ESU), with a view to enhancing the functional coherence and effectiveness of the Economic and Monetary Union (EMU) as well as its political legitimacy. He discusses the existing institutional building blocks that could be pieced together in a creative way to achieve this ambitious project. For Ferrera, an ESU should start as a limited but recognizable system of separate yet interdependent elements, subject (as in the EMU) to common rules and principles and aimed at sustaining/promoting two types of solidarity: a) a pan-European solidarity between countries and between individual EU citizens centred on supranational institutions, combined with b) more traditional forms of national solidarity, centred on ‘recalibrated’ domestic institutions.

Max Koch critically discusses current climate and sustainability policies in the EU in Chapter 2, which introduces alternative concepts such as ‘sustainable welfare’. Sustainable welfare integrates social inequality and environmental sustainability research and is directed towards the satisfaction of the human needs of everyone, now and in future, and within environmental limits. Since there are too few indications for an absolute decoupling of economic growth, material resource use and carbon emissions, the chapter pleads for less of a priority to be given to economic growth in policy making and recommends the development and implementation of ‘eco-social policies’ to simultaneously address inequality and sustainability concerns in Europe.

In Chapter 3, Sebastiano Sabato and Francesco Corti assess the effectiveness of the implementation of the EPSR in 2017 in terms of three dimensions: (a) its capacity to ‘revamp’ the EU social agenda; (b) its capacity to steer the direction of Member States’ policies, notably through the European Semester; and (c) the possibility of it influencing EU economic policies. The authors also compare the Pillar with the previous EU social policy framework – the Social Investment Package – to identify the elements of continuity and discontinuity. They conclude that the EPSR introduces a new approach to EU social protection and inclusion policies: a ‘rights-based social investment’ approach.

The Pillar is also at the heart of Chapter 4: Stefan Clauwaert examines the different legislative proposals and/or social partner consultations contained in the ‘European Pillar Package’ (26 April 2017) and the ‘Social Fairness Package’ (13 March 2018), which the Commission launched to implement the EPSR. The initiatives considered include the

revision of the Written Statement Directive, initiatives in the area of work-life balance, the establishment of a European Labour Authority and the revision of the Posting of Workers Directive. Particular attention is also paid, in each case, to the (diverging) positions of the European cross-industry social partners (ETUC, BusinessEurope, UEAPME and CEEP) and the effect ('collateral damage') this has had on the already weakened European social dialogue.

The diversity of labour market situations and access to social protection for the self-employed is analysed in Chapter 5: Slavina Spasova and Mathijn Wilkens show that the self-employed can no longer be perceived as archetypal representatives of the well-off liberal professions. Some are 'entrepreneurs' with good working conditions but others are 'vulnerable' and 'concealed' self-employed who struggle with precarious working conditions and low incomes. With regard to social protection, the self-employed have less statutory access and greater difficulties in accumulating entitlements than salaried workers. The chapter also discusses the growing political awareness of and initiatives regarding these issues, particularly at the European level.

In recent years, as Chapter 6 describes, the world of work has been radically transformed by the introduction of digital technology. Ramón Peña-Casas, Dalila Ghailani and Stéphanie Coster discuss the changes in job and employment quality which have resulted from the increasing use of digital tools, highlighting the major developments underway. Digitalisation, in addition to its potential benefits, brings greater exposure of European workers to psychosocial risks by enabling work to become more flexible and more intense, and generates feelings of alienation and depersonalisation of work. The issue of skills seems to be crucial, suggesting a need not only to improve the adaptability and quality of the available labour force, but also to encourage the development of cross-cutting skills.

In Chapter 7 Laurent Vogel explains that the launch, in May 2016, of the revision of the Directive on the prevention of occupation cancers came as a surprise to followers of European social policy. Since 2004, the volume of new legislation in this area had indeed dwindled, in contrast to the ambitious production of new rules between 1989 and the end of the last century. Upward harmonisation of working conditions in Europe is still a stated objective, but far fewer actual initiatives have been launched. This chapter analyses the factors behind the renewed law-making activity in this area. It considers whether new measures are also likely in relation to other aspects of occupational health: clearly, one swallow doesn't make a summer.

In the concluding chapter, Bart Vanhercke, Sebastiano Sabato and Dalila Ghailani point to a sharpening of the profile of the EU's social dimension during 2017. They discuss how the EPSR could contribute to the European Social Union and answer this important question: *why should it be different this time?* Crucially, the concluding chapter provides proposals for developing a stronger EU social dimension – including a pan-Eurozone unemployment insurance, a new balance between the social and economic dimensions and taking the Sustainable Development Agenda seriously.

The chronology by Cécile Barbier summarises the key events of 2017 in the area of social and economic affairs, beginning with Malta taking over the Presidency of the Council of the EU in January and ending with the Spanish elections on 21st December 2017.

The European Social Observatory has worked with the European Trade Union Institute and renowned external scholars to draw up this year's edition of the book. Through this collaborative publication, we aim to contribute to the debate between policymakers, social stakeholders and the research community, while providing accessible information and analysis for practitioners and students of European integration.

We again look forward to engaging in a dialogue with you over the crucial issues addressed in this volume.

Bart Vanhercke, Dalila Ghailani and Sebastiano Sabato (OSE)
Maria Jepsen and Philippe Pochet (ETUI)

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All links were checked on 14.11.2018.

Part I

High-level politics: accomodating the EU's economic, social and environmental objectifs

Chapter 1

The European Social Union: how to piece it together

Maurizio Ferrera

Introduction¹

Over the last decade, ‘Social Europe’ has followed a U-shaped trajectory. In 2009, the Lisbon Treaty assigned clear and ambitious objectives to the Union: social progress, full employment, a high level of protection, inclusion and non-discrimination, social justice, equality between women and men as well as solidarity between generations and the protection of children’s rights (Art. 3 TEU). Economic, social and territorial cohesion and solidarity among Member States were also explicitly referred to. Not all national constitutions are so explicit and exigent. Many observers in fact welcomed the Lisbon Treaty as the culmination of (and at the same time as a springboard for further strengthening) the long process of mutual opening up and convergence between Member States: an economically beneficial and at the same time socially and politically sustainable ‘coming together’ of European state-peoples.

The financial crisis and the ensuing great recession brusquely halted this ‘conciliatory’ trajectory, resurrecting the logic of ‘socially frigid economism’ which had characterized earlier phases of European integration (Mancini 1988). Fiscal stability and market conformity have become the top priorities, underpinned by a new institutional framework based on strict supranational surveillance, discipline, conditionality and the threat of financial sanctions. Socio-economic convergence has given way to new divergences and antagonisms, opening a fault line between the creditor countries of the North (core Europe) and the debtor countries of the South (the so-called periphery). In the wake of the Eastern enlargements, growing tensions have emerged around the issue of free movement: more specifically, access to domestic labour markets and welfare benefits for other European Union (EU) nationals (not to speak of third country nationals). It was mainly due to this aspect that the integration process witnessed its first dramatic reversal: Brexit.

As the economic crisis started to subside, the developmental curve of Social Europe veered gradually upwards again. Over the last few years, supranational institutions and some national leaders (French President Emmanuel Macron especially) have inaugurated a new socially-friendly discourse. Some practical steps of reconciliatory politics and policy have been undertaken, for example through the Juncker Investment

1. This chapter was written in the context of my ERC project REScEU - Reconciling Economic and Social Europe: the role of ideas, values and politics (ERC AdG 340534).

Plan (including the social realm), as well as greater ‘flexibility’ in the application of fiscal rules. The Commission has revamped its social agenda, culminating in November 2017 with the official proclamation of the European Pillar of Social Rights (EPSR) at the Gothenburg Summit (see Sabato and Corti, this volume).

In this chapter I argue that, building on what is already in place, the time is ripe for seriously considering the establishment of a fully-fledged European Social Union (ESU). Section 1 briefly introduces this notion, its main mission and its internal structure. Section 2 discusses the possible role of the EPSR within an ESU, while Section 3 argues in favour of a strengthening of EU social citizenship, taking advantage of the EPSR. Section 4 addresses the thorny issue of how to strengthen pan-European solidarity. The Conclusion wraps up and outlines some possible scenarios for the future.

1. The European Social Union: what’s in a name?

Contrary to the famous maxim of Roman emperor Justinian (*nomina sunt consequentia rerum*: names follow from the essence of things), contemporary social sciences argue that institutions are the product of an original act of naming, ‘creating’ novel collective meanings, symbols, goals, commitments and organizational forms (Douglas 1986; Searle 2010; March and Olsen 1989). Only after a name has been coined can the process of institutional development and differentiation run its full course. The new ‘entity’ is provided with clear empirical referents (e.g. a target group, a set of policy tools, an organizational and legal scaffolding) and with practical resources to impact on social reality. Apart from their names, few elements of new institutions are entirely ‘new’ at the time of birth. What typically happens is a gradual and creative re-assemblage of diverse institutional pieces already available in the pertinent context. Such creative re-assemblage changes the *Gestalt* (the form of perception and representation) of the pre-existing elements and the logic of their functioning, setting them on a new synergic course.

By re-naming the European Community a European Union and declaring the birth of the Economic and Monetary Union, the Maastricht Treaty, in the early 1990s, kick-started a quantum leap in the process of political and economic integration which is still under way. Social policy issues were however for the most part relegated to a Social Protocol, while the public debate continued to use the rather ambiguous term ‘Social Europe’, a term unfortunately not designating a definite institutional entity – as is also the case with the similarly vague notion of the European Social Model. These ‘names’ are not fit for purpose, as they lump together the horizontal dimension (*‘le social dans l’Europe’*) and the vertical dimension (*‘l’Europe dans le social’*) of social protection without clarifying their mutual connection and interdependence, their division of labour and potential synergies and, last but not least, without outlining a comprehensive system of governance. The reconciliation of the economic and social aspects of European integration must involve a far-sighted initiative of linguistic and symbolic innovation as a precondition for institution-building. We have an Economic and Monetary Union. We must pronounce the birth of a fully-fledged institutional counterpart: a European Social Union (ESU). The year 2017 sealed the adoption of the European Pillar of Social Rights

(EPSR), an important and valuable step forward, but not enough. We need an ESU as a wider container, certainly comprising the EPSR, but not coterminous with it.

In the intellectual realm, the ESU already ‘exists’. The name was originally launched by Frank Vandembroucke (2013) and its substance was further detailed in the context of the High-Level Group set up by Friends of Europe (Vandembroucke with Vanhercke 2014). In recent years, the notion of an ESU has become the subject of a vibrant intellectual debate (Vandembroucke *et al.* 2017), acquiring the status of a unifying policy concept encompassing the earlier and more limited concept of social investment (Hemerijck and Vandembroucke 2012). It is now time to fill this expression with recognizable empirical contents. I suggest that we already have a sufficient set of ingredients to start the re-assembling process and thus move from the symbolic to the policy realm.

Here is a tentative list of such ingredients:

- the ensemble of social protection systems of the Member States, all based on the common traditions of a ‘social market economy’ and ‘social dialogue’, but characterized by notable differences in their specific schemes and institutions, in their logics of market-correcting, and the ranges of risks covered. National systems are also internally differentiated, as revealed by the growing profusion of social initiatives and programmes at regional and local levels (Halvorsen and Hvinden 2016). Since their key feature – in the context of our discussion – is the close link between social protection institutions and domestic territories and jurisdictions, we can define this component as the *National Social Spaces*;
- the ensemble of social schemes and policies characterized by a cross-border element. Most of these initiatives involve regions, under the legal umbrella of European territorial cooperation. But another interesting development on this front is the creation (mainly by the social partners) of cross-border occupational insurance schemes for pensions and health care benefits. This component may be called *Transnational Social Spaces*;
- the novel membership space – coterminous with the EU external borders – within which all bearers of EU citizenship enjoy a common ‘title’ bestowed upon them by the Union in order to access the benefits and services of the place in which they choose to settle. From the 1970s onwards, the EU has had a structured legal framework for the coordination of Member State social security systems, and since 2011 a directive regulates the cross-border mobility of patients in the field of healthcare. Let us define this component as the *EU Mobility Space*;
- the ensemble of those supranational policies with an explicit social purpose, be they of a regulative or (re)distributive nature, directly funded by the EU budget (if they imply spending) and based on either hard or soft law. This component is the *EU Social Policy* in its proper sense;
- the set of objectives of a social nature contained in the Lisbon Treaty, including those that allocate responsibilities between levels of government and define

decision-making procedures in this field. Given the supremacy of EU law over national law, such objectives and rules constitute the general framework guiding the other four components. We can call this component the *EU fundamental social principles*.

The five components are all in place and in flux. They obviously are not on an equal standing, and national social spaces will keep their predominant role for a long time to come. We know however that integration has made their boundaries more porous and flexible, their policies more adaptive to interaction and coordination dynamics, more plastic at the margins of innovation and experimentation. Prior to the crisis, an overall process of mutual hybridization and at least partial convergence was clearly under way – slow-moving, but likely to have a systemic impact (Hemerijck 2013). The current decade has largely reversed this trend (Andor 2017; Palier *et al.* 2018). Thus, the challenge today is to rescue convergence by enhancing overall steering capacities, so that the five components can be made to work in sync, with mutual reinforcements. Addressing this challenge also implies rethinking the relationship between an ESU and the Economic and Monetary Union (EMU), in order to limit reciprocal negative externalities. If this process is to be steered according to EU fundamental social principles, then we need to devise a broad ESU template capable of sustaining two different types of solidarity: a pan-European solidarity between countries (and all individual EU citizens *as such*) centred on supranational institutions, and more traditional forms of national solidarity centred on domestic (and regional/local) institutions.

An ESU would be something very different from a federal welfare state as found in the so-called historical federations (such as the United States and Switzerland) (Obinger *et al.* 2005), in which the process of bottom-up unification took place at a time when the constituent units had barely started to address social problems. Although with some delay compared to unitary states, central authorities were thus able to standardize and/or establish *ex novo* federal social schemes and programmes. The construction of a European Social Union would take place within an entirely different developmental context, i.e. against the backdrop of extensive nation-based welfare states. This historical fact sets objective limits to ambitious forms of supra-nationalization, as already predicted by Stein Rokkan many years ago (Ferrera 2019). Thus, an ESU would represent an unprecedented ‘coming-together’ process involving already existing welfare states, allowed to maintain their ‘legitimate diversity’ (Scharpf 2002), but (i) committed to mutual adaptation based on jointly defined criteria and (ii) open to engage to a certain extent in risk-pooling. The fact that the EU has its own budget, fed by semi-automatic contributions and ‘own resources’ already sets it apart from any other type of multi-state regional organization, implicitly signalling the presence of a modicum of social federalism – based on inter-territorial transfers – within its institutional architecture. But compared to the historical federations, ESU-building will be a novel adventure of large-scale institutional experimentation.

Anton Hemerijck has dubbed ESU a ‘holding environment’ (Hemerijck 2013), i.e. ‘a zone of resilience based on shared values and a common purpose, matched by competent institutions, in times of painful adaptation. The function of a “holding environment” is to mitigate stress and thereby uphold the integrity of national welfare

states, but also to maintain pressure to mobilize rather than overwhelm domestic reforms with only disciplinary intrusion'. Stemming from child neuro-psychiatry (Wincott 1964), the 'holding environment' concept has been subsequently elaborated by management sciences. For the latter, a holding environment is 'a social system that serves to keep people engaged with one another in spite of the divisive forces generated by adaptive work' (Heifetz *et al.* 2009: 305). Resting on a mix of collective safety and mutual collaboration, on the one hand, but also systemic pressures to engage with policy problems and institutional recalibration, the 'holding environment' concept has indeed high analytical and symbolic potential in the context of our ESU discussion. The challenge is how to fill it with empirical content, building – as I propose – on those institutional components which are already available.

The word 'environment' evokes a notion already used above: 'space'. An ESU would be a political and institutional space (more precisely, a meta-space), in two senses. First, and obviously, it would be a territorial space, including all Member States and their citizens/residents, and with an outer border coterminous with the EU frontiers. Territorial closure is a necessary feature for organized collective sharing and solidarity: defining a 'who' comes prior to any discussion about 'whats' and 'hows' (Ferrera 2005). Second, an ESU would be a membership space, tying its participants to the respect of common values, the pursuit of common objectives and compliance with rights and obligations in a wide sense. As with the EMU, without prejudice to the fundamental social principles, the rules of mobility and the social *acquis*, an ESU could provide for some margins of membership differentiation, based on opt-in and opt-out clauses. Each Member State would preserve the core elements of its social protection tradition and design, taking advantage of the opportunities offered by those EU social measures for which it qualifies, engaging in EU-supported/regulated transnational social initiatives and, last but not least, sharing the burdens of ESU membership.

By providing a new institutional assemblage and a new *Gestalt*, ESU could overcome the ambiguities of Social Europe. In the first place, it would clarify once and for all (hopefully) that an integrative European social protection (and the underlying normative objectives of 'solidarity' and 'social justice') has at least three distinct dimensions: national, transnational and supranational. While these dimensions have the potential to clash with each other, this is not inevitable, provided they are properly recognized as such and deliberately reconciled. Secondly, and as a consequence of this, an ESU would be based on the premise that social protection must move towards a multi-level architecture, allowing for a network (rather than a hierarchy) of links among the five components and favouring synergies and mutual adjustments. While the internal interlinkages of an ESU is obviously key to its success, its construction must not lose sight of inter-institutional relations, so to speak. As mentioned, if an ESU is to become the counterpart of the EMU within the overall EU framework, the two Unions must gradually come to terms with each other, in a logic of 'institutional complementarity'.

In what direction should the creative re-assemblage of the five components proceed? Answering this question requires demanding exercises of political and institutional imagination. What is needed are both grand visions and circumstantial policy ideas to serve as seeds or wedges for change. It took about two decades – the 1970s and 1980s – to

generate, by trial and error, a detailed and consensual blueprint for the EMU. The design of this blueprint ran parallel with policy experimentations and incremental innovations (e.g. the monetary ‘snake’ of the Seventies, followed by the European Monetary System in 1979). Even though we have a ‘name’ which is fit for purpose, ESU construction has just made its first steps in the intellectual realm – yet only as a general aspiration. Even a brief inventory of the potential building blocks currently available would fall way beyond the scope of this chapter. Let me however make some remarks about two components which are of special interest for this volume: EU social policy and the EU mobility space. In 2017 the former witnessed, as noted, a highly significant institutional innovation: the EPSR. In the wake of Brexit, the latter has in turn become a highly contested issue. It thus seems more than reasonable to start from here.

2. The European Pillar of Social Rights: an operational arm of fundamental social principles?

Architectural metaphors have accompanied European integration since its very beginning. Already in 1948, the West European Union was described as a ‘cornerstone’ for post-war reconstruction. The pillar metaphor made its appearance in the 1980s – again in reference to defence cooperation – and then became a semi-official symbol for illustrating the reformed ‘three-pillar’ structure of the EU after Maastricht. European Commission President Juncker spoke of an EPSR for the first time in his State of the Union speech of 2015. In April 2017, the Pillar was the subject of a Commission Recommendation, later jointly signed by the European Parliament, the Council and the Commission.

What role can the EPSR play within the context of a wider European Social Union? The key ingredient (and also the most politically appealing) of the new expression is that of ‘European rights’. The legal status of the EPSR is, however, ambiguous. The text speaks about ‘principles and rights’, specifying that the Pillar reaffirms some of the rights already present in the Union’s *acquis* and that it also adds new principles, which however require dedicated measures or legislation in order to become legally enforceable. This ambiguity has led some commentators to consider the new initiative as mere phrase-mongering (see Sabato and Vanhercke 2017 for a review of positions). This judgement is however too hasty. To gauge the significance of the EPSR and its potential in respect of ESU, some conceptual clarifications are needed.

What exactly are ‘rights’? Following the tradition of Max Weber, we can define rights as sources of power (*Machtquellen*). There are three distinct types of resources which back the actual exercise of any right. First, there are normative resources. Holding a right means having legitimate reason to claim compliance by others: horizontally from fellow citizens (e.g. non-discrimination in the workplace) and vertically from political authorities (e.g. fair treatment by social administrations). Secondly, there are enforcement resources: if compliance is not obtained, the right-holder can activate legal coercion. Thirdly, there are instrumental resources: the availability of practical conditions for the full exercise of a right. In the case of social entitlements, for example, the state sets up social insurance systems and networks of public services,

provides information, advice, procedures for accessing and delivering benefits and so on. While the second type of resources (enforcement) is what makes rights (and, by extension, citizenship) 'hard', in contemporary liberal-democratic societies we should not underestimate the importance of the other two types: normative and especially instrumental resources. The former operate at the ideational and motivational level, while the latter facilitate the actualization of rights. In addition, both may play a role in the process of rights adjudication in courts of law.

We know that even when it adopts binding norms that indirectly impinge on national citizenship, the EU cannot provide enforcement resources directly to citizens. The EU does however provide normative resources (if only through soft law) and, in particular, instrumental resources. I suggest that the main role of the EPSR in terms of citizen empowerment could and should result, initially, from its capacity to exploit in a coherent and systematic way its motivational and actualization potentials.

The EU already offers a wide array of programmes and services facilitating the exercise of social rights legislated by supranational, national and even subnational authorities. Many programmes underpin intra-EU mobility (e.g. EURES, ERASMUS and EHC), while others make possible, complement and strengthen national initiatives, e.g. through the Structural and Cohesion Funds, some sector-specific funds – such as the European Globalisation Adjustment Fund (EGF)² or the Fund for Aid to Deprived People (FEAD)³ – or dedicated initiatives such as the Youth Guarantee. The added value of the EPSR should be that it acts as a broad framework capable of linking, enhancing and expanding such types of initiatives as instruments for the actualization of the Pillar's rights, leveraging the ideational and motivational power of its normative principles. The recent proposal – explicitly linked to the EPSR – for a Regulation for the establishment of a European Labour Authority (ELA) is a good illustration of the way in which the Pillar can take on form at grass-roots level.

In the ESU context, the EPSR could thus be seen as a sort of intermediary between the EU fundamental social principles, on the one hand, and all the other ESU components, on the other. In its preamble, the Pillar makes explicit and detailed reference to the pertinent articles of the Treaties, with Art. 12 stating that:

'The aim of the European Pillar of Social Rights is to serve as a guide towards efficient employment and social outcomes when responding to current and future challenges which are directly aimed at fulfilling people's essential needs, and towards ensuring better enactment and implementation of social rights'.

2. The European Globalisation Adjustment Fund was established in 2006 to provide support to people losing their jobs as a result of major structural changes in world trade patterns due to globalisation, e.g. when a large company shuts down or production is moved outside the EU, or as a result of the global economic and financial crisis.
3. The Fund for European Aid to the Most Deprived (FEAD) was established in 2014 to support Member State measures of material assistance to the most deprived, accompanied by social inclusion measures (Madama 2016).

In this formulation, the EPSR's 'guiding' purpose nicely relates to the above-mentioned ideational and motivational dimension, while the purpose of 'ensuring enactment and implementation' relates in turn to the facilitation and actualization dimension. In other words, if appropriately and strategically exploited and despite its soft character, the EPSR could play an important role within a future ESU. Even prior to that, it could already start to pave the way for its eventual establishment.

3. Movers and stayers: reconfiguring EU citizenship

The reference to 'rights' explicitly connects the Pillar to the language of citizenship and social entitlements which has become so culturally and institutionally entrenched in the European tradition. In 1992 the Maastricht Treaty created an unprecedented form of supranational citizenship, transforming nationals into multi-level citizens whose rights, duties and political memberships are determined not only by their state, but also by a political union of which their state is a member (Bauböck 2017). EU citizenship has often been characterized as mere 'market citizenship' (Shuibhne 2010): the most visible and tangible rights (in the hard sense) are in fact those of free movement. As already mentioned, the crisis has brought to the fore a growing tension around the issue of free movement within the mobility space (for a debate: Ferrera and Bauböck 2017). In various Member States, Brexit has sparked harsh controversies about who should be entitled to access national labour markets and social protection systems. While the main targets of public debates have been refugees and, more generally, economic migrants from third countries, contention has also arisen over the rights of EU nationals when moving within the Union. The academic debate has shown that resentment against non-nationals is more widespread among the so-called 'stayers', i.e. citizens who do not take advantage of free movement. Instigated by right-wing populist parties, large segments of the latter now blame the EU for having forced Member States to surrender their prerogatives of border control and of giving precedence to nationals (Ferrera and Pellegata 2017). Since EU citizenship is precisely what entitles free entry into, and non-discrimination within the domestic labour market and welfare system of any Member State, it runs the risk of eliciting rancour and enmity instead of mutual bonds and recognition.

In principle, there are three strategies for responding to the growing tension between stayers and movers (Van Parijs 2017). The first can be dubbed as the 'all movers' strategy and would consist in converting as many stay-at-homes as possible into movers. Since total conversion would obviously be impossible, let us say that such a strategy would involve persuading the stayers to internalize the functional and normative rationales of mobility as a collective benefit. But, as mentioned, empirical evidence tells us that an increasing number of stayers do not (or no longer) buy into that view. Thus the 'all movers' strategy is no solution, but instead risks aggravating the political problem. The second strategy is 'retreat', i.e. curtailing those elements of free movement rights that cause the problem. There is certainly room for some steps in this direction: for example, some limits could be placed on the constantly increasing judicialisation of EU citizenship (Schmidt 2017). The mobility regime can be partially reconfigured to make it more restrictive through secondary legislation alone, i.e. without needing to change the Treaty. There is however a third strategy, which can be dubbed as 'Caring Europe' – a term first

submitted to EU leaders in exactly this wording by a group of scholars during the UK presidency of the EU in 2005 under Tony Blair (Giddens 2006). How exactly might this latter strategy be pursued in the present situation – and more generally in the context of the ESU project? In line with the reasoning proposed above, the starting point should be a creative reconfiguration of what is already in place. There is already a profusion of EU-related (sponsored, co-funded, directly managed by the EU) initiatives that cater mainly to the stayers. They are currently dispersed, not linked to a single symbolic umbrella, and often not even perceived as having a significant EU component. In the delivery process at local level, there is a risk of this component remaining hidden from the eyes of final users (Madama 2017).

The two above-mentioned EU funds already target stayers. The EGF was introduced precisely to compensate national/resident workers for the negative employment effects of economic ‘opening’; in its turn, the FEAD was established to respond to the social shocks caused by the euro-crisis and the great recession. A substantial increase of resources for these two funds, accompanied by focused communication and popularization initiatives, would certainly be a move in the right direction. Another possibility could be to integrate into a single ‘EU guarantee’ scheme the Youth Guarantee scheme (never fully implemented: Andor and Vésely 2018) and two other schemes currently under discussion within the Commission: the Skills Guarantee and Child Guarantee (Council of the European Union 2016; European Commission 2017). Such a single guarantee scheme could operate by means of a voucher to be spent on services. The European Social Fund (ESF) has already experimented with similar schemes at local level, for example in the region of Lombardy where the EU co-funds an ‘Employment Unified Endowment’ (*Dote Unica Lavoro*) consisting of a cash transfer and a voucher for training and re-insertion services. Lombard citizens seem aware of the fact that the EU is involved (ESF 2017). But more can certainly be done to enhance the visibility – and thus the legitimation – of such schemes, even in regions such as Lombardy which have gone some way to achieving this.

A recent ambitious proposal – the so-called Prodi-Sautter Plan – could even break new ground in empowering the stayers (Fransen *et al.* 2018). The plan outlines a broad roadmap for boosting investment in social infrastructure, under the coordination of the EU. The objective is to mobilize public and private resources to fill the investment gaps in fields such as education and training (childcare facilities, schools, universities, training establishments), health and long-term care (hospitals, medical technologies, elderly care) and affordable housing. The EU has traditionally promoted and supported vast economic infrastructures for transport, telecommunications and energy, upholding free movement and intra-EU trade. It is now time to provide equivalent support to infrastructures catering for the social needs of local territories and communities – i.e. where the stayers live. It is interesting (and refreshing) to note that the Prodi-Sautter Report clearly identifies not only the functional, but also the political mission of the plan, i.e. its capacity to make the EU more ‘caring’, with tangible benefits at the grassroots level.

In order to make all stayers aware of the broad (and hopefully increasing) set of EU-related support measures – including those potentially arising from the Prodi-Sautter initiative – a smart move would be to introduce a practical tool capable of making

citizens/residents more aware of (and also easing access to) such support. One idea is the introduction of an 'EU social card', available to all European citizens. This card could integrate into a single document all already-existing (or envisaged) cards: the EU Health Insurance Card (EHIC), the European Student Card and the EU Disability Card. A single card would become a tangible good, with a high symbolic potential, capable of fostering collective identities, we-feeling sentiments, and membership perceptions. This proposal goes beyond the planned introduction of a European Social Security Number, as it would include the 'stayers' and not only the 'movers'. In this regard, it is closer to the idea of an 'EU social security card', launched by the European Parliament. However, it would be even more ambitious, as it explicitly serves not only administrative purposes (i.e. informing citizens about their rights) but also political objectives (enhancing citizenship-mediated identity and legitimation).

The emphasis on instrumental resources facilitating the exercise of social rights may seem unambitious and low-key, but they have the advantage of being practical and can become operative without Treaty changes or major legislative innovations. Given the weighty legacy and inertia of national regimes, incrementalism is the most promising policy strategy for the EU today for achieving short- and medium-term results – and this holds true also for the implementation of the EPSR and the creation of ESU – provided that both remain firmly anchored in a broad and ambitious vision of the future.

4. Pan-European solidarity: the hardest nut to crack

There is agreement in the ESU debate that it should rest on two types of solidarity, guided by different criteria: pan-European solidarity between countries and between individual EU citizens, centred on supranational institutions; and the more traditional forms of national solidarity, centred on domestic (and regional/local) institutions. Always very delicate, the issue of Pan-European solidarity has become even thornier in the wake of the crisis. Academic discussions on this topic have mainly concentrated and rested on either normative or functional arguments. The former defend (or reject) the principled desirability of cross-national solidarity, given the deep network of ties now linking the Member States. The latter try to establish whether the Monetary Union and the Single Market, in order to function properly (i.e. efficiently and effectively), require a number of 'social corollaries' implying some risk-pooling and the presence of some market-correcting and centralized 'visible hand' (Vandenbroucke 2017). Both types of arguments acknowledge the ultimate political nature of pan-EU solidarity by underlining the need for consensus and common will by national governments. But they fall short of spelling out which exactly are the political obstacles to institutional change and how they might be overcome. Even prior to this, normative and functional discussions skirt a more fundamental question: what would be the political implications of an ESU? Is it possible to outline a free-standing political justification of this proposal?

A tenet of political theory in all its variants is that a territorially organized collectivity cannot survive and prosper without the diffuse support of its members, i.e. a set of general and positive evaluative orientations towards the collectivity as such and its authority structure, providing diffuse support capable of motivating compliance

beyond self-interest. Historically, organized solidarity has played a key role in political legitimation by nurturing positive feelings about the effectiveness and fairness of the territorial government. Just like external security and internal peace, the welfare state has gradually established itself as a basic political good, i.e. an instrument serving the purpose of facilitating social cooperation, managing conflicts, sustaining generalized compliance and thus, ultimately, ‘keeping the polity together’. There can be little doubt that the EU and the Monetary Union are currently suffering from a legitimacy crisis: populist parties are not just questioning EU policies but are challenging the EU polity as such – and Brexit is going to tear apart an important piece of the latter. To what extent can we conceive an ESU (and specifically, its pan-European solidarity component) as an instrument for re-legitimizing the EU and thus as an antidote against political centrifugation?

The answer must come in two steps. As mentioned above, legitimation does not hinge on specific support, i.e. interest-based approval of contingent functional performance, but on overall output performance. A basic social norm in contemporary democracies is that institutions and public policies must abide by a logic of instrumental effectiveness in respect of voters’ needs and aspirations. In the eyes of a significant number of citizens and parties, the problem with the EU is, precisely, that ‘it does not work’, that it is out of sync with popular demands and needs. The functional justification for an ESU (specifically: the introduction of certain EU-level automatic stabilizers) is precisely that it is necessary for re-establishing the effective performance of the Monetary Union and the Single Market. An ESU’s contribution to such re-establishment would thereby also operate *ipso facto* as a vehicle for politically re-legitimizing and re-stabilizing the EU polity. Though analytically distinct, the political justification for ESU would rest on the shoulders of functional performance.

Diffuse support rests however not only on effectiveness, but also on fairness. Citizens must feel that the territorial government abides by the general norm of somehow representing the collective interest, taking care of all sectors/strata of the population, however weak and peripheral. One of the arguments voiced by Eurosceptics is precisely that the Union does not represent collective interests and does not rule by norms of fairness. Note that, in the political argument, what matters are not general conceptions of the common good or distributive justice, but the empirical presence of widely shared beliefs that the government (the EU) is indeed credibly inspired by norms of fairness. The Caring Europe strategy illustrated above would aim precisely at (re)activating such beliefs by explicitly and deliberately implementing the fundamental EU social principles, enhancing EU social policies and making them more visible to citizens – whether movers or stayers. Alongside the fairness dimension, the political justification becomes free-standing in respect of both normative and functional arguments.

One possible objection is that in the current situation the proposal for (let alone the construction of) a more solidaristic EU would aggravate the legitimation problem rather than solving it. Any move towards a ‘Transfer Union’ would in fact increase and embitter existing political conflicts around the EU. To the extent that it is genuinely political (and not functional or normative in disguise), this objection must be broken down into two distinct propositions: 1) the EU lacks the cultural preconditions (in a

very broad sense) for a strategy of political legitimation involving any significant form of organized collective solidarity; 2) given the extant conflict constellation and the rise of Euroscepticism, no step in this direction is politically feasible. Both propositions rest more or less explicitly on the hypothesis that there has been a clear shift from ‘permissive consensus’ to ‘constraining dissensus’ within national public opinions, emblematically represented by the rise of Euroscepticism (Hooghe and Marks 2009). Though obviously empirically grounded, the constraining dissensus argument has two limits. First, by focusing on the public opinion side, it soft-pedals the role played by the elite (including mainstream elites) in having prepared a fertile terrain for the voters’ dissensus. Second, it tends to overestimate the extent and depth of such dissensus. Both points are key for a realistic political justification. It may well be the case that the legitimation crisis has resulted from elite choices and mistakes, thus being largely self-inflicted. And it might equally be the case that there might be more cultural predispositions for a Caring Europe than meet the critic’s eyes.

An increasing body of empirical data seems to support the latter hypothesis. A mass survey conducted in autumn 2016 in the context of the EU-funded REScEU project (Ferrera and Pellegata 2017), shows that wide majorities of citizens would indeed favour steps in this direction, including in Germany. Popular support for a larger EU budget aimed at promoting economic and social investments, for helping people in severe poverty and for providing financial help to Member States experiencing a rise in unemployment has majority support in all of the six countries covered by the survey: Spain, France, Italy, Germany, Sweden and Poland. Results have been confirmed by a similar survey covering also Austria, Cyprus, Greece, Hungary, Ireland, the Netherlands, Portugal and Slovakia (Gerhards *et al.* 2018) and by a more recent YouGov survey (Genschel and Hemerijck 2018). Obviously, surveys must be treated with care, as they only provide snapshots of attitudes at one particular moment and we know that attitudes are volatile. Mover, they indicate citizens’ preferences, but not necessarily their saliency in voting behaviour. Finally, responses are sensitive to the way in which issues are framed and formulated. For these reasons, surveys only register contingent ‘value expressions’, not necessarily indicative of genuine value judgements and of a stable and internalised collective moral order. But these limitations should not be overrated. The fact that attitudes may easily change means in fact that that they are plastic and thus amenable to cuing on the part of elites, through issue-framing and discourse. And it cannot be assumed *a priori* that value expressions are entirely devoid of internal and stable commitments.

On this basis, it can be suggested that a ‘silent majority’ seems to be potentially available for supporting a strategy of realignment between the deep *de facto* interdependences created by the EMU, on the one hand, and the EU’s institutional and symbolic architecture, on the other. The absence of such a strategy represents a clear failure of European political elites. As mentioned above, elective (choice-based) partnerships based on forward-looking objectives turn onto fully-fledged families of nations to the extent that their leaders engage in some fraternal nudging. The exercise of ‘socioemotional leadership’, capable of developing a collective fraternal idioculture has become difficult in a world increasingly based on fluid social relationships, self-seeking behaviours and rational-legal authority (Brint 2001). But the EMU elite has made great steps in the opposite direction, emphasising difference and apartness between national

communities and their governments, denigrating – also symbolically – any mechanism of mutual support, promoting a historically unprecedented rule-based formalization of political authority: almost a deliberate recipe for undermining the conditions of polity maintenance.

I mentioned above that the EU cannot develop into a fully-fledged federal welfare state. But it must at least establish a ‘holding environment’ for the safe functioning and adaptive flourishing of national welfare states. In my view, such an environment should also serve a ‘polity maintenance’ function, i.e. conceived and pursued with a view to safeguarding the Union’s survival and durability.

To some extent, the problem of forging and combining inter-territorial and inter-group solidarity was already addressed during the historical process of welfare state-building. National risk-pooling is the key pillar of institutionalized solidarity in the European tradition. The introduction of national (even if occupationally fragmented) compulsory social insurance is typically seen as the birth certificate of the welfare state as such (Alber 1982). In the historical federations, an important turning point was also the setting-up of federal mechanisms for ‘equalizing’ the fiscal resources of the various territorial units, initially, to ensure the local absorption of asymmetric shocks, later to compensate for geo-economic or socio-demographic disadvantages (Burgess 2005; Müller and Keil 2013). In both cases, polity-building motivations played a prominent role (Ferrera 1993). Outside the European context, one interesting experience is that of Canada – the only federal system which has explicitly created a ‘Social Union’ among its ten provinces (Fortin *et al.* 2003). As in the EU, the notion of a social union made its first appearance in intellectual and political debates during the second half of 20th century. To promote non-discrimination and equal opportunity and to safeguard mobility rights, the Canadian federation adopted a Charter of Rights and Freedoms in 1982 and then proceeded to (re)define national objectives and binding standards of service throughout the entire nation. In 1999, the provinces and the central government signed a Social Union Framework Agreement (SUFA). This not only confirmed and defined the rights and standards of all Canadians regardless of their residence (as does the EPSR), but also confirmed and re-regulated intergovernmental financial relations, including the co-financing by the central government of some provincially-administered social protection schemes as well as fiscal equalization measures. To some extent, the Canadian Social Union can be regarded, in other words, as a holding environment for ‘welfare provinces’ (*‘le social dans le Canada’*) on top of a certain number of pan-Canadian schemes and fiscal transfers run directly from Ottawa (*‘le Canada dans le social’*). The implementation of SUFA – under changed macro-economic conditions - has experienced ups and downs, possibly providing political and institutional lessons for building ESU.

Several proposals to enhance cross-national economic solidarity are currently under discussion among EU leaders and institutions. Among the most ambitious are a common Eurozone budget to sustain economic and social convergence, possibly under the guidance of a dedicated EU Finance Minister, the expansion of the remit of the European Stability Fund – including the introduction of a dedicated credit line for asymmetric shocks – and an EU unemployment reinsurance fund. These innovations

are currently being discussed under the umbrella of EMU governance. By making the latter more transfer-oriented and socially friendly, they would create valuable institutional complementarities with an ESU, possibly even acting as bridges between the two. And with the passing of time, a strengthened ESU might be able to steer the functioning of these new instruments not only in accordance with a logic of economic effectiveness, but also of social fairness.

Conclusions

This chapter has argued strongly in favour of a fully-fledged European Social Union. Its formal establishment is of course merely presumptive and its functional and political effectiveness may well be disputable. Those who nurture more clamorous aspirations are likely to be disappointed, at least initially, as an ESU would not be much more than a formal re-assemblage of already-existing elements. But in politics a lot can be achieved through symbolic actions and small policy changes: a mere discourse about an ESU, an act of ‘naming’ and a smart packaging of its first measures could have a significant impact.

We should also remember that national welfare states did not come about through big bangs: with a few exceptions, their beginnings were quite modest and it took a long time to build momentum. Institution-building resulted from social and political conflict around redistributive issues. Conflict dynamics served both to cement horizontal alliances among the disadvantaged and to promote vertical exchanges between rulers and the ruled. Solidarity and political justice became irreversibly intertwined through the democratic process. In the historical federations, claims of social justice intersected with claims of territorial justice. In some critical historical contingencies (the New Deal in America, World War II in Switzerland), big leaps forward in terms of both interpersonal social and inter-territorial solidarity resulted not only from bottom-up pressure from the workers’ movement, but also from a top-down logic, based on the interests/wishes of incumbent political authorities – local and federal – to preserve stability and consolidate polity in the face of acute functional challenges, social unrest or dire emergencies. One of the lessons from the above-mentioned Canadian Social Union experience is the key role played by central authorities and some provincial leaders in forging the political climate which made SUFA possible.

The topic of political leadership has slipped into the background of EU studies. But without responsible and far-sighted leaders, institution-building – and in particular the creation of novel institutions – has little chance of success. The most vocal players in Europe’s political arenas seem now to be Eurosceptics and supporters of *souverainisme*. As mentioned, survey data reveals that there are large ‘silent majorities’ who still support EU membership and more integration, including more pan-European solidarity. It is to be hoped that such voters will be able to find suitable candidates in the run-up to the 2019 European Parliament elections. While the latter will not be the last opportunity for establishing an ESU, it would certainly be a pity to miss it – and probably a huge political mistake.

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All links were checked on 2.10.2018.

Chapter 2

Sustainable welfare, degrowth and eco-social policies in Europe

Max Koch

Introduction

Environmental thresholds are being approached or crossed (Steffen *et al.* 2015). In the case of climate change, scientists agree that the increase in the average global temperature over the past century is due in large part to greenhouse gas emissions, primarily stemming from fossil fuel combustion and landuse changes such as deforestation. In its Fifth Assessment Report on the Physical Science Basis for Climate Change, the Intergovernmental Panel on Climate Change (IPCC 2014) highlights that concentrations of CO₂ and other greenhouse gases in the atmosphere have risen to levels unprecedented for at least the last 800,000 years, with the burning of fossil fuels the main reason behind a 40% increase in CO₂ concentrations since the Industrial Revolution. The International Environmental Agency reports that global carbon emissions hit another record high in 2017¹. In recent decades, climate change has impacted natural and human systems on all continents and across the oceans. By the end of the 21st century, the IPCC projects the global surface temperature increase will exceed 1.5°C relative to the period 1850-1900 in all but the lowest and most optimistic scenarios considered. However, it seems increasingly likely that this threshold will be exceeded, causing uncontrollable climate change with frequent droughts, floods and storms plus largely unpredictable climate feedback effects. Other scenarios predict global temperatures to rise by as much as 4.8°C. Coupled with the unprecedented speed of the temperature rise, this is far outside the experience of human civilization. Warming of 4°C or more would expose more than 70% of the world's population to deadly heat stress, while 3°C is regarded as a crucial factor for the extinction of more than 50% of species (Ramanathan *et al.* 2017). The risks of abrupt and irreversible changes increase with the magnitude of the warming. Many aspects of climate change and its associated impacts will continue for centuries, even if anthropogenic emissions of greenhouse gases are stopped fairly soon. Beyond 2100, the IPCC expects warming to continue, the Arctic sea ice cover to shrink and thin and the Northern Hemisphere spring snow cover as well as the global glacier volume to decrease further.

Though the most negative impacts on human livelihoods are expected to occur in the developing countries, there are also significant implications for European populations. Direct risks include more heatwaves, forest fires and rising sea levels threatening coastal communities. Indirect effects for Europe include a degraded coastal infrastructure

1. See <https://www.nytimes.com/reuters/2018/03/22/world/asia/22reuters-energy-carbon-iea.html>

impeding shipping, epidemics and rising levels of distress migration from tropical Africa and South Asia. The European Union (EU) is also likely to suffer from disruptions in vital energy and food supplies coupled with rising and volatile prices, disturbances in international economic networks and chains, growing restrictions on free trade and the corresponding weakening of global governance. Both direct and indirect climate change impacts will necessitate public investment and policy reconfigurations, whereby traditional social policies are likely to face increasing fiscal competition from prioritised environmental policies such as strengthening sea defences and removing housing from flood plains (Gough and Meadowcraft 2011: 494). This competition is likely to be aggravated by measures such as carbon budgets or carbon taxes aimed at reducing carbon emissions.

Ambitious climate policies have distributional repercussions which threaten to make them unpopular with electorates. These distributional effects have been addressed in theories of climate justice and in models of burden sharing between rich and poor countries (Roberts and Parks 2006; Koch 2012). Yet even within the rich countries such effects question the feasibility of decarbonisation strategies in economically advanced democratic societies. Different societal groups have different responsibilities for fighting climate change, and experience different impacts. Responsibilities and impacts often work in opposing ways, constituting a 'double injustice' (Walker 2012), since the groups likely to be affected most by climate change are the ones least responsible for causing it. If rich countries and, within the rich countries, richer households continue to pay less than what climate expertise regards as necessary, this may even turn into a 'triple injustice', since the poor are the least able to bear the financial burden of climate policies. For example, low-income households spend a relatively high proportion of their income on energy-intensive needs such as heating and/or cooling and would thus be hardest hit by a general rise in energy prices (Büchs *et al.* 2011). A growing body of literature (Fitzpatrick 2011; Koch and Mont 2016) argues that welfare policies qualitatively different from those that emerged in the post-World War II context will be necessary to counteract the distributional consequences of ambitious climate policy targets such as those set forth in the 2015 Paris Agreement.²

An alternative eco-welfare governance network would need to redistribute not only carbon emissions, but also work, time, income and wealth (Büchs and Koch 2017). Social policies will need to address the inequalities and conflicts that are likely to emerge as a result of the decarbonisation of production and consumption patterns (Pye *et al.* 2008) and it will be increasingly necessary to formulate them in ways creating synergies with environmental goals, yet also acceptable to the electorate. This chapter starts by comparing and contrasting possible government reactions to climate change: irrational optimism, green growth and degrowth (Section 1). Against this background it then critically discusses current climate and sustainability policies in the EU as a whole and in selected Member States (Section 2). Section 3 goes on to introduce the alternative concept of 'sustainable welfare', a concept integrating environmental sustainability and

2. At the Paris 'Conference of the Parties' (COP21) in December 2015, 195 countries adopted a legally-binding global climate deal. It sets out in general terms a global action plan to limit global warming to 'well below 2°C'. See https://ec.europa.eu/clima/policies/international/negotiations/paris_en

social welfare research. Section 4 recommends the development and implementation of ‘eco-social policies’ to simultaneously address social inequality and environmental sustainability concerns. The final section summarises the key findings and concludes.

1. Irrational optimism, green growth and degrowth

At its 2015 summit in Paris, the United Nations Framework Convention on Climate Change recognised that climate change requires global responses, with the rich countries (including the EU) bearing disproportionate responsibility for quickly reducing greenhouse gas emissions. To have a 66% or greater chance of staying below the 1.5°C target, a drastic reduction in emissions from 2020 in a straight line to zero (IPCC 2014) will be necessary. Policy initiatives to achieve this goal have to consider the fact that institutional and technological path dependency binds governments to the pursuit of growth. While EU Member State governments promote consumer freedom in their quest for economic growth, they are also responsible for protecting the social and common good and for defending ecological limits. In order to understand the different ways that governments deal with these partially contradictory goals and with climate change, Ian Gough (2011) suggests three scenarios.

The first scenario, ‘*irrational optimism*’, is associated with freer markets and technological optimism as well as with mainstream US Republican positions. The idea prevails that faster growth will ‘equip future populations to cope with climate change, mainly through adaptation ...’ (Gough 2011: 16). Favoured solutions are deregulated drilling for oil and fracking in combination with federal subsidies and loan guarantees for alternative energy sources, in particular nuclear energy, carbon capture and storage and ‘negative-emission’ technologies. However, the successful implementation of these technologies is also factored into the Paris Agreement calculations, extending the time period available for mitigating climate change. It assumes that during this century enormous negative emissions will be achieved by sucking several billion tonnes of CO₂ out of the atmosphere each year. Yet a number of leading climate scientists argue that there is no evidence that this will work on the required scale (Anderson and Peters 2016: 183). Though Anderson and Peters recommend making negative-emission technologies the subject of further ‘research, development, and potentially deployment’, they warn against proceeding with the mitigation agenda on the premise that such processes will work at the calculated scale. Instead, they call for adoption of the ‘precautionary principle’, i.e. developing climate change mitigation scenarios and targets based on existing and operational technologies.

The second scenario, ‘*green growth*’ or ecological modernisation, has been actively promoted by the Organisation of Economic Cooperation and Development (OECD), the World Bank, the United Nations (UN) Environment Programme as well as the EU and its Member States since 2011 (see OECD 2011). According to the proponents of green growth, the pursuit of environmental goals including climate change mitigation will require a much more active state than in previous decades, setting goals and targets, managing risks, promoting industrial policy, realigning prices and countering negative business interests. By reducing energy and material consumption and the EU’s dependency on

the fragile geopolitics of energy supply, providing jobs in the expanding ‘green’ sector and meeting carbon emission reduction targets, the intention is to achieve synergies between economic, ecological and also social welfare goals. Central to any evaluation of the feasibility of green growth strategies is the distinction between ‘absolute’ and ‘relative’ decoupling of gross domestic product (GDP) growth from carbon emissions and resource use. While resource usage has declined relative to GDP in a number of developed countries, they have either not done so in absolute terms at all or not to the extent needed to allow the Paris targets to be met (Koch 2012; Antal and Van Den Bergh 2014). Not only have improvements in energy efficiency in recent decades been offset by increases in the overall scale of economic activity, but the prospects for further improving energy efficiency in the future to the required extent are minimal. Indeed, comparative research (Fritz and Koch 2016; O’Neill *et al.* 2018) continues to indicate a strong link between the level of economic development measured in GDP per capita, on the one hand, and carbon emissions and ecological production and consumption footprints, on the other.

In many respects due to the lack of evidence for absolute decoupling of GDP growth, material resource use and carbon emissions, a third scenario has been tabled: that of ‘no-’, ‘post-’ or ‘degrowth’. There are now a range of heterogeneous approaches³ that have in common the questioning of what some describe as a structural ‘imperative’ (Daly and Farley 2010; Koch 2018) or the ‘obsession with growth in public policy’ (EuroMemo Group 2018) and a joint search for ecologically and socially sustainable alternatives. All growth-critical perspectives have a common starting point: that the ecological crisis and the increase in social inequality are basic features of high-consumption capitalism and its spread from North America and Europe to the rest of the world. The common goal is thus to re-embed production and consumption patterns into planetary limits through a decrease in material and energy throughputs, particularly in rich countries, i.e. including EU Member States. The emerging research perspective of ‘sustainable welfare’, introduced in Section 3 below, specifically addresses the role of social policy in an ecological and social transition beyond the growth imperative.

2. Climate and sustainability policies in the European Union

In Article 194 of the Treaty on the Functioning of the European Union, the EU has committed itself to an integrated energy and climate strategy based on the three principles of sustainability, energy security and competitiveness, seen as mutually reinforcing. ‘Decarbonisation’ is not only regarded as a means to reduce greenhouse gas emissions but also as ‘... an advantage for Europe as an early mover in the growing global market for energy-related goods and services’ (European Commission 2011a: 9). Hence, as the EU does not regard economic growth as conflicting with environmental sustainability targets, it follows Gough’s second scenario (Section 1 above), the ‘green growth’ strategy. The EU has decided to reduce its emissions by 80-95% by 2050 compared to the 1990 level (European Commission 2011b). To reach this long-term

3. For an overview of the different growth-critical positions see Khan and Clark (2016) and Büchs and Koch (2017).

target, it follows a ‘target and timetable’ approach, with progressively faster reductions of 20% by 2020, 40% by 2030, and 80-95% by 2050⁴.

The ‘green growth’ character of EU policies is especially exemplified in the architecture of goals, priorities, flagship initiatives and targets of the current Europe 2020 Strategy, which pursues ‘smart’, ‘sustainable’ and ‘inclusive’ growth (European Commission 2010: 3; for critical reviews of the 2020 Strategy, see Vanhercke 2011 and Sabato *et al.* 2018). Growth is meant to be ‘resource-efficient, sustainable and competitive’ at the same time. Displaying a somewhat rose-tinted view of the future, the Commission envisions the EU ‘prospering in a low-carbon, resource-constrained world while preventing environmental degradation, biodiversity loss and unsustainable use of resources’ (European Commission 2010: 12). On the one hand, the 2020 Strategy explicitly combines goals and initiatives on economic development, the environment and social welfare. On the other hand, however, it is often unclear how exactly these – allegedly mutually reinforcing – goals are to be combined. Koch *et al.* (2016: 710) note that the EU fails to explicitly discuss the ‘potential tensions between its ambitious climate targets and its other policy goals such as economic growth, material prosperity and social welfare.’ Having instead incorporated potentially conflicting policy goals in its 2020 Strategy, one can only speculate what will happen if it becomes obvious that one of these goals will not be met within the defined period. Will, for example, economic growth be slowed down if the Paris climate targets are not reached? This appears doubtful given the general priority put on growth and ‘market solutions’ in EU policymaking and, particularly, the fact that the Juncker Commission decided to withdraw environmental objectives from the European Semester Annual Growth Survey and the associated Country-specific Recommendations, leaving their pursuit to other policy domains. Not only does the EU refrain from prioritising environmental goals, but also the co-existence of a plethora of other non-environmental goals raises a number of policy coordination challenges. In practice, much of the burden to coordinate economic, social and environmental priorities to meet the goals defined at European level is left to the Member States (see below).

The main policy instrument through which the EU aims to achieve its climate targets is the EU Emissions Trading Scheme (EU ETS), covering 45% of total greenhouse gas emissions caused by power generation, manufacturing and aviation in the EU and EEA countries⁵. The 2020 target is to reduce emissions in the EU ETS sectors by 21% compared to 2005, while the 2030 target is to reduce them by 43%. Emission allowances are partly sold and partly allocated for free based on previous emissions (‘grand-fathering’). Companies have to apply for allowances based on their annual emissions. Allowances are tradable and carbon reduction requirements can be offset through projects in developing countries via ‘flexible mechanisms’. However, far too

4. In March 2007, the European Council adopted the ‘20 20 20’- strategy (European Commission 2007), setting three policy targets for 2020: a 20% reduction in emissions, a 20% increase in efficiency, and 20% of energy to come from renewables. The emission reduction and renewable energy targets are binding, while the energy efficiency target is a ‘soft’ target.
5. In addition, the ‘Effort Sharing Decision’ established binding annual greenhouse gas emission targets for Member States for the period 2013-2020. These targets concern emissions from most sectors not included in the EU ETS, such as transport, buildings, agriculture and waste.

many emission allowances were initially handed out for free, notably to economic sectors claiming that they would otherwise face a competitive disadvantage. As a result, the market price for a tonne of CO₂ fell to around 5 Euro in 2017 (EuroMemo Group 2018). This is generally considered as having virtually no effect at all on curbing emissions, amplifying the risk of locking in a high-emissions infrastructure for many years to come.

The key to the success of any carbon emissions market is whether it is possible to create scarcity for allowances, allowing price signalling to work. This completely failed in the first two trading periods and there is controversy over whether better results will be achieved in the nearer future. While some observers regard the design flaws of the existing policy instruments as repairable (Newell and Paterson 2010; Michaelowa 2011), an increasing number of authors do not consider it likely that existing carbon markets can be re-regulated – let alone extended to the rest of the world – in a way making a peak of global carbon emissions a realistic possibility in the relatively near future (Spash 2010; Lohmann 2011; Koch 2014). The latter authors regard policy alternatives such as direct regulation and the taxation of greenhouse gas emissions as more suited to meeting ambitious climate targets. Similarly, in relation to the post-2020 period, a joint statement of a coalition of non-governmental organisations (NGOs) issued in November 2017 expects little improvement in the effectiveness of the EU ETS and insists on the necessity of far-going structural changes (Climate Action Network Europe 2017a). The same NGO umbrella organisation highlights the problematic fact that the EU and its Member States continue to subsidise fossil fuels (Climate Action Network Europe 2017b). In addition, the European Environmental Agency (2016) expects that, under current policies, transport activity – the sector with the greatest share of emissions – is likely to continue growing, with an increase in related emissions. It concludes that the EU's 2050 decarbonisation objective can be achieved 'only in the context of a major transformation of the EU's socio-technical systems such as the energy, food, mobility and urban systems' (EEA 2017: 13).

In addition to the Paris Agreement, the international community, including all EU Member States, reached another key milestone for global sustainability in 2015. In New York, the UN unanimously adopted the Sustainable Development Goals (SDGs). These represent a comprehensive global agenda, comprising a list of 17 goals and 169 targets. Themes range from poverty, health, education and inequality, through to energy, infrastructure, climate change, peace and good governance. Many targets apply to the global North as well as to the global South. EU Member States have begun to translate the international SDGs into national sustainability strategies and targets. This requires the continuing improvement of governance networks to promote coherence between different challenges and policy areas (Koch *et al.* 2016). The corresponding policy challenges often transcend traditional organisational boundaries, administrative levels and ministerial sectors. The complex nature of the issues requires interlinked administrative responses involving multi-sector and multi-level solutions. Responses frequently imply horizontal coordination across policy sectors and areas of ministerial responsibility and/or vertical coordination across levels of administration.

First results from the *Sustainable European Welfare States* project⁶ covering Germany, Italy, Norway and the UK indicate that governance networks implemented to cope with these new governance challenges vary considerably from country to country (Takle *et al.* 2017). In Germany and Norway, lead departments have been established, tasked with coordinating policies, and their respective ministries of finance have a power of veto within the sustainability governance network. In Italy the ministry for environment is a key player, drawing up the national sustainability goals. In the UK, by contrast, the national SDGs are administered in different ministries and are thus subject to different coordination mechanisms.

Looking specifically at the crucial link between social and climate policies, this is addressed and conceptualised in different ways. In Germany, all government departments take account of this link, while in Italy, for example, this is not the case at all. In Norway, it is just the environmental departments which consider the link between social and climate policies, while the ministries of labour and social affairs do not. Overall, however, interviewees from different government departments in Italy, Germany, Norway and the UK have rather different, imprecise and partially contradictory views on the links and potential synergies between climate and social policies. Some cross-sectoral work related to the SDGs is emerging, but this is as yet largely limited to good intentions and ambitions. All countries have in fact fallen short of developing coordinated public policies for a sustainable welfare state and coordinated eco-social policies.

In sum, while the EU has recognised that climate change is a serious threat to human wellbeing and has committed itself to ambitious greenhouse gas reduction targets, it is doubtful whether the general policy strategy of ‘green growth’ and ‘decarbonisation’ via the establishment of carbon markets will deliver. On the contrary, carbon emissions covered by the EU ETS rose in 2017 compared to 2016⁷, while in relation to the post-2020 period Member States’ projections indicate slower, not faster emissions reductions (EEA 2017), putting the longer-term reductions way off track. Similarly, all attempts up to now to achieve synergies across economic, social and ecological sustainability targets in selected Member States give little reason for cheer. The remainder of this chapter therefore takes up Gough’s third policy scenario for dealing with climate change: the attempt to achieve social welfare within environmental limits and in the absence of economic growth.

3. Sustainable welfare without economic growth

Despite the necessity to link social welfare and climate policies, until recently there has been a lack of theorising on their intersection, with scholars tending to carry out research into the two areas without much cross-fertilisation. Social welfare is commonly

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6. Funded by the Norwegian Research Council, this project generates knowledge about how researchers and policymakers may tackle issues of social welfare and environmental sustainability in coordinated and mutually supportive ways across policy fields (see <https://blogg.hioa.no/sustainablewelfare/>).
 7. According to data provided by Sandbag (see <https://sandbag.org.uk/project/eu-emissions-rise-for-first-time-in-7-years/>), total EU ETS stationary emissions rose by 0.3%, from 1750 million tonnes in 2016 to 1756 million tonnes in 2017.

conceptualised in socio-economic terms, highlighting equity and distributive issues within growing economies in terms of GDP, while social policy is often seen as the public management of social risks such as ill-health or unemployment. Much current welfare literature focuses on the crisis of post-war welfare state arrangements and on the readjustments and recalibrations following the 2008 financial and economic crisis (Kazepov 2010; Hemerijck 2013). Conversely, environmental concerns, raised as early as the 1970s, remain largely ignored in social policy debates (Schoyen and Hvinden 2017). One exception to this rule is the International Labour Organization (ILO 2015; see Stevis and Felli 2015), which has issued guidelines for a ‘just transition’ towards environmentally sustainable economies and societies. Yet the majority of academic social policy scholars do not regard the direct and indirect climate change-related challenges as ‘social’ risks – and, as a corollary, continue to ignore climate change in their studies. Although much recent research suggests that Western production and consumption standards cannot be generalised to the rest of the world due to ecological and planetary limits (Fritz and Koch 2016; O’Neill *et al.* 2018), neither policymakers nor welfare scholars have paid much attention to the relevance and potential implications of ecological sustainability issues and climate change, in particular with regard to social policy and welfare theory.

The emerging concept of ‘sustainable welfare’ (Koch and Mont 2016) recognises the long-term implications of contemporary production and consumption patterns, and, accordingly, raises normative questions such as whose welfare should be represented in current welfare societies. Brandstedt and Emmelin (2016) argue that the distributive principles underlying existing welfare systems would need to be extended to include those affected in other countries and in the future. Current welfare provision would need to consider that satisfying present welfare demands should not undermine the ability of future generations to meet their welfare needs. This includes the recognition of critical thresholds and limitations, and also of the fact that needs, aspirations and wants must be reviewed – and possibly restrained. Hence, the understanding of climate change as a devastating threat, in particular, and the very idea of environmental sustainability, in general, constitute a challenge to ‘business as usual’ in social policy and have significant implications for the scope and direction of welfare policies, which need to give greater weight to distribution and justice across nations and generations. Within the concept of ‘sustainable welfare’, the key welfare concern is not the provision and distribution of material riches to the ‘happy few’ in Western societies, but rather the satisfaction of basic needs for all humans now and in the future (Koch *et al.* 2017).

In his recent work, Gough (2017) addresses issues of intergenerational concerns and universality in the context of climate change. Underlining the necessity to tackle climate change, he suggests ‘policy auditing’, a principle under which critical thresholds for a ‘minimally decent life’ are constantly (re-)defined in light of the advancement of academic and practical knowledge. While it is, in principle, possible to satisfy basic human needs on a global scale, the degree to which more than basic needs can be provided on a planet with finite resources remains subject to scientific inquiry. The sustainable welfare perspective may also constitute a theoretical and normative framework for redesigning existing policies in an ‘eco-social’ direction. As also recognised by the SDGs, achieving the Paris climate targets will require greater coordination of welfare

and climate policies. A range of eco-social policy proposals (Büchs and Koch, 2017) exist. If integrated into a comprehensive policy strategy, these have the potential to bring about a redistribution of carbon emissions, work, time, income and wealth in the rich countries, which scholars such as Daly and Farley (2010), Jackson (2011) and Gough (2017) regard as indispensable for a re-embedding of Western production and consumption levels within planetary levels (Steffen *et al.* 2015), while allowing development space for poorer countries.

4. Eco-social policies for sustainable welfare and degrowth

Gough (2017) recently advocated a three-stage process to reconcile wellbeing and welfare with planetary stability. For EU countries, the first stage would address improvements in eco-efficiency within green growth strategies. This would, in turn, require a shift from liberal to more coordinated forms of capitalism. The second, which he terms ‘recomposing consumption’, would require a shift from coordinated to a more reflexive form of capitalism. Though Gough (2017: 15) considers the third stage, ‘degrowth’, as in principle ‘incompatible with the accumulation drive of any form of capitalism’, he nevertheless highlights that a degrowth transition to a global steady-state economy is ‘ultimately – and quite soon – essential for our future prosperity, if not our very existence.’ First presented by ecological economist Herman Daly (see Daly and Farley 2010), a steady-state economy aims to keep the throughput of material and energy in production and consumption processes at sustainable levels and as low as possible. Of course, interim strategies, in which crucial significance is attached to social policy, are of vital importance as bridges between the three stages. For example, green growth and degrowth strategies do not necessarily have to be regarded as mutually exclusive if one stage leads to another. Indeed, some of the ‘eco-social’ policies referred to in this section may figure in both. However, I agree with Gough that, to have a realistic chance of staying within the 1.5°C range, green growth policies in the EU would need to turn into degrowth and sustainable welfare policies fairly soon. This would require a combination of bottom-up mobilisations of European citizens and top-down regulation or an ‘active interventionist “innovation state”, with substantial public investment, state banking, subsidies and other incentives to private investment and greater regulation and planning’ (Gough 2017: 197). The investment functions of social policy would need to be enlarged and more closely integrated with environmental investment.

Sustainable welfare is oriented towards satisfying human needs within ecological limits, from an intergenerational and global perspective. Accordingly, existing economic, social and environmental policy goals as well as material welfare standards would need to be reviewed from the aspect of their potential for generalisation. Beyond basic human needs, material welfare and wellbeing would be made secondary to environmental sustainability (Koch and Mont 2016). To effectively mitigate climate change and to simultaneously allow for the needs of all human beings to be satisfied now and in the future, production and consumption patterns would need to be organised in such a way that the global material and energy throughput and the associated biophysical flows do not exceed the critical levels identified by climate and sustainability scientists. Here, the EU could play a crucial role in helping create global institutions tasked with the ecological

governance of the world economy, even if these initially leave out Trump's America. Accordingly, economic growth as a policy goal would be deprioritised and replaced by biophysical parameters within which both global markets and regional, national and local economies can evolve. In EU countries, state 'eco-social policies' would generally need to address the 'double injustice' (as referred to in the *Introduction*) whereby the poorest household groups, i.e. the ones least responsible for such environmental damage as climate change, are worst placed to cope with mitigation and adaptation. For example, ecological investment in retrofitting houses has only a chance of being perceived as legitimate if it is accompanied by countervailing social policies that, among other things, assist homeowners in paying for ecologically useful measures.

Corresponding European public policy initiatives could be informed and guided by sustainable welfare and need theories. Gough's 'dual strategy' may provide a collective and critical way of distinguishing between basic needs and luxuries in a particular national or local setting (Gough 2017: 169). Accordingly, citizens, 'experts' and government representatives would work together in democratic forums to identify the goods and services necessary to satisfy a given need, and the level of satisfaction within a particular social and cultural context. One example could be 'social tariffs', i.e. energy tariffs adjusted to energy needs. While such schemes already exist in certain EU Member States, they would need to be extended and partially modified to distinguish between need components and luxuries. This would require energy companies to 'operate a "rising block tariff", with lower tariffs for initial units of electricity or gas consumed, and higher tariffs for successive units' (Gough 2017: 140). Hence, social tariffs would recognise the basic need component of the first block of household energy as well as the choice element in successive units. While the total average price of domestic energy would continue to rise over time, much of the financial burden would be directed towards high-consumption households.

Looking beyond the energy sector, and in relation to Gough's second stage of an ecological and social transition, European public and social policy initiatives can help adjust consumption. En route to a global steady-state economy, Western consumption rates would need to decrease disproportionately, allowing (future) citizens in other parts of the world to enjoy an improved material standard of living. For example, Daly and Farley (2010: 442) argue that on a planet with finite resources the present generation should develop a 'sense of obligation toward future generations', i.e. entitling the latter to the same development opportunities as the former. Overconsumption would be regarded as a 'negative externality', with such consumers required to pay for the negative impacts imposed on others. Again, sustainable welfare approaches may be applied to develop a safe 'consumption corridor' between 'minimum standards, allowing every individual to live a good life, and maximum standards, ensuring a limit on every individual's use of natural and social resources.' (Gough 2017: 197-198) More concretely, the EU and its Member States can encourage certain forms of consumption (for example, vegetarian diets, local holidays, the use of public transport and cycling) and discourage others (for example, eating meat, holidaying in distant locations, car and plane use). Kasser (2009: 178) suggests a threefold strategy involving a decrease in the extent to which people are exposed to lifestyle models of conspicuous consumption, for example by banning advertisements aimed at children; the support of people's resilience, for example, by

teaching individuals how to decode advertisement messages; and helping people to act in accordance with ‘intrinsic’ goals, for example by encouraging ethical consumption. Such policy initiatives may be facilitated by growing public dissatisfaction with consumerist lifestyles. According to Soper (2016), European citizens are increasingly disenchanted with the consumer culture because of its negative side effects such as time scarcity, high levels of stress, traffic congestion, and due to the increasing displacement of other pleasures of life and well-being by the shopping mall culture.

Ecological economists regard a redistribution of wealth and income both within and across countries and in an intergenerational perspective as a crucial element of a wider ecological and social transition. In degrowth circles, especially, maximum limits on income and wealth are seen as critical to maintaining global warming within the 1.5°C range. Upon reaching maximum income, people would be incentivised to devote their further energy to non-economic pursuits. However, there is a lack of concrete proposals as to how a maximum limit on income and wealth could be implemented for example in the EU. At the other end of the scale, various authors address structural inequality through either minimum or basic income schemes co-financed from general revenues, an increasingly progressive income tax, eco-taxes and/or from depletion and emission certificates auctions. Andersson (2009: 3), for example, assumes equivalence between basic income financed by green taxes and the distribution of equal and transferable rights to use scarce environmental resources and to emit a given quantity of greenhouse gases. A number of authors postulate a new fiscal architecture to finance a postgrowth economy and the associated sustainable welfare system. Jackson (2011), for example, suggests an ecological tax reform, the general direction of which would be a shift in the burden of taxation from ‘economic goods (e.g. incomes) to ecological bads (e.g. pollution)’. If the tax base were linked to the throughput of finite resources, external costs, which private enterprises currently enjoy as ‘free gifts’ from nature, would be internalised and taken into account in their cost calculations. Again, the EU could push for a global coordination of tax reforms and a shift in the tax burden from taxes on labour to taxes on activities causing environmental damage, high-carbon luxuries, as well as on profits and rental income.

However, Bailey (2015: 795) argues that the revenue surplus resulting from such reforms may well not compensate for the tax losses that rich countries would be exposed to in the absence of GDP growth. In fact, reduced ‘levels of (taxable) economic activity’ threaten the ‘public sector funding base of welfare states’ and impede ‘the state’s traditional mechanisms of “crisis management”’. Hence, if traditional and national growth–tax–expenditure models are no longer viable, democratic policy-auditing practices would need to delineate how welfare and environmental states may be recalibrated – and in all likelihood downscaled – to meet human needs within environmental limits. Since existing welfare states ensure – via the same redistributive mechanisms that limit social inequality – that a sizeable percentage of the population partakes in environmentally harmful consumption practices (Koch and Fritz 2014), smaller welfare states may be acceptable as long as these are embedded in economic systems that provide relatively egalitarian outcomes and costs related to inequality, (unhealthy) work-life balances and environmental deterioration. Society would then need to find democratic ways to legitimise appropriate policy auditing and state downscaling.

In this situation, scholars have started to debate the relations between postgrowth economics, remuneration, employment and work in more general ways (Martínez-Alier *et al.* 2010: 1746). Moving towards a postgrowth economy would entail a significant cut in the percentage of time spent in paid work, with the aim of reducing unemployment and distributing working time more evenly across the population, breaking the circle of working to earn to consume, enabling a better work-life balance, and freeing up time for activities such as childcare and personal care or for voluntary work. Reducing the working week is, for example, at the heart of Victor's resilience scenario for the Canadian economy. In it, Victor (2008: 371) suggests that employment could be spread more evenly among the workforce, allowing the 'benefits of greater productivity' to be 'directed towards more leisure time, rather than increasing GDP', with shorter working hours a key ingredient. From a more general theoretical perspective, such a readjustment of employment, work and other activities presupposes placing them 'on a more equal footing, rather than seeing "work" as signifying a deficit, or a less valuable human activity than "employment"' (Barry 2012: 139)⁸.

Conclusions

Climate change and the crossing of planetary boundaries are a serious threat to human civilization and welfare. There is now global political agreement (with the exception of the United States) that greenhouse gas emissions have to be reduced radically and very soon. The climate change mitigation policies required to maintain global warming within the 1.5°C range to which EU Member States have committed themselves will have far-reaching distributional consequences. Countervailing public policies of a new 'eco-social' type will be necessary to help poorer household groups bear the financial burdens of mitigation policies and to make ambitious climate goals acceptable to the European electorate. In contrast to right-wing populist discourses à la *America First*, which lack any sympathy with the fate of millions in the global South who are already victims of climate change to which they have not contributed, democratic and solidary politics should target a transition of European production and consumption patterns that make the socially inclusive achievement of the climate goals agreed in the Paris Agreement a realistic possibility.

This chapter first compared and contrasted feasible government reactions to climate change: irrational optimism, green growth and degrowth. The advantage of the green growth path – the path adopted by the EU and its Member States – is obviously that it does not make any enemies. Not accidentally, there is broad socio-economic and political support for this policy course, ranging from green to liberal parties and from trade unions to employers' organisations. The belief that climate change mitigation is compatible with a largely uncoordinated and finance-driven capitalism is also reflected in the 'market-oriented' mitigation policy adopted. The EU ETS has turned out to be a

8. This section has only reviewed a selection of current or potential eco-social policies able to facilitate the kind of ecological and social transition needed to effectively mitigate climate change. Further proposals, whereby European and national public policies could lead or support civil society initiatives, include the role of commons and the cooperative economy, communal forms of living as well as alternative monetary systems and local currencies (see Büchs and Koch 2017: 112-119 for a critical review).

welcome windfall for major energy providers, which were allowed to sell on, on climate stock exchanges, the surplus emissions certificates that they had received for free, but it has contributed next to nothing to effective climate change mitigation. Neither have EU Member States made much progress in creating synergies through better coordination of their economic, social and environmental policies. Most importantly, given the lack of evidence of sufficient absolute decoupling of GDP growth, material resource use and greenhouse gas emissions, it is becoming increasingly obvious that the green growth and environmental modernisation course will not be sufficient to reach the climate targets that the EU has set itself. Sooner rather than later, these approaches will need to be transformed into degrowth and sustainable welfare policy strategies. Unlike in the green growth stage, EU policymakers will then have to take hard decisions and to curtail the material interests of powerful groups, if the climate targets are to be more than just paper tigers.

In this situation, approaches and policy proposals are being developed – and should be supported through EU research funding – which are geared towards social welfare and the satisfaction of (basic) human needs within environmental limits while deprioritising economic growth. On the one hand, the development of degrowth and sustainable welfare approaches, as well as specific eco-social policy proposals designed to facilitate the transition towards a steady-state economy is encouraging, suggesting that the potential for a good life within environmental limits in Europe is far from exhausted. On the other hand, however, the diversity of this list of proposals indicates that these are still mainly studied within separate silos and with too little cross-fertilisation. Much theoretical and practical work is still needed to combine, complement and unify these as yet fragmented policy proposals into a coherent strategy for the economic, political and ecological restructuring of European countries and their re-embedding within planetary boundaries.

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All links were checked on 17.8.2018.

Chapter 3

'The times they are a-changin'?' The European pillar of social rights from debates to reality check

Sebastiano Sabato and Francesco Corti

Introduction: a new EU social policy framework¹

On 26 April 2017, after a broad public consultation involving citizens, stakeholders and public authorities in the Member States, the European Commission (EC) published a Recommendation on a 'European Pillar of Social Rights' (EPSR) (European Commission 2017a). It was accompanied by a Reflection paper on the Social Dimension of Europe (European Commission 2017b) and a broader 'Pillar Package'.

In this chapter, we consider the EPSR as a new *EU social policy framework*, i.e. a policy infrastructure putting together in a coherent manner the various elements of a public policy, from agenda setting to implementation. We argue that such an EU social policy framework could serve three functions, and that its effectiveness be assessed against them: (a) revamping the EU social agenda and revitalising the EU social policy arena; (b) steering the direction of Member State policies; and (c) influencing EU macro-economic and fiscal policies, thus rebalancing the EU social and economic dimensions.

Against this backdrop, the aim of this chapter is twofold. First, we provide a preliminary assessment of the first stages of EPSR implementation in 2017, in terms of the three functions identified above (Sections 1, 2 and 3). Second, we compare (Section 4) the Pillar with the previous EU social policy framework, namely the Social Investment Package (SIP) (European Commission 2013a). This comparison appears important in order to identify the strengths of the EPSR compared to previous initiatives and, by 'learning from the past', to address its weaknesses. Moreover, through this comparison one can clarify the relationship between the two policy frameworks: *is there continuity or rather discontinuity? Are the two frameworks rivals or do they complement each other?* As the scope of the EPSR is broader than that of the SIP (the latter essentially concerned social protection and inclusion policies), the comparison concerns only policies addressed in both frameworks, notably the Pillar's chapter on 'Social protection and social inclusion' (Chapter III) and the one on 'Equal opportunities and access to the labour market' (Chapter I)².

1. This chapter partly draws on the study 'Implementing the European Pillar of Social Right: what is needed to guarantee a positive social impact' commissioned by the Workers' Group of the European Economic and Social Committee (Sabato *et al.* 2018). The authors would like to thank Anton Hemerijck (European University Institute), Frank Vandenbroucke (University of Amsterdam) and László Andor (Hertie School of Governance) as well as the co-editors of this volume for their useful comments on previous versions of this chapter. The usual disclaimer applies.
2. We consider also the documents of the Employment Package (and Youth Employment Package), which was delivered in 2012 for the implementation of the Agenda for New Skills and Jobs, in order to compare the relationship between the SIP and the EPSR on specific aspects.

This chapter uses a qualitative research methodology based on an analysis of the relevant scientific literature and of primary and secondary documents, in addition to the findings from six semi-structured interviews with key EU-level informants, conducted between January and April 2018 (see list of interviews in Annex).

1. The Pillar as a means to revamp the EU social agenda

The first potential function of the Pillar is to revamp the EU social agenda by reinforcing social priorities, relaunching already existing debates and initiatives in the social domain and proposing new ones.

The April 2017 Package includes both legislative and non-legislative initiatives (see Sabato *et al.* 2018; Clauwaert, this volume). One example of the former is the proposed directive on Work-Life Balance for Parents and Carers. The non-legislative initiatives are the consultations of the social partners on access to social protection and on the possible revision of the Written Statement Directive.

While these initiatives are not new, their political importance should not be underestimated. As emerged from our interviews, the value-add of the EPSR consists, firstly, in having created *political momentum*, allowing the social debate in the EU to advance and accelerate (Interview 4 – ETUC).

At the time of writing (May 2018), the fate of these initiatives is uncertain. On the one hand, disagreements between the social partners during both the consultation and implementation stages of the Pillar, and their refusal to enter into formal negotiations on the initiatives mentioned above, are likely to limit EPSR implementation at both EU and national levels. On the other hand, the stance of the Commission appears determined, showing willingness to go ahead regardless of the results of the social partner consultation (the initiatives tabled so far are discussed in Clauwaert in this volume; Spasova and Wilkens in this volume).

This said, the initiatives proposed so far by the Commission mainly concern specific EPSR principles and rights: (a) principle 12 on social protection; (b) principle 7 on information about employment conditions and protection in case of dismissals; and (c) principle 9 on work-life balance. Only a few initiatives related to other principles, in particular to social inclusion (a policy domain where EU competences are limited), have been undertaken as yet (cf. Section 4.2).

In addition, the tabled initiatives are not part of a single, coherent implementation roadmap. According to one of our interviewees (Interview 3 – DG EMPL), this is a deliberate choice of the Commission, wanting to do what it can before the end of its mandate, without overstressing itself and working on too many unfinishable initiatives.

The ‘revitalisation’ of the EU social policy arena

In light of the above, one can argue that the launch of the EPSR has already contributed to revamping the EU social agenda. An important role in this respect was played by the 2016 consultation on the Pillar, characterised as broad, open and constructive. According to the European Commission (2017c: 4), the consultation included EU institutions, national governments and parliaments, experts and civil society, and the social partners. The Commission (*ibid.*) also reports that over 60 targeted events took place across Europe, involving more than 2,500 participants and that, at national level, dedicated consultation events were held in 27 Member States. Finally, more than 16,500 replies to the online consultation questionnaire were received.

The trade union movement has been especially active in this debate. In particular, besides presenting their position papers, the ETUC created a website³ through which national trade unions’ opinions on the Pillar and concrete proposals for its improvement were collected. As claimed by our ETUC interviewee: ‘[During the consultation] we moved the entire world’⁴. The same applies to EU-level social NGOs, which contributed greatly to the consultation with their proposals, opinions and remarks (Carella 2018; Sabato and Vanhercke 2017).

Among institutional players, the European Economic and Social Committee (EESC) and the European Parliament showed striking activism. The former conducted awareness-raising activities in the Member States, also gathering concrete proposals for the content of the Pillar. Between September and November 2016, it held debates on the EPSR in all Member States, bringing together employer organisations, trade unionists and representatives from civil society organisations (Sabato *et al.* 2018). The results of these debates were summarised in national reports.

The European Parliament similarly engaged in an in-depth debate on the Pillar (Vesan and Corti 2018), culminating in a common position (European Parliament 2017). Specific proposals for implementation were also tabled. The Parliament’s position on the EPSR is of particular interest because it is the result of a highly politicized debate, characterized by a complex interweaving of traditional forms of ‘vertical Euroscepticism’ motivated by resistance to Union interference in national welfare systems, and new forms of ‘horizontal Euroscepticism’ caused by mistrust between politicians from different Member States. As a compromise-result of this new conflict constellation, the resolution on the EPSR⁵ is of great value and legitimacy, constituting a helpful indication of how to tackle the conflicts set to hamper the development and implementation of the comprehensive agenda foreseen by the Pillar.

All in all, ownership of the Pillar by a number of institutional and social players appears rather high. These players also seem generally satisfied with the final contents of the

3. <https://socialrightsfirst.eu/>

4. According to the European Commission (2017e: 5) ‘The vast majority of online replies [to the public consultation] (more than 15,500) were a standard text in a campaign launched by the European Trade Union Confederation [...]’.

5. The EP resolution was adopted with a large majority: 396 in favour, 180 against and 68 abstentions.

Pillar, perceiving that a number of their remarks have been, at least to a certain extent, taken into consideration by the Commission in its Pillar Recommendation (Interview 1 – NGO)⁶. Nobody considers the Pillar as perfect, but it is considered at least as satisfactory, or, in any case, as the maximum result achievable in the current political situation (Interview 4 – ETUC).

The relatively high level of ownership by key players is not a secondary aspect. Indeed, the lack of ownership (especially at the national and sub-national level) was one of the key limitations of previous EU strategies (such as the Lisbon strategy) and of ongoing strategies such as Europe 2020. A high level of ownership reinforces EPSR legitimacy, which is now seemingly greater than that of other EU social initiatives and significantly enhanced by the Inter-Institutional Proclamation.

2. The Pillar as a means to steer Member State policies

As stated by the European Commission, '[...] **the Pillar establishes a framework for guiding future action by the participating Member States**' (European Commission 2017c: 6, bold in the original). Indeed, one of the key functions of an EU social policy framework is clearly to steer Member State social policies in the direction of EU orientations and recommendations. To achieve this objective, the Pillar should be integrated into other existing EU social policy instruments and processes to create a coherent EU framework promoting synergies between its various components.

Key elements of such a framework are EU legislation and social dialogue. This said, it is clear that, to ensure effective implementation, the Pillar should also be closely linked to available EU financial instruments, in particular the European Structural and Investment Funds (ESIF). For the moment, the links between the Pillar and financial instruments are limited to generic declarations on the need to mobilise EU funds. Obviously, this will depend on the new post-2020 Multi-Annual Financial Framework (MFF)⁷.

Rather surprising is the lack of links between the proclaimed Pillar and other 'soft governance' processes and instruments in the social domain. For instance, it is not clear how the Pillar will be linked to the mutual learning and reporting procedures of the Open Method of Coordination for Social Protection and Social Inclusion (Social OMC) and of the European Employment Strategy (EES), both of which have been largely integrated into the European Semester. Similarly, the links between the EPSR and the SIP have not been specified. What is more striking is the lack of any explicit connections between the Pillar and the overall Europe 2020 Strategy and, in particular, its social targets. The latter were indeed one of the main governance innovations introduced by Europe 2020 and their fate is now uncertain. In other words two questions arise: *are those targets still valid? If yes, how can the Pillar help in achieving them?*

6. For trade unions, see Sabato *et al.* (2018); for social NGOs, see Carella (2018).

7. The Commission proposal on the new MFF was presented on the 2nd May 2018 (European Commission 2018a). Despite an overall budget increase from 1.03% EU Gross National Income (GNI) to 1.11% GNI per annum, funds for cohesion policy have been cut by 7%.

Apart from its links with other social policy instruments and processes, the Pillar is not at all integrated into broader EU strategies such as the EU Sustainable Development Agenda. During the public consultation on the Pillar, a number of players raised the issue of the missing links between social and environmental rights (Frazer and Marlier 2016), but the Commission took no account of these concerns. This is an important *lacuna* since, as shown by Koch (this volume), social and environmental policies are intimately linked, representing, together with economic growth, key components of people's well-being.

All this said, the main vehicle for steering Member State policies undoubtedly remains the European Semester. In this regard, the question is: *how, precisely, will the Pillar be implemented through the European Semester, especially at national level?* So far, we have seen that the EPSR has been integrated very quickly into the first stages of the 2018 European Semester. In the following, we will assess to what extent the EPSR has been taken into account in the so-called 'Autumn package', i.e. the set of documents that kicked off the 2018 European Semester.

The 2018 European Semester: the Pillar as a 'compass'

On 22 November 2017, five days after the Inter-Institutional Proclamation of the EPSR, the Commission released the 'Autumn Package'. This includes the Annual Growth Survey (AGS) (European Commission 2017h), the draft Joint Employment Report (JER) (European Commission 2017i), the Alert Mechanism Report (AMR), the Recommendation for a Council Recommendation on the economic policy of the euro area and the draft euro-area recommendations for 2018, with a proposal to amend the Employment Guidelines to bring them into line with the EPSR.

Moving to the AGS 2018, it explicitly refers to the EPSR as a compass to boost social rights in Europe, highlighting the EPSR principles and objectives as essential for 'fair and functioning labour market and welfare systems'. In particular, the influence of the Pillar emerges clearly from the three main areas of the AGS, reflecting the three EPSR chapters: 'Equal opportunities and access to the labour market', 'Job creation and fair working conditions' and 'Social protection and inclusion to tackle inequality and poverty'.

Under the first two headings, the AGS 2018, for example, highlights the necessity of active labour market policies as a way to reduce youth and long-term unemployment, calling on Member States to invest in training, life-long learning and re-skilling programmes and to support greater infrastructure investment in such sectors as education and health. With regard to social protection and inclusion, the AGS 2018 stresses, for example, the need for well-functioning social protection systems providing benefit schemes for the unemployed and minimum income schemes, fostering labour market participation and ensuring equal access to quality services.

As regards the proposal for new Employment Guidelines (European Commission 2017k), again the effect of the Social Pillar is significant. In Guideline 5, 'Boosting the demand

for labour', for example, the new Commission proposal stresses the redistributive effect of the taxation system and encourages Member States to set transparent and predictable wage-setting mechanisms, while ensuring fair wages that provide decent living standards. In Guideline 6, 'Enhancing labour supply: access to employment, skills and competences', the Commission proposal focuses on the importance of life-long learning and quality learning opportunities, while the new Guideline 7, 'Enhancing the functioning of labour markets and the effectiveness of social dialogue', stresses the importance of preventing labour market fragmentation, of facilitating transitions to open-ended contracts and of prohibiting abuse of atypical contracts. With regard to Guideline 8, 'Promoting equal opportunities for all, fostering social inclusion and combating poverty', the new proposal suggests three strands of active inclusion: adequate income support, inclusive labour markets and access to quality services, in order to guarantee equal opportunities to everyone, in particular to the most disadvantaged.

Finally, the influence of the Social Pillar on the new Employment Guidelines is further reflected in the draft Joint Employment Report, which explicitly mentions the Pillar in its foreword and where the Commission uses the headline indicators from the Pillar's Social Scoreboard to analyze Member States' employment and social performance (see Section 3).

This said, it seems fair to conclude that the Pillar has been integrated into the key documents of the European Semester to a fairly satisfactory degree. Yet, at the time of the writing, the extent to which the Pillar will influence the next steps of the Semester (notably the Country Reports and the Country-specific Recommendations) remains to be established. Moreover, some problems have already emerged in the first-phase documents. For example, the Social Pillar's rights-based approach is not explicitly mentioned in the AGS 2018. It is 'in the air', though only a few concrete references to the term 'rights' appear in the AGS. In addition, the relationship between the economic and social orientations of the AGS remains blurred: social priorities are visible, but stability and growth remain dominant

3. The Pillar as a means to influence the direction of EU macro-economic and fiscal policies

The third criterion against which the effectiveness of the EPSR should be assessed is its capacity to influence the direction of EU macro-economic and fiscal policies, thus rebalancing the social and economic dimensions of the Union. This raises two questions. *What will be the relationship between the EU's social policies and economic and fiscal policies under the EPSR? And is the Pillar strong enough to encourage a rebalancing of the EU's social and economic dimensions, ensuring that economic and fiscal aspects are instrumental in the pursuit of the well-being of European citizens and in the promotion of their social rights?*

In order to answer this question, we will look at the new Social Scoreboard, the set of indicators used to measure Member States' social and employment performance.

The Social Scoreboard

The new Social Scoreboard (European Commission 2017d) is made up of 14 headline indicators and 21 secondary indicators (i.e. 35 in total), divided into 12 areas in which societal progress can be measured. The Scoreboard serves as a reference framework for monitoring the 20 EPSR principles and rights, in a 'tangible, holistic and objective way, which is easily accessible and understandable to citizens'. Its indicators are used in the European Semester cycle (see Section 2).

While the decision to create a new Scoreboard to monitor Member State employment and social performance should be welcomed, concerns may be raised as to how it has been implemented so far. In this respect, we identify four main shortcomings, all of them serving to weaken it.

First, the indicators were not jointly agreed between EU-level players, notably the Commission and the Member States. As explained by one of our interviewees (Interview 2 – SPC), the decision on the new Social Scoreboard and on the indicators to be included was taken by the Commission at the highest levels, without involving the Member States through the SPC and the Employment Committee (EMCO). This resulted in the indicators sub-groups of the two committees having no time to express their views on the quality of the indicators used. As one interviewee pointed out, the problem concerns especially the secondary indicators, some of which suffer, from an SPC perspective, from comparability issues. Even more puzzling is the fact that doubts have been raised by the SPC as to the very purpose of the Social Scoreboard (Interview 2 – SPC): *is it a communication tool or an analytical monitoring tool to truly influence Semester policies? Is it intended as a way of monitoring the current situation in relation to the 20 principles of the Pillar or does it aim to monitor the evolution of the social situation and upward convergence?*

Related to the previous point, a second problem concerns the adequacy of the indicators chosen. Most of these are context-oriented but they fail to capture what each Member State government is doing to achieve the agreed EPSR objectives. The European Trade Union Institute has analysed all 35 Scoreboard indicators and their shortcomings (ETUI 2017). Its conclusion is that the Social Scoreboard indicators are either not appropriate, meaning that they fail to measure the implementation of a principle, or incomplete, i.e. they only partially succeed in grasping some principles.

As regards incompleteness, this refers to the relationship between the 35 Scoreboard indicators and the 20 EPSR rights. Some EPSR principles and rights are not monitored at all, including principle 7, 'Right to information about employment conditions and protection in case of dismissals', principle 8, 'Right to social dialogue and involvement of workers', principle 10, 'Right to healthy, safe and well-adapted work environment and data protection' and, partially, principle 12, 'Right to social protection'. As regards appropriateness, this refers to the incapacity of the Social Indicators to fully measure the content of some of the principles of the Pillar.

Finally, the fourth important shortcoming of the Social Scoreboard concerns its obvious overlapping with the existing set of social indicators used at European level, namely the indicators used for the Europe 2020 strategy, the Employment Performance Monitor (EPM), the Social Protection Performance Monitor (SPPM) and the ‘auxiliary social indicators’ in the MIP. So far, there is no indication of how the Social Scoreboard relates to these existing scoreboards, i.e. whether it will replace them or is to be considered as an exercise summarising the monitoring exercises mentioned above. Their co-existence is likely to lead to further confusion and inefficiency. This weakness of the Social Scoreboard is aggravated by the absence of a clear set of benchmarks and a related assessment methodology, which could have been a useful tool for providing a straightforward political and normative interpretation of the new indicators. The overall confusion as to the role of the new Scoreboard and the lack of a sound methodology to interpret the *rationale* behind the new indicators are likely to weaken, not strengthen, the monitoring of Member State employment and social protection performance, thus reducing the impact of the social indicators *vis-à-vis* the macro-economic indicators used in the European Semester.

Against this backdrop, there seems to be a need to beef up the Social Scoreboard, enhancing the visibility and the impact of social indicators and social monitoring in the Semester, in order to give it more weight compared to the MIP scoreboard (Interview 2 – SPC).

4. The Pillar and the Social Investment Package between change and continuity

This section compares the EPSR and the previous EU social policy framework (the SIP) with regard to the three dimensions discussed above. The question to be answered is: *is the EPSR (potentially) more effective than the SIP when it comes to revamping the EU agenda, steering Member State policies and influencing the direction of EU macro-economic and fiscal policies?* Answering this question is important, insofar as one can identify the strengths of the EPSR compared to previous initiatives and, by ‘learning from the past’, address its weaknesses.

The starting point of our analysis is the observation that, since the announcement of the EPSR, the attention paid to the SIP has decreased drastically, a circumstance highlighted in many contributions to the EPSR consultation. What is more, the SIP and, more generally, the whole notion of social investment is not even mentioned in key documents related to the 2017 Pillar Recommendation. Against this backdrop, and before assessing how the two frameworks perform with regard to the three functions listed above, one question needs to be answered: *has the social investment approach really been forgotten – thus marking a clear-cut break between the SIP and the EPSR – or is there (concealed) continuity/complementarity between the two policy frameworks?*

Comparing the SIP and the Pillar: preliminary considerations:

Procedural and substantive differences

A comparison between the SIP and the EPSR should cover two aspects: the *process* leading to the drafting of the two frameworks and '*substantial*' aspects (see Table 1 in Annex).

As for the process, the *genesis* of the two frameworks differs significantly. The SIP was an attempt by the Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) – and, in particular by the then Social Affairs Commissioner László Andor – to raise the importance of social policies in a period of 'fiscal consolidation', making clear that, if framed as 'social investment', social policies can contribute to growth, jobs and competitiveness. In order to justify this claim, the SIP identifies policy areas and measures that are particularly linked to the 'investment function' of social policy, providing scientific evidence of their effectiveness. In this sense, the SIP can be understood as a '*technical*' *policy framework* aimed at indicating how social policies can be reformed in a social investment direction and why this should be done. Importantly, such an initiative was undertaken by DG EMPL in relative isolation not only from other parts of the Commission and other EU institutions but also from social stakeholders. Indeed, both EU institutions and bodies and social stakeholders reacted with their comments and proposals only after the publication of the Communication on the SIP, while being barely consulted before (Sabato and Vanhercke 2014). *A posteriori*, one can say that this was a political mistake, entailing limited ownership of the Package by social, institutional and political players and thus limiting its legitimacy.

The situation is completely different when it comes to the drafting of the EPSR. First, the initiative was personally announced by Commission President Juncker in his State of the Union speech in September 2015. Consequently, the Juncker cabinet and the Secretary General (SG) took the lead in drafting the Pillar and in raising its ambitions, with DG EMPL remaining to some extent in the background (Interview 3 – DG EMPL). In other words, it was the Commission President himself who acted as a policy entrepreneur pushing for the EPSR, a circumstance that increased its political weight. Second, in great contrast to the SIP, the consultation process on the Pillar was broad, with the EPSR receiving the endorsement of a wide range of institutional and political players such as the Commission, the European Parliament and national governments in the Council, which solemnly proclaimed the Pillar. While the consultation process increased EPSR ownership among social and institutional players, the Proclamation gives it strong political legitimacy. Finally, the SIP was enacted in a 'rather difficult' period for social policies, in a context characterised by the crisis and fiscal consolidation measures. Conversely, the EPSR was established in a context where the future of Social Europe is an integral part of the high-level political debate on the future of the EU after Brexit⁸.

8. See the Rome Declaration, the White paper on the future of Europe (European Commission 2017i) and the Reflection paper on the social dimension of Europe (European Commission 2017b).

Taking all this into account, the EPSR appears as a *political framework* endowed with greater political *legitimacy* than the SIP.

Coming to more ‘substantial’ aspects, the different political weight and ambition of the initiative is also exemplified by the *objectives* and *discourse* of the two policy frameworks. As for the SIP, its primary objective was to enhance the effectiveness and efficiency of social policies, thus ensuring their fiscal sustainability, underpinning and emphasising the aspects of social policies that could contribute to economic objectives. For its part, the EPSR aims to ‘deliver new and more effective rights to citizens’ (European Commission 2017c:4): explicit references to ‘social policy as a productive factor’ on which the social investment approach relies⁹, have disappeared¹⁰. In term of *discourses*, while the contents of the SIP are framed in terms of principles and concrete measures, the EPSR explicitly uses the language of ‘rights’.

Summing up, looking at the nature, legitimacy, objectives and discourses of the two policy frameworks we find a number of fundamental differences between them. On this basis, one could (too) easily conclude that there is a complete discontinuity between the SIP and the EPSR. However, we claim, the situation is more complex since links and complementarities between the two policy frameworks emerge when considering the issue areas included and the approach followed by the two frameworks.

Complementarities and continuity after all

As for the *issue areas*, the SIP, consistent with the social investment approach, prioritises policies ‘preparing’ people to cope with challenges arising at various stages of their lives (rather than simply ‘repairing’ the consequences of adverse circumstances). Consequently, in the SIP, the European Commission (2013a: 6) identifies an array of priority policies with a higher social investment orientation, including policies targeting children, active labour market policies, education, training and lifelong learning, housing support, rehabilitation, healthcare and long-term care services. This said, while insisting on the ‘investment function’ of welfare states, the SIP recognises that social policies also have a ‘protective function’ and act as a stabiliser of the economy (European Commission 2013a). Consequently, minimum income and unemployment benefits are part of the Package, even though the emphasis is on activation. The same policy areas are included in the EPSR (Chapters I and III). However, the latter gives a greater emphasis to social protection¹¹. In a certain sense, this correspondence means that, while the SIP had already identified the social policy issues on which to focus in

9. Cf. Morel *et al.* (2012).

10. While this notion was explicitly recalled in the 2016 Commission Communication on the Pillar, it cannot be found in the 2017 Recommendation and related documents (European Commission 2016, 2017a, 2017c, 2017h).

11. In this respect, consideration of the ‘boundaries’ of social investment is needed. On the one hand, some scholars enlarge this notion by including policy areas and measures related to the protection function of the welfare state (see, for instance, the notion of ‘buffers’ proposed by Hemerijck 2014). Other scholars limit the notion of social investment to a reduced number of policy areas with a strong investment (‘enabling’) component (e.g. childcare), distinguishing them from policies providing the stabilizing-protective functions of welfare states (e.g., unemployment and minimum income benefits) (see Vandenbroucke 2017). We do not go into the scientific debate on the notion of social investment here. However, since our focus is on the SIP which also contains ‘protective’ measures such as unemployment and minimum income schemes, we de facto adopt a position closer to the former approach. We would like to thank Frank Vandenbroucke for directing our attention to this point.

order to modernise social protection systems, the EPSR has accorded them the status of 'rights' for all EU citizens. Moreover, when it comes to defining the constitutive elements of these rights and how concrete policy measures should be designed in order to ensure their implementation, the social investment approach taken in the SIP (implicitly) reappears in the EPSR, thus attenuating the risk of the latter being a simple declaration of rights without any practical implication¹².

For its part, with the reference to the notion of 'rights', the EPSR potentially contributes to attenuating some of the risks of the social investment approach: its strong emphasis on social policy as a productive factor instrumental in achieving the objectives of economic growth and competitiveness and characterised by a marked 'work first' approach. As for the latter, for instance, the principles of the Pillar related to labour market participation and activation should be read in relation to the rights and principles of Chapter II on 'Fair working conditions'. Thus, the focus should not simply be on jobs but, instead, on good-quality jobs: secure but 'adaptable' jobs (e.g. encouraging open-ended contracts), fair wages (to ensure a 'decent standard of living'), adequate protection in case of dismissal, and healthy, safe and well-adapted work environments.

All this considered, in terms of *policy approach*¹³, the EPSR displays neither a pure social investment approach relying on the notion of social policy as a productive factor and stressing the contribution of social policies to growth, jobs and competitiveness, nor a pure (ideal) rights-based approach based on decommodification and prioritising the promotion of social rights irrespective of their economic and fiscal implications. The EPSR, we claim, mixes the two approaches. We define such a *hybrid approach* as a *rights-based social investment* approach. While its primary objective is the promotion of social rights, when it comes to the actual measures and policy orientations through which these rights are to be implemented, the reference point is social investment.

A final element of comparison concerns the *governance arrangements* through which the two EU social policy frameworks are (to be) implemented. These basically include, with regard to social protection and inclusion policies, the European Semester and other soft governance instruments and EU funds.

Revamping the EU social agenda

As argued in Section 1, the EPSR is already performing well in re-vitalising the EU social policy arena and revamping the EU social agenda. Besides the legislative initiatives already undertaken (see Clauwaert in this volume), debates and initiatives have been launched in the domain of social protection and inclusion, a policy area in which the EU has no legislative competence. Some of these proposals stem from the consultation

12. Table 2 in Annex provides several examples of this.

13. Armstrong (2010: 75) identifies two policy paradigms coexisting under the Social OMC: a 'citizenship paradigm' and a paradigm of social policy as a productive factor. Hemerijck (2013) refers to social investment as a policy paradigm. Conversely, Vandenbroucke (2017) maintains that social investment cannot be considered as a fully-fledged policy paradigm. Referring to 'paradigms' has relevant implications and would require a different kind of analysis than the one performed here. For this reason, we prefer to use the notion of 'policy approach'.

debate (Sabato and Vanhercke 2017; Sabato *et al.* 2018), including the European Parliament proposal for establishing a Child Guarantee (European Parliament 2017)¹⁴. Furthermore, old debates have been relaunched, such as the one on a common European unemployment scheme (Fichtner 2014) or the possibility of enacting a Framework Directive on minimum income.

As for the SIP, the 2013 Commission Communication was accompanied by a roadmap for its implementation, thus giving it the concrete chance of relaunching EU action in the social domain. However, this roadmap had two important shortcomings. First, it lacked ambition and only concerned the short term (it was annual). Second, its drafting was a top-down initiative of DG EMPL, not shared with other institutional and social stakeholders. The first SIP implementation roadmap concerned 2014 (European Commission 2014) and most of the initiatives included were not original, overlapping with the 2010 European Platform against Poverty and Social Exclusion (EPAP) (Sabato and Vanhercke 2014). Furthermore, actions foreseen were especially related to the compilation of studies and reports, methodologies (e.g. on reference budgets) and communications, to the setting-up of platforms (e.g. the European Platform on Investing in Children), the organisation of conferences (e.g. the Annual Convention of the Platform against Poverty and Social Exclusion) and to the identification of topics for future calls for tenders (e.g. on social innovation).

The second SIP roadmap (European Commission 2015), drafted in 2015, was little different to the previous one, mainly concerning actions included in the 2014 document and not yet completed. After 2015, no new SIP roadmaps were proposed and attention at EU level was diverted to the debate on the EPSR. According to Ferrera (2017), this was a political mistake annulling the efforts made to promote and give visibility to a precise policy orientation (social investment), thus creating confusion in the Member States. This said, attention to a full implementation of the SIP had already been diverted towards other initiatives before the appointment of the Juncker Commission and the launch of the idea of an EPSR. Indeed, new initiatives and debates only tenuously linked to the SIP (or not linked at all) gained visibility, notably the Youth Guarantee and the debate on a possible common unemployment scheme for the euro-area. All in all, the SIP's lack of ambition, its limited ownership by stakeholders and the changed political circumstances (the appointment of a new Commission) limited its capacity to have a significant and long-lasting impact on the EU social agenda.

Two key lessons for the EPSR can be drawn from the discussion above. First, the need to 'stick to the point' and continue with the new approach followed in the Pillar. Admittedly, this will be difficult given the European elections in 2019 and the consequent appointment of a new Commission. On the one hand, it is possible that the new Commission will undertake a new initiative on social policy, differentiating it from the previous Commission. On the other hand, it is likely that the new Parliament and Commission will be less inclined to further advance EU-level initiatives in the domain of social policy. The question is: *will the Inter-Institutional Proclamation be a sufficient guarantee against the risk of setting aside the Pillar?* We claim that such

14. The Commission launched a preparatory action on a Child Guarantee in August 2017

a risk could and should be attenuated by the drafting, before the end of the current Commission's term, of an EPSR implementation roadmap. Such a roadmap should be ambitious, realistic and include long-term actions. Even more important, and this is the second lesson to be drawn from the fate of the SIP, this roadmap should be drafted in conjunction with the competent EU and Member State institutions, the social partners and civil society. This would constitute an important legacy, difficult to be simply ignored by the new Commission and Parliament.

Steering Member States' policies

As shown in Section 2, both light and shadow emerge when looking at the governance arrangements for EPSR implementation. On the one hand, more coherence is needed when it comes to the relationships with existing strategies and instruments in the social domain and beyond. On the other hand, and crucially, the concrete arrangements for its implementation through EU funds are still to be defined.

The problem of policy coherence also concerned the SIP, whose relationship with processes and initiatives such as the EPAP and the Social OMC and, more broadly, the Europe 2020 Strategy was never clarified (Sabato 2016). Such clarification is needed for the EPSR, since all these processes and instruments are important pieces for assembling the jigsaw puzzle of a future 'European Social Union' (see Ferrera, this volume).

This said, as was the case with the SIP, EPSR implementation will mainly take place through the European Semester and EU funds. Here, two paradoxes emerge from the comparison of the two policy frameworks. First, while clear mechanisms to include SIP implementation in the Semester had already been established soon after the publication of the Commission Communication on the SIP in 2013, the social investment approach is only to be found implicitly in the Semester documents. Explicit references to social investment were solely included in the AGS 2016 (Sabato 2016). By contrast, explicit references to the Pillar already characterise the 2018 Autumn Package (Section 2), even before clearly defining the concrete arrangements for linking the EPSR with the Semester. This constitutes further evidence of the considerably higher political weight of the EPSR compared to the SIP. The second paradox concerns EU funds. Besides many references to the role of EU funds in promoting EPSR implementation, the European Commission's proposal (2018a: 40) for the next Multiannual Financial Framework (MFF) explicitly refers to the efficiency gains available through 'social investments' and, when it comes to the budget allocations for 2021-2027, the reference is to 'Social investment and skills' (European Commission 2018a:9). This confirms the close, albeit implicit, links between social investment and the EPSR.

Finally, certain considerations regard the actual impact of the EU social investment strategy in the Member States. A study by the European Social Policy Network (Bouget *et al.* 2015) identifies both light and shadow. First, the social investment orientation of Member State social policies varies considerably across countries, with the same applying to the direction of recent reforms. Second, reform patterns since the publication of the SIP vary across countries and policy areas. Third, the economic crisis and fiscal

consolidation have heavily impacted the implementation of social investment strategies. Fourth, the concept of social investment is little-known at national level, a situation that did not change after the publication of the SIP. Indeed, even in those countries where recently implemented reforms and initiatives have a clear social investment flavour, the notion is not explicitly used in domestic debates.

The last finding appears to be a particularly important ‘lesson learnt’ for EPSR implementation. Visibility seems a *sine qua non* for impact. Besides continuing to give visibility to the Pillar in the Semester documents, building partnerships with national players to form national constituencies in favour of EPSR implementation appears crucial. This was not done with the SIP. Indeed, according to Ferrera (2017), on that occasion the Commission failed to duly involve local authorities and national civil society organisations in the implementation of the Social Investment Package, thus losing precious, potential allies. This mistake should be avoided in the implementation of the EPSR.

Influencing the direction of EU macro-economic and fiscal policies

The SIP can be understood as a strategic attempt by DG EMPL to convince its economic counterparts in the Commission that, if framed as social investment, social policy is not a burden on growth but, on the contrary, can support growth, jobs and competitiveness (Ferrera 2015: 5). The SIP can be considered as a ‘defensive move’ of DG EMPL in a period of crisis and austerity policies, characterised by significant cuts in social policies in most Member States. This attempt basically failed. First, as reported by ESPN (Bouget *et al.* 2015), fiscal consolidation measures heavily impacted the implementation of social investment strategies in the Member States: in some cases, cuts in social expenditure targeted existing investments in human capital, resulting in reductions in the availability and quality of programmes, or in new social investment policies being shelved or cancelled. Second, proposals to exclude social investment-oriented expenditure from the calculation of national deficits (the ‘golden rule’) were never seriously considered in EU economic circles.

The Pillar appears to be a more assertive policy framework, given its emphasis on the notion of social rights compared to such notions as efficiency and fiscal sustainability, notions characterising the SIP¹⁵. The question is: *has it been decided to promote social rights irrespective of their implications in terms of fiscal sustainability?* Certainly not. On the one hand, quite apart from the fact that such an approach would not be realistic, ‘balanced budgets’ are among the objectives of the AGS. On the other hand, since the devil is in the details, a fundamental reference to budget constraints can be found in a paragraph of the Staff Working Document accompanying the Communication on the

15. Fiscal concerns were more evident in the 2016 Communication on the Pillar and in the first preliminary outline (Sabato and Vanhercke 2017). For instance, the original title of the third chapter of the Pillar was ‘Adequate and sustainable social protection’. Again, the related principles, in their original formulation, state that the cost-effectiveness and financial sustainability of healthcare systems should be preserved as well as the sustainability and the future adequacy of pension systems. All these references to financial sustainability and efficiency were dropped in the 2017 Recommendation and related documents.

Pillar, which states: 'the Pillar should be implemented according to available resources and within the limits of sound budgetary management and Treaty obligations governing public finances' (European Commission 2017h: 4).

The key question then is: *how to prevent the Pillar succumbing to the same fate as the SIP, whose full implementation was hampered by fiscal consolidation policies?* In our view, first, it should be made clear that, while efficiency gains are possible, full EPSR implementation will not be cheap: significant fiscal room for manoeuvre will be needed. Second, to ensure such room for manoeuvre, both the excessive deficit procedure (EDP) and the MIP should be reformed to take better account of the social implications of macro-economic and fiscal policies. Ideally, in the future, a 'Social Imbalances procedure' should be set up with a view to ensuring that social imbalances¹⁶ are detected at an early stage and corrected properly.

All these are politically sensitive choices that cannot be made without a serious reflection on the relationship between economic growth and competitiveness on the one hand and social policies on the other. *Are the former objectives per se to be pursued irrespective of their social (and environmental) consequences? Or, on the contrary, should economic growth and competitiveness be at the service of citizens' well-being, of which social aspects are a key dimension?* In the former case, we can continue with business as usual, with all the political risks deriving from a further deterioration of the social situation in some Member States. In the latter case, a deep reform of EU macro-economic and fiscal policies would be needed to facilitate the promotion of the social rights codified in the EPSR. Otherwise, the Pillar risks becoming cheap talk, betraying the high expectations raised by its publication. This is a risk that, given the current political and social situation in some Member States, the EU cannot afford.

Conclusions

In this chapter, we first assessed the effectiveness of EPSR implementation almost one year after its launch. We draw three main conclusions. First, the EPSR has already been able to 'revitalise' the European arena for social policies and to revamp EU initiatives in the social domain, even though the fate of these initiatives remains uncertain. Second, the EPSR has the potential to steer Member States' social policies, mainly through the European Semester and if provided with adequate EU financial resources. However, the amount earmarked for its implementation is still uncertain, being dependent on the next Multi-Annual Financial Framework currently being negotiated. Furthermore, while the EPSR has already been integrated into the first stages of the 2018 Semester, arrangements for its integration into other EU social instruments and processes (as well as with broader EU strategies) are still defined only weakly. Third, when it comes to its potential to influence orientations and decisions in the domains of EU macro-economic and fiscal policies, the Pillar appears inadequate.

16. Vandenbroucke *et al.* (2013: 5) define excessive social imbalances as '[...] a set of social problems that affect Member States very differently (thus creating 'imbalances') but should be a matter of common concern for all Eurozone members', given their spill-over effects. Examples include youth unemployment and child poverty.

We went on to compare the EPSR with the previous EU social policy framework, the SIP, aiming to identify elements of both continuity and discontinuity (in the areas of social protection and inclusion and labour market integration). It emerged that there is overall continuity between the two frameworks with regard to their contents (in terms of issues and policy areas included) and to the governance arrangements for their implementation. Three elements of discontinuity, however, appear potentially fundamental for the future of the Pillar: its political nature, its high degree of legitimacy and the introduction of a rights-based discourse. All these elements are likely to increase the ‘political weight’ of the EPSR compared to the SIP, thus potentially facilitating its implementation. When it comes to the policy approach taken in the two frameworks, we find a situation of ‘continuity in discontinuity’: the EPSR takes a hybrid policy approach that we have defined as one of rights-based social investment.

When comparing the EPSR with the SIP with regard to the three functions that an EU social policy framework should perform, the former appears stronger than the latter when it comes to revamping the EU social agenda, while the two frameworks appear equally weak when it comes to the possibility of influencing the direction of EU economic and fiscal policies (see Table 3 in Annex). While it is obviously too early to assess the ability of the Pillar to steer Member State policies, however, its inclusion in the first steps of the 2018 Semester is a promising sign and a pre-condition for impact.

The question is: *is the EPSR truly a game changer for (social) Europe and, more generally, for the process of European integration?* Our answer is: *potentially yes*. However, the degree of these changes is not yet well defined. Political and social forces supporting the European integration project need to take action to ensure that the changes made encourage the development of a more unified, cohesive and fair Union, able to ensure the social rights of its citizens. Full support of the Pillar is the first step in this direction.

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All links were checked on 4.9.2018.

Annexes

List of interviews

Interview 1	NGO	Representative of an EU umbrella non-governmental organisation (NGO) operating in the social domain, January 2018, Brussels
Interview 2	SPC	Member of the Social Protection Committee (SPC), January 2018, Brussels
Interview 3	DG EMPL	Official from the Commission's Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL), January 2018, Brussels
Interview 4	ETUC	Representative of the European Trade Union Confederation (ETUC), February 2018, Brussels
Interview 5	MEP	Member of the European Parliament (S&D group), March 2018, Brussels
Interview 6	DG EMPL	Official from the Commission's Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL), January 2018, Brussels

Table 1 The SIP and the EPSR (selected principles): a comparison

Dimension	SIP	EPSR
Nature	Technical	Political
Legitimacy	Low	High
Objectives	Effectiveness and efficiency of Member States' social policy	Delivering new and more effective rights for citizens
Discourse	Social investment	Social rights
Contents	Social inclusion/social protection/ Equal opportunities and access to the labour market	Social inclusion/ social protection/ equal opportunities and access to the labour market
Approach	Social investment	Rights-based social investment
Governance arrangements	European Semester + soft governance instruments + financial instruments	European Semester + soft governance instruments + financial instruments

Source: authors' own elaboration.

Table 2 A comparison between the SIP and the EPSR: 'rights in practice'

Issue area	SIP	EPSR
Childcare and support to children (Pillar principle n. 11)	The Commission urges the Member States to implement the Recommendation on 'Investing in Children: breaking the cycle of disadvantage' in an integrated way through a combination of cash and in kind benefits, and access to quality early education, health and social services . Address childhood inequalities through eliminating school segregation and the misuse of special needs education. Make early childhood education and care (ECEC) more visible and available [...]	Children have the right to affordable early childhood education and care of good quality . Children have the right to protection from poverty . Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.
Unemployment benefits (Pillar principle n. 13)	In assessing adequate income support , it is important to distinguish between two levels of safety net for the working age population. The first level of safety net is mainly represented by the unemployment benefit system . [It] is reviewed regarding the coverage, adequacy and labour market friendliness (presence/absence of financial disincentives) of benefits	The unemployed have the right to adequate activation support from public employment services to (re)integrate in the labour market and adequate unemployment benefits of reasonable duration, in line with their contributions and national eligibility rules. Such benefits shall not constitute a disincentive for a quick return to employment.
Minimum income (Pillar principle n. 14)	The Commission urges the Member States to fully implement the Commission Recommendation on Active Inclusion (2008) without further delay [...] integrating its three pillars: adequate income support, inclusive labour markets and enabling services .	Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services . For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market .

Source: authors' elaboration on European Commission 2013a and European Commission 2017a.

Note: in bold, the common orientations and wording between the two policy frameworks.

Table 3 Effectiveness of the SIP and the EPSR alongside the three functions of a EU social policy framework

Function	SIP	EPSR
Revamping the EU agenda	Medium/low	High
Steering Member State policies	Low	Medium
Influencing the direction of EU macro-economic and fiscal policies	Low	Low

Source: authors' own elaboration.

Part II

Day-to-day policymaking: a new social policy agenda in the making

Chapter 4

A new legislative agenda for the EU: putting meat on the bones after all?

Stefan Clauwaert

Introduction¹

The European Pillar of Social Rights (hereafter EPSR), solemnly proclaimed in November 2017, is in principle to be welcomed. However, its credibility and effectiveness — as is the case with any other international, European or national list of fundamental social rights — will depend on its actual implementation (see also Sabato *et al.* 2018²). Particularly since the European Pillar is (still) a non-legally binding instrument, its added value will only become visible when (a) it is accompanied by tangible, legally binding initiatives; (b) once implementation of these at national level is regularly monitored; and (c) it is used as an authoritative interpretation/reference instrument by European and national courts.

The European Commission has so far³ launched two so-called ‘packages’ of implementation initiatives: the ‘European Pillar Package’ (26 April 2017) and the ‘Social Fairness Package’ (13 March 2018). With the European Commission set to use different tools and instruments for implementing and monitoring the Pillar (including legislative initiatives, soft governance tools such as the European Semester and better/enhanced use of EU funds)⁴, this chapter looks in particular into the different (potential) legislative proposals and/or (social partner) consultations contained in these two packages. Section 1 focuses on the ‘European Pillar Package’: the revision of the Written Statement Directive, legislative initiatives in the area of work-life balance, the consultations on access to social protection for workers and the self-employed (see also Spasova and Wilkens, this volume) and the interpretative guidance on the Working Time Directive. Section 2 takes a closer look at the initiatives proposed under the ‘Social Fairness Package’, which includes the establishment of a European Labour Authority (ELA). Section 3 describes the latest developments in relation to the revision

1. Given the vast number of documents produced under the different initiatives, references to these documents in the following footnotes (as well as in the reference list at the end of this chapter) are not necessarily given (and numbered) in chronological order, but rather following the structure of the content of the chapter.
2. This study on behalf of the Workers’ Group of the European Economic and Social Committee (EESC) analyses the initiatives launched in the first months since the proclamation of the EPSR, several of which are also described in this chapter. Furthermore, the study also provides some concrete policy recommendations to ensure the Pillar’s effective implementation, including proposals for some new legislative initiatives such as a framework Directive on minimum income schemes, a Directive on Effective Enforcement of Workers’ Rights, a Social Progress Protocol (to be annexed to the TFEU) and a ‘Social Rights Test’ for all new policies.
3. Time of writing: late June 2018.
4. For an overview of the various initiatives envisaged/announced as well as the monitoring of their implementation, see *inter alia*: European Commission (2017a and b), European Commission (2018a and b).

of the Posting of Workers Directive, which, while closely related to the ELA, was set in motion before the announcement of the EPSR. The concluding section summarises and looks to the future. Throughout the chapter, particular attention will also be paid to the (diverging) positions of the European cross-industry social partners (ETUC, BusinessEurope, UEAPME and CEEP).⁵

1. The 'European Pillar Package'

As part of the drive to use EPSR implementation not only for 'updating and complementing EU law where necessary' but also 'better enforcing EU law'⁶, the Commission put forward this first package of initiatives on 26 April 2017. It included, in particular, the following four initiatives: 1) a social partner consultation on the revision of the Written Statement Directive (Directive 91/533/EC); 2) a proposal for a (new) Directive on Work-Life Balance for parents and carers; 3) an interpretative guidance on the Working Time Directive (WTD, Directive 2003/88/EC); and 4) social partner (and public) consultations on improving 'access to social protection for all workers and the self-employed'.

1.1 The revision of the Written Statement Directive

Over the last decade, the EU has witnessed — due to economic, societal and digital developments — the emergence of numerous new forms/relationships of atypical/non-standard work (e.g. employee/job sharing, casual work, zero-hours contracts, platform workers, etc.) (Eurofound 2015). This has given rise to manifold problems and challenges in relation to labour law and the social security of these workers, including the transparency and predictability of their working conditions⁷. A Commission REFIT evaluation⁸ showed that the existing *acquis*, in the form of the so-called Written Statement Directive of 1991⁹, had become not only outdated in light of these challenges but was also insufficiently enforced (European Commission 2017d). The Commission therefore decided to launch a two-stage consultation of the European social partners to collect their views on the need for and possible content of a revised Directive. The Commission proposed mainly two alternative ways to amend the Directive: either to extend the matters on which information must be provided, to make the obligation apply earlier than two months after the start of work (as is the case in the 1991 Directive) and to extend it to all workers, irrespective of the type of employment relationship, including those in atypical and new forms of work; or to

5. For the positions and reactions of the European sectoral social partners, readers are advised to consult the respective websites.

6. See in particular European Commission (2017b: 8).

7. For social security protection, see in particular Spasova *et al.* (2017).

8. REFIT is part of the Commission's better regulation agenda. It aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising policy objectives. For more information see https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en

9. Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

amend the Directive by providing a minimum floor of rights to ensure fair working conditions for all workers, including the self-employed. It also asked whether the social partners wished to enter into negotiations over a revision within the framework of Articles 154-155 TFEU¹⁰.

In response to this invitation, the European social partners expressed divergent views in their respective replies to the two stages of the consultation. BusinessEurope firstly considered that the consultation went beyond a REFIT revision (i.e. to make a legal text simpler and adapt it where needed), as the Commission suggested not only the introduction of new rights, but also included a new EU definition of a ‘worker’: the employers’ organisation strongly opposed this, saying that it would only lead to more legal unclarity and that definitions should be left to the Member States. The Commission also proposed strengthening the means of redress and sanctions. Before entering into legislative work on any of the issues identified, the European social partners should first be allowed to assess the Written Statement Directive and its implementation (BusinessEurope 2017a and b). A similar view was expressed by UEAPME (UEAPME 2017a). The ETUC demanded that a revised Directive offer the greatest possible protection to all workers by combining the objectives of both proposed options, thus 1) extending the scope of the Directive to cover the broadest possible area; 2) extending the list of mandatory information to be provided prior to the start of the employment relationship; 3) providing a new set of minimum rights; and 4) strengthening enforcement and sanctions (ETUC 2017a and b).

Whereas the ETUC, in its reply to the first consultation, was ready to enter into negotiations, as was CEEP (CEEP 2017a), BusinessEurope and UEAPME were generally only willing to open a ‘dialogue’ or ‘exploratory talks’ to assess the feasibility and appropriateness of initiating a dialogue under Article 155 TFEU. As a counter-offer, the ETUC proposed opening a dialogue for the purpose of providing the Commission with shared inputs; this was also because opening formal negotiations lasting up to 9 months would not give the Commission and Parliament time to finalise the revision of the Directive before the end of their current legislative term. Though this offer was rejected by the peak-level employer organisations, they nevertheless called for negotiations, but only on a limited number of issues. The ETUC was unable to accept this conditional offer and thus urged the Commission to come up with a legislative proposal as soon as possible.

The Commission did this on 21 December 2017, launching a proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union (European Commission 2017f)¹¹. The proposal suggests changes to Directive 91/533, particularly in relation to the type of information to be provided, the deadline for its provision and the way it is provided, but also new material rights and strengthened enforcement. More importantly, however, the

10. A summary of the replies received as well as an analysis of the problems and challenges posed, can be found in European Commission (2017e).

11. The launch of the proposal was accompanied inter alia by an impact assessment (European Commission (2017g).

Commission proposes an EU definition not only of ‘worker’, but also of ‘employer’ and ‘employment relationship’¹². For an overview of the main changes, see Table 1.

During the consultation, the reactions of the European social partners to the Commission proposal unsurprisingly diverged greatly. BusinessEurope completely opposed the proposal. In their view, it is imbalanced and key aspects of the proposal do not respect the principles of subsidiarity and proportionality. In its view, the proposal firstly introduces a number of costly bureaucratic elements (in particular in relation to time, means and amount of information to be provided); secondly, it introduces too broad a definition of worker (which would cover, for instance, self-employed consultants and freelancers) and will create fundamental legal uncertainty; thirdly, it proposes several new minimum rights, and will introduce restrictions concerning often highly-paid, highly-skilled key company staff. Moreover, BusinessEurope is of the opinion that the proposal fails to take into consideration the specific nature of certain sectors, such as mobile work or road transport (BusinessEurope 2018a).

Similarly, the UEAPME, the official voice of associations of SMEs, also expresses serious concerns about the ‘red tape’ and complexity likely to be introduced by this new proposal, which, by introducing new rights, goes far beyond just informing workers of their working conditions. It also criticises the overly broad definition of ‘worker’ and of the notions ‘employer’ and ‘employment relationship’ (UEAPME 2018a and b).

The ETUC considers the proposal in general a ‘first major step forward but weaker than expected’ (ETUC 2017c). Although the proposal, if adopted, will provide greater protection especially to vulnerable workers in precarious and atypical working relationships, the current text still contains numerous loopholes and will need to be significantly amended to actually meet the aims it hopes to achieve. Thus, the proposal still allows too many exceptions from its scope (for instance the exemption for ‘employment relationships equal or less than 8 hours a month’). It does not clearly resolve the situation of the self-employed, nor is it clear whether it also covers public-sector workers. Furthermore, in the view of the ETUC, (a) the list of information requirements should be genuinely open; (b) the text contains no ban on the use of zero-hours contracts; and (c) some of the provided (new) forms of redress are optional (ETUC 2018a).

This proposal is now in the ‘trialogue negotiations’ between Commission, Parliament and Council. The main stumbling block will surely be the definitions of ‘worker’ and ‘employment relationship’, in particular since the Council, in its negotiating position adopted on 21 June, rejects the definitions put forward in the Commission proposal and wants to leave it completely to Member States to decide who should benefit from the Directive’s protection. Furthermore, the Council also proposes excluding seafarers,

12. Article 2 ‘Definitions’ reads:

‘1. For the purposes of this Directive, the following definitions shall apply:

(a) ‘worker’ means a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration;

(b) ‘employer’ means one or more natural or legal person(s) who is or are directly or indirectly party to an employment relationship with a worker;

(c) ‘employment relationship’ means the work relationship between workers and employers as defined above; (...).

Table 1 Main changes envisaged by the proposal for a Directive on Transparent and Predictable Working Conditions

	Current rules	New rules
Type of information offered by employer	Identity of parties; place of work; specification of work; starting date; duration (for temporary contracts); paid leave; notice period; amount and components of remuneration; length of working day or week; applicable collective agreements; additional information for expatriate employees.	In addition to current elements, information on: probationary period (if any); training provided by employer; arrangements and remuneration for overtime; information on working time for workers on very variable schedules; social security institution to which contributions are paid.
Deadline to provide the information	Within 2 months following the start of the employment relationship	At the latest on the first day of work
How the information should be provided	Written contract, letter of appointment or one or more written documents	A written document, in paper or electronic form. Member States are obliged to provide templates and accessible information to reduce burden on employers.
Material rights	None	Limit the length of probationary periods to 6 months, unless a longer period is objectively justified; the right to work for other employers, with a ban on exclusivity clauses and restrictions on incompatibility clauses; the right to predictable work: workers with variable working schedules determined by the employer (i.e. on-demand work) should know in advance when they can be requested to work; the possibility to request a more stable form of employment and to receive a justified written reply (within 1 month; for SMEs within 3 months and orally for repeated requests); the right to free-of-charge mandatory training.
Enforcement	Member States provide the necessary measures to enable employees to pursue claims through a judicial process after recourse to other competent authorities. This may be subject to notification of the employer by the employee, and failure of the employer to reply within 15 days.	Introduction of two alternative procedures to tackle missing information: positive presumptions (if no relevant information supplied, no probationary period, permanent and/or full-time employment relationship); administrative procedure to issue injunction to employer to supply missing information. In addition, provisions are introduced based on existing social acquis on compliance, right of redress, prevention of adverse treatment, burden of proof on dismissal, and penalties.

Source: European Commission (2017h).

certain public service workers such as members of the armed forces and the police, as well as workers with an employment relationship equal or less than 8 hours in a reference period of one month from the Directive's personal scope. These positions are naturally welcomed by BusinessEurope but firmly rejected by the ETUC (Planet Labour 2018a, BusinessEurope 2018f and ETUC 2018d).

1.2 A proposal for a directive on Work-Life Balance for parents and carers (WLB)

Following a long and unsuccessful debate among and between the various EU institutions as well as the European social partners, the Commission finally withdrew its 1992 proposal for a revision of the Maternity Leave Directive¹³. However, it announced its intention to come up with a new and broader proposal on work-life balance, taking into account developments in society over the past decade (European Commission 2015).

In preparation of this new initiative, the Commission conducted, in 2016-2017, both a two-stage consultation of the European social partners and an open public consultation to seek the views of citizens and stakeholders on amending/complementing the existing EU acquis¹⁴. Proposed amendments/additions concern an increase in the existing parental leave rights contained in the Parental Leave Directive (Directive 2010/18/EU)¹⁵, which incorporates a (revised) framework agreement between ETUC, BusinessEurope, UEAPME and CEEP. Moreover, the Commission would like to introduce new paternity and carers' leave rights, as well as offering parents and carers greater rights to request flexible working arrangements. Protection against dismissal and unfavourable treatment would be enhanced. Finally, the European social partners were also asked whether they would be willing to enter into a social dialogue over these different aspects within the context of Articles 154-155 TFEU.

Whereas the ETUC, in its replies to both the first- and second-stage consultation, generally welcomed the various (new) legislative initiatives and expressed a willingness to engage in negotiations (ETUC 2016a and 2016b), the employers' side saw no need to amend the current European legislation on gender equality (and in particular on parental leave), nor to introduce new legislative instruments/forms of leave at EU level. Rather, they wished to focus (EU) actions on ensuring full and comprehensive implementation of existing regulations at national level¹⁶. In particular, the proposal to amend/repeal the existing Parental Leave Directive was strongly opposed as 'ignoring the autonomy of the European social dialogue'. With regard to the willingness to enter into negotiations, for the ETUC this depended on the willingness of the employers to do the same on the widest possible range of aspects of those rights and on the guarantee

13. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348, 28 November 1992, 1-7; European Commission (2015).

14. For a summary of the replies received during the various social partner and public consultations, see European Commission (2016).

15. Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68, 18 March 2010, 13-20.

16. See inter alia BusinessEurope (2015), CEEP (2016), UEAPME (2015 and 2016).

that if the EU social partners would not negotiate or failed to reach an agreement, the Commission would put forward the necessary legislative proposals. However, with the exception of CEEP¹⁷, the employers' side saw no need and had no desire to enter into negotiations on any of the proposed issues.

Based on the input received during the consultations, the Commission, on 26 April 2017, launched its Communication entitled 'An initiative to support work-life balance for working parents and carers' (European Commission (2017i) which, in addition to many guidance, monitoring and funding measures, not only proposes 'in the legal arena' to 1) strengthen the application of the Maternity Leave Directive; but more importantly to 2) upgrade certain existing parental leave rights; and to 3) introduce several completely

Table 2 Main changes in the proposed Work-life Balance Directive compared to existing acquis

	Current EU legislative framework	Proposed Directive
Paternity leave	No paternity leave at EU level	10 working days of paternity leave when the child is born
Parental leave	4 months of parental leave: Non-paid Guideline on uptake until the child reaches the age of 8 1 month cannot be transferred between the parents Possibility of flexible uptake to be decided by the Member States	4 months of parental leave: Paid at sick pay level To be taken by the time the child reaches the age of 12 4 months cannot be transferred between the parents Possibility of flexible uptake
Carers' leave	No carers' leave at EU level beyond time-off on grounds of force majeure	Right to 5 days of carers' leave per year per worker, paid at sick pay level, to take care of seriously ill or dependent relatives ¹⁸
Flexible working arrangements for parents and carers	Currently at EU level, the right to request this exists only for parents coming back from parental leave	Right to request flexible working arrangements for parents of children up to 12 years old and workers with caring responsibilities
Protection against dismissal and unfavourable treatment	Currently at EU level, protection against dismissal and/or unfavourable treatment exists for maternity, parental, paternity and adoption leave (in those Member States which have paternity or adoption leave). There is no EU-level protection against dismissal and/or unfavourable treatment for carers' leave and for workers requesting flexible working arrangements (except for part-time work).	Protection against discrimination and/or dismissal in cases where workers choose to take or apply to take leave or request flexible working arrangements.

Source: European Commission (2017c).

17. In the view of CEEP, the decision of (certain) social partners not to enter into negotiations put the European social dialogue in danger. (CEEP 2017b).

18. According to the Commission proposal 'relative' means a worker's son, daughter, mother, father, spouse or partner in civil partnership, where such partnerships are envisaged by national law; and 'dependency' means a situation in which a person is, temporarily or permanently, in need of care due to disability or a serious medical condition other than serious illness.

new rights to paternity and carers' leave¹⁹. In conjunction with this Communication, the Commission also launched its proposal for a Directive on work-life balance for parents and carers (see also Bouget *et al.* 2017), repealing Council Directive 2010/18/EC (on parental leave) (European Commission 2017j). The most important changes to be brought about by the new Directive are summarised in Table 2 (see previous page).

In their first reactions to this new proposal for a directive, and faithful to their previous observations/positions, the employers' side strongly opposed the proposal, mainly for financial, organisational and competitiveness reasons²⁰. For its part, the ETUC 'broadly welcomed the Commission's package and mixed policy approach and in particular the new Directive proposal' (although some weaknesses in the text were identified and need to be overcome) (ETUC 2017d)²¹.

The proposal is now also in the so-called triilogue negotiations between Commission, Parliament and Council. These are proving to be difficult in particular given the negotiation position adopted by the Council on 21 June which not only opposes the introduction of 10 days of paternity leave but leaves the (level of the) payment of it up to Member States. Similarly, with regard to the payment of parental leave, the Council only considers that at least one-and-a-half months (out of the four months) should be paid at an "adequate level". The decision as to whether workers will have the right to carers' leave is completely left up to Member States. While accepting the principle of being able to request flexible working arrangements, the Council makes it conditional by requiring amongst others that the workers should have at least six months of service (Planet Labor 2018b)²².

1.3 The interpretative guidance on the Working Time Directive

Given the high (and growing) volume of case law of the Court of Justice of the European Union (CJEU) on the Working Time Directive²³, the Commission considered it necessary to publish, as part of the Pillar package, an 'Interpretative Communication on Directive

19. A carer is a worker providing personal care or support in case of a serious illness or dependency of a relative. In the context of the work-life balance proposal, a relative is the son, daughter, mother, father, spouse or partner in civil partnership (where such partnerships are envisaged by national law), of the carer. A dependent relative is a person who is temporarily or permanently in need of care due to a serious medical condition or disability. The self-employed are not explicitly covered by the proposal but the decision on whether the self-employed should also benefit from this initiative is left to the Member States.

20. See, *inter alia* BusinessEurope (2017c), CEEP (2017b) and UEAPME (2017b).

21. ETUC considered it e.g. necessary to ensure the Directive would apply to all atypical workers (including the self-employed) and warned against introducing specific exemptions for SMEs. It also regretted the fact that the Commission had failed to propose a revision of the Maternity Leave Directive and had opted for (only) non-legislative actions to ensure better implementation and application of the Directive at national level.

22. Whereas BusinessEurope considers the Council position as a sign of realism, preventing making leave too expensive for the economy and welcoming in particular that it rightly remains a Member State responsibility to define the nature and level of compensation of such leave (BusinessEurope 2018f). For its part, the ETUC regrets that important elements such as the payment of parental leave at sick-benefit level or the non-transferability of leave between parents have been weakened (ETUC 2018d).

23. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18 November 2003, 9-19. Since 1993, more than 50 judgments and orders of the Court have referred to the Working Time Directive and interpreted its provisions, including the scope and limitations of the flexibility it affords.

2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time' (European Commission 2017k).

Combining in a single document the provisions of the Directive and the CJEU interpretations thereof, the Communication aims to contribute to the effective application, implementation and enforcement of the existing EU legislation. Its specific objectives are: 1) to offer greater (legal) certainty and clarity to national authorities, legal practitioners and social partners when applying and interpreting the Directive; 2) to help better apply the Directive's provisions in the context of new and flexible work arrangements; and 3) to ensure the effective enforcement of existing EU minimum standards contained in the Directive and thereby better protect workers' health and safety against risks associated with excessive or inappropriate working hours and inadequate rest periods, to the benefit of all parties.

More questionably, however, the Communication also sets out its own view/interpretation on certain points not yet ruled upon by the CJEU²⁴. Aware of the risk of guiding or even pre-empting future CJEU case law, the Commission hurries to clarify that 'the Communication is not binding and does not intend to create new rules. The final competence to interpret EU law lies with the Court which ensures in the interpretation and application of the Treaties that the law is observed. This is why the additional aspects for which case-law is limited or does not exist and where the Commission presents its position are clearly identified through side lined paragraphs'.

In addition to this Communication, the Commission also presented an Implementation Report, as well as a Staff Working Document, in which it reviews the implementation of the Working Time Directive by Member States (European Commission 2017l and 2017m).

1.4 Consultations and Recommendation on 'access to social protection for all workers and the self-employed'

Even during the public consultation on the EPSR itself, many stakeholders expressed concerns that workers in atypical (or non-standard) forms of employment and the self-employed face obstacles to their access to social protection. To accommodate these concerns, the Commission launched a European social partner consultation under

24. Although the ETUC considers the Communication to be helpful, it deems it premature to take a position on it, as it is not yet possible to establish how the Communication will work out in practice (also because this is the first time the Commission has published such an interpretative Communication). The ETUC has nevertheless encouraged its affiliates to examine it (as well as the Commission's Implementation Report), in order to determine whether changes to working time legislation or practice are necessary in their country or whether there is scope to call on the Commission to launch infringement proceedings on issues which the Commission has identified as cases of wrong or insufficient implementation (ETUC 2017e). CEEP, on the other hand, finds it hard to understand the logic behind the Communication, in terms of its content and methodology. In CEEP's view, there is a risk that the interpretative communication will complicate – and not simplify – the operations of the public service providers who are most affected by the various court cases addressed by the interpretative communication. From a methodological point of view, it feels that the Commission went ahead in disregard of the views of the social partners, especially CEEP, which is always committed to finding a negotiated solution (CEEP 2017c).

articles 154-155 TFEU, a public consultation, as well as dedicated consultations with fora representing the views of the self-employed²⁵. It also carried out an impact assessment (European Commission 2018e).

In sum, in both its replies to the two-stage consultation, the ETUC welcomed the initiative and largely agreed with the views developed by the Commission in the consultation documents. However, it criticised, firstly, the lack of an explicit reference to *adequate* social protection (in particular in the 2nd stage consultation document). Secondly, the ETUC was of the view that, in its definitions (in particular of ‘worker’), the initiative should be as comprehensive as possible, covering all forms of non-standard work and self-employment and allowing no restrictions or possible circumvention. Thirdly, the ETUC felt that social security contributions should be mandatory (but that the share paid by workers should be lower than that paid by employers) and that the initiative should thus not opt for voluntary or differential contribution rates. Fourthly, in particular since the initiative covers non-standard forms of work (with different types and durations of contracts and working time), it must ensure that benefits are adequate. Finally, in the view of the ETUC, the Commission should opt for a legislative initiative in the form of a Directive (ETUC 2017f and 2017g).

BusinessEurope, however, reminds the Commission that social protection is a Member State competence. It is therefore in favour of non-legislative EU action focusing on reinforcing mutual cooperation, including peer learning and exchanges of good practices, or the development of benchmarks in the context of the European Semester (in particular on how to achieve greater effectiveness and efficiency in spending and how to support the sustainability of social protection systems). Mandatory coverage is not appropriate as it might deter employers from using different forms of work (BusinessEurope 2017d and 2018b). A very similar argumentation/view is provided by UEAPME in its replies to the consultations (UEAPME 2017c and 2018c).

Unlike the ETUC, all three employers’ organisations saw no scope for and were unwilling to enter into social dialogue negotiations.

Based on all this input to the different consultations, the Commission, in the context of the Social Fairness Package (see Section 2), launched a proposal for a Recommendation on access to social protection for workers and the self-employed on 13 March 2018 (European Commission 2018f and 2018h). Although the Commission had initially envisaged both legislative and non-legislative initiatives in this area, it limited itself to a Recommendation as it considered that ‘at this moment of time’ this was the most appropriate instrument, since the EU has no competence to intervene in the functioning of national social security systems. Compared to a Directive, which would impose binding outcomes, a Recommendation responds to the need to act at EU level, while taking into account the lack of political consensus, at this point in time, on the direction of the reforms (for a further discussion, see Spasova and Wilkens, this volume).

25. For a summary report on the responses received to these different stakeholder consultations, see European Commission (2018d).

The main objectives the Commission intends to achieve via this Recommendation are that all non-standard/atypical workers and the self-employed in comparable conditions can:

- have access to equivalent social security systems (closing formal coverage gaps);
- build up and claim adequate entitlements (adequate effective coverage);
- easily transfer social security entitlements from one job to the next;
- and have transparent information about their social security entitlements and obligations.

The proposal encourages Member States to provide access to social security coverage to all workers and self-employed persons and, given the wide diversity of so-called non-standard forms of employment, opts for very broad definitions of worker, employment relationship, type of employment relationship and labour market status²⁶.

It furthermore would apply to the branches of social security that are more closely related to the employment situation, rather than to citizen or resident status, namely: (1) unemployment benefits; (2) sickness and healthcare benefits; (3) maternity and equivalent paternity benefits; (4) invalidity benefits; (5) old-age benefits, including pensions; and (6) benefits in respect of accidents at work and occupational diseases.

The ETUC is of course clearly disappointed that the Commission opted for a Recommendation rather than a binding legislative instrument. Nevertheless, it welcomes the text, while at the same time calling for it to be made more substantial through specific linked measures (ETUC 2018b). Firstly, it should spell out more clearly that social protection, as a universal human right, should primarily be ensured via public schemes established by Member States and that occupational and private schemes, although very important, should only be complementary. Secondly, it questions whether the broad definition of workers (the same as in the proposal for the Directive on Transparent and Predictable Working Conditions, see above Section 1.1) ensures that the Recommendation will apply to non-standard workers. It also regrets the lack of a definition of ‘self-employed’. As for the material scope, the ETUC regrets that the Recommendation is not aligned to the scope of ILO Convention No.102 (which, for instance, also covers survivor benefits and child and family allowances)²⁷. It is also of the view that the proposed transferability principle lacks references to cross-border situations, and that the proposed definition of an overall adequacy principle is incomplete and ambiguous.

26. Article 7 ‘Definitions’ states that:

‘For the purposes of this Recommendation, the following definitions apply:

(a) ‘worker’ means a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration;

(b) ‘employment relationship’ means the work relationship between a worker and employer(s);

(c) ‘type of employment relationship’ means one of the various types of relationships between a worker and employer(s) that can differ regarding the duration of employment, the number of working hours or other terms of the employment relationship;

(d) ‘labour market status’ means the statuses of a person as either working in the framework of an employment relationship (worker) or working on their own behalf (self-employed); (...).’

27. Convention 1952 (No.102) concerning Minimum Standards of Social Security, adopted at 35th ILC session (28 Jun 1952), entry in force: 27 Apr 1955.

BusinessEurope, however, welcomes the non-legislative approach taken (including its implementation via the European Semester and the Open Method of Coordination, OMC). However, it still considers that some parts of the Recommendation are overly prescriptive and could interfere with the functioning of national social security schemes. Their main criticism is that the EU should not interfere, through this recommendation, with Member States' definitions of 'workers'; Member States should have the choice of how to extend coverage, to which groups of workers and regarding which branches of social protection (BusinessEurope 2018c). Similarly, UEAPME emphasises that, although social protection for the self-employed must be improved in Europe, Member States should, remain free to decide which branches of social protection should be compulsory or voluntary, and should facilitate real access, with tailored offers and at a reasonable cost (UEAPME 2018c and d). CEEP also welcomes the non-legislative approach, considering the implementation of the recommendation via the European Semester and the OMC as the right way forward. Furthermore, Member States should indeed be offered 'sufficient margins of manoeuvre' (CEEP 2018).

2. The 'Social Fairness Package'

On 13 March 2018, the Commission put forward a second 'package' of both legislative and non-legislative measures to implement a number of the principles set out in the EPSR, with the main objective of increasing social fairness for both (mobile) workers and the self-employed. The package comprises two main initiatives: firstly, a proposal for a Regulation establishing a European Labour Authority (see Section 2.1), and secondly, a proposal for a Council Recommendation on access to social protection for workers and the self-employed (discussed in Section 1.4). In addition, the Commission announced a legislative proposal, in principle before 1 July 2018, with rules for a European Social Security Number to be used across policy areas where appropriate²⁸.

2.1 The European Labour Authority

To ensure better implementation and application of the EU legislation on labour mobility (e.g. the Posting of Workers Directive and rules on social security coordination such as Regulations 883/2004 and 987/2009)²⁹, Commission President Juncker announced the establishment of a European Labour Authority (ELA) in his State of the Union address on 13 September 2017. Following this, the Commission launched a public consultation (between November 2017 and January 2018), dedicated hearings with the European social partners and an impact assessment³⁰.

28. See European Commission (2017n). For some initial European social partner reactions, see BusinessEurope (2018d) and UEAPME (2018e).

29. Regulation (EC) No.883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30 April 2004, 1; Regulation (EC) No.987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No.883/2004 on the coordination of social security systems, OJ L 284, 30 October 2009, 1-42.

30. For the results of the public consultation, see European Commission (2018f); for the impact assessment, see European Commission (2018g).

In their initial reactions to the public consultation, the European social partners expressed somewhat mixed feelings about the proposed ELA. The ETUC broadly welcomed it, but stated, as a red line, that it must not interfere with social partner autonomy (i.e. not interfering with collective bargaining nor the right to take collective action), nor undermine national systems involving trade unions in enforcement and inspection. Rather, the ELA should help and support trade unions in pursuing cross-border cases. The main objectives of the ELA, in the view of the ETUC, should be to: 1) promote effective enforcement of EU labour and social security rights; 2) combat unfair competition; 3) enable better prevention, detection and monitoring of cross-border social fraud and undeclared work; and 4) serve as a signalling function for non-compliance or ineffective enforcement of EU labour and social security law. To carry out its transnational activities, the proposed Authority should also be able to rely on effective tools such as a European register of companies carrying out transnational activities, making it possible, for instance, to better track down letterbox companies, the abusive use of temporary work agencies, etc. But there should also be effective access by the ELA to national databases on labour law, social security and tax law (ETUC 2017h).

BusinessEurope, on the other hand, expressed doubts as to the added value of creating such a new Authority, considering it more opportune to streamline and improve cooperation between existing structures and ensure better use of existing (information and advice) tools. It certainly sees no need to create any additional structures for resolving disputes between Member States and, should such a structure nevertheless be established, its use should remain voluntary for Member States and should not replace formal infringement procedures. Finally, and in agreement with the ETUC, any such Authority should respect social partner autonomy (BusinessEurope 2018e), a call similarly voiced by UEAPME and CEEP. UEAPME in addition considered that the ELA should have no regulatory power, interpretation capacity or EU legislative competence, basically operating as a one-stop-shop for sharing information and supporting the better functioning of the network of social security institutions. Bureaucracy and a multiplication of EU bodies, particularly by adding an additional layer, is to be avoided (UEAPME 2018e and f).³¹

Based on the input received from the consultations and the impact assessment, the Commission presented a proposal for a Regulation establishing a European Labour Authority on 13 March 2018 (European Commission (2018 c, d and e).

According to the proposals, the main aim of the ELA is to support Member States in matters relating to cross-border labour mobility, including rules on the free movement of workers, the posting of workers and the coordination of social security systems. As for its tasks and scope, the ELA is in particular intended to: 1) facilitate access to information by individuals and employers and exchange of information between national authorities to ensure the effective enforcement of EU law; and 2) support enforcement of EU law (via e.g. concerted and joint inspections, mediation in disputes between Member States).

31. For an interesting analysis on the envisaged ELA, reflecting also the views of other stakeholders, see Fernandes (2018).

As for its scope, the ELA will cover all economic sectors and mainly serve workers. However, as it will also be responsible for monitoring the application of rules on social security coordination, which cover all persons regardless of their status (e.g. jobseekers, third-country nationals), the latter will also benefit from the ELA to the extent that they are covered by the relevant EU rules.

What the ELA will in principle *not* do:

- it will not organise inspections on its own initiative; the right to launch and to carry out an inspection, whether national or cross-border, remains a national competence. However, the ELA may suggest a joint inspection to Member States if it identifies a (possible) case of fraud or abuse;
- the ELA will also not function as a forum for settling disputes between individuals or employers and Member State authorities. It will, at the request of the parties, provide mediation exclusively in cases of disputes between national authorities regarding the application of EU law in the areas of labour mobility and social security.

The ELA will be established in the form of an EU agency and should be up and running in 2019 and fully operational in 2023³². Currently, a temporary European Advisory Group, also made up of representatives of the Commission, Member States and EU social partners, is being established to advise and assist the Commission on the ELA's establishment and functioning. This group will also reflect on the best ways for the ELA to cooperate with and benefit from other EU agencies working in/on the area of employment policy such as the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Centre for the Development of Vocational Training (Cedefop) and the European Agency for Safety and Health at Work (EU-OSHA). The same will be true for those agencies working on issues related to criminal activities (such as Europol and Eurojust).

The ELA is intended to replace seven existing EU bodies and to pool their operational tasks into one permanent structure³³.

In its first reaction to the proposed ELA, BusinessEurope repeated its doubts concerning the added value of such a new agency as an efficient and cost-effective way of combatting fraud in cross-border situations. Neither does it agree that the ELA should be able to intervene in the case of suspected violations related to working conditions, health and safety or the employment of third-country nationals staying illegally in a country.

32. In his opening address to the Social Dialogue Committee on 28 June 2018, Mr. Joost Korte, the new DG EMPL Director General, indicated that the ELA would not be a 'normal' EU agency (like e.g. Eurofound) but would function instead as an 'operational' EU agency (like Europol or Eurojust). As a consequence, he saw no need for its tripartite governance. In his view, the success of establishing (and operating) the ELA would largely depend on the capacity to 'demystify what the ELA is, what it will do and in particular not do'.

33. The Technical Committee on the Free Movement of Workers, the Committee of Experts on Posting of Workers, the European Platform to enhance cooperation in tackling undeclared work, the EURES Coordination Office and three bodies attached to the Administrative Commission for the Coordination of Social Security Systems - the Audit Board, the Conciliation Board and the Technical Commission.

These, it states, are matters of national competence and have only a limited cross-border dimension. The ELA, moreover, should not have a role in relation to company restructuring, which should remain a matter for internal company decision-making. Furthermore, any dispute-resolving task should be removed from the scope of the ELA, though a mediation function triggered by a Member State request could be considered as long as it respects national authorities' competences. The mandate and procedures of the envisaged Mediation Board should also be further clarified. BusinessEurope similarly does not agree with the proposal whereby the ELA could, on its own initiative, suggest a concerted or joint inspection to Member State authorities. It sees a need to increase the number of social partner representatives on the Stakeholder Board, as this would better allow proper representation of both European cross-industry and sectoral social partners (BusinessEurope 2018e).

UEAPME firstly regrets that the ELA will not become a genuine tripartite agency, calling for a (bigger) proper management role to be assigned to the EU social partners. The ELA should also, in particular, ensure a level playing field, since SMEs suffer from a lack of protection through cooperation between national authorities to ensure effective implementation of EU rules in the field of social security and labour mobility (UEAPME 2018c, d and e). In a short communication, CEEP mainly welcomed the Commission's aim to increase the quality of information available to employers and workers on applicable labour rules, expressing its belief that the ELA, if properly set up and managed, would have the potential to facilitate fair European labour mobility. The agency should also contribute to more concerted and better cooperation between labour inspectorates, and special attention should be paid to respecting the roles and responsibilities of national social partners (CEEP 2018).

The ETUC, on the other hand, repeated its strong support for the ELA, while insisting that the ELA should not interfere with social partner autonomy. Also, improvements should be made to the proposed Regulation, beefing up the role of the ELA. In this respect, for instance, the sole focus of the ELA should be on protecting all workers in the EU regardless of their nationality or migrant status. Concerted and joint inspections should not be optional for the Member States concerned, and Member States should not be allowed to refuse such joint inspections on their territory. Trade unions, too, should be able to request such concerted and joint inspections. The ETUC is also calling for clarification of the ELA's mediation role, and furthermore considers the proposed role and structure of the Stakeholder Group as insufficient (ETUC 2018c). In accordance with the ordinary legislative procedure, this proposal for a Regulation is, at the time of writing, being examined by the European Parliament and the Council.

3. The revision of the Posting of Workers Directive

The commitment to revise the Posting of Workers Directive (Directive 96/71/EC) was announced in the 2016 Commission Work Programme and hence predated the EPSR. On 8 March 2016, the Commission tabled a proposal for a 'targeted' revision of the Directive, with the main aims of ensuring the principle of equal pay for equal work at the same place and of addressing unfair practices.

Table 3 **Revision of the Posting of Workers Directive: overview of the main elements of the proposals of the EU institutions**

Subject	Commission	European Parliament	Council
Legal basis	Articles 53(1) and 62 of the TFEU	Articles 53(1), Article 62 and Article 153 (1) (a) and (b) in conjunction with Article 153 (2) of the TFEU	Articles 53(1) and 62 of the TFEU
Long-term posting	24 months - Effective or anticipated duration	24 months + upon reasoned request - Effective or anticipated duration - Negative list: conclusion and termination of the employment contract	12 + 6 months upon motivated notification - Effective duration - Negative list: conclusion and termination of the employment contract; non-competition clause; supplementary occupational retirement pension schemes
Core rights	Remuneration; - information on remuneration to be published on a single official national website	Remuneration - publication on the single official national website - information needs to be accurate and up-to-date	Remuneration - publication on the single official national website - gross amount, not individual elements - information in conformity with Art.5 of Directive 2014/67 ³⁴
		Conditions of workers' accommodation – Article 3 (1)	Conditions of workers' accommodation – but not in a core article of Directive only mentioned in a Recital
Subcontracting	included	included	dropped
Temporary agencies	included	included	included
Collective agreements	included	Included, + company-level collective agreements	included
Transposition/application	2-year transposition period	2-year transposition period	3-year transposition period; application review after 4 years
Other elements		- Fundamental rights (Article) - Provisions on non-genuine posting	- Fundamental rights (Recital) - exclusion of international road transport

34. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), OJ L 159, 28 May 2014, 11-31.

The main elements (of change) of the proposal, which used as its legal basis Articles 53(1) and 62 TFEU (which are internal market policy provisions), were: 1) ensuring the principle of equal pay for equal work between posted and local workers; 2) extending the application of rules set by universally applicable collective agreements to posted workers in all economic sectors; 3) ensuring that the principle of equal treatment between local and posted temporary agency workers is also applied now to posted temporary agency workers; and 4) the application of mandatory host-country labour protection provisions to long-term postings (24 months).

This proposal triggered a heated, sensitive and long discussion between and within the different EU institutions, as well as with the EU cross-industry and sectoral social partners. On respectively 16 and 23 October 2017, both the European Parliament and the Council were able to agree on a fragile compromise text. For their diverging positions on some of the key changes, see Table 3. In sum, they relate to:

- extending the legal base to also include ‘social policy provisions’ in the Treaty;
- length of the period to be considered as a ‘long-term posting’;
- application of collective agreements (incl. company-level agreements);
- coverage of accommodation costs and other allowances;
- the integration of a provision ensuring that the Directive should not affect the exercise of fundamental rights (in particular collective bargaining and collective action) (known as the Monti clause);
- application of the Directive to international road transport.

Following an intense ‘trialogue’ between Commission, Parliament and Council, a political agreement was reached in March. It contains, inter alia, the following³⁵:

- legal basis limited to Articles 53(1) and 62 TFEU (or internal market provisions), but Article 1 of the Directive states that the Directive’s main subject matter is to ensure the protection of workers;
- a so-called ‘Monti clause’;
- application of the principle of equal pay for equal work, in particular in relation to rates of pay;
- the extension of rules set by universally applicable collective agreements, making them applicable to posted workers in all economic sectors, and the recognition of generally applicable collective agreements in the same geographical area and profession/industry;
- maximum duration of 12 months with a possible 6-month extension,
- application of the principle of equal treatment between local and posted temporary agency workers;
- protection in relation to workers’ accommodation;
- the payment of daily allowances and reimbursement of travel, board and lodging expenses;
- protection in case of ‘fraudulent or fake postings’;

35. See Council of the European Union (2018). For a short analysis of the history as well as the final achievements of this revision, see Picard and Pochet (2018).

- a two-year transposition period and a clause on a possible review of the Directive 5 years after transposition (in particular for sub-contracting and road transport);
- exclusion of international road transport: the revised rules on posting only apply to drivers in the transport sector as from the date of entry into force of a sector-specific approach.

This agreement was then incorporated in EU Directive 2018/957 of 28 June 2018, amending EU Directive 96/71/EC concerning the posting of workers in the framework of the provision of services³⁶.

Conclusions: a new legislative agenda for the EU after all?

A first strong conclusion from the discussion above is that, with the launch of the first two ‘implementation’ packages and in particular the legislative initiatives contained therein, the Commission is moving from ‘rhetoric to action’ in its commitment to deliver on the European Pillar of Social Rights. In several areas, significant steps forward have been taken: these include the revision of the Written Statement Directive, a proposal for a Directive on Work-Life Balance for parents and carers, the proposed revision of the Posting of Workers Directive. And yet, there is certainly still a need for improvement and clarification in several of these proposals, if they are to meet their declared objectives.

In other areas, promises have not really been delivered upon: for example, there is ‘only’ a proposal for a Recommendation on access to social protection for workers and the self-employed, rather than the hoped-for legal protection. Other initiatives look promising, but it is too early to say how they will be used and/or function: this is the case for example with the interpretative guidance on working time and the proposed European Labour Authority.

Some important first hurdles have been overcome and this should be welcomed. But we must also remain realistic and vigilant. What is most worrying is that – perhaps with the exception of the revision of the Posting of Workers Directive – the ‘legislative’ route for most of these initiatives is still very long and risks being ‘bumpy’. This makes it very unpredictable and unclear what the final outcomes will look like and what their added value will be with regard to protecting the rights of workers and the self-employed. And what if the end result cannot be achieved within the current legislative mandate of the relevant EU institutions? What will be the stance of a new Commission and Parliament on probable ‘left-overs’?

A second clear finding of this chapter is that several of the initiatives launched in the context of the EPSR have caused serious collateral damage in the field of European social dialogue, impacting the relationship of trust between the European cross-industry social partners. Within a very short period, there have been several refusals to enter into negotiations, albeit for a variety of reasons. This has also resulted in the

36. OJ L 173, 9 July 2018, 16-24. For a short analysis of the history as well as the final achievements of this revision, see Picard and Pochet (2018).

envisaged negotiations on a new joint work programme for 2019-2021 being put on hold; although these negotiations resumed in late May 2018, one can question how the already weakened European social dialogue will be able to overcome this serious setback.

In conclusion, the European Union is starting to put meat on the bones of the EPSR. A high price seems however to be paid in the field of European social dialogue. The proof of the pudding will be in the eating: it remains to be seen whether Member States will follow the Commission's ambitions. But, in view of the European elections in 2019, failure is no option and the EPSR must be translated into concrete measures to deliver tangible results within this new legislative social agenda.

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All links were checked on 23.10.2018.

Chapter 5

The social situation of the self-employed in Europe: labour market issues and social protection

Slavina Spasova and Mathijn Wilkens

Introduction

Self-employment is being promoted at national and EU level as a way to create ‘more and better’ jobs. For more than a decade, self-employment¹ has indeed drawn the attention of national policymakers throughout Europe as an economic and social policy tool. At EU level, the EU’s Employment Guidelines suggest that Member States boost demand for labour and facilitate the creation of quality jobs by promoting entrepreneurship and self-employment (European Commission 2017a). Importantly, during the economic and financial crisis, self-employment became an instrument of labour market and social policy. In some cases though, it has been used by companies to reduce labour costs for salaried employment and to gain a competitive advantage by avoiding social security contributions and circumventing labour law regulations.

Self-employment is widespread in such traditional sectors as construction (Behling and Harvey 2015) and transport as well as in the growing service sectors and in new business models as a substitute for salaried employment (ILO 2016). In this context, hybrid forms of employment – such as ‘dependent’² and ‘bogus’³ self-employment – have emerged, especially in the platform-driven section of the economy (ILO 2016 and 2017; Williams and Lapeyre 2017; Degryse 2016; Kenney and Zysman 2016).

As will be argued below, these hybrid forms of employment have increased to a point where they represent a challenge for national labour and social legislation as well as for the financing of social security systems. The question should therefore be asked whether the promotion of self-employment really leads to ‘more jobs’ and ‘better quality jobs’. Indeed, the labour situation of people in self-employment differs widely and self-employment comes with an elevated risk of precariousness (Eurofound 2017; European Parliament 2016). In addition, the self-employed generally have less statutory and effective access to social protection than employees (Spasova *et al.* 2017). At a macro level, a rise in self-employment could threaten the sustainability of social protection

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1. The concept of self-employment refers to an employment situation where people work on their own account with or without employees.
 2. A dependent self-employed person often depends on one or a small number of clients and receives direct guidelines on the scope of the task and the work process (ILO 2016). For the purposes of this chapter we also use interchangeably the term ‘economically dependent workers’.
 3. ‘Bogus self-employment’ is defined as the deliberate (mis-) classification of a worker’s employment status as self-employed despite the fact that their working situation meets all of the criteria of salaried employment (ILO 2016).

systems, as self-employed people without access to certain social protection schemes may have to rely on last-resort social assistance benefits.

In this context, policymakers at national and EU level have recently been looking at ways to ensure better (and innovative) social protection for self-employed workers (Eurofound 2017; Spasova *et al.* 2017; Behrendt and Nguyen 2018), including in the context of the European Pillar of Social Rights. In 2018 the European Commission indeed put forward a proposal for a Council Recommendation to ensure access to social protection for non-standard workers and the self-employed (European Commission 2018a).

Against this backdrop, this chapter provides first an account of the numbers and profiles of the self-employed today, clustering the ‘many faces’ of self-employment in Europe (Section 1). Section 2 describes statutory and effective access of the self-employed to social protection schemes. Section 3 briefly discusses how the social protection of the self-employed has been addressed in recent EU discourse and initiatives. The final section summarises the key findings.

1. Exploring the diversity of self-employment in Europe

1.1 Trends in self-employment

The proportion of self-employed in the European Union has not increased since the beginning of the 21st century, remaining, according to Eurostat, fairly stable at around 14-15% of the EU28 workforce. However, this general trend masks four interesting developments. Firstly, the share of the self-employed with employees is slowly decreasing (5% in 2002, 4.2% in 2016). For the EU15 we can observe a trend over a longer time, showing a fall from 5.6% in 1995 to 4.3% in 2017.

Secondly and conversely, the share of self-employed workers without employees is slowly increasing, from 10.1% in 2002 to 10.4% in 2017 in the EU28. This is *inter alia* linked to the shrinking size of agriculture in the European economy, a sector with a high self-employment rate. Roughly half of the workforce in this sector is indeed self-employed, and almost 9 out of 10 of these do not employ staff. Thus, the shrinking agricultural sector offsets an upward trend in the self-employed without employees in the other sectors – from 7.1% in 2002 to 9.0% in 2017.

Thirdly, the share of self-employment is counter-cyclical and to some extent corresponds with unemployment – the higher unemployment is, the higher the self-employment rate. Since 2002, the self-employment rate in the EU28 was highest in 2004 and 2010 (15.4% and 15.3% of the workforce), years when unemployment was also high (9.3% and 9.6%). Since 2012, self-employment has been declining, preceding the decline in unemployment.

Finally, trends in self-employment differ greatly between countries. Between 2008 and 2015 (just before and after the crisis), the strongest increases were observed in the Netherlands (up 3.6% pts), Latvia (2.9% pts) and Luxembourg (2.7% pts). The biggest decreases were in Portugal (down 6% pts), Croatia (5% pts) and Cyprus (1.2% pts). The

mentioned shrinking agricultural sector is a strong driver of the decrease in the latter countries.

1.2 Who are the self-employed?

The most recent Eurostat figures for 2017 show that 4% of the labour force are self-employed with employees, while 10% are self-employed without employees. Within the EU, the proportion of the former is highest in Greece (7%) and Italy (6%) and lowest in Romania (1%) and Cyprus (2%). The proportion of self-employed without employees is highest in Greece (22%) and Romania (15%) and lowest in Denmark (4%) and Germany (5%).

For each self-employed woman, there are more than two self-employed men in the EU28. Nearly half of the self-employed (47%) are male and do not employ staff. Women self-employed without employees account for about 25% of all self-employed. Roughly one in five (21%) of the self-employed are male and employ staff, while the smallest group are women self-employed with employees (8%). The self-employed are also older than employees: 39% are aged 50 or more, compared to 30% for all employed persons.

Agriculture alone accounts for 14% of all self-employed. Most of these are self-employed without employees. In addition to agriculture, self-employed are also overrepresented in service activities (30%, including personal and repair services), professional scientific and technical activities (30%) and construction (27%). Within these sectors, 3 out of 4 of the self-employed do not employ staff, a figure roughly in line with the overall average.

Certain occupations are historically or by nature self-employment domains. Professions such as lawyers, auditors, tax advisors, notaries, dentists, pharmacists and medical specialists can be referred to as 'liberal professions'. There is no precise and consistent definition across countries, but the European Centre for Liberal Professions (2014) lists categories of professions that could belong to that group and De Moortel and Vanroelen (2017) estimate on the basis of the European Working Conditions Survey (EWCS) that 8% of the self-employed belong to these liberal professions.

Finally, the self-employed earn on average more than employees (Eurofound 2017). Income distribution is however more skewed for the self-employed than for employees, testament to the fact that the group of self-employed includes some of the highest earning people as well as some of the lowest earners. In fact, Spasova *et al.* (2017) found that in 2015 the at-risk-of-poverty rate of the self-employed was three times higher than that of salaried workers.

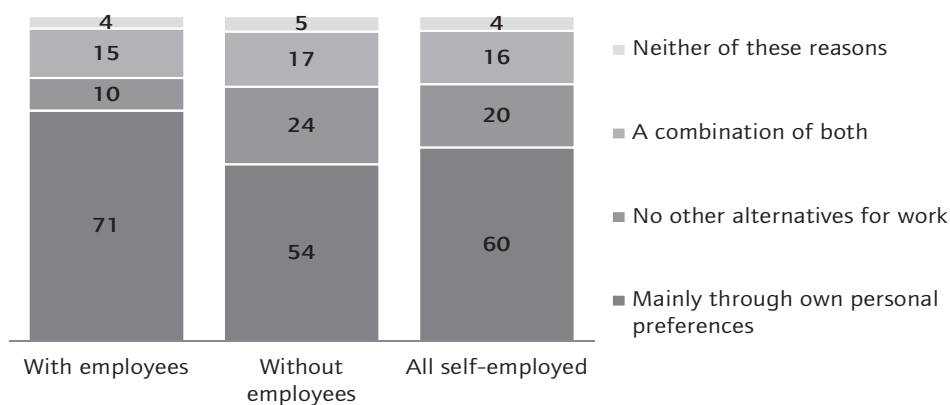
1.3 Becoming self-employed: choice or necessity?

Much of the recent policy discourse focuses on self-employment in the context of precarious work and economic dependence (see Section 3). This implies that for some, the status of self-employment may not be desirable, with employee status preferred.

Questions that arise are: *what motivates people to become self-employed? Is it choice or rather necessity?*

The 2015 EWCS asked respondents who had identified themselves as self-employed whether this option was based mainly on their own personal preferences ('opportunity') or because there were no other options for work ('necessity'). A combination of both (or neither) of these reasons could also apply. The majority (60%) of self-employed people in the EU28 became self-employed of their own preference (see Figure 1). One in five stated that they had no other alternatives for work and therefore resorted to self-employment. For 16% of respondents it was a combination of both. Clearly there is a difference between the self-employed with employees and those without: those who employ staff themselves are more likely to have become self-employed out of preference (71%) than those without staff (54%).

Figure 1 Main reasons for self-employment, EU28



Source: Eurofound (2017).

Binder and Coad (2013) find that in the UK 'opportunity' entrepreneurship is linked to higher life satisfaction than is 'necessity' entrepreneurship. Eurofound (2017) shows that those who became self-employed by choice are more likely to report that they 'enjoy being their own boss' and less likely to report that they 'find it hard to bear the responsibility of running a business' than those who had no alternative to self-employment. Self-employed workers' assessment of their situation points to the fact that not all self-employed people display traits commonly associated with entrepreneurship, such as enjoying autonomy and embracing risk. Gevaert *et al.* (2018) show that having entrepreneurial characteristics seems to be crucial for the mental well-being of the self-employed.

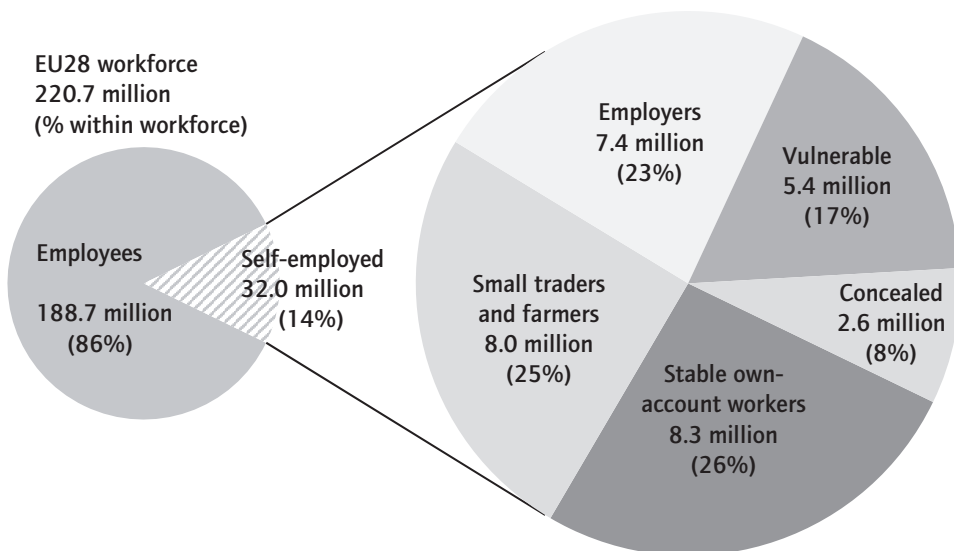
At country level, the change in the share of self-employment in the workforce between 2008 and 2015 is negatively correlated (-0.46) with the proportion of those who became self-employed because there were no other alternatives for work. Some of the highest rates of 'necessity self-employment' can be observed in countries with the steepest declines in self-employment, e.g. Portugal (34%), Croatia (38%) and Romania (37%).

Conversely, necessity self-employment is low in countries that have witnessed growth in the proportion of self-employment, e.g. the Netherlands (9%), Luxembourg (13%) and the UK (14%). This seems to imply that the recent increases in the self-employment rate are the result of self-employment becoming relatively more attractive as an alternative to dependent employment. In the Netherlands, tax incentives for self-employment have contributed greatly to the surge in self-employment (Bosch *et al.* 2012).

1.4 The many faces of self-employment

It has become clear that the self-employed are no homogenous group, and this diversity needs further investigation. Eurofound (2017) performs latent class analysis on the EWCS resulting in five distinct clusters of self-employed in the EU28 in terms of a range of characteristics related to entrepreneurialism, economic or operational dependence and economic sustainability or precariousness⁴ (Figure 2). The main characteristics of the workers belonging to each of these groups are outlined below.

Figure 2 Clusters of self-employed, EU28



Source: Eurofound (2017), based on the EWCS.

On one side of the spectrum we find two of the five clusters – labelled ‘**employers**’ and ‘**stable own-account workers**’ – together represent about half of the self-employed. These groups tend to be more independent and enjoy greater powers of decision over their work, are engaged in economically more viable and sustainable activities

4. See the technical report for more details on the model (De Moortel and Vanroelen 2017).

and are more likely to be self-employed out of choice. Compared to the other groups of self-employed, their levels of health, wellbeing and satisfaction with their working conditions are higher.

The self-employed '**employers**' fit the positive image associated with entrepreneurs, as they have larger businesses employing multiple employees across multiple subsidiaries. Unsurprisingly, high earners are overrepresented in this group and a majority claim to be financially secure in case of sickness. The 'employers' are economically independent, as almost all of them have multiple clients from which to generate income. Also, more than half (53%) of the self-employed in this group find it easy to find new clients. The 'employers' have a high degree of discretion over their work situation, both in terms of laying off employees and of taking time off for personal or family matters.

The '**stable own-account workers**' by contrast do not employ any staff, while being economically and operationally independent. Only a small fraction (12%) of the self-employed in this cluster became self-employed out of necessity, and, like the 'employers', many have more than one client (93%) and can easily find new ones (53%). Nine out of ten within this group can take time off when they wish. They tend to earn more than the other clusters except for the 'employers'. This cluster is most strongly represented in the country that has witnessed the strongest growth in self-employment in the last decade: the Netherlands. However, less than half of the self-employed (41%) in the Netherlands can be classified as 'stable own-account workers'.

On the other side of the spectrum we find one in four self-employed belonging to the '**vulnerable**' (17%) or '**concealed**' (8%) clusters. The self-employed in these groups are generally in more precarious situations, with lower levels of income and job security, greater dependence and with less working autonomy. They experience, overall, unfavourable working conditions and this seems to correspond to lower levels of health and wellbeing.

The self-employed in the '**vulnerable**' cluster are labelled as such because they are low earners and financially insecure in case of sickness (54%). It is also difficult for them to change their situation as they are economically dependent: 55% have only one client and 48% find it difficult to find new clients. Generally, a large share of the self-employed in this cluster do not assess their work situation very positively – 40% became self-employed out of necessity. The 'vulnerable' self-employed are overrepresented in agriculture and the shrinking relative size of agriculture in employment explains the largest drops in self-employment.

The '**concealed**' self-employed display many features similar to those of the 'vulnerable' (economic dependency, precariousness) but their most striking characteristic is that they have little discretion in how they organise their work. For example, only 15% have the authority to dismiss other workers and, for 33%, it is difficult to take time off at short notice, potentially indicating the sort of subordination one would typically expect in an employee-employer relationship (hence the term 'concealed' self-employment). Two-thirds (65%) of the self-employed in this group are paid on a weekly or monthly basis. Overall, the 'concealed' self-employed have a very similar work situation to employees,

without having the same rights (e.g. dismissal protection, leave entitlements) or social protection. The UK – a country which has seen a strong increase in self-employment – has by far the strongest representation of this type of self-employed (21%).

Finally, one in four self-employed people are members of perhaps a more traditional group: **‘small traders and farmers’**. The picture is more mixed for this group, combining both favourable and unfavourable working conditions. People in this group tend to be economically independent and work autonomously, but find it hard to do their job – 40% indicate they ‘find it hard bearing the responsibility of running a business’. This is most likely because of their long working weeks: more than 7 out of 10 of these ‘small traders and farmers’ work 6 days or more a week.

The cluster analysis above confirms previous research (see Section 2) showing the blurring of boundaries between employment and self-employment, as the working and employment conditions of some of the self-employed – the ‘vulnerable’ and ‘concealed’ – are close to those of employees. The situation of these self-employed has sparked a lively debate in many Member States concerning the legal status of some groups of self-employed, as more and more workers seem to fall into an ‘in-between’ category of ‘economically dependent workers’ (or also) ‘dependent self-employed’ and ‘bogus (or sham) self-employment’ (Eurofound 2017).

2. Access to social protection for the self-employed: making sense of diversity

The question then is how the wide diversity among the self-employed described in Section 1 affects their access to social protection⁵. Research shows that in general the self-employed are less protected than salaried workers in terms of both ‘statutory’ and ‘effective’ access to social benefits (Spasova *et al.* 2017; Matsaganis *et al.* 2016; Fondeville *et al.* 2015; Fachinger and Frankus 2015; Westerveld 2012), though major nuances exist.

Thus, although the situation varies greatly from country to country, in general the self-employed have the same statutory access to non-insurance (non-contributory)⁶ based schemes as salaried employees. Most often, these are universal schemes, i.e. social assistance, long-term care and family benefit schemes, financed by general taxation and not dependent on employment status.

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5. The main social protection schemes considered in this chapter are healthcare, sickness, maternity/paternity, old-age pensions, unemployment, social assistance, invalidity, accidents at work/occupational injuries and family benefits. Statutory access refers to the right enshrined in law to access social protection, while effective access is linked to meeting eligibility conditions in order to accrue entitlements and receive benefits.
 6. Insurance-based schemes (contributory schemes) are based on social security contributions paid by the worker and/or the employer. Non-insurance based (non-contributory) schemes are financed by taxes (e.g. family allowances, some forms of healthcare and long-term care and certain means-tested benefits as social assistance benefits). These are granted regardless of an individual’s employment status. Distinguishing between non-insurance-based (non-contributory) and insurance-based (contributory) social protection schemes is a difficult task for several reasons. In some countries, there may be a mix of benefits (contributory and non-contributory) for the same risk. Moreover, the same scheme can be contributory in one country and non-contributory in another.

However, the self-employed often do not have statutory access to certain insurance-based (contributory) schemes (Spasova *et al.* 2017; Matsaganis *et al.* 2016; Fachinger and Frankus 2015; Westerveld 2012; Dekker 2011). In addition, even if they legally have access to social protection, their effective access is often hampered by eligibility conditions tailored to salaried employment, issues of transferability of benefits between schemes and under-insurance due to contributions paid on low minimum required incomes⁷. Moreover, the self-employed may be subject to longer waiting periods and enjoy shorter periods of receipt of benefits than salaried workers (Spasova *et al.* 2017; Fondeville *et al.* 2015). This section focuses mainly on statutory access (Section 2.1), while providing some insights on effective access (Section 2.2).

2.1 Statutory access to social protection for people working in a self-employed capacity

2.1.1 Access to insurance-based schemes

Why does statutory access to certain benefits, such as sickness or unemployment benefits, matter for the self-employed? Surely a well-off, self-employed individual belonging to one of the economically most viable ‘employers’ or ‘stable own-account’ clusters (Section 1) may not need to be insured against these risks. In fact, some argue that risks such as unemployment are entrepreneurial risks inherent to setting up and running an entrepreneurial venture (BusinessEurope 2018a). However, how would a ‘vulnerable’ or a ‘concealed’ self-employed person cope with the same situation? If the latter groups are not protected, there is a greater risk of them ending up in poverty and social exclusion and having to resort to social protection safety nets. Statutory access thus relates to equal access to social rights, i.e. the possibility of enjoying mandatory coverage or of having the possibility to opt into a social protection schemes.

Insurance-based schemes can be divided into two groups as regards the social protection situation of the self-employed⁸. The first group can be considered as mainly linked to gainful employment⁹, made up of schemes to which in general the self-employed have statutory access: healthcare insurance, invalidity, old-age pensions and maternity/paternity benefits. The second group comprises benefits mostly related to a salaried employment relationship, to which the self-employed mostly do not have access, or may join only on a voluntary basis. The main gaps in statutory access indeed relate to sickness, unemployment and occupational injuries and accident-at-work benefits. As shown in Table 1, no less than fifteen Member States do not provide access to unemployment

7. In general, when possible the self-employed ensure at the minimum required income level (e.g. BG, RO, ES). In some countries (e.g. BG, RO), the self-employed have the choice to insure at the level of the minimum wage (for more details see Spasova *et al.* 2017).

8. It should be noted that statutory access to these schemes is further complicated by the possibility of opting in, opting out and by exemptions for certain self-employed categories. The self-employed may also be entitled only to means-tested benefits (non-contributory) from some schemes which comprise contributory and non-contributory benefits, while salaried workers can have access to both.

9. According to the ILO (2016), there are four types of social protection schemes related to the employment relationship: those linked to (1) a contract with a specific employer; (2) salaried employment; (3) participation in ‘gainful employment’, i.e. including earnings from self-employment; and (4) residence status (ILO 2016).

benefits, twelve do not provide access to accident at work/occupational injuries and three to sickness benefits. Importantly, research shows that the self-employed consider precisely these schemes to be the most important branches of social protection in which to be insured, after old-age pensions (Codagnone *et al.* 2018).

Table 1 Main gaps in statutory access for the self-employed

Social protection scheme	No legal access	Statutory access	
		Mandatory	Voluntary
Unemployment	BE, BG, CY, DE, EE ^a , EL ^b , FR, IE ^a , IT, MT ^b , NL, LT ^b , LV, PT ^b , UK ^a	CZ, HR, HU, LU, SI, SK ^c , PL	AT ^c , DK, ES, FI, RO, SE
Accidents at work and occupational injuries	BE, BG, CY, CZ, DE, DK, IE, LT, LV, NL ^b , SK, UK	EE, EL, HR, HU, IT, PL, LU, MT, SE, SI	AT ^c , ES ^d , FI ^d , FR ^b , PT, RO ^d
Sickness benefits	EL ^b , IE ^a , IT	AT ^c , BE, CY, DE ^c , DK, ES ^d , FI, FR, HR, HU, LU, LT, LV, MT, PT ^c , SE, SI, SK ^c , UK ^c	BG, CZ, EE, NL, PL, RO ^d

Notes: a) Access only to means-tested benefits b) Access only for certain categories of SE c) OPT- OUT and exemptions d) Compulsory /voluntary access depending on the category of SE.

Source: This table is based on previous research: Spasova *et al.* (2017), Fondeville *et al.* (2015), European Commission (2017b and 2018b). The table does not claim to be exhaustive.

In order to simplify the complex reality of national legal provisions, Spasova *et al.* (2017) classify statutory access to social protection for the self-employed in Europe in four clusters (see Table 2), using two main criteria. The first pertains to compulsory coverage of the self-employed by insurance-based schemes (i.e. similar to salaried employment). The second criterion relates to whether the self-employed are able to voluntarily opt into a scheme in cases where they, unlike salaried employees, do not have mandatory coverage¹⁰.

Table 2 Statutory access to insurance-based schemes for the self-employed in the EU

'All-inclusive' systems	'Optional access' systems	'Partially exclusive' systems	Patchwork of 'optional access' and 'partially exclusive' systems
HR, HU, LU, SI	AT, CZ, DK, ES, FI, PL, RO, SE	BE, CY, EL, FR, IT, LT, LV, MT, SK	BG, DE, EE, IE, NL, PT, UK

Source: based on Spasova *et al.* (2017).

In the '**All-inclusive access**' cluster, comprising only four Member States, the self-employed, like salaried workers, are required to be insured under all the insurance-based schemes.

10. Exceptions to the requirement to be insured may apply in certain countries in each of the four clusters. For instance, there may be income thresholds below which the self-employed are not required to be insured.

In the **‘Optional access’** cluster (eight Member States) the self-employed, different to salaried workers, are not required to be insured under one or more insurance-based but may choose to voluntarily opt into the scheme(s) concerned¹¹. For instance, in Austria, the self-employed can opt into unemployment insurance. In the Czech Republic and Poland, they may choose to take out sickness and maternity insurance.

The **‘Partially exclusive schemes’** cluster is the biggest group, made up of nine Member States where the self-employed, contrary to salaried workers, do not have access and, different to the previous cluster, they cannot opt into one or more insurance-based schemes. For instance, there is no access to unemployment insurance in seven of these countries¹².

Finally, the residual group of seven Member States is a **‘Patchwork of “optional access” and “partially exclusive”** systems, as it combines features of both clusters. The self-employed in this group are not required to be insured under one or more insurance-based schemes. They may opt into some schemes but are completely excluded from others. For instance, in Bulgaria, the self-employed can opt into the sickness scheme but are excluded from the occupational disease and work injury as well as the unemployment schemes. It should be noted that this ‘patchwork’ cluster includes some countries where the situation is rather specific (e.g. EE, IE, PT and the UK). For instance, in Ireland and the United Kingdom the self-employed do not have access to certain insurance-based schemes and do not have the possibility to opt in. However, they can qualify for a means-tested benefit covering a similar contingency.

Although the boundaries between the four clusters are not watertight, this classification clearly flags two main points. First, there is a great variety among Member States in the way they deal with statutory access to social protection for the self-employed. Second, the self-employed have less extensive rights of access to social protection than salaried workers. Only twelve EU Member States provide comprehensive access, i.e. compulsory or voluntary insurance under all statutory social protection schemes (‘all-inclusive’ and ‘optional access’ clusters).

2.1.2 Hybrid social protection for the dependent self-employed

In addition to the complex situation in terms of statutory access for the self-employed, Section 1 flagged that a second major challenge has become apparent. Since the beginning of the crisis a hybridisation of social protection for the so-called ‘dependent self-employed’ (or ‘economically dependent workers’) can indeed be observed.

In terms of statutory access to social protection the ‘dependent self-employed’ can be classified somewhere between salaried employment and self-employment. They are better protected in some countries than the rest of the self-employed, especially

11. It should be noted that the situation with regard to unemployment insurance in some countries in this cluster takes a specific form (DK, FI, SE). In these countries, there is a two-tiered unemployment system: a state benefit and a voluntary insurance scheme accessible to those in all kinds of employment.

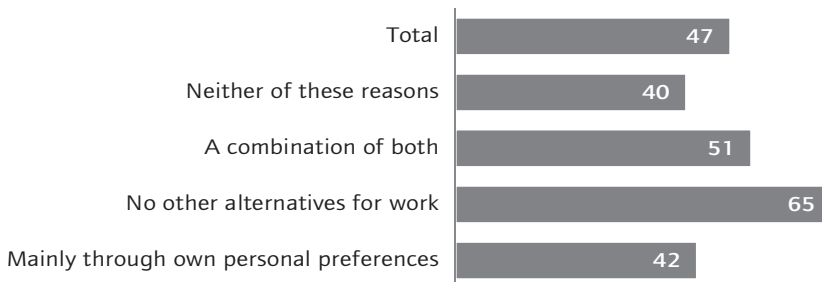
12. BE, CY, FR, IT, LT, LV, MT.

regarding unemployment, sickness and occupational injuries and accident-at-work benefits. Yet, in some cases, the ‘dependent self-employed are subject to different eligibility and benefit receipt conditions than salaried workers (see illustrations in Table A1 in Annex).

2.2 Effective access to social protection

In addition to the patchy statutory access, there are several issues with regards to effective access to social protection for the self-employed. As an illustration, particularly telling are the perceptions of the self-employed on their access to sickness benefits. In most Member states they have (at least voluntary) statutory access to sickness benefits. However, as many as 47% of the self-employed in the EU indicate they would not be financially secure if they had a long-term illness (Eurofound 2017; Figure 3). This is particularly the case for those who became self-employed due to a lack of alternatives – these are the self-employed who consider themselves financially most vulnerable.

Figure 3 If I had a long-term sickness, I would be financially secure – % of self-employed who tend to disagree or strongly disagree, by main reasons for self-employment



Source: Eurofound (2017).

Since effective access to social protection is very difficult to estimate due to a lack of comprehensive national data, we merely highlight four main findings of existing research (Behrendt and Nguyen 2018; Spasova *et al.* 2017; Matsaganis *et al.* 2016; Fonderville *et al.* 2015). First, in many cases the eligibility criteria for social protection are tailored to salaried employment or are tighter for the self-employed, which may hinder their access. Such eligibility criteria mostly relate to contributory periods, shorter duration of benefits as well as waiting periods (e.g. for sickness benefits)¹³. For instance, in Portugal the maximum period of sickness benefit receipt is three times shorter and the waiting period ten times longer for the self-employed than for salaried workers. These conditions undoubtedly explain the very low proportion of self-employed (2.4%) among the total number of beneficiaries of sickness benefit (2016) in Portugal.

13. AT, BE, EE, FR, HR, LU, PL, PT, SE, SI.

Second, effective access to social protection may be influenced by the possibilities for voluntary access, opt-out and exemptions. Third, the way the income assessment base upon which the self-employed pay contributions is determined¹⁴ may play a significant role in the adequacy of the benefits (see examples in Table A2 in Annex).

Fourth, effective access may be hindered by a lack of transferability of social rights entitlements. This is the case especially for pension schemes and in particular for occupational pension schemes. For instance, in some Member States where occupational pensions have very high coverage rates for salaried workers, the self-employed may have only limited access or no access at all (European Commission and SPC 2018; Spasova *et al.* 2017). Access to information and administrative procedures may also make effective access difficult, especially with regard to old-age, invalidity, and accident/occupational benefits (Codagnone *et al.* 2018).

This section has shown that Member States differ greatly in the extent to which they cover the self-employed in their social protection systems and that in many of them the self-employed do not have statutory access to some social protection schemes. Moreover, even if statutory access is guaranteed, effective access may be lacking. The next section discusses how this issue has been addressed at EU level by the European Commission.

3. When Europe becomes involved: from an economic to a social protection discourse on self-employment

In the EU policy discourse, self-employment has mainly been considered as a tool to make labour markets more flexible and boost employment. Self-employment has indeed been perceived as a means ‘of coping with restructuring needs, reducing direct or indirect labour costs and managing resources more flexibly in response to unforeseen economic circumstances’ (European Commission 2006: 8).

3.1 The social situation of the self-employed in EU discourse: antecedents

While the social situation of non-standard workers has been covered by several specific EU legal initiatives¹⁵, the self-employed have rarely been included in them. This is not so surprising as the Treaties of the EU do not refer to self-employment at all.

14. Income assessment bases play an important role for accrual of entitlements for the self-employed. On the one hand, if social contributions are paid on a very low income assessment base it may lead to a low level of benefits. On the other hand, if the reference base is too high, the self-employed person not be able to pay the required contributions. These issues may be related to the way of calculating the income base reference period: income paid on long previous periods of earnings, upfront payments (advance social security payments), payments of arrears, under- or non-reporting of income-streams, etc.

15. Such as the Council Directive 97/81/EC on part-time work; Council Directive 1999/70/EC on fixed-term work, Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work (OJ L 327, 5 December 2008, p. 9). For an exhaustive list, see European Commission (2018a).

And yet, between the end of the 1990s and mid-2000, there were some EU-level discussions related to the social situation of the self-employed, covering issues such as diversity in income, working conditions and the grey area between self-employment and contractual employment (Supiot *et al.* 1999; European Commission 2006). However, the specific issue of social protection for the self-employed was rarely addressed. One exception is the 1992 Council Recommendation on the convergence of social protection objectives and policies. This Recommendation was issued during the favourable context of the ‘Delors Era’, when considerable progress was made on EU social policy. The Recommendation identified common objectives and invited the Member States to ‘examine the possibility of introducing and/or developing appropriate social protection for self-employed persons’ (Council of the European Communities 1992: 2).

Some issues relating to social protection for the self-employed were addressed indirectly during the discussions on the Green Paper (2006) on the future of Labour Law. The Paper recognised issues such as the lower social protection of the self-employed, the grey area of ‘dependent self-employed’ and their blurred rights as well as the issue of increasing transitions between one employment status and another (European Commission 2006). For different reasons, this document attracted significant criticism from both trade unions and employers, including representatives of the self-employed as well as civil society organisations, and somehow came to nothing (Westreveld 2012).

Since the onset of the economic crisis in 2008, interest for the social situation of the self-employed has however grown at EU level. EU documents have begun to point to certain issues, in particular relating to the social protection of ‘bogus’ self-employment and ‘dependent’ self-employment (EESC 2013 and 2010; European Commission 2010). Importantly, in 2010, the Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity addressed social protection issues such as entitlement to maternity benefits (Directive 2010/41/EC) (European Parliament and Council of the European Union 2010). In 2016 the European Commission created a precedent by addressing a Country-specific Recommendation to the Netherlands on the topic, calling for measures to tackle issues related to the steep increase in the number of self-employed without employees, including the promotion of ‘access of the self-employed to affordable social protection’ (European Commission 2016: 5)¹⁶. A 2016 European Parliament report and Resolution also emphasised the importance for all people in all employment forms and self-employment to have access to social protection (European Parliament 2016).

3.2 The EU initiative on access to social protection for non-standard workers and the self-employed

The issue of access to social protection for non-standard workers and the self-employed became one of the key priorities on the social agenda of the EU in 2017, notably in the slipstream of the political momentum created by the European Pillar of Social Rights

16. Judging the Dutch policy response in these areas to be insufficient, the Commission reiterated the same recommendation in 2017 (European Commission 2017c).

(Principle 12) initiated by the Juncker Commission (Sabato and Corti in this volume; European Commission 2017d). The European Commission launched a two-stage consultation (April 2017–January 2018) of the social partners on a possible EU legislative or non-legislative initiative in the area of social protection under Article 154(2) TFEU.

Putting access to social protection, in particular for the self-employed, on the EU legislative agenda arguably represents a milestone in EU discourse and action. This is an ambitious step for three reasons. First, social protection is principally the competence of the Member States: the EU has mainly competences in the coordination, not the design of social security. Second, while the Treaties provide a legal basis for policy on the social protection of workers (including non-standard workers)¹⁷, as mentioned above, there is no legal provision for dealing with the social protection of the self-employed. Thus, the initiative addressing the latter has been based on the so-called ‘flexibility clause’ (Article 352 TFEU)¹⁸. Third, social protection for the self-employed may sound to some like a ‘contradiction in terms’, as self-employment is (too) easily associated with the idea of voluntarily borne risks (but see the cluster discussion in Section 1).

3.2.1 A two-stage consultation process

Three main issues with regard to social protection were identified during the first stage: (a) gaps in statutory and effective access to social protection; (b) lack of transferability of entitlements; and (c) lack of transparency linked to regulatory complexity and poor access to information on social security rights. The second-phase consultation document focused on the same issues, but in greater depth. For instance, as for the formal and effective coverage of social protection, the Commission weighed the pros and cons of mandatory/voluntary coverage (European Commission 2017e).

In neither stage of the consultation were the social partners able to reach agreement on entering into negotiations (for more details see Clauwaert in this volume). And yet, during both stages, the trade union side called for mandatory insurance for people in all types of employment and called on the Commission to bring forward the issue of the adequacy of social benefits. The ETUC expressed furthermore its willingness to enter into negotiations, while considering a directive to be the most appropriate instrument (ETUC 2017a and 2017b). The employers, however, emphasised that the self-employed are a wide-ranging, heterogeneous group and self-employment may become less competitive and attractive if they are obliged to contribute to social protection. An EU legal initiative was, in their view, neither needed nor appropriate, since social protection is a competence of the Member States; at EU level the issue should, therefore, be

17. Article 153 TFEU can serve as a legal basis for addressing the challenges of coverage in the area of social security and social protection for people in non-standard employment. Within certain limits, Article 153(1)(c) of TFEU provides for the EU to adopt legislation in the area of ‘social security and social protection of workers’ and could be used to establish the new *acquis* necessary to address the challenges of gaps in coverage of social protection for people in non-standard employment. Article 153(2) enables the EU legislator to adopt measures, including directives setting minimum requirements, in the field of social security and social protection of workers.

18. Article 352 TFEU (or this so-called ‘flexibility clause’) allows the EU ‘to act in areas where EU competences have not been explicitly granted in the Treaties but are necessary to the attainment of the objectives set out in the Treaty’, see additional information at https://ec.europa.eu/commission/sites/beta-political/files/role-flexibility-clause_en.pdf

addressed mainly through the European Semester and soft governance instruments. As a result, the employers did not express any willingness to enter into negotiations (BusinessEurope 2017 and 2018b).

3.2.2 A proposal for a Council Recommendation

Faced with the failure to enter into negotiations, the European Commission, on 13 March 2018, took the lead and announced a proposal for a Council Recommendation on a common set of building blocks for the design of the social protection systems of the Member States (see also Clauwaert, this volume). These building blocks are not binding, but the Commission believes they can nonetheless provide a strong basis for creating a level playing field between Member States in the way they address the gaps in access to social protection¹⁹.

Basically, the proposed Council Recommendation reiterated the same three key issues identified during the two-stage consultation process (Section 3.2.1). However, it emphasises some specific elements:

- even if there is only a subtle difference vis-à-vis the consultation documents, the discourse of the proposed Recommendation is more focused on social rights per se and only then on the importance of these for labour markets and economic growth;
- the text links up with progressive International Labour Organisation ideas and instruments calling for the establishment of national floors of social protection;
- adequacy of social protection benefits has become one of the cornerstones of the initiative;
- mandatory insurance is clearly supported as an option for people in employment and self-employment for most of the social protection schemes. Voluntary insurance is seen as a ‘suitable solution’ only for unemployment benefits for the self-employed;
- last but not least, the existence of categories of self-employed with differing social situations is clearly acknowledged. In addition, the text refers to the misuse of self-employment in cases of a subordinate employment relationship (European Commission 2018a).

The proposed Council Recommendation is a significant step forward, at least in ideational terms, recognising and raising awareness to the gaps in social protection for non-standard workers and the self-employed. The documents accompanying the two stages of consultation and the proposed Recommendation have progressively included (and further deepened) issues such as statutory and effective access, transferability, access to information as well as the adequacy of benefits (European Commission 2018a and 2018b; 2017b, 2017f and 2017e). Most of these ideas, in particular, adequacy of the benefits and the wide coverage of mandatory insurance were among the proposals by the European Trade Union Confederation during the consultation process (ETUC 2017a and 2017b).

19. The Council Recommendation requires unanimity and is based on Article 292 TFEU, in combination with Articles 153(1) (c) and 153(2), third subparagraph, and with Article 352 TFEU.

The proposed Council Recommendation, within the broader context of the Pillar of Social Rights and the Social Fairness Package, is a promising step towards restoring the idea of ‘Social Europe’. It can be seen as a (admittedly late) recognition that there are important social protection consequences of the deregulation of labour markets needing to be tackled. As Crespy and Schmidt put it, ‘trying to assess to what extent countries deal with social protection is primarily a matter of evaluating their recovery after a period of implementing austerity packages and cutting welfare states across the board from 2010 to 2013’ (Crespy and Schmidt 2017). Indeed, the Commission has been putting these issues more firmly on the agenda through a variety of channels (e.g. the Annual Growth Survey 2018 or the EU Joint Employment Report 2018).

However, the future of the proposal for a Recommendation is unclear, and it is difficult to predict its fate, let alone the actual ‘bite’ it will have in directing Member State policies. The outcome will mainly depend on the political agenda of the next European Commission, the outcome of the 2019 European elections and the political and economic situations in the Member States.

Conclusions

Today, and in particular since the economic crisis, the self-employed can no longer be perceived as archetypal representatives of the well-off liberal professions. As described in Section 1, the self-employed indeed have many faces. At one end of the spectrum are well-off individuals (‘entrepreneurs’ and ‘stable own account self-employed’) working in good conditions and in high quality jobs, but at the other end there are the ‘vulnerable’ and ‘concealed’ self-employed who struggle with precarious working conditions and low incomes. Within the latter categories, over two-thirds have become self-employed involuntarily, i.e. out of necessity.

Moreover, as Section 2 illustrated, the self-employed in the EU are legally entitled to less social protection than salaried workers. Often, they do not have access to certain insurance-based schemes: mainly sickness, unemployment and accident-at-work and occupational injury benefits. In addition, they may not be able to build up adequate entitlements because of difficulties meeting eligibility criteria, low transferability of previous entitlements etc.

The consequences of the economic and social crisis and the increase in own-account self-employment have led some countries to opt for differentiated (‘hybrid’) social protection for the ‘dependent self-employed’, providing them with better protection than the rest of the self-employed. This approach is questionable in terms of social fairness, especially in contexts where it is difficult to legally distinguish between ‘dependent self-employment’ and ‘bogus self-employment’.

This context of an increasing diversity in self-employment arrangements and growing gaps in formal and effective access to social protection has been progressively matched by a growing awareness at political level. One of the major initiatives in this direction has been the 2018 proposal by the European Commission for a Council Recommendation

on access to social protection for workers and the self-employed. This initiative echoes ideas about social protection for the self-employed that were circulating in EU social discourse at the beginning of the 1990s but have been dormant ever since. The expected resistance from Member States and employers arguably explains why the European Commission has decided to revert to a 'soft governance' instrument (in this case a Council recommendation) rather than a directive on access to social protection. The choice of policy instrument, dependent on an unanimity vote within the Council, illustrates the challenge of moving from a proclamation of principles to implementing the European Pillar of Social Rights 'on the ground'.

This initiative would certainly be welcomed by those self-employed confronted with the worst of both worlds: risking economic dependency and precariousness out of necessity while not being covered by certain social protection schemes. These self-employed workers certainly deserve a response from policymakers. Beyond the specific situation of some particularly precarious forms of self-employment, national social protection systems need to continue to monitor and adapt to the changing world of work in order to ensure comprehensive social protection for all.

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Annex

Table A1 National examples of access to social protection for the 'dependent self-employed'

Country	'Dependent self-employed'
Germany	Since 1999, the 'own account self-employed' who are dependent on a single client have been subject to compulsory insurance for old-age pensions while the other categories of self-employed are not.
Italy	In Italy, an unemployment benefit was introduced in 2015 for dependent self-employed persons working on continuous collaboration contracts (co.co.pro., Collaborazioni coordinate a progetto).
The Netherlands	Only the dependent self-employed are compulsorily covered by occupational and work injury schemes. The rest of the self-employed should take out private insurance.
Spain	Accident-at-work insurance is compulsory for the dependent self-employed ('economically dependent self-employed' – TRADE) but voluntary for the rest of the self-employed.
Portugal	Only the dependent self-employed have access to unemployment benefits.
Romania	Dependent self-employed benefit from compulsory pension and health insurance (while conditional upon a certain income for the rest of the self-employed). Yet, compared to a salaried worker, the dependent self-employed do not have mandatory insurance against unemployment.

Source: this table is based on previous research (Spasova *et al.* 2017), European Commission (2017b and 2018b). This table does not claim to be exhaustive.

Table A2 Examples of issues of effective access to social protection for the self-employed (optional access and income bases)

Voluntary access, opt-outs and exemptions	Low minimum assessment bases
Romania: only 10-11 % of the self-employed are covered for old-age benefits, invalidity, sickness or maternity benefits.	Latvia: 85%-90% of self-employed pay contributions based only on a minimum monthly wage.
Czech Republic: In September 2017, 15.37% of SE (main economic activity) contribute to sickness insurance.	Spain: the average monthly base of the self-employed is approximately 36% lower than that of salaried workers. 86.1% of self-employed are insured at minimum contribution base.
Austria: coverage of the unemployment insurance which is voluntary: 0.02 % of all self-employed (117 persons insured in 2015)	Slovenia: 70% of self-employed persons pay social security contributions on the minimum insurance base for pensions.
Finland: coverage of the second-tier voluntary unemployment insurance: solo self-employed: 20% and for self-employed with employees only about 10%.	Estonia: there is a legal incentive to declare only 'passive income' instead of 'active income' (the former is not subject to social tax and income tax). Households with business income are estimated to under-report 62% of their actual active income.

Source: based on Spasova *et al.* (2017), European Commission (2017b and 2018b). This table does not claim to be exhaustive.

Chapter 6

Digital transition in the European Union: what impacts on job quality?

Ramón Peña-Casas, Dalila Ghailani and Stéphanie Coster

‘The crisis consists precisely in the fact that the old is dying and the new cannot be born: in this interregnum, a great variety of morbid symptoms appear.’

Antonio Gramsci

Introduction

In recent years, the generic term ‘digitalisation’ has become a buzzword, used to refer to all sorts of diverse, but complementary, technological developments (Box 1, see below). This revolution in the economy and work follows on from the changes which began in the 1970s with the start of the ‘Third Industrial Revolution’: the introduction of electronics and information and communication technologies (ICT), resulting in increased automation of tasks and complex processes, and significant tertiarisation of the economy. For some, this ‘revolution’ paves the way for a renewal of European economies, moving towards greater economic growth in a context of unbridled globalisation (European Commission 2017, Van Ark 2014, Rifkin 2014). Others, however have serious questions and fears as to its consequences for the future of work and changes to, or even the erosion of, this work (Degryse 2017a; Méda 2016; ETUI 2016; Valenduc and Vendramin 2016; Dolphin 2015; Huws 2014). This digital revolution is confronting contemporary societies with major social, economic and environmental challenges (Degryse 2017a; Méda 2016). In this constantly changing future, the public authorities have a major role to play in regulating the potential for economic and social growth, and preventing the excesses inherent to the changes to the world of work, production processes and society as a whole.

The European Union (EU), in its work on the digital transition, has focused on the issue of skills and their contribution to the labour market, and on enhancing the digital single market (see Box 2 below). The various strategies and plans have been implemented using a combination of EU measures and actions, such as legislation, policy coordination, financing, strategic partnerships and social dialogue.

Through social dialogue, the trade unions are, by definition, in the front line when it comes to safeguarding and improving conditions for workers affected by the digital transition. Clearly, this is a major challenge for the unions, particularly at a time when change is still subject to European insistence on budgetary austerity and on the simplification/rationalisation of regulation (e.g. REFIT – Regulatory Fitness and Performance –, see Van den Abeele 2015). This leaves limited scope for social dialogue, despite the fact that its importance is repeatedly emphasised (European Commission 2016a; Pochet and Degryse 2016).

Box 1 **The many facets of digitalisation**

The term 'digitalisation' covers various technological developments:

- the ubiquity of high-speed internet and mobile phones, enabling improved network functionalities and capacity, and leading to the 'Internet of Everything and in everything'
- the availability of "Big Data", datasets too large and complex to be processed and analysed by traditional applications, and thus requiring the development of new technologies
- cloud computing, providing massive increases in storage and information-sharing capacities
- developments in artificial intelligence, robotics and machine-learning;
- additive manufacturing and 3D printing
- progress in methods for systems simulation and integration
- the introduction of digital currencies (blockchains)

Source: European Commission (2016).

A large body of literature exists on the very low quality of jobs created in the service sector through the development of new ways of organising the economy and employment ('uberisation', the platform economy, crowd working and virtual work, etc.), and the major implications regarding the undermining of traditional labour contracts, access to social protection (see Spasova and Wilkens in this volume) and the conventional working environment. Although it is generally agreed that the digital transition affects the various aspects of work in almost all sectors of the economy, the impact of digitalisation on the whole spectrum of quality of work and employment has been studied relatively little. It is, however, a key question for the future of the EU. This chapter looks at the impact of digitalisation on the various aspects of quality of work and employment, highlighting factors of insecurity, intensification, routinisation, alienation and depersonalisation of work, but also the consequences for workers, and especially their exposure to psychosocial risks. The chapter is structured in three sections. It first examines the effects of digitalisation on the various aspects of job quality (Section 1), before presenting the position of the European and national social partners (Section 2), and describing the issues raised by digitalisation for society (Section 3).

1. The impact of digitalisation on job quality in Europe

Since the beginning of the millennium, there has been renewed interest in the issue of quality of work and employment, generally seen as a concept with many aspects. Several international institutions, such as the International Labour Organization (ILO), the European Commission (EC), and, later on, the Organisation for Economic Cooperation and Development (OECD), have developed conceptual frameworks to measure job quality using aggregate indices (ILO 2008; European Commission 2001, 2003; OECD 2014; Peña-Casas 2009; Caillaud *et al.* 2012). Nevertheless, little has been done by Member States to move towards the objective of better quality jobs. Although we can see some improvements in certain aspects, the challenges continue to grow (Piasna 2017; Bothfeld and Leschke 2012; European Commission 2014; ETUC 2015;

Box 2 Digitalisation on the European agenda

As part of the larger Europe 2020 strategy, various initiatives have been implemented concerning the digital transition of economies and of European societies.

The 2010 initiative *A digital agenda for Europe* contains proposals for action on the longer-term transformations to be brought about by the increasing digitalisation of the economy and society, making the best use of the economic and social potential of Information and Communication Technologies. This is expected to stimulate innovation and economic growth, and improve daily life for individuals and businesses, bringing, for example, better health care, safer and more efficient transport solutions, cleaner environment, new media opportunities and easier access to public services and cultural content (European Commission 2010a).

The issue of skills, particularly digital skills, is addressed at length in the context of the Europe 2020 strategy. In 2010, the flagship initiative *An agenda for new skills and jobs* was designed to raise employment levels in Europe, to improve job quality and create the conditions required for new jobs, while ushering in a more flexible and secure labour market. This agenda is based on four major priorities: better-functioning labour markets, a more skilled labour force, better job quality and working conditions, and stronger policies to promote job creation and demand for labour. For each of these, the Commission has established a set of key actions and accompanying and preparatory measures, intended to add to the national measures available to Member States (European Commission 2010b).

Adopted in 2016, the *New skills agenda for Europe* lists 10 actions to promote the acquisition of skills, particularly digital skills. This agenda is centred around three key work strands: (1) improving the quality and relevance of training and other ways of acquiring skills; (2) making skills and qualifications more visible and comparable; and (3) improving skills intelligence and information, making for better career choices (European Commission 2016b). The need to develop and update skills, particularly digital skills, is also emphasised in the European Pillar of Social Rights.

In 2015, with a view to enhancing the European single market, the Commission adopted a *Digital single market strategy for Europe*. This is built on three pillars: 1) better access for consumers and businesses to online goods and services throughout Europe (e-commerce, preventing geo-blocking of intra-European websites, modernising copyright law, simplifying VAT regimes); (2) creating the right environment and fair competition conditions for innovative digital networks and services to flourish (telecommunications and media, online platforms, security and personal data); and (3) maximising the growth potential of the European digital economy (data economy, standards, skills, e-government) (European Commission 2015). A mid-term review of the Strategy was published in May 2017. This review found that the EU should pursue its activities in three main areas: the data economy, cybersecurity and online platforms (European Commission 2017a). On the same day, the Commission published the 2017 European Digital Progress Report, which reviews the progress made in the implementation of Member States' digital policies (European Commission 2017b).

Other measures are also set to help strengthen the digital single market. In 2016, the Commission adopted an overall strategy for *Digitising European industry*, including a whole range of EU policies designed to maintain and support a strong, diversified and competitive industrial base in Europe, offering well-paid jobs while becoming more resource efficient. (European Commission 2016c). The *EU eGovernment Action Plan 2016-2020* aims to speed up and enhance the digital transformation of public administrations, to make them more efficient and facilitate the free movement of businesses and citizens. Other measures include the proposal to move to a single digital gateway and the initiative on digital solutions throughout a company's life cycle (European Commission 2016d). Recently, the Commission has also taken measures *enabling the digital transformation of health and care in the Digital Single Market* (European Commission 2018).

ILO 2015). The most recent version of the European job quality index, developed by the European Trade Union Institute (ETUI), confirms this ongoing trend towards a deteriorating quality of work in Europe (Piasna 2017).

The issue of job quality is certainly a main concern, but it is more difficult to agree on a definition of this concept and of the factors affecting it in Europe (Davoine *et al.* 2008). Authors, however, agree on one fundamental aspect: the distinction between intrinsic and extrinsic aspects of work. Intrinsic aspects include working conditions, work organisation, vocational training and skill development, health and safety (see Vogel in this volume) and working time. On the other side are the extrinsic aspects of the labour market in which this work is carried out: type of contract, job security, pay, social protection, workers' rights, etc. In the rest of this chapter, we use the expression 'job quality' to refer to both aspects.

The impacts of digitalisation can be seen at various levels. We must first identify the potential general impacts of digitalisation on the labour market and quality factors (Section 1.1). We will then examine at greater length the effects of this digital transformation on work organisation (Section 1.2) and on workers (Section 1.3).

1.1 General impacts on employment and quality factors

Recent literature tends to acknowledge the existence of a link between **digitalisation and increased productivity**. However, this is something still under discussion within the academic community. Workers carrying out routine tasks, replaced by machines, are being reassigned to occupations with higher marginal productivity (Keister and Lewandowski 2016). According to a study carried out for the European Commission, ICT helps tasks to be completed more quickly and efficiently, to replace humans in some manual tasks and to give workers more autonomy and flexibility (ECORYS and Danish Technological Institute 2016). Some authors suggest that increased productivity could lead to higher remuneration and a reduction in working time (Muñoz-de-Bustillo *et al.* 2017). Others highlight less obvious effects, such as the maintenance of wage inequality, since the benefits and disadvantages of productivity affect workers differently (Stacey *et al.* 2017). The general impact of digitalisation on economic productivity is also the subject of disagreement. Valenduc and Vendramin (2016) stress that the introduction of new technology does not always result in an immediate rise in productivity, but that it takes several years to have an impact. Authors indicate that the relationship between technology and productivity still very much depends not only on the level of technological innovations within a company, but also on the – often underestimated – organisational changes made.

Much research has highlighted changes in the **supply of work**, pointing to **risks that human work will be replaced by digital and robotic work**. Frey and Osborne (2013) emphasise the probability that 47% of US jobs will be automated over the next ten years. Bowles (2014) points out that, using the same probability calculations, the risk of job replacement is also high in Europe (up to 60% probability). This risk is

greater, according to these authors, for low-income and low-skilled jobs (Berger and Frey 2016; Bowles 2014). Other authors take a less categorical view: although some tasks may be taken on by machines, the jobs themselves will not necessarily disappear. Such authors state that only 9% of jobs are at risk in European countries, a figure which varies from 6% in Finland and Estonia to 12% in Austria, Germany and Spain (Arntz *et al.* 2016). These differing results could be the result of methodological differences in the importance and combination of tasks and related skills.

In an analysis of jobs in Europe, Eurofound (2016a) suggests an analytical framework to examine the content of the tasks carried out by workers in their occupations. The tasks are first broken down by their nature (physical, intellectual, social)¹. These tasks are carried out and combined to different extents in different jobs. Looking at how tasks are distributed between job categories, Eurofound (2016a) underlines that tasks do not exist in isolation but are specifically or systematically combined in particular jobs. This has important implications for our understanding of structural change in general, and more particularly of the effects of new technologies (Eurofound 2016a). Digitalisation leads to the emergence of new trades, but also to changes in existing occupations.

Another effect of digitalisation is a **polarisation** between low-skilled and high-skilled jobs. Routine tasks, initially performed by low or medium-skilled workers, are, it is said, more easily automated than non-routine tasks, for which it would be more difficult to replace workers, and which are concentrated in occupations requiring higher qualifications (Black and Spitz-Oener 2007). In decline, medium-skilled jobs are partially being replaced by low-skilled jobs, while the number of jobs requiring a high skill level is still increasing. Medium-skilled workers are therefore tending either to seek jobs requiring lower levels of qualification, or are developing new skills which give them access to higher-skilled jobs (ILO 2015). Polarisation of occupations would then lead to greater polarisation of remuneration, thereby increasing inequalities (Autor 2015).

1.2 Impact on work organisation

Digitalisation is affecting the working environment, making it **more flexible**. The time and spatial borders defining the working environment are becoming blurred, thereby undermining the traditional employment relationship. The flexibility resulting from digitalisation can upset work-life balance and generate increased stress (Degryse 2017a; Stacey *et al.* 2017; EESC 2017a). Workers are obliged to be constantly available, ready to respond to requests from their employers; they must be reachable and/or connected at all times. This has led to discussions and/or demands as to the ‘right to disconnect’ (see Box 3). Workers’ health and safety can also be undermined by irregular working times, tight deadlines and the need to be permanently available (Eurofound

1. Physical tasks can be broken down into those which use capabilities such as strength (tasks requiring physical effort) and dexterity (tasks requiring physical skills and good coordination). Intellectual tasks require skills concerning the processing of information (numerical and/or verbal), or problem-solving ability (information gathering, creativity and finding a solution). Social tasks require skills involving interaction with other people: helping patients or clients, training and supporting others, selling and persuading, managing and supervising (Eurofound 2016a).

2016b; EU-OSHA 2015b). In parallel, increased flexibility gives rise to new contractual arrangements, which, in some sectors, do not always guarantee a sufficient minimum number of working hours or a fixed wage (For quality! 2015). The flexibility inherent to digitalisation generates risks of **work intensification**, as a result of various factors such as information overload. This can be so extreme that workers find it difficult to filter and process important information (Valsamis *et al.* 2015; EU-OSHA 2016). Digital tools, moreover, may enable heightened real or perceived **monitoring** of workers and their performance (EU-OSHA 2016; Valenduc and Vendramin 2016; Degryse 2017a).

Digitalisation has brought many changes in the skills necessary and methods used to implement the tasks which make up work, in many cases making work **more routine**. No longer used solely for repetitive manual tasks, ICT is increasingly used in analytical tasks requiring intellectual skills such as decision-making, information management and problem-solving. This is done using digital tools able to gather and process complex sets of data, perform calculations and plan tasks quickly and accurately. In addition to routine analytical and calculating tasks, ICT can also provide support to more complex analytical thought processes in professions such as medicine (ECORYS and Danish Technological Institute 2016).

With the growing digitalisation of European economies, **the development of qualifications and skills** is generally presented, particularly by the European Union, as an urgent need. Emphasis is placed on the acquisition of digital skills in response to present and future needs of the digitalised economy. Skills also need to be updated in jobs in the more traditional economy, as do the skills of jobseekers to heighten their employability (Valenduc and Vendramin 2016; European Commission 2015). One in two workers, it is said, do not have the skills needed to use ICT efficiently (OECD 2016a; EESC 2015). Three types of skills are needed and should be promoted: specialised skills (such as application development), generic skills (such as the use of technology at work), and complementary skills (such as information-processing and problem-solving) (OECD 2016b). Individuals, however, also need basic digital skills to efficiently use digital interfaces, increasingly necessary as the main way for users/clients to access services.

The polarisation of the labour market resulting from digitalisation heightens the need for low- and medium-skilled workers (the most vulnerable) to enhance their skills so that they can be considered for higher-skilled jobs (Valsamis *et al.* 2015). Education, lifelong learning and vocational training systems, with input from the social partners, play a key role in the acquisition of the necessary skills. Digitalisation itself can provide very powerful educational tools and vectors to transmit and share knowledge (European Commission 2015). Nevertheless, given the speed of technological change, it is difficult to clearly identify which skills will be needed in the future (OECD 2016b). Not everyone will work in the digital economy, and even if human work is taken over by intelligent machines, social and emotional skills will, for a long time, remain the prerogative of humans, particularly in the field of personal care services, while machines and digital processes will increasingly perform the tasks requiring physical and intellectual skills.

It is, however, difficult to transmit these social and emotional skills through education and training systems.

1.3 Impacts on workers

Digitalisation can have serious impacts on **workers' mental and physical health**. The European Agency for Safety and Health at Work has identified positive and negative effects (EU-OSHA 2015a). On the positive side, teleworking can, it says, cut commuting, thus reducing accident risks. The use of new technologies can also reduce the risks posed by hazardous environments as well as limiting repetitive monotonous tasks. ICT makes it easier to monitor the health of workers, particularly those carrying out dangerous tasks. They are an excellent way to improve communication of occupational health and safety practices to workers and to train managers and workers. The Agency, however, also lists a good number of negative effects of digitalisation, both physical (such as physical inactivity and musculoskeletal problems) and mental (heightened psycho-social risks).

New technologies and greater flexibility can result in an excessive number of working hours, work overload, feelings of isolation, increasing work pressure and ultimately engendering extreme work stress and burnout (EU-OSHA 2015a). The risks are particularly linked to the emotional and cognitive stress of having to be permanently available and connected, and to the loss of, or reduced interaction with, colleagues and superiors (EU-OSHA 2016). In the personal care sector, a sector with strong growth potential, difficult to relocate and relatively well protected from the risk of replacement by automation, digitalisation nevertheless introduces greater distance between the worker and the subject of his/her work, the person cared for. This distancing can potentially generate stress and loss of motivation.

The flexibility made possible by digitalisation, in terms of location/time, can be perceived as a way for workers to better reconcile their **private and working life**. This flexibility, even if it is not always wanted by workers, does allow for better working arrangements, particularly for women and older workers (Valsamis *et al.* 2015). Nevertheless, for female workers wishing to combine their non-work and work aspirations, this increased flexibility can aggravate inequalities in the distribution of home tasks, as men tend to remain at work longer (Perez 2017; Valenduc and Vendramin 2016). The work-life balance can also be undermined by factors such as work intensification, non-standard hours and the need to be permanently available (Degryse 2017a).

Digitalisation can also generate feelings of **alienation and depersonalisation** of work. It can result in a loss of control, both over the content of the tasks to be performed and over working processes and methods (ECORYS and Technological Danish Institute 2016; Eurofound 2016b). The use of technological tools can also put up a barrier between workers and users. In the service sector, for example, increased ICT use means that workers remain behind their computers, deprived of social contact. In a joint statement on the opportunities and challenges of digitalisation in local and regional administrations, the European Federation of Public Service Unions and the Council of European Municipalities and Regions highlighted the problem of depersonalisation,

stating how important it is to identify how workers feel about the loss of personal contact with clients after the introduction of new technologies (EPSU-CEMR 2015).

Training and skill development linked to the digital transition can be seen as factors aggravating **inequalities**. The use of certain technological tools or intelligent machines can indeed result in deskilling (Degryse 2016). Moreover, the trend towards labour market polarisation is increasing the need for low- or medium-skilled workers to develop their skills to heighten their employability. The stakes seem even higher for certain categories of workers, such as older workers or workers without a post-secondary educational qualification (Valsamis 2015). The European Economic and Social Committee (EESC 2017a) emphasises, on this point, that older workers must be given access to training to prevent them being sidelined from the labour market.

Technological developments and the emergence of new forms of work also reinforce gender inequalities. Analysing the task content of jobs, Piasna and Drahokoupil (2017) have shown that women who are already performing routine tasks more regularly than men, even in a similar occupation, are also at greater risk of seeing their tasks automated. Flexible forms of work, moreover, and the growing demands for workers to be available around-the-clock, discriminate between workers, accentuating the unequal division of unpaid labour and weakening women's bargaining power vis-à-vis their employer. Peña-Casas and Ghailani (2011) have shown that the imbalance in income from work within a household, notably due to the fact that they more often have part-time work, means that women are at greater risk of becoming working poor.

2. The social partners and digitalisation: actions and positions

The European Economic and Social Committee (EESC) notes in its September 2017 opinion that digitalisation and its effects on work should be a priority at EU level and should become a central component of social dialogue. In this regard, the Committee recommends monitoring of developments, trends, threats and opportunities linked to digitalisation, as well as their impact on professional relationships, working conditions and the social dialogue. It also recommends improving the efficiency and relevance of social dialogue given the changes in the world of work. Topics which should be addressed in social dialogue include employment, lifelong learning, particularly vocational training, job transitions, working conditions and pay, social protection and the sustainability of social protection funding (EESC 2017a). This section briefly describes the positions and initiatives adopted to this effect by the European and national social partners.

At **cross-industry** European level, the employers and trade unions have issued, separately and jointly, several statements on issues related to digitalisation. Representing European employers, BusinessEurope emphasises in its 'Recommendations for a successful digital transformation in Europe' the need to adapt labour markets and work organisation in order to leverage the maximum potential of digitalisation (BusinessEurope 2015).

The European Trade Union Confederation (ETUC) first underlined in 2015 that digitalisation was not simply a question of technology and markets, but that it was also important to ensure a fair transition from traditional jobs to digital jobs in both the industrial and service sectors. This will require the active participation of the unions on issues linked to job quality (ETUC 2015 and 2016). In 2017, the ETUC proposed launching negotiations on digitalisation with the European employers' organisations, stressing the need for trade union action. It also called for an exchange of information and experience on known approaches and announced its intention to create a new forum for dialogue with digital platforms (ETUC 2017).

At the March 2016 tripartite social summit, the European social partners adopted a joint declaration on digitalisation, stating that 'public authorities and social partners at various levels need to assess how best to adapt skills policies, labour market regulations and institutions, as well as work organisation and information, consultation and participation procedures, in order to derive maximum benefits for all from the digital transformation' (ETUC *et al.* 2016)².

At **sectoral level**, the fears provoked by the rapid development of the platform economy and the resulting unfair competition it could cause have led several European sectoral federations to tackle the issue of digitalisation³. The texts adopted in this context are neither framework agreements nor collective agreements, but rather common positions or declarations of intent. They constitute a first, necessary step in the creation of a shared vision by the social partners of the social issues raised by digitalisation, even though employers and unions, and different sectors, still have somewhat different concerns. The topics addressed reflect a quasi-consensus on issues related to vocational training and upskilling of workers.

The **national social partners** have also, in recent years, addressed the issue of digitalisation. In most Member States, unions have launched initiatives on digitalisation: studies, analyses and conferences, even collective bargaining. In the following sections, we shall give just a few examples of these, without trying to list them all⁴.

In the Belgian 2017-2018 Cross-Industry Agreement⁵ (concluded on 2 February 2017), the social partners decided to examine what measures should be taken to ensure that digitalisation and the collaborative economy lead to further growth, employment and entrepreneurship, and sustainable social security (CNR-CNT 2017). In Denmark, the social partners have published analyses and reports, commented in the media on the impact of digitalisation, launched dialogues with political departments and parties, and taken part in European fora on this issue (Ilsøe 2017). In Germany, the main discussion

2. Following the Trade Union Forum on Digitalisation, held in Paris in February 2017, the trade union advisory committee to the OECD published a series of recommendations on how to address the challenges linked to the rise of the digital economy, including some on the question of job quality (TUAC 2017).

3. Transport (ETF and IRU 2014), hotel and catering (EFFAT and HOTREC 2015), insurance and financial services (AMICE, BIPAR, Insurance Europe, UNI-Europa Finance 2016), the metal sector (IndustriAll and CEEMET 2016), chemical sector (IndustriAll and ECEG 2016), public services and local authorities (EPSU-CCRE 2015).

4. For a broader overview, see Degryse 2016.

5. <http://www.cnt-nar.be/INTERP-AKKOORD/IPA-2017-2018-BIL.pdf>

is about codetermination rights. Employers see no need to amend the current legislation, while the trade unions are calling for greater employee participation, with improvements to the rights of works councils and greater influence on the changes which come with greater digitalisation (Ilsøe 2017; Eurofound 2017).

The social partners in several European countries have joined in the dialogue launched by governments on the challenges and issues linked to digitalisation. The German and Swedish governments have set up commissions on digitalisation (Arbeiten 4.0 in Germany and the Swedish commission on future jobs), in which the social partners are involved (Ilsøe 2017). In France, five trade union and employer representatives were involved in drafting the *Mettling report*, setting out the stances and demands of the social partners, as well as 36 recommendations covering aspects such as job quality, training, reclassification and the right to disconnect (Mettling 2015). In 2016 in the Czech Republic, the Trade Union Confederation of Bohemia-Moravia (ČMKOS) took part in discussions in the Economic and Social Council on digitalisation and automation (Eurofound 2017).

Box 3 The right to disconnect

- In France, the right to disconnect, enshrined in Article 55 of the labour law, came into force on 1 January 2017. It obliges companies with more than 50 workers to negotiate, with the social partners, 'provisions to regulate the use of digital tools, in order to ensure observance of rest time and leave, as well as of personal and family life'. If no agreement is reached, the employer has to prepare a unilateral charter (Allen & Overy 2017).
- In Italy, the right to disconnect is not seen as a general right, but only applies to a more restricted category of subordinate work known as 'lavoro agile', which could be translated as 'flexible work' (law no. 81/2017 of 10 May 2017). The right to disconnect must be included in a broader individual agreement between the employer and the worker setting out the arrangements for the 'lavoro agile', notably rest times and the technical and organisational measures necessary to ensure that the worker can be disconnected from the technological/digital instruments and tools used to do his or her work (Ludicone 2017).
- In Germany, company-level agreements have been concluded between unions and employers in the large automotive companies. In January 2014, the German car manufacturer BMW concluded an agreement with its works council stipulating that all employees can record time spent outside the employer's premises as working time; this means that workers replying to emails after the end of their day's work can be paid for this extra time working. Employees, moreover, are encouraged to agree on set 'accessibility times' with their supervisors (Eurofound and ILO 2017).

Experiences in some Member States show how trade union measures have evolved and new rights have been acquired thanks to collective bargaining on digitalisation. The right to disconnect recently established by law in France and Italy, or in company agreements in Germany, is an excellent example of this (see Box 3). There are, however, other examples too. The first agreement on digitalisation to be concluded in Europe was signed in France in 2016 between the social partners in a telecommunications group; this agreement, moreover, included the setting up of a committee with the social partners

to try and anticipate the new skills which workers will need due to digital developments (EESC 2017a). In Italy, digitalisation has led to the emergence of new collective bargaining subjects: work-life balance, excessive stress and work intensification due to technological devices, training opportunities and participation in decision-making. In November 2016, when the metalworkers' collective agreement was renewed, a right to training was introduced (EESC 2017b). In Germany, collective agreements have been concluded mainly in larger companies aimed at protecting workers against redundancies resulting from technical progress and automation (Rationalisierungsschutzverträge). For example, the union concluded an agreement with Telekom (2015) to resolve job loss and retraining issues due to digitalisation (Ilsøe 2017).

With regard to the platform economy, national trade union responses have tended to take three forms: legal action, provision of services and the creation of new organising forms. In the United Kingdom, at the initiative of the trade unions, legal action was taken against Uber, with the courts reclassifying drivers presented by the platform as 'self-employed' as workers. The German metalworkers' union, IG Metall, has created FairCrowdWork Watch, an information website with a system for comparing rates, an assessment of platforms and legal information. The site is linked to a telephone hotline. Some large national unions, such as the General Municipal Boilermakers (GMB) in the United Kingdom and IG Metall and Vereinte Dienstleistungsgewerkschaft (ver.di) in Germany, have directly defended the rights of platform workers, and have sometimes decided to include in their ranks workers who, legally-speaking, are self-employed. In other cases, these workers have set up their own organisations – either a union (e.g. the Independent Workers Union of Great Britain), or an association or cooperative (Freyssinet 2017). In Belgium, Smart, the Société Mutuelle d'Artistes (Shared Society for Artists), also covers on-demand delivery and transport workers from the platform economy. It arranges working contracts for Deliveroo riders and represents their interests. It has signed an agreement with Deliveroo and negotiated with the platform to obtain better wages for the riders⁶ (Vandaele 2017).

A growing number of unions, moreover, have managed to obtain proper working arrangements for digital platform workers, with collective representation and collective bargaining. In Vienna, for example, the Foodora delivery riders, with the support of the Vida trade union, have set up a works council. In Germany, Delivery Hero, an on-line meal delivery service which owns Foodora among others, signed an agreement with the European Federation of Food, Agriculture and Tourism trade unions (EFFAT) in April 2018, whereby the works council and employees are represented on its supervisory board. In Denmark, the trade union 3F announced the conclusion of the world's first collective agreement in the platform economy with Hilfr.dk, a platform offering cleaning services for private houses (Vandaele 2018).

6. However, this joint protocol became null and void when Deliveroo unilaterally changed the employment status of the couriers to that of 'independent contractors'. As a result, a number of riders are exploring the possibility of setting up a platform cooperative (Vandaele 2017).

Concluding comments: some future issues

The changes in the quality of work and employment brought about by the ever-increasing use of the digital tools and methods described in this chapter show clearly that major developments are underway. These transformations will, at least in part, shape the future world of work, bringing with them both risks and potential benefits with regard to job quality. We shall consider two of these changes, on which there seems to be agreement among both academics and the social partners.

Firstly, digitalisation, aside from its potential benefits, is partly responsible for the increased exposure of European workers to psycho-social risks by making work more flexible and more intense. It also brings other risks. Negative phenomena such as stress or burn-out can be aggravated by the need, enhanced by digital tools, to be always connected and available; the emergence of / call for a new workers' right, the right to disconnect, is significant in this regard. A recent OECD document insists on the vital importance of job quality and its positive influence on workers' health as a key factor in increasing productivity, and therefore on the need for European policies to focus on improving job quality (Arends *et al.* 2017). Healthy workers are not only more productive, but also a lesser burden for social protection systems, during and after their working lives.

Secondly, the EU is essentially promoting, as the best way to prepare for forthcoming changes, teaching and training to develop digital skills, and their contribution to improving the quality and adaptability of the workforce. Is this, however, sufficient? Probably not, in a context of heightened future competition between humans and 'learning machines'. We have already underlined that the question of the impact of digitalisation on work and job quality should be approached in terms of the skills used to perform the tasks making up an occupation. Many occupations involve not only physical and intellectual skills, but also social skills – interaction skills – used across-the-board by the workers involved in completing the tasks, particularly in the field of personal care services. In the future, it could be crucial to develop and use these cross-cutting skills, as this is probably what will make the difference, for work purposes, between humans and intelligent machines.

It is essential that all social players agree that digitalisation should be used to improve job quality, rather than changing or reducing it. Job quality is still clearly on the agenda of European and national policies and social partners. The European Pillar of Social Rights, adopted jointly by the European Parliament, the Council and the Commission on 17 November 2017 (see Sabato and Corti in this volume), covers, in its fundamental principles, the key elements of job quality. The recent Commission initiatives on extending social protection to more workers, including, notably, the 'new forms of employment' generated by the digital economy, are also intended to improve job quality (European Commission 2018). Legislation has a major role to play, at European and national levels, in regulating against the potential adverse effects of the digital economy, but also in protecting and improving job quality. The various aspects of job quality are also key social dialogue issues: social partners will therefore have to develop a shared account of the positive and negative effects of digitalisation in order to come to grips with its consequences for the quality of work and employment.

For us to better understand and contain future changes, however, shared critical reflection should also include all societal and social stakeholders. Like the issue of digitalisation of the economies and of the world, other questions require concerted responses to the undermining of established paradigms. If, in a more or less distant future, digital processes and intelligent machines take over much of human work, we will no doubt have to reconsider an idea which some now describe as old-fashioned, that of a general and fair sharing out of work (De Spiegelaere and Piasna 2017; Méda 2016). If everyone works less, the question which then arises is how to provide everyone with an income allowing a decent standard of living, while enabling continued mass consumption of the goods and services produced by the economy. The idea of a global tax on the non-productive economy, i.e. the financial sector, or on digital tools (e.g. a robot tax) has of course been suggested. However, this idea seems a long way off in Europe, particularly given how difficult some Member States, struggling with ‘enhanced cooperation’ for more than seven years, are finding it to agree on a financial transaction tax which is really rather low (0.1 % on shares and bonds and 0.01 % on derivatives) (Toute l’Europe 2017). While the Commission’s proposal has still not been adopted, it was originally only intended to finance the cost of climate change transition; the idea of a digitalisation tax is not even on the agenda.

The digital and climate change transitions (see Koch in this volume) are likely to be the two most significant changes shaping our future, as is underlined in a recent foresight brief from the European Trade Union Institute (Pochet 2017). In this brief, the author emphasises the need to develop a shared critical narrative, to bring together the (currently separate) understandings and cognitive approaches of those working on these two transitions, and to develop a long-term reflection on the idea of an ‘inclusive society, where the economy is a means rather than an end, where work and employment are aimed at human development and self-fulfilment, where inequalities are reduced, and where society takes collective responsibility for social and environmental risks’ (*ibid.*: 10). The issue of fair redistribution of resources and wealth should be placed back at the heart of policies, in order to face the challenges of the future.

Astrophysicist Stephen Hawking, when asked what would become of mankind in a future society where intelligent machines would do most of the work, made a similar point: ‘If machines produce everything we need, the outcome will depend on how things are distributed. Everyone can enjoy a life of luxurious leisure if the machine-produced wealth is shared, or most people can end up miserably poor if the machine-owners successfully lobby against wealth redistribution. So far the trend seems to be toward the second option, with technology driving ever-increasing inequality’⁷.

7. New Reddit Journal of Science: Science AMA Series, 08/10/2015. https://www.reddit.com/r/science/comments/3nyn5j/science_ama_series_stephen_hawking_ama_answers/cvsdmkv/?st=jerj1dt1&sh=120ac55f

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All links were checked on 23.10.2018.

Chapter 7

One swallow doesn't make a summer – European occupational health policy at a crossroads

Laurent Vogel

Introduction

European Union legislative action in the field of workers' health and safety has been put on the back burner since the beginning of the 21st century. The main reason for this is not specific to occupational health but reflects the general weakening of social policies in the EU, a trend which became clearly noticeable when the focus of the Lisbon Strategy was adjusted in 2004-2005. It is also linked to the gradual implementation of the 'Better Regulation' agenda, under which legislative initiatives have been made dependent on their supposed economic impact. This weakening of Community occupational health policy can be traced by examining the various strategies established for 2002-2006, 2007-2012, and finally 2014-2020. In terms of occupational health legislation, there is a striking contrast between the large amount of legislation produced in the wake of the Single European Act (1986), and the far smaller number of texts produced as of 2002. The table annexed to this chapter gives an overview of the legislation adopted. This quantitative reduction, however, is only one aspect of the change. In terms of quality, the few directives worked on since 2002 have been the subject of tough negotiations, providing only a partial, and often insufficient, response to the needs they were supposed to meet¹.

In May 2016, a glimmer of hope arose with the launch of the revision of the directive on carcinogens and mutagens at work. Will this change of direction lead to a revitalisation of Community policy, or will it remain a one-off? This chapter examines the development of European regulation in this area over the last twenty years. After considering the needs to which it is responding, and dwelling on the fact that Community legislation is a vital tool in this area if we are to see harmonised progress on living and working conditions in Europe (Section 1), we examine the impact of 'Better Regulation' (Section 2). The revision of the carcinogens and mutagens directive (Section 3) raises some particularly interesting questions. It seems to go against a general trend unfavourable to rules protecting workers' lives and health. We shall attempt, therefore, to understand how, at a particular point in time, multiple complex factors have created an unexpected window of opportunity. Section 4 shows that the renewed activity in relation to cancer has not yet been able to revive Community policies on other priority occupational health issues. Major challenges remain: the still worrying level of musculoskeletal disorders and the strong emergence of psychosocial risks require an approach to occupational

1. For reasons of space, this chapter does not cover developments on the regulation of working time.

health going beyond material risks. These reflect aspects of work organisation needing to be regulated with a view to counteracting the power of employers.

We conclude on the need to consider health and safety issues as part of a broader approach linking societal issues to workplace democracy. In our view, a purely technical approach to occupational health rules is bound to be inefficient and basically legitimises the double standards under which the health of people at work is far less well protected than their health in other contexts (regulations on the marketing of foodstuffs, medicines, cosmetics, rules on transport safety, air and water quality etc.).

1. Clear needs for legislation

Employment and working conditions are responsible for a large and increasing share of the social inequalities in health in Europe, as in the rest of the world (Benach *et al.* 2013). Life expectancy, healthy life expectancy, cardiovascular mortality, cancer, mental health, disabilities acquired or intensified in adulthood: in all these areas there are very strong correlations between an individual's socio-occupational group and the state of his/her health. Different disciplines (sociology, epidemiology, statistics, toxicology, ergonomics, etc.) establish often very complex causal links, requiring an analysis taking account of effects and the cumulation of harmful factors throughout a person's working life (Thébaud-Mony *et al.* 2015). The risks involved are both material (toxic chemical substances, inadequate work equipment) and immaterial (absence of workplace democracy, imbalance between the work which has to be done and the means available to perform it, work intensification, discrimination and harassment, etc.). Accumulated exposure to these harmful factors tends to become greater lower down the social hierarchy. European surveys show two fault lines. Manual workers are far more exposed to material risks and tiring or taxing posture. When it comes to most immaterial risks (low levels of autonomy, lack of training, precarious work, etc.), the most obvious fault line in risk distribution is between those who design tasks and those responsible for implementing them (Amossé 2015). When poor working and employment conditions have chronic or serious effects on workers' health, they can result in downward occupational and social mobility, towards jobs which are less-skilled, less well-paid and/or more precarious.

Examining the data from national and European surveys on working conditions², we can identify a number of general characteristics:

- major inequalities exist, not only between occupational groups, but also between women and men, between workers with different employment statuses (precariousness), and between companies of different sizes. Other factors interact with these inequalities: immigrant status and ethnicity, age, position of the

2. At Community level, the most important survey on working conditions is taken every five years by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), in Dublin. The first survey dates back to 1990-1991, while the sixth one was carried out in 2015. We therefore have a set of data on the evolution of working conditions in Europe covering 25 years.

company in sub-contracting chains, stronger impact of austerity policies in some sectors (civil service, health and social services, education, etc.);

- most risks remain at a high level for long periods of time, with no primary prevention measures taken despite the risks being known for a long time. They are downplayed due to passive resignation to so-called ‘occupational hazards’, with gender stereotypes having a strong influence. While there have been some improvements in the accidents at work statistics, no significant improvement is observable in the field of health, a field in which data is not collected systematically. Most public health statistics take no account of the occupational activity of those whose health is affected;
- the objective set out in the Treaty of Rome (1957) – the harmonisation and improvement of working conditions – is far from being met³. There are still huge differences in the quality of working and employment conditions between Member States, and, in some respects, these differences are growing. For example, the share of women workers in part-time jobs has increased in some Member States to the point of becoming standard for most women (in the Netherlands, for instance). In all European Union countries, moreover, there are still considerable or worsening gaps between different socio-economic groups;
- the cumulative impact of poor working conditions often results in people being sidelined from the labour market well before they reach statutory retirement age (Volkoff and Gaudart 2015; Vendramin and Valenduc 2014). Occupational health problems are an important factor in the reduced employment rates of over-50s. Workers in the building sector, in cleaning or in nursing are often unable to complete a full working career.

The unequal distribution of unpaid work between women and men is still a fundamental characteristic of our societies. Its consequences interact strongly with the conditions of paid work. Public health surveys carried out in Catalonia, for example, show that less-qualified female workers are particularly negatively impacted by a heavy domestic workload (Borrell *et al.* 2004). Many factors help to explain this: these women cannot afford paid help in the home; work of a lower status results in a lower social status, making it more difficult to challenge inequality in the family structure; low-skilled work is quite similar to housework, and this monotony can negatively affect health.

From the time when preparations began on the Single Market (second half of the 1980s), improving working conditions with a view to ensuring workers’ health and safety emerged as a key aspect of Community social policy. Several strong arguments justified this importance. They remain just as valid today.

3. Article 117 of the Treaty of Rome states that: ‘Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained’. This objective is repeated, in different words, in the current Article 151 of the Treaty on the Functioning of the European Union (TFEU).

Completion of the Single Market implied greater competition between companies at European level. It was therefore important to ensure that companies could not gain a competitive advantage by ignoring prevention and adopting poor working conditions, as this could create a downwards spiral. The debates in the run-up to the adoption of the Lisbon Strategy in 2000 show that, at that time, most employers acknowledged that Europe's competitiveness could not be based on poor quality of work; they recognised the correlation between quality of work, in terms of production efficiency, and the quality of working conditions. From the social and political viewpoint, working class support for European integration would only be obtained if people could see a positive impact of Europe on their living and working conditions.

The Single Market involved measures to harmonise market regulation (particularly for machines and chemical products). Harmonisation of market rules would only work when accompanied by a partial harmonisation of the rules governing working conditions. This link resulted in a dual harmonisation. While market rules have basically been fully harmonised (up to a point where Member States have little leeway to go beyond the Community requirements), social rules have seen just minimal harmonisation. National rules ensuring a higher level of protection for workers than the minimum requirements set out in the directives are, indeed, one of the forces driving the development of Community legislation. European legislation can often evolve precisely because more effective rules have already been adopted in a number of Member States.

The adoption of the Single European Act in 1986 was followed by ten or so years of very productive legislative activity on occupational health issues, leading to a radical overhaul of national occupational health rules in many Member States.

The Single European Act added Article 118A to the Treaty of Rome (Article 153 TFEU). Thanks to this legal base, Community legislative activity in the field of occupational health, which began in a rather piecemeal way in 1978, became more systematic. The negotiations on the 1989 framework directive⁴ took place in parallel with the negotiations on the machinery directive⁵. The rules on chemical risks at work are closely linked to the rules on the production and marketing of chemical products. While the link between economic rules and occupational health rules is essential, it does not, however, constitute grounds for Community legislative intervention. The aim is to protect workers' health by acting on all factors influencing it. This principle was clearly upheld by the Court of Justice of the European Union (CJEU) in its ruling of 12 November 1996 on an action for annulment of the Working Time Directive, brought by the United Kingdom⁶.

4. Council Directive 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29 June 1989, pp.1-8.

5. Council Directive 89/392/EEC, of 14 June 1989, on the approximation of the laws of the Member States relating to machinery, OJ L 183, 29 June 1989, pp.9-32.

6. Judgment of the Court of 12 November 1996, United Kingdom/Council, case C-84/94, Rec. I-05755.

2. Better Regulation: silent revision of the Treaties and greater bureaucratisation of decision-making since 2004

The European employers put up very little systematic opposition to Community occupational health legislation between 1989 and 1995, considering it as complementary to the harmonisation of market rules, which they supported. Only two specific initiatives met with their resistance during this period: the 1993 directive on the organisation of working time⁷ and the 1989 directive on work equipment⁸, insofar as it required existing equipment to be made to comply with the rules. In both cases, the opposition reflected the individual position of one national employers' organisation: the Confederation of British Industry (CBI) on working time, and the Union des industries et métiers de la métallurgie (UIMM, the French employers' federation for the metal industry) on compliance of work equipment. UNICE, the Union of Industrial and Employers' Confederations of Europe, now BusinessEurope, merely supported these national organisations without fully taking part in the discussions. The CBI's strategy involved the UK government (which brought an action for annulment of the directive to the Court of Justice, and subsequently began purely formal transposition with no potential sanctions). The UIMM campaign began with a dramatic condemnation of the supposed cost of rendering all existing equipment compliant, estimated at 30 billion euros in the French metalworking sector alone (Cornudet 1995). This assessment turned out to be inaccurate. To our knowledge, this was the first time that an economic argument was used against a Community legislative measure taken to protect workers' lives and health. The UIMM campaign did however have some impact, as the revision of the Work Equipment Directive adopted in 1995 was less ambitious than the initial proposal. However, the main objective and outcome of the campaign were predominantly national. The UIMM wished to have some provisions removed from the French legislation and to push the government to halt inspection measures and the imposition of sanctions by the labour inspectorate.

The European Commission took an ambiguous stance in this first debate on occupational health legislation and the extent to which it was a 'burden'. It defended the legislation as one element in the balance to be struck between 'social' and 'economic' issues, a balance regularly referred to by the Community. However, in September 1994, the Commission set up an expert group – the Molitor group – to assess the impact of Community and national legislation on employment and competitiveness (Vogel 1995). Looking back, it is striking, at such an early stage, to hear the Community putting economic considerations before the protection of workers' lives and health.

7. Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, OJ L 307, 13 December 1993, pp.18-24.

8. Council Directive 89/655/EEC, of 30 November 1989, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual directive within the meaning of Article 16 paragraph 1 of Directive 89/391/EEC), OJ L 393, 30 December 1989, pp.13-17. This directive concerns employers' obligations vis-à-vis work equipment, while the machinery directive concerns the obligations on manufacturers and importers placing machinery on the market. The two texts complement each other.

The ‘Better Regulation’⁹ principles progressively gained the upper hand from the end of the 1990s onwards (Van den Abeele and Vogel 2010; Van den Abeele 2014 and 2015; Alemanno 2015). Initially they appeared to be merely the practical extension of the Treaty principles of subsidiarity and proportionality. But in 1997-1998, the Commission made ‘Better Regulation’ a principle in its own right. It developed certain stances, geared towards finding alternatives to legislation and towards the introduction of cost-benefit assessments before deciding on the need for legislation. It developed a concept of law based on ‘market totalitarianism’, to use the expression aptly coined by French lawyer Alain Supiot (Supiot 2010).

‘Better Regulation’ has resulted in waning Community action in the field of occupational health, without the slightest amendment to the Treaty (Vogel 2015b). Increasingly formal criteria have meant that any potential new legislation is subject to impact assessments focusing on a cost-benefit calculation; moreover, all existing legislation is to be reviewed, assessing the administrative burden supposedly placed on companies. The wording of the Treaty contrasts, therefore, with how these legislative powers are exercised in practice. The exercise of these powers is hampered by a change of the main criterion justifying legislation: from protecting workers’ lives to ostensible economic efficiency.

The ‘means-to-an-end’ approach, whereby any legal rule is assessed in terms of economic ‘dividends’, has deeply impacted decision-making mechanisms within the European Union. Formally speaking, tripartite consultations are still held regularly, on the basis of the Treaty. Their real impact, however, has been greatly reduced. The European Commission uses its sole right of legislative initiative as a privilege, refusing to submit proposals for directives, and thus preventing their discussion in the Council and European Parliament. The most striking example of this change is the social dialogue agreement on health and safety in the hairdressing sector reached in 2012 (Vogel 2018). In this case, bureaucratic procedures completely undermined the Treaty provisions on social partner autonomy and the option of implementing an agreement reached in the European social dialogue via a directive.

The two mandates of the Barroso Commission (2004-2014) were marked by a dual process: a reduction in the political role played by a Commission increasingly hesitant to set out ambitious projects, and, within the Commission, increased power for a bureaucracy close to the President and responsible for monitoring the other departments as part of the ‘Better Regulation’ agenda (Van den Abeele 2015). This has resulted in a lucrative market for private consultants, not as independent as they might seem. Their access to this market partly depends on how willing they are to bend to the Commission recommendations, issued throughout the impact assessment process.

9. According to its supporters, the idea of the ‘Better Regulation’ programme is to ensure that EU policies and legislation are drafted and assessed in a transparent, evidence-based fashion, taking account of the views of citizens and stakeholders. The aim is to ensure targeted regulation which does not do more than is necessary to meet its objectives and provides benefits at as low a cost as possible. Critical analysis shows that this approach essentially favours the interests of employers.

The crisis in Community regulation was accentuated by the REFIT (Regulatory Fitness and Performance) initiative, launched in December 2012. Its aim is to assess all existing legislation (the 'Community acquis'), and to make it more difficult to adopt any new social, environmental or consumer protection legislation. In 2013, the Commission suspended the legislative initiatives underway in the field of health and safety. The process of evaluating the acquis was used as the pretext for this hold-up. Initially intended to run until the end of the mandate of the second Barroso Commission (1 November 2014) (European Commission 2013), the Juncker Commission extended the moratorium on new legislation to cover the whole of 2015. Under pressure from various factors, the moratorium was abandoned in May 2016, under the Netherlands Presidency.

The European Commission is using REFIT as a way to put pressure on Member States to revise their own legislation downwards (Tansey 2014). The pejorative term 'gold-plating' is used to describe national legislation providing a higher level of protection to workers (or other beneficiaries). The aim of this pressure is to convert the minimum requirements in the directives into rules ensuring total harmonisation.

With regard to occupational health policies, it appeared, at the end of 2014, that their future was bleak at European level. In June 2014, the Commission had adopted a 'strategic framework on occupational safety and health' (European Commission 2014). It did not refer to a single legislative initiative. Essentially, the Commission merely called on other players (the Member States, employers' and workers' organisations, etc.) to provide a minimum level of service in the absence of an ambitious EU initiative. From 2015, however, the winds of change started blowing in one particular area: occupational cancers.

3. Revision of the directive on carcinogens and mutagens (2015-2017)

We shall now look briefly at the revision of Directive 2004/37/EC¹⁰ on carcinogens and mutagens at work (hereafter CMD), focusing on the factors which enabled this change from previous policies¹¹. These were a combination of intrinsic factors (specific to the issue of occupational cancer) and a wide range of external factors, all reflecting the European Union's current extreme instability.

10. Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (sixth individual directive within the meaning of Article 16(1) of directive 89/391/EEC of the Council, OJ L 158, 30 April 2004, pp.50-76.

11. Detailed analyses of all the issues raised by the revision of the directive can be found in various publications by the European Trade Union Institute, particularly in a collective volume on cancer and work, due to be published in the second half of 2018.

The most important intrinsic factors can be summarised as follows:

- cancer, accounting for more than 100,000 deaths per year, is the main cause of mortality due to poor working conditions in Europe (Takala 2015). In the 1980s and 1990s, a series of demonstrations called for a ban on asbestos. These protests led, in 1999, to a ban in the European Union, from 1 January 2005 onwards. It seemed as if, with asbestos banned, a page had been turned, with occupational cancers no longer a political issue;
- between 1990 and the turn of the millennium, the view shared by most European stakeholders, with some differences, was that what was needed was ongoing improvement of the 1990 directive and the establishment of national public policies allowing for its proper implementation. One important political issue was the extension of the directive's scope to reprotoxic substances;
- little by little, the main discussions shifted to market regulation, with REACH¹² as the key element. The REACH negotiations took around ten years, and were considered – also outside the European Union – as extremely important. While the discussions on the CMD may have aroused the interest of, at best, a few hundred people, the REACH discussions aroused massive interest and were highly controversial, despite their extreme technical complexity;
- REACH entered into force in 2007, with employers' organisations initially branding it as a disaster for the European chemical industry. Conversely, implementation of the new regulation was considered as a way to restore consumer and public confidence in chemical products, and to influence decision-making, which it did, most effectively. Generally speaking, employers considered REACH to be the key issue, with the specific legislation on carcinogens at work seen as a sort of secondary, almost residual, point.

Some Member States were in favour of revising the CMD, though for different reasons. They were, unsurprisingly, concerned about the increasing costs of cancer to social protection systems (RIVM 2016; Vencovsky *et al.* 2017). In a number of countries, legislation on carcinogens and reproductive risks at work already went much further than the CMD.

These countries joined forces with a growing number of employers. For employers' confederations in countries where the legislation went further, political conditions did not permit any form of backtracking¹³. They therefore saw the Commission's inertia as encouraging unfair competition from countries which did little to tackle occupational

12. REACH is the acronym referring to Regulation (EC) No.1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

13. To our knowledge, it was only the Austrian employers who in 2018, following the formation of a government of the extreme right and the Christian Democrats, proposed that Austria should henceforth apply only the minimum requirements of the Community occupational health directives, abandoning 'gold-plating' (a higher level of worker protection). The declarations to this effect have, to date, been very general and vague. No specific measures have been proposed.

cancers. The other factor was the concern of sectoral employers' organisations, which were worried that the REACH authorisation procedures would require them to abandon production or reduce the use of substances of very high concern, particularly due to their impact on workers. These organisations saw an improvement to the CMD as a lesser evil.

2015 was a crucial year for preparing to launch the revision of the directive. The formation of the European Commission under President Jean-Claude Juncker in November 2014 gave no cause for optimism. At her hearing before the European Parliament on 1 October 2014¹⁴, Marianne Thyssen – appointed to the post of Commissioner for Employment and Social Affairs – mentioned four priorities for her work. Workers' health and safety were not among them. The word 'cancer' was not mentioned once during this long hearing.

Under pressure from many sides, the European Commission reiterated that, until the evaluation of the existing occupational health legislation was completed, it would not be possible to launch a revision of the directive.

There had been fairly broad agreement within the European Parliament for years that the directive needed to be revised, particularly in order to include reprotoxic substances. This position became more entrenched following the health scandals to which we will refer shortly. From June 2016 onwards, analysis of the results of the Brexit referendum in the United Kingdom strengthened this trend. In the Parliament's view, it was time for the European Union to again place greater emphasis on new legislation to meet the expectations of the general public (Ulvskog 2016). The advantage of the issue of occupational cancer was that it was an opportunity to respond to compelling needs without explicitly referring to the collective relations between workers and employers. Its close links to public health and the environment made it even more of a legitimate cause.

On 25 February 2015, a coalition of 31 employers' organisations wrote to the European Commission. While upholding their ideological support of the 'Better Regulation' principles, the letter called for work on revising the CMD to begin. It was signed by associations representing a very broad range of sectors: the automotive sector, medical technology, the steel and mining industries, aluminium, etc. It was also supported by the American Chamber of Commerce to the European Union, an organisation representing US multinationals. The signatories were worried that the lack of legislative action in this area could result in prohibitions or restrictions under REACH. This concern led important employers' organisations to depart from the purely deregulatory ideology of BusinessEurope, the European employers' confederation.

On 9 March 2015, the Social Affairs Council of Ministers called on the Commission to launch the CMD revision. This move had been in the pipeline since 2014, in the form of joint initiatives of the labour ministries of four Member States (the Netherlands, Belgium, Germany and Austria). The Netherlands, which was to hold the presidency of

14. This hearing can be found at: <http://www.europarl.europa.eu/hearings-2014/resources/library/media/20141022RES75837/20141022RES75837.pdf>

the Council of Ministers in the first half of 2016, put strong pressure on the European Commission, demanding a legal proposal on occupational cancers during its presidency and leaving it up to the Commission to organise its procedures to do so.

On the trade union side, 2015 was the year of the 13th European Trade Union Confederation (ETUC) Congress in Paris (September). During the preparatory discussions and in the course of the congress itself, the elimination of occupational cancers was defined as a priority occupational health campaign: union action could thus be concentrated on this issue in the various countries and sectors¹⁵. There was broad agreement on this, in contrast to the previous decade where there had been major differences of view on REACH.

The specific factors just referred to would probably have resulted in a different outcome, without the convergence of certain external factors linked to the broader context.

Three large-scale health scandals have arisen in the course of the last five years. Basically, public health and environmental issues, they also have an important occupational health aspect. These scandals concern endocrine disruptors (Horel 2015), renewal of the authorisation for glyphosate (Foucart and Horel 2017) and the standards for diesel vehicle engines (Neslen 2016). They all shed a harsh light on the way in which the Community institutions function. ‘Better Regulation’ is supposed to make decision-making less political by making greater use of technical and scientific assessments and cost-benefit calculations (Marcilly and Touillon 2015). These three scandals show the extent to which scientific expert reports and socio-economic impact studies can be manipulated in support of political options which are not described as such, but which are presented, rather, as the natural conclusions to be drawn from ‘neutral data’. Industry’s stranglehold on whole swathes of European regulation became clear, in specific eloquent examples, to millions of people.

The negotiations on revising the Posted Workers Directive were also a factor. Throughout 2016, there seemed to be a strong risk that these would come to a standstill. Revision of the CMD seemed to be a less problematic alternative, should the Commission wish to show an improvement to social legislation before the end of its mandate in 2019.

Finally, in May 2016, the Commission adopted the first revision proposal, the first step towards the adoption of the Directive of 12 December 2017 (European Commission 2016). The previous argument used – that the evaluation of existing legislation should first be completed – was unceremoniously buried.

The directive is being revised in several stages, meaning that the discussions at times overlap. As the legislative process for each proposal can take quite a long time, it is not completed by the time the next proposal is put to the European Parliament and the Council of Ministers. For example, the proposal for the first phase of the revision was presented in May 2016, with the directive adopted in December 2017. In the meantime,

15. See, in particular, the Emergency motion on health and safety at work adopted on 2 October 2015 by the 13th ETUC Congress.

the second phase had begun (January 2017). The European Parliament amendments to this second phase were voted on in March 2018, and negotiations between Parliament and Council will probably end during the second half of 2018. The third phase, which began in April 2018, should finish in 2019, while the fourth phase will probably be launched after the May 2019 European elections.

Parliament has played a dynamic role in this process, with its amendments – supported by around 85% of MEPs¹⁶ – greatly improving the Commission's minimalist proposals.

During negotiations of the first phase in the 'trilogue', the Member States were divided, generally, into three blocks¹⁷. A significant group of countries supported the Parliament's wish to go beyond the Commission's minimalist approach. The most active Member States in this group were Sweden, France, Germany and Belgium, but, on certain points, as many as ten countries supported Parliament's position. Two countries (the United Kingdom and Poland) wished to retain the Commission's minimalist proposals, rejecting the Parliament's substantial amendments. They were generally backed by Romania and Finland. The other countries occupied the middle ground, or had no clear position. Following a series of unfruitful meetings, agreement was reached, leading to the directive being adopted in December 2017.

The final text is substantially better than the initial proposal. The inclusion of reprotoxic substances in its scope is a key issue. According to the final agreement reached, the Commission must assess the consequences of this measure by, at the latest, the first quarter of 2019, allowing the legislation to be revised on this point. Thanks to the Parliament, the directive requires Member States to organise the health monitoring of exposed workers, even after the period of exposure is finished. For hexavalent chromium¹⁸ and wood dust, the Parliament obtained occupational exposure limit values (OELs) ensuring a higher level of protection against cancer. However, the Parliament's amendment on crystalline silica¹⁹ was not adopted, with the European OEL leaving workers subject to a considerable risk.

The most important discussion for the second stage concerned emissions from diesel engines. Around 3 million workers in Europe could potentially be affected. The Parliament has voted amendments bringing these emissions into the scope of the directive and setting OELs for two of their components (elemental carbon and carbon dioxide). It is too early to know what the majority view within the Council of Ministers will be.

16. Only two groups – the extreme right (ENF) and the nationalist conservatives (ECR) – did not vote in favour of most of the amendments.

17. Discussion between the author and members of the Committee of Permanent Representatives (COREPER) from various Member States between January and July 2017. These blocks were not static. Countries could be more in favour of some Parliament amendments and less in favour of others.

18. Hexavalent chromium is a state of oxidation of chromium. It is highly toxic. It is used in many industrial applications, and around a million workers are estimated to be exposed to it at work in Europe.

19. Crystalline silica is a carcinogen when inhaled. It is the raw material for some industrial processes, such as glass manufacturing. Workers are most often exposed when dealing with materials which contain it. It is estimated that, in Europe, 5.3 million workers are exposed to crystalline silica. 70% of these work in the construction sector.

If we look at what has been achieved so far, 21 OELs should be adopted before the end of the mandate of the current Commission in 2019. Though this constitutes real progress compared to the three OELs adopted between 1990 and 1999, a lot remains to be done, given the reality of workplace situations. The objective announced by Commissioner Marianne Thyssen in May 2016 to adopt 50 OELs by 2020 will not be met. The OELs already set levels of protection which vary greatly between substances. There is a lack of consistency, made more serious by a problem with transparency, since the directive provides no information as to the residual risks which still remain even if an OEL is respected. The other questions raised mainly concern the scope of the directive. In the first quarter of 2019, the Commission is supposed to put forward its proposals on the inclusion of reprotoxic substances. Whether or not diesel engine emissions will be included will depend on the agreement negotiated between the Parliament and the Council in the second half of 2018.

4. Beyond legislation on cancers: a move towards a revival of occupational health policies?

The prevention of occupational cancers is rightly considered to be a key priority. The question which arises is to what extent the breach opened up by this issue can help to revitalise occupational health policies as a whole.

We should be cautious in our answer. The European Trade Union Confederation (ETUC) and BusinessEurope have diametrically opposed positions on this issue. In the view of the union confederation, there are further priority areas which require new legislation. The first of these are psychosocial risks (PSRs), on which there are no specific provisions in the existing legislation, although the general prevention principles of course apply to all risks. The same is true for musculoskeletal disorders (MSD), which figure in European and national surveys as the most common complaint of workers in relation to the negative impact of work on their health. BusinessEurope, however, is against any new legislation on these questions. This very strong opposition from employers is due to the fact that both these categories of risk are largely determined by work organisation, in the broadest sense of the term (pace of work, compartmentalisation of tasks, management methods, subordination of workers to management). A technical approach would not work at all for PSRs, and would have limited effectiveness for MSDs. Any new legislative proposal, therefore, will require looking at work organisation, via the procedures used in other areas of prevention: risk assessment, worker consultation and participation, possible involvement of labour inspectorates, involvement of prevention services whose independence must be guaranteed, etc.

While the European Parliament is generally in favour of a more ambitious Community policy also addressing these two areas, the Member States have very divided views, and national legislation differs greatly from one country to another²⁰. The pressure on the

20. Some countries have specific, quite detailed legislation on psychosocial risks (particularly Sweden, France and Belgium), whereas others barely do more than apply the general prevention measures as well as some fragmentary provisions (e.g. on protection against harassment), which do not emphasise a primary prevention approach.

Commission is far less in this area than with respect to cancer, and there are practically no links to market regulation.

DG Employment's inertia on the issue of PSRs has paved the way for questionable initiatives geared to keeping people with mental health problems in work, or getting them back to work (Scandella 2017). Within the Commission, these are directed by DG Health. The pharmaceutical industry sponsors most of them, seeing opportunities to develop new markets. The issue of work organisation is avoided, in favour instead of an approach focused on 'problematic' individuals, with all the associated risks of stigmatisation.

The main justification for the lack of Community action was the need to assess all existing legislation. This long process, which began in 2013, has finally come to an end. It resulted in the Commission's adoption, on 10 January 2017, of guidance documents revising or partially updating the strategy set for the period 2013-2020 (European Commission 2017a and 2017b).

As is often the case with Community texts, the Communication of 10 January 2017 is drafted in a rather piecemeal way, containing statements designed to satisfy all parties. It is likely that, on many points, no decision has yet been taken, and that the document could later on justify very different policies.

The overall conclusion drawn by the Commission is that the legislative 'acquis' must be maintained. There is no more talk, therefore, of revising the 1989 framework directive, relaxing the prevention obligations of small and medium enterprises or transforming some directives into non-binding guidance documents. The idea of modernising this 'acquis' and adopting specific texts where it is insufficient is however addressed very hesitantly. The Commission states how important it is to revise the rules protecting workers against cancer. However, the section in the 10 January 2017 communication on PSRs and MSDs is entitled 'Helping businesses cover rapidly increasing occupational safety and health risks'. The heart of the system would still be optional self-regulation by employers, plus some advisory and practical tools. This general thrust is confirmed by the complete absence of an analysis of the role of workers' representatives in prevention.

Given the institutional calendar (the run-up to European elections and a new Commission in 2019), no new action will be taken before 2020.

Sectoral social dialogue did not result in any new formal health and safety agreements in 2017. Probably, the Commission's refusal to implement the agreement concluded in 2012 in the hairdressing sector via a directive was one factor discouraging the sectoral social dialogue committees. However, these committees are still actively involved in a series of 'soft law' initiatives. The revision of the carcinogens directive led to closer contacts between union and employer organisations on specific sectoral issues. A joint letter, for example, was signed by the sectoral employers' organisations and the ETUC

on 16 July 2016, calling for an OEL for formaldehyde²¹. The Commission included this proposal in the third phase of the revision of the directive.

Although the Communication of 10 January 2017 distances itself from the deregulatory tone of the past, it is still very vague when it comes to initiatives over and above the revision of the CMD. It no longer suggests that small and medium-sized enterprises could be exempted from some of the occupational health rules. The Communication announces adaptations to technical progress for six existing directives²². This procedure allows the Commission to amend technical provisions without having to go through the ordinary legislative procedure. In principle, the process should be completed for four of these directives by the end of the term of office of the current Commission in 2019²³.

Conclusions

The recent developments in the field of occupational health show that, even in a context which does not, in general, favour social rights, there may be windows of opportunity. These are linked to a complex chain of events, whereby different interests converge at a particular moment. In our view, such opportunities could be encouraged if occupational health issues were seen in relation to a series of other policies. There are many links between occupational health and issues such as ageing, better allocation of public health expenditure (with greater priority given to the prevention and reduction of social health inequalities) and gender equality, and these links would justify far more ambitious Community policies. Analysis of the social dynamics of prevention, moreover, suggest that active worker representation is often the key difference between prevention ‘on paper’ and real action to eliminate risks (Walters and Nichols 2007). The absence of such representation is often a major barrier to prevention in small companies or more precarious jobs. Recognition of this fact enables us to broaden the discussion. This is not purely an occupational health issue. The democratic deficit in Europe reflects, in our opinion, first and foremost an absence of democracy at work. Around half of European workers lack any form of collective representation. An increasing percentage of workers are no longer covered by collective agreements. Sub-contracting aggravates this situation, as a considerable share of the real power is transferred to the contracting party. This situation has a threefold impact. It acts as a barrier to real prevention at the workplace, and is thus a key factor in threats to workers’ health. It prevents the establishing of counterbalancing mechanisms within a company. This has a direct impact on working conditions, but also influences the more general effects of business activity within society. Environmental issues, problems relating to job quality, the weighing-up of the social usefulness of certain production processes: none of these issues can be properly addressed without daily counterbalancing employers’ decision-making monopoly. At a macro-political level, an absence of workplace democracy boosts

21. https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-171/feedback/F11816_en

22. See the table annexed to this chapter, which, for these directives, indicates that ATP (adaptation to technical progress) is underway.

23. In the case of two directives, Member States have indicated that the changes would go beyond purely adaptation to technical progress, which means that the usual legislative procedure will need to be followed. This position is supported by the tripartite Advisory Committee on Health and Safety at Work.

passivity, abstentionism, vulnerability to populist campaigns, and the emergence of political movements built around charismatic leaders (Coutrot 2018).

Part of a deeper crisis affecting all Community regulation, the crisis in occupational health regulation provides an opportunity to relaunch more general action for change in Europe. This is the battle which trade union organisations should be engaging in. They should highlight the close links between occupational health, industrial policy, the environment, quality of work and workplace democracy, and should build alliances focusing on these needs.

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All links were checked on 1.7.2018.

Annex: Community safety and health directives currently in force

Box 1 Framework directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

<p>Workplace 89/654/EEC Workplace (*1)</p> <p>92/57/EEC Temporary or mobile construction sites (*8)</p> <p>92/58/EEC Safety and/or health signs (*9) (ATP underway)</p> <p>1999/92/EC Explosive atmospheres (*15)</p> <p>Use of work equipment 2009/104/EC (codification of directive 89/655/EEC and of its later amendments) (*2)</p> <p>Individual protection 89/656/CEE (*3) Use of personal protective equipment (APT underway)</p>	<p>Exposure to chemical, physical and biological agents 2004/37/EC (codification of directive 90/394/EC and of its later amendments) (*6) Carcinogens and mutagens Amended by directive 2017/2398</p> <p>Two other directives amending this directive should be adopted by the end of the mandate of the current Commission</p> <p>2000/54/EC codification of directive 90/679/EC and of its later amendments Biological agents (*7) (ATP underway)</p> <p>98/24/CE Chemical agents →</p> <p>2009/148/EC (codification Directive 1983/477/EC and its amendments) *14 Asbestos</p> <p>2002/44/CE Vibrations (*16)</p> <p>2003/10/CE Noise (*17)</p> <p>2006/25/CE Artificial optical radiation (*19)</p> <p>2013/59/Euratom (amending previous directives) Ionising radiation</p> <p>2013/35/UE (amending a 2004 directive) Electromagnetic fields (*18)</p>	<p>2000/39/EC 2006/15/EC 2009/161/EU 2017/164/EU</p> <p>Limit values indicating exposure at work</p>
<p>Specific activities 92/29/EC Medical treatment on board vessels (ATP underway)</p> <p>92/91/EEC Mineral-extracting industries (*11)</p> <p>92/104/EEC (*12) Surface and underground mineral-extracting industries</p> <p>93/103/EC (*13) + 2017/159/EU (SD) Fishing vessels</p> <p>92/104/EEC Surface and underground mineral-extracting industries</p> <p>2010/32/EU (SD) Prevention from sharp injuries in the health sector</p>		

Box 1 (continued)

Precarious working conditions

91/383/EEC

Workers with a fixed-duration employment relationship or a temporary employment relationship

Specific categories of workers

92/85/EEC

Pregnant workers, workers who have recently given birth or are breastfeeding (*10)

94/33/EC

Young people at work

Working time

2003/88/EC

(codification of directive 93/104/EC and of its later amendments)

Working time

+ directives on specific sectors:

1999/63/EC

(SD) working time of seafarers (amended by directive 2009/13/EU)

2000/79

(SD) civil aviation

2002/15/EC

working time in road transport

2005/47/EC

mobile workers in cross-border railway services (SD)

2014/112/EU

(SD) inland waterway transport

Ergonomic factors

90/269/EEC

Manual handling of loads (*4)

90/270/EEC

Display screen equipment (*5)

Notes: the individual directives falling under the framework directive are indicated by an * followed by a number. For example, *10 means 'tenth individual directive of the framework directive'.

The note (ATP underway) means that the Commission is currently working on modifications amounting to adaptations to technical progress. These modifications do not follow the usual legislative procedure. These are Commission directives. These texts should be adopted by the end of the mandate of the current Commission. The letters SD mean that this is a Council directive implementing an agreement concluded as a result of the social dialogue. In these cases, Parliament is not involved in the adoption of the legislation. Most of these directives are to do with working time. They cover sectors or activities excluded from the scope of the initial 1993 directive.

This table does not include two other directives agreed upon in the course of social dialogue in the maritime sector. These can be considered as 'mixed' directives, since they concern a set of provisions including some occupational health and safety issues. These two directives (Directive 2009/13/EC, amended by Directive 2018/131) enable the implementation of European agreements for the application of an ILO convention.

This table is based on Vogel (2015a). It was updated on 1 June 2018.

Conclusions

The European Pillar of Social Rights as a game changer

Bart Vanhercke, Sebastiano Sabato and Dalila Ghailani

Introduction¹

A dominant feature of this annual review of social policy in the European Union (EU) is the way in which the European Pillar of Social Rights (EPSR) has started to influence EU policymaking, well before it was endorsed politically by the Gothenburg Social Summit in November 2017. The EPSR's new 'rights-based social investment approach' has left its mark on the 2018 European Semester, and has already triggered two batches of implementation initiatives: the 'Pillar Package' (April 2017) and the 'Social Fairness Package' (March 2018). These include ambitious legislative and non-legislative initiatives in the area of social policy. The initiatives surrounding the EPSR are critically examined in this edited volume, looking at both their positive and negative outcomes as well as their potential to serve as stepping stones towards a much-needed 'European Social Union' (ESU).

The chapters in this book show that the EPSR may very well be more than a formal (read: symbolic) proclamation of principles framed as rights. Indeed, as a result of the 're-politicisation' of EU social policies it has rapidly set in motion, the EPSR has the potential to become a true game changer. More particularly, it can be used as an authoritative lever for demanding more social rights for citizens. *But will it also be able to steer the direction of Member States' policies and, ultimately, the EU's macroeconomic policies?* In this concluding chapter we will argue that more ambitious initiatives, including a roadmap for implementing the Pillar and increased stakeholder involvement, will be needed to achieve these goals.

In a world characterised by changes in the very substance of work, largely dictated by new IT-governed processes, this volume also looks at social policy in the increasing number of EU-promoted initiatives in the field of self-employment, providing in-depth reflections on the many facets of self-employment (whether positive or negative) and on the significant gaps in social protection for this category of workers. The Commission's proposed Council Recommendation on the topic may be non-binding but can nevertheless be seen as a milestone in this policy area ruled by unanimity and

1. The authors would like to thank Slavina Spasova for her generous suggestions regarding the narrative and some of the key concepts guiding this chapter. We thank Maria Jepsen and Philippe Pochet for their helpful feedback and Richard Lomax as well as Taylor Wilhoit for their substantive and editorial suggestions. The usual disclaimer applies.

subsidiarity. Turning to health and safety, the book critically discusses whether recent progress in the prevention of occupational cancers is more than the proverbial one swallow in the making of an occupational health and safety summer, a field in which workers' interests continue to be largely subordinate to business interests.

But this review of the EU's 'high-level' politics, as well 'day-to-day' social policymaking, presents not just the state of play in 2017. It also looks at the clouds building up on the horizon, questioning the very sustainability of social policy and programmes in the face of environmental challenges and forcing us to reflect on alternative approaches, such as 'green growth' and 'sustainable welfare' (or even, controversial as the notion may be, 'degrowth'). Such eco-social policies urgently need to be put on the agenda – *but at whose expense?*

In view of the formidable – old and new – social challenges faced by the EU and the Member States in this 'post-crisis, pre-Brexit' period, 2017 turned out to be a pivotal year for creating a shared understanding of the need for social protection systems to be strengthened. It is no coincidence that the President of the European Commission called for a 'European Social Standards Union' in his September 2017 State of the Union speech (Juncker 2017).

European Parliament elections are scheduled for 23–26 May 2019. The last European elections saw turnout rates declining. At national level, established (pro-EU) parties are losing power (the centre-left has collapsed in many countries), with seats taken by parties fuelled by populist, anti-immigration and increasingly anti-EU rhetoric². If the European elections follow these national trends, prospects for 'social' policy initiatives could become gloomy. Yet the social challenges remain formidable: in 2016, 23.5% of the EU population was estimated to be at risk of poverty or social exclusion; youth employment, having peaked at 23.7% in 2013, is decreasing but is still above the level observed in 2008 (15.6%); and gender gaps in the labour market remain a key challenge.

Before the current Parliament finishes its term, it should oversee completion of the official withdrawal of the UK, with or without an agreement. President Jean-Claude Juncker is not seeking re-election and it therefore remains to be seen whether his successor will embrace the creation of a stronger Social Europe and implementation of the European Pillar of Social Rights. Sixty years on, as this 19th edition of Social Policy in the EU demonstrates, the EU's social dimension is truly at a crossroads.

The EU debates about the future of (social) Europe which characterised the past year are discussed in Section 1, pointing to a sharpening of the profile of the EU's social dimension during 2017. Section 2 argues that, as a first step towards a 'European Social Union' (ESU), existing initiatives in the social sphere should be creatively (and visibly) pieced together. The question of how the EPSR could contribute to the ESU, empowering

2. In Austria, Sebastian Kurz's newly-formed Austrian People's Party won the most seats, while in Germany Angela Merkel remained Chancellor but suffered a blow as the right-wing Alternative for Germany party gained ground. In the Netherlands as well, support for the nationalist parties grew while centrist parties lost seats. In Italy, an extreme-right, sovereignist and eurosceptic party – the Northern League – is part of the government. Far-right, Eurosceptic parties with limited democratic credentials are in power in Hungary and Poland.

citizens through giving them access to both symbolic and instrumental resources, is addressed in Section 3, which also answers the question: *why should it be different this time?* Section 4 discusses whether the Pillar, considered as the new EU social policy framework, already influenced EU social policymaking in 2017. Some proposals for developing a stronger EU social dimension – including a pan-Eurozone unemployment insurance, a new balance between the social and economic dimensions and taking the Sustainable Development Agenda seriously – are put forward in Section 5.

1. Debating the future of (social) Europe

The shock waves created by the planned British exit from the European Union – scheduled to take place on 29 March 2019 – continued to loom large during 2017. The historic Brexit decision made it crystal-clear that continuing with the *status quo* is not an option. Yet the direction of travel is uncertain, with Member States deeply divided as to the way forward.

Some observers hoped that the Brexit decision and the related crisis of legitimacy and identity experienced by the EU would – finally – lead to a quantum leap forward in the integration process, for example through the reinvigoration of enhanced cooperation (Telò 2017). However, in practice there seems to be very little appetite for the idea of such a ‘coalition of the willing’. Other observers hypothesized that Brexit would spur further disintegrative dynamics, speculating about what a fully disintegrated Europe might look like (Rosamond 2016). Developments in the EU in 2017, as the chapters of this book demonstrate, point, instead, to a third (less dramatic) scenario: *incrementalism*, i.e. small yet significant steps driving European integration for the time being.

A first key step in the debate concerning the way forward for the EU was reflected in the Rome Declaration, signed on 25 March 2017 by the leaders of the EU 27 on the sixtieth anniversary of the Treaty of Rome. The Declaration identifies four, albeit non-conflictual, areas in which leaders pledge to work together: a) a safe and secure Europe; b) a prosperous and sustainable Europe; c) a social Europe; and d) a stronger Europe on the global scene. At the same time, the Rome Declaration shies away from acknowledging past mistakes or providing an explanation as to why the EU has lost momentum, and why populists in key countries are on the rise.

The European Commission also fuelled the debate on the future of Europe through a White Paper (European Commission 2017a) setting out five scenarios for the future integration process: these range from a minimalist (‘nothing but the Single Market’) to a very ambitious option in which the 27 advance together in the integration process in specific policy areas (‘doing much more together’). In-between, the Commission imagines a scenario whereby a restricted number of countries deepen their integration in some areas, possibly joined by the others at a later stage (‘those who want more do more’).

The social dimension of the EU was among the key issues in the high-level debates that dominated the EU agenda throughout 2017. Besides featuring as a priority in both the aforementioned Rome Declaration and the Commission’s White Paper on the

Future of Europe, the Commission published a dedicated *Reflection paper on the Social Dimension of Europe* (European Commission 2017b)³ on 26 April 2017. Mirroring the White Paper scenarios, the Reflection Paper envisages three options for the social dimension: the EU withdraws from social policy (except for aspects related to free movement); further progress is limited to Eurozone members; or citizens' rights are fully harmonised in selected social policy areas throughout the EU 27.

That same day, the Commission issued its long-expected *Recommendation on the European Pillar of Social Rights* (EPSR) (European Commission 2017c). Aimed at promoting 'upward social convergence' in the Eurozone, the EPSR was published as part of a broader 'Pillar Package' and was followed by a second 'Social Fairness' implementation package in March 2018 (see Section 4.1).

In other words: at least in terms of discourse, 'EU social policymaking' was back in business in 2017, thereby laying the foundations for a future 'European Social Union'.

2. A 'European Social Union': piecing together the jigsaw puzzle of Social Europe

Clearly, the European Union is not starting from scratch when moving forwards in line with its revamped social ambitions. Vandembroucke and Vanhercke (2014) argue that over the past fifty years a European social dimension has been actively pursued, resulting in a considerable social *acquis*, including in the areas of employment and non-discrimination. The authors argue that the positive EU social *acquis* should be further developed into a 'European Social Union' (ESU⁴). ESU would not be a European welfare state but 'a Union of Welfare States' (ibid: 103), in which major responsibilities for social policies would continue to be in the hands of Member States. The main role of the EU would be to set common objectives, coordinate and support the work of its Member States and promote benchmarking and exchanges of good practices. However, a full-blown ESU would also require more ambitious EU initiatives such as a stabilization mechanism for the Economic and Monetary Union (EMU) (see Section 4).

One could contend that, in academic debates, the ESU already 'exists'. According to Hemerijck (2013), it would be a 'holding environment', i.e. 'a zone of resilience based on shared values and a common purpose, matched by competent institutions, in times of painful adaptation'. Its function would be '[...] to mitigate stress and thereby uphold the integrity of national welfare states, but also to maintain pressure to mobilize rather than overwhelm domestic reforms with only disciplinary intrusion' (ibid.).

3. Other European Commission Reflection Papers published as part of the debate on the future of Europe in 2017 concerned: a) the future of EU Finances; b) harnessing globalisation; c) the future of European Defence; and d) the deepening of the Economic and Monetary Union.

4. This notion was first introduced by Vandembroucke (2013) and further developed by Vandembroucke and Vanhercke (2014) in the context of the Friends of Europe's 2015 High-level Group on Social Union.

In an attempt to illustrate this notion, Maurizio Ferrera (in this volume) identifies five components that *already constitute* the first (but largely separate) building blocks of a fully-fledged ESU:

- the ‘national social spaces’: the ensemble of national social protection systems, all based on the common traditions of a ‘social market economy’;
- the ‘transnational social spaces’: the ensemble of social schemes and policies characterized by a cross-border element (e.g. cross-border occupational insurance schemes);
- the ‘EU mobility space’: the coordination of Member State social security systems and cross-border mobility of patients;
- the ‘EU social policy’ *stricto sensu*: the ensemble of supranational policies – regulative and (re-)distributive – with an explicit social purpose and possibly funded by the EU budget;
- The ‘EU fundamental social principles’: the set of objectives of a social nature contained in the Lisbon Treaty, including those that allocate responsibilities between levels of government and define decision-making procedures in this field.

At least initially, an ESU would not be much more than a formal re-assembly of these already-existing elements. However, as Ferrera argues, the mere discourse over an ESU, an act of ‘naming’ and the smart packaging of its first measures, could have a significant impact. Two questions then arise: a) *how to make the best use of the separate components already in place and create synergies⁵ between them, so as to give flesh and bones and a specific meaning to the notion of the ESU?* And b) *what role can be played by the European Pillar of Social Rights in creating a fully-fledged ESU?*

3. The Pillar as a key component of the European Social Union

3.1 The European Pillar of Social Rights: what’s in a name?

According to Maurizio Ferrera (this volume), the ESU comprises the EPSR, but is not coterminous with it. The EPSR can be understood as ‘an operational arm of fundamental social principles’, empowering citizens by providing them with both normative/symbolic and more policy-oriented/instrumental resources.

The Pillar could first be considered as a symbol showing the EU’s renewed commitment to protecting the social rights of its citizens. While it is clear that symbols are important in politics, they need to be endorsed and supported by national political leaders, paving the way for substantial initiatives at EU level and in the Member States. The extent to which

5. Ferrera (in this volume) refers to a ‘[...] creative re-assembly of the five components [requiring a] demanding exercises of political and institutional imagination’.

this is the case for the EPSR is questionable. Admittedly, the unanimous endorsement of the EPSR by the EU28 gave it much wider geographical coverage than initially intended: the instrument was essentially proposed for the Eurozone. This also means, however, that the Pillar has been endorsed by heads of state or government who are openly against any further steps towards a more social Europe, as well as, paradoxically, by Theresa May, the prime minister of a country set to leave the EU. In spite of the explicit commitment made to the Pillar by certain European leaders (e.g. French President Macron), several Member States seem to support the Pillar in word only.

A more optimistic reading is that ‘socially-oriented’ players could use the solemn inter-institutional proclamation of the Pillar by the European Parliament, the Commission and the Council of the EU as a powerful vehicle to hold national decision-makers and EU institutions accountable for any initiatives (including EU macro-economic and fiscal policies) going against the principles/rights they have endorsed at the highest political level. They could also use it to lobby for new political initiatives to promote implementation of the Pillar principles. The fact that the Pillar has, as we will discuss below, already influenced ongoing EU social policy initiatives (incl. the European Semester) and spurred new ones (incl. social partner consultations and tabled legislation) suggests that its commitments may be more firmly institutionalised than previous instances of soft governance.

For such ‘usage’ of the Pillar by social players to be effective, it must be visible to those players potentially referring to it. While it is true that the March 2016 ‘first preliminary outline’ of the Pillar was subject to a broad public consultation⁶, arguably enhancing its visibility and ownership (appropriation), it seems likely that this appropriation was mainly limited to the European trade union movement and EU-level social NGOs (Sabato and Corti in this volume; Carella 2017). Little is known about the Pillar’s visibility at national level or to what extent it has been discussed in national mass media.

The question, then, is: *what kind of ‘rights’ could the Pillar help to uphold?* Sabato and Corti (this volume) maintain that the principles of the Pillar point to ways in which certain rights could be applied. According to the authors, the Pillar introduces a new ‘rights-based social investment approach’ to EU social protection and inclusion policies. Such an approach would link the implementation of rights to the ideas couched in the previous Social Investment Package (SIP). The question however arises: *is there any reason to believe that, this time, things will be different?*

3.2 Why the Pillar could make a difference: the re-politicisation of EU social policies

Is it naïve to assume that the twenty ‘principles’ and ‘rights’ enshrined in the EPSR and structured in three broad chapters (equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion) will be made operational?

6. The public consultation involved European and national public authorities, social partners and NGOs (for a further discussion, see Sabato and Vanhercke 2017).

There are grounds for scepticism. The first is a legal point: in spite of the Pillar's rhetoric of 'rights', it is not clear which body shall grant these rights or who will enforce them. While the Pillar will be implemented through a variety of EU instruments including legislation, the Commission seems to be set on relying heavily, as was the case with the Lisbon Strategy and the Europe 2020 Strategy, on non-binding instruments such as the Open Method of Coordination (OMC) and the European Semester.

This argument, however, overlooks one key element: the Pillar has very quickly led to a 're-politicisation' of EU social policies. According to Sabato and Corti (this volume), the EPSR is, indeed, a truly 'political' instrument, in contrast to previous, mostly 'technical' EU social policy frameworks such as the European Employment Strategy (EES), the Social Open Method of Coordination (Social OMC) and the Social Investment Package (SIP). While these soft governance tools had demonstrable substantive and procedural impact on national and EU social policymaking (Vanhercke 2016), debates about (EU) social policies tended to be highly specialised discussions among an inner circle of social players.

The effect of this 're-politicisation' is that, building on the ongoing 'socialization' of the European Semester (Zeitlin and Vanhercke, 2017), EU social policies are no longer confined to a relatively insulated position among the inner circle. They are now being coupled with EU macro-economic and fiscal policies, the latter being the subject of harsh political cut and thrust.

There are a few good reasons to explain the 'political turn' of the Pillar:

- first, the *political context*: the Pillar was adopted at a time of heightened interest in EU social policies, as part of the broader, high-level political debate on the future of Europe launched after the Brexit decision;
- second, its *origins*: the initiative was proposed by the President of the European Commission himself, with a key role played, in the definition of its contents, by the Secretariat-General of the Commission and the President's personal staff (cabinet);
- third, its *development*: as explained above, the Commission's draft Pillar was subject to broad public consultation. During this consultation, EU political players, in particular the European Parliament, were very active (Vesan and Corti 2018);
- fourth, its *endorsement*: as explained above, the Pillar was solemnly proclaimed by the European Commission, the European Parliament and (unanimously by) the Council of the EU, unequivocally recognising the importance of 'Social Europe';
- fifth, the *rights-based language* used in the EPSR bears witness to its political nature. Indeed, as noted by Ferrera (this volume), rights can be understood as sources of power, and power is one of the key ingredients of politics.

While this politicisation theory and its implications should be further investigated, the EPSR may represent a move towards a future where EU social policy is no longer left 'to the judges and the markets' alone (Leibfried 2015). It would indeed seem that, through

the above-mentioned ‘rights-based social investment approach’ to EU social protection and inclusion issues, politics has stepped (back) in. The question then is: *what has the Pillar achieved so far?*

4. From debates to action: the Pillar as a new EU social policy framework

Did the new Pillar already influence EU social policymaking in 2017? We answer this question by understanding the Pillar as a new ‘EU social policy framework’ (Sabato and Corti, this volume), i.e. a policy infrastructure combining the various elements of public policy, from agenda-setting to implementation. The authors argue that such an EU social policy framework could serve three functions, with its effectiveness assessed by considering how well it has fulfilled these: a) revitalising the EU social policy arena and revamping the EU social legislative agenda; b) influencing Member States’ (social) policies through the Semester; and c) influencing the EU’s macroeconomic and fiscal policies, thus striking a new balance between the EU’s social and economic dimensions. We will discuss these three functions in turn, drawing on the evidence provided in the chapters of the present volume.

4.1 Revamping the EU social policy agenda

We have argued that the run-up to the EPSR revitalised the EU social policy arena, notably through the abovementioned broad public consultation throughout 2016 (Sabato and Vanhercke 2017). The consultation indeed gathered opinions on the proposed Pillar from a wide variety of domestic and EU stakeholders, fostering a rich debate about how it would be implemented in practical terms.

According to Clauwaert (this volume), the two above-mentioned European Pillar of Social Rights implementation packages did more than just revitalise debates and empower players: they relaunched a new EU legislative social policy agenda, putting ‘meat on the bones’ of the commitment to deliver on the EPSR. Thus, the ‘European Pillar Package’ proposed a revision of the Written Statement Directive, the proposal for a Directive on Work-Life Balance for parents and carers, the consultations on access to social protection for workers and the self-employed as well as the interpretative guidance on the Working Time Directive. The ‘Social Fairness Package’ encompasses the establishment of a European Labour Authority (ELA) and a proposal for a Council Recommendation on access to social protection for workers and the self-employed. In addition, the Commission announced a legislative proposal regarding a European Social Security Number, and a long overdue compromise was reached regarding the revision of the Posting of Workers Directive⁷.

7. While closely related to the ELA, the commitment to revise the Posting of Workers Directive (Directive 96/71/EC) was announced in the 2016 European Commission Work Programme and hence predated the EPSR.

Three main caveats can be identified with regard to these initiatives, making it difficult to predict their future added value in protecting workers' rights:

- first, the high level of antagonism between the European social partners, making them unable to enter into formal negotiations on these and other initiatives. This could seriously limit the future effectiveness of the EPSR, since the (EU and domestic) social partners have always been considered key players in its implementation;
- second, disagreements among Member States could mean that, for most of these initiatives, the aims of the Commission's proposals will be watered down, during the legislative process, to the lowest common denominator, since the process may prove to be long and 'bumpy' (most strikingly regarding the proposed Directive on Work-Life Balance);
- third, the European Commission has become active again in the social domain: it has been at the forefront of these (legislative and non-legislative) initiatives despite predictable resistance from the EU social partners and within the Council.

The publication of the EPSR also gave momentum to addressing the issue of the social protection of the self-employed and non-standard workers at European level⁸. Spasova and Wilkens (this volume) describe that, in a changing European labour market, hybrid forms of employment – such as 'dependent' and 'bogus' self-employment – have emerged, especially in the platform-driven section of the economy. These hybrid forms of employment have increased to a point where they represent a challenge for national labour and social legislation as well as for the financing of social security systems. Crucially, the labour situation of people in self-employment differs widely: this category of workers has 'many faces' in terms of entrepreneurialism, economic dependence and precariousness.

The self-employed can no longer be perceived as archetypal representatives of the well-off liberal professions with good working conditions (merely 8% of them belong to this group). Many of them are 'vulnerable' and 'concealed' self-employed struggling with precarious working conditions and low incomes. Even though their situation varies widely among Member States, they often do not have access to certain insurance-based schemes: mainly sickness, unemployment and accident-at-work and occupational injury benefits. Only twelve EU Member States provide comprehensive access, i.e. compulsory or voluntary insurance under all statutory social protection schemes (Spasova *et al.* 2017). The chapter also discusses the growing political awareness of and initiatives regarding these issues, particularly at European level. In the slipstream of the EPSR, the European Commission launched a two-stage consultation (April 2017-January 2018) with the European social partners on a possible (legislative or non-legislative) EU initiative on access to social protection for all employment types.

8. Principle 12 of the EPSR states that 'regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection' (European Commission 2017c).

Since the social partners were unable to reach agreement on entering into negotiations – mainly as a result of BusinessEurope’s negative stance –, the Commission decided to resort to a non-legislative initiative, tabling a proposal for a Council Recommendation identifying a common set of building blocks for the design of Member State social protection systems. Despite its non-binding nature, the level of ambition of the future Recommendation remains uncertain in view of Member State resistance. Nevertheless, as Spasova and Wilkens claim, the Commission proposal represents a milestone in terms of EU discourse and action in this highly sensitive policy area.

The EU’s health and safety regulatory framework is at the heart of Vogel’s chapter (this volume). Focusing on the revision of the Directive on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, the author explains that the adoption of the Single European Act in 1986 was followed by ten or so years of very productive legislative activity on occupational health issues, leading to a radical overhaul of national occupational health rules in many Member States. The author adopts a historical perspective, identifying two periods (‘legislation’ and bureaucratisation’) and discussing whether a third (‘revival’) period could be on the horizon.

According to his analysis, during the 1990s the approach shifted from prioritising improvements in working conditions in relation to workers’ health and safety to prioritising the objectives of economic growth and enhanced competitiveness, notably in the context of the ‘Better Regulation’ initiative and accentuated by the REFIT initiative. This move *de facto* blocked further legislative initiatives in the domain of health and safety at work. Vogel suggests that the Directive on carcinogens at work adopted in December 2017 may represent a change of direction, focusing again on the rights of workers to a healthy and safe work environment. However, we still do not know how much these ‘winds of change’ regarding the prevention of occupational cancers can help to revive EU policies in other priority occupational health fields: as Vogel argues, one swallow doesn’t make a summer.

Summing up, the legislative and non-legislative EU social policy agenda was revamped throughout 2017, with the EPSR opening a window of opportunity immediately after its formal adoption. However, the political fate of the new initiatives is still uncertain. Moreover, as pointed out by Clauwaert (this volume), the repeated refusals by the social partners, within a very short period, to enter into negotiations may well have inflicted serious collateral damage on European social dialogue. The author even wonders how the European social dialogue, already weakened, will be able to overcome this serious setback. The next Work Programme of the European social partners will be the proof of the pudding: *are both sides of industry still willing and able to tackle key labour market issues such as the consequences of digitalisation?*

4.2 Steering Member States’ policies through the European Semester

The second function of the EPSR should be to steer Member States’ policies in the direction of common EU orientations, notably through the European Semester.

Sabato and Corti (this volume) claim that the Commission has failed, so far, to create interlinkages and synergies between the Pillar and other ‘Social Europe’ instruments and processes, such as the Social OMC and the SIP.

The governance arrangements for the implementation of the EPSR were to some extent clarified in March 2018 (European Commission 2018): the Pillar principles and rights will be considered throughout the European Semester in monitoring, comparing and assessing the progress made (ibid: 10). A thematic approach will be adopted: some specific themes will be highlighted for detailed assessment in the Country Reports (CRs). The Member States will be requested to set out, in their National Reform Programmes (NRPs), priorities and concrete actions for national implementation of the Pillar.

Although arrangements for implementing the Pillar through the Semester were only specified at the beginning of 2018, Sabato and Corti demonstrate that the EPSR has already had an impact on the first stages of the 2018 European Semester cycle, notably on the Annual Growth Survey 2018 (AGS), the Draft Joint Employment Report 2018 (which used, in its analysis, the headline indicators of the Pillar’s Social Scoreboard) and on the Commission proposal for the new Employment Guidelines, all of which were tabled in November 2017. In other words: the European Commission did not even wait for the formal proclamation of the EPSR to start mainstreaming its discourse into its core publications. The extent to which the principles and rights of the Pillar will be considered at national level in the National Reform Programmes remains to be seen.

A crucial lever enabling the EU to steer Member States’ policies, including in the context of the EPSR, is stakeholder involvement. Social partners (trade unions and employers) as well as civil society organisations are to be considered as key players in employment and social policymaking, and should be better involved in the EU’s socio-economic governance. Initial mechanisms for involving social stakeholders were weak, not allowing for any meaningful involvement in the Semester (Sabato and Vanhercke 2017). Since then, and in particular from 2014 onwards, their involvement in the EU’s socio-economic governance has increased, in a context of the ongoing ‘socialization’ of the Semester. The situation at national level is however more varied.

In sum, the jury is still out as to whether the EPSR, and other recent social initiatives, will allow for a more effective steering of Member State policies. The fact that the Commission ultimately opted for a recommendation, rather than a directive, on social protection for all types of workers was a disappointment in this respect. The degree to which the social legislation tabled (e.g. regarding work-life balance) will have the necessary ‘clout’ to direct national legislation crucially depends on the extent to which the Commission’s initial ambitions can be upheld during the legislative process. While the precise governance arrangements for the Pillar (especially the synergies with other processes) remain unclear, the EPSR has already influenced the approach taken in the 2018 Semester Cycle.

4.3 The Achilles heel: reconciling EU social, economic and environmental policies

A final function – a litmus test for the effectiveness of the EPSR – is its capacity to influence the direction of EU macro-economic and fiscal policies so as to ensure that Member States have sufficient budgetary resources to implement initiatives related to the Pillar. Putting the Pillar into practice will not be cheap. Given that both the Macro-economic Imbalances Procedure (MIP) and the Excessive Deficit Procedure (EDP) are based on strong sets of indicators, Sabato and Corti (this volume) are rather sceptical as to whether the EPSR will be able to effectively perform this ‘reconciliation’ function; if it cannot, it may be difficult to implement the 20 rights and principles at national level.

In particular, the authors point out that a) the Social Scoreboard accompanying the EPSR is still incomplete, as it does not reflect all the principles and rights enshrined in the Pillar; b) its function should be better defined and the ways in which it is linked to existing EU employment and social protection scoreboards⁹ further specified; and c) its ‘weight’ and function in relation to the Scoreboards of the MIP and of the EDP should be clarified. More efforts will therefore be needed to ensure that EU economic and social policies are consistent, complementary and mutually reinforcing.

Analysed by Peña-Casas, Ghailani and Coster (this volume), the reconciliation of economic and social policies is at the heart of the issue of digitalisation and its impact on jobs and work content. Although some improvements in working conditions can be expected from digitalisation, the authors identify a number of serious risks. These are mainly related to employment and working conditions (impact on the availability and types of jobs and on job quality), work organisation (e.g. flexibilization dynamics, pace of work and consequences in terms of work-life balance) as well as physical and mental health risks for workers (e.g. stress, mental fatigue, alienation and depersonalisation of tasks). Both the social partners and the EU have a key role to play in addressing the consequences of digitalisation, making the most of its opportunities and attenuating its risks.

High on the agenda of the social partners, the future of work in the digital economy has been the subject of social dialogue at both EU and national levels. This is true, for instance, for a new social right in the era of digitalisation, the ‘right to be disconnected’. In France and Italy, agreements have been reached on this issue. Peña-Casas *et al.* note that, to date, the EU has mainly approached the issue of digital transition by considering the competences required in this new context, and the development of a single digital market. A more comprehensive understanding of the phenomenon is needed, also including its consequences for working conditions and physical and mental health.

This said, while reconciling EU economic and social policies will be a challenging task *per se*, there is a third dimension needing to be considered: environmental policies and, in particular, policies to combat climate change. As demonstrated by Koch (this volume), policies in this field are urgent in view of the threat that climate change represents for the sustainability of social policies in their current form. While environmental concerns

9. Notably the Employment Performance Monitor (EPM) and the Social Protection Performance Monitor (SPPM).

remain largely ignored in social policy debates, the two sets of concerns are set to be increasingly interwoven. Both direct and indirect climate change impacts will require public investment and policy reconfigurations, whilst traditional social policies are likely to face increasing fiscal competition from prioritised environmental policies, such as strengthening sea defences or greening energy production. This will take place in an international context of double injustice where (a) the groups bearing the brunt of climate change are those least responsible for causing it and (b) the poor are the least able to bear the financial burden of climate policies (ibid).

Ian Gough (2011) identifies three possible policy strategies for addressing climate change:

- the first, ‘irrational optimism’, is based on the idea that faster growth and technological progress will equip future generations to cope with climate change, mainly through adaptation;
- dubbed ‘green growth’¹⁰, the second (mainstream) strategy postulates the possibility to achieve synergies between economic, ecological and welfare goals by reducing energy and raw material consumption and the EU’s dependency on the fragile geopolitics of fossil energy supply, providing jobs in the expanding ‘green’ sector and meeting carbon emission reduction targets;
- the third strategy is dubbed ‘sustainable welfare’, specifically addressing the role of social policy in an ecological and social transition beyond the growth imperative. According to this strategy, we should go beyond what Dominique Méda (2013) labels ‘the mystique of growth’. Recently, 283 academics indeed called upon the EU and its Member States to plan for a post-growth future¹¹, making a case for turning the Stability and Growth Pact (SGP) into a “Stability and Wellbeing Pact” (The Guardian 2018). This strategy would be politically very demanding, entailing a re-thinking of the functions of both social welfare and economic growth while requiring the implementation of unpopular measures: beyond basic human needs, material welfare and wellbeing would be made secondary to environmental sustainability.

In the EU context, the ‘green growth’ perspective has inspired a number of initiatives, some in the context of the Europe 2020 Strategy. The latter, with its objective to pursue smart, sustainable and inclusive growth, includes targets concerning economic, social and climate change dimensions. This said, however, the potential of Europe 2020 to create linkages and synergies between these three dimensions was dramatically reduced by the decision to remove environmental objectives from the European Semester. The announced specific coordination arrangements designed to link socio-economic policies in the Semester with existing strategies in the environmental domain are visible only to

10. This strategy has been actively promoted by the Organisation of Economic Cooperation and Development (OECD), the World Bank, the United Nations Environment Programme (UNEP) as well as the EU and its Member States.

11. Within civil society and academia, ‘a post-growth movement has been emerging. It goes by different names in different places: *décroissance*, *Postwachstum*, steady-state or doughnut economics, prosperity without growth, to name a few. Since 2008, regular degrowth conferences have gathered thousands of participants’ (The Guardian 2018).

the trained eye. As argued by Koch (in this volume), in practice much of the burden of creating synergies between economic, social and environmental priorities to meet the goals defined at European level is left with Member States. The main policy instrument through which the EU aims to achieve its climate targets, the EU Emissions Trading Scheme (EU ETS), has – to date – had virtually no effect on curbing emissions.

An in-depth reflection, and hard political choices regarding the relationship between and the respective functions of the objectives of (high) economic growth and competitiveness, (high) social standards and (high) environmental protection, are more than urgent. Taken together, they represent a perfect trilemma: maximum value cannot be achieved in all three dimensions. Attempts to address this trilemma can no longer be postponed.

5. Towards a stronger social Europe: proposals for the future

In this section, we put forward some policy proposals aimed at contributing to the broad democratic debate on the future of a more social Europe. Admittedly, some of them will be hard to implement in the present political context. This is, however, the time to be ambitious and creative. After all, what is at stake is no less than the future (read: survival) of the European project after Brexit, its first serious setback.

5.1 A roadmap for the implementation of the European Pillar of Social Rights

The proclamation of the European Pillar of Social Rights was not accompanied by a roadmap for its implementation. This was a deliberate choice by the Commission, the result of political realism. It would be better, it was felt, to focus on implementing, before the end of the Juncker term, the initiatives already tabled, without expending too much energy on a myriad of initiatives unfinishable in the short term.

We maintain that a comprehensive, strategic approach to Pillar implementation requires a precise roadmap setting out short-, mid- and long-term actions. Such a roadmap would be an important legacy for the next Parliament and Commission, which may be less inclined to deepen the process of European integration, including its social dimension.

Establishing this roadmap should – as far as possible – be a participatory process, involving EU and national institutions and stakeholders. In this way, it could have a real impact on the next EU leadership: the next Parliament and Commission could disagree with a shared and strong (social) roadmap but could hardly ignore it.

The Pillar roadmap should include realistic but ambitious initiatives, designed to be gradually implemented over time. Table 1 below illustrates some examples of initiatives that could be included and further elaborated.

Table 1 Elements for an EPSR implementation roadmap

Short-term initiatives
Directive on work-life balance to be adopted
Endorsement of the Council Recommendation on access to social protection for workers and the self-employed
Adoption of the Directive on transparent and predictable working conditions ¹²
Benchmarking and mutual learning exercises with a view to establishing wage floors in the form of a national minimum wage
Decision on the European Labour Authority
Revision of the Social Scoreboard to more fully reflect the Pillar
Earmarking an adequate level of resources for implementing the Pillar in the EU's post-2020 multi-annual financial framework
'Greening the European Semester' by reflecting the results of the Environmental Implementation Review (EIR) in the Semester's key tools.
Medium-term initiatives
Embedding an environmental pillar in the post-2020 EU grand strategy for coordinating national economic, social and environmental policies
Setting up of a 'European Unemployment Reinsurance Scheme'
Framework Directive on Minimum Income Schemes
Exchange of good practices concerning the calculation of minimum pensions
Studying the feasibility of a European Child guarantee
Directive on Effective Enforcement of Workers' Rights
Long-term initiatives
Arrangements to link the Pillar and the post-2020 EU grand strategy to the Sustainable Development Agenda
A Social Progress Protocol in any future Treaty change
A Social Rights Test for all new EU policies
Elaboration of a Social Imbalances Procedure

Source: adapted from Sabato *et al.* 2018: 34.

5.2 Striking a new balance between EU economic and social policies by strengthening the social dimension of the EMU

Over the years, criticism of the governance of the EMU has grown, directed at both its economic and political unsustainability. A debate has been launched on the possibility of reforming the EMU, including a strengthening of its social dimension. With regard to this latter aspect, the macro-economic and fiscal policies adopted by the EU – including in the context of the Stability and Growth Pact – have often constrained the development of effective social policies. Against this backdrop, macro-economic policies should not only aim at economic convergence between the Member States but also – in line with the objectives of the EPSR – at social convergence. Two specific proposals stand out for

¹². Resulting from the revision of the Written Statement Directive.

the Eurozone countries: a) a budget for the Eurozone; and b) a new balance between the Eurozone's social and economic dimensions.

The possibility of creating a budget for the Eurozone, possibly accompanied by the appointment of a European Finance Minister, has been an issue at the centre of the political debate in recent years. The idea has been pushed by French President Macron since his election in 2017, as part of a more comprehensive reform of Eurozone governance, to a certain extent¹³ backed by German Chancellor Angela Merkel. According to the French-German Declaration¹⁴ of June 2018, such a budget would be one way to ensure convergence and stabilization in the EMU, and should be funded through national contributions, allocation of tax revenues and European resources. However, the Declaration remains vague, not entering into any details of how large such a Eurozone budget should be. It is also not clear whether and to what extent the budget would be used (also) for social purposes. The only specific reference to social policy is the idea of a macro-economic stabilization instrument, in the form of a common unemployment insurance or re-insurance scheme¹⁵.

The proposal for a future Eurozone budget should be more ambitious in terms of size and functions: its aims should include addressing critical social situations in Eurozone countries, beyond the issue of unemployment. Such a budget should include the creation of a fund to boost investment in social infrastructure, as proposed by a High-level Task Force on Investing in Social Infrastructure in Europe chaired by Romano Prodi (Fransen *et al.* 2018). According to this proposal, the fund should be aimed at filling the gap in social infrastructures in a number of policy areas such as education. Ferrera (this volume), speaks of considerable popular support (perhaps even a 'silent majority') in several EU countries for a larger EU budget of this type. The investment functions of social policy would need to be enhanced and more closely linked to environmental investment.

The second proposal would be to further adjust the balance between the Eurozone's social and economic dimensions by setting up a mechanism counterbalancing the weight of economic procedures, notably the Macro-economic Imbalances Procedure and the Excessive Deficit Procedure, and increasing the importance of social aspects. We propose in particular the setting-up of a 'Social Imbalances Procedure' (SIMP). In our view, such a procedure would have two components: a monitoring component and an action-oriented component. The function of the first would be to identify 'excessive social imbalances'¹⁶. Such monitoring is already partially performed through the EPSR

13. Such an agreement has however provoked major tensions in the German government coalition; <https://www.euractiv.com/section/economy-jobs/news/strong-reactions-in-germany-against-eurozone-reform/>

14. <https://www.diplomatie.gouv.fr/en/country-files/germany/events/article/europe-franco-german-declaration-19-06-18>

15. The expression used in the French-German Declaration is 'European Unemployment Stabilization Fund'. In the Commission's Reflection paper on the Deepening of the Economic and Monetary Union (European Commission 2017d: 26), there is also a reference to the possibility of setting up a 'European Unemployment Reinsurance Scheme'. German Finance Minister Olaf Scholz was reported to be willing to propose a europäische Arbeitslosenversicherung to the ECOFIN Council. <https://www.handelsblatt.com/politik/international/vertrauliches-papier-das-sind-die-details-zu-scholz-plaenen-fuer-eine-europaeische-arbeitslosenversicherung/23192280.html?share=twitter>

16. Vandenbroucke *et al.* (2013: 5) define excessive social imbalances as '[...] a set of social problems that affect Member States very differently (thus creating 'imbalances') but should be a matter of common concern for all Eurozone members'. Examples would be youth unemployment and child poverty.

Social Scoreboards, which provide a snapshot of the social situation and developments in Member States. Social performances in terms of levels (current situation) and changes (compared to the previous year) are combined (using a predefined matrix) so that each EU country is classified into one of seven categories¹⁷. This said, certain shortcomings in the Social Scoreboard need to be improved, allowing it to perform this function more effectively (see Sabato and Corti, this volume), including in the context of the monitoring framework for the Sustainable Development Goals (SDG) (see Section 5.3).

The second component of a future SIMP would be action-oriented. Once a critical situation has been identified in a Member State, its respective government and the Commission would draft a compulsory multi-annual strategic plan defining how to address it. To implement these plans, all available EU instruments would be brought to bear in a coherent and mutually reinforcing manner: EU funds (incl. the Commission's Investment Plan for Europe and the aforementioned proposed fund for social infrastructure), the instruments of the European Semester (in particular the CSRs and NRPs) but also 'soft governance' instruments, such the Social OMC's mutual learning exercises. Importantly, macro-economic and fiscal policies would also need to take into consideration the need to address the identified social imbalances, enabling national governments to combine conditionality (i.e. the need to follow EU orientations and recommendations) and subsidiarity (i.e. the autonomy of national governments in defining their social policies).

In our view, such a Social Imbalances Procedure would not require a Treaty change: in line with the political nature of the EPSR, it would be a political commitment by the Commission and the Member States. In the future, the governance procedures for social and macro-economic policies could be streamlined by integrating them, through a Treaty change, into a single 'Economic and Social Imbalances Procedure' (ESIP).

5.3 Taking the Sustainable Development Agenda seriously

On 25 September 2015, the United Nations General Assembly formally adopted the 2030 Agenda for Sustainable Development, along with a set of 17 Sustainable Development Goals (SDGs) and 169 associated targets (United Nations 2015). The SDG agenda promotes an integrated notion of development aimed at creating synergies between economic, environmental (including climate change) and social policies and objectives. With regard to social aspects, at least seven SDGs are linked to the principles and rights enshrined in the EPSR: ending poverty; zero hunger; good health and well-being; quality education; gender equality; decent work and economic growth; and reducing inequalities.

The EU has undertaken to implement the SDGs in both its internal and external policies. However, as we have shown in Section 5.2, it is experiencing remarkable difficulties in integrating economic, social and environmental policies in a coherent manner and creating synergies between them. The UN 2030 Agenda for Sustainable Development

17. These categories are 'best performers', 'better than average', 'good but to monitor', 'on average/neutral', 'weak but improving', 'to watch' and 'critical situations'.

and the SDGs, duly adapted to the EU context, should be the framework for the next EU post-2020 grand strategy. The objective would be the pursuit of sustainable development, an objective already enshrined in the Treaty and much broader than the idea of sustainable growth upon which the Europe 2020 Strategy is based. In this respect, the integrated approach of the 2030 agenda should stand as an example for EU policies formulated through the European Semester. The latter is incomplete, as it ignores the environmental dimension of development. Policies and objectives for fighting climate change should be brought (back) into the Semester, and synergies with social and economic policies should be developed. Such a ‘policy coherence operation’ is difficult but necessary, and EU proposals are expected by December 2018, with the publication of a Reflection paper on ‘Towards a sustainable Europe by 2030’.

5.4 Boosting stakeholder involvement

The role and autonomy of the social partners in labour relations and European social dialogue is recognised in the EU Treaty (Article 152 TFEU). However, the contribution of civil society organisations to the EU’s socio-economic governance is far less clearly established.

And yet, we argue that both social partners and civil society (‘social stakeholders’) could perform at least three functions in the implementation of the EPSR, including through the European Semester:

- first, they could work with the Commission as ‘early warning mechanisms’ to monitor the social situation in Member States. Working ‘on the ground’, social stakeholders are able to detect changes in the social situation before these are revealed by research and official statistics. The Commission should take advantage of this;
- second, social stakeholders should be considered as key partners for implementing the Pillar. They could perform such a function both directly and indirectly. On the one hand, they are often directly involved in the implementation of social policies, including the most innovative ones (Sabato and Verschraegen 2016). Moreover, social stakeholders can push national governments to implement the Pillar (incl. at the time of the forthcoming European elections), requiring them to respect the solemnly proclaimed principles;
- third, social stakeholders can contribute to the debate about the Pillar among their members and the public at large: improving awareness is fundamental to increasing the legitimacy of the initiative, and to show that the idea of a ‘Caring EU’ is not an elusive concept (Friends of Europe 2015).

While both EU social partners and peak-level civil society organisations already take on these three functions, more efforts are needed, especially at national level. The Commission should provide these organisations with adequate resources and make sure that they are not merely ‘listened to’ but also ‘heard’.

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All links were checked on 29.10.2018

The European Union in 2017: key events

Cécile Barbier

January

1 January: Malta takes over the Presidency of the Council of the European Union (EU) from Slovakia. Its programme prioritises migration, security, social inclusion, the Single Market, as well as the EU's maritime and neighbourhood policies.

5 January: evaluation of the European Social Fund (ESF). The European Commission publishes an evaluation report of investments under the European Social Fund (ESF) over the period 2007-2013, as well as specific reports for each Member State, IP-16-3984.

10 January: single market/services. As part of the roadmap laid out in the Single Market strategy, the European Commission presents proposals to 'unleash the full potential of the Single Market and make it the launchpad for European companies to thrive in the global economy', IP-17-23.

10 January: citizens' initiative/ban on glyphosate. The European Commission decides to register a European citizens' initiative (ECI) inviting it 'to propose to Member States a ban on glyphosate, to reform the pesticide approval procedure and to set EU-wide mandatory reduction targets for pesticide use, IP-17-28.

10 January: health and safety of workers. Within its work to establish a European Pillar of Social Rights (EPSR), the European Commission proposes a review of EU occupational health and safety legislation, proposing changes to the Carcinogens and Mutagens Directive. The Communication is also linked to the general evaluation of the existing 'acquis', as part of the Regulatory Fitness and Performance Programme (REFIT), IP-17-2.

12 January: foreign direct investment. According to figures published by Eurostat, the EU is still a net investor in the rest of the world, with a balance of 1,000 billion euros. Net foreign investment stocks held by the EU in the rest of the world amounted to 6,894 billion euros at the end of 2015, while those held by the rest of the world in the EU amounted to 5,842 billion euros. 6/2017. <https://ec.europa.eu/eurostat/documents/2995521/7788281/2-12012017-BP-EN.pdf/684f355f-8fa6-4e75-9353-0505fa27f54f>

17 January: EU financing. Mario Monti presents the report from the high-level group on own resources to the College of European Commissioners, meeting in Strasbourg. The report calls for an ‘overhaul’ of the European budget, particularly giving ‘Europe’ new own resources so that it is no longer dependent on direct contributions from the Member States. <http://ec.europa.eu/budget/mff/hlgor/library/reports-communication/hlgor-press-release-20170113.pdf>

17 January: Brexit. UK Prime Minister Theresa May sets out the UK’s plans for leaving the EU, seven months after the Brexit referendum of 23 June 2016. The 12-point plan is for a ‘hard Brexit’. According to Theresa May, the UK is not seeking ‘partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out’. <https://www.bbc.com/news/uk-politics-38641208>

17 January: presidency of the European Parliament. The Members of the European Parliament elect Antonio Tajani (EPP, IT) to the position of President of the European Parliament, with 351 votes, defeating Gianni Pittella (S&D, IT) with 282.

18 January: Davos World Economic Forum. According to Italian Minister of Finance Pier Carlo Padoan, ‘Le problème de l’Europe c’est l’Euro’. <http://www.lefigaro.fr/flash-eco/2017/01/18/97002-20170118FILWWW00196-le-probleme-de-l-europe-c-est-l-euro-italie.php>

19 January: European Parliament/Pillar of Social Rights. The European Parliament adopts a non-legislative resolution on a European Pillar of Social Rights. The resolution is adopted with 396 votes in favour, 180 against and 68 abstentions. <https://bit.ly/2ID2bpg>

23 January: towards a European Pillar of Social Rights. The European Commission organises a high-level conference to set out in detail its future proposals. https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

24 January: European citizenship. The European Commission publishes its third EU Citizenship report. This report emphasises four areas for action: 1) promoting EU citizenship rights and EU common values; 2) promoting and increasing citizens’ participation in the democratic life of the EU; 3) simplifying EU citizens’ daily lives; 4) strengthening security and promoting equality, IP-17-118.

27 January: European Semester/growth prospects. The Economic and Financial Affairs (ECOFIN) Council adopts conclusions on the annual growth survey and the alert mechanism report, the starting point for the annual macroeconomic Imbalances Procedure. It endorses a draft recommendation on economic policy for the eurozone. This recommendation covers fiscal policy, competitiveness and productivity, labour market and social issues, EU banking union and the further development of economic and monetary union (EMU). <http://data.consilium.europa.eu/doc/document/st-5194-2017-init/en/pdf>

February

3 February: informal summit on migration. The EU Heads of State and Government meet in Malta for an informal summit on the external dimension of migration. A more general discussion on the future of the Union, with a view to the 60th anniversary of the Treaties of Rome, is held between 27 Member States, not 28, since by the time this anniversary is celebrated, the UK should already have triggered the Article 50 procedure to leave the EU (see 29 March 2017).

3 February: European citizens' initiative/protection of national and linguistic minorities. The EU General Court annuls Commission decision C(2013) 5969 final, of 13 September 2013, refusing registration of the proposed European citizens' initiative, entitled 'Minority SafePack – one million signatures for diversity in Europe', T-646/13.

15 February: trade policy. The European Parliament approves the EU-Canada Comprehensive Economic and Trade Agreement (CETA), with 408 votes in favour, 254 votes against and 33 abstentions. <http://www.europarl.europa.eu/news/en/press-room/20170209IPR61728/ceta-meps-back-eu-canada-trade-agreement>

22 February: European Semester/ 'winter package'. The European Commission publishes its annual analysis of the economic and social situation in the Member States, as well as a report on implementation of the fiscal compact. According to the Commission, the Member States are making progress in implementing the various political guidelines issued in 2016 on the 'virtuous triangle' (investment, structural reform and responsible public finances), IP-17-308. Communication and report on the fiscal compact: COM (2017) 1200 and COM (2017) 1201. https://ec.europa.eu/info/publications/fiscal-compact-taking-stock_en

22 February: France/Comprehensive Economic and Trade Agreement) between Canada and the EU and its Member States. In France, more than 150 elected politicians have brought a case to the Constitutional Court, asking it to verify whether the agreement is compatible with the French Constitution. The General Secretariat of the Constitutional Court registers the referral – which, to be registered, had to be submitted by at least 60 elected politicians. *Affaire 2017-749 DC*. <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/actualites/2017/instruction-de-l-affaire-2017-749-dc.148838.html>

March

1 March: the future of 'Europe'. The President of the European Commission presents his 'White paper on the future of Europe'. It sets out five possible scenarios, as a contribution to a summit to be held in Rome on 25 March, to celebrate the 60th anniversary of the Treaties of Rome, IP-17-385 and COM (2017) 2025. https://ec.europa.eu/commission/publications/white-paper-future-europe_en

9 March: non-standard monetary policy. The European Central Bank (ECB) announces a reduction in the amounts of its purchase programme. The ECB Governing Council ‘confirms that it will continue to make purchases under the Asset Purchase Programme (APP), at the current monthly pace of €80 billion until the end of this month’. From April 2017, the programme will continue at a monthly pace of €60 billion until the end of December 2017, or beyond if necessary, and at any case until the Governing Council sees a sustained adjustment in inflation consistent with its inflation aim. <https://www.ecb.europa.eu/press/pr/date/2017/html/pr170309.en.html>

9 March: European Council/Donald Tusk reappointed to a second 2.5-year term as President of the European Council. Re-election of the President of the European Council is an act separate from the European Council Conclusions (which must be adopted unanimously), and only requires 21 votes in favour. Donald Tusk obtained 27 out of 28 votes, with the Polish government opposing the decision.

10 March: preparation for marking the 60th anniversary of the Treaties of Rome. The European Council meets without the United Kingdom: the 27 insist on their resolve to strengthen mutual trust and to preserve political unity between them.

15 March: general election/Netherlands. The results of the parliamentary elections held in the Netherlands on 15 March 2017 reassure the European elite as to the ability of Dutch voters to resist the ‘populist’ temptation. The VVD party (liberal right-wing) of Prime Minister Mark Rutte is still the strongest political party in the country (with 21.3% of the votes, down on 2012). The PvdA, the Dutch Labour party, has its worst election result ever: down from 24.8% in 2012 to 5.7%. The rise of Geert Wilders’ PVV, the racist and xenophobic party calling for ‘Nexit’ (exit by the Netherlands from the EU) seemed to have peaked, with 13.1% of votes.

25 March: adoption of the Rome Declaration. The 27 EU leaders meet to celebrate the 60th anniversary of the signing of the Treaties of Rome. The ‘Rome Declaration’ recalls the EU’s past achievements, presents the challenges to come and contains an undertaking to work for unity among the 27 Member States, and to strengthen joint action in key areas. The Declaration envisages ‘a Union which, based on sustainable growth, promotes economic and social progress as well as cohesion and convergence, while upholding the integrity of the internal market’, Doc. 149/17. <http://www.consilium.europa.eu/en/press/press-releases/2017/03/25/rome-declaration/pdf>

29 March: Brexit. The Prime Minister of the United Kingdom, Theresa May, notifies the European Council of the UK’s intention to leave the EU. Following the referendum of 23 June 2016, the triggering of Article 50 of the TEU launches the exit procedure for the United Kingdom. Prime Minister Letter to the President of The European Council, 29 March 2017. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf

April

18 April: United Kingdom/general election called early. In a surprise move, and despite her promise not to hold an early election, Theresa May announces her decision to call a general election on 8 June 2017, with a view to strengthening her ‘hard Brexit’ position after the voting.

17-23 April: spring meeting of the international financial institutions in Washington. The International Monetary Fund (IMF) and the World Bank restate their worries concerning protectionist trends harmful to growth. Leaders of the world financial institutions again condemn protectionism and make a strong plea in favour of international trade, weakened by criticism from the Trump administration and by the impact of Brexit. On 18 April, the IMF publishes its growth forecasts for the world economy in 2017. FMI, *World Economic Outlook April 2017: Gaining Momentum?*, 17 April 2017.

26 April: the social dimension of Europe. The European Commission publishes a reflection document on the ‘social dimension of Europe by 2025’. The document is intended to mark the start of a reflection process with citizens, the social partners, the European institutions and governments, IP-17-1008 and COM (2017) 206.

26 April: European Pillar of Social Rights. One year after the launch of the consultation on the ‘European Pillar of Social Rights’ (March 2016), the European Commission presents its proposals, in the form of 20 fundamental principles and one recommendation, as well as a proposal for joint proclamation of the Pillar by the Parliament, the Council and the Commission. According to the Commission, the principles place the focus on how to deliver on the promise in the Treaties of a ‘highly competitive social market economy, aiming at full employment and social progress’, MEMO 17-1004 and COM (2017) 0250.

26 April: work-life balance. On the same day, as part of the ‘Pillar package’, the European Commission presents a proposal for a directive on work-life balance for parents and carers. This proposal is intended to repeal and replace Council directive 2010/18/EU, COM (2017)253 final.

27 April: Structural Reform Support Programme. The European Commission welcomes the vote of the European Parliament, backing the Structural Reform Support Programme (SRSP) set up by the Union to provide technical support to the Member States. The programme has a budget of 142.8 million euros for the period 2017-2020, and will not require co-financing from the Member States, IP 17/1122.

27 April: the Organisation for Economic Cooperation and Development (OECD) wishes to ‘fix’ globalisation. An OECD report, published at the height of the French Presidential election campaign, is intended to ‘support national governments and the international policy dialogue to advance a fairer and more inclusive globalisation, to ensure that the benefits are more widely shared, and that the rules of the game are more ambitious, economically, socially and environmentally, and are also more enforceable’.

27 April: Court of Justice of the EU (CJEU)/social security. The CJEU hands down a judgment in favour of the German cruise ship company A-Rosa, which (via its Swiss branch) employed around 90 seasonal workers between 2005 and 2007, with a Swiss contract, on two ships sailing on French rivers. These employees were not therefore subject to the French social security system, pursuant to European Regulation 1408/71. The low-cost company Ryanair welcomed this judgment in a press release, stating that it plans to seek a full refund of €15 million from the French authorities. The judgment highlights the severe challenges involved in revising the Posting of Workers' Directive to combat social dumping and unfair competition between EU countries, and those of the European Economic Area, C-620/15.

29 April: Brexit. Guidelines from the EU27 European Council (Article 50), following the United Kingdom's notification under Article 50 TEU. EUCO XT 20004/17. <https://www.consilium.europa.eu/media/21763/29-euco-art50-guidelinesen.pdf>

May

3 May: Brexit. The European Commission transmits to the Council its Recommendation for a Council decision authorising the Commission to open negotiations with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union, COM (2017) 218.

7 May: France/presidential election. Emmanuel Macron is elected 25th President of the French Republic, with a majority of 66.1% of the votes, as against 33.9% for Marine Le Pen. Nevertheless, the election also sees a record level of abstentions (25.38% of those registered to vote), and a record number (4 million electors) turning up at the polling station but leaving their ballot papers blank or spoiled. Moreover, for the first time since 1969, turn-out for the second round (74.6%) is lower than for the first (77.8%). <https://www.theguardian.com/world/ng-interactive/2017/may/07/french-presidential-election-results-latest>

11 May: structural reform support programme. The Agriculture and Fisheries Council adopts, without discussion, the regulation establishing a structural reform support programme, with a budget of 142.8 million euros, OJ L 129 of 19 May 2017.

16 May: trade policy/opinion of the CJEU. Following the Commission's request for an opinion on the free trade agreement between the EU and Singapore, the Advocate General of the Court, on 21 December 2016, had ruled that some parts of the agreement do not fall under the sole competence of the Union, and should be ratified by all national parliaments. In its opinion, the CJEU finds that the agreement in question is a mixed agreement, requiring ratification by national parliaments in respect of the areas not falling under the exclusive competence of the Member States, i.e. non-direct foreign investment and dispute settlement between investors and States. In this opinion, the Court considerably extends the areas falling under the sole competence of the EU, contrary to the Advocate General's conclusions of 21 December 2016. The December

conclusions had included provisions setting basic labour and environmental standards among those forming part of a mixed agreement, since, in her view, they were elements of social or of environmental policy, Opinion 2/15.

22 May: Brexit. The European Council authorises the opening of Article 50 negotiations with the United Kingdom and appoints the Commission to negotiate on behalf of the Union. The European Commission welcomes the adoption of the first set of negotiating directives, giving it the political and legal mandate it requires to negotiate with the United Kingdom on behalf of the EU-27.

22 May: European Semester. The European Commission presents its Country-specific Recommendations for 2017, setting out its economic policy guidance to the Member States for the next 12-18 months. Particular attention is paid to the priorities of and challenges facing the eurozone, IP-17-1311.

24 May: EU/US summit. At a summit organised in Brussels, the EU leaders and the President of the United States, Donald Trump, discuss foreign policy, security, tackling climate change and trade relations.

31 May: European Commission/deepening of the EMU. The Commission sets out possible ways forward for deepening Europe's Economic and Monetary Union. This document, taking due account of the discussions underway in the Member States and of the opinion of the other EU institutions, describes specific measures which could be taken up to the 2019 European elections, as well as a series of options for the years after that, once the EMU structure is completed, IP-17-2401. https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en.pdf

June

14 June: Relocation of asylum seekers. The European Commission announces the launching of infringement proceedings against the Czech Republic, Poland and Hungary due to their refusal to participate in the relocation programme decided on in September 2015, for the relocation of 160,000 asylum seekers who entered the EU through Italy and Greece, IP-17-1607.

15 June: Greece/EU. The Eurogroup releases another tranche of financial assistance for Greece. After the Greek Parliament adopted new austerity measures in May, the Eurogroup, meeting in Luxembourg, approves the release of an €8.5 billion tranche of the loan to Greece. This should, particularly, enable Athens to make the scheduled repayments to the European Central Bank (ECB) by the due date in July. The Eurozone ministers also undertake to consider debt relief measures to reduce the Greek public debt – 320 billion euros – with a view to applying this assistance plan, should the debt turn out to be 'unsustainable'.

15-16 June: recommendations on the national reform programmes (NRPs). The Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council adopts the employment and social policy aspects of the draft recommendations on the 2017 national reform programmes (NRPs) of each Member State, for the European Council meeting on 22 and 23 June. According to the press release, the overall objective of the 2017-2018 recommendations is to ‘deliver more jobs and faster growth, whilst taking better account of social fairness.’ This year, ‘special emphasis was put on the recognition of the crucial role of the social partners, notably in collective bargaining, in line with national practices’, Doc. 10376/17.

16 June: Death of former German Chancellor Helmut Kohl. The President of the European Commission, Jean-Claude Juncker, declares that ‘Helmut Kohl was not only the architect of German unity. He contributed fundamentally – more than others – to reconciling European history and European geography’.

19 June: Brexit. Launch of the first round of Article 50 negotiations between the European Commission and the United Kingdom.

28 June: an EU budget fit for tomorrow. The Commission opens the debate on the post-2020 multiannual financial framework. The issues raised in this fifth and final document in the series on the future of the EU are at the core of the discussion launched on 1 March with the Commission’s White Paper on the Future of Europe. This reflection document sets out the possible budgetary consequences of the choices we could make, IP-17-1795.

July

1 July: Estonia takes over the Presidency of the Council of the European Union from Malta. The Presidency motto is ‘unity though balance’, and its four priorities are: an open and innovative European economy, a safe and secure Europe, a digital Europe and the free movement of data, and an inclusive and sustainable Europe.
<https://www.eu2017.ee/priorities-estonian-presidency>

4 July: trade policy/Commission registers the citizens’ initiative to repeal the TTIP negotiating mandate. The European Commission decides to proceed with registration of a European citizens’ initiative (ECI) inviting it ‘to recommend to the Council to repeal the negotiating mandate for the Transatlantic Trade and Investment Partnership (TTIP)’, and ‘not to conclude the Comprehensive Economic and Trade Agreement (CETA)’ (‘Stop TTIP’ initiative). The formal registration of this initiative, on 10 July 2017, will start a one year-process of collection of signatures of support by its organisers. This registration follows the annulment by the EU General Court, on 10 May 2017, of the Commission’s initial decision to refuse to register the ‘Stop TTIP’ initiative’, IP-17-1872.

6 July: external trade/ EU/Japan relations. European and Japanese leaders announce the reaching of political agreement on the Japan-EU Free Trade Agreement (JEFTA). According to the Commission, this will be the most important bilateral trade agreement

ever concluded by the EU, and the first to include a specific commitment to the Paris climate agreement, IP-17-1902.

7/8 July: the G20 leaders meet in Hamburg. The theme of this year's summit is 'Shaping an interconnected world'. The G20 also adopts an action plan to enhance counter-terrorism cooperation. In the margins of the G20, the European Commission President, Jean-Claude Juncker, and the Canadian Prime Minister, Justin Trudeau, announce the date of provisional application of the CETA treaty, i.e. application of all its provisions except for the controversial investor-State dispute settlement mechanism: 21 September 2017. <http://www.consilium.europa.eu/en/meetings/international-summit/2017/07/07-08/>

11 July: economy/euro. The Council adopts an action plan to resolve the problem of non-performing loans (NPL) in the banking sector. The ministers also adopted conclusions on the European Commission review of the EU capital markets union action plan.

11 July: economy/regional development. The group of independent cohesion policy experts, chaired by Siim Kallas, the former European Commission Vice-President (2004-2014), presents its report on a simplified EU funds framework after 2020, IP-17-1921.

11 July: EU/Ukraine association agreement. The EU announces the definitive adoption of the association agreement signed in March 2014 with Ukraine, which will enter into force on 1 September 2017. In April 2016, the law authorising ratification of the agreement was rejected by Dutch voters in a referendum. In December 2016, The Hague obtained assurances from its European partners that the agreement would not grant Ukrainian workers freedom of establishment in the EU, would not guarantee military or financial assistance to Kyiv, nor would it automatically give Ukraine the status of candidate country for EU membership. In May, the Dutch parliament ratified the agreement.

12/13 July: enlargement, external relations and trade. Meeting in Kyiv, European and Ukrainian leaders celebrate the ratification of the association agreement and the recent entry into force of the visa exemption for Ukrainians travelling in the EU.

13 July: budgetary rules/transposition of Directive 2011/85/EU. The European Commission decides to refer Slovenia to the Court of Justice for failing to fully notify its measures to transpose Directive 2011/85/EU, which sets requirements for Member States' budgets. It is the only directive in the 'Six-Pack', as the other five measures are regulations, directly applicable in the Member States, IP-17-1956.

13 July: posting of workers/infringement proceedings against Croatia. The European Commission refers Croatia to the CJEU for failing to notify national measures transposing EU rules to enforce the Posting of Workers Directive (Directive 2014/67/EU), (also known as the 'enforcement directive'), almost one year after its transposition deadline, IP-17-1947.

17 July: employment and social rights. The Commission publishes the 2017 edition of its annual review 'Employment and Social Developments in Europe' – ESDE. The 2017 review shows positive trends but highlights the heavy burden on the young, IP-17-1988.

18 July: globalisation/regional development. According to the European Commission, globalisation has brought enormous benefits to the less-developed economies of the world, and many opportunities for Europeans. Nevertheless, while the benefits are widely spread, the costs are often borne unevenly, as is highlighted in the Commission's reflection paper on harnessing globalisation, IP-17-1995 and COM (2017) 376.

25 July: consultation with the International Monetary Fund (IMF) on Eurozone policies. According to the IMF, 'Euro area recovery has strengthened over the last year, bringing with it more jobs and opportunities'. On institutional matters, the IMF states that 'developing a central fiscal capacity for the Euro area would help struggling economies cope with shocks when their own budgets are stretched. This could also go hand in hand with a reform of the fiscal framework to simplify the rules and make enforcement more automatic'. <http://www.imf.org/en/News/Articles/2017/07/25/pr17297-imf-executive-board-concludes-2017-article-iv-consultation-on-euro-area-policies>

26 July: rule of law/Poland. In its recommendation on the rule of law addressed to the Polish authorities, the European Commission considers that 'the planned reform of the judiciary in Poland amplifies the systemic threat to the rule of law in Poland already identified in the rule of law procedure started by the Commission in January 2016 [...]'. The Commission calls on the Polish authorities to address these problems within one month. It also asks them not to take any measure to dismiss or force the retirement of Supreme Court judges. If such a measure is taken, the Commission stands ready to immediately trigger the Article 7(1) procedure – a formal warning by the EU that can be issued by four fifths of the Member States in the Council of Ministers, IP-17-2161.

26 July: EU/Canada. CJEU declares that the agreement on air passenger data may not be concluded in its present form. The Court, in an opinion requested by the European Parliament, gives a negative opinion on the agreement signed in June 2014 between the EU and Canada, concerning the transfer of passenger name record data, with a view to tackling terrorism and transnational crime. The Court is of the opinion that these procedures 'entail an interference with the fundamental right to respect for private life', Opinion 1/15.

31 July: compatibility of CETA with the French Constitution. The French Constitutional Court finds that the CETA is compatible with the French Constitution. A large part of the agreement 'falls under the exclusive competence of the EU', and 'does not imply a revision of the Constitution'. Although it still needs to be ratified by the 38 national and regional parliaments of the Member States to enter fully into force, the Constitutional Council does not oppose partial application of the CETA as of 21 September 2017. However, it considers that the agreement is not 'irrevocable' and that the provisional application may be interrupted if a party is unable to ratify it. Decision No.2017-749 DC.

August

9 August: back to recovery after the crisis. Ten years after the start of the world financial crisis, the European Commission considers that a recovery is taking place ‘thanks to decisive EU action’. This action, according to the Commission, has made it possible to ‘address the shortcomings of the initial set-up of the Economic and Monetary Union’, IP-17-2401.

31 August: Unemployment/statistics. In July, the unemployment rate is 9.1% in the eurozone and 7.7% in the EU28.

September

6 September: CJEU judgment/migrant relocation plan. The Court finds that Hungary and Slovakia, which brought the actions, must not refuse to apply the plan, adopted by the European Commission in 2015, to relocate 120,000 migrants arriving in Italy and Greece. This plan, to be implemented over two years, has resulted in the relocation of fewer than 28,000 migrants. The migration agreement concluded with Turkey in March 2016 has stemmed the influx of migrants, and there have been fewer applications for relocation than expected, Joined cases C-643/15 and C-647/15.

6 September: Spain/Catalan independence. After a tumultuous debate, the Catalan parliament adopts a law authorising the organisation of a referendum, on 1 October, on independence for the region. Supporters of independence argue that Catalonia, which has its own language and culture, is a ‘nation’, rather than a ‘nationality’, as stated in the 1978 Spanish Constitution. They also condemn the fact that the ‘Estatut’, the autonomy agreement concluded in 2006 between Madrid and Barcelona, was ‘struck down’ four years later by the Spanish Constitutional Court.

13 September: European Commission/State of the Union address. The European Commission President, in an address to the European Parliament, describes how the EU could evolve between now and 2025. The top priorities are continued deployment of EU trade policy, strengthening the competitiveness of European industry, the fight against climate change, better protection of citizens in the digital age, and more effective management of the external borders and of migratory flows.

14 September: state of the Union 2017/‘trade package’. The European Commission unveils initiatives for a ‘balanced and progressive’ trade policy, IP-17-3182.

21 September: provisional entry into force of the CETA. The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada enters into force provisionally: it will only enter into force fully and definitively once it has been ratified by all EU Member States.

23 September: federal elections in Germany. Following the federal elections, the German authorities claim that the real victors are the voters themselves, due to the rise

in turn-out (76.2%, five percentage points higher than in 2013, when the abstention rate reached nearly 30%). The alliance between Angela Merkel's CDU and its Bavarian coalition partner, the CSU, wins the elections with 33% of the votes, the SPD has its worst election result ever with 20.5%, and AfD ('Alternative for Germany', a Eurosceptic political party) sees a historic surge in support and becomes the third strongest political force in the country, with more than 12.6% of the votes. http://www.germany.info/Vertretung/usa/en/06__Foreign__Policy__State/02__Foreign__Policy/00/Elections2017.html

27 September: asylum and migration/security and defence. The European Commission proposes to update the Schengen borders code, to adapt the rules for the reintroduction of temporary internal border controls to the need to respond to evolving and persistent serious threats to public policy or internal security, IP-17-3407 and COM (2017) 570.

October

1 October: Spain/self-determination referendum in Catalonia. The self-determination referendum takes place in an atmosphere of considerable tension, and results in a victory for the 'yes' vote, with 90.18% of the votes cast, and 7.83% voting 'no'. Turn-out is 2.3 million voters, i.e. around 43% of those registered, according to the Generalitat (Catalonian Government). Almost 850 people are injured by the law enforcement authorities, according to the report from the regional government.

2 October: Spain/self-determination referendum in Catalonia. Carles Puigdemont calls for international mediation, suggesting the EU. Brussels is of the view that this is an internal Spanish issue and should be dealt with in line with the Spanish constitutional order.

4 October: moves towards incorporating the Treaty establishing the European Stability Mechanism (ESM), and the Treaty on Stability, Coordination and Governance (TSCG or the 'Fiscal Compact'), into Union law. The European Commission Vice-President, Valdis Dombrovskis, speaking at the European Parliament, supports the incorporation of the ESM and TSCG treaties into Union law. He believes that 'their incorporation into Union law would bring greater democratic accountability and legitimacy across the Union'. <https://bit.ly/2kkz81b>

5 October: employment/social situation. According to the Autumn 2017 ESDE Quarterly Review on Employment and Social Developments in Europe, 'the EU remains on a firm path towards more employment and growth', IP-17-3664.

10 October: Spain/self-determination referendum in Catalonia. Speaking before the Catalan Parliament, Carles Puigdemont declares the region's right to become an independent State, while suspending implementation of the process to allow for dialogue with Madrid: 'I assume', he says, 'the mandate of the people for Catalonia to become an independent State in the form of a Republic'. 'We propose to suspend

the effect of the independence declaration in order to begin discussions and reach a negotiated solution’.

16 October: Eurostat/poverty. The EU statistics office highlights a downward trend in the percentage of persons at risk of poverty or social exclusion in the EU. In 2016, 117.5 million people, i.e. 23.4 % of the population, were at risk of poverty or social exclusion in the EU. Such a reduction is one of the key targets of the Europe 2020 strategy, STAT-17-3963.

18 October: Tripartite social summit. The main theme of this meeting of the tripartite social summit for growth and employment was ‘Shaping Europe’s future: strengthening resilience and promoting economic and social progress for all’. According to the President of the European Council, Donald Tusk, ‘Today, we discussed how the social partners can be better involved in national policy-making. I remain convinced that only by taking their views into account can we make real progress. This is especially important in today’s digital age, where citizens, young and old, need to be equipped with the right skills to prosper’. <http://www.consilium.europa.eu/en/meetings/european-council/2017/10/18/>

19/20 October: European Council. The European leaders agree to consolidate the current strategy for controlling migration. They also declare that they are ‘ready to do what it takes for Europe to go digital’. On 20 October, they endorse the leaders’ Programme and agree to make the necessary internal preparations for the second phase of the Brexit talks. European Council Conclusions (Article 50), EUCO XT 2001 4 /17. <http://data.consilium.europa.eu/doc/document/XT-20014-2017-INIT/en/pdf>

21 October: Spain/self-determination referendum in Catalonia. Following an extraordinary ministerial council meeting in Madrid, the Spanish Prime Minister Mariano Rajoy, under Article 155 of the Constitution, announces that the regional government will be stripped of its powers and the Catalan parliament dissolved. He also supports the holding, as soon as possible, of early regional elections. Article 155 of the Spanish Constitution. <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

23 October: agreement on the revision of the Posting of Workers Directive. The Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council reaches agreement on the revision of the December 1996 Posting of Workers Directive. The new proposal limits the posting to 12 months, which can be extended by a further 6 months. It sets a principle of equal pay for the same job at the same place – whereas, in the 1996 directive, the reference remuneration is the host country’s minimum rates of pay. Under this agreement, the revised directive need not apply to the transport sector, which will require a specific text. On the basis of this agreement, the Council can begin negotiations with the European Parliament. The revised directive will enter into force four years after its adoption by the EU bodies. The Polish, Hungarian, Lithuanian and Latvian ministers were against the agreement. <http://www.consilium.europa.eu/en/press/press-releases/2017/10/23/epsco-posting-of-workers/>

26 October: monetary policy: confirmation of the reduction in the level of the Asset Purchase Programme (APP). The ECB Governing Council decides that ‘purchases under the Asset Purchase Programme will continue at the current monthly pace of €60 billion until the end of December 2017.’ From January 2018, purchases will continue at a monthly pace of €30 billion, until the end of September 2018. The Governing Council may increase the APP in terms of size and/or duration if it assesses the inflation prospects as unfavourable. <https://www.ecb.europa.eu/press/pr/date/2017/html/ecb.mp171026.en.html>

27 October: Spain/Catalan independence. The Barcelona Parliament adopts a unilateral declaration of independence, and votes to begin a ‘constituent process’ to separate Catalonia from the rest of Spain. With the agreement of the Spanish Senate, Prime Minister Mariano Rajoy announces the dismissal of the autonomous Catalan government, the dissolution of the regional Parliament and the holding of early elections on 21 December.

27 October: Spain/Catalan self-determination referendum. The President of the European Council declares on Twitter that: ‘Spain remains our only interlocutor. I hope the Spanish government favours force of argument, not argument of force’.

November

2 November: Spain/Catalan self-determination referendum. A European arrest warrant is issued for Carles Puigdemont, the Catalan President dismissed by Madrid, who reached Belgium on 30 October, with a view to ‘putting the Catalan problem at the heart of the European Union’.

13 November: Defence/permanent structured cooperation. Representatives of 25 EU Member States sign a document establishing ‘permanent structured cooperation’ (PESCO) between them in the field of defence. Initially, the PESCO foresees the joint development of military equipment. Its purpose is to act as a framework for other types of project: European crisis centre, network of logistic hubs, joint training, even joint external operations. The signatories also make a commitment to increase their defence budgets.

17 November: Social rights. The European Pillar of Social Rights is proclaimed and signed by the Council of the EU, the European Parliament and the European Commission at the Gothenburg social summit for fair jobs and growth. It will be the driving force behind the European Semester’s social dimension, Press release 673/17.

22 November: European Semester. The European Commission presents its ‘autumn package’, launching the 2018 European Semester cycle of economic, fiscal and social policy coordination. The package is made up of: the 2018 annual growth survey; the 2018 alert mechanism report; the 2018 recommendation on the economic policy of the euro area; the 2018 joint employment report; the proposal to amend the employment guidelines, and the opinions on the euro area draft budgetary plans, IP-17-4681.

30 November: unemployment rate – Eurostat. In the eurozone (ZE19), the seasonally-adjusted unemployment rate is 8.8% in October 2017, down from 8.9% in September 2017 and from 9.8% in October 2016. This is the lowest rate recorded in the eurozone since January 2009. In the EU28, the unemployment rate is 7.4% in October 2017, down from 7.5% in September 2017 and 8.3% in October 2016. This is the lowest rate recorded in the EU28 since November 2008, STAT-17-5043.

December

4 December: new Eurogroup President. The eurozone finance ministers elect their Portuguese colleague Mário Centeno as the new President of the Eurogroup. He will replace the Dutch minister Jeroen Dijsselbloem in January 2018.

5 December: Spain/Catalan self-determination. The Spanish Supreme Court announces the withdrawal of the international arrest warrant issued for the former Catalan President Carles Puigdemont and four members of his former government. The Court explains that they have expressed their intention to return to Spain and take part in the Catalan elections on 21 December. The five Catalan leaders face charges of sedition, rebellion and misuse of public funds.

6 December: the European Commission presents a ‘package’ on EMU. The package includes a) the conversion of the European Stability Mechanism (ESM Treaty) into a European Monetary Fund; b) a new dedicated euro area budget line in the EU budget with four functions: structural reform assistance, a stabilisation function, a backstop for the Banking Union and an instrument to give pre-accession assistance to Member States on their way to euro membership; c) incorporation of the ‘substance’ of the Treaty on Stability, Coordination and Governance (TSCG) into the Economic and Monetary Union in Union law; and the creation of a European Minister of economy and finance, with two functions. Article 352 of the Treaty on the Functioning of the European Union (TFEU) would be used to incorporate the ESM Treaty into Union law, Article 126.14 TFEU for the TSCG. These two solutions would obviate the need to revise the European Treaties and would involve the European Parliament, which would need to give its approval in the first case and would be consulted in the second, MEMO-17-5006.

11 December: permanent structured cooperation in the field of defence. The Council adopts a decision establishing permanent structured cooperation (PESCO) in the field of defence. The Council adopts a decision establishing PESCO in defence less than a month after receiving a joint notification from the Member States expressing their intention to take part. The 25 Member States participating in PESCO are Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden, OJ L 331 of 14 December 2017.

12 December: glyphosate/citizens’ initiative. In response to the European Citizens’ Initiative (ECI) ‘Ban glyphosate and protect people and the environment from toxic pesticides’, the European Commission commits to proposing a legislative proposal in

2018 and announces measures to further increase the transparency of the process for authorising, restricting or banning the use of pesticides, IP-17-5191.

13 December: migration policy. Non-Governmental Organisations (NGOs) call for a migration policy which respects human rights. More than 30 civil society associations, including the European Association for the Defence of Human Rights (AEDH), call on the Council to establish a mechanism for responsibility-sharing as part of EU migration policy, respecting the rights and dignity of all asylum-seekers. <http://www.aedh.eu/wp-content/uploads/2018/01/Statement-EU-Council-Migration-December-FINAL.pdf?x51973>

13 December: rearmament/Germany. In the face of a dangerous external and internal policy of rearmament and militarisation announced by the German federal government, the International League of Human Rights (ILHR) launches an urgent appeal for disarmament. The League calls, in particular, for an end to German arms exports to crisis areas. <http://www.aedh.eu/en/international-league-for-human-rights-ilmr-germany-call-for-disarmament/>

14 December: joint declaration by the European institutions on the EU's legislative priorities for 2018-2019. The declaration, signed by the Presidents of the European Commission, the European Parliament and the rotating Council Presidency, lists 31 new legislative proposals presented by the Commission, which will be given priority treatment by the Parliament and Council for adoption or substantial progress by the time of the European Parliament elections in 2019, IP-17-5266. https://ec.europa.eu/commission/publications/joint-declaration-eus-legislative-priorities-2018_en

14 December: European Council/defence/social rights. The European Council examines the 'progress' made in the areas of security and defence. With regard to the social dimension, education and culture, the leaders highlight their importance in bringing 'Europeans' together and building 'our common future'. Under the treaties, Member States are still primarily responsible for these areas, 'but much can be achieved by working together, while fully respecting the principles of subsidiarity and proportionality', EUCO 19/1/17 REV 1.

15 December: Brexit/confirmation of progress made. The European Council, in its 'Article 50' formation (leaders of the EU27), confirms that sufficient progress has been made on the issues of citizens' rights, Ireland and the financial regulation. The leaders adopt guidelines for moving on to the second phase of negotiations, EUCO 19/1/17 REV 1.

15 December: the European Trade Union Confederation (ETUC), on the Summit and the Social Pillar. The Secretary General of the ETUC, Luca Visentini, declares: 'The European Pillar of Social Rights now has to be implemented. It was adopted in November and is now endorsed by national leaders. Working people are crying out for a better future. Far too many are struggling to make ends meet. Working poverty is the scandal of our era, and a blot on rising employment'. According to Luca Visentini, 'There is nothing more certain to disillusion citizens – and boost populism and Euroscepticism – than empty, broken EU promises. There is a duty on all leaders to ensure the European

Pillar of Social Rights delivers real improvements in the lives of working people in the EU'. <https://www.etuc.org/en/pressrelease/etuc-summit-social-pillar>

20 December: CJEU/Uber. The intermediation service to connect non-professional drivers provided by Uber with potential passengers is a service in the field of transport. Member States can therefore regulate the conditions applying to the provision of this service, C-434/15.

20 December: rule of law/Poland. The European Commission takes measures to defend judicial independence in Poland, IP-17-5367.

21 December: working conditions. The Commission presents a proposal for a directive revising directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (the 'Written Statement Directive'). The European Commission, linking this initiative to the European Pillar of Social Rights, proposes new minimum standards, to apply to all workers, including those on atypical contracts, IP-17-5285 and COM (2017) 797.

21 December: Spain/elections in Catalonia. The separatist parties retain their majority in the regional elections. After almost all the votes have been counted, the three lists in favour of independence have gained 70 out of 135 seats, i.e. two more than an absolute majority.

All links were checked on 23.10.2018.

List of abbreviations

AGS	Annual Growth Survey
APP	Asset Purchase Programme
CEEP	Centre européen des entreprises à participation publique et des entreprises d'intérêt économique general (European Centre of Employers and Enterprises providing Public Services and Services of general interest)
CETA	Comprehensive Economic and Trade Agreement
CJEU	Court of Justice of the European Union
DG	Directorate General
ECB	European Central Bank
ECI	European citizens' initiative
EESC	European Economic and Social Committee
ELA	European Labour Authority
EMU	Economic and Monetary Union
EP	European Parliament
EPSCO	Employment, Social Policy, Health and Consumer Affairs (Council configuration)
EPSR	European Pillar of Social Rights
ESF	European Social Fund
ESM	European Stability Mechanism
ESU	European Social Union
ETS	Emissions Trading Scheme
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EU-OSHA	European Agency for Safety and Health at Work
GDP	Gross Domestic Product
ICT	Information and Communication Technology
ILO	International Labour Organization
IMF	International Monetary Fund

IPCC	Intergovernmental Panel on Climate Change
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
OMC	Open Method of Coordination
OSE	European Social Observatory
PESCO	Permanent structured cooperation
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals (EU Regulation)
REFIT	Regulatory Fitness and Performance
SDG	Sustainable Development Goal
SE	Self-employed
SIP	Social Investment Package
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance
TTIP	Transatlantic Trade and Investment Partnership
UEAPME	Union européenne de l'Artisanat et des Petites et Moyennes Entreprises (European Association of Craft, Small and Medium-sized Enterprises)

List of country codes

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

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Social policy in the European Union: state of play 2018

Edited by Bart Vanhercke, Dalila Ghailani and Sebastiano Sabato

A dominant theme of this annual review of social policy in the European Union is the way in which the European Pillar of Social Rights (EPSR) has slowly but steadily started to influence EU policymaking, well before it was politically endorsed in November 2017. The Pillar's new 'rights-based social investment approach' is at present leaving its mark on the 2018 European Semester and has triggered two batches of legislation: the 'Pillar Package' and the 'Social Fairness Package'.

These developments are critically reviewed in the 19th edition of this edited volume, looking at both their positive and negative outcomes as well as their potential to serve as steps towards a fully-fledged 'European Social Union' (ESU). But will the EPSR, despite recent progress in the prevention of cancers, also leave its stamp on occupational health and safety, a field in which workers' interests continue to be largely subordinate to business interests? And will the Pillar be able to steer the direction of Member States' policies and, ultimately, the EU's macroeconomic policies?

In a world characterised by changes in the very substance of work, to a large extent dictated by new IT-governed processes, this volume also looks at social policy in the growing set of EU-promoted initiatives in the field of self-employment, providing refreshing in-depth reflections on the many facets of self-employment and social protection, whether positive or negative.

But this review of the EU's 'high-level' politics and 'day-to-day' social policymaking presents not just the state of play. It also looks at what is already on the horizon, questioning the very sustainability of social policy and programmes in the face of environmental problems and forcing us to reflect on alternative approaches such as degrowth and 'sustainable welfare'. It is becoming increasingly evident that eco-social policies need urgently to be put on the agenda – but at whose expense?

D/2018/10.574/25
ISBN: 978-2-87452-504-9



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