Momentum and fragility in Social Europe's renewal

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> Although there is a justified perception of a renewed Social Europe, a deeper analysis leads to more nuanced conclusions
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As we approach the 2024 European Parliament elections, to be followed by the renewal of the other key EU institutions, it is useful to offer a retrospective assessment of the state of Social Europe, benchmarking (as this publication does) its development during the 2019-2024 period. This was, it should be noted from the outset, in many ways an exceptional phase for European integration, characterised by growing social aspirations and ambitions – best embodied by the numerous instruments and policies delivering on the European Pillar of Social Rights (EPSR or Social Pillar) – but also by unexpected and even dramatic events, first and foremost the Covid-19 pandemic, a war on Europe's doorstep following Russia's invasion of Ukraine, an economic and financial crisis and a 'cost of living' crisis, unfolding in parallel with the climate crisis. These growing social aspirations were even more striking and noteworthy when contrasted with the previous, austerity-driven, phase of European integration. In fact, they could, in many ways, be seen as an implicit acknowledgement of the adverse consequences of that phase on the overall political sustainability of the integration process itself.

This assessment elaborates and reflects on three key governance channels that have fostered and shaped this – in many ways unexpected – significant and broad-based flourishing of Social Europe: legislation linked to the Social Pillar, EU funding and EU socio-economic governance. The latter two channels also have important Social Pillar components, making the Pillar a significant integrating element to promote Social Europe across all three channels.

The first channel is the numerous legislative and policy initiatives linked to the 2017 EPSR, a substantial 'progeny' of instruments characterised by both breadth and depth in terms of their social progress aspirations. In many ways, this wave of new legislative activity has taken the EU into new Social Europe terrain (Kilpatrick 2023).

The second channel is EU funding. This is strongly linked to the novel approach to EU spending embodied by 'NextGenerationEU', an initiative worth (in 2018 prices) 750 billion euros (primarily in grants and loans for the 2021-2024 period) that nearly doubled the resources allocated to the 2021-2027 Multiannual Financial Framework (just over 1 trillion euros).

The third channel is EU socio-economic governance. This is perhaps less obvious but no less important, pertaining to the sudden loosening of the EU fiscal framework and, more gradually, of the overall public expenditure rules, at the outset of the Covid-19 pandemic. This is best exemplified by the decision – in March 2020 – to activate the 'general escape clause' of the Stability and Growth Pact.[1] The pandemic, followed by the Russian war on Ukraine, have led to the escape clause's application being extended until the end of 2023. An additional important element is the emergence, in the Juncker and von der Leyen Commissions, of more 'social' macro-economic coordination, leading to a notable change in the European Semester. This more social Semester has also been used to guide EU funding.

Action within all three governance channels has revived what, until 2015, appeared to be an underdeveloped social project, characterised by a faltering labour regulation agenda, macroeconomic and fiscal austerity, and a regulatory and policy framework designed to discourage any significant role of the state in the economy and society at large. In fact, it could be argued that, without these three channels operating over the same period, Social Europe would not have been able to respawn, even tentatively, from the ashes of the 'austerity' decade. For example, the prospect of adequate minimum wages and of a relaunch of collective bargaining processes across the EU, clearly envisaged in Articles 4 and 5 of the Adequate Minimum Wages Directive (2022/2041/EU), would have been no more than illusory had the EU retained its hostility towards centralised collective bargaining

1. As set out in Articles 5(1), 6(3), 9(1) and 10(3) of Regulation (EC) 1466/97 and Articles 3(5) and 5(2) of Regulation (EC) 1467/97, pertaining to the 'preventive' and the 'corrective' procedures of the Pact.

and wage-setting mechanisms best embodied by the EU's Country Specific Recommendations and Memorandum of Understanding (MoU) prescriptions for much of the decade between 2008 and 2018.[2]

Social Europe has accordingly departed from its previous austere direction along all three governance channels. This year's *Benchmarking Working Europe* proposes to assess the interaction between these three channels in renewing and, in many ways, reshaping the EU's 'social profile', after a long phase of social stagnation associated with 'austerity' policies. This guest editorial first highlights and reflects upon the key developments and features of each of the three channels: EPSR legislation and soft law, EU funding and EMU. It highlights the important cross-channel role of the Social Pillar in shaping legislation, funding and macro-economic coordination. The European Semester has also played a role in integrating social governance. Although there is a justified perception of a renewed Social Europe, a deeper analysis leads to more nuanced conclusions depending on the channel under consideration. An area of tension is identified within the EMU channel between the restoration and enforcement of fiscal rules and the development of social infrastructure, rights and protections.

Secondly, this analysis provides some elements and examples for assessing how robust or fragile given Social Europe developments are. As the 2022 Adequate Minimum Wages Directive is the most powerful, game-changing development for Social Europe, not just during this period, but for EU Social Europe *tout court*, this will be a special focus throughout my analysis, allowing us to (a) grasp the new Social Europe ground it breaks; (b) assess its support through EU funding and EMU; and (c) consider the remaining challenges its full development presents.

The Social Pillar and EU legislation

Launched by Commission President Juncker in 2015, and solemnly declared by the EU institutions in Gothenburg in 2017, the EPSR is best seen as an unfolding process and reference point for Social Europe legislative and soft-law initiatives for two reasons. On the one hand, it was further renewed and reconsecrated during the von der Leyen Commission, especially at the Porto Social Summit in May 2021. This launched the 2021 European Pillar of Social Rights Action Plan, itself built on a year of consultations. The Action Plan indicates the need to update the 'social rulebook' to address climate change and environmental, digital, demographic and globalisation challenges in addition to Covid-19, stating that, 'The 20 principles of the European Pillar of Social Rights are the beacon guiding us towards a strong Social Europe and set the vision for our new "social rulebook".' The Social Pillar was further 'consecrated' at the Porto Social Summit with the adoption of the Porto Declaration by the Heads of State or Government and the Porto Social Commitment by the Commission, Parliament, social partners and civil society.

On the other hand, this ongoing commitment is crucial because the Social Pillar is a rights document itself containing no legally enforceable rights but rather 20 principles arranged in three thematic chapters: equal opportunities and access to the labour market; fair working conditions; and social protection and inclusion. For example, principle 12 entitled 'Social protection' is formulated as follows: '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.' This makes its links to other binding rights sources, in international human rights, EU and national law, and continuing EU political commitment, crucial. Notwithstanding its soft-law status, the Social Pillar period is shaping up to be the most intense and wide-ranging of Social Europe law-making in the EU's history (Kilpatrick 2023). This new wave of legislation is notable in its quantity, its politics and its substance.

Focusing specifically on 2019-2024, we can point to the Transparent and Predictable Working Conditions Directive 2019/1152/EU; the Work-Life Balance Directive 2019/1158/EU; the Adequate Minimum Wages Directive 2022/2041/EU; the Women on Corporate Boards Directive 2022/2381/EU; the Pay Transparency Directive 2023/970/EU; and several Occupational Safety and Health (OSH) directives, in addition to the important Competition Law Guidelines for the Self-Employed of September 2022. Intense discussions surround further significant legislative proposals currently inside the legislative process: the proposed directives on Platform Work (COM/2021/762 final), on Corporate Due Diligence (COM/2022/71 final) and on Equality Bodies (COM/2022/689

2. See https://www.etui.org/sites/default/files/14%20FINAL%20Background%20CSRs%202014%2001%20Stef%20Clauw%20Web%20version.pdf. One statistic that encapsulates the sovereign debt dismantling of collective bargaining: collective bargaining coverage in Greece went from 100% in 2011 to 14.2% in 2017 (OECD and AIAS 2021).

final); the work- and social-related dimensions of the Artificial Intelligence Act (COM/2021/206 final), and the proposed Regulation prohibiting products made with forced labour (COM/2022/453 final).

Soft-law measures that may lay the foundations for future legislation include the Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01), the Council Recommendation of 30 January 2023 on adequate minimum income ensuring active inclusion (2023/C 41/01) and the Council Recommendation of 16 June 2022 on ensuring a fair transition towards climate neutrality (2022/C 243/04). The remarkable opening of the EU legislature – the Commission as initiator, Parliament and Council – can be seen not just through this quantitative dimension but also in a new political alignment allowing the successful passage of extensive Social Europe legislation. This has allowed the revival and successful passage of legislative proposals kept on ice for a decade such as the Women on Corporate Boards Directive. Several others are notable in breaking new EU ground in their subject matter and range: promoting domestic collective bargaining in the case of the Adequate Minimum Wages and Pay Transparency Directives, grasping the nettle of the digital transition and engaging with labour standards as human rights in new ways.

> The Adequate Minimum Wages Directive is a stand-out development

The Adequate Minimum Wages Directive (2022/2041/EU) is a stand-out development. It breaks new ground in EU law in several ways, including the adoption of the first-ever binding commitments to: (a) the adequacy of minimum wages; (b) combatting abusive wage deductions; (c) the promotion of collective bargaining; and (d) the protection of trade unions, their representatives and members. In terms of statutory minimum wages, the Directive operates by establishing criteria that Member States must use to evaluate their adequacy, and procedures to establish, monitor and regularly update their level, with longer time frames for assessing adequacy for those states operating an automatic indexation mechanism. It is carefully designed to safeguard industrial relations systems that set minimum wages through collective bargaining rather than through legislation. The Directive also places limits on acceptable variations in the minimum wage as well as deductions. By conditioning deductions to the criteria of non-discrimination and proportionality, as well as explicitly stating that deductions for equipment necessary to do a job or for accommodation are at high risk of being disproportionate, the Directive addresses head-on a recent resurgence of abusive wage deduction practices. The Directive identifies, for the first time, the erosion of collective bargaining coverage, particularly with the rise of non-standard and precarious forms of work, as an EU problem to be addressed legislatively. It sets a target for collective bargaining coverage, increased to 80% in the Directive from 70% in the original proposal, to be addressed particularly by promoting sectoral and cross-industry bargaining via an action plan with a clear timeline and specific measures. The Directive reinforces protection for collective representation in several other ways. It embeds it in relevant external human rights sources – several ILO conventions beyond the core Conventions No. 87 and No. 98, the European Convention of Human Rights and the European Social Charter – as well as internally referencing the EU Charter of Fundamental Rights. It gives the social partners a full role in the governance of the setting, updating, reviewing and enforcing of statutory minimum wages. Finally, the role of trade unions and trade union representatives in worker representation is explicitly identified and protected. Hence workers, trade unions, their members and representatives should be protected against interference or acts of discrimination for participating in – or wishing to participate in – and enforcing collective bargaining on wage setting.

EU funding

The pandemic rebooted EU funding in several ways of interest for Social Europe. The European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE) allocated 100 billion euros in cheap loans to support Member States' short-time working schemes between late 2020 and the end of 2022.[3] From 2021, NextGenerationEU (NGEU) and the EU budget for 2021-2027 supercharged cohesion policy funding, tripling the normal funding allocation from the budget alone.[4] Both the main funding instrument of NGEU, the

3. Council Regulation 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the Covid-19 outbreak.
4. 'Cohesion, resilience and values' receives 426.7 billion euros from the EU budget and 776.5 billion euros from NGEU giving a total funding envelope of 1,203.2 billion euros.

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The pandemic rebooted EU funding in several ways that are of interest for Social Europe

Recovery and Resilience Facility (RRF),[5] and the main social component of the 2021-2027 budget, the European Social Fund+, tie their spending to relevant European Semester country-specific recommendations (CSRs) and the European Pillar of Social Rights.[6] Hence, there is an inbuilt wider governance dimension to the design of EU funding.

The RRF has been a central focus and regenerator of Social Europe discussions. Why that has been the case requires some unpacking. The RRF does not foreground Social Europe. Rather the green and digital transitions are RRF priorities, as shown by its minimum required funding percentage to be dedicated to these two issues: 37% to the green and 20% to the digital transition. Nonetheless, albeit in a broader and more residual way, what is not spent on the green and digital transitions is to be spent on the other four pillars which have substantial employment and social components.[7] And, of course, the digital and green transitions themselves can have social components (Sabato and Theodoropoulou 2022). In addition, the roll-out of the RRF has been accompanied by a Commission methodology for social expenditure, and, as noted above, the RRF requires national plans to consider the Social Pillar and relevant European Semester CSRs.

It is also the case that the recipients of RRF funding track the biggest losers from the sovereign debt crisis period.[8] Hence, rather than Covid-19 impacts being a driver of funding allocation, as Armingeon et al. (2022) have effectively traced, the states which suffered during the sovereign debt period obtained the greatest RRF allocations. In this sense, the largest funding facility of NGEU represents EU reparations for its sovereign debt management.

In several ways, the RRF appears to be the obverse of the sovereign debt loans. Rather than unattractive loans with regressive social conditions and fiscal consolidation, set top-down, heavily policed and mainly funded by agreements made outside the EU legal order, the RRF offers EU grants as well as low-cost loans,[9] with pre-financing.[10] In place of top-down conditions for payments to be released, states develop their own plans to fit within the six pillars identified for the RRF and identify themselves the milestones and targets to measure their achievement with these plans, milestones and targets being evaluated by the Commission.

Yet this claim requires some fine-tuning regarding Social Europe. Overall, this is an agenda more focused on social policy and social infrastructure than on progressive labour law and industrial relations where it is more muted and ambiguous.

5. Regulation 2021/241 of 12 February 2021 of the European Parliament and of the Council establishing the Recovery and Resilience Facility. The NGEU comprises seven distinct sub-programmes (RRF, ReactEU, Just Transition Fund, EAFRD, rescEU, Horizon Europe, InvestEU). The RRF amounts to 672.5 billion euros (360 billion euros in loans and 312.4 billion euros in grants) out of the overall package of 750 billion euros (2018 prices) (although not all loans may be requested, making the overall sum smaller).
6. RRF Regulation Article 18(4). For the ESF+ see recitals 1 and 2 and Articles 1 and 7(1) and (2) of the ESF+ Regulation (Regulation 2021/1057 of the European Parliament and of the Council of 24 June 2021).
7. (3) smart, sustainable and inclusive growth, including economic cohesion, jobs, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs; (4) Social and territorial cohesion; (5) health and economic, social and institutional resilience, with the aim of, inter alia, increasing crisis preparedness and crisis response capacity; and (6) policies for the next generation, children and the youth, such as education and skills: see Article 3 RRF Reg (‘Scope’). See also the Commission’s interpretation of these four pillars in SWD(2021) 12 final – Guidance to Member States Recovery and Resilience Plans Part 1, defining a social core for all of them.
8. See the distribution of Recovery and Resilience Facility (RRF) per Member State: Recovery and Resilience Scoreboard (europa.eu) The RRF allocations as share of GDP are Greece (16%), Romania (12%), Croatia (11%), Italy (10%), Bulgaria (9%), Portugal (8%); as opposed to Luxembourg (0.1%), Ireland (0.2%), Denmark (0.4%), Netherlands (0.5%), Sweden (0.6%) or Germany (0.7%). Of special interest in relation to Rule of Law are Poland (6.16%) and Hungary (3.77%).
9. Just under half in grants and just over half in loans.
10. RRF Preamble (46) and Articles 12 and 13: To ensure that the financial support is frontloaded in the initial years after the Covid-19 crisis, and to ensure compatibility with the available funding for the Facility, the funds should be made available until 31 December 2023. To that end, it should be possible for 70% of the amount available for non-repayable financial support to be legally committed by 31 December 2022 and 30% between 1 January 2023 and 31 December 2023. By 31 December 2021, upon request of a Member State to be submitted together with the recovery and resilience plan, an amount of up to 13% of the financial contribution and, where applicable, of up to 13% of the loan of the Member State concerned can be paid in the form of a pre-financing within, to the extent possible, two months after the adoption by the Commission of the legal commitments.

In this sense, it is certainly not aiming at 'reversing' the MoU labour prescriptions of the sovereign debt crisis. Pillar 3 of the RRF concerns smart, sustainable and inclusive growth. It is poised between economic orthodoxy and concerns for social fairness. Hence it calls on states to act towards 'fostering competitiveness, productivity and macro-economic stability' and strong policy support for shifting from 'employment preservation to job creation and supporting job transition … to ease and accelerate structural change' while also asking states to explain how their plans are coherent with implementation of the European Pillar of Social Rights. Pillar 4 of the RRF focuses on addressing geographical and group-based disparities. Its Pillar 5 focuses on strengthening health systems as well as critical supply chains and infrastructure and improved resilience in employment and social policies. Pillar 6, entitled Policies for the Next Generation, focuses on early childhood support, skills across the life course and intergenerational fairness. While these four pillars, which could constitute a maximum of 43% of RRF funding (after the minimum green 37% and digital 20% are taken into account), undoubtedly open the door to significant social policy funding, they also leave significant space for spending on other unrelated issues. It is quite an open menu, more focused on social policy than labour policy and with many nods to other types of spending.

All of this means that comparative analysis of the National Recovery and Resilience Plans (NRRPs) is essential to understand how the RRF is shaping Social Europe. Country analyses (Menegatti and Rainone 2022) show wide variation with some, albeit not most, using the NRRP to introduce significant labour reforms. For example, Spain has reversed some features of a euro-crisis 2012 labour market reform that weakened collective bargaining, including reestablishing the priority of sectoral over company-level bargaining. It addressed high youth unemployment by introducing a law making fixed-term contracts the exception rather than the rule (Aranguiz 2022). The Romanian RRP has an interesting intersection with the Adequate Minimum Wages Directive and Adequate Minimum Income Recommendation. It responds to European Semester CSRs by committing to a new social dialogue law in line with recent ILO recommendations, a better designed minimum wage aligned with the Adequate Minimum Wages Directive (2022/2041/EU) as well as vouchers to formalise domestic work and measures relating to a minimum inclusion income (Dimitriu 2022). Other states with substantial funding, such as Italy, have focused mainly on active labour market policy (ALMP) measures, education, childcare and improvement of vulnerable territories by investing in social housing and services (Ales 2022). Many states with small allocations have spent almost everything on the green and digital transitions.

It is also important, though rarer in the EU literature to date, to focus on other NGEU funding instruments. Smaller in scale, but still highly significant, these contribute to Social Europe in distinctive ways. A good example is REACT-EU which is the NGEU follow-up to SURE and the first pandemic cohesion packages of 2020 (the Coronavirus Response Investment Initiative and the Coronavirus Response Investment Initiative Plus). Allocated 50.6 billion euros to spend before the end of 2023, under a continuation and top-up of the 2014-2020 budget, it combines spending mainly through the European Regional Development Fund and the European Social Fund. The latter includes the continued support of short time working schemes to which the SURE programme allocated 100 billion euros in cheap loans between late 2020 and the end of 2022. While channelled through budgetary instruments, unlike normal budgetary spending, no co-financing from states is required, there is a heavy pre-financing dimension and normal regional categories and conditionalities are not applied.

Above all, the budget, especially ESF+ should be mainstreamed in Social Europe analyses. The ESF – repackaged as ESF+ in the 2021-2027 budget – falls under the second heading on Cohesion, Resilience and Values.[11] The ESF+ comes from merging existing programmes: the ESF, the Youth Employment Initiative; the Fund for European Aid to the Most Deprived and the Employment and Social Innovation Programme.[12] It takes up just under 88 billion euros (in 2018 prices) over the budget period, representing just under 10% of the total budget, almost all under shared (rather than direct Commission) management.

The NGEU and the ESF+ can usefully be compared in their construction and shaping of the new Social Europe of the 2020s. Apart from their different time frames, legal organisation and funding structure, it is important also to consider

11. The other headings are (1) Single Market, Innovation and Digital; (3) Natural Resources and Environment; (4) Migration and Border Management; (5) Security and Defence; (6) Neighbourhood and the World; (7) European Public Administration.
12. Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 OJ L 231, 30.6.2021, p. 21–59.

whether NGEU and ESF+ approach Social Europe in different ways. Viewed in terms of their EU design, the RRF has a significant focus on health, whilst this is a minor feature of ESF+ that is focused only on access by the most vulnerable to healthcare. ESF+ has a very strong focus on poverty and social inclusion, with a special focus on the materially deprived and children in poverty, which is not present in the RRF. Funding to promote social inclusion must be at least 25% of the total ESF+ budget, while at least 4% must be spent on material deprivation and at least 12% on young people not in education, employment or training (NEETs) where the NEET rate is above the EU average. Both focus on skills and training, especially for young people. Both also pay significant attention to gender equality and its links to childcare as well as equal access to work and social benefits for groups protected against status discrimination in EU law. Neither has a strong focus on fair working conditions, industrial relations infrastructure or capacity-building. Of the 13 specific objectives pursued by ESF+, only one relates to working conditions, and it concerns the adaptation of the working environment towards health risks with a view to promoting active and healthy ageing.[13]

> Funding conditionality could play a role in safeguarding and enhancing the social partners, civil society and Social Europe

However, the potential of two distinct features of EU funding to support the social partners, civil society and Social Europe goals should be highlighted. The first is through the partnership principle underpinning the ESF. This requires ensuring the meaningful participation of social partners and civil society and is bolstered by requiring states with a relevant CSR recommending capacity-building to allocate at least 0.25% of ESF+ funding to this goal.[14]

The second is the role funding conditionality could play in safeguarding and enhancing the social partners, civil society and Social Europe. The European Structural and Investment Funds (ESIF), including the ESF+, contain conditionalities which can be used to suspend or stop payments to states which do not respect them. The RRF milestones have been developed by the Commission to operate similarly. A Conditionality Regulation, applying to all funds, was agreed as part of the NGEU and budget package in December 2020.[15] Conditionality, often based on non-respect of specific provisions of the EU Charter of Fundamental Rights (EUCFR),[16] has been used to substantially delay and block payments to Poland (RRF only) and Hungary (RRF, ESIF and Conditionality Regulation) due to Rule of Law concerns. Those concerns are also increasingly expressed in European Semester CSRs which show how free and effective social partners, collective bargaining and civil society are a core component of liberal democratic states.[17] The potential is there to link to EUCFR conditionality using, for example, Article 28. Civil society, especially human rights NGOs, have to date played a key role in activating and policing Rule of Law conditionality action by the Commission. Hence, for example, the CSRs for Hungary for 2023 note that:

'Social dialogue remains among the weakest in the EU and further deteriorated recently. The main tripartite body serves mainly as an information-sharing forum for the government and it has no formal legal framework, with no meaningful dialogue except for minimum wage setting. While the shortage of teachers is an increasing challenge, new legal provisions have curbed the rights of teachers to collective action and widened employers' possibility to

13. Article 4 Regulation 2021/1057. The other objectives are: access to employment and activation for job-seekers; improved employment services; lifelong learning; gender-balanced labour market participation; active inclusion and employability, especially for disadvantaged groups; socio-economic integration of TCNs including migrants; socio-economic integration of marginalised communities, such as Roma people; modernised access to social services including housing, health and care and social protection with a special focus on the disadvantaged; social integration of people AROPE including the most deprived women and children; addressing material deprivation through food and/or basic material assistance.
14. Article 9 ESF+ Regulation.
15. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I, 22.12.2020, 1-10).
16. EUCFR respect is a horizontal enabling condition across the ESI funds including the ESF+: see Article 15 and Annex III of Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, 159-706).
17. See e.g. Poland's 2022 CSR (5): Enhance the investment climate, in particular by safeguarding judicial independence. Ensure effective public consultations and involvement of social partners in the policy-making process.

retroactively dismiss teachers participating in civil disobedience to protest labour conditions. Recent reforms, introduced without meaningful dialogue with the relevant unions, negatively affected working conditions and weakened self-representation for healthcare workers.'

Although Social Europe is not dominant within the broader EU budget and funding scholarship, it has always been present, and there is a growing recent literature on its social component and social impact with a special focus on poverty and social inclusion (Graziano and Polverari 2020; Griess, Hermans and Cantillon 2023). This is an important channel for further policy and academic attention. Richard Crowe (forthcoming 2024) makes the powerful claim that spending lines today provide a more reliable guide to developing centres of EU activity than legislative competences. This points to much more careful attention being paid to EU funding within and beyond the budget.

The socio-economic governance framework

Understanding the economic governance framework during this period requires grappling with the complex relationship between a much heftier, sanctions-rich economic governance rulebook and its – in significant ways minimal – application and enforcement in practice. At the apex of the rulebook sits the EU Treaty framework with its famous limits on debt at 60% of GDP and deficit at 3% GDP and requirements for macroeconomic coordination. Amplifying and specifying this framework is the Stability and Growth Pact, a cluster of instruments introduced in 1997 and subsequently revised in 2005 and 2011. Its most important components are Regulation 1466/97 on Preventive Fiscal Discipline and Regulation 1467/97 on the Excessive Deficit Procedure. This economic governance rulebook was substantially overhauled, beefed up and elaborated during the sovereign debt period. Macroeconomic coordination was renamed and reorganised as the European Semester. Fiscal governance was overhauled in the six-pack legislative measures of 2011 and the two-pack regulations of 2013 to strengthen budgetary management and surveillance, introduce a macroeconomic imbalance procedure, and speed up and extend the remit of the excessive deficit procedure.

Yet, the practical application of this strengthened and more automatically enforced orthodox fiscal and macroeconomic rulebook during this period was significantly different from the rulebook itself in both its socio-economic content and in its application and enforcement.[18] The general escape clause of the Stability and Growth Pact (SGP) was activated from March 2020 and will be deactivated only at the end of 2023. The country-specific recommendations under the European Semester undoubtedly became more social (Rainone 2022). The CSRs, as evident in our analysis of EU funding, also became linked to substantial EU funds through NGEU and the budget, giving them a substantially stronger compliance potential than their recommendatory status would suggest. Nonetheless, the CSRs remain a varying mix of socially oriented content and exhortations to macroeconomic stability and supply-side reforms. EU funding, with the most emblematic example being the provision of 100 billion euros of cheap loans under SURE for states to give income support to those unable to work normally due to the pandemic, represented a notable shift in macroeconomic orientation but, like its successor NGEU, was temporary.

Hence, the rules-based economic governance framework, especially its fiscal rules, is always present, but, at the same time, it is subject to suspension and/or its stated sanctions are ultimately never formally applied. From the introduction of the Stability and Growth Pact in 1997, through its various iterations, despite the many excessive deficits, excessive debts and macroeconomic imbalances, the sanctions that 'shall' be applied never have been. However, even if the sanctions that 'shall' be applied, strictly speaking, never have been, they still had significant practical effects on domestic policy-making.

The messages coming from the economic governance rulebook really matter even if they do not straightforwardly dictate choices of Member States. Like the messages of the international financial institutions, they provide a view of the right and wrong ways to run national economies and welfare states. The economic governance rulebook, while unlikely to result in the formal application of sanctions, is more likely than before to produce opinions and views, from national independent fiscal bodies and EU institutions, that contest diverging macroeconomic and

18. The sovereign debt decade (2008-2018) was different in two ways. Sovereign debt states were, in several important ways, subject to a different set of rules set by the loan conditions. The 2010-2015 period (the second Barroso Commission) was one in which macroeconomic coordination reflected economic orthodoxy recommending fiscal consolidation, including welfare state cuts and labour market deregulation. From 2015, change slowly began to happen (Kilpatrick 2018).

budgetary positions of national governments. This has effects on political and public debates as well as sometimes on policy outcomes. The salience of EU national budget discussions for government bond markets in vulnerable states is particularly noteworthy. Lastly, the economic governance rulebook can have a chilling effect on large-scale public investments and interventions at EU and national level. Too much prudence can be as foolhardy as too little for future-oriented economic governance. Even when larger public investments have been made, as they have been in response to the pandemic, the economic governance rulebook is one reason why they are framed as temporary departures from the status quo.

The lessons to be drawn from this for any reform of the economic governance rules are that such reforms should be based on what actually happened rather than the rulebook: *govern as you do, not as you said you would do*.[19] The rulebook should align more closely with the lived experience of their application and use, rather than treating the lived experience as an exceptional period during which the normal rules and sanctions were not applied. The lived experience of Covid-19, recovery from the sovereign debt period, the multiple new demands arising from the Russian invasion of Ukraine, as well as urgent needs for public investment to meet the green and digital transitions, led to the suspension of the Stability and Growth Pact, a loosening of state aid rules, cheap EU loans to subsidise employment support schemes and a massive injection of EU grants and loans, mainly targeted at green and digital investments, to those Member States most negatively affected by the sovereign debt period. Reform of the rules should take their cue from that experience rather than largely proposing to restore and strengthen the status quo ante. Yet the current legislative reform proposals of April 2023[20] propose largely to restore the rulebook and make it more effective through greater national ownership and, while allowing Members States to request a longer debt adjustment path for timebound heavily evidenced reforms and investments, aims (once again) to make the original Maastricht rulebook work better. This seems likely to perpetuate the gap between the rules and their application but risks insufficient public spending and investment on European public goods.

Sources of momentum and fragility in the new Social Europe

An important source of momentum is that the costs of inadequate social regulation and infrastructure have become painfully apparent and tangible within European society. Unless social structures and protections are shored up by a new politics, the price of a radically diminished and legally constrained social infrastructure in quite a few Member States is paid in more of the population being poorer, sicker and less educated, living in inadequate accommodation and working in poor conditions. This, in turn, drives what Hopkin (2019) has called anti-system politics, benefitting the far and radical right, and illiberal regimes, but also leading to more social responses by centrist parties.

Hence, the social is crucial in bolstering democratic life in European states, not just by providing outcomes of social safety but also in building social networks providing connection, support and voice. Not only are there elements of well-organised and active civil society and trade unions to which people are turning in greater numbers as they navigate precarious lives,[21] further expanding their role and coverage is necessary to lend a voice, support, legitimacy and substance to difficult societal transitions, including the content of new legislation and spending. This seems particularly resonant in the context of the monumental shifts required in the work performed across the primary, industrial

19. By this, I mean (a) the envisaged sanctions under the SGP have never formally been applied; (b) from 2020, the SGP escape clause was activated; (c) the 'socialisation' of the European Semester (see Zeitlin and Vanhercke 2017), especially during the period under review, belies in particular the overhaul of the economic governance framework in the two-pack and six-pack legislative packages of 2011 and 2013 which reinforced economic orthodoxy.
20. https://economy-finance.ec.europa.eu/publications/new-economic-governance-rules-fit-future_en (reform of both SGP regulations and a reform of Directive 2011/85/EU on national budgetary frameworks).
21. See, emblematically, in the light of austerity, Covid-19, the invasion of Ukraine and the cost-of-living crisis, the European Food Banks Federation (FEBA). Present from the 1980s in France, it relaunched in Brussels in 2018 to effectively participate in EU policy debates and support its network of food banks in over 30 European states. Its most recent EU Working Group report (2022) focuses, for example, on the EU funding instrument FEAD launched in 2014 to provide food to the most deprived in Europe and explores its amendments and increased funding to address Covid-19 and the refugee and cost-of-living consequences of the Russian war on Ukraine.

and services sectors to meet the challenges of climate change, biodiversity and environmental restoration.

While trade union density has continued its downward trajectory over the past two decades in many OECD states, there are very recent signs of an uplift and revival in organisation by those people who rely on working for a living. These include not just the macro figures of trade union density[22] but also new shoots in smaller-scale grassroots platform worker organisation as well as an increase in self-employed organisation and representation. While sometimes, at least initially (Vandaele and Piasna 2023) outside traditional union structures (Trappman et al. 2020), these new shoots offer opportunities for building relationships and alliances, or even integration, with traditional unions who are thinking creatively about representing these new sectors. There are signs that worker organisation is becoming an aspiration again for a younger and more diverse group of individuals who are dependent on work for income.

Key sources of fragility include enduring EU competence and legal constraints around the making of social legislation and sufficient EU fiscal capacity; national objections and challenges based on the diversity of labour relations and welfare systems; the speed and magnitude of changes needed to keep pace with digital and green challenges; and effective lobbying against change by businesses. Other sources of fragility are that the new Social Europe, although it has some elements of integration and connection, more often consists of different strands being developed in various locations with different amounts of sustenance. Hence domestic collective bargaining is being promoted much more fully at EU level than ever before, and even EU social dialogue is being rediscovered with a promise at the State of the European Union 2023 speech by President von der Leyen to 'go back' to Val Duchesse for a Social Partner Summit to be held under the Belgian Presidency in 2024. This promotion, however, could be much more fully developed in the context of EU funding.

Meanwhile, poverty and material deprivation, while embedded much more fully than before in the EU budget, especially through ESF+, have received limited and inconstant EU institutional support in terms of political commitments for new legislation or other high-profile commitments to prioritise their reduction through EU or national-level action. We could, for instance, imagine a Europe where governance is much more thoroughly anchored around the horizontal social clause in Article 9 TFEU: 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.'

The 2022 Adequate Minimum Wages Directive is an exemplary source to explore both momentum and fragility. Above, we outlined several of its ground-breaking contributions to EU law. It gives considerable forward momentum to Social Europe, especially collective bargaining. It shows the EU addressing low wages which feed into poverty and the cost-of-living crisis (Müller, Vandaele and Zwysen 2023). As the example of Romania referred to above shows, the Directive has a special resonance in central and eastern Europe. Yet the Directive also demonstrates that there are some issues still to be resolved in Social Europe.

Bold New Social Europe legislation is being born, but not without competence challenges. To create the Adequate Minimum Wages Directive, competence to work around the exclusion of EU legislative competence for pay in Article 153(5) TFEU was found by opting for a framework directive under Article 153(1)(b) TFEU which allows measures on working conditions to be adopted by a qualified majority vote in the Council. Since it does not contain measures directly affecting the level of pay, neither harmonising levels of minimum pay nor establishing a uniform minimum wage-setting mechanism, the EU legislature maintains that it fully respects the limits imposed on Union action by Article 153(5) TFEU. Rather, the Directive establishes criteria that Member States must use to evaluate the adequacy of statutory minimum wages[23] and

22. https://stats.oecd.org/Index.aspx?DataSetCode=TUD (from 2024, this will migrate to the OECD Data Explorer). This dataset shows an OECD-wide continuous decline in trade union density, year-on-year from 2000 to 2019 from 20.9% on average across the OECD in 2000 to 15.8% on average in 2019. However, especially from 2019, although data are currently available for only a limited number of states, density has increased. For example, Ireland's trade union density had fallen every year between 2000 and 2018, from 35.9 to 24.1%, but it went up to 25.1% in 2019 and 26.2% in 2020. Increases are also recorded in 2019 and/or 2020 in the UK, US, Canada and Mexico.

23. Article 5 AMWD. These include the purchasing power of the statutory minimum wage, the general level of wages and their distribution. States can also have regard to established international reference levels e.g. 60% of median wage or 50% of the average wage (gross).

procedures to establish, monitor and regularly update their level. It protects systems setting minimum wages through collective bargaining in various ways. Above all, it provides that 'Nothing in this Directive shall be construed as imposing an obligation on any Member State where wage formation is ensured exclusively via collective agreements, to introduce a statutory minimum wage'. Moreover, collectively bargained wages made universally applicable without any state discretion are not considered to be statutory minimum wages.

Competence concerns have nonetheless resulted in litigation being brought by Denmark before the Court of Justice of the EU against the European Parliament and the Council to annul the Directive (C-19/2023). At the same time, the opportunities and challenges of the Directive go beyond EU law-making and include the politics and practicalities of transposition and implementation (see, for example, Orlandini and Meardi (2023) on Italy). The coming years will provide a fascinating experiment to show how EU law and policy, with this Directive at their heart, can reshape and enhance wage protection, collective bargaining and unionisation.

The EU's Social Pillar process has, to date, provided a rights language and framework for making and sustaining claims for social and labour rights, including participatory and representation rights, at EU level. Continuing its momentum after the 2024 elections would require reconsidering, in a more far-reaching way, EU competences, EU funding and the economic governance framework, in the context of urgent priorities to adapt to digital, green and democratic challenges, with a view to giving Social Europe more solid foundations.

References

Ales E. (2022) National recovery and resilience plan: Italy, Italian Labour Law E-Journal, 15 (1S), 1-13.

Aranguiz A. (2022) National recovery and resilience plan: Spain, Italian Labour Law E-Journal, 15 (1S), 1-15.

Armingeon K., de la Porte C., Heins E. and Sacchi S.(2022) Voices from the past: economic and political vulnerabilities in the making of next generation EU, Comparative European Politics, 20, 144–165.

Crowe R. (2024) The European Union's Public Finances in Times of Crisis: Fragmentation, Innovation, and Consolidation in Kilpatrick C. and Scott J. (eds.) New Frontiers of EU Funding: Law, Policy and Politics, Oxford University Press. [Forthcoming]

Dimitriu R. (2022) National recovery and resilience plan: Romania, Italian Labour Law E-Journal, 15 (1S), 1-13.

FEBA (European Food Banks Federation) FEBA EU Working Groups 2022 Report, Brussels.

Graziano P. and Polverari L. (2020) The social impact of cohesion policy, in Vanhercke B., Ghailani D., Spasova S. and Pochet P. (eds.) Social policy in the European Union 1999-2019: the long and winding road, OSE and ETUI, 167-182.

Greiss J., Hermans K. and Cantillon B. (2023) The making of a European Social Union: the case of foodbanks and the right to minimum income protection, Working Paper 23/06, University of Antwerp Herman Deleeck Centre for Social Policy.

Hopkin J. (2019) Anti-System Politics: the crisis of market liberalism in rich democracies, Oxford University Press.

Kilpatrick C. (2018) Social Europe via EMU: Sovereign Debt, the European Semester and the European Pillar of Social Rights, Giornale di Diritto del Lavoro e di Relazioni Industriali, (160), 737-759.

Kilpatrick C. (2023) The roaring 20s for Social Europe. The European Pillar of Social Rights and burgeoning EU legislation, Transfer, 29 (2), 203-217.

Menegatti E. and Rainone S. (eds.) (2022) Editorial: Special Issue - The NextGeneration EU in action: impact on Social and Labour Policies, Italian Labour Law E-Journal, 15 (1S), 1-3.

Müller T., Vandaele K. and Zwysen W. (2023) Wages and collective bargaining: fighting the cost-of-living crisis, in Countouris N., Piasna A. and Theodoropoulou S. (eds.) Benchmarking Working Europe 2023, ETUI and ETUC, 77-98.

OECD and AIAS ICTWSS (2021) Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts.

Orlandini G. and Meardi G. (2023) Round table - Implementing the EU Directive on adequate minimum wages in southern Europe: the odd case of Italy, Transfer, 29 (2), 253-259.

Rainone S. (2022) The 2022 Country Specific Recommendations in the social field: quo vadis, EU recovery? An overview and comparison with previous European Semester cycles, Report 2022.08, ETUI.

Rainone S. and Pochet P. (2022) The EU recovery strategy A blueprint for a more Social Europe or a house of cards?, Working Paper 2022.18, ETUI.

Sabato S. and Theodoropoulou S. (2022) The socio-ecological dimension of the EU's recovery: further traction for the European green deal?, in Vanhercke B., Sabato S. and Spasova S. (eds.) Social policy in the European Union: state of play 2022: policy making in a permacrisis, ETUI, 43-67.

Trappmann V., Bessa I., Joyce S., Neumann D., Stuart M. and Umney C. (2020) Global labour unrest on platforms: the case of food delivery workers, Friedrich-Ebert-Stiftung.

Vandaele K. and Piasna A. (2023) Sowing the seeds of unionisation? Exploring remote work and work-based online communities in Europe during the Covid-19 pandemic, in Countouris N. et al. (eds.) The Future of Remote Work, Brussels, ETUI, 103-126.

Zeitlin J. and Vanhercke B. (2018) Socializing the European Semester: EU social and economic policy co-ordination in crisis and beyond, Journal of European Public Policy, 25 (2), 149-174.

All links were checked on 06.02.2024