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"Throughout all of my political life I have fought for our unique European economic and social model. I am convinced that Europe will succeed only when its economy is both strong and fair".

Jean-Claude Juncker¹

The European Pillar of Social Rights: Building a Deeper, Fairer Union?

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Introduction

Building a deeper and fairer Economic and Monetary Union (EMU) is one of the ten priorities for this European Commission. In the political guidelines published in July 2014, Jean-Claude Juncker pointed to the lack of social fairness in the measures taken in recent years to tackle the worst financial and economic crisis facing post-war Europe.² This multidimensional crisis has revealed a deep need for the European Union to “recreate a process of convergence” among Member States and within societies, “with productivity, job creation and social fairness at its core”.³

The European Commission, driven by its President, has thus embarked on the development of a “European Pillar of Social Rights” (EPSR) as part of its efforts to create a “fair and truly pan-European labour market”. The Pillar is intended to take account of the changing realities of Europe’s societies and the world of work and to “serve as a compass for the renewed convergence within the euro area”.⁴ This initiative is part of the work undertaken by the Commission for a deeper and fairer EMU and has been included in the 2016 and 2017 Commission Work Programmes.⁵

Since it was announced by President Juncker in September 2015, the Commission has engaged with a wide range of stakeholders in the process of building the Pillar of Social Rights. In March 2016, it presented a preliminary outline of an EPSR and launched a broad

¹ European Commission. Press release, Strasbourg, 6 October 2015, IP/15/5763.

² Jean-Claude Juncker, Candidate for President of the European Commission. *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*. Political Guidelines for the next European Commission. Opening Statement in the European Parliament Plenary Session. Strasbourg, 15 July 2014.

³ European Commission. *State of the Union 2015. Time for Honesty, Unity and Solidarity*. Address by Jean-Claude Juncker, President of the European Commission, before the European Parliament, Strasbourg, 9 September 2015. Brussels: European Commission, 2015, p. 15. Available from: www.ec.europa.eu/soteu.

⁴ European Commission. *State of the Union 2015*, op. cit., p. 18.

⁵ Commission Work Programme 2016. *No time for business as usual*. Strasbourg, 27.10.2015, COM(2015) 610 final, p. 9. Commission Work Programme 2017. *Delivering a Europe that protects, empowers and defends*. Strasbourg, 25.10.2016. COM(2016) 710 final, p. 10.

open consultation, lasting until 31 December 2016, to gather feedback on the proposed outline and identify the scope of future action.⁶

The recent adoption of the European Commission's proposal for an EPSR on 26 April 2017⁷ marked a significant step forward in this process.⁸ Alongside this proposal, the Commission adopted a number of accompanying legislative and non-legislative initiatives related to work-life balance,⁹ the information of workers,¹⁰ access to social protection¹¹ and working time.^{12 13} The Commission also took this opportunity to present its reflection paper on

⁶ European Commission. *Launching a consultation on a European Pillar of Social Rights*, Strasbourg, 8.3.2016, COM(2016) 127 final; Annex – *First preliminary outline of a European Pillar of Social Rights*, COM(2016) 127 final ANNEX 1. The Communication was accompanied by two Commission Staff Working Documents: *The EU social acquis*, SWD(2016) 50 final; *Key economic, employment and social trends behind a European Pillar of Social Rights*, SWD(2016) 51 final.

⁷ European Commission. *Establishing a European Pillar of Social Rights*. Brussels, 26.4.2017, COM(2017) 250 final. The Pillar is presented in the form of a Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights (see C(2017) 2600 final of 26 April 2017), together with a proposal for an Interinstitutional Proclamation on the European Pillar of Social Rights (see COM(2017) 251 final of 26 April 2017). The Pillar is accompanied by three Commission Staff Working Documents. One document provides more detailed explanations on each of the principles and rights set out in the Pillar (see SWD(2017) 201 final of 26 April 2017). Another document establishes a social scoreboard to monitor progress on the ground (see SWD(2017) 200 final of 26 April 2017). The third document is a report of the public consultation (see SWD(2017) 206 final of 26 April 2017).

⁸ “This is a crucial moment for this Commission, and, more importantly, this is a crucial moment for Europe. (...) Today we deliver on our promise”, Commissioner for Employment, Social Affairs, Skills and Labour Mobility, Marianne Thyssen, highlighted during the public presentation of the Pillar's final proposal. See European Commission. *Speaking points by Commissioner Thyssen on the European Pillar of Social Rights and accompanying initiatives*. Brussels, 26 April 2017, SPEECH/17/1119.

⁹ European Commission. *An initiative to support work-life balance for working parents and carers*. COM(2017) 252 final, and *Proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU*. Brussels, 26.4.2017, COM(2017) 253 final, 2017/0085 (COD). See also the Commission's statement accompanying the Commission Proposal of 26 April 2017.

¹⁰ European Commission. *Consultation Document of 26.4.2017. First phase consultation of Social Partners under Article 154 TFEU on a possible revision of the Written Statement Directive (Directive 91/533/EEC) in the framework of the European Pillar of Social Rights*. Brussels, 26.4.2017, C(2017) 2611 final. See also the Commission Staff Working Document, REFIT Evaluation of the ‘Written Statement Directive’ (Directive 91/533/EEC), Brussels, 26.4.2017 SWD(2017) 205 final.

¹¹ European Commission. *Consultation Document of 26.4.2017. First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights*. Brussels, 26.4.2017, C(2017) 2610 final.

¹² European Commission. *Interpretative Communication on 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*. Brussels, 26.4.2017, C(2017) 2601 final.

¹³ Two other documents were published on 26.4.2017: Commission Staff Working Document *on the implementation of the 2008 Commission Recommendation on the active inclusion of people excluded from the labour market*, SWD(2017) 257 final, and Commission Staff Working Document. *Taking stock of the 2013 Recommendation on "Investing in children: breaking the cycle of disadvantage"*, SWD(2017) 258 final. Other proposals linked to the “Social Pillar” will be adopted later on “in the months and years to come”. See European Commission. *The European Pillar is taking shape*. In: *Social Agenda*. N° 47, April 2017, p. 6.

Europe's social dimension;¹⁴ this opens up the debate by offering a range of ideas, proposals and options for a European social dimension by 2025, in line with the White Paper on the future of Europe presented on 1 March 2017.¹⁵

Building on the results of the public consultation, the social package that the Commission put forward in April 2017 is intended to support “fairer and better functioning labour markets and welfare systems” and a “renewed convergence towards better working and living conditions”.¹⁶

Social rights have therefore returned to centre stage, not only as part of a deeper and fairer EMU but also as a key component of the fairer, more social Europe required by the future EU27.

The EPSR raises high expectations related to its pan-European scope, its truly “social dimension”, its core of “rights” (fundamental rights) and the symbolic basis of a pillar.¹⁷

Our analysis aims to provide a critical assessment of the EPSR in terms of its approach, role, scope, nature and content. This paper examines the contribution of this initiative compared with social rights protection instruments in Europe and its added value for the future of the European Union.

I. The background of the EPSR

The roots of the Pillar may be found in the context of the debate on the achievement of a genuine EMU in 2012. The European Council in June 2012 invited the President of the European Council, in close collaboration with the President of the European Commission, the President of the Eurogroup and the President of the ECB, to present a “specific and time-bound roadmap”. The Four Presidents’ Report presented in December 2012, states that “in order to remain a highly attractive social market economy and to preserve the European social models, it is important for the Union to be globally competitive and to avoid excessive divergences in competitiveness among EMU members”.¹⁸

¹⁴ European Commission. *Reflection Paper on the Social Dimension of Europe*. COM(2017) 206 of 26 April 2017, 36 p.

¹⁵ Developing the social dimension of Europe is the first topic in a series of European Commission reflection papers. The second is deepening Economic and Monetary Union. See European Commission. *White Paper on the Future of Europe. Reflections and scenarios for the EU27 by 2025*. COM(2017)2025 of 1 March 2017, p. 26.

¹⁶ European Commission. *Op. cit.*, COM(2017) 250 final, p. 2.

¹⁷ The word “pillar” seems to suggest an essential and reliable support for social rights. The French term for the initiative is “socle”, meaning “base, foundation”.

¹⁸ Herman Van Rompuy, President of the European Council, in close collaboration with José Manuel Barroso, President of the European Commission, Jean-Claude Juncker, President of the Eurogroup, Mario Draghi, President of the European Central Bank. *Towards a genuine Economic and Monetary Union*. 5 December 2012, p. 13.

The political initiative of the Pillar began to take shape following the appointment of the new European Commission in 2014. In the political guidelines for the Commission, Jean-Claude Juncker proposed an agenda for a renewed European Union focused on ten policy areas, the first being “A New Boost for Jobs, Growth and Investment” and the fifth “A Deeper and Fairer Economic and Monetary Union”:

“Over the next five years, I want to continue with the reform of our Economic and Monetary Union [...] always with Europe’s social dimension in mind. [...] I am a strong believer in the *social market economy*”.¹⁹

In his statement to the European Parliament ahead of the vote on the College, the President-elect of the European Commission emphasised:

“What I want is for Europe to have a social triple-A rating: that is just as important as an economic and financial triple-A rating”.²⁰

Two days later, the Euro Summit of 24 October 2014 invited the President of the European Commission, in close cooperation with the President of the Euro Summit, the President of the Eurogroup and the President of the European Central Bank, “to prepare next steps on better economic governance in the euro area”.²¹ The Analytical Note presented in February 2015 emphasises that the euro is “also a political project” and stresses the need to move gradually towards “concrete mechanisms for stronger economic policy coordination, convergence and solidarity [...] based on the reality of the economic, employment and social situation of euro area Member States, the nature of the interdependency which exists between them, and their capacity to converge over time”.²²

With a view to completing Economic and Monetary Union, one immediate measure proposed by the Five Presidents’ Report of June 2015 is to move towards an “Economic Union of convergence, growth and jobs” based on four “pillars”: 1) the creation of a euro area system of Competitiveness Authorities; 2) a strengthened implementation of the Macroeconomic Imbalance Procedure; 3) a greater focus on employment and social performance; and 4) stronger coordination of economic policies within a revamped European Semester. The third pillar is based on the ambition to earn a “social triple A” and is also presented as an

¹⁹ Jean-Claude Juncker, Candidate for President of the European Commission. *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*. Political Guidelines for the next European Commission. Opening Statement in the European Parliament Plenary Session. Strasbourg, 15 July 2014.

²⁰ Jean-Claude Juncker, op. cit.

²¹ Euro Summit statement, Brussels, 24 October 2014. Available from www.consilium.europa.eu.

²² Jean-Claude Juncker, in close cooperation with Donald Tusk, Jeroen Dijsselbloem and Mario Draghi. *Preparing for Next Steps on Better Economic Governance in the Euro Area. Analytical Note*. Informal European Council, 12 February 2015, p. 1 and 7.

“economic necessity”.²³ Without mentioning social rights, this pillar looks ahead to the EPSR.

The full name “European pillar of social rights” was first used by President Juncker in his State of the Union address in September 2015. He highlighted “a fair and truly pan-European labour market” as the fifth domain where the Commission would present ambitious proposals swiftly and provided important background information as follows:

“Fairness in this context means promoting and safeguarding the free movement of citizens as a fundamental right of our Union, [...]

Labour mobility is welcome and needed to make the euro area and the single market prosper. But labour mobility should be based on clear rules and principles. The key principle should be that we ensure the same pay for the same job at the same place.

As part of these efforts, I will want to develop a European pillar of social rights, which takes account of the changing realities of Europe’s societies and the world of work. And which can serve as a compass for the renewed convergence within the euro area. [...]²⁴

In his speech delivered before the European Parliament, Jean-Claude Juncker stressed that the EU is about establishing a “common foundation of social values which we must, and will, adopt together”.²⁵

On 6 October 2015, the College of Commissioners discussed, for the first time, the concept of the “Pillar of Social Rights” during a debate on the economic and social dimension of the Single Market.²⁶ The pillar would be “a self-standing reference document, of a legal nature, setting out key principles and values shared at EU level”.²⁷ The College referred to “a consolidated and clear set of social rights” and compiled a non-exhaustive list of fifteen rights and sets of provisions related to areas such as employment contracts, working conditions and access to welfare.²⁸

²³ European Commission. *Completing Europe's Economic and Monetary Union*. Report by Jean-Claude Juncker in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz. 22 June 2015, p. 8.

²⁴ Op. cit., p. 18.

²⁵ Op. cit., p. 57.

²⁶ See European Commission, IP/15/5763 and MEMO/16/64.

²⁷ It could serve as “a framework to screen employment and social performance in the light of changing work patterns and societies” and, as a result, lead to update or complement the EU social legislation.

²⁸ Right to minimum pay, minimum rights to representation, minimum rights during probation periods, minimum protection against unfair dismissal, minimum measures to ensure awareness of rights and access to justice, right to equal treatment regardless of the type of employment contract, minimum health and safety rights, minimum working time protection rights, access to provisions relating to maternity/paternity, access to life-long learning and (re-)training, access to provisions relating to childcare and benefits, access to provisions relating to unemployment, access to provisions relating to active inclusion, access to provisions relating to pensions, access to basic social services, including health care.

The European Commission Communication “Launching a consultation on a European Pillar of Social Rights” of 8 March 2016 is a key step in the process, giving rise to a preliminary outline of the Pillar, accompanied by two Staff Working Documents, the first summarising the EU social acquis and the second presenting the key economic, employment and social trends behind an EPSR.²⁹

The first concrete outline of the EPSR was followed by a broad consultation from March to December 2016 intended to refine the text of the Pillar and identify appropriate areas for action at EU or national level. In January 2017, a high-level conference took place to conclude the consultation and define the future direction of the Pillar.³⁰

The final proposal of the EPSR presented on 26 April 2017 takes into consideration the significant response to the consultation and the numerous contributions received.³¹

This initiative has generated considerable support from a number of stakeholders, European institutions, national governments and parliaments, social partners, experts and non-governmental organisations, as well as from civil society in general, all of which agree on the need to improve the social dimension of the EU. Nevertheless, major concerns have been expressed about several issues in connection with the role, scope, legal nature and content of the Pillar. As a result of the consultation, several parameters have been refined in the final proposal.

II. The rationale behind the EPSR

The EPSR initiative is designed to strengthen the foundations of EMU in line with the EU’s social mission and objectives as laid down in Article 3 of the Treaty of European Union (TEU), namely to promote its values and the well-being of its peoples and to work for sustainable development based on balanced economic growth and price stability, a highly competitive social market economy aiming at full employment and social progress, and a high level of protection and improvement in the quality of the environment.

The European Commission’s action in building the Pillar is based on its conviction that social policy should be considered as a “productive factor, which reduces inequality, maximises job

²⁹ See footnote 6 above.

³⁰ Conference “The European Pillar of Social Rights: Going forward together”, Brussels, 23 January 2017. See an analysis on the policy process and proposals related to the EPSR until the high-level conference in KILPATRICK, C., MUIR, E., GARBEN, S. *From Austerity Back to Legitimacy? The European Pillar of Social Rights: A Policy Brief*, EU Law Analysis Blogpost, 20 March 2017. Available from: <http://eulawanalysis.blogspot.be/2017/03/from-austerity-back-to-legitimacy.html>

³¹ Until the end of 2016, the European Commission consulted the stakeholders at EU, national, regional and local level. The main stakeholders involved were citizens, Member States, EU institutions, social partners, civil society, the European research community and other organisations like the Council of Europe, ILO, IMF, OECD and the World Bank. More than 60 meetings and events at EU and national level, involving more than 2,500 participants were organised. The Commission received around 200 position papers, as well as 16 560 replies to its on-line questionnaire.

creation and allows Europe's human capital to thrive". As outlined in the 2016 Commission Communication, the Pillar meets a twofold need: overcoming the crisis and looking beyond, and moving towards a deeper and fairer EMU.³²

In its 2017 Communication, the Commission highlights that the EPSR "is about delivering new and more effective rights for citizens". The consultation revealed support for the EPSR as an opportunity to build a more social Europe and confirmed that the EU's economic and social challenges are interlinked and need consistent action at all levels. Finally, the Commission stresses the "specific meaning" of these challenges for the completion of EMU.

As Commission President, Jean-Claude Juncker has been seeking "to put social priorities at the heart of Europe's work, where they belong". With the EPSR and the first set of initiatives launched in April 2017, a new chapter is opening.³³

Economic and social performances are thus presented as "two sides of the same coin".³⁴ This begs the question of whether the European Commission is seeking an appropriate balance between economic and social aspects in the process of building the EPSR. Against this backdrop, criticism has been raised as to the genuine role of the Pillar.

III. The role of the EPSR

According to the 2016 Commission Communication, the purpose of the Pillar is "to express a number of essential principles to support well-functioning and fair labour markets and welfare systems". It is intended to become "a reference framework to screen the employment and social performance of participating Member States, to drive reforms at national level and, more specifically, to serve as a compass for renewed convergence within the euro area".

At the same time, the Pillar is intended to help modernise, broaden and deepen social rights, at work and in society.³⁵

The text of this Communication reveals tension between the economic and social aspects. Critics highlight the fact that the Pillar is "embedded in a deep economic rhetoric" in which economic growth is the main goal, while the social dimension of EMU is more technical than really founded on the values and principles of the Treaties. For the European Trade Union Institute (ETUI), the Commission has embarked on an "unconvincing development of a 'highly competitive social market economy'... The rationale of the Pillar is linked to an economic necessity rather than a genuine, rights-based prerequisite."³⁶

³² European Commission. Op. cit., COM(2016) 127 final, pp. 2-3.

³³ European Commission. Press release, Brussels, 26.4.2017, IP/17/1007.

³⁴ European Commission. Op. cit., COM(2016) 127 final, p. 4.

³⁵ European Commission. Op. cit., COM(2016) 127 final, p. 7.

³⁶ LÖRCHER, Klaus, SCHÖMANN, Isabelle. *The European pillar of social rights: critical legal analysis and proposals*. Brussels: ETUI aisbl, 2016, p. 18 and 20.

On the other side, European employers stress that solely focusing on “social rights” is not the right approach because “the social dimension of the EU is much broader than this”. For Business Europe, there is already a strong social dimension in Europe. The focus must be on increasing the contribution of Social Europe to Europe’s global competitiveness.³⁷

At the Conference on the Social Pillar, the “first sounding board” after the consultation, held in January 2017, Commissioner Marianne Thyssen claimed: “We also heard, via the consultation, some people say that: social issues should be left solely to the Member States. That the EU should limit itself to fostering growth and competitiveness; and that Member States will handle fairness through taxation, employment and social protection. I fundamentally disagree. [...] economic policy is social policy. And social policy is economic policy. You cannot disentangle the two - and we need action on both at the same time.”³⁸

In its 2017 Communication, the Commission adapts the wording and specifies that the Pillar is designed as “a compass for a renewed process of convergence towards better working and living conditions among participating Member States”. It stresses more clearly that the Pillar is about “delivering new and more effective rights for citizens”.³⁹

According to the final proposal for the interinstitutional proclamation on the EPSR, the aim of the Pillar 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 ensuring better enactment and implementation of social rights.”⁴⁰

It is clear that economic and social aspects are interlinked and mutually enriching. The final EPSR proposal includes both dimensions without ranking them in any order of importance. While it is true that the origins of the Pillar can be linked to the priority of completing EMU, the emphasis placed on its social dimension and the recent developments in favour of a more social Europe have confirmed the need to take a genuinely integrated approach to address this issue. Moreover, the Pillar does not exclude more specific, ambitious social policy measures, for which there is clearly enough room – provided there is political will – in full conformity with the allocation of competences between the Member States and the European Union.

IV. The scope of the EPSR

According to the 2016 Commission Communication, the Pillar would be developed within the euro area but other EU Member States will be able to join in if they wish to do so.⁴¹

This initial restricted scope is based on the specific needs and challenges confronting the euro area. Nevertheless, social issues involve all EU Member States and there is a risk of

³⁷ European Pillar of Social Rights – BusinessEurope contribution to the debate, 24 August 2016.

³⁸ European Commission. SPEECH/17/122.

³⁹ European Commission. *Op. cit.*, COM(2017) 250 final, pp. 2 and 4.

⁴⁰ European Commission. *Op. cit.*, COM(2017) 251 final, p. 4.

⁴¹ European Commission. *Op. cit.*, COM(2016) 127 final, p. 7.

increasing the negative effects of a multi-speed European Union which could aggravate social inequalities.

The scope of the Pillar is not primarily pan-European but *eurozone-oriented*. This choice has been criticised because it enhances the economic objectives of the initiative.

The European Parliament considers that “standards to be articulated by the Pillar should apply to all countries participating in the single market ... and that legislation, governance mechanisms and financial instruments relevant for their achievement should apply to all EU Member States”.⁴²

For the European Economic and Social Committee (EESC), the Pillar “must offer a positive project for all and should apply to all EU Member States, while acknowledging that the Eurozone may need particular instruments/mechanisms”.⁴³

The final proposal for the Pillar modifies the initial approach and emphasises its applicability to all Member States that wish to be part of it. The final version makes it clear that the Pillar is “open to all EU Member States”, although it is “primarily conceived for the euro area”, because a stronger focus on employment and social performance is particularly important to increase resilience and deepen EMU.⁴⁴

When considering the scope of the Pillar, it is also important to point out that its principles concern both EU citizens and third country nationals with legal residence. The principles referring to workers are applicable to all those in employment, regardless of their employment status and the terms and duration of their employment. The EESC is of the view that “this initiative should include all citizens, covering all phases of the life-cycle. The Committee is concerned about the lack of reference to asylum seekers and migrants.”⁴⁵

Nevertheless, the final proposal states that the EPSR “shall not prevent Member States or their social partners from establishing more ambitious social standards”. On the other hand, it specifies that nothing in the EPSR shall be interpreted as restricting or adversely affecting rights and principles that are recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter signed in Turin on 18 October 1961 and the relevant Conventions and Recommendations of the International Labour Organisation.⁴⁶

⁴² European Parliament. Resolution of 19 January 2017 on a European Pillar of Social Rights (2016/2095(INI)), §2.

⁴³ European Economic and Social Committee. Opinion on the European Pillar of Social Rights. SOC/542, 25/01/2017, p. 3.

⁴⁴ European Commission. Ibid.

⁴⁵ European Economic and Social Committee. Op. cit., p. 6.

⁴⁶ European Commission. Ibid.

The European Commission stresses the fact that delivering on the EPSR is “a shared commitment and responsibility between the Union, its Member States and the social partners”. The principles and rights laid down by the Pillar should be implemented by both the Union the Member States within their respective competences and in accordance with the principle of subsidiarity.

Following the public consultation, the final proposal for the Pillar specifies the importance of respecting the diversity of the cultures and traditions of the peoples of Europe, as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels. In particular, the establishment of the Pillar does not affect the right of Member States to define the fundamental principles of their social security systems and should not affect the financial equilibrium thereof. The purpose of the Pillar is not to harmonise social policy in the EU according to a “one-size-fits-all” approach.

At EU level, the Pillar does not entail an extension of the Union’s powers as defined by the Treaties.⁴⁷

In light of the existing economic and social divergences between the EU Member States, the euro area appears to be a pragmatic starting point for the implementation of the EPSR, albeit an ambitious one. As a matter of principle, the enlargement of the Pillar’s scope should be welcomed.⁴⁸

V. The political and legal nature of the EPSR

The political and legal nature of the EPSR has given rise to intense debate since its outline was first published by the European Commission in 2016. The Communication remained unclear on what exactly was meant by a “pillar” and the notion of “social rights” in this context. The 2017 Communication, building on the results of the public consultation, has shed new light on these questions.

a. The legal form of the Pillar

The Pillar was presented on 26 April 2017 in two legal forms with identical content: as a Commission Recommendation, which took effect on the date of publication, and as a proposal for an interinstitutional proclamation by the European Parliament, the Council and the Commission.⁴⁹

The Recommendation was adopted on the basis of Article 292 of the Treaty on the Functioning of the European Union (TFEU), with the Pillar establishing a “framework for

⁴⁷ European Commission. Op. cit., COM(2017) 251 final, p. 5.

⁴⁸ For instance, the European Trade Union Confederation (ETUC) urges all EU Member States to join the Pillar. See *No future without a more social Europe*, Press release, 26.04.2017. Available from www.etuc.org.

⁴⁹ See footnote 7 above.

guiding future action” by the participating Member States. In making a proposal for a joint proclamation, the European Commission follows the example of the Charter of Fundamental Rights of the European Union that was adopted and proclaimed on 7 December 2000 in Nice by the European Parliament, the Council and the Commission.

The European Parliament believes that the Pillar should be adopted in 2017 as an agreement between Parliament, the Commission and the European Council, involving the social partners and civil society at the highest level, and that it should contain a clear roadmap for implementation.⁵⁰ It also calls for a social protocol to be introduced in the Treaties when they are revised, in order to strengthen fundamental social rights in relation to economic freedoms.⁵¹

A legally binding Pillar is not included in the current agenda of the European Commission. The more realistic option for a joint proclamation on the EPSR will be pursued and the European Commission will enter into discussions with the European Parliament and the Council to secure broad political support and high-level endorsement of the Pillar.⁵²

b. The nature of the Pillar’s content

The final proposal for the Pillar sets out a number of “key principles and rights” to support fair and well-functioning labour markets and welfare systems. It reaffirms some rights that already form part of the EU *acquis* and adds new principles addressing new challenges arising from societal, technological and economic developments.

The European Commission asserts that what is at issue is not so much the recognition of rights but rather their “actual take-up” due to a lack of awareness, implementation or effective enforcement of existing legislation. The follow-up strategy will therefore focus on strengthening the enforcement of existing rights.⁵³

It may be argued that a number of social rights are missing, and that there is enough room for more ambitious accompanying initiatives. But it is also clear that the Pillar is not intended to solve all the shortcomings and weaknesses of systems for the protection of social rights at national or European level. What it does seek is to deliver “more effective rights to citizens” in some relevant fields.

It is important to note how the Pillar has changed since its preliminary version, which contained “essential principles” selected for both their economic and social importance for the performance of participating Member States. They were grouped into 20 policy areas in

⁵⁰ European Parliament. *Op. cit.*, §47.

⁵¹ European Parliament. *Op. cit.*, §31.

⁵² President Jean-Claude Juncker has said that he “would like to see the Pillar endorsed at the highest political level before the end of this year.” See European Commission. Press release. Brussels, 26 April 2017, IP/17/1007.

⁵³ European Commission. *Op. cit.*, COM(2017) 250 final, p. 7.

three broad chapters: 1) Equal opportunities and access to the labour market, 2) Fair working conditions and 3) Adequate and sustainable social protection. Each policy area referred to any corresponding articles in the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union (CFREU).

The wording of the first outline of the Pillar seems to differ from the previous Commission reference to a list of “social rights” based on various national, EU and international legal instruments, in particular ILO conventions.⁵⁴

It may be assumed that a pillar of “social rights” would require a rights-based approach. The aim is not to replace existing EU instruments for the protection of social rights but to identify rights that require further EU action via secondary legislation or political means.⁵⁵ Following the public consultation, the Pillar has now adopted this approach where relevant, reflecting the title and genuine objective of the initiative.

c. Foundations

The European Commission stresses that the Pillar builds on the strong body of law which exists at EU and international level as well as on existing best practices across Europe. The 2017 Communication refers to the values enshrined in the 1957 Rome Treaties and to the work of international organisations such as the United Nations, the International Labour Organisation and the Council of Europe. In particular, the Pillar draws on the 1961 European Social Charter, the 1996 Revised European Social Charter, the 1989 Community Charter of the Fundamental Social Rights of Workers and the European Code of Social Security of the Council of Europe. The EU “social acquis” developed over the last 30 years, the Charter of Fundamental Rights of the EU, new legislation and the case law of the Court of Justice of the EU are also part of the Pillar’s foundations. Finally, it takes into consideration the UN Sustainable Development Goals for 2030.

The final version of the Pillar also takes account of political considerations and legal or financial limitations. In many areas, such as labour law, the question of a minimum wage, education, healthcare and the organisation of social protection systems, EU Member States – and often the social partners – have primary or exclusive competences. The areas covered by the EPSR also generate a financial burden for the Member States. Implementing the principles and rights at EU and Member State level therefore means observing their respective competences and complying with the principles of subsidiarity and proportionality.⁵⁶

⁵⁴ See footnote 28 above.

⁵⁵ In particular, LÖRCHER, Klaus, SCHÖMANN, Isabelle. Op. cit., pp. 31 ff.

⁵⁶ European Commission. Op. cit., COM(2017) 250 final, p. 6.

d. Legal and political scope

Like the first outline of the Pillar, the final proposal does not contain a legally binding framework. The principles and rights set by the Pillar are not directly enforceable and require dedicated action and/or separate legislation. However, the Pillar is intended to be a useful tool for the effective implementation of these principles and rights. Moreover, the Pillar is also significant in terms of its political scope; the issues it raises are of interest to a wide range of citizens, public authorities and social partners at all levels.⁵⁷

e. A dynamic instrument

The European Commission has devised the Pillar as a dynamic instrument that provides sufficient flexibility and room for manoeuvre for a number of players at all levels to act according to their competences and to update their instruments in the light of a variety of situations and socio-economic environments.⁵⁸

Finally, the Commission has underlined that the Pillar is part of a gradual, long-term process.⁵⁹ The blueprint of the European Social Pillar is thus intended to evolve over time. This evolving approach reflects the rationale of an instrument which takes account of the changing realities in society and the world of work. In this regard, the follow-up of the Pillar is essential.

VI. The content of the EPSR

The final proposal for the EPSR sets out key principles and rights which cover the areas of employment, social protection, social inclusion, education and equal opportunities.

Unlike the first outline, these principles and rights are preceded by a preamble which sets out the legal basis of the Pillar and particularly refers to the provisions of the TEU, the TFEU and the Charter of Fundamental Rights of the EU, while also clarifying the rationale, aim and scope of the Pillar.

The principles and rights are organised into three chapters: 1) Equal opportunities and access to the labour market, 2) Fair working conditions and 3) Social protection and inclusion.⁶⁰

⁵⁷ European Commission. Op. cit., COM(2017) 250 final, p. 7.

⁵⁸ European Commission. Ibid.

⁵⁹ As the Special Adviser to European Commission President for the European Pillar of Social Rights, Allan Larsson, states, the Pillar “is not going to be a quick fix: it should go deep and have an impact over a long period of time”. See European Commission. The future European Social Pillar in context. In: *Social Agenda*. No. 46, December 2016, p. 11.

⁶⁰ Compared to the first outline, only the wording of third chapter has been adapted and “social inclusion” has been added.

The Pillar reaffirms a number of rights that already exist in the EU and in the international legal acquis. The aim is to render them more visible, more understandable and more explicit. At the same time, it complements the acquis with new elements which take account of new realities. Compared to the first outline of the Pillar, some of the 20 policy areas have been changed and reorganised. The wording has been updated to express the rights more clearly. The structure of the final version of the EPSR is as follows:

Chapter I – Equal opportunities and access to the labour market

1. Education, training and life-long learning
2. Gender equality
3. Equal opportunities
4. Active support to employment

Chapter II – Fair working conditions

5. Secure and adaptable employment
6. Wages
7. Information about employment conditions and protection in case of dismissals
8. Social dialogue and involvement of workers
9. Work-life balance
10. Healthy, safe and well-adapted work environment and data protection

Chapter III – Social protection and inclusion

11. Childcare and support to children
12. Social protection
13. Unemployment benefits
14. Minimum income
15. Old-age income and pensions
16. Health care
17. Inclusion of people with disabilities
18. Long-term care
19. Housing and assistance for the homeless
20. Access to essential services

The 2017 Commission Communication is accompanied by a Commission Staff Working Document which provides further details about the various principles and rights. Each principle or right is presented in three main sections: an outline of the existing EU social acquis, an explanation of the scope and changes introduced by the Pillar, and suggestions for effective implementation by Member States and the social partners, as well as recent and ongoing initiatives at EU level.⁶¹

⁶¹ European Commission. Op. cit., SWD(2017) 201 final.

These explicit references to the legal foundations of the Pillar respond to the criticism levelled at its “scant respect for international and European treaties”⁶² and the absence of overall vision and overarching values and principles in the first outline of the Pillar.⁶³

The presentation of the EU social acquis is unfortunately not exhaustive. One missing element is the existing interconnection of international, European and national legal sources of fundamental social rights. This approach could enrich the pan-European dimension of the Pillar and upward convergence of social standards.

VII. The implementation and follow-up of the EPSR

The implementation of the EPSR will be primarily the responsibility of national governments, of public authorities and of social partners at all levels.

At EU level, the European Commission proposes recourse to various instruments: EU Law, social dialogue, policy guidance and recommendation, monitoring progress and financial support and.

a. EU Law

Following the Commission’s proposal, the EPSR is intended to be solemnly proclaimed jointly by the European Parliament, the Council and the Commission.

Given the legal nature of the Pillar, further legislative initiatives will be necessary in order to ensure the enforcement of a number of principles and rights. In this way, the launch of the Pillar on 26 April 2017 has been accompanied by a first set of legislative and non-legislative initiatives adopted by the European Commission with regard to work-life balance, the information of workers, access to social protection and working time.⁶⁴

Finally, an important focus of the follow-up of the Pillar is on the effective implementation of existing legislation. The European Commission envisages a wide range of measures such as support for a higher awareness of rights, enforcement mechanisms or enhanced interpretative guidance. An example of this guidance is the interpretative Communication on the Working Time Directive also published on 26 April 2017.⁶⁵ Further EU legislative or non-legislative initiatives may follow in the future annual Commission Work Programmes.

⁶² See LÖRCHER, Klaus, SCHÖMANN, Isabelle. Op. cit., p. 24. In the 2016 Commission Communication, the references to social rights and principles as laid down in international law are presented as possible “sources of inspiration”.

⁶³ See for instance Frazer, H. and Marlier, E. (eds.). *Towards a European Pillar of Effective Social Rights. Submission to the European Commission, European Social Policy Network (ESPN)*. Brussels: ESPN, 2016, p. 11.

⁶⁴ See footnotes 9-12 above.

⁶⁵ See footnote 13 above.

b. Social dialogue

The involvement of the social partners is essential to the delivery of social rights. Article 151 TFEU enshrines the promotion of dialogue between management and labour as a common objective of the Union and its Member States. The EU recognises and promotes the role of the social partners (Article 152 TFEU). At EU level, social partners are to be consulted in the policy domains covered by Article 153 TFEU (Article 154 TFEU), and may request implementation of their agreements at EU level (Article 155 TFEU). Social partners may support the implementation of the Pillar via collective bargaining at national level and/or by collecting and exchanging good practices across the EU Member States. An example of the social partners' contribution is the Framework Agreement on active ageing and an intergenerational approach signed by European social partners on 8 March 2017.⁶⁶

c. Policy guidance and recommendation, monitoring progress

Social issues have been mainstreamed and reinforced in the European Semester for economic policy coordination over the last years. The European Commission stresses on the fact that policy guidance and recommendations through the European Semester will reflect and promote the principles enshrined in the Pillar by assessing, monitoring and comparing progress in their implementation. Benchmarking and exchange of best practices will be conducted for a number of areas, such as employment protection legislation, unemployment benefits, minimum wages, minimum income and skills.⁶⁷

Moreover, the European Commission launched on 26 April 2017, also for the first time, a social scoreboard which will serve as a reference framework to monitor 'societal progress'. It consists of a limited number of existing relevant indicators (based on quantitative data collected by Eurostat and the OECD) to assess employment and social trends.⁶⁸ The indicators proposed covers 12 areas associated with three chapters in close connection with the chapters of the Pillar.⁶⁹

The scoreboard will be discussed with the relevant Council committees, with a view to its incorporation in the annual Joint Employment Report published each autumn in the

⁶⁶ BusinessEurope, UEAPME, CEEP and the ETUC (and the liaison committee EUROCADRES/CEC).

⁶⁷ European Commission. Op. cit., COM(2017) 250 final, p. 9.

⁶⁸ See footnote 7 above.

⁶⁹ The indicators are the following: early leavers from education and training, gender employment gap, income inequality, at-risk-of poverty or social exclusion rate, young people neither in employment nor in education and training - age group 15-24, employment rate, unemployment rate, activation measures – labour market policies participants per 100 persons wanting to work, adjusted gross disposable income of households in real terms, compensation of employees per hour worked, impact of social transfers (other than pensions) on poverty reduction, children aged less than 3 years in formal childcare, self-reported unmet need for medical care, individuals' level of digital skills.

framework of the European Semester. It could also become a reference point for the work done on the social dimension of the euro area and of the EU.⁷⁰

The Pillar is part of the Commission's priority for the completion of EMU, in line with the Five Presidents' Report. In particular, the Pillar should serve to re-start the process of convergence within EMU and some of the principles and rights could act as "guidance towards more binding standards for the euro area".⁷¹

d. Financial support

EU funds, in particular the European Social Fund, will continue to support the implementation of the EPSR, as well as the European Structural and Investment Funds, as well as other key financial programmes such as the Youth Employment Initiative, Erasmus+, the European Globalisation Adjustment Fund and the Fund for European Aid to the Most Deprived. The Pillar will also be a reference for the post-2020 EU financial programming period.

It is important to note that the implementation of the Pillar will take account of the availability of resources and of the limits of sound budgetary management and Treaty obligations governing public finances.

Conclusion

The EPSR is a milestone in the process of building a deeper, fairer European Union. The devastating consequences of the recent economic, financial and social crisis in EU Member States, especially in some euro area countries, have meant that a meaningful response and action are required at all levels. There is an economic, social and political urgency to make this Pillar a success.⁷²

Remaining true to his political course, President Juncker has demonstrated his determination in this area, leaving his own mark on the action taken by this European Commission to achieve a more social Europe. The Commission's Social Package, proposed in April 2016, is the result of a concerted effort to strengthen the social dimension of EMU and of the EU as a whole.

The first benefit of the EPSR is the very fact that it exists. Positive momentum has been generated around the initiative, with many relevant stakeholders expressing their support. The

⁷⁰ The Social Scoreboard 2017 contains an overview of EU Member States' performance in the social field. See European Commission. *Social Scoreboard 2017. Headlines indicators: descriptions and highlights*. Luxembourg: Publications Office of the European Union, 2017, 32 p.

⁷¹ European Commission. Op. cit., COM(2017) 250 final, pp. 9-10.

⁷² As emphasised by Commissioner Thyssen during the debate on the decision adopted on the European Pillar of Social Rights and work-life balance initiative, held in the European Parliament on 26 April 2017.

establishment of the Pillar thus raises high expectations. Its title and goals are ambitious and its effective implementation is closely linked to future joint efforts at various levels.

The EPSR is not a legally binding instrument for the protection of social rights. It is not comprehensive, its wording leaves room for improvement and there is potential for progress towards a triple-A social Europe. Once it has been endorsed by an “interinstitutional proclamation” by the European Parliament, the Council and the Commission, its effective implementation by the stakeholders at all levels becomes essential, otherwise it would serve merely as a political, declarative text. The Pillar can become a useful tool that, as well as raising awareness of the need to take into account social principles and rights, also complements the EU social acquis and other instruments for the protection of fundamental social rights through its follow-up strategy.

This initiative is timely at such a crucial moment for the future of the Europe of 27. The Rome Declaration of 25 March 2017 includes a commitment to a social Europe, based on sustainable growth which promotes economic and social progress, as well as cohesion and convergence. The first reflection paper launched by the European Commission is purposefully on the social dimension of Europe. The upcoming reflection documents on harnessing globalisation, on the deepening of EMU and on the future of EU finances will also address relevant issues for the future social Europe. The Social Summit for Fair Jobs and Growth will be held in Gothenburg in November 2017.

An evolving and strong European Pillar of Social Rights embedded in such a broad context would present real added value for European integration as a whole.