The European Pillar of Social Rights

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The European Pillar of Social Rights has been the major topic of the last 2 years in the field of EU labour and social law. It is part of the efforts to deliver on President Jean-Claude Juncker's promise to earn a social “triple A” rating for the EU.¹ With this highly awaited initiative, social rights have come back to the forefront of the EU agenda.

1 Background and content

On 9 September 2015 in his State of the European Union speech delivered before the European Parliament, President Juncker first announced the establishment of a European Pillar of Social Rights:

“We have to step up the work for a fair and truly pan-European labour market. 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 (...)

¹ Speech of President-elect Jean-Claude Juncker on 22 October 2014 “Time for Action”—Statement in the European Parliament plenary session ahead of the vote on the College.

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*Over the last three years, almost 8 million more people found a job, but unemployment is still too high. Social injustice remains: this is why we must quickly work on the European Pillar of Social Rights. Europe is not social enough.”*²

After presenting a first outline³ in March 2016, the European Commission launched a broad public consultation to gather feedback on both the content and the role of the Pillar, which was concluded by a high-level conference in January 2017.

The European Pillar of Social Rights was finally delivered on 26 April 2017. The Pillar consists of several components. More concretely, the elements of the social package of 26 April 2017 are:

- The Pillar
 - Chapeau communication⁴
 - Commission Recommendation with 20 principles⁵
 - Identical draft for a Joint Proclamation of Parliament, Council and Commission⁶
 - SWD: short fiche on each principle⁷
 - SWD: a scoreboard showing progress on employment and social indicators⁸
 - SWD: a consultation report⁹
- Accompanying initiatives on
 - Work-life balance¹⁰
 - Access to Social Protection¹¹
 - Written Statement Directive¹²
 - Working Time Directive¹³
- Other elements
 - Investing in Children Recommendation: SWD on implementation¹⁴

²European 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, 9.9.2015.

³European 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.

⁴European Commission, Establishing a European Pillar of Social Rights, 26.4.2017, COM(2017) 250 final.

⁵Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights, C(2017) 2600 final.

⁶Proposal for an Interinstitutional Proclamation of 26 April 2017 on the European Pillar of Social Rights, COM(2017) 251 final.

⁷SWD(2017) 201 final of 26 April 2017.

⁸SWD(2017) 200 final of 26 April 2017.

⁹SWD(2017) 206 of 26 April 2017.

¹⁰Proposal for a Directive on Work-Life Balance for Parents and Carers, COM(2017) 253.

¹¹Consultation document of 26 April 2017, C(2017) 2610 final.

¹²Consultation document of 26 April 2017, C(2017) 2611 final.

¹³Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time [2017] OJ C 165/1.

¹⁴Commission Staff Working Document, Taking stock of the 2013 Recommendation on “Investing in children: breaking the cycle of disadvantage”, SWD(2017) 258 final.

- Active Inclusion Recommendation: SWD on implementation¹⁵
- Reflection paper on developing the social dimension of Europe

The most important and controversial part of the package is the Pillar itself, that is, the 20 principles and rights. The Pillar sets out a number of key principles and rights to support fair and well-functioning labour markets and welfare systems as well as to deliver new and more effective rights for citizens. These principles and rights set out an ambitious agenda for better-performing economies and more equitable and resilient societies. According to the European Commission, its central objective is to be a reference framework to drive the process of reforms at national level. More specifically, it should serve as a compass for the renewed process of both economic and social upward convergence, towards better living and working conditions.

These 20 principles are grouped under three broad themes: Chapter 1 “*Equal opportunities and access to the labour market*” dealing with education, training and lifelong learning, gender equality, equal opportunities, active support to employment. Chapter 2 “*Fair working conditions*” focuses on secure and adaptable employment, wages, information about employment conditions and protection in case of dismissals, social dialogue and workers’ involvement, work-life balance and healthy, safe and well-adapted work environment and data protection. Chapter 3 “*Social protection and inclusion*” deals with children and support to children, social protection, unemployment benefits, minimum income, old-age income and pensions, healthcare, inclusion of people with disabilities, long-term care, housing and assistance to the homeless, and access to essential services.

The Pillar has been conceived for the Member States of the euro area but is applicable to all Member States that wish to be part of it. This initial restricted scope is based on the specific needs and challenges confronting the euro area but has been criticised as risking to aggravate social inequalities since social issues involve all EU Member States.

The Pillar reaffirms rights that are already present in the EU and international legal acquis¹⁶ and complements them, rendering the principles and rights contained in binding provisions of EU law more visible, more understandable and more explicit. Moreover, for some particular areas, the Pillar adds new elements to the existing acquis, addressing emerging social challenges and the changing world of work in light of, notably, emerging types of employment deriving from new technologies and the digital revolution.

The Pillar has been presented in two ways: a Commission Recommendation which took effect on the date of publication, and also as a proposal for an interinstitutional Proclamation with the European Parliament and the Council. The Commission expects this joint proclamation to be adopted in Gothenburg on 17 November 2017

¹⁵Commission 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.

¹⁶In particular, the 1989 Community Charter of the Fundamental Social Rights of Workers, the European Social Charter of 1961, the Revised European Social Charter of 1996 and the European Code of Social Security of the Council of Europe, the relevant International Labour Organization (ILO) conventions, recommendations and related protocols, and the United Nations Convention on the Rights of Persons with Disabilities.

during the EU Social Summit. It should be noted that both forms are however non-binding. The legal form of the Pillar is therefore considered by some as its primary weakness.

Given the legal nature of the Pillar, the question remains as to how exactly the Pillar will be implemented. As explained by the Commission, these principles and rights are not directly enforceable and will require a translation into dedicated action and/or separate pieces of legislation, at the appropriate level. Member States and the social partners have the primary responsibility for making social principles and rights operational on the ground. The Commission Staff Working Document SWD(2017)201 also addresses how each principle or right could be effectively implemented. Additionally, it outlines how EU actions would contribute to implementing the Pillar, proposing recourse to various instruments: EU Law, social dialogue, policy guidance and recommendation, monitoring progress and financial support.

A social scoreboard is also established to track trends and performances across EU countries in 12 areas and to assess progress towards a social “triple A” for Europe. This analysis will also serve to inform policy guidance in the context of the European Semester.

2 Accompanying initiatives

In addition to proposing the European Pillar of Social Rights, a number of legislative and non-legislative initiatives related to work-life balance, the information of workers, access to social protection and working time were also put forward. These proposals, once adopted, should update and complement the EU acquis. These initiatives illustrate both the nature of the issues covered by the Pillar as well as the way in which its principles and rights can be implemented.

- A Directive on *Work-Life Balance for Parents and Carers* has been proposed. It follows the withdrawal of the European Commission’s 2008 proposal to amend Maternity Leave Directive. It aims at establishing a more equitable use of work-life balance arrangements between women and men. It includes higher minimum standards for parental leave (the existing right to 4 months’ parental leave can be taken for children up to 12 years of age and is non-transferable) and paternity leave (at least 10 working days off around the birth of a child) and a new right to carer’s leave (5 days per year) in case of sickness of a direct relative. All of these family related leave arrangements will be compensated at least at the level of sick pay and parents and carers will have the right to request flexible working arrangements.
- A consultation of social partners on a proposed revision and modernisation of the *Written Statement Directive* was also launched. Following an evaluation¹⁷ of the Directive, the Commission concluded that the Directive is still relevant but needs to be adjusted in the light of new realities and practices on the labour markets—it became apparent for instance that many workers in the EU still do not receive a written confirmation of their working conditions or in a timely manner, especially

¹⁷SWD(2017) 205 final, Evaluation of the ‘Written Statement Directive’ (Directive 91/533/EEC).

when it comes to casual workers (for instance those on zero-hour contracts) or intermittent workers. Five areas for potential action are identified in the consultation document: (1) the scope of application of the Directive could be clarified or broadened; (2) the ‘information package’ could be more comprehensive; (3) the means of redress could be rethought (claims for damages not really effective); (4) the two-month deadline could be shortened and (5) minimum floors of workers’ rights could be defined.

- A second consultation of social partners was launched on *access to social protection*. Rights and obligations associated to social protection have been developed insufficiently developed for people in self-employment and non-standard employment, such as gig-economy workers. The aim is to ensure that everyone who works has access to social protection coverage and employment services on the basis of their contributions.
- Finally, the European Commission also released an Interpretative Communication on the *Working Time Directive*. It aims to increase legal certainty and clarity to national authorities, through comprehensive legal guidance on the Directive and help better apply the Directive’s provisions. The Communication is non-binding and does not create new EU law. It summarises and brings into a single document the case law of the European Court of Justice (total of 67 cases). In this way, it grants all Member States and stakeholders with the same information on the Commission’s views on a limited number of unresolved issues.

3 Conclusion

While it is certainly good news that the European Commission makes efforts towards building a fairer Europe and strengthening its social dimension, it remains to be seen what the real effect will be. This is so, especially in view of the Pillar’s legal shortcomings, such as the fact that it merely repeats already existing EU social “acquis” and its non-binding legal nature.

The future of the Pillar will also very much depend on the wider discussions on the future of Europe and on which scenario of those proposed in President Juncker’s White Paper on the Future of Europe¹⁸ is agreed.

¹⁸White Paper on the Future of Europe. Reflections and scenarios for the EU27 by 2025, 1.3.2017, COM 2017(2025) final.