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## **The European Pillar of Social Rights and the Quest for EU Social Sustainability**

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This article sets out to review the policies introduced by the European Pillar of Social Rights and its accompanying initiatives in light of their contribution to EU social sustainability, particularly in comparison to their predecessors. The balance between economic and social policies at EU level has long been tipped in favour of the economic, leaving an atrophic social side a servant of market-based objectives. Social sustainability appeared absent from the European vocabulary, at least in substantive terms, something exacerbated by the effects of the 2008 crisis. The criticisms that ensued led to a resurgence of interest in establishing a socially sustainable Union, crystallised in the Pillar and its accompanying initiatives. Despite their potential, further commitment by the Member States as well as more concrete and legally-binding proposals are necessary, for without them this social resurgence might once again surrender to economic hegemony.

Keywords: social sustainability, European Pillar of Social Rights, Social Europe, European Union, social integration

### **Introduction**

Sustainability as a term is and has been en vogue in policy-drafting and making roughly during the last three decades, ever since the 1987 Report of the World Commission on Environment and Development entitled ‘Our Common Future’ (WCED, 1987). Sustainability, or sustainable development, were thus inextricably linked to environmental issues and concerns, trying to strike a balance between the environment, the economy and society. This article departs from the tight confines of the popular environment-centred theoretical understanding of sustainability, choosing to focus instead on its social side, to analyse it emancipated from environmental considerations. Apart from environmental deterioration, 21st century brought also a decrease in labour and welfare standards worldwide, through the ‘race to the bottom’ mantra, which was

only exacerbated during the global economic and financial crisis (Singh and Zammit, 2004). The crisis escalated the issue from one largely affecting the development of comprehensive protection mechanisms in the Global South to a universal one, dictating labour market deregulation and social policy dilution in countries with traditionally high levels of welfare provision and employment protection (Heyes and Lewis, 2013).

The European Union (EU) did not weather the crisis unscathed. To the contrary it represents a textbook example of constant deregulation and welfare retrenchment in many of its crisis-hit Member States, up until recently known for their models of social protection. This led to allegations that the so-called European Social Model is dead, or at least burdensome for economic competitiveness in the current globalised setting (Vaughan-Whitehead, 2015). For economists, the EU Member States were, simply put, not economically sustainable enough, and dismantling the social *acquis* could boost economic activity and ease overstretched public finances (Clauwaert and Schömann, 2012). Social protection was not worthy of conservation, being the easy target to succumb when confronted with economic pressure. Yet this position should not come as a surprise. The balance between economic and social policies at EU level has long been skewed in favour of the former, with the latter adopted predominantly if they were perceived as instrumental in advancing the internal market.

The development of social laws and policies at EU level, formally known as the social *acquis*, was incremental to say the least, and even normatively significant reforms, such as the introduction of the social market economy paradigm with the Lisbon Treaty, were largely side-lined. Creating a sustainable Social Europe appeared for the most part absent from the vocabulary of the key stakeholders, at least in substantive terms. For example, since the mid-1990s, instead of entrenching social sustainability through law

and policy-making, more subdued and rather political methods were promoted, such as the Open Method of Coordination (OMC), which to date has produced questionable results (de la Porte, 2002). Unlike well-trodden areas of EU policy-making, environmental policy included, social policy as a whole relied for the most part on setting minimum standards, something that hinders upwards convergence at EU level (Scharpf, 2002).

EU social sustainability, has thus, been underdeveloped compared to both its environmental and economic counterparts. This ‘welfare neglect’ was further exacerbated through the response of the EU institutions to the effects of the 2008 crisis in some of the Member States, as manifested in the reforms included in the bailout packages and which had dubious results (Hemerijk, 2016). The criticisms that ensued led to a resurgence of interest in establishing a socially sustainable Union, crystallised in the newly-introduced European Pillar of Social Rights and its accompanying initiatives. To the extent that these promote hard law measures in tandem with soft-law mechanisms, this signals a departure from the almost exclusively soft-law approach of the OMC. The Pillar pushes forward a more pronounced conceptualisation of social provision at EU level to render welfare an equal counterpart to the Union’s strong economic component. Can social sustainability finally feature at the forefront of the European agenda? Although the Pillar certainly represents a laudable development, the danger of relapsing is still lurking.

This article sets out to review the policies introduced by the Pillar and its accompanying measures in light of their contribution to EU social policy and to the establishment of a sustainable Social Europe, particularly in comparison to their predecessors. It begins by mapping out the exact definition of sustainability used for the purposes of the analysis, which departs from the classic conceptions of it as part of the

environmental-centred sustainable development. A short overview of the development of Social Europe then follows, showing the haphazard attempts for advancing the social dimension of the EU, and ending with the ongoing post-crisis social resurgence. Then, the Pillar and its accompanying measures are assessed vis-à-vis their potency to achieve a socially sustainable EU. The article concludes by arguing that more concrete and legally-binding provisions are necessary, for without them this social resurgence might again surrender to economic hegemony, and any hopes for social sustainability will be shattered in the wake of a revived market subordination.

### **Social Sustainability at EU Level: A Definition**

Whilst social considerations were taken into account by the Brundtland Commission when drafting the 1987 Report, their role was only incremental and largely perceived as a precondition for achieving a sustainable ecosystem. The primacy of the environmental side of sustainable development is the hallmark of the one-pillar model of sustainable development where all other components are regulated in order to achieve optimal ecological effects (Littig and Grießler, 2005). Social sustainability thus turns into a prompter for the starring environmental pillar. Subsequent conferences, starting with the 1992 Rio Earth Summit, adopted what was coined as the three-pillar model, which accorded equal importance to environmental, economic and social development. Or so was the intention on paper. The strong environmental and ecological heritage of the concept of sustainable development forged a quasi-constitutionalised environmental pillar that reigned above the other two (Pepper, 1996). Moreover, between the remaining two, the economic pillar almost de facto overtook the social one, given the largely market-oriented, neoliberal and capitalistic context in which the world economy operates. Social

sustainability became a laggard. Not only that, it also became contested as a concept of scholarly interest, lacking even a commonly agreed core (Dempsey et al, 2011).

The work of Littig and Griebler represents the most comprehensive attempt to coin the key conceptual characteristics of social sustainability to date (2005). The authors acknowledge the absence of a theoretical consensus on the concept and, drawing on the sustainable development literature, try to decipher common elements, which they then combine in their analysis in order to conceptualise social sustainability. For them, social sustainability is more than a minimum floor of social rights trying to satisfy basic human needs. It strives to satisfy those, but also contains an aspirational side, and to some extent idealistic, aiming for social justice and social coherence. All within the context of work, which plays a defining role in achieving those objectives. More specifically, in a European setting, they define social sustainability as efforts to devise, implement and provide ‘effective and coordinated measures to promote and ensure employment for all citizens ... [and] ... a sensible reduction of working hours – and adequate social security to make up for it – which will allow a fairer distribution of (paid and unpaid) work among the genders’ (Ibid, 75-76). This involves state-funded welfare provision, and protective labour market policies.

Given the nature of social sustainability as an outlier, lacking a widely-accepted definition and being instead a rather catch-all concept, then specifying its actual meaning in the context of this paper is important. Different disciplines adopt different perspectives on what social sustainability might mean, also depending on the exact sub-field that is examined (Weingaertner and Moberg, 2014). Contextualising the framework and the applicable narratives, sculpting a *sui generis* and independent definition of the concept, renders the definition provided by Littig and Griebler relevant to the present analysis. For

the purposes of this article the quest for social sustainability in the EU does not involve a box ticking exercise on the Millennium Development Goals, nor a hysteria with keeping public finances in order. It also does not refer to the social-environmental relationship, scholars of urban and environmental science focus on (Boström, 2012). At EU-level with its long-standing market-oriented tradition simply having a discernibly sustainable social side is crucial. If nothing else, to come a step closer to the realisation of the more holistic visions of the Union as a supranational entity.

Social sustainability in the peculiar European welfare space has less to do with the financing of welfare provision and more with keeping the social acquis going, not through a lifeline but through growth, in order to become developed enough to withstand crises-induced shocks and neoliberalism-fuelled assaults. It is more fruitful to discuss this aspect of EU social sustainability, involving, as Littig and Griebler noted, re-distributive policies and good employment conditions, as the economic and social side of EU policy-making are not in parity at the moment. It is, thus, pivotal to focus on the policies in place that can promote, and most importantly sustain, the social dimension of the EU, from being subsumed by or becoming subordinated to the internal market and the economic pillar's imperatives. Consequently, for the purposes of this article, social sustainability at EU level is defined as the set of policies, rules and principles laid down in the EU legal order, and which aim to reinforce the social dimension of the EU as a long-term solution, ring-fencing it from any relapse into a position of hierarchical subordination to the markets, so that Social Europe can unequivocally be perceived an equal counterpart to the economic constitution.

Such conceptualisation of social sustainability acts neither as a heuristic nor as a sticking plaster. It sets a benchmark for evaluating the success of any policy initiative in

sustainably serving social objectives. By concretising the concept's elements, what needs to be done is made clear. The total market thinking, in its heyday following the entrenchment of austerity policies in the course of the crisis, needs to give way to the entrenchment of long undermined genuine social laws, policies and rights, not ersatz of those, mere token gestures with no teeth like what was happening in the past (Christodoulidis, 2017). This way the social could be constitutionalised as an equal counterpart to the economic. In turn, this will inevitably necessitate shifts in the current architecture of the European project, so as to balance what have now been designated as antagonistic interests. Whilst social sustainability is seldom used when talking about the inner workings of the EU, realising its merits may liberate the European Social Model from its perpetual failings. In its true form, it inherently encompasses a call for reorienting the established constitutional dynamics within the Union.

Needless to say, while the adopted definition can act as a useful point of reference in the context of EU social integration, or even in that of 'the EU's internal promotion of social development' more broadly (Novitz, 2015: 243), it is by no means panacea. Adopting or worse yet, imposing 'a singular, all-encompassing, definition [...] denies much of the concept's complexity' (Vallance et al, 2011: 346). According to Vallance et al. the complexities embedded under the umbrella of social sustainability are in need of better appreciation, achieved by putting forward a more pluralistic approach towards the term (ibid). A pluralistic approach in light of the lacking social convergence at EU level, would better reflect the diverse welfare regimes among the Member States, laying the groundwork for more and better EU social policies in the future (de la Porte, 2002). Strengthening the core welfare and employment-friendly components of social sustainability sits at the heart of this discourse. Giving social sustainability the normative

and policy push it deserves will cement its position as *aequalis inter partes* and might help to finally bring it to the forefront of discussion and debate. A debate not staged around social sustainability's semantics, but emphasising how the other pillars of sustainable development can be re-arranged in order to truly complement and stimulate each other. A final note, the terms social sustainability, social dimension of the EU and Social Europe are used interchangeably herein.

### **Attempting Social Sustainability at EU Level**

As noted above, this article focuses on the internal aspects of sustainable development at EU level, on how the Union's social sustainability objectives could go beyond an agenda dominated by economic interests, looking at improving welfare and work conditions with an eye on the future (Novitz, 2010). But before delving into the recent initiatives, it would be beneficial to set out their context first. During the very beginning of the European project, the Paris negotiations in the 1950s envisaged a social dimension of the Union, which nonetheless the Treaty of Rome failed to incorporate, preferring a solely economic route for the then European Economic Community founded on embedded liberalism (Schiek, 2017). Granted a laconic and abstract social provisions chapter was there, but no competences allowing for meaningful EU action in the area came with it. Almost throughout the first two decades of the EU, its social dimension was in hibernation.

Things slowly started to pick up in the 1970s, with the unveiling of the 1974 Social Action Programme and some accompanying policy-making, albeit confined in the areas of workers' health and safety and non-discrimination (Geyer, 2000). The limited extent of the reforms, coupled with unwillingness by certain Member States' governments at that time, namely that of Thatcher in the United Kingdom (UK) in 1979 and, to a lesser extent, of Kohl in Germany in 1982, to push for further social integration led things to a

stalemate which spilled over well into the 1980s, despite the enactment of the Single European Act that brought the expansion of Qualified Majority Voting to the area of health and safety of workers (Brigford and Stirling, 1991; Moravcsik, 1998). To make matters worse, the 1985 internal market programme solidified this pattern of ‘welfare neglect’, with its exclusively economic nature, which, in turn, stirred a lively debate that prompted the Commission to issue a series of White Papers advocating for greater welfare provision (Silvia, 1991).

Efforts culminated in 1989 with the enactment of the Charter of the Fundamental Social Rights of Workers, a halfway-house measure, given its non-binding character due to UK opposition, and, therefore, with limited impact on actually advancing the social acquis (Barnard, 2012). In the meantime, a renewed interest emerged as regard to health and safety of workers, which represented one of the few sectors where concrete measures were adopted at that time (Anderson, 2015). A push for change came with the Treaty of Maastricht in 1992, whereby Member States, with the exception of the UK, wished to constitutionalise the social dimension further. Alas, the lack of unanimity, resulted yet in another soft-law measure annexed to the Maastricht Treaty, the Social Chapter, an umbrella term referring to the Protocol and its accompanying Agreement on Social Policy (Falkner, 1996). These were originally destined to form part of the Treaty itself, but were only embedded therein with the Treaty of Amsterdam in 1997, following the waiver of the UK veto.

The Social Chapter saga notwithstanding, the Maastricht Treaty contributed to the development of a European social core, extending the competences of the EU institutions in the area. It pushed Social Europe into the limelight as a counterweight to the Economic and Monetary Union (EMU), also introduced by the Treaty of Maastricht. The underlying

aim was to avoid an asymmetrical development between the economic and the social (Jepsen and Serrano Pascual, 2005). It laid the seeds of a concrete plan for social sustainability, introducing to the discourse the notion of a European Social Model, which, unlike the ultraliberal American one, ‘represents the idea that European welfare states are legitimately diverse, but that they all aim to uphold high social standards, working conditions and well-being, which should be supported by the EU’ (de la Porte and Heins, 2015: 9). The Model’s somewhat deferential stance to the Member States could be attributed to the association of welfare with national sovereignty, a stance that was bound to create problems in an enlarged, and thus more welfare-diverse EU, with common minima that gradually became eroded, also because of the crisis. Although ideational, the Maastricht plans for a socially sustainable EU did not translate into the corresponding policy change, leaving the attainment of Social Europe a work in progress (Dukes, 2014). Nonetheless, they were a good first step, cementing the need for a strong social dimension in the pertinent debates.

The Treaty of Amsterdam, in addition to incorporating the Social Chapter, also introduced a new section on employment policy and, more importantly for social sustainability, the goal to achieve high employment and social protection levels. In a way, it completed what the Maastricht Treaty started, by bestowing upon social policy ‘distinctive aims, processes, new legal tools and new political actors’ (Szyszczak, 2001: 1128). This was further strengthened only a couple of years later, where the negotiations for the Treaty of Nice introduced a panoply of soft-law initiatives such as the Social Policy Agenda, the Lisbon Strategy and the expansion of the OMC to various social policy areas (Kountouros, 2003). The latter though were more of a half-hearted effort to push for the realisation of social sustainability without impinging much on Member

States' sovereignty, having also half-hearted outcomes as a result (Barnard, 2012). Social Europe was in need of fresh -but also strong- air. The Treaty of Nice also saw the initial proclamation of the Charter of Fundamental Rights, which included social rights therein, albeit without any constitutional power yet.

In between Nice and the next treaty reforms in Lisbon, the next milestone for EU social sustainability after the foundation of the European Social Model came to light: the elusive concept of flexicurity. It represents an amalgam between the contradictory notions of flexibility and security as regards employment relationships, the labour market, and to some extent social security, and was particularly en vogue in the 2000s. It was a sign of a backtracking from efforts to initiate stronger social protection at EU level, calling for sustainability, yet giving rise to questions as to whether that was of social or economic nature (Heyes and Lewis, 2013). Moreover, it is also 'a metonymic shift: from social protection to self-insurance' according to Keune and Serrano (2014: 7). The purpose of flexicurity, thus, appears to be not to balance economic and social development, but to stop any progress on an autonomous social dimension, while prioritising free market demands. Despite hiding behind a questionable -as to its nature- sustainability premise, flexicurity has been criticised as unsustainable following its inability to withstand the effects of the crisis; decent and quality work and social protection, true to the spirit of genuine social sustainability have been proposed as an alternative (Méda, 2014). It is of no surprise then that flexicurity has nowadays been largely cast away from the EU agenda.

While Nice's contribution was insignificant, and flexicurity tried to retract rather than promote social sustainability, the Lisbon Treaty brought important changes that, if exploited, can help establish a truly social Social Europe. The Charter of Fundamental

Rights became binding, gaining the same status as the Treaties, and Article 3(3) TEU replaced ‘open market economy with free competition’ with social market economy ‘aiming at full employment and social progress’ as the new paradigm for the EU (Anderson, 2015). It represents a significant step forward, since, in normative terms, it gives equal footing to economic and social considerations, and can moreover support any substantial social development at EU level. Despite its potential, social market economy has not been capitalised on. Instead the EU institutions used to function as if nothing had changed, promoting a sustainability agenda that served primarily the economic, to some extent the environment, but to no extent the social pillar of sustainable development (Novitz, 2015). Plus ça change, plus c'est la même chose, until the Pillar came along.

### **Towards the European Pillar of Social Rights**

The Lisbon reforms would have gone under the radar, in terms of instigating path-departure towards a stronger social sustainability component for the Union, but for the aftermath of the crisis. The latter shocked sequentially financial and labour markets alike, leaving its mark on the prevailing discourse. Not only that, but the crisis also distanced political leaders from the people, projecting an image of the EU as a neoliberal leviathan, showcasing the need for a re-orientation of the policy debate and the narratives employed therein (Schmidt, 2014). More and more expert voices now side with the people in calling for a balanced approach that brings social considerations on equal footing with economic ones (Deakin, 2012). Most importantly, these voices were no longer marginalised. Their social narratives were gradually held to be credible alternatives that merit to be put on the table when drafting the future direction of the European project. On top of that, the Brexit referendum’s result in June 2016 came as yet another shock to an EU that had not yet recovered from the aftermath of the crisis.

The critique of the crisis and the austerity policies that ensued, the, largely connected to those, disenfranchisement of the European demos, coupled with Brexit, all acted as drivers for redesigning the Union's priorities, for socialising the policy arena aiming at a more socially sustainable EU. This was first reflected in the socialisation of the initially exclusively economic European Semester, in place to coordinate the Member States' economic and financial policies, through its infusion with social objectives, particularly as regards to Country Specific Recommendations (Zeitlin and Vanhercke, 2018). Nonetheless, the latter, much like the OMC, represent a softer side of European integration and policy-making, largely dependent on the Member States' willingness to address those, without any particular carrot or stick in place (Verdun and Zeitlin, 2018). In a Union that is more diverse than ever, it is very hard to find the common ground that existed during the Maastricht era of the European Social Model. Moreover, the intensified free market thinking of the crisis, promoting deregulation and strict fiscal conditionality over 'socialisation', is unlikely to lead to Member States voluntarily espousing such policies, let alone spreading them EU-wide. Consequently, the recommendations would probably fail to generate the required impetus to drive social sustainability forward. At the same time though, they laid the groundwork for what was to come: Juncker vowing for the EU to achieve 'a social triple-A rating: that is just as important as an economic and financial triple-A [one]' (Juncker, 2014).

In April 2017, the publication of the Reflection Paper on the Social Dimension of Europe attempted to answer how the social triple-A could be achieved. The Paper sought to 'galvanise Europe's social spirit' by presenting three options for the future of Social Europe (European Commission, 2017a). These boil down to a negligible social dimension as a corollary of free movement, a multi-speed one based on a common axis of minimum

standards of protection much like what is in place today, or, an enhanced Social Europe with a more sustainable social acquis, although still allowing the Member States and social partners to have a say on the matter (Ibid). The Reflection Paper appears to subtly endorse the last scenario, attributing fewer ‘negatives’ to it compared to the other two; the difficulty in attaining unanimity among the 27 Member States and that some EU citizens may feel distanced by a more centralised decision-making at European level (Ibid). The third scenario is also supported by the Rome Declaration of March 2017, wherein a stronger and more sustainable Social Europe is featured among the key priorities for the EU in the course of the next decade (Council of the European Union, 2017). Together, they contributed to crucial momentum-building so as to push for a serious consideration of the European Pillar of Social Rights and for concrete -if not daring- associated developments.

### **The European Pillar of Social Rights and its Accompanying Initiatives: a Social Renaissance?**

Despite the consultation process for the European Pillar of Social Rights having been launched already in 2016, when a rough outline was presented to the public, the first concrete initiatives together with a more detailed outline were unveiled on the same day as the Reflection Paper on the social dimension of Europe was. This certainly was not coincidental and should be interpreted as a sign of the renewed commitment by the EU institutions, and the Commission in particular, to achieve a socially sustainable EU. The text of the Pillar is essentially a list of 20 rights and principles, revolving around three core strands: equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion. It spans across a range of welfare-related issues, from equality and social inclusion to education, housing and care, with a particular focus on

employment policies, workers' health and safety, social dialogue and social security. It is the most important EU document solely dedicated to such matters since the Agreement on Social Policy, from which it can be distinguished due to the breadth of areas that it covers.

The Pillar is in a way the progeny of the whole social acquis. According to preambles 1 to 6 thereof, the social market economy paradigm, the social policy chapter of the Treaties, certain protective free movement of workers provisions, the Charter, as well as the horizontal clause of Article 9 TFEU calling for high level of employment, education, training and health, adequate social protection, and diminish social exclusion, all set the foundations for the catalogue of rights and principles that are incorporated in the text of the Pillar. It is obvious that the Pillar builds on those, and, moreover, tries to bring them out of the shadows and to shake off the lethargy that had characterised EU social policy-making over the last decade. The way to achieve this is via an increase in the actual take-up of social measures by the Member States, stimulated through an array of legislative and non-legislative measures by a primarily supporting and/or supervisory EU that respects the principle of subsidiarity (European Commission, 2017b). It represents a flexible approach, rooted in soft-law actions for the most part, and monitored by means of a Social Scoreboard.

The high value placed on the Pillar by the EU stakeholders was further manifested by its proclamation soon afterwards, in November 2017 at the Gothenburg Social Summit for fair jobs and growth. The realisation of a stronger Social Europe seems to have been set as high priority. The proclamation also made a small but potentially significant alteration to the scope of the Pillar. While initially its scope was worded as being primarily for the euro area but applicable to the rest of the Member States that wish to opt

in, this emphasis on its discretionary nature for non-eurozone Member States was noticeably played down by preamble 13 that now notes the relevance of the Pillar for the Eurozone, but moreover states that it is also addressed to all Member States. Considering the generally soft-law approach of the Pillar as a whole and the fact that there are no specific measures applicable solely to the Eurozone, accentuating the distinction between members and non-members of the euro area was superfluous, and therefore the amended wording can only be welcomed. For a genuine social sustainability at EU level ought to be sought beyond the confines of the EMU.

The unveiling of the Pillar was accompanied by a proposal for a new Directive on work-life balance for parents and carers repealing Council Directive 2010/18/EU (European Commission, 2017c) and an interpretative communication, summing up the Court of Justice's case-law and best practice, on the implementation of the Working Time Directive 2003/88/EC (European Commission, 2017d). Meanwhile, on the same day, it was announced that the consultation process was launched with an aim to revise the Written Statement Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. The proposal seeks to address the challenges posed to people in all forms of employment, and not just workers, when trying to access social protection. All in all, it was as if the European Commission wanted to demonstrate that its commitment to the social dimension of the EU is not just words reflected in principles like those spotted in the Pillar, but actions, tangible steps towards the realisation of the social promise undertaken by Juncker's speech back in 2014.

The proposal for the work-life balance Directive, which is to repeal the one on parental leave, aims to extend welfare policies on bridging work and family commitments

to carers, enhance gender equality and employment opportunities for women, and lead to more men taking advantage of parental leave or other flexible working arrangements (European Commission, 2017e). To achieve that, the proposed provisions include a guaranteed level of pay for those taking parental leave, an independent right to paternity leave and carer's leave of 10 and 5 days a year respectively, and a more thorough portfolio of various flexible working arrangements. These reforms were not embraced by the social partners representing the employers, as some of them, BusinessEurope and UEAPME, did not see the need for new laws in the area. That is why instead of the common -in EU social policy-making- method of Framework Agreement, the Commission here exercised its power to initiate legislation. Tackling rising concerns about work-life balance, is a timely issue, that was seen as an area of priority.

Next in line of reforms were the issues discussed in the consultation processes of April 2017, namely adequate protection for workers in all forms of employment and the revision of the Written Statement Directive (91/533/EC). The consultation's outcomes were combined, and a proposal for a new Directive on transparent and predictable working conditions was introduced in December 2017, again using the Commission's legislative initiative, due to the lack of agreement between the social partners to negotiate a Framework Agreement (European Commission, 2017f). The Directive is to tackle another contemporary challenge, extending social protection to people in unconventional forms of work, and pushing for upwards convergence on the matter through the introduction in Article 2 of an EU-wide definition of worker, on the basis of the Court's case-law. Not only that, but new minimum requirements as regards to working conditions are laid down in Chapter III of the proposed Directive, together with a more sophisticated set of sanctioning and enforcement mechanisms. If materialised, this Directive seems a

serious step up from its predecessor, whose character was rather formalistic for the most part, without much of a tangible impact on workers' protection, particularly for those on non-standardised employment contracts (Clark and Hall, 1992).

2018 saw a follow-up to the Pillar, with a new Social Fairness Package revealed by the Commission. Its centrepiece is the European Labour Authority, that aims to be a first port of call for all sides involved in cross-border employment, and to monitor the operations of labour market mobility at EU level (European Commission, 2018a). This is to be followed by a proposal for a European Social Security Number, which will further strengthen the concept and identity of a socially caring and sustainable EU. An evaluation of the Directives embedding the Framework Agreements on fixed and part-time work by the Commission's Regulatory Fitness and Performance programme (REFIT), aiming at their simplification and improvement, was also underway at the time of writing (European Commission, 2018b). The Social Fairness Package also includes a proposal for a Council Recommendation on accessing social protection for workers and the self-employed, which aims to complement the 2017 proposal for a Directive on transparent and predictable working conditions, by putting forward recommendations to Member States for action on issues affecting the access to welfare provision in various forms, namely social security, leave, and health and safety, of those not falling under the definition of worker (European Commission 2018c).

### **Reflections: A Renaissance or a Revolution?**

Following the presentation of the developments, it is undeniable that notable efforts have taken place in the wake of the crisis to socialise the European project. A social renaissance has indeed happened, at least on paper, with a series of proposals on various front, all coming under the auspices of the European Pillar of Social Rights. Ensuring social

sustainability at EU level, safeguarded from neoliberal economic interventions, finally became important. This is shown not only by the breadth of the proposed reforms, but by the pace of their introduction, which has not shown signs of a slow-down so far. One has to be cautious though, for reforms that are taken in a hurry, might not be without disadvantages. Although sometimes something is better than nothing, given the dearth of serious positive welfare reforms in recent years; to the contrary there was retrenchment pushed by the neoliberal reforms of the crisis. This section reflects on the recent developments to assess their contribution towards achieving a socially sustainable EU.

The fast proclamation of the Pillar, roughly 7 months since its introduction, is a strong display of willingness and commitment by the key EU institutions to bolster the policy discourse as to prioritise a more comprehensive social sustainability agenda for the Union. A proclamation process was carried out in relation to the Charter of Fundamental Rights, which was subsequently bestowed with Treaty-like status in the Lisbon Treaty reforms. Perhaps, the Pillar could have the same fate, and end up being part of the EU's constitutional documents in the future. On the other hand, the social character of the Pillar might make this scenario unlikely if one takes into account the limited justiciability of the Charter's social chapter, as demonstrated in the jurisprudence of the CJEU (Guðmundsdóttir, 2015). Considering the afore-mentioned problems with the now Treaty-like social provisions of the Charter, it is likely that similar issues may arise with a constitutionalised Pillar, hampering its enforceability.

It might as well be that such 'constitutional ambition' was never envisaged for the Pillar, despite the breadth of its text and accompanying measures. Unlike the Agreement on Social Policy, there was no plan for it to be incorporated or somehow given equal standing with the Treaties. The risk then surfaces for the Pillar to become a tool of limited

applicability, much like the Charter of the Fundamental Social Rights of Workers. For the commitment to become reality, it needs to have support, and it is a hopeful sign that the Commission, the most powerful institution according to some, and the one that ascribes the most to free market thinking according to others, initiated the reforms. It was the pledge of Juncker, the Commission's President, incited by the critiques of the policies taken during the crisis, to achieve a triple social A that put the EU 'mills' into action, and it is the Commission that introduced the proposals one right after the other in the course of 2016-2018.

It is worth mentioning that this happened even in cases where the support of the social partners, and more specifically of the employers' side, was lacking. Instead of choosing to wait until both employers and workers' associations agreed to enter negotiations for the revision of the Parental Leave or Written Statement directives, the Commission defied the odds in a positive way, by opting to exercise its power to initiate legislation. It signals a new way of social policy-making, which shifts the focus from the partners' agreement to the urgent nature of the measures, at least if social sustainability is a relatively imminently desired result, by speeding up the processes in place to achieve that. Whilst welcomed in bypassing possible vetoes by the employers' side, it risks weakening the contribution that the employees' side would have had therein. Union representatives' pro-welfare footprint would be missing from the text of the reforms. In addition, as the case of the proposed work-life balance Directive shows, compromises could be sought, if the Directive is to gain the approval of the Council and the Parliament (Plomien, 2018).

The same would likely apply to all legislative, and, thus binding, proposals that are to follow, especially if these purport to intervene with the national decision-making

processes. Yet binding measures are necessary, for without them an exclusively soft-law Pillar would risk having the same negligible impact the OMC and Lisbon Agenda arguably did. Apart from the difficulties arising in trying to persuade the majority of the Member States to take up such initiatives voluntarily, soft-law as the sole policy choice risks having negative rule of law implications, in that it is difficult for challenges to be brought against soft-law measures (Armstrong, 2018). Not only that, but policy-making focused exclusively on soft-law, could moreover lead to allegations of an EU that prefers to abdicate responsibility by making social sustainability contingent upon the actions of the Member States at national level. Scharpf's asymmetry will continue to exist, if Social Europe remains confined to coordination policies, without any entrenched legislative action (2010). In turn, such action would require a structural change in the primarily economic nature of the European constitution, something not as difficult to achieve as at first glance it appears to be (Atkinson, 2002).

Binding proposals are, thence, essential to push for upwards convergence EU-wide, and the proposed Directives are an essential step forward in the realisation of a fairer, and more socially sustainable Union. They go beyond a wish-list, in truly laying down some concrete foundations for the Commission's vision of the Social Europe of tomorrow. Notwithstanding that, progress is still at embryonic stage. The proposals are just that, and how their final text will end up looking, is still unknown. Moreover, the reforms might take a while until they become reality, as the Posted Workers Directive saga shows. It took almost ten years following the controversial CJEU judgments in the *Laval Quartet*,<sup>1</sup> for a substantial reform to finally be agreed (Zahn, 2017). According to the most pessimistic scenario the Pillar's ambition might not even materialise in the first place, drawing parallels with the failed proposals for changing the Maternity Leave

Directive, after the proposed amendments were rejected by a blocking minority of Member States.

Despite these dangers, the Pillar and some of the measures accompanying it, namely the proposed European Labour Authority and the European Social Security Number, deserve credit for trying to reinforce aspects of EU Social citizenship, in their conceptualisation of a pan-European labour market with a mobile cross-border labour force. Nevertheless, these refer primarily to mobile EU citizens, who happen to be also workers. Current practice shows that atypical and non-standardised employment relationships are on the rise, and this might have as outcome the exclusion of a sizeable part of the population from the Labour Authority's scope. That is why the Authority needs to gain more powers in supervising the application of the EU social acquis as a whole, and not just in cross-border situations, something though that the Member States might not be ready to compromise on. Furthermore, while the Pillar's 20 rights and principles do not appear to distinguish in favour of mobile EU and/or economically active EU citizens, or to promote a particular definition of worker, the lack of specific accompanying initiatives that refrain from using the exercise of free movement rights, or certain economic activity as a prerequisite for people to fall under their umbrella, does admittedly very little to change the current state of affairs (Bruzelius et al, 2017).

With a view to the future of a socially sustainable EU, the Pillar could thus benefit from both more breadth and teeth. More breadth in order cover without distinction the majority of EU citizens (scope), and to expand in areas that are not limited to the regulation of labour (content). Even though it is true that the competences of the Union are structured in a way that privileges intervention as regards to labour market policies over other welfare provisions, there is still leeway, in light of the more aspirational Treaty

provisions centred around adequate social protection, to do more. Of course, taking concrete, and preferably binding measures, at least in those areas where policy-making has been normalised, is not enough. Ensuring adherence to the measures is key. The Pillar includes a scoreboard of targets, that can be used to measure their take up in each Member State, but could conditionality also be used if one truly wishes to drive the social acquis up quickly? Otherwise, the whole endeavour might simply end up becoming a box ticking exercise.

### **Conclusion**

Social sustainability at EU level is in a state of flux. Proposals for new measures or reforms spur every few months or so, all set in motion following the pledge in the aftermath of the crisis for a social-triple A, largely encapsulated in the European Pillar of Social Rights and its accompanying initiatives. The latter try to tackle social sustainability in a diverse set of areas, with a particular focus in those of employment and social protection of workers. According to the definition given to the concept of social sustainability for the purposes of this article as the set of rules, policies and principle aiming to enrich and fortify the EU social acquis so as to render it immune from and a true counterweigh to the economic constitution, it seems that the ulterior objective of the measures in question is candidly to reinforce the image of a socially sustainable EU. There are doubts though as to how far this objective can be achieved by the proposed reforms.

Much like past reforms, their aim is to up the social dimension of the European project and result in upwards convergence among Member States. They reaffirm that EU social policy-making has matured and is a far cry from the initially displayed ‘welfare neglect’. They also seem to have learned from the past. The overwhelmingly free market

underpinned flexicurity paradigm has been largely set aside in favour of more autopoietic and autonomous welfare reforms. Unlike the past, the context and the drivers that support the Pillar era are stronger, and have the potential to make it weather any changes better than the initial Social Model of the 1990s. The rise in populism, the scathing attacks on the handling of the crisis, and the imminent UK departure, all created the right impetus for the EU to try and reinvent itself. Although not explicitly, ensuring sustainability, a notion interwoven with politics, was flagged up during the debates that followed, calling for a reinforcement of its -up until now weak- social pillar (Davidson, 2009). This is precisely what led to the creation of the European Pillar of Social Rights.

Naturally, the Pillar is a work in progress, and as such any concrete evaluation of its legacy is at the moment difficult, if not impossible. It arguably demonstrates a renewed -and stronger- commitment towards a more substantial and resilient social dimension, but its execution is not flawless, with its soft-law aspects and the lack of carrots and sticks slowing down a swifter upwards harmonisation. Its scope and content could also be expanded to cover most manifestations of EU social citizenship and welfare provision. Yet it is a mostly welcomed development, representing a possible path-departure from the retrenchment of the crisis era. And much like its predecessors, it is inevitable that setbacks will occur throughout the process. At the same time, such strong commitment to the realisation of a genuinely social Social Europe was lacking from the relevant discourse. In that regard, the Pillar, by socialising the priorities of the Union arguably for the first time to such extent, represents a social renaissance.

The title of the penultimate section of this article, which reflected on the recent reforms, was asking whether the Pillar can be perceived as a renaissance or a revolution. At the very end of the preceding paragraph, it was characterised as the former. But is a

renaissance enough, or through enlightenment, a revolution has to come about for social sustainability to become entrenched in European integration? It is true that the reforms themselves are not daring enough to be called revolutionary, although perhaps understandably, given that compromises are unavoidable in EU policy-making. However, the legacy of the crisis and Brexit might count as quiet revolutions that are now permanently carved in the European memory, for such instances to be averted in the future. To do so, Europe has to become not only economically, but socially sustainable as well, demanding ‘well-informed, theoretically robust, yet pragmatic, social solutions’ (Vallance et al, 2011: 347).

Solutions such as those embedded in the Pillar need not to be promoted exclusively by the EU institutions at EU level summits. For their take up to become reality, Member States’ leaders need to believe in them, and embed them into their national priorities as well. In that regard the Franco-German Meseberg Declaration of June 2018 does not fare well; the social dimension of the EU is absent from its text, despite it having been prioritised in the European agenda. The commitment needs to spread across all actors involved in the policy-making processes, or else it will be nothing other than a Chimera, an unrealised post-crisis, post-Brexit European dream, bearing similarities with some of its predecessors. To end on a hopeful note though, the new reforms encapsulated in the Pillar and its accompanying initiatives are a promising start, a moment that has to be seized for social sustainability at EU level to become a reality. Of course, much of what one can make of them depends on their perspective; the glass can only be half-full or half-empty. But one cannot ignore this, that the Pillar will positively fuel the Social Europe debate.

## Notes

1. Case C-438/05 International Transport Workers' Federation, Finnish Seamen's Union v Viking Line ABP, OÜ Viking Line Eesti [2007] ECR I-10779; Case C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundet, avd. 1, Svenska Elektrikerförbundet [2007] ECR I-11767; Case C-346/06 Rechtsanwalt Dr Dirk Ruffert v Land Niedersachsen [2008] ECR I-1989; and Case C-319/06 Commission v Luxembourg [2008] ECR I-4323.

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