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## **The European Pillar of Social Rights – Tell Me Where You Come from and I Will Tell You Who You Are**

### **1. Introduction**

The proclamation of the European Pillar of Social Rights (EPSR) coincided with a renewed emphasis on the social dimension of the European Union's (EU) integration. The Juncker Commission considered the EPSR one of the main achievements of its social agenda as it led to the establishment of the European Labour Authority (ELA), the revision of the Posting of Workers Directive, the Directive on Work-life Balance, and the Directive on Transparent and Predictable Working Conditions.<sup>1</sup>

The Von der Leyen Commission confirmed the commitment to develop the EU's social outlook further and to place the EPSR at the core of it.<sup>2</sup>

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<sup>1</sup> The EPSR was presented as a very ambitious social initiative during different official events, among them the Commissioner Thyssen speech of 8 March 2016 presenting “The Commission’s Social Package: Frist outline of the European Pillar of Social Rights and reform of the Posting of Workers Directive”, and the President Juncker address at 2017 State of the Union speech, where he held that “If we want to avoid social fragmentation and social dumping in Europe, then Member States (MS) should agree on the EPSR as soon as possible”. More recently, during a statement on the EPSR on 13 November 2018, Commissioner Thyssen said that: “The European Pillar of Social Rights is designed to make a positive difference in the everyday life of all Europeans. [...] The European Semester is now more social than ever, with the Pillar firmly integrated in the process to monitor social progress.”

<sup>2</sup> Vladis Dombrovskis, Commissioner for “An Economy that Works for People”, and Nicolas Schmit, Commissioner for “Jobs and Social Rights”, indicated that the Commission will present an action

Before letting this intent comfort those who advocate for more social EU policies, it is important to reflect to what extent EU labour and social policy based on the EPSR leads to the realisation of social objectives, such as advancing social progress, promoting the social market economy, and realising the upward convergence of living and working conditions.<sup>3</sup>

Formulating predictions is not among the intentions of this contribution. It is nevertheless interesting to take a moment to reflect on what we can legitimately expect from a social agenda that places the EPSR at its core. Since the EPSR will most likely shape future EU measures on social and labour matters, having a deeper look at this instrument might provide insights on the main features of the Commission's future initiatives.

Acknowledging that “to know your future you must know your past”, the analysis and the assessment of the EPSR will begin with a historical contextualisation. Casting light on the premises that have led to the drafting of the EPSR could help defining the potential and the limits of the measures that will be adopted in its implementation. In section 2, the focus will be on the strategy that EU policy-making defined to support the EU recovery from the 2008 economic and financial crisis. This strategy constitutes the frame of reference in which the EPSR was initially conceived. Then, in section 3, the analysis will concentrate on the launch, content, and implementation of the EPSR. In particular, the EPSR will be studied through the lens of the relationship between labour standards and economic priorities. Finally, section 4 will formulate a prospective reflection on future labour and social policies, assuming that the Commission's social agenda will be developed, as announced, around the EPSR.

## 2. The Post-2008 Crisis Agenda

This section retraces the EU institutions' reaction to the economic backlash that hit the EU in the wake of the 2008 financial crisis. Three policy documents deserve particular attention: the 2012 Commission's Communication on “A Blueprint for a Deep and

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plan for the implementation of the EPSR across the EU. In particular, Schmit made clear that its effort to strengthen Europe's social dimension will be based on the Pillar. Similarly, Dubravka Suica, Vice-President of the Commissioner and responsible for “Democracy and Demography”, announced that her work will be based on the Principles laid down in the EPSR. For a deeper overview of the different Commissioners' programme: “Commitments made at the hearings of the Commissioners-designate (September-November 2019)”, see European Parliament, Briefing of the European Parliament, Commitments made at the hearings of the Commissioners-designate, URL: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/629837/IPOL\\_BRI\(2019\)629837\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/629837/IPOL_BRI(2019)629837_EN.pdf).

<sup>3</sup> Article 3 of the Treaty on the European Union (TEU) includes “social progress” and “highly competitive social market economy” as objectives of the Union, and Article 151 of the Treaty on the Functioning of the European Union (TFEU) indicates that the Union and the Member States aim at the “promotion of improved living and working conditions”.

Genuine Economic and Monetary Union”, the so-called Four Presidents Report of 2012 and the so-called Five Presidents Report of 2015. Throughout these documents, the EU institutions defined a growth-enhancing agenda to reinvigorate the Economic and Monetary Union (EMU) and give a fresh start to the economy. Even if the strategy had primarily economic objectives, such as growth and productivity, it also had vast labour and social policy implications. The EPSR was indeed conceived on account of these implications. A glance at the main elements of the EU (economic) strategy adopted to overcome the crisis is, therefore, highly relevant to grasp the origins of the EPSR.

### *2.1. The EU Strategy for a Deeper EMU*

In 2012, four years after the financial crisis unfolded, the Commission issued its Communication on “A Blueprint for a Deep and Genuine Economic and Monetary Union”, where it identified the lasting effects of the financial crisis as still being a serious threat to the European single market and the broader social and political stability of the EU.<sup>4</sup> In particular, the backlash of the 2008 crisis had revealed that the weaknesses of the national economies and national labour markets have a contagious effect in the entire EU.<sup>5</sup> The Communication suggested that economic challenges and the competitiveness decline impose a serious reconsideration of the pace and direction of European integration, and indicated that the solution was to further deepen the EMU.

The choice of bringing the EU away from economic and social stagnation by focusing on strengthening the EMU was grounded on a specific growth-centred socio-economic model. Deepening the EMU implies the enhancement of the European market economy, which consents business to thrive and guarantees a substantial tax return which, in turn, is believed to provide for well-functioning welfare systems, ultimately allowing a fair redistribution of wealth.<sup>6</sup>

Once determined that the priority was to reinforce the EMU, it was necessary to define the structural corrections to implement it. Therefore, in its 2012 Communication, the Commission called for the formulation of a strategy to increase the EU’s control on

<sup>4</sup> Communication from the Commission, “A Blueprint for a Deep and Genuine Economic and Monetary Union”, COM (2012) 777 final, 28.11.2012.

<sup>5</sup> European Council (The President), Towards a Genuine Economic and Monetary Union, Report by the president of the European Council Herman Van Rompuy, URL: <https://www.consilium.europa.eu/media/33785/131201.pdf>.

<sup>6</sup> Dawson, *New Governance and the Displacement of Social Europe: The Case of the European Semester* (2018), pp. 191–209. Less recent but highly relevant, see also Joerges, Rödl, *SOCIAL MARKET ECONOMY AS EUROPE’S SOCIAL MODEL?* (2004), where it is clearly argued that this socio-economic model is coherent with the ordoliberal economic constitutional theory, that—in the view of the author—might lead Europe to become a market without state, grounded on an economic constitution which poses constraints to political discretion and is persistently devoted to guarantee economic freedoms.

the definition of national economic and employment policies, with the precise objective to support national growth-enhancing structural reforms.<sup>7</sup>

The direction outlined in the 2012 Commission Communication was then developed in the 2012 Four Presidents Report, which set the stage for the realisation of a deeper EMU based on a renewed emphasis on national policy convergence.<sup>8</sup> The Report stressed that the financial crisis had revealed serious weaknesses in different grounds, imposing action on four fronts: the establishment of a financial framework, the set-up of a budgetary framework, the consolidation of EU economic policy integration, and a complementary enhanced democratic character to improve the legitimacy and the accountability of EU policy-making.<sup>9</sup>

In 2015, the Five Presidents Report further validated the direction defined in the 2012 Report and restated the commitment to strengthen the EMU through a multifaceted approach.<sup>10</sup> It was confirmed that actions in the financial, fiscal, economic, and political dimensions were the essential components for realising a stronger EMU.<sup>11</sup> Compared to its 2012 predecessor, the Five Presidents Report provided a more detailed strategy, as it presented a structured overview of the different initiatives. In particular, the

<sup>7</sup> Communication from the Commission, “A Blueprint for a Deep and Genuine Economic and Monetary Union”, COM (2012) 777 final, 28.11.2012.

<sup>8</sup> European Council (The President), Towards a Genuine Economic and Monetary Union (“The Four Presidents’ Report”), Report by the president of the European Council Herman Van Rompuy, 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), URL: [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/134069.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134069.pdf). The Four Presidents’ Report set a rather ambitious timeline. The short-term plan was to improve the existing governance tools, with the effect of making national policies surveillance more effective and steering competitiveness. In the medium-term (before 2017) the intention was to foster the EU integration in the taxation and employment fields. The long-term objective was identified with the establishment of a proper fiscal capacity and banking Union, allowing common issuance of public debt.

<sup>9</sup> Ibid., p. 3

<sup>10</sup> European Commission, Completing Europe’s Economic and Monetary Union (“The Five Presidents’ Report”), Report by Jean-Claude Juncker (President of the Commission), in close cooperation with Donald Tusk (President of the European Council), Jeroen Dijsselbloem (President of the Eurogroup), Mario Draghi (President of the European Central Bank), and Martin Schulz (President of the European Parliament), URL: [https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report_en.pdf).

<sup>11</sup> The Five Presidents Report corrected the timeframe, while confirming the two-stage implementation process. Stage 1 (2015–2017) was conceived as dedicated to improving competitiveness, economic convergence and the completion of the fiscal Union. This was to be achieved on the base of the existing instruments. Stage 2 was deemed to focus on the completion of the EMU’s economic and institutional architecture, through conferring binding legal nature to a set of benchmarks and convergence thresholds. The achievement of a genuine EMU was then foreseen for 2025.

2015 Report indicated that, in the context of the economic component of the agenda for a deeper EMU, the EU action should be based on a four-pillar strategy. These pillars are the following

1. The creation of a Euro-system of competitiveness authorities;
2. A strengthened implementation of the Macroeconomic Imbalance Procedure;
3. A greater focus on employment and social performance; and
4. A greater focus on stronger coordination of economic policies within a revamped European Semester.<sup>12</sup>

It does not require much imagination to recognise the genesis of the EPSR in the third pillar (the one addressing employment policies). It is thus evident that the EU institutions adopted a holistic strategy to reinvigorate the EMU whereby social (and labour) policies are deemed to play a relevant role.<sup>13</sup>

## *2.2. The Relevance of Social and Labour Policies for the EU Economic Strategy*

How to explain the centrality of labour and social policies within a primarily economic programme? The answer is that the predominant socio-economic understanding of EU integration looks at national social and labour policies from an utilitarian perspective.<sup>14</sup> Social and labour standards are indeed considered to be relevant for the economic recovery strategy inasmuch as they are framed within the EU growth-enhancing agenda.<sup>15</sup>

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<sup>12</sup> The Five Presidents' Report, p. 7.

<sup>13</sup> Beside the presence of a dedicated social pillar, it is interesting to note that the relevance of labour and social policies also emerges in the fiscal component of the EMU-deepening strategy. In that context, reinforcing the EU budgetary framework is deemed necessary to ensure sustainable and sound fiscal policymaking and to allow forms of fiscal solidarity across the EU in the direction of future common debt issuance. Quite interestingly from a labour and social policy perspective, the hypothesis of an EU unemployment insurance system was also advanced. Such system was presented as a possible way to increase budgetary solidarity within the EU: following the creation of a dedicated reserve, it would consent to link the transfer of budget to specific level of unemployment rates. See also the Four Presidents Report, p. 11, which more precisely indicates that "in this case, the level of contributions/benefits from/to the fiscal capacity would depend directly on labour market developments. In this scenario, the fiscal capacity would then work as a complement or partial substitute to national unemployment insurance system. Transfers could, for example, be limited to cyclical unemployment by covering only short-term unemployment." The idea is to activate the unemployment related transfers only once the increase in short-term unemployment exceeds a certain threshold.

<sup>14</sup> See the analysis of the social dimension of EU governance in Dawson, *New Governance and the Displacement of Social Europe: The Case of the European Semester* (2018), pp. 191–209.

<sup>15</sup> See, for instance, The Four Presidents' Report, p. 13: "[I]t is essential to complete the Single Market as it provides a powerful tool to promote growth. In addition, there is a need for a thorough assessment of the performance of labour and product markets in the euro area. [...] A well-functioning EMU

Global competition is mostly based on productivity rates and imposes an overreaching market rationale, which demands highly inclusive and flexible labour markets as well as a well-trained and possibly cheap workforce.<sup>16</sup> A dynamic and adaptable workforce is indeed an attractive factor for investments, allows firms to thrive, and leads to elevated employment rates. On the contrary, high levels of unemployment are generally read as signs that labour markets are embedded in regulatory rigidities (both regarding access to and exit from the labour market), which create an environment that is unfavourable to economic growth and productivity. While this relationship between labour policies and labour market functioning and, in turn, the economic situation has been challenged by empirical studies, it still is the prevailing view and is dominant among the EU institutions.<sup>17</sup> As clearly expressed in the 2015 Report:

“Europe’s ambition should be to earn a ‘social triple A’. This is also an economic necessity. For EMU to succeed, labour markets and welfare systems need to function well and in a fair manner in all euro area Member State”.<sup>18</sup>

It is the functional link between labour and social policies and economic performances that ultimately justifies the centrality of the Commission’s social agenda within the EMU deepening strategy. Looking more closely at the 2012 Communication and the 2012 and 2015 Reports, it is possible to identify two main objectives underpinning the post-crisis EU approach towards social and labour standards.

The first objective is to address the normative rigidities that prevent firms from being competitive on the market. Positioning social and labour matters into the mainstream economic discourse indeed leads to question those labour and social provisions that, from a purely market-oriented perspective, are perceived as excessively burdensome for entrepreneurship and labour market functioning.<sup>19</sup> Economic sustainability, efficiency,

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requires efficient labour and product market”. Giubboni provides a clever analysis in Giubboni, *The Rise and Fall of EU Labour Law* (2018), pp. 7–20. A similar stance is taken in Barnard, *EUROPEAN UNION INTERNAL MARKET AND LABOUR LAW: FRIENDS OR FOES?* (2009). For a broader historical contextualisation of the function of social policy not only as a factor of protection but also as a way to promote growth see Neal, *LABOUR LAW AND INDUSTRIAL RELATIONS AT THE TURN OF THE CENTURY* (1998); and Veneziani, *THE TRANSFORMATION OF LABOUR LAW IN EUROPE* (2009).

<sup>16</sup> See, for instance, The Five Presidents’ Report, p. 8: “For EMU to succeed, labour markets and welfare systems need to function well and in a fair manner in all euro area Member States.”

<sup>17</sup> Piasna, Myant, *MYTHS OF EMPLOYMENT DEREGULATION* (2017), pp. 43–56. The authors conducted an empirical study which challenges the assumption that reduction of employment protection leads to job creation and decrease in labour market segmentation.

<sup>18</sup> The Five Presidents’ Report, p. 8: “For EMU to succeed, labour markets and welfare systems need to function well and in a fair manner in all euro area Member States”.

<sup>19</sup> Among others, see the Analytical Note of Jean-Claude Juncker in close cooperation with Donald Tusk, Jeoren Dijsselbloem and Mario Draghi, on “Preparing for Next Steps on Better Economic Governance in the Euro Area”, from 12 February 2015. See also Syrpis, *EU INTERVENTION IN DOMESTIC LABOUR LAW* (2009), pp. 13–49. Syrpis identifies an integrationalist rationale in the

and growth therefore are (one of) the rationale(s) that inform(s) the regulation of labour markets, labour policies, social welfare, and education. A specific example of this approach is the creation of an European system of competitiveness authorities, originally outlined in the Four and the Five Presidents Reports. These national competitiveness boards have the mandate to bolster productivity-driven reforms by advising national policy-makers on labour market policies and wage setting, with the specific goal to reduce labour rigidities.<sup>20</sup>

The second objective of the EU strategy of attracting labour and social policies within the scope of action of the economic agenda is to expand the EU competences and, accordingly, to reach a deeper harmonisation of the national legal systems.<sup>21</sup> The 2012 and the 2015 Report in fact advocated for higher level of convergence in the employment

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EU approach to labour law, whereby domestic labour provisions are taken down by the “negative integration strategy” of the CJEU. Such approach has been explicitly endorsed by the Commission’s White Paper on Completing the Internal Market. Completing the Internal Market: White Paper From the Commission to the European Council, 28-29 June 1985, COM (85) 310. The author argues that the negative integration technique is quite efficient in removing normative obstacle to economic freedoms, since targets those national (labour) measures which obstruct the functioning of the internal market.

<sup>20</sup> The instrument to improve the convergence in national competitiveness was identified in the creation of a system of competitiveness authorities (in the 2015 Five Presidents Report) and was implemented through a Council Recommendation of 20.09.2016 on the establishment of National Productivity Boards within the Euro Area. The Five President Report, p. 8, indicated that “[Productivity Boards] would help to prevent economic divergence and would increase ownership of the necessary reforms at the national level. These [Productivity Boards] should be independent entities with a mandate to assess whether wages are evolving in line with productivity and compare with developments in other Euro area countries and in the main comparable trading countries. [...] In the end, a competitive economy is one in which institutions and policies allow productive firms to thrive. In turn, the development of these firms supports the expansion of employment, investment and trade”. Similarly, the Council Recommendation of 20.09.2016 on the establishment of the National Productivity Boards refers to the objective of raising productivity as “a multifaceted challenge which requires a set of well-balanced policies aimed at, in particular [...] reducing rigidities in the labour market.” Council Recommendation of 20 September 2016 on the establishment of National Productivity Boards, OJ C 349/1, 24.9.2016.

<sup>21</sup> Communication from the Commission to the European Parliament and the Council on “Strengthening the Social Dimension of the Economic and Monetary Union”, COM (2013) 690 final, 2.10.2013. In particular, p. 14, the Commission indicates that “The recent changes to strengthen EU economic governance aim to reinforce the MEU, address some of the initial weaknesses of its design and make it more competitive and able to promote growth. In the Commission’s view, developing the social dimension of EMU is an essential part of this process. [...] A well-functioning monetary union requires flexible markets and appropriate institutions to address the social situation and provide adequate safety nets.”

law area.<sup>22</sup> The coexistence of different regulatory regimes within the Union is indeed an obstacle to economic cohesion since it conducts to (de)regulatory competition based on the downgrading of social standards. The harmonisation of national labour rules, instead, alleviates the employers' pressure of transnational competition based on labour costs. It can also be desirable for social progress and, as it limits the urge to lower tax and social security contributions, for public finance too.<sup>23</sup>

It can be observed that, to reach both these objectives, the ideal and more intuitive way forward would be to adopt new EU legislation in the labour and social field. However, the limited EU competences and the unanimity-voting rule that apply to the Social Policy Title of the TFEU represent a quasi-insurmountable barrier to a substantive expansion of the EU *acquis* in the area. Due to this bottleneck, the Commission Communication and the Presidents' Reports turned to the European Semester to further develop the social and labour component of the EU economic and growth strategy. In 2015, it was thus decided that the cycle of policy coordination and surveillance that takes place within the framework of the European Semester had to absorb more prominently social and labour policy objectives.<sup>24</sup> At the same time, the Commission encouraged a more active participation of social policy actors (social partners) throughout the Semester process.<sup>25</sup> This governance strategy confirmed a proposal already advanced in the 2012 Communication and 2015 Report, where the Commission suggested to fully merge the coordination of the national economic policies with the process covering the

<sup>22</sup> Communication from the Commission, "A Blueprint for a Deep and Genuine Economic and Monetary Union – Launching a European Debate", COM (2012) 777 final, 28.11.2012, p. 11; The Four Presidents' Report, p. 5.

<sup>23</sup> As an example, it is useful to point at the Explanatory Memorandum that accompanied the Commission proposal of a Directive on Transparent and Predictable Working Conditions, establishing EU rules on the extension of social and labour protection to casual workers and other forms of atypical workers (COM(2017) 797 final). Among the reasons for the adoption of EU rules the Commission indicated that the fragmented regulatory framework was associated with unsustainable pressure for firms, as well as with untenable fiscal consequences for the Member States' public finance.

<sup>24</sup> Note of the Council on "European Semester 2015: Contribution to the European Council", Brussels, 10 June 2015.

<sup>25</sup> Communication from the Commission to the European Parliament and the Council on "Strengthening the Social Dimension of the Economic and Monetary Union", COM (2013) 690 final, 2.10.2013, p. 14 : "There is scope to strengthen the social dimension of EMU by better coordinating and monitoring employment and social policies and developments as part of the European Semester process, mobilising and targeting action and funds to better address social distress, removing the barriers to cross-border labour mobility within the EU and boosting the role of social dialogue". Interestingly, in relation to the increased emphasis on social dialogue, in the Commission's publication "A New Start for Social Dialogue", Brussels, August 2016, it refers to social dialogue as having a positive role on a country's economy. See also Welz, From Val Duchesse To Riga: How to Relaunch Social Dialogue, URL: <https://www.socialeurope.eu/val-duchesse-riga-relaunch-social-dialogue>.

employment aspects.<sup>26</sup> Ultimately, this proposal only found partial implementation. The European Semester indeed currently takes place on the base of a set of integrated but separated economic and employment guidelines.<sup>27</sup> The prominence of social and labour aspects within the policy coordination cycle is furthermore confirmed by the incorporation of a social inclusion objectives among the employment guidelines.<sup>28</sup>

In sum, the EU policy-making from 2012 to 2015 makes it rather clear that the focus on social and labour policies was mainly aimed at promoting the convergence of national standards and at tackling labour market rigidities. With even an explicit reference in the EU economic agenda outlined in the 2015 Report (being the third pillar thereof, on “greater focus on employment and social performance”), the EPSR unequivocally finds its origins in the context of the growth-enhancing agenda for a deeper EMU.<sup>29</sup>

### 3. The EPSR: Advancing *Both* Social and Economic Progress?

When the EPSR was at first presented, the emphasis was on the positive contribution that this initiative would bring to the social dimension of the EU.

The EPSR was enthusiastically announced in September 2015 by the Commission President Juncker as part of the Commission’s Social Package. It was introduced as an instrument pursuing the ambition to pair economic development with the improvement of living and working conditions.<sup>30</sup> After years of austerity and economic reforms merely aimed at overcoming the financial crisis, the EPSR became a the flag of the Commission’s commitment to ensure that economic growth and social progress go hand in hand.

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<sup>26</sup> See The 5 Presidents’ Report, p. 8: “Employment and social concerns must feature highly in the European Semester.”

<sup>27</sup> Communication from the Commission to the European Parliament and the Council on “Strengthening the Social Dimension of the Economic and Monetary Union”, COM (2013) 690 final, 2.10.2013, p. 27: “Coordination and surveillance of employment and social policies should be reinforced within the EMU governance, and convergence promoted in those areas. The current Broad Economic Policy Guidelines and Employment Guidelines could be reinforced by merging them into a single instrument”.

<sup>28</sup> For a deeper understanding on how the social policy guidelines are currently strongly tied to the economic targets that the European Semester aims to achieve, see: Schoukens, Beke Smets, *Fighting Social Exclusion under EU Horizon 2020. Enhancing the Legal Enforceability of the Social Inclusion Recommendations?* (2014), pp. 51–72, where the authors provide an assessment of the implementation, within the European Semester process, of the employment guideline n. 10 on social inclusion. It is argued that the social inclusion guideline is conceived as narrowly connected to rates of employment and the functioning of the labour market, which, in turn, have a strong impact on the prevention of macro-economic unbalances.

<sup>29</sup> In this regard, see also Lörcher, Schömann, *THE EUROPEAN PILLAR OF SOCIAL RIGHTS* (2016).

<sup>30</sup> Commissioner Thyssen speech of 8 March 2016 on the Commission’s Social Package.

However, when the 2016 Commission's Communication Launching a Consultation on the EPSR started giving a more concrete shape to the initiative, it became clearer that behind the rhetorical openness towards social aspirations, the main justification was still economic.<sup>31</sup> The Commission indeed launched the EPSR with the premise that:

“[T]he best performing Member States in economic terms have developed more ambitious and efficient social policies, not just as a result of economic development, but as a central part of their growth model”<sup>32</sup>

and that

“a stronger focus on employment and social performance [...] is not just a political or social imperative, it is also an economic necessity”.<sup>33</sup>

Quite evidently, the spirit of the “four-pillar strategy” outlined in the 5 Presidents Report resonates quite loudly. Accordingly, the EPSR can thus be read as the Commission's reaction to the negative effects of not financially sound national welfare systems on the resilience of the overall EU economy.<sup>34</sup> This inscribes the EPSR within the EMU-deepening agenda, whereby social and labour rights are conceived as closely tied to the pursuit of economic priorities.<sup>35</sup>

The core question which was initially also formulated in the introduction to this article, is whether social and labour policies conceived in the context of a growth-enhancing strategy can be adequate instruments to pursue social progress effectively. In the next subsections, the EPSR will be analysed by first looking at its content and then at its implementation, and considerations will be advanced on the coexistence of social and labour aspirations with economic objectives.

<sup>31</sup> Communication from the Commission on “Launching a Consultation on a European Pillar of Social Rights”, COM (2016) 127 final, 8.3.2016.

<sup>32</sup> Ibid., p. 4.

<sup>33</sup> Ibid., pp. 4–5.

<sup>34</sup> Ibid. Communication from the Commission on “Monitoring the Implementation of the European Pillar of Social Rights”, COM (2018) 130 final, 13.3.2018.

<sup>35</sup> In this regard, see also the analysis of Rasnača in: Rasnača, BRIDGING THE GAPS OR FALLING SHORT? THE EUROPEAN PILLAR OF SOCIAL RIGHTS AND WHAT CAN BRING TO EU-LEVEL POLICYMAKING (2017). This approach to the social dimension of EU integration also emerges from the Communication from the Commission on a “Reflection Paper on the Social Dimension of Europe”, COM (2017) 206, 26.4.2017, p. 8: “[W]here convergence in economic performances over time is accompanied by convergence of social conditions, fears of social dumping diminish and support for the single market is nourished”. Similarly, on the occasion of the Rome Summit for the 60<sup>th</sup> anniversary of the EU, 25 March 2017, when EU leaders declared: “[W]e pledge to work towards a social Europe—a Union which, based on sustainable growth, promotes economic and social progress, as well as cohesion and convergence, while upholds the integrity of the internal market”.

### *3.1. Structure and Content of the EPSR*

The EPSR was officially proclaimed at the European Council in Goteborg in November 2017. The final version of the document is articulated in 20 principles, structured around three chapters having the following main headings: Equal opportunities and access to the labour market, Fair working conditions, and Adequate and sustainable social protection.

These chapters are preceded by a Preamble characterised by a rather neutral phrasing, which nevertheless discloses a certain degree of functionality of social and labour standards in relation to the economic agenda and the deepening of the EMU. Quite eloquently, paragraphs 10 and 13 of the Preamble respectively state that:

“Economic and social progress are intertwined, and the establishment of a European Pillar of Social Rights should be part of wider efforts to build a more inclusive and sustainable growth model by improving Europe’s competitiveness and making it a better place to invest, create jobs and foster social cohesion”

and

“A stronger focus on employment and social performance is particularly important to increase resilience and deepen the Economic and Monetary Union. For these reasons, the European Pillar of Social Rights is notably conceived for the euro area but is addressed to all Member States.”

The first Chapter (Equal opportunity and access to the labour market) draws a road-map to improve the inclusiveness of labour markets. It addresses training and life-long learning, gender equality, equal opportunities, and active support of employment. The accent is not placed on strengthening labour conditions; these principles rather promote participation or, as Giubboni has intuitively recognised, “access justice” into the labour market.<sup>36</sup>

The second Chapter (Fair working conditions) focuses on a wide range of matters that touch upon core labour standards. It contains principles on secure and adaptable employment, fair and adequate minimum wages, workers’ information and consultation, social dialogue, and work-life balance. From a genuine labour policy perspective, it is possible to find some good elements. For instance, commentators have argued that the inclusion of Principle 6 on fair minimum wages indicates a (positive) change of approach towards wage policies: from wages as a cost factor, to wage-setting as an instrument to boost internal demand and social cohesion.<sup>37</sup> Moreover, the EPSR recommends predict-

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<sup>36</sup> Giubboni, *Appunti e Disappunti sul Pilastro Europeo dei Diritti Sociali* (2017). Access justice refers to the institutional effort to guarantee a fair and non-discriminatory access to the labour market, and implies measures aimed at enhancing vocational training, youth employment and gender equality.

<sup>37</sup> Muller, Schulten, *European Social Pillar – Towards an EU Minimum Wage Policy*, URL: <https://www.socialeurope.eu/european-social-pillar-towards-eu-minimum-wage-policy>.

ability and transparency in the definition of wages, while still leaving broad discretion to the Member States and not interfering with national industrial relation systems. The EPSR's approach to wages suggests that even a social agenda originally designed to support economic growth can, potentially, develop in the direction of social progress and that economic and social objectives can actually go hand in hand.<sup>38</sup> On the other hand, it should be noted that the Preamble of the EPSR includes a reference to the Rome Declaration of 27 March 2017, where it was stressed that linking wages to productivity is essential to sustain competitiveness and job creation<sup>39</sup> The concept of "fair minimum wages" contained in Principle 6 is therefore still subject to labour market efficiency considerations which dominate the whole EPSR initiative. This implies that, in case of a clash between a "social" and an "economic" understanding of fair minimum wage, the latter is likely to prevail.

Similar considerations can be advanced regarding Principle 8, dedicated to the promotion of social dialogue. It is undisputed that the support to the involvement and participation of social partners in the design and implementation of economic, employment and social policies should be praised. Yet, the link with economic objectives is, once again, present. In the Preamble of the EPSR and other recent Commission Communications, social partners' participation in labour reforms is often presented as a tool to promote efficient labour market transformation and productivity-enhancing reforms.<sup>40</sup> Social dialogue is thus approached in a rather utilitarian manner, which limits the margin of manoeuvre of the social partners.

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<sup>38</sup> Communication from the Commission on a "Reflection Paper on the Social Dimension of Europe", COM (2017) 206, 26.4.2017. Integrating a social dimension within the EU economic agenda does not only support growth, but is also functional to social progress which, is believed, descends from economic growth. "Convergence of social standards is a key element of fair globalization. [...] There are several options for the social future of Europe [...] the political option chosen will have implication beyond the social field, stretching to the competitiveness of Europe, its capacity to harness and shape globalization". COM (2017) 206, p. 24.

<sup>39</sup> Ibid.

<sup>40</sup> Preamble to the European Pillar of Social Rights, paragraph 10: "Social dialogue plays a central role in reinforcing social rights and enhancing sustainable and inclusive growth"; Communication from the Commission on a "Reflection Paper on the Social Dimension of Europe", COM (2017) 206, 26.4.2017, p. 12 where under the heading "What helps our societies and economies withstand a crisis", it is stated that "Countries in which social partners have been strongly involved in reforms of the labour market have shown lasting positive results as their involvement ensured the ownership of the reforms process by a wider range of stakeholders"; Commission Publication on "A New Start for Social Dialogue", Brussels, August 2016, presents social dialogue as being "crucial to promoting both competitiveness and fairness in Europe. Countries with a long tradition of social dialogue tend to have stronger, more stable economies and are often Europe's most competitive. Knowing the important role that social dialogue plays and the positive benefit it has on a country's economy, the challenge today is to enhance its role across all EU Member States."

Evidently embedded in a labour market discourse is Principle 5 on Secure and adaptable employment. This principle states that “the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured” and that “entrepreneurship and self-employment shall be encouraged, occupational mobility shall be facilitated.” This wording indicates that labour standards have to be responsive to the employers’ fluctuating needs and their interest to dispose of a flexible and dynamic workforce.<sup>41</sup> Principle 5 promotes the idea of flexicurity and implies that workers’ protection should be framed within a normative context that encourages entrepreneurship.<sup>42</sup>

The third Chapter of the EPSR (Social protection and inclusion) contains principles addressing childcare, pension, unemployment benefits and minimum income, the inclusion of people with disability, health care, long-term care, housing, access to essential service, and social protection in general. Full implementation of these principles has the potential to substantially enrich the EU social dimension. It is, however, worth noting that the accent is placed, once more, on aspects that are functional to the inclusiveness of labour markets and to ensure sound public finances. For example, “reintegration into the labour market” appears to be (among) the underlying objective(s) of Principle 13 on unemployment benefits,<sup>43</sup> Principle 14 on minimum income<sup>44</sup> as well as Principle 17 on the

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<sup>41</sup> Commission Staff Working Document Accompanying the Communication from the Commission on “Establishing a European Pillar of Social Rights”, SWD (2017) 210 final, Brussels, 26.4.2017; Commission Staff Working Document on “Key Economic, Employment and Social Trends Behind a European Pillar of Social Rights”, accompanying the Communication from the Commission on Launching a consultation on a European Pillar of Social Rights, SWD (2016) 51 final, 8.3.2016.

<sup>42</sup> As the Commission suggested in Commission Staff Working Document on “Key Economic, Employment and Social Trends Behind a European Pillar of Social Rights”, accompanying the Communication from the Commission on Launching a consultation on a European Pillar of Social Rights, SWD (2016) 51, final, 8.3.2016, p. 32: “The fundamentals on which the concept of “flexicurity” is based, namely flexible and reliable contractual arrangements, comprehensive lifelong learning strategies, active labour market policies and modern social security systems, are particularly pertinent in view of the aforementioned trends [...]. This offers workers the human capital they need to be secure and to be able to manage the adaptation challenges that will be increasingly required in the future world of work; and it offers employers the security that they will be able to find and retain the skills they need for growth and innovation.”

<sup>43</sup> “The unemployed have the right to adequate activation support from public employment services to (re)integrated in the labour market and adequate unemployment benefits of reasonable duration, in line with their contribution and national eligibility rules. Such benefits shall not constitute a disincentive for a quick return to employment.”

<sup>44</sup> “Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market.”

inclusion of people with disabilities.<sup>45</sup> Self-evidently, stressing the efficient functioning of labour markets and the economic sustainability of national welfares does not reflect the ontologically redistributive function of social protection systems.

Overall, it seems that the principles in Chapters 2 and 3 fall short of adequately complementing the “access justice” approach of Chapter 1 with a clear “substantial justice” component. The labour and social standards thereby promoted are indeed framed in a context rich of allusions to flexibility, adaptability and labour market functioning.<sup>46</sup> The overarching economic rationale might thus impede the EPSR from addressing social and labour standards without being conditioned by the economic functionality paradigm.

### 3.2. *The Implementation of the EPSR*

The EPSR has no direct enforceability. The main responsibility to implement it lies with the Member States.<sup>47</sup> At the Union level, the EPSR predominantly finds actualisation within the European Semester and, limitedly to the competences established in the Treaties, through EU legislation.

#### 3.2.1. Implementation within the European Semester

Starting from the implementation through the European Semester, it might be convenient to make a brief digression to explain how this governance mechanism actually works. The European Semester can, very simplistically, be described as a yearly process of national policy coordination, taking place in different stages.

In the first phase, the national economic and employment situations are monitored and assessed by the Commission. The Commission’s analysis takes the form of Country Reports that evaluate national progress in addressing the issues identified in the previous year. The Country Reports are formulated in consideration of a specific of economic and social priorities, which the Commission yearly defines in two instruments: the Annual Growth Survey<sup>48</sup> (having an economic focus) and the Joint Employment Report (concerning employment policies). Both documents are, in turn, drafted according to a broad-

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<sup>45</sup> “People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.”

<sup>46</sup> On the predominance of the economic rationale over the social objectives, see also Giubboni, *Appunti e Disappunti sul Pilastro Europeo dei Diritti Sociali* (2017); Bonciu, in Bonciu, *The European Pillar of Social Rights: Too Little, Too Late?* (2018), is instead more optimistic and depicts the EPSR as having the potential to enhance European integration.

<sup>47</sup> Press Release, European Commission, 27 April 2017 – “Delivering on the European Pillar of Social Rights”.

<sup>48</sup> In 2020 the Annual Growth Survey was substituted by the Annual Sustainable Growth Strategy, COM(2019)605 final.

er set of integrated economic and employment guidelines, which aim to steer national policies coordination towards more growth and competitiveness. The link between the national policies' assessment process and the EMU-deepening agenda is, therefore, clear.

In the second phase, national governments define their reform programmes in accordance to the priorities identified in the Country Reports. In the national reform programmes, the Member States are expected to address the highlighted socio-economic unbalances and to define a strategy to strengthen labour markets and economic performances. These reforms programmes are again evaluated by the Commission and the Council, which provide further policy guidance to the Member States in the form of Country-Specific Recommendations (CSRs). In the third phase, the countries are supposed to digest the feedback formulated in the CSRs and correct their policies accordingly.

The connection between the Semester and the EPSR is obtained mainly through the Social Scoreboard.<sup>49</sup> The Social Scoreboard is a statistic-based instrument adopted in conjunction and in line with the EPSR, designed to benchmark social progress within the Union.<sup>50</sup> It contains 14 headline indicators that refer to the principles of the EPSR, meant to track the performances of the Member States and to offer accessible data and figures on national social developments.<sup>51</sup> Similarly to the Principles of the EPSR, the Scoreboard's indicators mainly address labour market functioning. To give an example, the Scoreboard has a heading on "Dynamic Labour Market and Fair Working Conditions", which contains no criteria for assessing the fairness of working conditions. Instead, the benchmarking only considers employment and unemployment rates, participation to activation or support to labour market policies and, lastly, the levels of household disposable income, which is the only indicator that tangibly concerns the quality of living conditions.<sup>52</sup>

The Social Scoreboard feeds into the European Semester process since its indicators are used for the analysis of national systems in the Joint Employment Report (which—as indicated above—is one of the Commission's documents that set the socio-economic priorities that inform the whole cycle of national policy coordination).<sup>53</sup> The Social

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<sup>49</sup> Commission Staff Working Document on the "Social Scoreboard", accompanying the Communication from the Commission "Establishing a European Pillar of Social Rights", SWD (2017) 200 final, 26.4.2017.

<sup>50</sup> Communication from the Commission on "Monitoring the Implementation of the European Pillar of Social Rights", COM (2018) 130 final, 13.4.2018.

<sup>51</sup> Ibid.

<sup>52</sup> See the social scoreboard composite indicators, available on the Commission website: <https://composite-indicators.jrc.ec.europa.eu/social-scoreboard/> (accessed 10. 4. 2020).

<sup>53</sup> In particular, the headlines of the social scoreboard are also the headline indicators of the Joint Employment Report, where the performance of the Member States is analysed on the base of the following criteria: the level of the indicators itself, and the progress made in respect to the previous year.

Scoreboard thus transposes the spirit of the EPSR into the definition of the priorities that national governments are pressured to realise.

The integration of the Social Scoreboard in the European Semester triggers ambivalent considerations. On the one hand, it can be argued that the Social Scoreboard is an important tool to “socialise” the European Semester, for too long focused on predominantly macroeconomic objectives.<sup>54</sup> On the other hand, the introduction of social and labour policy indicators into a cycle of policy coordination having a mainly economic character might have only mild effects, and might even result in reinforcing the utilitarian relationship between social and labour standards and economic priorities.<sup>55</sup> It should be indeed recalled that the post-crisis Commission’s Communication and the Presidents Reports addressed the European Semester as a strategic arena to strengthen the tie between social and labour policies and the growth-enhancing agenda.

Besides the Social Scoreboard, the EPSR finds implementation within the Semester process also by serving as a compass for the periodical redefinition of the employment guidelines, which—together with the economic guidelines—inform the whole cycle of national policy coordination. Thus, in 2017 the employment guidelines were reformulated to be aligned with the principles of the EPSR. While one might have expected to see an increased social profile of said guidelines, the changes were minor and in the direction of an even more prominent focus on labour market efficiency.<sup>56</sup> With respect to the pre-Pillar period, Guideline 5 (“Boosting the demand for labour”) and Guideline 8 (“Promoting equal opportunity for all, fostering social inclusion and combatting poverty”) remained unchanged. The revision only concerned Guidelines 6 that from “Enhancing labour supply, skills and competences” turned into “Enhancing labour supply: access to employment, skills and competences” and Guidelines 7, which passed from “Enhancing the functioning of labour markets” to “Enhancing the functioning of labour markets and the effectiveness of social dialogue.” While this reference to social dialogue could be read as a positive acknowledgment of the social partners’ role, it is important to notice that such acknowledgment merely relates to realization of labour market reforms, and not on the definition of labour standards.<sup>57</sup>

<sup>54</sup> Rasnača, BRIDGING THE GAPS OR FALLING SHORT? THE EUROPEAN PILLAR OF SOCIAL RIGHTS AND WHAT CAN BRING TO EU-LEVEL POLICYMAKING (2017), see especially pp. 26–30.

<sup>55</sup> For an analysis of the potential of the EPSR within the European Semester framework see: Garben, The European Pillar of Social Rights: Effectively Addressing Displacement? (2018), p. 210ff.

<sup>56</sup> Commission’s Proposal for a Council Decision on guidelines for the employment policies of the Member States, COM (2017) 677 final – 2017/0305(NLE), 22.11.2017.

<sup>57</sup> See COM (2017) 677 final – 2017/0305(NLE), Proposal for a Council Decision on guidelines for the employment policies of the Member States, whereas it is stated in Paragraph 7 that “Reforms to the labour market, including the national wage-setting mechanisms, should follow national practices of social dialogues and allow the necessary opportunity for a broad consideration of socio-

On account of these elements, the Pillar's implementation in the European Semester seems to confirm the economic embedding of the principles that are thereby formulated. The Pillar's contribution to the Semester is indeed functional to define reforms and policies which lead to job creation and make labour market more agile. It instead does not materialises in a proper refocusing of the policy coordination cycle on genuinely social priorities.<sup>58</sup>

### 3.2.2. Implementation Through EU Legislation

The implementation of the EPSR can take place also through EU law. Despite the limited EU competences in the areas covered by the Pillar, several legislative initiatives have already been adopted.

The Directive on Transparent and Predictable Working Conditions addresses those working arrangements characterised by a very high degree of flexibility in relation to the time, the place or even the actual performance of the labour activity.<sup>59</sup> On the other hand, the Directive reduces the managerial prerogatives in the determination of the working schedule, by preventing the most extreme cases of casualisation of work.<sup>60</sup>

The Directive on Work-Life Balance for Parents and Carers was then adopted to amend the previous EU rules on parental leave, paternity leave and carer's leave. The goal was to promote a better coexistence between working life and household obligations.<sup>61</sup>

Lastly, the Council Recommendation on Access to Social Protection is instead a non-binding (and therefore rather weak) measure that calls on the Member States to extend the scope of their social security systems to atypical workers. The idea behind the Recommendation is to dissuade the Member States to limit the increasing divide between those who have a standard labour relationship and those who do not.<sup>62</sup>

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economic issues, including improvements in competitiveness, job creation, life-long learning and training policies as well as real incomes.”

<sup>58</sup> Clauwaert, *THE COUNTRY-SPECIFIC RECOMMENDATIONS (CSRS) IN THE SOCIAL FIELD – AN OVERVIEW AND INITIAL COMPARISON*, (2012 to 2019).

<sup>59</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, pp. 105–121.

<sup>60</sup> Bednarowicz, *Delivering on the European Pillar of Social Rights: The New Directive on Transparent and Predictable Working Conditions in the European Union*, 2019, pp. 619ff.

<sup>61</sup> Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188, 12.7.2019, p. 79-93.

<sup>62</sup> Council Recommendation on Access to social protection for workers and the self-employed, adopted on 8 November 2019, OJ C 387, 15.11.2019, p. 1-8. See also Schoukens, Barrio, Montebovi, *The EU Social Pillar: An Answer to the Challenge of the Social Protection of Platform Workers?*, pp. 219ff.

These three measures, while representing an encouraging revitalisation of the legislative activity based on the Social Policy Title of the TFEU, only marginally address the quality of working conditions and do not adequately remedy the precariousness that characterises an increasing portion of atypical working relations.<sup>63</sup> Instead of substantially promoting upward convergence in labour standards, these legislative measures set a minimalistic regulatory framework. As a result, flexible and precarious working arrangements are not effectively discouraged, and the social safety nets are not strengthened. The weak contribution to the improvement of labour conditions and the emphasis on dynamic and inclusive labour markets reflect the contrast between the promotion of access justice and the neglect of substantial justice that permeates the EPSR. The absence of binding statutory provisions redressing the broad business freedoms and the margin of discretion granted to the employers indicates that the EU legislature might fall short in honouring the Pillar's declared objective to equally promote economic and social progress.

It is worth mentioning that to foster the legislative convergence on issues covered by the Pillar, in 2019 the Commission proposed the activation of one of the so-called *passerelle* clauses contained in the Treaties.<sup>64</sup> These clauses allow, upon the observation of *ad hoc* procedures, to pass from special legislative procedure (where the Council is the only legislator) to ordinary legislative procedure (where the Council and the European Parliament are co-legislators), and from the unanimous voting rule within the Council to the qualified majority voting.<sup>65</sup> The Commission launched a debate on the opportunity to rely on the *passerelle* clause provided in Article 48(7) TEU in employment matters,<sup>66</sup>

<sup>63</sup> Insights on the shortcoming of the legislative measures implementing the EPSR can be found in Garben, *The European Pillar of Social Rights: An Assessment of its Meaning and Significance?* (2019), pp. 1–27.

<sup>64</sup> State of the Union 2018, Letter of Intent to President Antonio Tajani and to Chancellor Sebastian Kurz, signed by Commission President Jean-Claude Juncker and Commission Vice-President Frans Timmermans, Strasbourg, 12.9.2018; Commission Infosheet on the Roadmap for the future Commission's initiative on "More Efficient law-making in social policy: identification of areas for an enhanced move to qualified majority", 20 December 2018; Communication from the Commission on "More efficient Decision-making in Social Policy: Identification of Areas for an Enhanced Move to Qualified Majority Voting", COM (2019) 186 final, 16.4.2019.

<sup>65</sup> *Ibid.*: the procedure to trigger a *passerelle* clause implies the adoption of a non-legislative initiative. Qualified majority voting means that the vote in favour must represent the 55 per cent of the Member States and the 65 per cent of the total EU population.

<sup>66</sup> *Ibid.*, p. 7, and ETUC Submission on the European Commission Roadmap on "More efficient law-making in social policy: identification of areas for an enhanced move to qualified majority voting", Brussels, 19.1.2019. These documents identify three different possibly suitable options for *passerelle* clauses within the treaties. The first is enshrined Article 48(7) TEU, providing a general *passerelle* clause. The second is in Article 153(2) TFEU, last subparagraph, which contains a specific *passerelle* clause for social policy measures covered by Article 153(1)(d), (f) and (g) TFEU. In other words, this could cover measures on the protection of workers where their employment contract is

and in particular in the two specific fields of non-discrimination and social protection of workers.<sup>67</sup> The decision to activate the *passerelle* clause would facilitate the adoption of legislation on the two targeted areas, since the unanimity rule implies that every Member State has veto power, with a stalling effect on every legislative proposal.

While the activation of the *passerelle* clause might confer to the EU legislature more leeway to adopt progressive measures that promote the upward convergence of working and living standards, the usual reservations apply. Indeed, a closer look to the Commission's justification for its initiative reveals an utilitarian approach, oriented at promoting EU growth, job creation and competitiveness. About the procedural rules on non-discrimination matters, the Commission indeed argued that

“the lack of common EU rules to protect against discrimination in access to goods and services undermines the level playing-field that is key for an effective and fair single market.”<sup>68</sup>

Similarly, with reference to EU action in the field of access to social protection, the Commission stated that it is important to “ensure that EU business make the most of the changing world of work.”<sup>69</sup> Needless to say it, these considerations quite evidently already place future labour policy initiatives within the EU economic strategy rather than into a genuinely social agenda.

#### 4. Conclusion: Reflections on a Social Agenda Based on the EPSR

The diachronic analysis of the EPSR and of the policy-making around it allows formulating some considerations on the EU approach to (future) social and labour initiatives.

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terminated, on the representation and collective defence of workers' and employers' interests, and on conditions of employment for third-country nationals legally residing in the Union. It could not cover measures on non-discrimination, having their legal basis in Article 19 TFEU, and on social security and social protection of workers, with legal basis in Article 153(1)(c). The third option is found in Article 19(1) TFEU, which provides a specific *passerelle* clause applicable to measures on non-discrimination exclusively. Ultimately, the Commission opted for the general *passerelle* clause established in Article 48(7) TFEU.

<sup>67</sup> Based on Article 153 TFEU, the other areas where either special legislative procedure or the unanimity voting rule within the Council are: protection of workers when employment contract is terminated; workers' and employers' representation and collective defence; conditions of employment of third country nationals.

<sup>68</sup> Communication from the Commission on “More efficient Decision-making in Social Policy: Identification of Areas for an Enhanced Move to Qualified Majority Voting”, COM (2019) 186 final, 16.4.2019, p. 10.

<sup>69</sup> *Ibid.*, p. 11.

The proclamation of the EPSR has undoubtedly revitalised the political and academic debate on the relevance of labour and social standards within the European integration. This should be acknowledged as a merit of the Juncker Commission and, in more general, of the EU policy-makers that have elevated labour and social policy among those crucial areas that need to be addressed to guarantee a solid future to the EU. However, it was shown that the context in which the EPSR was conceived was rooted in a post-economic crisis strategy, whereby the ultimate objective was deepening the EMU. The idea to dedicate one of the pillars of the EU's economic agenda to social and employment matters had an intrinsically economic rationale. It is then not surprising that the EPSR predominantly focuses on labour market functioning and less on strengthening labour and social standards. This contribution has indeed demonstrated that the content of the EPSR, as well as its implementation, present an unbalanced inclination towards strengthening the inclusiveness of labour markets rather than increasing the quality of labour conditions.

The original question formulated in the introduction was whether the EPSR, a document conceived within a growth-enhancing strategy, can be a catalyst for leading the EU towards social progress and more fairness. The answer is nuanced and not straightforward.

While it is not argued that the efficient functioning of labour market is *per se* at odds with adequate labour and social protection, the EPSR and its implementing measures seem to assume that job creation and inclusive labour market policies necessarily coincide with good working and living conditions. Instead, EU policy-making fails to recognise that rethinking the growth paradigm and purposively redressing the economic priorities so to ensure that economic policies go hand in hand with social progress are also important ingredients.

Based on these premises, the declared intention of the Von der Leyen Commission to base its social agenda on the EPSR forewarns policies that will still focus on the inclusivity of labour market and on ensuring and dynamic workforce. The logic intuition is thus that the future initiatives will continue to stress job creation and flexibility rather than labour protection, and will not break the tie between social and labour policies and the EMU-deepening strategy. This prospect might change, however, if the Commission manages to de-contextualise the EPSR from the agenda in which it was originally conceived and succeeds to emancipate the social and labour principles from the overarching economic rationale. Would the EU institutions be able to extrapolate labour and social rights from their growth-oriented embedding, the Pillar would acquire a more independent meaning, and it would be better suited to achieve substantial advancement in the social and labour fields.<sup>70</sup> To achieve this, it is necessary to relocate the EPSR and its implementation into a different normative framework, which does not predominantly

<sup>70</sup> Hendrickx, in: Hendrickx, *GAME CHANGERS IN LABOUR LAW* (2018), pp. 63–74.

focus on labour market efficiency and does not perceive national labour standards as market rigidities. In this way, the Commission's usual (rhetorical) commitment to ensure that social and economic progress proceed hand in hand, will finally be reflected in EU policy-making.

At present, with only a half year of activity of the Von Der Leyen Commission, it is early to discern the actual approach *vis-à-vis* the EPSR and its implementation. There are ambivalent elements to consider. On the one hand, some factors indicate that a Copernican revolution is unlikely to happen. First, with respect to 2015 (when the Juncker Commission was appointed), in 2019 the elections showed that socially-oriented political forces have generally lost consensus across Europe, in the European Parliament as well as at the national level.<sup>71</sup> Moreover, the 2019–2024 European Council's Strategic Agenda contained only one synthetic reference to social policies, indicating that in this field the priority is to invest for "implementing the European Pillar of Social Rights at EU and Member State level."<sup>72</sup> On the other hand, there are other and more optimistic indications. One is that Commissioner Schmit, in charge of "Jobs and Social Rights", belongs to the centre-left side of the political spectrum. At his confirmation hearing before the European Parliament, Schmit openly addressed the problem of the precariousness of new forms of work, and anticipated future measures to ensure fair minimum wage and to provide better labour conditions to platform workers.<sup>73</sup> Furthermore, in December 2019 the Commission adopted the Annual Sustainable Growth Strategy, where, for the first time, the accent was placed on the need to adopt a new growth model, based on sustainability.<sup>74</sup> The same spirit was subsequently present in the January 2020 Commission's Communication on a Strong Social Europe for a Just Transition.<sup>75</sup> There, the Commission outlined several social and labour policy measures among which an initiative on minimum wages, one on a EU unemployment scheme and a Social Action Programme to implement the EPSR. Finally, the 2020 European Semester cycle has departed from the usual predominantly macroeconomic focus. The 2020 CSRs reflects the socio-economic crisis brought along by Covid-19 and the consequent relaxation of the

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<sup>71</sup> See European Parliament, 2019 European Election results, URL: <https://europarl.europa.eu/election-results-2019/en/tools/comparative-tool/>.

<sup>72</sup> "A New Strategic Agenda 2019-2024", agreed by the European Council at its meeting in Brussels on 20.6.2019.

<sup>73</sup> European Parliament Briefing on "Commitments Made at the Hearings of the Commissioners-Designate of the Von der Leyen Commission, 2019-2024", November 2019.

<sup>74</sup> Communication from the Commission on "Annual Sustainable Growth Strategy 2020", COM(2019)650 final, 17.12.2019, Brussels.

<sup>75</sup> Communication from the Commission on "A Strong Social Europe for Just Transitions", COM(2020)14 final, 14.1.2020, Brussels.

EU budgetary rules. The emphasis is indeed placed on the need to improve national social protection systems and the recommendations do not exclusively reflect a growth logic.<sup>76</sup>

Confronted with this evolving scenario, it is premature to assess whether EU policy-making will be able to preserve this renewed social outlook which casts a new light on the EPSR and provides a different normative framework for its implementation. Only time will tell whether these positive signals are anticipations of a new discourse, or rather just a temporary deviation from “business as usual”.

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<sup>76</sup> Rainone, *THE COUNTRY-SPECIFIC RECOMMENDATIONS (CSRS) IN THE SOCIAL FIELD – AN OVERVIEW AND INITIAL COMPARISON*, (2020).

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ZBORNIK ZNANSTVENIH RAZPRAV  
PERSPEKTIVE EVROPSKEGA STEBRA SOCIALNIH PRAVIC  
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*Silvia Rainone*

### **Evropski steber socialnih pravic – povej mi, od kod prihajaš, in povem ti, kdo si**

Socialna in delovnopravna politika imata poseben pomen za ekonomske cilje Evropske unije (EU). Prvič – splošno velja, da naj bi omejitev delovnopravnih ovir pripomogla k večji tržni konkurenčnosti podjetij. Prožna delovnopravna ureditev naj bi zanje ustvarila ugodne razmere in pripomogla k nižji stopnji brezposelnosti. Drugič – konvergenca nacionalnih delovnopravnih sistemov je pomembna za spodbujanje razvoja evropskega skupnega trga in zmanjševanje konkurenčnih prednosti podjetij v državah članicah z nižjimi stroški dela. Avtorica k Evropskemu stebru socialnih pravic (ESSP) pristopa prav z ekonomskega vidika socialne in delovnopravne politike EU. Prispevek korenine ESSP izpeljuje iz ekonomskih ciljev EU, ki so sledili krizi iz leta 2008 in ki naj bi skrbeli za nadaljnjo ekonomsko rast in rast produktivnosti skupnosti. Kot izhaja iz Poročila petih predsednikov, sprejetega leta 2015, je bil vnovični zagon evropskega gospodarstva odvisen od poglobitve ekonomske in monetarne unije (EMU), ki je – prav zato – zahtevala povečan pomen zaposlovanja in socialne učinkovitosti. Avtorica ESSP vzpostavlja kot most med evropsko strategijo poglobljene EMU in socialno ter delovnopravno politiko EU. Trditev jasno odpira vprašanje, ali lahko socialna politika, ki je utemeljena v ekonomski strategiji, uspešno dosega cilje EU, kot sta zagotavljanje socialnega napredka ter izboljšanje življenjskih in delovnih razmer. Kot izhaja iz prispevka, politični dokumenti, sprejeti pred ESSP, pa tudi njegova struktura, vsebina ter orodja njegove implementacije odsevajo globoko ekonomske značilnosti. Bolj kot skupni napredek k višjim socialnim in delovnopravnim standardom namreč poudarjajo prožnost in vključujočo naravo trga dela ter možnosti za ustvarjanje novih zaposlitev in razvoj podjetništva. Avtorica je tako prepričana, da je ESSP v samem jedru povezan z idejo poglobitve ekonomske in ne socialne integracije EU, saj sam po sebi ne ponuja zadostnih instrumentov, ki bi uspešno spodbujali koncept socialne pravičnosti. Vendarle pa je, kot izhaja iz prispevka, pri presoji odločilna jakost vezi med ESSP in ekonomsko agendo EU. Če bo njenim institucijam, zlasti Komisiji, ESSP v nadaljevanju uspelo osamosvojiti konteksta tržne integracije, to lahko pomeni tudi osamosvojitve prihodnjih socialnih in delovnopravnih politik od siceršnje ekonomske ali gospodarske naravnosti EU.

**Ključne besede:** Evropski steber socialnih pravic, socialna politika EU, preglednica socialne uspešnosti, Poročilo petih predsednikov, ekonomski vidiki delovnega prava.

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ZBORNIK ZNANSTVENIH RAZPRAV

PERSPECTIVES ON THE EUROPEAN PILLAR OF SOCIAL RIGHTS

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### **The European Pillar of Social Rights – Tell Me Where You Come from and I Will Tell You Who You Are**

Social and labour policies have a significant relevance for the European Union's (EU) economic agenda. First, it is generally assumed that lifting labour law rigidities helps firms to increase their competitiveness on the market. Labour market flexibility is indeed deemed to create a favourable environment for business and to support the employment rate. Second, the convergence of different national labour law systems is important to foster the expansion of European single market and to reduce the competitive advantage of companies situated in countries where labour costs are lower. It is in consideration of the EU social and labour policies' economic rationale that the author approaches the European Pillar of Social Rights (EPSR). This contribution places the origins of the Pillar in the EU economic agenda that followed the 2008 financial crisis and that was designed to resume European economic growth and productivity. As stated in the 2015 Five Presidents Report, the re-launch of EU economy depended on the deepening of the Economic and Monetary Union (EMU) which, in turn, needed *greater focus on employment and on social performance*. The author argues that the Pillar constitutes the bridge between the EU strategy for a deeper EMU and social and labour policies. This then raises the question on whether a social agenda rooted in an economic strategy is adequate to fulfil the Union's objective to advance social progress and improve living and working conditions. The contribution illustrates that the policy documents that preceded the proclamation of the EPSR, the EPSR's structure and content, and its implementation tools reflect the economic embedding. The accent is placed on labour market flexibility and inclusivity, job creation and entrepreneurship more than on promoting the upward convergence of labour and social standards. The author argues that the Pillar is ontologically linked to the deepening of economic integration and that it does not provide, *per se*, sufficient instruments to effectively promote social fairness. However, it is noted that much depends on how strong are the ties that link the Pillar with the economic agenda. If the EU institutions, and the Commission *in primis*, manage to de-contextualise the Pillar from its market deepening embedding, that could emancipate future social and labour policies from the overarching economic rationale.

**Keywords:** European Pillar of Social Rights, EU social policy, social scoreboard, Five Presidents Report, economic rationale of labour law.