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Strengthening the EU's social dimension: using the EMU to make the most out of the Social Pillar

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Key points

In its current form the European Pillar of Social Rights (EPSR) does not offer sufficient ways of endowing the European Union (EU) with a meaningful social dimension. For the EPSR to matter, the relevant actors should strongly commit themselves to its principles, ideally by using a legally binding mechanism. We propose that an inter-governmental route could be used to achieve consensus on at least a few principles – such as unemployment insurance – that are essential for the smooth functioning of the EMU. This would then serve as the first step towards, or at least a trigger for, creating a stronger social dimension across the EU. The Commission's currently suggested use of the EPSR's principles for drafting recommendations in the European Semester is much weaker, but, in the absence of more meaningful solutions, it would be preferable to the status quo.

Introduction¹

The debate on whether – and if so, how – to strengthen the social dimension of EU has once again become urgent. Despite the current economic recovery, the crisis has left deep social scars in several parts of the EU, while divergence in social outcomes has re-emerged. These developments have added to previous concerns about the asymmetry between the economic and social dimension in the EU. Together with the rise of parties with strongly euro-sceptic agendas across Europe, these developments have resulted in a crisis of trust towards the EU, questioning its capacity to deliver prosperity and equal opportunities. In response, calls and initiatives have been launched to strengthen EU's social dimension, the most prominent of which has been the European Pillar of Social Rights (EPSR), which was proclaimed by the European Commission, the Council and the European Parliament on 17 November.

To a large extent the EPSR was proposed alongside and in connection to the future plans for a deeper and fairer EMU. In its final form the Pillar refers directly to the euro-zone states as the key addressees of the initiative:

A stronger focus on employment and social performance is particularly important to increase resilience and deepen [EMU]. For this reason, the [EPSR] is notably conceived for the euro area but it is addressed to all Member States. (Council 2017)

Both the Five Presidents' Report (Juncker *et al* 2015) and a Strategic Note produced by the European Political Strategy Centre² (EPSC 2015) in June 2015 emphasise the imperative for a stronger focus on the EMU's employment and social performance, not just in order to fulfil Europe's ambition to earn a social 'triple A' but also as an economic necessity. And indeed, the EPSR deals with a number of questions highly relevant in that context – wages, support for employment, social protection and unemployment benefits, to name but a few.

At the same time, some of the Member States that would stand to benefit the most from a stronger European social dimension by adopting the Pillar are not yet members of the Eurozone. Significant difficulties arise from the lack of EU competence in several important social policy domains, in addition to the difficulty of reaching a consensus across Member States and between political actors regarding the desirable level of protection. In this policy brief we discuss some possible ways in which the EPSR could eventually strengthen the EU social dimension by looking into how we could

1 We thank – without implicating – Philippe Pochet and Maria Jepsen for helpful comments on an earlier version of this Policy Brief.

2 That is, the European Commission's in-house think-tank.

make progress in this direction first among the Eurozone members (and other states willing to join) and then by extending this initiative to other states.

To build our argument, we first set out the main lines of the current discussion regarding EMU's social dimension; second, we look at what the EPSR has now added; and finally, we examine how to make the most of the Pillar to promote the EU social dimension by first creating a dynamic within the EMU.

The social dimension of the EMU

The quest to strengthen the EMU's social dimension regained prominence following the recent crisis and in the context of the broader debate on how to reform the EMU to improve its functioning (see, for example, EPSC 2015 and Juncker *et al.* 2015). Concerns about the relative weakness of EMU's social dimension are not new.

In the EMU's original setup, the allocation of functions across monetary and fiscal policies and prices and wages meant that labour markets would become a crucial mechanism of adjustment to shocks, by promoting either wage/labour cost flexibility and/or labour mobility. Given the intimate links between social policies, on one hand, and employment and labour costs, on the other, and in the absence of any stabilisation functions at the euro-zone level, labour markets and social policies would potentially become 'adjustment variables' (Degryse *et al.* 2013), thus raising concerns among socially-minded actors about the EMU's social dimension. In that context, the emphasis was on policies and reforms that would foster labour market flexibility and mobility. During the crisis, such reforms, together with fiscal austerity, were among the main pillars of economic adjustment programmes that Member States on the euro-zone 'periphery' – which received bailouts – had to implement as a condition for receiving financial support. Recessions and the deterioration of social outcomes have been greatest in those Member States. Divergence in social and economic developments re-emerged especially between the 'core' and the 'periphery' of the euro zone.

The calls to strengthen the EMU's social dimension after the crisis are somewhat different. The emphasis is now more on differences in the capacity of national labour markets and social policies to help economies absorb and adapt to adverse shocks, not just by means of more flexible wages but also by supporting people's return to gainful employment while also providing adequate income protection when unemployment occurs. From a longer-term perspective, various documents on the future reform of the EMU also emphasise the pro-employment role that labour and social market policies can play for long-term growth. Both adjustment to shocks and long-term growth are considered to be matters of common concern for the EMU. In fact, both the reflection paper on deepening EMU and the Five Presidents' Report went on to suggest that significant and sustained convergence towards similarly resilient economic structures, where the social dimension is a crucial factor for resilience, should be a condition for access to a shock absorption mechanism to be set up for the euro area.

In addition to these economic arguments, from a political perspective the hope is that strengthening the social dimension

would help reverse the current lack of trust in the EU as a whole, both because the EMU crisis has been a fundamental trigger of this distrust and because this kind of action could create a dynamic that is extended to the entire EU.

The European Pillar of Social Rights: What we got and why

The EPSR was proposed against this background. Part of the rationale behind this initiative was the need to strengthen the EU's social dimension, and also to help with mainstreaming social elements across EU policies, including EMU, in accordance with the requirements of Article 9 TFEU ('the Social clause'). The Social clause came into force in 2009 and contains an obligation to promote a high level of employment, to guarantee adequate social protection and to fight against social exclusion when defining and implementing all EU policies. Nevertheless, when it comes to the EMU and macroeconomic and budgetary surveillance, this mainstreaming obligation has not yet been realised and (formally) accommodated.

For the first time, the EPSR, which, according to Juncker's announcement, is destined to serve as a '*compass for renewed convergence within the euro area*' (Juncker 2015), brought along the promise of instrumentalising social concerns in the fast-developing EMU framework. While a stronger social dimension is needed for the whole EU, the EMU can at least get the ball rolling.

The EPSR contains 20 principles, formulated mainly as rights, regulating diverse matters. It broadly covers three areas: (i) equal opportunities and access to the labour market, (ii) fair working conditions and (iii) social protection and inclusion. For example, concerning 'wages' the EPSR states that 'workers have the right to fair wages that provide for a decent standard of living' and requires the minimum wages to be 'adequate'. The EPSR also confers a right to 'adequate minimum income benefits ensuring a life in dignity' for those lacking sufficient resources (for example, unemployed), and stipulates that pensions should ensure adequate income. These are all matters not currently regulated in EU law and therefore the EPSR goes further than the EU *acquis*. In addition, the EPSR also regulates an array of 'classical' EU labour law matters, such as gender equality, non-discrimination and work-life balance. Overall, the EPSR in part reiterates the obligations already present in EU law, in part develops them beyond their current scope and in part goes beyond the current domain of EU social policy (for example, by regulating wages and housing).

As welcome as the content of most of the principles is (Rasnača 2017: 11), the legal form of the EPSR could be heavily criticised for its weakness. The EPSR consists of a recommendation (European Commission 2017a) and an inter-institutional proclamation with identical content. While the recommendation is aimed at triggering (legislative) activity at the national level, the proclamation expresses an inter-institutional and political commitment by the Commission, Council and the European Parliament to abide by the EPSR's principles in their actions. Neither document has binding legal force and there is no sanctions mechanism in the event of disobedience. 'Strength-wise', therefore, they cannot be compared with, for example, requirements established under the

EMU concerning member-state fiscal and monetary policies (for example, the excessive deficit procedure).

It is also not completely clear where exactly the EPSR will play a role. According to the Commission, the tools for delivering on the EPSR are in the hands of local, regional and national authorities, while the EU can help in setting the framework, giving direction and establishing a level playing field. While the EPSR directly refers to some EU law areas, alluding that it could possibly play a role there³ and also mentions the EMU explicitly in another recital, the only concrete example of a policy mechanism where the EPSR will matter identified by the Commission is the European Semester (European Commission 2017b: 9).

It is not surprising that the European Commission seems to privilege the soft mode of social policymaking in the EU. First, non-binding, peer pressure-exerting mechanisms have been used in the past to expand EU influence to policy fields such as social/employment policies, but also in domains where Member States maintain significant differences in their national policies and policy preferences with little, if any, appetite for significant convergence. Second, many of the domains regulated by the EPSR are considered national competences – for example, wages, and many aspects of social protection and social assistance – by both the Member States and the Commission. Overall, this, along with the evolution of the Pillar, reveals the underlying political contestation and, ultimately, constraints on its implementation.

Also, the changes in the preamble of the text to be proclaimed, compared with the European Commission's original proposal, suggest that in reaching an agreement about the proclamation of the Pillar by the Council, at least some Member States have been keen on reasserting the constraints imposed on social policies by certain economic policy objectives. For example, in recital (1), it is mentioned that Europe's sustainable development will be 'based on balanced economic growth and *price stability* [emphasis added], [...], *aiming at full employment and social progress and a high level of protection...*'. The reference to 'price stability' is new and suggests that it has primacy over, rather than being on a par with full employment.

In recital (19), it is stated that 'the establishment of the European Pillar of Social Rights does not affect the right of Member States to [...] manage their public finances and *must not* [emphasis added] significantly affect the financial equilibrium thereof.' In the original proposal it was stated that the Pillar 'should not' significantly affect the financial equilibrium of public finances. Although the preamble does not have the same weight as the text of the Pillar, it can shape how the principles of the Pillar are interpreted if challenged.

In sum, while the content of the EPSR is in part socially ambitious and expands beyond the protection currently offered by EU law, its legal form is disappointing. In addition, recent changes in the EPSR's preamble also seem to weaken the content and subject it to an economic rather than a social rationale.

³ For example, freedom of movement of workers, the right of establishment, economic, social and territorial cohesion, guidelines of the economic policies (recital (6) of the EPSR). Note that Economic and Monetary Policy (Title VIII TFEU) is not included in this list.

How to make the most of the Pillar for promoting the social dimension: starting with the EMU

The EPSR directly concerns numerous social policy aspects that are relevant for the well-functioning of the EMU and therefore could be taken as a sort of a basis or at least inspiration for encouraging social convergence on the principles included therein. In this context the EPSR could be used to draw the social and labour policy areas that were reoriented towards economic policies during the crisis (Parker and Pye, 2017) back towards their social purpose by establishing clearer common social standards for at least some groups of countries.

It follows from the EPSR (recital (13)) that the Eurozone states are especially encouraged to enforce and comply with the rights and principles embedded in the Pillar. Therefore, a stronger commitment from these states in particular could be the first step towards enforcement.

The idea that the effectiveness of soft law (the EPSR) could be enhanced if it could be linked or attached to hard law initiatives has been expressed by Trubek and Trubek (2005). Unfortunately, within the confines of the Treaties currently in force there is no legal basis for adopting social policy measures solely for the Eurozone countries. While the Treaty provisions on the EMU do not contain legal basis that could be used for establishing common social standards, any legislative measures adopted under the Social policy title (Title X TFEU) have to be addressed to all EU Member States and not only particular groups.

Adopting common standards and ensuring meaningful social upwards convergence for EU28, while welcome, does not seem realistic due to the lack of political consensus, at least not to a scale capable of re-balancing the imbalance between monetary and economic policies and social dimension. Also, many aspects regulated by the EPSR are beyond the EU legislative competence as it currently stands (e.g. on wages, social protection for self-employed, minimum income, old age income and pensions).

Therefore, a traditional legislative route is simply not available.

In spite of this, if the Eurozone countries (or at least some Eurozone countries) and maybe some other countries that wish to join could actually reach an agreement on establishing broad and binding guidelines for their social performance needed to meaningfully strengthen the EMU social dimension, legally two routes remain.

First, the rarely used route of enhanced cooperation allows groups of Member States to go further than others are ready to. However, such cooperation has substantive barriers. First, it cannot impact trade and to distort competition (Article 326 TFEU). Second, more importantly, there are significant procedural barriers (vote in the Council and consent from the European Parliament (Article 329 TFEU)). Due to these substantial limits this path is in practice almost never used and might be impractical.

What remains is a route analogous to the one successfully taken by groups of Member States in the past: intergovernmental cooperation.

This route was taken to establish Schengen, to cooperate in the area of asylum, and also to establish some rules within the Eurozone. The relevant precedent of such legal measures for, specifically, the Eurozone is the (in)famous Fiscal Compact. Such intergovernmental cooperation has later led to binding standards for the whole of the EU (e.g. asylum and the current proposal to directly implement the Fiscal Compact in EU law). This inter-governmental route beyond the EU domain could also be taken for strengthening EMU's social dimension starting from the Pillar. While from a legal perspective such an international (intergovernmental) treaty would be the best (and most binding) option we could get, its effectiveness would still very much depend on its content and on whether an effective sanctions mechanism for non-compliance would be foreseen.

Even this approach would require significant consensus building to bring Member States on board and keep them committed to delivering, a consensus which is unlikely to be found at once for the entirety or even many of the principles in the Pillar. An alternative to that would be to focus on one or a few principles that are essential for the smooth functioning of the EMU. An example could be the issue of unemployment insurance. As Vandembroucke (2017) argues unemployment insurance in EMU produces positive externalities: in the face of adverse shocks, unemployment insurance can be a par excellence automatic stabiliser, provided that it is adequately generous on the level of benefits, their duration and the coverage of the unemployed workforce. The stabilisation benefits it produces for a single Member State spill over to the others. Moreover, elements of the generosity of unemployment benefits, such as their relation to the previous, minimum or average wage, can be Member State specific and thus easier to agree on. Therefore, it should be a matter of common concern in the EMU that Member States organise sufficiently good unemployment insurance systems. Building a momentum for agreement among Eurozone Member States could make it easier to draw non-Eurozone members into negotiating and joining the agreement.

As far as the Pillar principles are concerned, organising an adequate and encompassing unemployment insurance system would require the operationalisation of not just principle 13 (unemployment benefits) but also of principles 12 (social protection), 5 (secure and adaptable employment) and probably 4 (active support for employment). The operationalisation of the social protection and secure and adaptable employment (or at least of parts of the latter) would ensure that workers under all forms of employment and contracts would be covered by unemployment benefits, while operationalising active support for employment could ensure that entitlements to unemployment benefits would not get lost when an individual changes jobs.

A much weaker, but in the light of the Commission's promise that the EPSR will be used in the European Semester, option would be to implement the EPSR's standards in both the economic and social semester. Although this route would not suffice for entrenching the E(M)U with adequate social standards, it would be better than nothing. Currently the governance processes involved in the Semester process often have different legal bases, ranging from 'soft' coordination or social policies to mandatory fiscal surveillance with 'hard' means of sanctioning (Hentschel, 2015: 4). Therefore, in

practice the social aspects of the European Semester are currently weaker than the economic ones, at least when it comes to the enforcement prospects. It is possible that the EPSR could to some extent strengthen the social aspects, especially if treated as binding and taken seriously by the stakeholders.

This could be ensured by adjusting the Scoreboard (European Commission, 2017c) attached to the EPSR in a way that would allow meaningful instrumentalisation of the Pillar's principles (e.g. on adequate support for unemployed). Corresponding objectives for individual Member States could then be adopted in the form of the recommendations. While this would again mean that only soft law measures were used, to an extent this might help in further socializing the European Semester along the lines suggested by Zeitlin and Vanhercke (2017).

Conclusions

The EPSR is the latest Commission's initiative aiming at strengthening EU's social dimension. The legal form of the Pillar has failed to impress as the documents it consists of have neither binding legal force nor provide for any sanctioning mechanism. At the same time the content of some of the EPSR's principles is rather ambitious and forward-looking. Therefore, it could be used as a starting point for developing more effective standards. Taking the EPSR forward in building the social dimension from a legal perspective would require forging a broad consensus on a limited number of its principles for which there is evidence that they are necessary and have positive spill over effects. We argue that the momentum for such a consensus could be built more easily among the Eurozone Member States and then be extended to the rest of the EU.

If the actors involved do not manage to reach consensus, then the only route through which the EPSR could slightly affect the economic and monetary policies remains via the European Semester. A sort of 'socialization' of CSRs could be imagined, and if it takes place together with meaningful concretization of the EPSR's principles, then it might lead to some actual impact at the national level. Nevertheless, the biggest weakness when compared to the economic and fiscal requirements under the EMU then still remains – the lack of binding force and the lack of sanctions mechanisms.

Ultimately, however, the speed at which we are likely to see progress in translating the principles of the EPSR to actions is likely to be too slow to address the falling levels of trust that citizens seem to have towards systemic parties and the EU. Thus, finding ways to implement the Pillar (e.g. by using EU budget funds) should not be the only approach to strengthening the social dimension. Changing the context within which fiscal policies operate in the EMU so as to allow them to play their stabilizing role and so as to avoid putting extra pressure on social policies would certainly be a promising route, albeit one with similar difficulties for achieving sufficient consensus. Taking this logic a step further, social principles should be placed at the heart of all economic policies in the EU if the social dimension is ever to be rebalanced with the economic. A stronger commitment to social values capable of rebalancing this asymmetry should be encouraged, particularly regarding implementation and enforcement.

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