

# Conclusions: the twists and turns of two decades of EU social policymaking

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## Introduction

This 20<sup>th</sup>-anniversary edition of *Social policy in the European Union* (hereafter referred to as the *Bilan social*, its shorter name in French) analyses the main developments, over the past two decades, of what is often referred to as ‘Social Europe’.<sup>1</sup> Key questions addressed in this volume include: *what was the place of the social dimension during the financial and economic crisis? Who has driven, who has braked EU social policymaking? Which instruments does the EU have at its disposal for ‘market correcting’ policies? And last but not least, what are the next steps in the further implementation of the EU’s social dimension, especially in the context of the European Pillar of Social Rights?*

These conclusions are structured as follows. Section 1 provides an analytical chronology of the main developments of the EU’s social dimension over the past twenty years. Section 2 reflects on the key messages put across by the authors of the book’s chapters with their focus on long-term developments in key EU social policy areas: industrial relations; social protection and social inclusion; social security coordination and gender equality. This section also highlights how the EU increasingly intervenes in the social domain, using a variety of policy instruments. Section 3 discusses some of the recent debates regarding the EU’s social agenda under the new von der Leyen European Commission. Section 4 provides policy recommendations, drawing on the analyses presented in this book.

## 1. The EU’s social dimension: twenty years of trials and tribulations

Identifying stages in the development of the EU’s social dimension is a challenging exercise, not in the least because this ‘dimension’ encompasses a variety of policy areas<sup>2</sup> with sometimes differing temporal developments.<sup>3</sup> For analytical and pedagogical reasons, we nevertheless find it useful to capture the development of the EU’s social

1. For a discussion of concepts such as ‘Social Europe’ and the ‘European social model’, see Pochet (2019) and Crespy (2019).
2. Including some policy areas which have not been discussed in this volume, notably health and safety at work, but see Vogel (2018).
3. This is for example reflected in the chapters by Tricart and Vanhercke (this volume), who identify somewhat different stages to describe the historical development of the European Social Dialogue and the Open Method of Coordination, respectively.

dimension in three main periods, drawing on Pochet (this volume) and Verdun and d'Erman (this volume).

### 1.1. From the Treaty of Amsterdam to the revised Lisbon Strategy: the 'social period' (1997–2005)

The years 1997–2005 are often referred to as the 'social period' (Pochet, this volume), an outcome of the criticism levelled against the Maastricht Treaty. This period featured a particular context. First, the 1995 enlargement to Austria, Finland and Sweden saw three affluent countries with strong welfare models and net contributors to the budget joining the EU. Second, between 1997 and 2003, the majority of EU Member States had social democratic or socialist governments, alone or in coalition with other parties: in 1999, no fewer than eleven out of fifteen national governments were headed by social democratic parties. The combination of both factors resulted in a new approach to social issues: convergence towards best practices, rather than a push for harmonisation through legislation. At the same time, Nordic enlargement allowed the Commission to widen the scope of gender policy to include matters around work-life balance (Guerrina, this volume).

This social period can broadly be seen as a continuation of the previous decade: the late 1980s and the 1990s, a decade marked by 'the first instances of social policy being pursued independently of economic integration' (Verdun and d'Erman, this volume). Social milestones of the 1990s included the Maastricht Agreement on Social Policy (1992), the Treaty of Amsterdam (1997) and the implementation of its new Employment chapter via the European Employment Strategy (EES), which can be seen as an Open Method of Coordination (OMC) *avant la lettre*. These milestones were followed by the launch of the Lisbon Strategy (2000) which legitimised the launching of OMCs in a wide variety of policy areas: in several cases, a key motivation of the social policy players was to define a level playing field *vis-à-vis* their economic counterparts (Crespy 2019; Vanhercke 2016).

At the same time, and despite formidable institutional and political hurdles, the EU continued to accumulate substantial regulatory mandates in employment, social and anti-discrimination policy (Vandenbroucke with Vanhercke 2014). This was the case for *gender equality at work*<sup>4</sup> (2002/73/EC) and equality with regard to access to services (2004/113/EC). It was also the case with workplace health and safety: the European Framework Directive on Safety and Health at Work (89/391 EEC) spawned a host of directives on specific hazards, such as exposure to chemical agents (98/24/EC), biological agents (2000/54/EC) and electromagnetic fields (2004/40/EC).<sup>5</sup> The European Commission stretched the interpretations of 'health and safety' as far as possible to develop an agenda on working conditions and workers' rights, which included, during this 'social period', the highly contested Working Time Directive

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4. More particularly regarding access to employment, vocational training and promotion, and working conditions.

5. Other directives pertain to exposure to carcinogens or mutagens at work (2004/37/EC), risks from explosive atmospheres (1999/92/EC), risks arising from vibration (2002/44/EC) and risks arising from noise (2003/10/EC).

(2003/88/EC). As regards equal treatment, legislation pertained to racial or ethnic origin (2000/43/EC) and employment (2000/78/EC). Finally, Regulation 883/2004 extended the material scope of European social security legislation to pre-retirement benefits and paternity benefits (Cornelissen and De Wispelaere, this volume).

The ‘Delors era’ (1985-1995) was also the golden age of the European Social Dialogue, resulting in several major agreements between the social partners, *inter alia* on parental leave (1995), part-time work (1997) and fixed-term contracts (1999), three agreements which were later transposed into European directives (Tricart, this volume). There was also some progress in European sectoral social dialogue and cross-industry dialogue, resulting in ‘autonomous’ (or voluntary) agreements, i.e. agreements implemented by the national social partners in areas such as telework (2002) and stress (2004) (Pochet, this volume; Tricart, this volume).

Another major event during this period was the proclamation (in 2000) of the EU Charter of Fundamental Rights, which was integrated into the Lisbon Treaty in 2009. Finally, as part of the debate on the role of wages in a monetary union, various forms of wage coordination emerged at European level. The Cologne process (1999), involving the European Central Bank (ECB), the Commission, the Member States and the social partners, was the first (and in fact the last) attempt of this kind at European level.

It should be noted that even during this ‘social’ period, progress on developing Social Europe was difficult: health and safety at work was side-lined in the social agenda, and the new ‘gender mainstreaming’ approach launched in 1997 proved difficult to implement (see Guerrina, this volume and Section 2.4). In a similar vein, the golden period of social dialogue was also a time of uncertainties, sometimes of disillusionment – for example, the negotiations on temporary agency work ended in failure in 2001 (Tricart, this volume).

At the end of this period, the tide was turning against the social dimension of Europe for various reasons. First, social democratic parties were losing elections, gradually being supplanted – in national parliaments and governments and in the European Parliament – by conservative and right-wing parties. The EU’s legislative machinery in the social field equally slowed down as a result of EU enlargement to Central and Eastern Europe in 2004, while the effectiveness of ‘soft’ policy coordination was increasingly being called into question by academics and policymakers alike (Crespy 2019; Vanhercke, this volume).

## 1.2. From the enlargements to the crisis: the European social dimension called into question (2005–2015)

From 2005 onward, the progressive decline in EU social policymaking was accelerated by a series of important historical developments: the enlargement to Central and Eastern Europe, the rise of right-wing governments, and, most notably, the 2007–2008 financial and economic crisis.

The first development, the successive big-bang EU enlargements to the countries of Central and Eastern Europe (in 2004, 2007 and 2013) added thirteen new Member States, with no additional budget to ensure economic, social and territorial convergence. Moreover, research underlines the limited role of social policy issues during the enlargement negotiations (de la Porte 2001). The second development was the political shift towards centre-right or right-leaning national governments: in the 2004 European elections, the right-leaning parties grouped together in the European People's Party (EPP) gained a sweeping victory over the social democratic and socialist parties (S&D), a feat repeated in 2009. As a result, the second Barroso Commission (2010–2014) was disproportionately right-leaning, with only six social democratic commissioners out of 27.

The third and arguably the most important factor was the global financial crisis that began in 2007–2008 and quickly developed into a sovereign debt crisis in many EU Member States. National fiscal policies – with their focus on taxation and spending decisions – came under increased scrutiny as the EU developed new forms of economic governance to address the failings of monetary union in the context of the crisis. The effects of EMU were thus indirect but potent: while supranational prescriptive recommendations for national budgetary decisions were aimed at maintaining the stability of the euro, domestic political debates on how to achieve compliance with the Stability and Growth Pact involved deliberations on where public spending should be cut, with social policies often losing out (Verdun and D'Erman, this volume). In this context, the ECB seized the opportunity to play a key role and promote structural reforms; its recommendations were often driven by financial austerity considerations and frequently clashed with domestic needs for higher levels of public spending on social programmes (*ibid.*). Reforms were often linked to the liberalisation and de-regulation of labour markets (Crespy 2019).

The worst global economic crisis since the Great Depression was arguably one of the more visible and important large-scale events influencing the institutional arrangements applicable to the EU's social dimension. The 2007 financial crisis 'thus became, albeit indirectly, a secondary crisis of social policy' (Verdun and d'Erman, this volume), not only because of the negative prospects for a stronger Social Europe, but also because it led to a downgrading of the existing level of social rights for workers and citizens (Crespy 2019; Crespy and Schmidt 2018). While it seemed at the time of its launch in 2010 that employment and social issues in the Europe 2020 Strategy had gained in visibility, initial experiences under the European Semester, which effectively got going in 2011, seemed to confirm critics' worst fears that the new integrated EU policy coordination framework would result in a paradigm shift: the subordination of social cohesion objectives to fiscal consolidation, budgetary austerity and welfare retrenchment imposed by economic policy players (Vanhercke, this volume).

Taken together, the three historical developments described above implied a period of trials and tribulations for the EU's social dimension which lasted nearly a decade. This was particularly the case with the European Social Dialogue: despite being 'part of the Union's DNA' (Tricart, this volume), it gradually evolved into a 'dialogue of the deaf' under the Barroso Commission (2004–2014). This period was marked by the

Commission's distrust of, and even growing hostility toward, the progress of social legislation resulting from agreements between the European social partners. It added to the tougher position of BusinessEurope and the difficulties encountered by the trade unions in creating a favourable transnational balance of power (see also Crespy 2019). As described by Vanhercke (this volume), another EU policy instrument went through a turbulent period under the Barroso Commission: the Open Method of Coordination (OMC). Indeed, following a damning assessment by Wim Kok (2004) of the first years of the Lisbon Strategy, the post-Lisbon enthusiasm for the OMC came to a rather abrupt end. The re-launched Lisbon II Strategy from 2005 onwards focused on jobs and growth, largely disregarding the social and environmental pillars of the initial strategy. With a wide range of OMC processes being simplified or even suppressed, the hitherto separate Social Inclusion, Pensions, and Health and Long-Term Care OMCs were merged (streamlined in the EU jargon) into a single Social Protection and Social Inclusion OMC (henceforth 'Social OMC') on the periphery of the Lisbon II Strategy (*ibid.*).

It is perhaps not so surprising that, in this new economic and political context, the Court of Justice of the EU (CJEU) began challenging one of the fundamental principles underlying European social policy: equal treatment (within a Member State) between permanent workers and mobile European workers from other Member States. Four game-changing cases (*Laval* and *Viking* in 2007, *Rüffert* and *Luxembourg* in 2008) simultaneously widened the already broad definition of potential restrictions on the free movement provisions, seemingly embracing a full 'market without rules' approach. In doing so, the CJEU seemed to have given precedence to market freedoms over social objectives (Garben, this volume; Ghailani 2008, 2009). These cases *de facto* allowed for social dumping, not between countries with differing standards and levels of protection but within a country between workers of different nationalities (Pochet 2019). Garben (this volume) points out that, perhaps 'in response to the criticism levelled at its hardened stance towards labour standards, the CJEU has readjusted its position to the benefit of national social regulatory autonomy in two more recent rulings'. However, these 'do not alter the point of principle in *Viking* and *Laval* that collective action undertaken by workers has to respect the free movement rights of companies in the internal market' (*ibid.*).

The fact that, as of 2005, Europe no longer had a central social policy paradigm does not mean that Social Europe has been completely sacrificed on the altar of economic and monetary policies. Indeed, as the chapters in this book demonstrate, this period was also characterised by some key advances in the social sphere. For instance, in 2010, Regulation 1408/71 on the coordination of social security was extended to third-country nationals, offering them the same protection, in terms of social security, as EU citizens moving within the EU (Cornelissen and De Wispelaere, this volume). Even though O'Dwyer (2018: 749) points out that 'gender inequalities have persisted and worsened under the EU's new economic governance regime', Guerrina (this volume) draws our attention to no less than three directives that gave renewed momentum to the European equality agenda in the post-Lisbon period: these address gender equality for self-employed workers (2010/41/EU); parental leave (2010/18/EU); and combating trafficking (2011/36/EU). One could add the Recast Equal Treatment Directive (2006/54/EU) to this list.

As regards social dialogue, the ‘running out of steam’ under the Barroso Commissions did not prevent some further progress, including a joint analysis of changes in the labour market (2007) and the conclusion of autonomous agreements on harassment and violence at work (2007) and inclusive labour markets (2010). Another key advance during this period took place in the context of the Semester: Zeitlin and Vanhercke (2018) argue that a partial but progressive ‘socialisation’ of the Semester took place between 2011 and 2016, leading to a) increasing emphasis on social objectives in the Semester’s priorities and key messages, including the Country-Specific Recommendations (CSRs); b) intensified social monitoring and review of national reforms; and c) an enhanced decision-making role for EU social and employment players. It should be added that, following difficult discussions with the Member States, Commission President Barroso himself managed to convince the heads of states and government to accept the first-ever numerical EU poverty and social exclusion target, i.e. to lift at least 20 million people out of the risk of poverty and exclusion by 2020, compared to 2008. Other significant political initiatives in this period were the Social Investment Package and the Youth Guarantee, both launched by Commissioner László Andor in 2013.

As regards the structural funds, a particularly significant reform was introduced in 2013: cohesion policy was aligned with the goals of the Europe 2020 Strategy and the European Semester (Graziano and Polverari, this volume). Equally importantly, the 2013 Common Provisions Regulation strengthened the social dimension in a number of ways. First, it introduced a Thematic Objective dedicated explicitly to the promotion of social inclusion and to combating poverty and discrimination (TO9). Second, it earmarked a minimum of 20% of the European Social Fund (ESF) for social inclusion initiatives. Third, it set specific *ex-ante* conditionalities on poverty, healthcare, Roma inclusion and early school-leaving, requiring Member States to adopt national or regional strategic policy frameworks on these policy themes (*ibid.*)<sup>6</sup>.

In other words, despite EU enlargement, right-wing governments in a majority of Member States (in favour of using cost-containment and austerity policies to manage the crisis) and the EU’s new economic governance, social affairs players were able to advance, to some extent, their policy agenda. Vanhercke (2013) referred to a certain amount of ‘under-the-radar’ social policy activity by European officials and social stakeholders, pointing to the gradual return of social issues in a period still largely dominated by austerity. These advances in the social domain notwithstanding, the impact of the historical developments described above demonstrates how fragile the social domain is: it is ‘simultaneously intertwined with, and subservient to, the forces of EU economic governance’ (Verdun and D’Erman, this volume).

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6. The 2013 Common Provisions Regulation also included new (or reformed) instruments such as the Youth Employment Initiative (YEI), the European Employment and Social Innovation Programme (EaSI), and the Fund for European Aids for the most Deprived (FEAD) (Graziano and Polverari, this volume).

### 1.3. The Juncker Commission: a social policy revival, with some caveats (2015–2019)

In a speech to the European Parliament in October 2015 during which he enunciated his ambition for the EU to achieve a ‘Social Triple A’ rating, Commission President-Elect Juncker stated that the Semester should not be considered merely an economic and financial process but should necessarily take into account the social dimension, including in the CSRs (Juncker 2015). In a post-crisis context largely dominated by Brexit discussions, Juncker promised and delivered a revival of the EU’s social dimension, notably through the solemn proclamation of a European Pillar of Social Rights (EPSR) in November 2017. The EPSR can be seen as a game changer: even though its motivation remained within the paradigm of economic growth, its text promptly empowered the Commission to develop a new EU social agenda. In a relatively short time span, this led to the adoption (in most cases following long and difficult negotiations with the Member States) of several directives (on work-life balance and on transparent and predictable working conditions), the establishment of a European Labour Authority and a Council Recommendation on access to social protection for workers and the self-employed. Section 3 below discusses how the EPSR, following its political adoption by the new von der Leyen Commission, continues to provide a framework for ‘a strong social Europe for just transitions’.

As discussed by Vanhercke (this volume), the strong pressure exerted by the Juncker cabinet to immediately integrate the European Pillar of Social Rights in the ongoing cycle of the Semester (including the Employment Guidelines) gave leverage to social affairs players, particularly in DG EMPL, to call for greater consideration of social and employment challenges in the coordination process. For instance, the 2018 Joint Employment Report (JER) presented a new Social Scoreboard for monitoring Member States’ performance in relation to key principles of the EPSR via twelve headline indicators. The Juncker Commission also introduced a series of significant innovations to a) the conception and timing of key Semester documents; and b) the organisation of Commission Directorates dealing with the process (notably reinforcing DG EMPL). These contributed to the further socialisation of the Semester’s substantive policy content as well as its governance procedures. The main new feature of the 2019 European Semester was the strengthening of the links between the Semester and EU funding (Vanhercke, this volume).

Under the Juncker Commission, the issue of health and safety, notably regarding occupational cancers, seems to have come back in from the cold, even if Vogel (2018) warns that ‘one swallow doesn’t make a summer’. The Juncker Commission also relaunched the European Social Dialogue in 2015 and created the conditions for the social partners to be more closely involved in the governance of the European Semester (Sabato *et al.* 2017). The social partners concluded an autonomous agreement on active ageing (2017). In 2016, the Commission also proposed further significant changes to European social security legislation, in particular in the areas of applicable legislation, unemployment and long-term care. The proposal also contained a series of provisions aimed at fighting fraud and abuse: at the time of writing, the proposal remains blocked in Council (Cornelissen and De Wispelaere, this volume).

The proposals made by the Juncker Commission for the next programming period (2021–2027) also seem to reinforce the social dimension: a new ESF+ to be even more aligned with the European Semester; greater earmarking of funds for measures fostering social inclusion (25%); and minimum investment thresholds for measures supporting youth employment and the activation of young people and the most vulnerable. One of the five new policy objectives is to support the implementation of the European Pillar of Social Rights (Graziano and Polverari, this volume).

In view of these and other initiatives, the Juncker Commission explained that it was one of the most, if not *the* most, socially-minded Commissions since the early 1990s. The jury is still out as to whether this admittedly stark contrast with the Barroso Commissions was part of well-developed plan to create a strong social dimension, or rather the realisation that this was a ‘last chance’ for the Commission to ‘rebuild its social credentials’ (Garben, this volume; Pochet, this volume) after years of austerity policies and upheaval in the Member States, including the 2016 Brexit vote and the rise of nationalism.

Even if it is true that the Juncker Commission created a social policy revival, there are some caveats. For instance, certain scholars and social stakeholders are less optimistic about the ongoing socialisation of the Semester: the design of the Semester has institutionalised the EU’s less prescriptive (‘soft’) approach to social policy areas long assumed to be Member States’ prerogatives, including such sensitive areas as healthcare. Dawson (2018: 207) points to an important paradox in the socialisation thesis: it ‘hopes to rescue the European Semester by capturing its processes for social voices. What, though, of the danger that social voices are themselves captured, or “socialised into” the Semester’s wider logic of competitiveness and market fitness?’.

Moreover, questions are being raised as regards the pertinence of the EPSR Social Scoreboard, while legitimate concerns are being raised over the high proportion of social and employment policy CSRs issued under the Stability and Growth Pact (SGP) and Macroeconomic Imbalance Procedure (MIP). As a result, they fall under the formal jurisdiction of the ECOFIN Council, taking them outside the reach of Social Affairs Ministers. Another important caveat applies to the European Social Dialogue: despite its ‘new start’ in 2015, this cornerstone of the EU’s social dimension is still in crisis, with the employers increasingly refusing to negotiate and the Commission continuing to discourage the legislative implementation of agreements reached by collective bargaining at European level, most recently regarding an agreement concerning the central administration sector (Tricart, this volume).

## **2. Developments in the key social policy areas over the past two decades**

This section looks at the key thoughts from the book’s various chapters, focusing on how key EU social policies have been handled by the EU through a variety of policy instruments: EU law, social dialogue, policy coordination and EU funding.

## 2.1. Creating social rights: social security coordination and social dialogue

Writing about the achievements, controversies and challenges of European social security coordination, Cornelissen and De Wispelaere (this volume) point out that the figures on the number of people benefiting from the European coordination regulations reveal a hidden ‘European welfare state’. Indeed, a sophisticated European social protection system for mobile persons, based on high-quality coordination techniques, has been developed over a period of 60 years. Interestingly, in some aspects, the Coordination Regulations provide social protection going beyond mere coordination, creating certain rights which citizens would not otherwise have. However, over the past 20 years, and especially since the 2008 crisis, some of these provisions have been called into question due to fears of ‘welfare tourism’ and ‘social dumping’.

Given the context of these sensitive debates, the Commission put forward a proposal in 2016 to revise the coordination rules. Nearly four years later, the text is still under negotiation and stuck in the Council, showing the complexity and sensitivity of the issues at stake. Some of the key controversies and challenges discussed in the chapter concern the export of unemployment and family benefits, the aggregation of insurance periods for unemployment benefits, access to minimum subsistence benefits for inactive people and the rules determining the applicable social security legislation (including in the context of intra-EU postings). However, the authors emphasise, these regulations are still in the making and, whatever the outcome, they will be no more than a further episode in the 60-year-long history of adaptations to the coordination regulations to keep up with the times. In addition to raising the issue of the non-take-up of social security rights by migrant workers, the authors raise this key question: *is it really logical that a person who works only to a marginal extent in another Member State is subject to the social security legislation of that Member State?*

Another key instrument for creating social rights, notably for workers, has been the European Social Dialogue. However, as Tricart (this volume) demonstrates, ever since its golden age under the Delors Commissions (1985–1995) – when there was agreement between the EU institutions and the social partners on the need for such an instrument to complete the single market – social dialogue has been in constant decline. This reached its nadir under the Barroso Commissions (2005–2014), a period dominated by the financial crisis, during which the EU organised its governance around a neoliberal economic rationale. This gradually reduced social concertation to a ‘cosmetic’ exercise, undermining the impact of collective bargaining at European level. In fact, after having played a vital role for many years, the Commission switched to providing very selective support, i.e. only to social partner initiatives in line with its policies.

Although Tricart (this volume) writes positively about the developments under the Juncker Commission, which tried to revitalize the dialogue, he points out how fragile this attempt is: see, for example, the tensions between the social partners regarding the Commission’s REFIT and ‘Better Regulation’ initiatives and the stormy debates on many issues, notably on the occupational health and safety agreement in the hairdressing sector, which was to become a symbol of Commission hostility to agreements emerging from the sectoral social dialogue. More generally, according to the author, the new

European Commission should change its attitude towards the legislation emerging from European collective negotiations, also with a view to restoring trust among the parties concerned.

## 2.2. The Court of Justice: still balancing economic and social rights?

The preeminence of the economic over the social dimension, especially during the crisis years, is similarly reflected in the role played by the CJEU over the past twenty years. As Garben (this volume) demonstrates, social rights have regularly been downplayed when they clash with fundamental economic rights or freedoms in the internal market and the Charter, and in particular with the freedom to conduct a business. Judgments such as *Viking*, *Laval*, *Alemo-Herron* and *AGET* generate an asymmetry, giving precedence to economic interests over the fundamental social rights of workers. Such judgments are problematic not only from a social perspective but also because highly sensitive political decisions are being taken by the judiciary. Economic rights thus achieve a constitutional status, almost completely separate from political processes, thereby posing a serious democratic problem. In her chapter, the author calls for an interpretation of social and economic rights primarily oriented towards ensuring the necessary (pre-)conditions for a robust and healthy long-term democracy, in which human dignity is meaningfully protected. She demonstrates how these abstract concepts can be transposed into specific elements of (improved) legal interpretation of the economic and social rights under discussion in the aforementioned cases.

## 2.3. The hard governance of soft governance

In his chapter, Vanhercke (this volume), describes the Open Method of Coordination (OMC) as a flexible and constantly metamorphosing policy instrument. He distinguishes six stages (or 'lives') in the development of the OMC on Social Protection and Social Inclusion (Social OMC): a) *experimenting*: the proliferation of OMCs after the method was coined by the Lisbon European Council in 2000; b) *streamlining*: the rolling back and growing teeth of the Social OMC in 2005–2006; c) *capacity building*: developing the OMC's learning tools 'in splendid isolation' from the revised Lisbon Strategy; d) *marginalisation* of the Social OMC at the start of the Europe 2020 Strategy and the European Semester; e) *reinvigoration*: the Social Protection Committee 'rescues' its process, paving the way for the initial socialisation of the Semester; and finally f) *maturity*: the further socialisation of the Semester under the Juncker Commission.

The chapter concludes that whether the OMC will continue to play a significant role in the EU's post-2020 socio-economic governance will ultimately not depend on its hardness or softness, but on whether key domestic and EU players continue to use it strategically to further their ambitions. Only as an integral part of the post-Europe 2020 Strategy can the Social OMC maintain its influence: promoting upward social convergence and ultimately supplementing and counterbalancing budgetary and macro-economic coordination. Such a strategy is, however, not without risks (*ibid.*).

## 2.4. Twenty years of gender mainstreaming: 'add women and stir'?

In her chapter, Guerrina (this volume) explains that the introduction of gender mainstreaming (GM) in the Treaty of Amsterdam (1997) offered a space for ensuring that gender, equality and diversity were integrated into all policy fields. However, the failure of policymakers to deploy the most basic tools associated with this approach (e.g. gender impact assessments) in times of crisis highlights some of the limitations of GM. And yet, the principle of gender equality has been incorporated into the EU's public communication narrative and is part of how the organisation presents itself: despite the significant gap between the EU's rhetoric and practice with regard to gender equality, the idea of the EU as a promoter of women's rights has become one of its foundational myths.

The last twenty years have been marked by huge opportunities as well as disappointments for those promoting gender equality. Gender mainstreaming (GM) is the preferred policy strategy and approach, particularly in the area of employment policy. However, GM requires political will and commitment to be effective. In a way, in the post-Amsterdam era we have seen the limitations of an approach to equality rooted in economic rationalities. This functionalist logic separates the principle of equality from that of social justice, stressing the neutrality and apolitical nature of the principle of mainstreaming. This has proved to be an effective strategy in times of growth, particularly as a way of supporting mainstream policies. However, it ignores the fact that it feeds into a specific gender regime, with associated structures and practices. Though the principle of gender equality has become embedded in EU processes and structures, the way GM and equality have been interpreted by the institutions has not led to any transformational change of the European economy. Austerity and Brexit provide illustrations of the biases in favour of a neo-liberal economic model that can only include gender in a superficial way. For the author, the European Pillar of Social Rights similarly represents a highly commodified approach to equality. More than twenty years since the inclusion of this principle in the EU *acquis*, there is still little evidence that the EU has moved beyond the 'add women and stir' approach to equality. Intersectional approaches to gender, treating it as a structure of power, highlight the limits of this approach, particularly in times of crisis (*ibid.*).

## 2.5. EU cohesion policy: in search of its social impact

EU cohesion policy, and in particular the European Social Fund, is one of the key pillars of the EU's social dimension: Cohesion policy is arguably the most tangible manifestation of solidarity among European regions and Member States. Where it invests the most, it is also recognised and perceived as valuable by European citizens. As discussed by Graziano and Polverari (this volume), since its creation in 1957, the ESF has been considerably expanded, becoming the key source of funding for vocational training and job-seeking support. It has become even more pivotal in the wake of the 2008 economic and financial crisis, the Europe 2020 Strategy and the European Semester, with spending of EU funds being increasingly made conditional on respecting the objectives of these overarching frameworks.

Yet there is still no clear picture of cohesion policy's direct impact on various categories of individual recipients. There is a particularly large gap in the understanding of its impact on poverty reduction and social inclusion. This may be linked to the assumption that, if growth is guaranteed and regional disparities are reduced by means of EU cohesion policy, then poverty rates can also be expected to drop. But there is virtually no empirical evidence to back up this claim. The authors therefore call for a comprehensive and systematic impact assessment to be carried out, going beyond single case studies and embracing all Structural Funds in an integrated manner. Moreover, based on their research, they recommend that future EU strategies, including cohesion policy, should focus more on 'inclusive growth', with further support given to fostering the administrative capacities of national and regional institutions in order to increase absorption rates and encourage timely policy implementation and results orientation. If well-conceived, cohesion policy can be viewed as a key political tool for creating and strengthening a European identity in the face of globalisation as well as being one of the key levers for counteracting rising levels of Euroscepticism (*ibid.*).

### **3. The three transitions and the further strengthening of the EU's social dimension**

#### **3.1. A work programme for the new European Commission**

This section briefly discusses some of the main ideas recently put forward by the EU with regard to the social dimension, clearly present in the ambitious agenda presented by Ursula von der Leyen, at that time still a candidate for the post of President of the European Commission, in July 2019, signalling that the market and the economy go hand in hand with social fairness and prosperity (von der Leyen 2019). This mainstreaming of social objectives is also clearly visible in the allocation of portfolios (in particular 'An Economy that works for People', 'Jobs and Social rights', and 'Democracy and Demography') and supporting services in the new European Commission.

In January 2020, the new von der Leyen Commission published its first key document outlining the main ideas and instruments to be used in working towards 'a strong social Europe for just transitions' (European Commission 2020a). This acknowledges that 'social justice is the foundation of the European social market economy and is at the heart of our Union' (*ibid.*: 1). The document suggests that the EU is facing three main transitions<sup>7</sup> – climate neutrality, digitalisation and demographic change – which the Commission has undertaken to tackle, also with a view to 'fully meeting the United Nations' Sustainable Development Goals' (SDG) (*ibid.*). The European Pillar of Social Rights is presented as the overall framework for ensuring that these transitions are 'socially fair and just': the Pillar is to be implemented through an Action Plan (to be announced by early 2021) that turns the Pillar's rights and principles into reality. Progress towards the principles will continue to be monitored through the European Semester which will integrate, as of 2020, the SDG's and will be guided by an Annual Sustainable Growth Strategy. The two first transitions addressed in the Communication

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7. Beyond these three main challenges and drivers, many other initiatives are announced in this strategic document.

(climate neutrality and digitalisation) are well-known (see the European Green Deal proposed in December 2019). However, the Commission seems to pay specific attention to the third dimension, that pertaining to demography. In order to address this third major transition, the issues of pensions and long-term care services are prioritised.

Four main areas are under consideration in the Commission's 'strong social Europe for just transitions' Communication: a) equal opportunities and jobs for all; b) fair working conditions; c) social protection and social inclusion; and d) promoting European social values in international trade.

### 3.1.1. Equal opportunities and jobs for all

How should *equal opportunities and jobs for all* be tackled in a greener, digitalised and ageing economy? The Commission's main emphasis is on upskilling, reskilling and education.<sup>8</sup> Although these are not new items on the Commission's agenda – and are among the least controversial – they are now being revisited in the light of these three important transitions. With a view to supporting 'economic reconversion', several initiatives and instruments are expected to be tabled, including a Just Transition Fund (as part of the European Green Deal Investment Plan) aimed at providing support to those regions most affected by the ecological transition and a Modernisation Fund to support carbon-dependent regions in their market and social transformation. With a view to creating more jobs, the Commission has also announced a more comprehensive industrial strategy as well as a specific strategy for SMEs (both to be presented in the first quarter of 2020).

The European Regional Development Fund, the European Social Fund Plus (ESF+) and the Cohesion Fund continue to play a crucial role in the Commission's proposal for the next multiannual financial framework (MFF). The Commission also calls for an InvestEU Programme, including for social infrastructure projects and investments in education and skills. The Commission has also announced an action plan for the social economy by 2021. Last but not least, under the heading of 'fostering equality', the Commission will propose (in the second half 2020) a new European Gender Equality Strategy aimed at closing the gender pay and pension gap; it will also promote women's access to the labour market, including in senior positions. Under this heading, the Commission has also announced a new a European Disability Act, while measures are scheduled for fostering the economic and social integration of third-country nationals.

### 3.1.2. Fair working conditions

The second area covered by the Communication concerns fair working conditions: a major initiative announced by the Commission is the launch of a first-stage consultation of social partners on how to ensure fair minimum wages for workers. As stated by Jobs and Social Rights Commissioner Schmit, this idea is a 'paradigm shift' for the Commission, as in the past 'EU officials have tended to ask Member States for cuts

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8. The Commission will update the Skills Agenda for Europe in the first quarter of 2020 and establish a new education and training cooperation framework with the Member States and reinforce the Youth Guarantee.

in salaries and ‘now, that logic has been reversed’ (Euractiv 2020). Note that the Commission Communication stipulates that minimum wages ‘should be set according to national traditions, through collective agreements or legal provisions’. Linked to the second transition listed above, the Commission also intends to present a Digital Services Act and to organise a Platform Work Summit, expected to upgrade the liability and safety rules for digital platforms and the services and products offered by them. Linked to the issues of digitalisation, the Commission will review the occupational safety and health strategy. Furthermore, it is worth mentioning that the question of (un)fair taxation (especially taxation of platforms) is also on the new Commission’s agenda. However, given the EU’s limited competencies in this sensitive area, no specific proposals have yet been announced. The Commission will also explore ways to promote social dialogue and collective bargaining – perceived as extremely important to the success of the three transitions – *inter alia* by supporting the capacities of unions and employer organisations at EU and national level.

### **3.1.3. Social protection and social inclusion**

In the third area covered, social protection and social inclusion, the Commission’s agenda is also quite ambitious, with prominence attached to the revitalised idea of a European Unemployment Benefit Reinsurance Scheme (initially launched in 2012 by Social Affairs Commissioner László Andor under the Barroso Commission). Other proposals relate to the implementation of the 2018 Recommendation on access to social protection for workers and the self-employed, and a Europe’s Beating Cancer Plan.

The new Commission puts important emphasis on the impact of demographic change (a Report on this topic is announced by the first quarter of 2020) and ageing. A Commission Green Paper (scheduled for late 2020) is set to launch a debate on the long-term impacts of ageing, notably on access to affordable and quality long-term care, and on how to foster active ageing. Under the sub-heading ‘poverty and social exclusion’, the Communication announces the idea of a Child Guarantee to make sure that children have access to the services they need. Note that, as regards homelessness, the Communication merely states that the phenomenon ‘is increasing in most Member States’. Note also that the Communication does not mention further work on the coordination of social security systems, an issue currently deadlocked in the Council of Ministers (see Section 2.1).

### **3.1.4. European social values in international trade**

The Commission Communication also addresses the promotion of European social values in international trade: European trade policy should include more of a ‘fair trade agenda’ and ‘take a tough stance’ on the enforcement of internationally agreed standards on labour rights. The Commission will appoint a Chief Trade Enforcement Officer and suggests a zero-tolerance approach to child labour, an idea warmly welcomed by the European Trade Union Confederation (ETUC 2020). The Commission will also strengthen dialogue with the Western Balkans to foster the implementation of the European Pillar of Social Rights in this region.

As was the case with the European Pillar of Social Rights, the Commission has launched a broad and long consultation (until November 2020) open to EU and national institutions, social partners and civil society organisations, with the objective ‘to jointly build an Action Plan that reflects all contributions and that is proposed for endorsement at the highest political level’ (European Commission 2020a: 13).

### 3.2. Initial reactions from stakeholders and the economic governance review

The European Commission’s ambitious plan to develop a strong social Europe for just transitions is very much needed in the current context of uncertainty for the European Union. These transitions are unavoidable and should be managed in a way that ‘no one is left behind’ and which makes it possible to counter the threats of nationalism. With Brexit confirmed, the new Commission will have to convince the remaining EU citizens that the EU is a genuinely inclusive space. The Commission’s ambitious plan will need support from the other EU institutions and, most importantly, from the Member States. As the new Social Affairs Commissioner Nicolas Schmit noted, social policy is a ‘shared competence’: the EU executive ‘will propose directives where needed’, but it is also up to countries to drive the agenda forward (Euractiv 2020).

Moreover, the outcome of many of the announced initiatives will also partially depend on the European social partners’ commitment to engage in negotiations. As is clear from Tricart (this volume), this cannot be taken for granted. While the trade unions welcomed the Commission’s ambitious plan, they also point to ‘missing’ initiatives, such as a clear commitment to improve health and safety at work and a clearer status for non-standard workers (ETUC 2020). BusinessEurope, in turn, supports the objective of a social market economy that works for people, but believes that the way forward is to improve the performance of labour markets and social systems in all Member States by giving the necessary space for social dialogue solutions at EU and national levels. However, when it comes to such a concrete yet sensitive measure as a minimum wage, their response is clear: the employers consider this a matter for national competence and are strongly opposed to EU legislation thereupon. For the employers’ organisation, the European Semester remains the key tool for coordinating reforms and delivering on the Pillar (BusinessEurope 2020). For its part, the European Anti-Poverty Network (EAPN 2020) stresses that the European Green Deal doesn’t seem to recognise that those companies bearing the greatest responsibility for creating the climate emergency should be taxed accordingly, under the ‘polluter pays’ principle. The EAPN is also concerned that the only concrete EU initiatives highlighted are the Child Guarantee and that on Roma equality and inclusion, both crucial, but not sufficient: what is needed instead is an integrated EU anti-poverty strategy and a renewed, more ambitious EU target on reducing poverty. In its initial comments on the Commission Communication, the Social Platform (2020) stipulates several minimum conditions for an adequate minimum wage (*inter alia* that it should have a minimum threshold of at least 60% of the median national wage) and expresses the hope that the Commission will extend its consultation beyond the social partners to include the views of civil society organisations.

In this context, another recent initiative should be closely monitored: the economic governance review launched by the European Commission in February 2020. This economic review – while emphasising the importance of economic and fiscal convergence and the role of the Two-Pack and the Six-Pack – acknowledges that the economic governance instruments are flawed, inefficient and too complex. In a footnote, the review states that ‘the employment and social situation has improved across the board but has not recovered yet to the pre-crisis levels in several Member States’ (European Commission 2020b: 5). The review recognises the essential role of public investments as a necessary condition for supporting sustainable economic growth and for long-term sustainability.

Importantly, this economic governance review is also accompanied, for the first time, by a public debate on the EU’s framework for economic and fiscal surveillance. As for the social dimension of the EU, the review draws several parallels with the new EU context: the Green Deal and the aforementioned Communication on a strong social Europe for just transitions. Importantly, the document points out that it should be considered to what extent the existing framework for economic and fiscal surveillance ‘can support economic, environmental and social policy needs related to the transition towards a climate-neutral, resource efficient and digital European economy’ (*ibid.*: 17). This is certainly an invitation for social players – including Member States’ representatives in the Employment Committee, the Social Protection Committee and the EPSCO Council – to make the case (including by drawing on available monitoring tools such as the EPM and the SPPM) for the social dimension to no longer be considered the poor cousin of the economic dimension.

With regard to many of the initiatives cited in this section, including those linked to the three transitions, we have at our disposal, at the moment of writing, not much more than the title and the good intentions of the European institutions. We therefore invite readers to look out for the next *Bilan social* for an in-depth analysis of what could be an ambitious plan – or a failure – to relaunch the social dimension.

## 4. Key messages and recommendations

Based on the chapters in this volume,<sup>9</sup> the following key messages and recommendations are addressed to national and EU decisionmakers as well as to social stakeholders.

### 4.1. Ensuring appropriate resources

- Prospects for the EU’s social dimension depend, as always, on the political negotiations and developments underlying integration. Any progress toward deeper integration in the social realm that wants to go beyond the coordinative mechanisms in place, will require deliberate and difficult political action. The EU should **support the capacities of unions and employer organisations** (at EU and national level) as well as of other social stakeholders.

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9. The editors are indebted to the authors of the respective chapters for sharing these ideas with us.

- The European Social Dialogue is part of the EU's DNA, and yet it is in dire straits. The European Commission should show a firm and **credible commitment to**, and invest the necessary resources for, restoring the trust needed to relaunch a real dialogue between the social partners.
- More **targeted research** is needed on the different social impacts of cohesion policy across the wide range of interventions and recipients it supports. To enable this, comprehensive and systematic impact assessments should be carried out, going beyond single case studies and embracing all structural funds. Specific attention should also be paid to generating finer-grained data on poverty.
- To achieve a greater social impact, more resources should be directly used to systematically **fund social inclusion and poverty alleviation** measures. Future EU strategies, *inter alia* cohesion policy, should have an even greater focus on 'inclusive growth', with further support given to fostering the administrative capacities of national and regional institutions in order to increase absorption rates, timely policy implementation and results orientation.

#### 4.2. The social dimension of EMU

- Given the recent history of the Great Recession, the EU needs powerful automatic macroeconomic stabilisers. A future detailed proposal for a **European Unemployment Benefit Reinsurance Scheme** should be given political priority in order to protect citizens from external shocks and reduce the pressure on public finances during such events.
- With a view to tackling the asymmetry between the economic and social dimensions of the EU and of the EMU, a **Social Imbalances Procedure** (SIMP) should be launched, drawing on existing tools and practices within the European Semester and involving three stages: the identification of social imbalances, a Multi-annual Action Plan (MAP), and EU interventions (technical and financial support as well as a flexible interpretation of the SGP for social investments).

#### 4.3. Balancing economic and social rights

- The approach of the Court of Justice of the EU needs to change. But this needs to be preceded by a **fundamental discussion** within the legal community about the respective places of social and economic rights in the EU Treaties and how this relates to the requirement of democratic legitimacy. We need to come to a coherent adjudication framework guided by the principles of (not primarily economic) constitutionalism and democracy in equal measures.

- The interpretation of fundamental rights, especially social and economic ones, should primarily be oriented towards ensuring the necessary (pre-)conditions for a robust and healthy long-term democracy in which human dignity is meaningfully protected. This abstract insight can be operationalized to provide concrete elements of **improved legal interpretation** of the economic and social rights underpinning *Viking*, *Laval*, *Alemo-Herron* and *AGET*.

#### 4.4. Social security coordination

- Substantial amendments to the Coordination Regulations should only be made if they are **really necessary**. This involves carrying out an *ex-ante* legal and socio-economic impact assessment of the current rules and possible amendments.
- The coordination system needs to adapt, in the near future, to two key points. Firstly, changes in the nature of the labour market have an impact on the rules determining the **applicable social security legislation**. Secondly, the Coordination Regulations have not sufficiently kept pace with the introduction of **new forms of social security** in Member States.

#### 4.5. Gender equality

The forthcoming European Gender Equality Strategy should be seized as an opportunity for

- **Gender impact assessments:** the *ex-ante* analysis or assessment of a law, policy or programme, enabling policymakers to identify, in a preventative way, the likelihood of a given decision having negative consequences on gender equality;
- **Gender budgeting:** the gender-based assessment of budgets incorporating a gender perspective at all levels of the budgetary process and the restructuring of revenues and spending to promote gender equality.

#### 4.6. Social policy coordination

- For the Social OMC to stay relevant under the EU's next overarching strategy (post-Europe 2020), a clear **political affirmation of its overall objectives**, also in relation to the European Pillar of Social Rights and the SDG, is warranted. At the same time, the Social OMC needs to be an integral part of the post-Europe 2020 Strategy in order to maintain its influence.
- Social affairs players should seize the momentum created by the new European Commission's focus on demography to push for the launch of **OMC-type exchanges on long-term care**, a topic that has so far been largely dominated

by DG ECFIN and the concomitant financial perspective, largely ignoring the problem of access to care.

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