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The European Pillar of Social Rights: from promise to delivery –Introduction to the 'European Social Union (ESU) public forum debate'

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Publication date

2018

Document Version

Final published version

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Citation for published version (APA):

Vandenbroucke, F. (Author). (2018). The European Pillar of Social Rights: from promise to delivery –Introduction to the 'European Social Union (ESU) public forum debate'. Web publication or website, EuVisions. <http://www.euvisions.eu/europea-social-union-public-forum-debate-vandenbroucke/>

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The European Pillar of Social Rights: from promise to delivery –
Introduction to the “European Social Union (ESU) public forum
debate”

By Frank Vandembroucke

In November 2017, the European Parliament, the Council and the Commission jointly and solemnly proclaimed a European Pillar of Social Rights: a set of 20 principles about equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion. Some principles are well-known, as they have already been formulated in the context of earlier efforts to coordinate the Member States’ policies. Other principles are relatively new at the European scene, such as the objective to ensure adequate minimum wages. **The communication on the Pillar was ambitious: it was said to be about “delivering new and more effective rights for citizens”, and Commission President Juncker called for agreement on the Pillar “to avoid social fragmentation and social dumping”.**

The launching of this Pillar was not an isolated event: it fitted into a broader evolution in EU policy-making. Over the last five years, the Commission steered away from an emphasis on fiscal consolidation and economic competitiveness, which dominated in the immediate aftermath of the financial crisis of 2008. Already in 2013, the Commission’s Social Investment Package explicitly signalled the need to broaden the EU’s agenda. Below the radar, social issues became gradually more important in the European Semester process. Official reflection papers and roadmaps on the future of the Monetary Union underscored the need for a social dimension in the completion of EMU. The Commission tackled the thorny problem of posted workers and announced the creation of a European Labour Authority. So conceived, the Pillar of Social Rights was but one instance of a gradual, cautious but deliberate policy shift at the level of the Commission.

However, the Pillar initiative may also turn out to be a decisive moment in this policy shift, with longer-lasting consequences - either positive or negative.

Positively, the Pillar may become a policy agenda that sustains real momentum, beyond the lifetime of this Commission. In contrast, if the EU fails to deliver on the promise enshrined in the Pillar, the initiative will backfire, and the frustration it generates will undermine any new attempt to equip the EU with a comprehensive social dimension, for a long time to come. Thus, the solemn proclamation of the Pillar marks a point of no return: either it will be a sufficiently convincing and recognisable success, or it will be a high-profile failure. Apparently, the jury is still out, and a final verdict will take time, maybe years. At the moment of writing this introduction, there is a straightforward reason why the jury is still out: we are in the realm of democratic politics, and we cannot predict how important the solemn

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declaration of November 2017 will be for the new Parliament and the new European Commission after the next European elections.

Nevertheless, given the political cost of an eventual failure to deliver on the Pillar, those of us who care about the social dimension of European politics, should now work on an interpretation of the Pillar that maximises its positive potential. The

reader may be surprised that I call for work on the ‘interpretation’ of the Pillar (‘Does the communication of the Commission about the Pillar not speak for itself?’). However, my choice of words is on purpose. For the Pillar to have an impact on EU policy-making, a first condition is that its *raison d’être* is sufficiently powerful: it must be connected convincingly with functional necessities and broadly accepted aspirations of European integration; and it must fit into a consistent conception of the role the EU should play and the role it should not play in social policy. Yet, I’m not calling for a purely conceptual debate: whether or not we agree on what is a promising interpretation of the Pillar’s *raison d’être* can be tested through practical, concrete proposals. This is what this debate is about.

The *raison d’être* of a European Pillar of Social Rights: an interpretation

When the Pillar was launched, the Commission explicitly declared that the Pillar is “primarily conceived for the euro area but applicable to all EU member states wishing to be part of it”. This focus on the Eurozone is not happenstance; the Commission’s thinking on the future of the monetary union and its motivation for the Pillar are related. Since it is essential to understand that relationship, I briefly elaborate on it. **A fundamental insight, that has gained prominence in the European Commission’s recent thinking on the completion of EMU, is that nearly all existing monetary unions are true ‘insurance unions’. They not only centralise risk management concerning banks, but they also centralise unemployment insurance.** EMU is the one exception, but it is gradually developing policies driven by the need for mutual insurance, notably in its progress towards a Banking Union.

Next to Banking Union, the European Commission now argues that EMU also needs fiscal stabilisers; to achieve this, one of the options would be the re-insurance of national unemployment benefit schemes at the Eurozone level. Another option, which the Commission seems to prefer at the time of writing this contribution, would be a scheme that supports Member States’ public investment capacity when they are hit by a crisis and have to cope

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with reduced revenue and increased spending on unemployment benefits (1). In fact, both options share a common insight, to wit, that it is important that Member States’ automatic stabilisers can play their role in times of crisis while simultaneously their public investment capacity is protected.

The reference to unemployment insurance in these policy scenarios is not happenstance: unemployment insurance supports the purchasing power of citizens in an economic downturn, and is, therefore, an ‘automatic stabiliser’ par excellence. Existing monetary unions either opt for a downright centralisation of unemployment insurance (like in Canada or in Germany), or they demand some convergence in the organisation of unemployment insurance and provide a degree of reinsurance and centralisation when the need is really high (like in the US, which combines centralisation and decentralisation in unemployment insurance). This is rational behaviour for two reasons. First, risk pooling enhances resilience against asymmetric shocks. The second reason also applies when shocks are symmetric across the whole Union, and risk pooling across Member States has no added value per se.

National insurance systems create an externality; a country that properly insures itself, also helps its neighbours. Therefore, the concern with the stability of the Eurozone entails a cluster of policy principles to sustain an effective stabilisation capacity in each Member State: sufficiently generous unemployment benefits; sufficient coverage rates of unemployment benefit schemes; no labour market segmentation that leaves part of the labour force poorly insured against unemployment; no proliferation of employment relations that are not integrated into systems of social insurance; effective activation of unemployed individuals; and the constitution of budgetary buffers in good times, so that the automatic stabilisers can do their work in bad times. These principles would become a fortiori imperative, as quid pro quo, if the Eurozone were equipped with reinsurance of national unemployment insurance systems. More broadly, I contend that such common principles would be a corollary of any conceivable Eurozone risk-sharing scheme that is triggered by unemployment shocks (e.g. a public investment guarantee, as considered by the Commission). But even without a Eurozone risk-sharing scheme, the implementation of common ‘stability-related’ principles would benefit the Eurozone as a whole.

The upshot of this argument is that monetary unification is more beneficial when there is a degree of convergence in some key features of the participating Member States’ social and employment policies. This is not necessarily a flat denial of an

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argument developed by Schelkle that a monetary union allows and even valorises diversity (Schelkle, 2017); my emphasis is on ‘convergence’ (not: uniformity) and on ‘some’ (in some policy domains, not in all areas).

Admittedly, the idea that there is a social policy corollary to monetary unification is not new. Already in the 1990s, reform in labour markets was justified by the advent of the monetary union. The 1997 European Employment Strategy emphasised supply-side flexibility: an agenda for flexible labour markets was interwoven with an agenda of investment in individual labour market opportunities and the development of ‘enabling’ policies; together, this would create ‘flexicurity’.



Signature of the Amsterdam Treaty, 1997. CC Wikipedia: Poma

In a nutshell, my argument adds ‘stability’ as a desideratum to ‘flexibility’: stability both in terms of the avoidance of large financial and economic shocks,

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and of a stable development of the wage share in national income, thanks to coordinated collective bargaining (2). Whilst the ‘enabling’ dimension of flexibility focused on equipping individual people with adequate skills, in order to achieve stability, one needs collective action: collective bargaining, but also the organisation of collective insurance devices. Stability requires instruments that typically protect vulnerable individuals: unemployment insurance stabilises the economy because it protects the purchasing power of the unemployed. In other words, stability is intrinsically associated with collective action and ‘protective’ policies. Enabling and protective policies can be mutually reinforcing in creating resilient social systems. That social systems **should be resilient is a matter of common concern in a monetary union.**

In addition, the monetary union calls for integrated competitive markets for goods and services as well as for cross-border mobility of labour (including in the form of ‘posting’). This, in turn, entails a social corollary. For instance, next to reform in the regulation of posting, national minimum wage regimes should be transparent, predictable and universal in coverage. Admittedly, this applies not only to the Monetary Union but to the whole Single Market (3).

Thus, the Pillar can be understood as a translation of functional necessities of monetary integration and the Single Market in terms of social standards and, subsequently, in a language of social rights. **However, I would immediately emphasise that one should not overstretch the power of such a functionalist rationale: what is ‘needed’ and what is ‘imposed’ by EMU (or the Single Market), depends on the normative aspirations that drive the European project at large** (Vandebroucke, 2017b). We are not talking about the functional requirements associated with a monetary union in abstracto; we are considering a monetary union that should serve the fundamental aspirations of the European project, such as upward convergence in prosperity and social cohesion. More fundamentally, as Ferrera (2018) argues, next to functional and normative arguments, there may be a ‘free-standing political justification’ to equip EU citizens with EU social rights. **A political authority cannot survive and prosper without the diffuse support of the people belonging to its jurisdiction; diffuse support rests not only of effectiveness but also on fairness:** “Citizens must feel that the (...) government abides by the general norm of somehow representing the collective interest, taking care of all sectors/strata of the population, however weak and peripheral.”

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State of the Union debate 2017: Shaping our future, CC Flickr: European Commission

The Commission’s statement that the Pillar is “primarily conceived for the euro area but applicable to all EU member states wishing to be part of it” is analytically coherent, but, politically, such a differentiation is not well received in a number of Member States and in the Parliament. This underscores the observation that the Pillars addresses a problem of legitimacy that goes beyond the Monetary Union.

My summary account of the *raison d’être* of the Pillar shows that it is multifaceted, but it nevertheless points to priority areas in which initiatives have to be taken. For instance, by this account a clear priority area is access to adequate social protection for all workers. Access to social protection (notably, but not only, adequate unemployment insurance) is not only a key feature of labour markets that support both stability and flexibility. ‘Access to social protection for all workers’ is also a principle that speaks both to mobile and non-mobile EU citizens, and that highlights fairness as a key driver of EU policy

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initiatives. The Commission was therefore right to launch an initiative on ‘access to social protection’ in parallel to the Pillar. It is a pity that it has first been announced with the promise of a ‘hard’ legal initiative, but then was scaled down to a softer recommendation (European Commission, 2018); now the challenge is to give that recommendation real bite. For related reasons, **I consider the Commission initiative concerning the European Labour Authority as highly relevant:** organising and enforcing ‘fair mobility’ is key in a monetary union, and ‘fair mobility’ has to be embedded in well-regulated labour markets, in the interest of both mobile and non-mobile citizens. In a similar vein, the improvement of the Written Statement Directive, proposed by the Commission, answers the need to fight growing gaps in employment protection in some EU labour markets and is well-taken.

In contrast, independently of the intrinsic need to develop policies that sustain the work-life balance in all the Member States, one may wonder why the Commission picked ‘work-life balance’ as a showcase for its willingness to develop the social dimension of the EU. An EU initiative on improving the work-life balance enters into sensitive domains of national policies, and on the basis of the *raison d’être* of the Pillar – at least, as I understand it – it is not evident that this should now be a priority matter to be regulated at EU level, notwithstanding its intrinsic merits. But the contributors to this forum debate may disagree with me on this.

A Pillar of Social Rights for a European Social Union

In the preceding section, I highlighted (albeit briefly) the intellectual coherence between the Commission’s work on the completion of EMU and its work on the Pillar of Social Rights. **The public debate nevertheless remains handicapped by the absence of clear analytical thinking about the role the EU should play in the domain of social policy and the role, it should not play.** At the very moment, the Pillar was solemnly accepted by the Council, one could hear some national ministers saying that its implementation was all the responsibility of the Member States, while other ministers underscored the need for tangible EU-level initiatives. Such confusion in debates on ‘Social Europe’ is not a new phenomenon, and it is not happenstance. **In fact, although the expression ‘Social Europe’ is omnipresent in debates about the EU, it is an ill-defined and even ambiguous concept.** For some people ‘Social Europe’ may mean ‘protecting domestic social policies against (liberalising consequences of) further Europeanisation’, for other people it may mean ‘more supranational EU initiatives’. Hence, simply stating that the Pillar should contribute to ‘Social Europe’ begs the question: what should the EU do, what should Member States do?

In trying to clarify our thinking on the EU’s social dimension, I deliberately started

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to use the notion ‘a European Social Union’, for three reasons. First, the expression ‘Social Union’ invites us to propose a clear-cut institutional concept, in contrast to the elusive notion of ‘a Social Europe’. Second, it indicates that we should go beyond the conventional call for ‘a social dimension’ to the EU as if today’s EU has no social dimension whatsoever. Suggesting that the EU has no social dimension is analytically incorrect and politically counterproductive. The coordination of social security rights for mobile workers, standards for health and safety in the workplace, and some directives on workers’ rights constitute a non-trivial acquis of fifty years of piecemeal progress. The EU also developed a solid legal foundation for enforcing non-discrimination among EU citizens. The notion of a European Social Union is not premised on a denial of that positive acquis. The next steps can build on that acquis. However, the next stage of development must also respond to new challenges, which are about more than ‘adding a social dimension’. Third, the emphasis on a Social Union is not a coincidence. **A European Social Union is not a European Welfare State: it is a union of national welfare states, with different historical legacies and institutions.** As explained below, a union of national welfare states requires more tangible solidarity between those welfare states as collective entities. But its primary purpose, so I believe, is not to organise interpersonal redistribution between individual European citizens across national borders; the main mechanisms of solidarity which the EU now needs to develop are between Member States; they should refer to insurance logics rather than to redistribution, and to support for social investment strategies (space forbids to elaborate upon the latter idea).

There are specific aspects of social policy for which we may have to rethink the practical application of the subsidiarity principle, both within Member States and at the level of the EU. Yet, a ‘union of welfare states’ would apply subsidiarity as a fundamental organising principle. **Solidarity between Member States necessitates a degree of convergence, but convergence is not the same as harmonisation. More generally, the practice of a Social Union should be far removed from a top-down, one-size-fits-all approach to social policy-making in the Member States. The core idea can be summarised as follows: a Social Union would support national welfare states on a systemic level in some of their critical functions** (stabilization is such an essential systemic function, as explained earlier) **and guide the substantive development of national welfare states,** via general social standards and objectives, leaving ways and means of social policy to the Member States. A Social Union would need a basic consensus about and an operational definition of ‘the European Social Model’. In other words, European countries would cooperate in a union with an explicit social purpose; hence, the expression “European Social Union”.

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A Social Union, so conceived, is not only desirable but necessary, unless we would drop the idea that the integration project concerns welfare states with at least some shared aspirations. To make that analysis is not to say it leads to only one definitive version of a European Social Union: depending on the normative judgements that are brought to bear, a Social Union may be a more ambitious or a less ambitious project; it can be based on different conceptions of social justice. Nor is it to say that an operational concept of a European Social Union is already on the table. We are, at least in part, still in uncharted territory: important issues have to be clarified.

Ferrera (2018) develops his vision on a European Social Union in a way that is very congenial and helpful: he starts from the premise that we can build on what is already in place – a set of diverse institutional pieces that serve as ingredients for a European Social Union – whilst the aim is something very different from a federal welfare state as found in the so-called historical federations. **The objective is to create a ‘holding environment’ for flourishing national welfare states, rather than a federal welfare state. Yet, such a holding environment requires real supranational policies.**

Returning to our initial subject, the reader may now wonder: if the EU’s vocation is not to become a welfare state, why should it equip its citizens with European social rights, defined at the EU level?

To answer that question, the nature and purpose of what is proposed as ‘rights’ at the EU level must be clarified. We tend to conceive of ‘rights’ primarily as instruments for the enforcement of entitlements. Ferrera (2018) rightly argues that we should broaden our understanding of the role of rights: “Following the tradition of Max Weber, we can define rights as sources of power (Machtquellen). There are three distinct types of resources which back the actual exercise of any right. First, there are normative resources. Holding a right means having a legitimate reason to claim compliance by others: horizontally from fellow citizens (e.g. non-discrimination in the workplace) and vertically from political authorities (e.g. fair treatment by social administrations). Secondly, there are enforcement resources: if compliance is not obtained, the right-holder can activate legal coercion. Thirdly, there are instrumental resources: the availability of practical conditions for the full exercise of a right. In the case of social entitlements, for example, the state sets up social insurance systems and networks of public services, provides information, advice, procedures for accessing and delivering benefits and so on. While the second type of resources (enforcement) is what makes rights (and, by extension, citizenship) ‘hard’, in contemporary liberal-democratic societies we should not underestimate the importance of the other two types: normative and

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especially instrumental resources. The former operate at the ideational and motivational level, while the latter facilitate the actualisation of rights. Also, both may play a role in the process of rights adjudication in courts of law. We know that even when it adopts binding norms that indirectly impinge on national citizenship, the EU cannot provide enforcement resources directly to citizens. The EU does, however, provide normative resources (if only through soft law) and, in particular, instrumental resources. **I suggest that the primary role of the European Pillar of Social Rights regarding citizen empowerment could and should result, initially, from its capacity to exploit coherently and systematically its motivational and actualisation potentials.”**

Building on the typology of resources that back the actual exercise of rights as presented by Ferrera, I would argue that delivery on the Pillar’s promise presupposes that different instruments are combined to implement its principles: EU legislation; policy coordination and benchmarking; and EU funding. These principles should play a substantial role in the European Semester and fiscal and macroeconomic surveillance. My account of the Pillar’s *raison d’être* also explains why I think it cannot be dissociated from the need to make progress in the completion of the monetary union, as proposed by the European Commission. (In that respect, the actual content of the joint declaration by Merkel and Macron of 19 June was more important than what some commentators made of it; obviously, it must be kept on the agenda.) **In short, what is needed is an effective ‘roadmap for delivery’, based on the complementarity of existing EU instruments and a well-considered selection of priority initiatives. Which initiatives should feature in such a range of priorities? That is the question to be debated in this forum.**

Notes:

1 See European Commission (2017a), notably on pp. 25-26 and European Commission (2017b), notably pp. 13- 16.

2 Space forbids to develop the relevance of well-organised collective bargaining for EMU: see Vandembroucke, 2017b, and Watt and Watzka, 2018.

3 On an analytical level, one should carefully distinguish between (i) the ‘social corollary’ of EMU, and (ii) the ‘social corollary’ of the Single Market; they partly overlap, but are also different. The Commission’s Reflection Paper on the Social Dimension of Europe of April 2017 is insufficiently clear about this. See Vandembroucke (2017b).