
Consultation of the European Commission: Towards a European Pillar of Social Rights – Launching, implementing and enforcing

Opinion – Adopted by the Presidium of CESI

Preliminary remarks

The European Commission has repeatedly stressed the need for a ‘new start’ for social dialogue. Formal consultation meetings with social partners on the European Pillar of Social Rights have so far unfortunately been restricted to the cross-sector social partners. As a recognised European sectoral social partner and the voice of more than five million employees mainly from the public sector, CESI believes that a truly systematic inclusion of all recognised social partners in formal consultation meetings would be desirable.

There is a vital role to be played by the EU to bring economic and social cohesion: The growing interconnections of the Member States’ economic, financial and social architectures require a **strong signal towards more (effective) action by the EU**. Solidarity among the Member States must be the bedrock of the EU and its social model. Renationalisation of measures cannot be the answer.

Decreasing economic and social inequalities is the EU’s most important contemporary challenge. Social rights and equality should not primarily be seen as a “*productive factor*”¹ to generate additional economic growth, but also as a goal itself as well as a tool to achieve fair, resilient and sustainable economies. After years of increasing social dumping in the name of ‘competitiveness’, **it is high time for the EU to be there much more for citizens and workers again, not only for businesses, banks and multinationals**. Otherwise, the dismantling of the European integration project is a real danger.

A European Pillar of Social Rights which covers the EU in its entirety can be a vital instrument to achieve more economic and social justice, cohesion and equality throughout the EU. However, any Pillar’s success will depend on its ability to bring a **real upward social convergence**. If workers and citizens feel no substantial positive changes, the much-advertised Pillar initiative of the European Commission will fail and likely boomerang on the EU, further strengthening existing disillusion about European integration, reinforced by surging populist voices throughout the Union.

The policies of the EU have in the past years been decisively led by objectives such as better regulation, international trade, completion of the single market and economic governance. In the area of social

¹ Communication ‘Launching a consultation on a European Pillar of Social Rights’, COM(2016) 127 final.

policies, the competence of the EU can, if at all, mainly result from establishing (fair) single market provisions, coordinating social security systems, using the open coordination method, guaranteeing (horizontal) non-discrimination principles, and using the social policy Title of the TFEU and (social) Fundamental Rights enshrined in the EU Charter. As a consequence, and in order to make sure that the social acquis is mainly understood as establishing minimum standards, legislation should, if possible, mainly fall back on legal bases and principles laid down by the non-discrimination principles, the social policy Title of the TFEU and the Charter – at least as additional legal bases. (Fundamental) social rights are to be considered as being on the same footing as economic freedoms.

CESI in principle appreciates the European Commission's exercise to collect and take stock of existing rights and objectives existing in treaties, legislation and other documents of the European Union, including the **Charter of Fundamental Rights**, as an important precondition to set up a comprehensive European Pillar of Social Rights (c.f. Preliminary outline of the Pillar by the European Commission). Institutions, decision-makers and social partners must increasingly draw on social fundamental rights established in the Charter when creating a European consensus on social rights, **identifying gaps** in social and employment legislation, taking measures to **close them** and **enforcing rights** which already exist to concretely benefit all workers and citizens. However, texts adopted by the UN/International Labour Organisation (ILO) and the Council of Europe (including the European Social Charter) should not be forgotten in the analysis.

In the end, the Pillar initiative should be as broad as possible and ensure above all the following:

I. Closing legislative gaps

1. **Gaps in fields in which the EU has legislative competences must be closed via binding standards based on the highest level of job quality and protection** for workers and citizens, especially for groups which are often disadvantaged, such as young and older workers, women and the disabled. This relates especially to directives and regulations concerning:²
 - i. new, flexible forms of employment
 - ii. consequences of mobile and digital work models on employment relationships and worker rights
 - iii. adequate work-life balance based on a notion of gender equality according to which responsibilities in households should be equally shared
 - iv. comprehensive and transparent portabilities of pensions and social security entitlements which follow workers during their career across employers and Member States
 - v. effective and comprehensive inclusion and information and consultation for all workers, regardless of the sector of employment and the trade unions of affiliation

New, flexible forms of employment

- Clear definitions of “worker” and “self-employed” should be agreed upon at EU or international level. This could enable obligations to pay income taxes and make social and labour rights applicable to all persons in any de-facto dependent work relationship.
- Existing protection standards and rights in traditional forms of employment must be applied to new forms of labour – not new weak rules. A race to the bottom must be prevented.

Consequences of mobile and digital work models on employment relationships and worker rights

² This is not a comprehensive list of action fields which will need to be considered but a collection of some key priorities that need to be addressed.

- Establishing mobile work relationships should only be possible on a mutual voluntary basis. The interests of workers preferring traditional work patterns must be defended.
- Mobile work solutions must rule out constant availability and unpaid overtime and include a right to disconnect in order to prevent increasing or unpaid working hours. The EU Working Time Directive should apply as broadly as possible. Models to manage working time like blocking computer accounts after working hours should be promoted.
- Tasks performed at the place of work and away from it should be subject to the same rules and obligations. Employers should be made liable for employees performing work outside offices. This especially concerns accidents and other matters relating to occupational safety and health.
- Employers should always provide the means required by workers to do their job.
- Employers must supplement new digital work tools with technical support and training. Digital skills are added value for both the employee and the employer. Training should therefore take place during working hours. The principle of “re-train before hiring new staff” should be applied. The lack of digital skills must not serve as a reason for dismissal, pay cuts or other labour-related legal measures.
- Public investments in digital skills should be considered as a social investment. They need to be given special consideration in the frame of the EU’s economic governance and budgetary surveillance rules.
- Binding rules should narrowly regulate what digital data (such as internet usage) an employer may gather from workers. Employers must be obliged to provide employees with regular, full information on which digital data is being collected, and to what end.
- For the protection of third-party workers’ data, clear rules should set ambitious minimum standards for the sharing or selling of data to private actors like advertisement agencies. When setting these standards, both representatives defending the companies’ interests and trade unions should be involved.

Adequate work-life balance based on a notion of gender equality according to which responsibilities in households should be equally shared

- As regards maternity leave, the period of dismissal protection should be extended and preparatory steps to dismissal prohibited. There should be a right to written reasons in cases of dismissal in exceptional circumstances not connected to pregnancy as well as special entitlements for parents at work, especially for breastfeeding mothers, in relation to breaks and/or extra facilities.
- Parental leave should be further developed at EU-level. Fathers and mothers should be each entitled to an adequate fixed period of leave, rather than allowing transfers of leave entitlement between mothers and fathers (which would likely lead to mothers taking most of the parental leave and thus counteract the objective to achieve a more equal take-up of leave times between men and women).
- A new carers' leave should be introduced at the EU-level. Such a leave scheme should be as flexible as possible for the workers so that a new carer's leave can serve as a real help for men and women with domestic care responsibilities. Rigid schemes would in many cases not be effective since domestic care responsibilities are often hard to foresee and emerge rather quickly.

Gender equality and equal opportunities must be mainstreamed as a fundamental principle in all actions and measures coming out of the Pillar.

Comprehensive and transparent portabilities of pensions and social security entitlements which follow workers during their career across employers and Member States

- To ensure that social security and pensions entitlements can be effectively claimed across Member States and that they are not lost 'one the way' as workers change employers and move across different Member States during their professional career, the EU should work for a more transparent and clearer portability schemes – in the interest of administrations and workers.

Effective and comprehensive inclusion and information and consultation for all workers, regardless of the sector of employment and the trade unions of affiliation

- The scope of information and consultation frameworks must be inclusive and apply to all workers without exception.
- Employers should share profits made through digitalisation (digital dividends) by means of better employee financial participation or reduced working time (for the same pay).

II. Enforcing legislation and rules

2. It is crucial that the EU, together with the Member States, the social partners, trade unions and employers, ensures the proper and swift implementation and enforcement of EU law and rules in employment and social affairs without exception. Enforcement is to be guaranteed **legally** (e.g. through proceedings, infringement procedures, collective agreements) **administratively** and **politically**. It is not least the task of trade unions to ensure a seamless representation of workers through high union membership density, a wide geographical coverage and inclusive cooperation and agreements among themselves, also transnationally. Trade unions should be supported in their efforts to set up transnational agreements among themselves to provide advisory and legal services for a fair labour mobility and service provision.

III. Meaningful indicators to measure social progress

3. In areas in which the EU has no clear legislative competences, the EU must apply truly effective solutions to achieve higher levels of employment, social protection, social inclusion as well as better education, training and health (cf. Art. 9 TFEU). In the absence of 'large solutions' (revision of the treaties, a large fiscal capacity for the EU to deal with social challenges, a totally new 'consensus' for cohesion in employment and social affairs, ...), a first step could be the **development of a set of commonly accepted and meaningful indicators which can measure social change timely, effectively and to the most objective extent possible**. Once established, such social indicators should be monitored regularly by means of analogous benchmarks in the Member States which measures relative improvements.

IV. Financing progress – More social investments

4. Implementing the Pillar – i.e. meeting the relative improvements defined by the benchmarks – will require more substantial public spending to ensure the delivery of services of general interest (SGI) necessary to implement its objectives. This requires more investments in areas such as early childhood care, health, education and training. Investment possibilities under the current EU's macroeconomic and fiscal surveillance framework (Stability and Growth Pact) remain very restrictive. More **flexibility and incentives** for increased public social investments should be enabled and encouraged by the EU – **A new Golden rule for public social investments is needed that puts the provision of social rights at its core**.

V. Inclusive social partner involvement – All workers count

5. While the effectiveness of the Pillar should be assessed regularly, it must be designed in a way that allows it to respond to new and emerging social and employment-related developments and challenges. Developing and implementing the Pillar should **involve all recognised social partners** at all levels of the process. Inclusive sectoral and interprofessional social dialogues are fundamental. If recognised social partners do not agree on the participation in European social dialogue, the European Commission is called upon to facilitate the participation of those organisations fulfilling the three criteria established by the European Commission to be recognised as a sectoral social partner in European sectoral social dialogue.³

³ SEC(2010) 9064 final – Commission SWD on the functioning and potential of European sectoral social dialogue, p.5.