

The Social Pillar and its Implementation – Is a More Social Europe with Less Burdens on Employers Really Possible?

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A few months ago the Pillar of Social Rights was adopted and its implementation process was started. As the Pillar represents the backbone of the Commission's Social Agenda, a closer look might provide interesting insights on the future of the social dimension of the EU.

This contribution begins with an overview of the context in which the Pillar of Social Rights was conceived, then presents its content, illustrates its current stage of implementation and, finally, provides a brief reflection on the underlining approach towards social and labour rights.

Context

In September 2015, the President of the Commission Juncker announced that the social dimension of the EU would be further strengthened with the adoption of a Pillar of Social Rights, and in March 2016 the Commission presented the text of a preliminary outline.

The Pillar was introduced as the way forward for the realization of social progress and of a social market economy, which Article 3 TUE indicates among the purpose of the EU. In particular, the Juncker Commission proposed the Pillar in the context of a plan to provide the EU with a “social triple A” status, and to respond to the post-economic crisis need to promote fairness, security and inclusion in the labour market.

It is worth noting that these remarkable aspirations have been framed within a broader design, namely the strengthening of the resilience of EU economic growth and the deepening of the internal market. To say it with the words of the Social Affairs Commissioner Marianne Thyssen: “*The Social Pillar should be seen as a compass pointing to a very specific destination: a stronger EMU, paved on an accelerated process of convergence, and with an effective counter-cyclical function. [...] Since it helps create a more level playing field and so, improves the functioning of the Internal Market.*”(speech of Thyssen of 16.09.2016 at the 28th Conference of European Association of Labour Economists).

Moreover, and on a similar note, the Commission Communication Launching a Public Consultation

on the Pillar (COM(2016)127) explains that “*social policy should also be conceived as a productive factor*” and that the Social Pillar aims at boosting economic stability in the EU.

Content

On 17 of November 2017, in occasion of the Gothenburg Summit for Fair Jobs and Growth, the Pillar of Social Rights was the object of an inter-institutional proclamation, which marked its adoption, as a non-binding instrument.

The document is articulated in three chapters, containing a total of 20 policy initiatives which are presented as tools for benchmarking, assessing and eventually adapting national social policies, in a way to enrich the system of policy coordination that takes place within the European Semester. The first chapter of the Pillar is dedicated to “*Equal Opportunities and Access to the Labour Market*”, where the Commission highlights the centrality of lifelong learning, support for (re)entering the labour market, and equal opportunities in the labour market. The second chapter concerns “*Fair Working Conditions*”, and here the Commissions’ priorities consist of information rights on the conditions of employment, notice periods in case of dismissals, fair wages, work-life balance, health and safety, social dialogue and workers’ involvement, and flexible and secure labour contracts. It is interesting to note that, in relation to the last principle on flexible and secure labour contract, the Pillar specifies that “*the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured*”, thus underlining the importance of a dynamic labour market. Finally, the third chapter deals with “*Adequate and Sustainable Social Protection*”, and focuses on healthcare and sickness benefits, pensions rights, unemployment benefits, minimum income, disability, long-term care, child care, housing and access to essential services.

State of implementation

The Commission has already started the implementation of the Pillar through the adoption of legislative proposals. The first proposal was published in December 2017 and it concerns a Directive on Transparent and Predictable Working Conditions (which would repeal the Written Statement Directive). The aim is to guarantee that employees are provided in writing with information on the essential aspects of their work relationship and that they receive cost-free mandatory training from their employer. One of the main differences with the current Written Statement directive is the personal scope of the protection which in the Commission’s proposal covers standard and non-standard forms of employment, potentially including also platform workers. Article 2 indeed broadly defines the concept of *worker* by referring to the criteria established in the jurisprudence of the CJEU (C- 66/85 *Lawrie-Blum*, recently confirmed in C-216/15 *Ruhrlandklinik*): the fact that for a certain

period of time, a natural person performs services for and under the direction of another person in return for which he receives remuneration.

Moreover, the proposal includes more extensive rights, as it imposes a maximum duration to probation periods (6 months), protects the worker's freedom to enter in more than one employment relationship at the time, disfavours those working arrangements which do not respect certain standard of predictability of the work schedule, and imposes on the employer the duty to provide a written reply to the employee's request to obtain more predictable and secure working conditions.

It is interesting to note that on the one hand the Commission appears willing to enlarge the protective scope of the directive to platform workers, who often risk to fall outside labour provisions, and to expand the quality and range of information that the employer is obliged to provide to the worker. On the other hand, however, the directive will not provide any effective right to transit from a precarious to a more secure and predictable form of work. On this point, the European Trade Union Confederation (ETUC) takes the position that the mere "*right to request a more secure and predicabile form of work is not really a meaningful right for the many workers trapped in precarious and zero-hour type contract*" (press release of 21.12.2017, Esther Lynch, ETUC Confederal Secretary).

This double characteristic of the proposal (broader scope of application, but with modest substantial effects on the workers' rights) appears in line with the goal of the directive, which, as the proposal's explanatory memorandum highlights, is not only to combat unfair labour practices, but is also to ensure the adaptability of the labour market and to limit burdens on the employer.

On 13 March 2018, the Commission presents other initiatives to implement the blueprint designed by the Pillar: a proposal for a Council Recommendation on Access to Social Protection for Workers and Self-Employed, and a proposal for a Regulation Establishing the European Labour Authority.

As for the European Labour Authority, the explanatory memorandum of the proposal indicates that the Regulation is grounded in the "*concerns regarding compliance with an effective and efficient enforcement of EU rules, which risks jeopardising trust and fairness in the Internal Market*", and in ensuring fair cross-border labour mobility. The setting up of a decentralised European Labour Authority would facilitate the access to information by individuals concerning their labour rights and social security entitlements, would foster operational cooperation among national authorities, coordinate concerted and joint inspections and would support Member States in complying with the obligations imposed by EU (labour) law. The draft contemplates the presence of one "national liaison officer" per Member State, with the aim to promote exchange of information and to create national contact points of the Authority. The proposed Regulation not only establishes the principles and tasks

of the European Labour Authority, but also contains rules on its organization (a management board, an executive director, and a stakeholder group with advisory functions) and budget.

The Commission's proposal for a Recommendation on Access to Social Protection instead advocates for an extensive coverage of social security schemes to all workers (defined once again on the basis of criteria set out by the CJEU, in the *Lawrie-Blum* and *Ruhrlandklinik* case, thus including also non-standard workers) and self-employed, so to allow them to benefit from *adequate* social protection (on unemployment, sickness, healthcare, maternity/paternity, accidents at work, occupational diseases, disability and old age). This measure openly favours a more inclusive social security coverage, in a way that would represent quite an advancement of workers' prerogatives, especially in light of the growing number of people in self-employment, free-lance jobs and atypical forms of employment, which are currently often denied access to social protection. However, it should be noted that the Commission proposes the initiative in the form of a Council Recommendation, which is a non-binding instrument, that merely provides policy guidance and complements other governance (and in a way "soft law") instruments such as those deployed in the framework of the European Semester and of the Open Method of Coordination.

As the proposal's explanatory memorandum reveals, the Commission's preference for a non-binding instrument "*responds to the need to act at EU level, while taking into account the lack of political consensus, at this point in time, on the direction of the reforms*".

Concluding reflections

The process of implementation of the Pillar has so far brought about Commission's proposals which, if adopted and effectively transposed into domestic systems, could advance the social dimension of EU integration. Indeed, the Pillar and the drafted measures show a particular sensitivity towards the societal effects that have been produced by the progressive tightening of the internal market, the increased quest for competitiveness and technological advancement.

This is quite clear in the expansion of certain aspects of labour and social protection to those (atypical) forms of work that are more and more representative of the European workforce but that are at the same time at the edge of or excluded from the scope of national or EU labour provisions. Similarly, the accent on transparency and information rights could have a positive effect in helping workers to cope with the flexibility requested by the employer. Also, the institution of a European Labour Authority may have the double effect of tackling (unlawful) practices of social dumping and, at the same time, support the enforcement, and therefore the uplifting, of workers' rights.

Finally, it should be acknowledged that this Commission and the Pillar have had the merit to bring the social dimension of the EU once again into the spotlight, thus creating the opportunity for (an interinstitutional, political and academic) debate on the future of the EU social model.

However, and on a less positive note, the Pillar and its implementation seem to reflect only a partial perspective on labour and social prerogatives, whereby workers' rights and their enforcement go hand in hand with labour market expansion and economic growth.

As a matter of fact, the Commission appears so keen to embark in a process of adaptation of the working conditions to the changing nature of the economy, that it seems to forget to include in its priorities those labour principles which are (still) essential to provide effective protection to workers - but that do so at the cost of the employer's contractual freedom. Reference could be made, for instance, to substantive protection against individual or collective dismissals, the right to continuative and open ended employment, the safeguarding of workers' prerogatives in case of business restructurings, or workers' involvement and participation into the employer's decision making process.

A failure to address those "core" labour law aspects in favour of measures aimed at the flexibilization of the labour market, not adequately accompanied by binding provisions on labour inclusion and social protection, may lead to a future scenario whose desirability is quite disputable. Indeed, workers might witness a progressive weakening of the protective shelter provided by labour law, in a context where their (weaker) bargaining position vis-à-vis the employer remains, nevertheless, unaltered. Whether these concerns are justified, the future development of the initiatives stemming out the Pillar will tell.