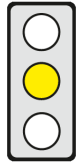


KEY ISSUES

Objective of the Communication: EU-wide socio-political principles will provide a standard for assessing and approximating the social policies of the Member States.

Affected parties: All citizens, particularly employees, employers and social partners.



Pro: (1) The proposal to guarantee the portability of social and training entitlements may have a positive impact on employment.

(2) Increasing the proportion of women in the workforce can be achieved by expanding childcare services and long term care for the elderly.

Contra: (1) A blanket approximation of social benefits is inadvisable because the capacity of national social systems varies significantly.

(2) The fact that the Commission calls for remuneration which provides a reasonable standard of living and remuneration based on productivity, demonstrates the intrinsic inconsistency of the principles.

CONTENT

Title

Communication COM(2016) 127 of 8 March 2016: Launching a consultation on a **European Pillar of Social Rights**

Brief Summary

► Context and objectives of the Consultation

- The Communication launches a consultation on a draft "Pillar of Social Rights" (hereinafter: Pillar). The draft Pillar is annexed to the Communication.
- The Pillar will
 - not repeat nor paraphrase existing EU legislation in the area of employment and social affairs (p. 8) but
 - express in a list "essential principles to support well-functioning and fair labour markets and welfare systems",
 - provide a standard for assessing and approximating the employment and social policies of the eurozone countries (p. 8) while the non-eurozone countries can join in "if they want to do so" (p. 7),
 - help to "modernise, broaden and deepen" social rights (p. 8), and
 - serve as a "compass for the renewed convergence within the euro area" (p. 2).
- The consultation, in which the non-eurozone countries are also expressly called upon to participate, pursues three main aims (p. 9):
 - Existing EU legislation in the area of employment and social affairs will be assessed in order to establish the extent to which there is need for reform.
 - New trends in working life and society, triggered by demographic change and digital transformation, will be identified.
 - The draft Pillar will be discussed and the special needs of the eurozone determined.
- At the beginning of 2017, the Commission, using the results of the consultation as a basis, will submit a concrete proposal for the Pillar, possibly in the form of a non-binding recommendation (p. 9). The Commission does not rule out legislative measures.

► Current challenges

- Almost 22 million people are out of work in the EU, and 17 million of those are in the eurozone (p. 3). 122 million, a quarter of the population, are at risk of poverty or social exclusion because they have an income below 60% of the national median income [SWD(2016) 51, p. 3].
- The globalisation and digitisation of work processes are changing working life and creating "grey zones" in terms of labour rights and "access" to social systems [SWD(2016) 51, p. 3].
- As a result of this demographic change, the EU will only be able to grow if it succeeds in mobilising "the entire available workforce" including women, young people and older people. For the same reason, the social systems must also be designed to be sustainable [SWD(2016) 51, S. 4].
- The stability and success of the eurozone depend, inter alia, on the efficiency of national labour markets and social systems as well as on the ability of the economy to absorb and react to shocks (p. 5).

► **General information about the Pillar**

- The draft includes a list of social principles divided into three sections:
 - equal opportunities and access to the labour market,
 - fair working conditions and
 - adequate and sustainable social protection.
- The Pillar's principles are worded very generally because this is "a first, preliminary outline" (p. 2). The "scope and content of the Pillar" will be discussed as part of the consultation (p. 9).

► **Equal opportunities and access to the labour market**

- Everyone will have lifelong "access" to (vocational-) education. Low-skilled people are to up-grade their skills (Annex, p. 4).
- Equal treatment regarding employee rights will be ensured, regardless of the employment contract - e.g. fixed term and indefinite contracts (Annex p. 5).
- "Flexibility in the conditions of employment" will facilitate a "gateway" to the labour market and allow employers the ability to swiftly respond to shifts in demand ("flexicurity", Annex p. 5).
- Everyone will have "access" to individualised job-search assistance and be urged to take up further training (Annex p. 5).
- EU-wide portability of social and training entitlements will be provided (Annex p. 5).
- Everyone under the age of 25 is to receive an offer of employment, continued education, an apprenticeship or a traineeship within four months of becoming unemployed (Annex p. 6).
- Everyone will receive individualised job-search support after 18 months of unemployment (Annex p. 6).
- Gender "equality" in the areas of education and employment will be fostered (Annex p. 7).
- People with caring responsibilities will receive "access" to "adequate leave arrangements" and care services (Annex p. 7).
- Flexible working arrangements – including flexible working time – will be promoted to facilitate work-life balance (Annex p. 7 et seq.).
- Labour market participation of "under-represented" groups - particularly third country nationals and ethnic minorities - will be enhanced (Annex p. 8).

► **Fair conditions of employment**

- Everyone will be informed in writing of their rights and obligations prior to the start of employment.
- Probation periods will be of a reasonable duration (Annex p. 9).
- There will be protection against dismissal (Annex p. 9).
- Wages will enable a decent standard of living and motivate people to seek work (Annex p. 10).
- Wages will evolve in line with productivity developments (Annex p. 11).
- An adequate level of health and safety protection will be provided, together with support for implementation, notably in small and medium-sized enterprises.
- Social partners will be consulted in the design and implementation of employment and social policies (Annex p. 11).
- All workers will be informed and consulted in good time particularly in the event of mass redundancies, mergers or restructuring of companies (Annex p. 11).

► **Adequate and sustainable social protection**

- Social protection benefits and services - such as advisory services - will be integrated to the extent possible in order to strengthen the consistency and effectiveness of these measures (Annex p. 12).
- Everyone will have timely "access" to "good quality" preventive and curative health care. Healthcare systems will support health promotion and disease prevention. All workers, regardless of contract type, will receive "adequate" sick pay in the event of illness (Annex p. 13).
- Everyone will receive an "adequate" pension when they retire. Gender-related differences particularly with regard to the state pension will be reduced. In order to ensure the sustainability of pensions, the statutory retirement age will be linked to life expectancy and early exit from the labour force avoided (Annex p. 14).
- The unemployed will receive "adequate" unemployment benefits linked to requirements for actively seeking work (Annex p. 14).
- Those who lack sufficient resources for a "decent" standard of living will be granted a minimum income. For those of working age, these benefits will be linked to requirements for labour market integration (Annex p. 15).
- Those with disabilities will receive "access" to basic support services and a secure basic income (Annex p. 16).
- "Access" to long-term care services - i.e. over several weeks or months - will be ensured (Annex p. 16).
- All children will have "access" to child care. Children from disadvantaged backgrounds will be encouraged, and measures will be taken to combat and prevent child poverty (Annex p. 17).

- Those in need will have "access" to social housing. "Access" to residential property will be supported. The homeless will be provided with accommodation (Annex p. 18).
- Everyone will have "access" to affordable, "essential services", e.g. in the areas of communications, energy, transport, and finance (Annex p. 21).

Policy Context

On his election as Commission President in October 2014, Jean-Claude Juncker declared that the EU had to be brought closer to its citizens otherwise it would fail. For this, the EU needed a triple A rating not only in the economic and financial sectors but also in the social sector. The call for a social triple A for the EU is also mentioned in the "Five Presidents' Report" [Communication COM(2015) 600; see cep **PolicyBriefs** No. [20/2015](#), [21/2015](#), [22/2015](#) u. [23/2015](#)] on completion of Economic and Monetary Union (EMU), published in June 2015. There it states that for EMU to succeed, there has to be a significant degree of convergence of national labour markets and welfare systems in the eurozone (see p. 10 of the Report). At the start of 2017, after completion of the consultation, the Commission wants to submit a concrete proposal on the Pillar and, in spring 2017, publish a White Paper on the future of Economic and Monetary Union (p. 9).

Options for Influencing the Political Process

Directorates General:	DG Employment and Social Affairs (leading)
Committees of the European Parliament:	Employment and Social Affairs (leading); Rapporteur: Maria João Rodrigues (S&D Group, PT);
Federal Ministries:	Employment and Social Affairs (leading);
Committees of the German Bundestag:	Committee for Employment and Social Affairs (leading);
Consultation procedure:	All citizens may express their opinion. The procedure ends on 31 December 2016;http://ec.europa.eu/social/main.jsp?langId=de&catId=699&consultId=22&visib=0&furtherConsult=yes .

ASSESSMENT

Economic Impact Assessment

Due to the harmonisation of legislation and creation of the internal market, the economic integration of the Member States is at an advanced stage. This is not true of the employment and social sectors. **A blanket approximation of social benefits** under the Pillar is **inadvisable**, however, **because the** economic strength of the Member States and the corresponding **capacity of national social systems vary significantly**. Thus **too similar** or even identical **social standards** were a major contributing factor in the fact that the competitiveness of the individual eurozone countries developed in very disparate ways. They **were** therefore **one of the main causes of the euro crisis**.

Not to mention the fact that a varied economic and socio-political tradition would be lost as a result of uniform social standards. It is therefore appropriate that the principles are clearly only intended to be non-binding recommendations to the Member States. On that basis, the individual proposals can be assessed as follows:

The concept of "flexicurity" enables employers to react to fluctuations in demand in that the deployment of staff can be flexibly arranged. At the same time, employee protection is to be provided by way of contractual provisions - such as by regulating fixed-term employment contracts. The proposal to introduce the concept of flexicurity is therefore appropriate insofar as employee protection is orientated according to national conditions.

The proposal to guarantee the portability of social and training entitlements EU-wide, **may have a positive impact on employment** because it increases the geographical mobility of employees which means it is easier - notwithstanding language barriers - to find employment. Insofar as such entitlements place an additional cost burden on the employing company, however, their portability may also have the opposite effect.

In view of the skills shortage in many European countries, **increasing the proportion of women in the workforce** may improve Europe as a business location. It **can be achieved**, as the Commission recommends, **by expanding childcare services and long term care for the elderly**.

Employment legislation which facilitates work-life balance for employees, such as by way of flexible working hours, may, on the one hand, increase production costs, for example due to additional organisational expenditure on personnel planning. On the other hand, it makes taking up work more attractive for those not in employment. It is unclear whether, on balance, the envisaged impact on growth and employment would take effect.

The fact that the Commission calls, in quick succession, **for remuneration which provides a reasonable standard of living and remuneration based on productivity, demonstrates the intrinsic inconsistency of the principles**. Whilst the latter protects against excessive wage rises and thus against the erosion of competitiveness, the former may lead to state intervention in the setting of wages, such as by increasing or introducing minimum wages which are above the productivity of many employees. In this case, unemployment will rise.

The proposal to improve the integration of social protection benefits and services increases the efficiency of public authorities and gives unemployed people a better chance of entering and returning to the labour market.

Legal Assessment

General

Many of the Pillar's principles state that certain groups should have "access" to various services. The term is not defined in the Communication. **The Commission should clarify what it means by "access".**

The term "access" does however arise in a number of the provisions in the Charter of Fundamental Rights of the EU (CFR). In Art. 35 CFR it states e.g.: "Everyone has the right of access to preventive health care [...]". In the CFR, the right of access is understood to mean that the said group of people must be equally entitled to the respective services [cf. Rudolf, in: Meyer (Ed.), Kommentar zur GRCh, 4th Edn. 2014, Art. 35, para. 9]. Claiming the benefits can only therefore be made dependent on objective criteria, e.g. the amount of available capacity or the respective person's level of need. Since the Commission makes numerous references to the CFR, we may assume that it is going by the CFR's use of the term "access" and intends to attach the same legal meaning to it under the Pillar. This is not certain however.

Legislative Competency

The principles referred to in the Pillar essentially refer to matters of social policy. In this area, the EU can act legislatively or non-legislatively. The EU can, e.g. by means of Directives, adopt minimum requirements for working conditions, social security, employment protection, co-determination by employees, professional integration and equal opportunities for men and women (Art. 153 (2) (b) TFEU). The Commission could therefore, depending on the result of the consultation, submit proposals to revise existing provisions or to adopt new ones. The examination of existing provisions is also part of the Agenda for "better regulation" [Communication COM(2015) 216, cf. **cepInput No.17/2015**]. The Commission can also establish, together with the Member States, non-binding guidelines for the continued development of social policy and prepare procedures for periodic monitoring and evaluation of the measures of the Member States (Art. 156 TFEU). The Commission's indication that the Pillar is to provide a standard for assessing and approximating the social policies of the Member States (p. 8) and that the final Pillar will possibly take the form of a non-binding recommendation (p. 9) are in line with this. The Commission could therefore use the Pillar as a standard in the context of the ongoing coordination of the social policies of the Member States (Art. 160 TFEU). The Pillar's principles could also be taken into consideration in the context of the European semester [Art. 160 TFEU in conjunction with Art. 2a (4) Regulation (EC) 1466/97]. Contrary to its designation as a Pillar of social "rights", the Pillar will probably only contain non-binding principles. Subjective rights of the individual will therefore only arise from legislative follow-up measures by the EU or Member States.

Subsidiarity

Dependent on the actual design of the follow-up measures.

Conclusion

A blanket approximation of social benefits is inadvisable because the capacity of national social systems varies significantly. Too similar social standards were one of the main causes of the euro crisis. The proposal to guarantee the portability of social and training entitlements may have a positive impact on employment. Increasing the proportion of women in the workforce can be achieved by expanding childcare services and long term care for the elderly. The fact that the Commission calls for remuneration which provides a reasonable standard of living and remuneration based on productivity, demonstrates the intrinsic inconsistency of the principles. The Commission should clarify what it means by "access".