

Frank Vandenbroucke's [call for joint reflections on the European Pillar of Social Rights](#) (the Pillar), as well as on the European Social Union (ESU) in general, could not be timelier. The final text of the Social Pillar has been set in stone and solemnly proclaimed by EU institutions, the Revision of the Posted Workers Directive (PWD) has been adopted and reflections on the social consequences of the austerity governance in response to the eurozone crisis have been widely present in both the academic and the political realm. As I understand it, the aspirations of this debate are both conceptual and practical. The conceptual component strives to substantiate the idea of an ESU that is opposed to the arguably vaguer (but potentially more political) notion of Social Europe. The practical component, after conceptually interpreting the *raison d'être* of the Pillar and its role in the ESU, calls for reflection on concrete (policy) proposals to maximise the Pillar's potential. **This contribution engages with the on-going debate on Social Europe as envisioned by the ESU and the Pillar, and argues that the conceptual choices we make now as academics and policymakers will have practical consequences for the future development of the European integration project.** Therefore, no major undertaking in the EU's social domain can afford to disregard the current divide between the EU's core and periphery from its top priorities.

The conceptual understanding of the ESU and the *raison d'être* of the Pillar are inherently interrelated, as it is necessary to first understand the desired national and supranational dimensions of the 'social' in the European integration project – [Ferrera, for one, differentiates five categories of social space](#) – to then be able to reflect on how the Pillar might serve as an instrument that could contribute to achieving the desired social ideal. As several authors in this discussion have already noted, the Pillar – as well as Vandenbroucke's conceptual project of the ESU – happened to come about at the same time as several other EU level initiatives in the social domain. This might be read as a signal for a European 'social momentum' and a policy shift at the Commission's level (Vandenbroucke 2018), which makes it crucial to consider the Pillar within this broader context.

Carpe (the social) momentum

The most prominent among the mentioned initiatives, namely the Revised Posted Workers Directive (PWD), is particularly relevant and offers momentum for both the idea of the ESU and the Social Pillar. The debate on the Revision lasted over two years and created an atmosphere more reminiscent of Europe from the times of the Iron Curtain than a period with

an ever-closer Union. It has divided Europe's core and the eastern periphery on the question of low-cost labour competition, itself symbolic for the general social dumping debate in the context of labour mobility in Europe, beyond the posted workers debate. **In the context of Brexit and rising Euroscepticism across the continent that has focused on (mis)interpretations of the effects of labour mobility, the question of the ESU cannot sidestep the East-West chasm and treat the Eurozone as its only priority.**

Rethinking and reconstituting the 'social' by leaving out a large part of the eastern periphery from the start is both symbolically and practically exclusionary and creates the impression that the social inequality across the Union is not a priority so long as it does not directly affect the euro. This has the potential to further entrench the line dividing the European East and West, which is still fresh from the recent posted workers debate.

The final compromise on the Revision of the PWD has, however, opted for the rescue of the national welfare state (in the sense of Milward 1992). By finding the best possible compromise in the introduction of an equal pay principle for posted workers, the Revision attempts to sustain both national social standards and cross-border service provision, but with clear determinacy to preserve the former. It rejects the 'access justice' as the EU's own conception of social justice (Micklitz 2011), and the market rationality behind wealth distribution between the East and the West through merely granting service providers and their workforce from the East free access to Western markets. **In this sense, the Revision signals that the Member States' (MS) welfare arrangements, together with their industrial relations system embedded in the national socio-economic cultures, are to be protected before anything else.** Understandably enough, it leaves the discussion of fairness and the practical aspects of the distribution of wealth within the EU to take place elsewhere.

Foundational market freedoms are important, but these should not undermine national social arrangements, according to the Revision. In this sense, the Revision compromise resonates to some extent with Vandenbroucke's conceptual project of the ESU, thus contributing to the

'social momentum' for our debate. But protecting the already existing national welfare arrangements is only the very first and basic step to an ESU, and certainly won't be enough. **The Posting debate was just a piece of the underlying conflict between the old core and the eastern periphery, which is deeply rooted in the structural and economic inequality among MS from these two counterparts.** Consequently, the national welfare states are at different levels of development, depending on whether they are in the core or the periphery of Europe. Hence, a Social Union of unequally developed welfare states will likely not be the European social ideal.

Beyond the Pillar's functional approach

Where the Revision has left off is where a project as ambitious as the Social Pillar would ideally step in to create and sustain a 'holding environment' (Hamerijck 2013; Ferrera 2018), where national welfare states, backed by the development of a transnational and EU social space, will thrive. **There are three crucial aspects that need to be taken seriously in the discussion of the Pillar and the ESU more generally.** First, the *raison d'être* of the Pillar is essentially functional for the completion of the EMU, which is inherently limiting to the search for more imaginative social solutions. Second, as indicated in the posted workers example, the future of the European integration project depends on tackling inequality within and across European polities, but the Pillar does not set clear distributive goals that would eventually bridge the inequality gap, especially between the core and the periphery. Third, the language of rights that has been chosen for the Pillar's approach has historically lost the battle against material inequality (Samuel Moyn 2018), not to mention it could shut down further debate on more progressive pre- and re-distributive approaches beyond the rights framework.

Although the other contributors to this debate are aware of the limits and potential pitfalls of a functional social dimension, the rationale behind the Pillar and the ESU remains primarily functional rather than political (Ferrera 2018). **This functional understanding of the Pillar is not only normatively unfortunate but might create an epistemic trap, where pursuing social goals becomes desirable or justifiable only when it benefits the functioning of the EMU or the single market.** Because we are arguably in the midst of 'social momentum' and are having this discussion to rethink the 'social dimension' of the European integration project, following Ferrera's observations I suggest we go beyond the necessitarianism regarding the functional character of the ESU and, more broadly, the EU's overall social dimension.

The social legitimacy of the European integration project goes far beyond the Eurozone, which for a 'social restructuring' project of this kind necessarily requires the inclusion of the eastern periphery from the start.

I propose, instead, a more 'dignitarian' and fairness-based understanding of the 'social' in Europe, which should be normatively decoupled from the functioning of the single market, the EMU or the regaining of the social and political legitimacy of the EU. The functional rationale has, for instance, led to the conception of the Pillar for eurozone members only (with the option for other MS to join), which risks paving the way for social policy a field of differentiated integration. Rethinking and reconstituting the 'social' by leaving out a large part of the eastern periphery from the start is both symbolically and practically exclusionary and creates the impression that the social inequality across the Union is not a priority so long as it does not directly affect the euro. This has the potential to further entrench the line dividing the European East and West, which is still fresh from the recent posted workers debate.

New initiatives such as the European labour authority (ELA), which strives to improve the practice of labour mobility within the EU, are certainly important and relevant, but rethinking the social dimension of the European project will require us to discern the root causes for the failures of the free movement framework in the first place. **If the ELA is going to be established to improve the enforcement of mobile or posted workers' rights, we need to discuss how the vulnerabilities and structures that lead workers (from the periphery) to work under less favourable and often exploitative working conditions (in the core) are enabled and created.**

Some of the root causes can partly be located in the pre-existing economic and social inequalities between the core and periphery. The living conditions and lack of material resources among a significant part of the mobile and posted workers from the periphery are creating high levels of vulnerability and dependency by structurally limiting workers' choices and agency, which further impairs successful enforcement of their rights. The same exercise of tracing the root causes would apply to the social consequences of the eurozone crisis governance in the MS of the southern periphery. **Therefore, any further thinking - and especially action - on the substance of the ESU or the Pillar will presuppose tackling the problem of within and especially between European polities.**

In this sense, as [Chiara Saraceno has argued in this forum](#), it is essential to focus on both pre-distributive and redistributive policies to bridge the inequality gap within and between MS. We, therefore, need to think outside the rights framework that the Pillar itself is constructed upon and reflect on the legal structures that might perpetuate particular hierarchies and injustices within the EU (Kukovec 2015).

Equal rights in unequal national economic and social conditions

Having recognised that tackling inequality is essential for overcoming the core-periphery chasm, **to what extent can the Pillar guide the establishment and further operation of an ESU?** One of the Pillar's goals is supporting the efforts for more inclusive and sustainable growth by 'improving Europe's competitiveness and making it a better place to invest, create jobs and foster social cohesion (Para. 11, Preamble).' According to paragraph 12, the aim of the Pillar is 'to serve as a guide towards efficient employment and social outcomes when responding to current and future challenges which are directly aimed at fulfilling people's essential needs, and towards ensuring better enactment and implementation of social rights.'

Pre-distributive policies need to be combined with distributive and redistributive policies that would naturally require thinking about transfers and supporting national and transnational initiatives through structural and cohesion funds.

This clearly shows that the contested 'flexicurity' rationale is ingrained in the Pillar's DNA, which implies that social policy objectives will generally need to withstand economic efficiency or cost-benefit tests. It is, therefore, crucial to question the capacity of the Pillar's rights approach to counterbalance the established single market rationality (remember Viking and Laval) and the social consequences of monetary governance during the eurozone crisis. Questioning the rights approach should go beyond the critique of pursuing social policy objectives through the language of social rights (*juridisches Missverständnis*, Rödl 2017), but should question whether the Pillar's approach remains predominantly minimalist. **The Pillar sets to establish a tendency that would**

replace 'minimum level' with 'good quality' entitlements (Pillar, Arts. 1, 5, 11, 16, 18, 19, 20). This, at least symbolically, can be considered an improvement compared to other EU or international instruments, such as the EU Charter or the International Covenant for Economic, Social, and Cultural Rights, which strives for a minimum floor of protection in domains like housing, health, and food, rather than a fuller bodied egalitarianism (Moyn 2018; Florian Hoffmann forthcoming 2019). Despite this turn from minimum or adequate to good quality standards, the inequality between MS renders the Pillar's approach a minimalist rather than an egalitarian one (distinction by Moyn 2015). **Determining what good quality means 'in light of national economic and social conditions' (Pillar, Art 6) will relativise the Pillar's goals and might *de facto* maintain the sufficiency of an approach with minimum standards and adequacy.**

Sufficiency is unlikely to be enough to achieve social convergence and combat inequality at the EU level as envisioned in the Pillar's supporting documents – especially if we reimagine the ESU to include the eastern periphery from the start. **Therefore, one might argue that it would be more productive to consider the Pillar's rights framework as an auxiliary rather than the main instrument for substantiating the ESU.** Its rights and principles, together with the accompanying scoreboard, could be regarded as motivational and inspirational directions, but it would be less productive to focus on discussing their enforceability and justiciability in each case.

Outlook

In this contribution, I argued that in the midst of the current 'social momentum' it is crucial to reconsider the predominantly functional rationale of both the ESU and the Social Pillar. **The social legitimacy of the European integration project goes far beyond the Eurozone, which for a 'social restructuring' project of this kind necessarily requires the inclusion of the eastern periphery from the start.** Tackling the existing inequality between the European core and the periphery (both southern and eastern) is essential for the success of any social reinvention of the European integration project, which in this case will require looking for progressive pre- and re-distributive policy solutions beyond the rights framework offered by the Social Pillar.

One starting point will be to rethink pre-distributive policies (Saraceno 2018) that would aim at correcting the existing legal arrangements that keep reproducing hierarchies and structural inequalities in the single market and within the EU in general (see Kukovec 2014). **These pre-distributive policies need to be combined with distributive and**

redistributive policies that would naturally require thinking about transfers and supporting national and transnational initiatives through structural and cohesion funds, as well as other sector-specific funds such as the European Globalisation Adjustment Fund (EGAF) or the Fund for Aid to Deprived People (Ferrera 2018).

Regarding the EGAF, for example, research has shown that only a small proportion of EU workers affected by globalisation receive EGF financing (Clayes and Sapir 2018), which could be a field where mitigation and improvement of the current situation through the Pillar's guidance is imaginable. Finally, the Pillar should by no means prevent the pursuit of more progressive alternatives, following the latest example of the 'European Pact for Social Progress' (Rödl 2018). All of this would, however, require open support for more pan-European solidarity, which does not have to be *a priori* perceived as a dangerous idea in the current political context (Ferrera 2018; Vandenbroucke 2018).

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References:

- Clayes, G. and Sapir, A., The European Globalisation Adjustment Fund: Time for a reset, Bruegel, 11 April 2018
<http://bruegel.org/2018/03/the-european-globalisation-adjustment-fund-easing-the-pain-from-trade/>
- Ferrera 2018
- Hemerijck, A., *Changing Welfare States* (Oxford University Press 2013)
- Hoffmann, F., The Future of Social and Economic Rights in Bhuta, N. (ed), *The Futures of Human Rights (Collected Courses of the Academy of European Law)* (OUP Oxford forthcoming 2019)
- Kukovec, D., Hierarchies as Law, 21 *Columbia Journal of European Law* (2014) 131
- Kukovec, D., Law and the Periphery, 21 *European Law Journal* (2015) 406
- Micklitz, H-S., Social Justice and Access Justice in Private Law, Working Paper (EUI 2011)
- Milward, A., *The European Rescue of the Nation-State* (Routledge 1992)

Challenges to 'united in diversity' in a European Social Union: Taking
the core-periphery conflict seriously
By Vladimir Bogoeski

Moyn, S., *Not Enough: Human Rights in an Unequal World* (Harvard University Press 2018)

Rödl, F., An Alternative to the Constitution of the EU's Single Market, in Hien, J. and Joerges, C. (eds), *Responses of European Economic Cultures to Europe's Crisis Politics: The Example of German-Italian Discrepancies* (RSCAS 2018)

Rödl, F., Soziale Rechte in Europa: Von irreführenden Versprechen und notwendigen Kämpfen, WSI-Herbstforum 2017

Saraceno 2019

Vandenbroucke 2018