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Mélanie Schmitt, Marco Rocca

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Enforcing EU labour law in the context of EU economic and monetary policy

Mélanie Schmitt and Marco Rocca

Introduction

The European Union's (EU) 'New Economic Governance' (NEG) encompasses a series of reforms enacted during the economic crisis of the 2010s. These changes were aimed at reinforcing the power of EU institutions to coordinate economic policies across Member States, with the objective of avoiding similar crises in the future. Because of this, their approach and ideological framing were deeply influenced by the narrative of the crisis accepted by EU institutions, and in particular by the (at the time) EU Commission. Such a narrative is underpinned by the idea that the crisis was brought about by the 'fiscal profligacy' of the Member States of the EU periphery and would thus be solved through what have become known as austerity policies.¹ Interestingly, the introduction of New Economic Governance in turn marks an implicit shift from the belief that the simple unfettered action of 'the market' would bring about such coordination.²

Although at first sight they might appear to be 'soft' instruments, devoid of binding effect, and directed mainly at budgetary aspects, in fact they cover a broad array of areas belonging within the scope of labour law. Therefore, this chapter considers whether and to what extent the instruments of New Economic Governance can, or should, be used to improve the enforcement of EU labour law, defined as the contents of the EU legislative *acquis* in this area. To this end, the chapter is structured as follows. Section I presents the instruments of New Economic Governance (I.1), as well as their relationship to labour law in general (I.2) and EU labour law in particular (I.3). Section II considers the potential benefits (II.1) and the risks (II.2) of using the instruments of New Economic Governance to ensure better application of EU labour law.

I. EU economic governance and its 'socialization'

I.1 New Economic Governance

New Economic Governance includes several instruments, some of which are presently being phased out. The most infamous of these instruments, falling within the aforementioned 'phasing out' category, is the Memorandum of Understanding (MoU), examples of which have been signed between the so-called Troika³ and individual Member States requesting financial assistance during the crisis. These documents include an extensive list of conditionalities, that is, conditions to be fulfilled by the recipient to obtain or maintain access to financial assistance.⁴ The last MoU expired with the end of the Greek adjustment programme.⁵

A second set of instruments, by contrast, outlived the crisis and is now deeply embedded in EU economic governance thanks to the process known as the 'European Semester', an annual cycle of surveillance and enforcement of economic policies.⁶ Several instruments contribute to the

¹ See in general M Blyth, *Austerity: The History of a Dangerous Idea* (Oxford, Oxford University Press, 2013); P Krugman, *End This Depression Now!* (New York, WW Norton & Company, 2012).

² J Jordan, V Macarrone, and R Erne, 'Towards a Socialization of the EU's New Economic Governance Regime? EU Labour Policy Interventions in Germany, Ireland, Italy and Romania (2009–2019)' (2020) 1 *British Journal of Industrial Relations* 2.

³ Comprising the International Monetary Fund, the European Commission and the European Central Bank.

⁴ See S Babb and B Carruthers, 'Conditionality: Forms, Function, and History' (2008) 4 *Annual Review of Law and Social Science* 13.

⁵ The third (and last) economic adjustment programme for Greece ended on 20 August 2018.

⁶ C Degryse, 'The new European economic governance' (2012), 14 ETUI Working Paper 1, 36.

cycle, namely the Country Specific Recommendations (CSRs), the Stability and Growth Pact (SGP), the Macroeconomic Imbalances Procedure (MIP),⁷ and the Europe 2020 strategy.

In this chapter, we will focus mainly on Country Specific Recommendations (CSRs), which are annual recommendations drafted by the Commission (in May) and adopted by the Council (in July).⁸ The term ‘Recommendation’ is used somewhat loosely in this context, given that failure to comply can lead to sanctions, at least in some instances. This has not yet occurred because CSRs related to compliance with the budgetary criteria established by the Stability and Growth Pact or to the Macroeconomic Imbalances Procedure can lead to financial sanctions, which, having been proposed by the Commission, can only be rejected by a qualified majority in the Council.⁹ Notably, Member States that are part of the Eurozone risk fines equal to 0.2 per cent (SGP) or 0.1 per cent of GDP (MIP). Furthermore, since 2014 a Member State risks losing access to EU structural funds if they fail to comply with CSRs.¹⁰ One can also discern an appetite to further strengthen the link between ‘EU money’ and compliance with CSRs, further reinforcing sanctions arsenal, in a recent report by the EU Court of Auditors.¹¹

1.2 The ‘Social Dimension’ of New Economic Governance

1.2.1 The socialization of New Economic Governance?

It is worth noting that an important number of CSRs are related to labour rights, employment and social policies. This comes as no surprise if one considers that Memoranda of Understanding, too, were focused especially on labour and social security reforms.¹² In particular, research from the European Trade Union Institute (ETUI) shows how between 40 and 63 per cent of CSRs adopted over the past decade (2011–2019) have focused on social aspects.¹³

Areas covered by these ‘social’ CSRs vary widely so that it would be impossible to provide a full account here.¹⁴ Focusing on CSRs in the areas of labour law and employment policy, several groups of recommendations can be identified. The first deals with wages. Recommendations in this area, particularly in the first years of the European Semester (up until 2014), focused on the revision of wage indexation mechanisms, with the aim of reducing or eliminating such mechanisms.¹⁵ The following years marked a shift, with CSRs now encouraging Member States to ‘ensure that wages can evolve in line with productivity’.¹⁶ In this same group we also include

⁷ Article 2 of Regulation (EU) No 1176/2011 of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances: “excessive imbalances” mean severe imbalances, including imbalances that jeopardise or risk jeopardising the proper functioning of economic and monetary union’.

⁸ See further A Verdun and J Zeitlin, ‘The European Semester as a new architecture of EU socioeconomic governance in theory and practice’ (2017) 1 *Journal of European Public Policy* 3.

⁹ C De la Porte and E Heins, ‘A new era of European Integration? Governance of labour market and social policy since the sovereign debt crisis’ (2015) 13 *Comparative European Politics* 8, 12.

¹⁰ Jordan, Macarrone, and Erne, ‘Towards a Socialization of the EU’s New Economic Governance Regime?’, 6; V Vita, ‘Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality’ (2017) 4 *Cambridge Yearbook of European Legal Studies* 1.

¹¹ European Court of Auditors, The European Semester – Country Specific Recommendations address important issues but need better implementation, 2020, 35: ‘The Commission should strengthen the link between EU funds supporting reform processes in Member States and Country Specific Recommendations. CSRs should be taken into consideration in the different stages of budgetary processes.’

¹² A Sapir, G Wolff, C De Sousa and A Terzi, *The Troika and Financial Assistance in the Euro Area: Successes and Failures* (Brussels, Bruegel, 2014).

¹³ S Clauwaert, ‘The country-specific recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2019–2020’ (2019) 3 ETUI Background Analysis 1, 11; S Clauwaert, ‘The country-specific recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2017–2018’ (2017) 2 ETUI Background Analysis 1, 12.

¹⁴ See for analysis of the latest round of recommendations S Rainone, ‘An overview of the 2020–2021 country-specific recommendations (CSRs) in the social field’ (2020), 1 ETUI Background Analysis 1. When referring to CSRs in this chapter we will use the country code (AT for Austria) and the year to identify a specific recommendation.

¹⁵ See for instance 2011 and 2012 (BE, CY, ES, LU, MT), 2013 (BE, LU).

¹⁶ For instance, in the CSRs rounds between 2016 and 2018, these kinds of CSRs were addressed to 12 to 14 Member States each year.

CSRs aimed at the decentralisation of collective bargaining systems, that is, requesting a shift from sectoral to company collective bargaining,¹⁷ which were particularly visible in the first years of the CSRs (up to 2014).¹⁸

A second group of CSRs revolves around employment protection legislation, focusing on rules on dismissal. The relaxation of dismissal rules for open-ended contracts is often the focus of these recommendations, justified either as a measure to combat segmentation of the labour market¹⁹ or to encourage the hiring of workers with open-ended contracts.²⁰ The third group of CSRs covers areas related to employment policies, with a specific focus on improving the labour market participation of women,²¹ older²² and younger²³ workers.

This focus represents a new challenge for labour lawyers in the EU. To an extent, the challenge is similar to the one experienced during the application of MoUs. Indeed, large and important areas of labour regulations and practices, such as, to cite just the most obvious example, collective bargaining and wage policies, are directly influenced (sometimes to an important extent) by instruments whose legal nature escapes the usual classifications leading to difficulties in exerting judicial control, for instance when it comes to respecting fundamental social rights.²⁴ The same can be said for social actors, such as national trade unions, who can find it difficult to mobilise their power resources, often anchored in national practices and institutions, to challenge the outcomes of New Economic Governance and its impact on national labour laws.²⁵

Evidently, this is not the first time labour lawyers have been confronted with ‘soft law’ instruments in relation to EU social policy. Indeed, the Open Method of Coordination (OMC) received significant attention in the first decade of the new millennium.²⁶ The integration of these aspects in the much more penetrating machinery of economic governance, however, and the ever present (if so far theoretical) threat of sanctions, constitute a marked difference with existing instruments. At the same time, this also underpins the point of view from which we approach the topic in the present chapter. If indeed New Economic Governance can give soft law instruments some teeth, this might help bridge the gap between then and traditional hard law instruments. Moreover, enforcing labour standards through the NEG instruments offers also the promise of a relatively easy procedure, because, as we saw in the previous section, CSRs are drafted by the Commission and then adopted by the Council, therefore circumventing the European Parliament.

Labour lawyers, particularly those at the international level, can appreciate the importance of having enforcement tools that go beyond solving individual disputes. This kind of monitoring system based on periodic reporting immediately brings to the mind those put in place in the context of the International Labour Organisation (ILO) or the European Social Charter. Although these systems operate without the threat of sanctions, they are able to tackle violations of labour standards which are not easily addressed by individual litigation. A good example of this would be the gender pay gap arising from differences in wage levels between

¹⁷ See T Schulten and T Müller, ‘A new European interventionism? The impact of the new European economic governance on wages and collective bargaining’, in D Natali and B Vanhercke (eds), *Social Developments in the European Union 2012* (Bruxelles, ETUI-OSE Publications), 186.

¹⁸ See for instance BE (2011-2013), ES (2011), IT (2011).

¹⁹ See for instance FR (2016), SI (2011), IT (2011, 2012).

²⁰ See for instance ES (2017), NL (2017).

²¹ These cover measures concerning the expansion of childcare and long-term care, and improving employment services. See for instance HU (2011), SK (2012), IE (2015), AT (2017), IT (2019).

²² These cover measures concerning lifelong learning, active labour market policies, and vocational education. See for instance BE (2012), LT (2014), FI (2016), DE (2018).

²³ Covering measures such as the improvement of apprenticeship and vocational education, the introduction of a youth guarantee, and the improvement of the quality of education. See for instance DK (2011), PL (2014), CY (2017).

²⁴ C Kilpatrick, ‘Are the bailouts immune to EU social challenge because they are not EU law?’ (2014) 10 *European Constitutional Law Review* 393.

²⁵ P Copeland and M Daly, ‘The European Semester and EU Social Policy’ (2018), *Journal of Common Market Studies* 1, 13.

²⁶ D Ashiagbor, ‘Soft Harmonisation: The Open Method of Coordination in the European Employment Strategy’ (2004) 10 *European Public Law* 305.

male- and female-dominated sectors (vertical segregation),²⁷ where non-discriminatory approaches would struggle to succeed in the absence of a comparator.²⁸

The increased focus on social aspects has led some authors to conclude that we are witnessing a ‘socialisation’ of New Economic Governance, balancing social retrenchment with social investment, and rediscovering the ‘flexicurity’ approach.²⁹ In purely quantitative terms, the number and scope of socially orientated CSRs have been reinforced from 2011 to 2014, while during the period 2017–2020, CSRs dedicated to, or at least linked with, social aspects represent more than the half of all CSRs addressed to Member States.³⁰ This was saluted by the European Trade Union Confederation (ETUC) which, in its Action Programme 2019–2023, asserted that ‘a process of making the European Semester more social has started’, all the while lamenting the enduring primacy of ‘restrictive macroeconomic policy’ and the ‘liberal market bias’ of New Economic Governance.³¹ Indeed, this re-orientation was accompanied by a reductionist vision of social objectives and rights, henceforth centred on the idea of a floor of rights for the most vulnerable categories of workers (and citizens).

These parallel trends are confirmed by studies dealing with more recent cycles of the Semester.³² It is clear that improving the protection of all workers is not the objective guiding Economic and Monetary Policy. In this context, establishing a harmonisation of social legislation by means of EU (social) directives has been supplanted by a search for convergence of social policies, including labour market and social security policies, as elements of economic convergence broadly understood. Other authors have criticised the ‘socialisation’ conclusion, reaffirming the need to go beyond the simple categorisation of CSRs as ‘social’ on the basis of their literal context, to read them in light of their accompanying documents, different level of (potential) sanctions, and impact on the national environment.³³ In one example, this approach made it possible to determine that a seemingly ‘neutral’ prescription on the need to improve ‘transparency’ in the setting of minimum wages was instead meant to create obstacles to the unilateral increase of the minimum wage proposed by a centre-left government.³⁴ Another important element to keep in mind when considering the ‘socialisation’ of the semester is that, even in the face of an unprecedented economic and social crisis, the 2020 CSRs maintained that Member States would still be expected to implement the recommendations adopted in 2019.³⁵ As such, it is difficult to shake the feeling that the markedly ‘social’ direction of the 2020 CSRs (which will possibly extend to 2021) is conceived, first of all by the Commission and the Council, as an exception.

Finally, the ‘socialisation’ of New Economic Governance also covers the increased participation of social partners in the process.³⁶ In 2016, a quadripartite statement on a ‘New Start for Social Dialogue’ was signed, with the aim of improving said participation.³⁷ This included a commitment of EU institutions (notably, the Council and the Commission) to enhance the involvement of Union level social partners in New Economic Governance, as well as the involvement of social partners at national level in the relevant steps of the European Semester,

²⁷ ILO, *Global Wage Report 2018/19. What lies behind gender pay gaps* (Geneva, International Labour Office, 2018), 74.

²⁸ Advisory Committee on Equal Opportunities for Women and Men, *Opinion on the effectiveness of the current legal framework on Equal pay for equal work or work of equal value in tackling the gender pay gap* (Brussels, 2009), 10.

²⁹ S Bekker, ‘Flexicurity in the European Semester: still a relevant policy concept?’ (2017) 25 *Journal of European Public Policy* 175; J Zeitlin and B Vanhercke, ‘Socializing the European Semester: EU social and economic policy co-ordination in crisis and beyond’ (2017) 25 *Journal of European Public Policy* 149.

³⁰ See also B Hacker, ‘A European Social Semester? The European Pillar of Social Rights in practice’ (2019) 5 ETUI Working Paper 1.

³¹ ETUC, *ETUC Action Programme 2019–2023* (Vienna, 2019), 23.

³² ‘The country-specific recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2019–2020’.

³³ Jordan, Macarrone, and Erne, ‘Towards a Socialization of the EU’s New Economic Governance Regime?’, 9.

³⁴ *Ibid.*

³⁵ In 2020, CSRs all featured a common recital stating that 2019 CSRS ‘remain pertinent and will continue to be monitored throughout next year’s European Semester annual cycle’. See Rainone, ‘An overview of the 2020-2021 country-specific recommendations’, 9.

³⁶ Zeitlin and Vanhercke, ‘Socializing the European Semester’, 19.

³⁷ A New Start for Social Dialogue, Statement of the Presidency of Council of the European Union, the European Commission and the European Social Partners, 2016.

such as the process of drafting national reform plans and implementing CSRs. This followed a period (2011–2013) in which said participation was considered to be inadequate by social partners and academic observers.³⁸ A more recent study by Eurofound, however, focusing on participation in the 2017 round of CSRs, found that social partners in a large number of Member States still lamented insufficient involvement in the implementation of policy reforms at national level in the context of the Semester.³⁹ These criticisms generally point to a merely formal process of consultation, so that claims of ‘socialisation’ based on the mere ‘involvement’ of social partners at some point of the process should be considered carefully.

That being said, some measure of a more ‘social’ approach can be found when looking at social security and social assistance. Although these areas fall outside the scope of the present Chapter, we will touch upon them briefly to complete the picture. These CSRs often focus on the establishment/improvement of a minimum level of protection aimed at poverty alleviation.⁴⁰ Specific attention to these instruments is to be found in the 2020 round of CSRs.⁴¹

1.2.2 The European Pillar of Social Rights, instrument for the integration of social policy into New Economic Governance

Elaborated by the Commission during a year-long consultation phase, and officially launched on 26 April 2017 via a Recommendation,⁴² the EPSR was endorsed by the Commission, the Parliament and the Council in an Institutional Proclamation on 17 November 2017. While characterised by an unclear legal nature and effects,⁴³ the instrument nevertheless reflects a shared view that the EU’s social dimension needs to be strengthened. In that perspective, the EPSR consists of a set of 20 social rights and principles inspired by existing European and international instruments, including those emanating from the European Semester as ‘initiatives to strengthen efforts on pressing priorities and to update the EU “acquis”’.⁴⁴

The EPSR rights and principles are structured around three chapters: ‘equal opportunities and access to the labour market’ (chapter 1);⁴⁵ ‘fair working conditions’ (chapter 2);⁴⁶ ‘social protection and inclusion’ (chapter 3).⁴⁷ In this Section, we focus on the first two chapters, combining labour law and employment policy. The rights and principles briefly set forth in this tripartite structure form a skeleton, which is complemented with staff working documents⁴⁸ giving flesh to the bones.

Primarily addressed to Member States, the aim of the Pillar is ‘to serve as a guide towards efficient employment and social outcomes’.⁴⁹ The Commission puts special emphasis on the idea that ‘most of the competences and tools required to deliver on the European Pillar of Social Rights are in the hands of local, regional and national authorities, social partners as well as

³⁸ For an overview of these criticisms see S Sabato, B Vanhercke, S Spasova, ‘Listened to, but not heard? Social Partners’ multilevel involvement in the European Semester’ (2017) 35 OSE Paper Series 1, 9.

³⁹ Eurofound, *Involvement of the national social partners in the European Semester 2017: Social dialogue practices* (Luxembourg, Eurofound, 2018).

⁴⁰ See for instance HR (2018, 2019), LT (2018-2020),

⁴¹ Rainone, ‘An overview of the 2020-2021 country-specific recommendations’, 8.

⁴² Commission Recommendation to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions on the European Pillar of Social Rights, Brussels, 26 April 2017.

⁴³ Z Rasnača, ‘Bridging the gaps or falling short? The European Pillar of Social Rights and what it can bring to EU-level policymaking’ (2017) 5 ETUI Working Paper 1, 14.

⁴⁴ European Commission, Communication Launching a consultation on a European Pillar of Social Rights, COM (2016) 127 final, 6.

⁴⁵ Chapter 1 comprises the rights to education, gender equality, equal opportunities, and active support to employment.

⁴⁶ Covering secure and adaptable employment, wages, information about employment conditions and protection in case of dismissals, social dialogue and involvement of workers, work-life balance, health and safety and data protection.

⁴⁷ Covering childcare and child support, social protection, unemployment benefits, minimum income, pensions, health care, inclusion of people with disabilities, long-term care, housing, and access to essential services.

⁴⁸ Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions Establishing a European Pillar of Social Rights, Brussels, 26 April 2017 SWD(2017) 201 final.

⁴⁹ EPSR, Preamble, recital 12.

civil society'.⁵⁰ Nonetheless, for each right or principle, the accompanying documents also put forward proposals of pre-existing and new pieces of EU legislation and soft law measures. However, the EPSR does not entail an extension of the Union's powers and tasks,⁵¹ which is not surprising in the absence of a revision of the Treaty. The new legislative initiatives that are mentioned therefore rely on social policy legal bases, namely Article 153 TFEU, reinforced by a reference to relevant provisions of the Charter of Fundamental Rights of the EU. In that respect, the Pillar can be conceptualised as a 'Social Agenda' identifying priorities and orientations for further social policy (legislative) developments,⁵² rather than a new institutional framework for social policy, which remains formally determined by the provisions of title X of the TFEU. This notwithstanding, directives adopted in 2019⁵³ as direct follow-up to the EPSR showcase that the Pillar is an instrument able to boost the EU's (employment-related) social policy legislation.⁵⁴

Soft law initiatives are also mentioned as possible implementation avenues for the EPSR, where the EU has no legislative powers. For instance, in the first preliminary outline of a European Pillar of Social Rights, Articles 165 and 166 TFEU are mentioned as bases for strengthening access to education and professional training in order to preserve their entry and participation in the labour market.⁵⁵

Although reinforcing the status of employment and social considerations as 'an essential feature of the process of economic policy coordination at EU level',⁵⁶ the formal preservation of social policy appears unable to safeguard its 'philosophy' and very objective, that is workers' protection. One should not underestimate the extent to which social policy has been deeply transformed by its economic objectives under the EPSR: 'deepen the Economic and Monetary Union'⁵⁷ and contribute to 'fair and well-functioning labour markets and welfare systems in 21st century Europe'.⁵⁸ In the first preliminary outline, the Commission further developed the philosophy underlying the Pillar: 'social policy should also be conceived as a productive factor' which plays a prominent role in growth and job creation. In the same vein, social rights and principles of the Pillar are more in line with employment policy objectives, as set out in Article 145 TFEU, than with the 'social' objective of improving working conditions. In that conceptual framework, the 'social goals' (protection of workers) pursued by social policy and its instruments are now in competition with (possibly) contradictory and (more) powerful economic goals.

Moreover, the Pillar not only sets new economic goals for the social rights and principles it (re)affirms. Following the abovementioned first preliminary outline, 'the principle proposed here (...) offers a way to assess and, in future, approximate for the better the performance of national employment and social policies'⁵⁹ and 'should become a reference framework to screen the employment and social performance of participating Member States, to drive reforms at national level and, more specifically, to serve as a compass for renewed convergence

⁵⁰ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Monitoring the implementation of the European Pillar of Social Rights, Strasbourg, 13 March 2018, COM(2018) 130 final.

⁵¹ EPSR, Preamble, recital 18.

⁵² S Sabato, D Ghailani, R Peña-Casas, S Spasova, F Corti, and B Vanhercke, *Implementing the European Pillar of Social Rights: what is needed to guarantee a positive social impact* (Brussels, European Economic and Social Committee, 2018).

⁵³ See Section I.3.2.

⁵⁴ S Garben, 'The European Pillar of Social Rights: Effectively Addressing Displacement?' (2018) 14 *European Constitutional Law Review* 210, 221.

⁵⁵ Articles 165 and 166 TFEU set out that the Union shall implement a vocational training policy and shall contribute to the development of quality education by encouraging cooperation between the Member States, supporting and supplementing their action.

⁵⁶ First preliminary outline of a European Pillar of Social Rights, Annex 1 to the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Launching a consultation on a European Pillar of Social Rights, 8 March 2016, COM(2016) 127 final.

⁵⁷ EPSR, Preamble, recital 13.

⁵⁸ EPSR, Preamble, recital 14.

⁵⁹ First preliminary outline of the European Pillar of Social Rights, March 2016, 8.

within the euro area'.⁶⁰ Social principles are then transformed from 'protection shields' into objectives to be achieved in order to comply with EU economic requirements.⁶¹

Monitoring of the implementation of the Pillar within the European Semester is entirely consistent with this new functionalisation of social rights and principles, as well as with the emphasis put on Member States' responsibility in the implementation process. For the Commission, the European Semester provides the most appropriate tool for monitoring progress in key areas covered by the European Pillar of Social Rights. The reasons are twofold: it is

'specific to the situation of each country: it acknowledges the diversity of challenges and the need to prioritise in the light of different starting points and available means across countries. The European Semester is also the way to structure collective efforts over time: it builds on in-depth dialogue and reporting throughout the year, which is transparent and open to all actors, and it is used in particular to structure peer reviews and benchmarking among Member States'.⁶²

This subsequent 'socialisation' of the European Semester, particularly visible in the growing number of 'social CSRs' as mentioned in the previous Section, is a direct consequence of the integration of the Pillar into the same process. Another development with a potentially important impact on the enforcement of EU Labour Law resides in the statistical approach of monitoring via the Social Scoreboard (see section II.1). The whole monitoring process reflects the notion of convergence calling for renewed relationships between economic and social considerations and their respective institutional frameworks.

The European Pillar of Social Rights Action Plan, published by the Commission on 4 March 2021,⁶³ complements and further develops these essential orientations. To make the Pillar concrete, social policy initiatives, including Directives, are combined with employment policy actions in the same programme. The major achievement of the Action Plan indeed resides in the dilution of this new framework for social policy within New Economic Governance: based on the employment policy model, social policy initiatives are intended as an element of economic policy coordination with the aim of achieving goals of inclusive and sustainable growth. The three new 'EU targets to set ambitions for 2030' set out in the first section of the Action Plan⁶⁴ further exacerbate this dilution. The Action Plan also constitutes an OMC tool within the framework of the European Semester, in which national implementation measures that would have to be decided will be monitored. To that end, the Commission presents a revised Social Scoreboard which 'will track Member States' trends and performances'. New headline and secondary indicators are added to the initial ones, but again, none of them deals with 'fair working conditions', thus confirming that workers' protection is not an objective of economic policy coordination.

1.3 Focus on EU labour law within New Economic Governance

1.3.1 EU labour law in the CSRs

Having taken stock of the main areas of labour law and employment policy covered by CSRs, one should then consider which areas of EU labour law have been touched by these instruments so far. At first blush, and in light of the main categories of CSRs we outlined in the previous sections, the answer would be: not many. Indeed, CSRs seem to be related more to employment policy than to labour law. To an extent, this is reassuring, as the Commission,

⁶⁰ Ibid, 7.

⁶¹ K Chatzilaou, 'Vers un socle européen des droits sociaux: quelles inspirations?' (2017) 3 *Revue de Droit du Travail* 175.

⁶² Communication from the Commission, Monitoring the implementation of the European Pillar of Social Rights.

⁶³ The EPSR Action Plan consists legally of a Communication but the formal reference cannot be found, even in the document itself. It is available online: <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/>

⁶⁴ The three targets are as follows: at least 78 per cent of the population aged 20 to 64 should be in employment by 2030; at least 60 per cent of all adults should participate in training every year; the number of people at risk of poverty or social exclusion should be reduced by at least 15 million by 2030.

which drafts CSRs, has other instruments at its disposal to ensure the correct application of EU Labour Law Directives and Regulations, such as the opening of infringement proceedings.

That said, if one goes beyond the text of CSRs themselves and considers the explanations which accompany them, some areas of overlap can be identified.

The first of these areas relates to non-discrimination directives, related to equality between women and men⁶⁵ and to other protected grounds.⁶⁶ As we have seen in Section I.2, several CSRs have dealt with improving the labour market participation of ‘disadvantaged’ groups, such as women, young and old workers, and workers with a migrant background.⁶⁷ Hence, these areas are covered mainly in terms of employment policy, only very partially overlapping with labour law issues. In the case of women, this was addressed mostly by recommending the expansion of child-care services,⁶⁸ but also by pointing to the existence of a gender-pay gap or gender segregation in low paid or part-time employment.⁶⁹ Similarly in the case of workers with a migrant background, CSRs focused on the importance of fostering equal opportunities in terms of labour market access, as well as addressing unequal access and outcomes in the context of education.⁷⁰ Again, issues related to the low employment rate of older and younger workers, as well as people not in employment, education or training (NEETs) are addressed through the lens of labour market participation. This leads to CSRs aimed at improving active labour market policies for these groups, as well as their access to vocational training and/or lifelong learning.⁷¹

A second area, emerging from CSRs related to employment protection legislation, as well as from some related to younger workers’ participation in the labour market, concerns atypical employment. A good example of this is the 2017 CSR for Germany, which stressed the need to avoid abuses of temporary agency work and fixed-term contracts. More specifically, the same document lamented the wage gap between fixed-term and permanent contracts,⁷² echoing the protection against discrimination established by Clause 4 of the Fixed-term Work Directive.⁷³ The importance of allowing workers to access permanent contracts, which is also put forward in the Preamble of the Directive,⁷⁴ also comes up in certain CSRs.⁷⁵ Some Recommendations also highlighted the existence of a wage gap, in connection with the gender pay gap, in the context of part-time employment.⁷⁶ Again, this can be seen as an attempt to concretise the right to non-discrimination guaranteed by Clause 4 of the Directive on part-time work.⁷⁷ In 2013 France also received a CSR aimed at improving the situation of temporary agency workers, though the link with a provision of the corresponding Directive⁷⁸ cannot be established clearly.

⁶⁵ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

⁶⁶ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁶⁷ This trend appears to be bound to continue, as these groups’ labour market access is the main element mentioned under the heading of ‘fairness’ in the 2021 Annual Sustainable Growth Strategy presented by the Commission. See Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Annual Sustainable Growth Strategy 2021, COM/2020/575 final, 7-8.

⁶⁸ See for instance, AT (2012), CZ (2015), FI (2018).

⁶⁹ See for instance, AT (2014), CY (2014), EE (2019), IT (2019).

⁷⁰ See for instance, DK (2013), AT (2014), BE (2017), NL (2019).

⁷¹ See for instance, EE (2011), ES (2014), PL (2015), BE (2016).

⁷² ‘[F]ixed-term contracts appear to have a comparatively high wage gap of 27 per cent compared to permanent contracts’.

⁷³ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

⁷⁴ CY (2017): ‘recruitment [of young people and long-term unemployed] is likely to occur on temporary contracts, therefore not addressing the challenge in structural terms’; PL (2013 and 2014): ‘Combat in-work poverty and labour market segmentation including through better transition from fixed-term to permanent employment and by reducing the excessive use of civil law contracts’.

⁷⁵ See PL (2014).

⁷⁶ See AT (2019): ‘Female part-time employment also explains an important share of the unadjusted gender pay gap’.

⁷⁷ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work.

⁷⁸ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

A third area, notably collective bargaining, is only loosely connected to EU labour law. Article 28 of the EU Charter of Fundamental Rights recognises the fundamental right to collective bargaining, but, leaving aside the limited impact of this recognition,⁷⁹ no specific legislative intervention in this area can be identified in EU labour law. However, the issue of wages, which, as we have seen before, is strictly interrelated with that of collective bargaining in the context of CSRs, could soon fall within the scope we are currently exploring. Indeed, this would apply to the proposed Directive on adequate minimum wages, if adopted.⁸⁰ Although we will not consider the challenges and legal issues raised by the proposal itself, the ultimate adoption of this Directive remains uncertain. As such, we will consider its potential impact and interest for the topic at stake in the next Section, devoted to future prospects. It is also worth noting that the issue of adequate minimum wages, as well as the previous two areas, are addressed in the EPSR, which contributed significantly to the socialisation of New Economic Governance.

1.3.2 EU labour law in the EPSR

While economic and employment objectives remain predominant, the social CSRs adopted since 2019 demonstrate that the Pillar has played a role in the substantive socialisation of New Economic Governance. The strong anchoring of the Pillar in the EMU and the European Semester is criticised precisely regarding its (in)ability to improve workers' rights and (legal) protection.⁸¹ The adoption of several social policy directives (on the basis of Article 153 TFEU) to deliver the Pillar is not sufficient to remove all doubts about this concern. As regards enforcement, the question raised above all deals with the linking and combination of the two enforcement processes, ie enforcement by (national and/or European) judges and inspectorates, on one hand, and (soft) enforcement within the framework of the European Semester, on the other.

Insofar as the EPSR is dedicated to social rights, it obviously deals with areas directly linked with EU labour law. Thus, half of the Pillar's rights and principles refer to employment and working conditions. In line with the CSRs, chapter 1 of the Pillar covers rights and principles focused on 'equal access to the labour market'. Not surprisingly, the first area of the EPSR overlapping EU labour law is non-discrimination: besides the general right to equal opportunities regarding employment regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation (point 3), the Pillar puts special emphasis on gender equality (point 2). These provisions are consistent with the abovementioned non-discrimination directives. In the same vein, the EPSR Action Plan 'encourages Member States to implement the reinforced Youth Guarantee with a particular focus on quality offers that support a stable labour market integration'. In addition, special attention is paid to the right to professional training and to active support in that perspective (points 1, 3 and 4). This focus is particularly visible in the Action Plan because, following the second target set out for 2030, 'at least 60 per cent of all adults should participate in training every year'. Progress made by Member States will be monitored by two new secondary indicators introduced in the revised Social Scoreboard.⁸² All these rights and principles (and now also targets) are consistent with a market-oriented approach, which is also characteristic of the 'flexicurity' policy and objectives. The aim of the Pillar is not to improve workers' personal fulfilment and their dignity and freedom in employment, but resides in the efficient functioning of the labour market. As a consequence, protection afforded by labour law devices should reside primarily in, and result from, access for everyone to the labour market.

⁷⁹ F Dorssemont and M Rocca, 'Article 28 – Right of collective bargaining and action', in F Dorssemont, K Lörcher, S Clauwaert and M Schmitt (eds), *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Oxford, Hart Publishing, 2020).

⁸⁰ Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, COM/2020/682 final.

⁸¹ P Rodière, 'Le dévissage de l'Europe sociale – sur les "explications" du socle européen des droits sociaux par la Commission' (2018) 1 *Revue trimestrielle de droit européen* 45; S Garben, 'The European Pillar of Social Rights: Effectively Addressing Displacement?', 221; K Lörcher and I Schömann, 'The European pillar of social rights: critical legal analysis and proposals', 139 *ETUI Report* 1, 18-19.

⁸² Participation of low-qualified adults in learning and share of unemployed adults with recent learning experience.

Such an essential link with employment policy also infuses rights and principles set out in chapter 2 ‘fair working conditions’, addressing both working conditions strictly speaking (for instance, the right to health and safety at work⁸³) and employment protection. Beyond this, the wording of the rights and principles further incorporates economic considerations in their very definitions. This is particularly visible in Point 5 entitled ‘Secure and adaptable employment’: while stating that ‘Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contract’ (point 5, d)—which, again, is in line with the Directive on fixed-term work—the Pillar insists on ‘the necessary flexibility for employers to adapt swiftly to changes in the economic context [that] shall be ensured’ (point 5, b). However, point 5, d) enshrines a new principle in that ‘[a]ny probation period should be of reasonable duration’. The individual right to information, already protected by the so-called Written Statement Directive no 91/533, provides another example of how social rights are formulated in light of an economic conceptual framework. As stated in Point 7, a) of the Pillar, ‘[w]orkers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including on probation period’. Here, the requirement of fairness resides exclusively in access to information, which corresponds to mainstream neoliberal economic thought, following which transparency and predictability of information for all economic agents is the key requirement for well-functioning (labour) markets. Both these points 5 and 7 of the Pillar have boosted the adoption of Directive no 2019/1152 on transparent and predictable working conditions in the European Union,⁸⁴ which combines the revision of the Written Statement Directive and new provisions setting ‘minimum requirements relating to working conditions’. In a similar vein, workers’ right to a working environment adapted to their professional needs should ‘enable (...) them to prolong their participation in the labour market’.⁸⁵

The legislative route has also led to a new Directive on work–life balance (Point 9), which improves parents’ and carers’ rights.⁸⁶ As regards the enforcement issue, the Social Scoreboard could be complementary and bring added value to the usual enforcement routes of directive implementation in the Member States, via the possible incorporation of new indicators (such as the percentage of workers benefiting from parental leave). Besides the Member States’ duty to implement the minimum requirements of social directives, such indicators could be useful to assess and improve the effective enjoyment of rights enshrined in these directives. Work–life balance also implies that workers are entitled to a right to disconnect, following a European Parliament Resolution.⁸⁷ In the EPSR Action Plan, the Commission officially takes this initiative into account but its initiative will be limited to ‘ensur(ing) an appropriate follow-up’. More generally, when it comes to occupational safety and health, the Action Plan confirms that this area remains neglected by the Pillar, particularly in the Social Scoreboard, as it is in the context of New Economic Governance. Public authorities and social partners are simply encouraged to ‘ensure the application and enforcement of existing rules’. The same applies to working time: the Commission will present a report on the implementation of Directive 2003/88 only in 2022. However, the Action Plan announces new initiatives in respect of working conditions. More important in terms of commitment is a legislative proposal on the working conditions of platform workers, which will be presented in Q4 2021 following the ongoing consultation of social partners. This proposal of a new social policy Directive should be preceded by another proposal of an EU regulation on Artificial Intelligence in Q2 2021, for the uptake of trustworthy AI in the EU economy, including in the workplace for all forms of work.

⁸³ EPSR, Point 10, a).

⁸⁴ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, 105–121.

⁸⁵ EPSR, Point 10, b).

⁸⁶ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

⁸⁷ European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL).

In two other labour law areas, the Pillar goes further than the EU social *acquis*. One area is addressed in Point 7 b) affirming the right to protection in case of dismissal, whereas there is no EU general minimum requirement on this important element. This situation can be explained by the fact that the adoption of a directive would require unanimity under Article 153, para 2, TFEU. Moreover, the right to be informed of the reasons for dismissal and be granted a reasonable period of notice, which is part of employment protection following the Pillar, goes further than Article 30 CFREU. Concretising this right at national level would necessarily imply enforcement outside the social policy framework. The question is then raised of the (ir)relevance of NEG processes and tools.

Wages (Point 6) are the second area in which the EPSR goes beyond the EU *acquis* by establishing the ‘right to fair wages’ and to ‘minimum adequate wages’ and stating that ‘[a]ll wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners’. These provisions provide the direct inspiration for the Commission’s initiative for a Directive on adequate minimum wages in the EU, already mentioned. While recognising that ‘[a] common framework at EU level would reinforce trust both among Member States and social partners [and that w]ithout it, individual countries may be little inclined to improve their minimum wage setting because of the perception that this could negatively affect their external cost competitiveness’,⁸⁸ the Commission perpetuates and even sharpens policy guidance already issued within the European Semester by incorporating monitoring tools inspired by New Economic Governance. The major stakes of EU labour law enforcement could not have been more clearly introduced, as we will discuss now in the Section 2.

II. EU Economic Governance as an avenue for (better) enforcement of EU labour law?

Is New Economic Governance an appropriate framework for enforcing EU labour law, notably in the perspective of ensuring and improving the application of workers’ rights and protection? In this final section we wish to draw attention not just to the feasibility and potential of such a ‘repurposing’ of New Economic Governance instruments, but also to the potential and sometimes elusive dangers that such a strategy might entail.

II.1 The possibility of a social ‘re-instrumentalisation’ of EU economic governance

As we have seen in the previous Chapter, New Economic Governance already covers areas related to EU labour law. The following step, if one wants to pursue such an agenda, is then to consider if and how this form of enforcement might be expanded to other areas. Therefore, in this section we will consider areas that appear to be ‘adjacent’ to those already (partially) covered by CSRs in the past. An important starting point is that New Economic Governance should not aim at replacing existing instruments for enforcing EU labour law. As such, for those rights and obligations that stem from Directives and Regulations, the ultimate enforcement through the EU Court of Justice, activated either by national judges through preliminary questions or by the Commission through an infringement procedure, should not be supplanted by the instruments we are presently considering. This is not just because new instruments should naturally complete and expand the already existing legal arsenal, but also to avoid the hollowing out of the fundamental tool of judicial enforcement. In particular, enforcement by the Court of Justice provides an authoritative interpretation of EU labour law, which simply could not be replaced by the instruments of New Economic Governance. Thus formulated, the question of the potential repurposing of New Economic Governance to improve the enforcement of EU labour law becomes one of added value.

⁸⁸ Commission Staff Working Document, Analytical Document Accompanying the Document Consultation document Second phase consultation of Social Partners under 154 TFEU on a possible action addressing the challenges related to fair minimum wages, Brussels, 3 June 2020 SWD(2020) 105 final, 47.

Non-discrimination is a perfect example of this potential. As we have seen before, CSRs in this area have sometimes targeted the existence of a gender pay gap in Member States. This is an area in which individual action based on a fundamental rights approach might not be best suited instrument to tackle the issue, for instance, because of the lack of comparator when inequalities are caused by vertical segregation, with female-dominated sectors being characterised by lower wages. Considering its pre-existing inclusion in CSRs, this represents somewhat low hanging fruit. Attention to this aspect is also shown by the inclusion of the fight against the employment gap in the European Social Pillar Action Plan,⁸⁹ which specifically mentions the European Semester as a tool to monitor Member State policies in this area.⁹⁰ The gender pay gap is included in the Social Scoreboard, accompanying the EPSR.⁹¹ Better enforcement in this area could be achieved by elevating the gender pay gap to a ‘proper’ indicator, such as those included in the scoreboard for the Macroeconomic Imbalance Procedure.⁹² This would open the way to the existence of a threat, albeit theoretical, for Member States failing to take into account CSRs in this area. This would also be linked to the existing activities of the EU Commission on fighting the gender pay gap.⁹³ Such an approach—that is, the inclusion of ‘social’ indicators among those instruments which allow for the threat of sanctions—could constitute the blueprint for similar interventions in other areas, such as youth unemployment (in its turn, already addressed in the EPSR and included in the Social Scoreboard), transformation of temporary contract into permanent ones, or (ab)use of agency workers. To facilitate this process, most of these indicators could be construed as part of the economic rationale,⁹⁴ fostering equal access to the labour market and the structural reduction of unemployment.

A more difficult test for the ‘socialisation’ of New Economic Governance could emerge from the enforcement of certain aspects of the proposal on adequate minimum wages, recently put forward by the Commission. It goes without saying that these brief considerations stem from the present text and envisage a future scenario in which such a text would be adopted. Now, to the dismay of many,⁹⁵ the proposal does not include, in its legal text, any ‘hard’ threshold for assessing the adequacy of a minimum wage. Indeed, such indicators—notably 60 per cent of the gross median wage and/or 50 per cent of the gross average wage—are included only in the recitals of the proposal.⁹⁶ This is easily explained by the attempt to minimise potential legal challenges based on the conflict with the exclusion of legislative competences in the area of wages which stems from Article 153(5) TFEU. It goes without saying that the inclusion of these thresholds as real ‘indicators’ would constitute a major step forward in the socialisation of the NEG. However, as already mentioned, here we will proceed on the basis of the existing text of the proposal. Keeping to this, the *only* actual numerical threshold included in the legal text is to be found under Article 4 and concerns the level of collective bargaining coverage that Member States should ensure. This is fixed at 70 per cent of workers and is presently met by only 10 Member States.⁹⁷ The proposal itself provides for the establishment of an action plan to ‘promote collective bargaining’ for those Member States that do not meet the threshold. As

⁸⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee Of The Regions, The European Pillar of Social Rights Action Plan, Brussels, 4 March 2021, COM(2021) 102 final, 6.

⁹⁰ Ibid, 8.

⁹¹ EU Commission, Social Scoreboard, <https://composite-indicators.jrc.ec.europa.eu/social-scoreboard/>. See Rasnača, ‘Bridging the gaps or falling short?’, 13.

⁹² For an analysis of the need to improve the indicator itself see ETUI, ‘The Social Scoreboard revisited’ (2017) 3 ETUI Background Analysis 1.

⁹³ See for instance the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, EU Action Plan 2017-2019 Tackling the gender pay gap.

⁹⁴ See M Dawson, ‘New governance and the displacement of Social Europe: the case of the European Semester’ (2018) 14 *European Constitutional Law Review* 191, 192.

⁹⁵ A Lo Faro, ‘Al andar se hace camino: la Proposta di Direttiva sul salario minimo tra ottimismo della volontà e...’ (2021) *Eticaeconomia*, <https://www.eticaeconomia.it/al-andar-se-hace-camino-la-proposta-di-direttiva-sul-salario-minimo-tra-ottimismo-della-vo-lonta-e/>.

⁹⁶ Proposal for a Directive on adequate minimum wages in the European Union, Recital 21.

⁹⁷ Data from the ICTWSS Database of the Amsterdam Institute for Advanced Labour Studies (AIAS), elaborated by the European Trade Union Institute, see <https://www.etuc.org/en/pressrelease/eu-countries-weak-collective-bargaining-have-lowest-wages>.

such, it is not unthinkable for such a quantified indicator to be integrated into New Economic Governance. Indeed, the objective of reducing inequalities is already present in the Social Scoreboard, which we have already mentioned, and research from the International Monetary Fund has highlighted the link between trade union presence and inequality.⁹⁸

Moreover, besides the usual form of enforcement as regards directives—that is, the judicial route⁹⁹—the Commission has already proposed a follow-up to the (possible) directive, which is directly and broadly inspired by the process and timescale of New Economic Governance. In that perspective, Article 10 of the proposal is dedicated to data collection tools that Member States would have to put in place and report on to the Commission. To ensure the effectiveness of the directive, the Commission will report every year to the European Parliament and to the Council its assessment of developments in the adequacy and coverage of minimum wage protection on the basis of these data and information. In addition, progress should be monitored within the framework of the process of economic and employment policy coordination at EU level (European Semester). In this context, the Employment Committee will every year examine the situation with regard to collective bargaining on wage setting, as well as the adequacy of minimum wage protection in the Member States, based on the Commission's reports.

Of course, it would be somewhat ironic if CSRs were addressed to Member States asking for reinforcement of collective bargaining coverage, not even a decade after MoUs led to a drastic reduction of such coverage.¹⁰⁰ However, this is precisely why the inclusion of such an indicator under the 'strong' New Economic Governance regime represents a real test of the socialisation hypothesis.

II.2 Dangers of a social 're-instrumentalisation' of EU economic governance

The idea of repurposing the powerful and seemingly malleable tool of New Economic Governance to further the enforcement of EU labour law appears particularly attractive. At the end of our analysis, we wish to highlight a number of caveats that should be borne in mind by anyone embarking on such a strategy.

Research on New Economic Governance shows the difficulties trade unions and social movements might face in trying to politicise this area,¹⁰¹ as well as in trying to advance their demands vis-à-vis the actors representing the 'economic rationale' of New Economic Governance.¹⁰² As such, social objectives might be difficult to defend, let alone advance, in a procedure in which recommendations are ultimately adopted by the Council in its Economic and Financial Affairs configuration.¹⁰³ Of course one might postulate that in the 'repurposing' scenario these actors would also have embraced the value of enforcing labour rights through New Economic Governance. Even in such a case, however, actors interested in advancing a social agenda for the EU should carefully consider whether this might be easier to advance in an arena less susceptible to political pressure.

A second risk comes from the potential hollowing-out of classical legal instruments, such as the directive, and their enforcement mechanisms (labour inspections, judicial action). After all, CSRs can be adopted to, for instance, recommend that Member States close the gender pay gap or to facilitate the transformation of temporary contracts into permanent ones. Why

⁹⁸ F Jaumotte and C Osorio Buitron, 'Inequality and Labor Market Institutions' (2015) IMF Staff Discussion Note 1.

⁹⁹ Proposal for a Directive on adequate minimum wages in the European Union, Article 11 (right to access to effective and impartial dispute resolution and right to redress, including adequate compensation, in the case of infringements).

¹⁰⁰ See M d R Palma Ramalho, 'Portuguese labour law and industrial relations during the Crisis' (2013) 54 ILO Working Paper 1, 3; ILO, *Report on the high level Mission to Greece* (Athens, 2011), §§304–307; ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations* (International Labour Conference 103rd Session, 2014), 112. The reduction was around 90 per cent. See V Delteil and M Bănărescu, 'Roumanie – le modèle social sous la pression des bailleurs de fonds: les syndicats à la recherche de nouvelles "tutelles"' (2013) 143–144 *Chronique Internationale de L'ITRES* 133, 142.

¹⁰¹ R Erne, 'A supranational regime that nationalizes social conflict: explaining European trade unions' difficulties in politicizing European economic governance' (2015) 56 *Labor History* 345, 347.

¹⁰² Copeland and Daly, 'The European Semester and EU Social Policy', 13.

¹⁰³ Dawson, 'New governance and the displacement of Social Europe', 202.

should EU institutions go through the much more cumbersome and uncertain legislative procedure to adopt a directive in this area? This is all the more true regarding protection against dismissal, a domain in which directives would be subject to a unanimity vote in the Council (Article 153, para 2, TFEU). However, the instruments of New Economic Governance are ill-suited to the language of rights, and therefore lack any clear pathway to the creation and enforcement of individual situations. Even more problematically the tailored nature of CSRs would take away the very idea of a EU floor of rights embodied by labour law directives. For that reason, it would necessarily renationalise social and political struggles, as different Member States are shown different faces of New Economic Governance, a problem highlighted perfectly by Roland Erne.¹⁰⁴ Because of this, developments in the social aspects of New Economic Governance might end up being counter-productive for transnational solidarity and the Europeanisation of social struggles.

In light of these dangers, one should also assess the actual added value and effectiveness of taking the ‘NEG path to enforcement’. The most important limitation of effectiveness comes from the fact—which we highlighted in Section I.1—that the threat of sanctions is directly connected to the context of the recommendation. Those which are relevant to attaining the SGP or MIP objectives can lead to sanctions, an unlikely scenario to start with, when addressed to Member States facing an excessive deficit or macroeconomic imbalances procedure. The non-respect of CSRs falling outside the SGP or MIP—that is, those related to Europe 2020 targets—cannot constitute the basis for a sanction.

The focus of CSRs on poverty alleviation and on disadvantaged groups, which we have already highlighted,¹⁰⁵ gives the impression of a mechanism better suited to addressing minimal protection floors. The third target set out in the EPSR Action Plan (“The number of people at risk of poverty or social exclusion should be reduced by at least 15 million by 2030”) confirms that impression. More significantly, the only new indicator introduced in the chapter dedicated to working conditions is limited to fatal accidents at work per 100,000 workers, which is far from sufficient to monitor the concretisation of the broad notion of health and safety promoted by Directive 89/391¹⁰⁶ and of the ‘high level of protection’ granted by Point 10 of the Pillar. In this sense, from the perspective of labour rights, the issue of minimum wages might be best suited to being monitored and enforced through the instruments of New Economic Governance. This is also plausible in light of its more ‘quantifiable’ nature. Still, the fact that the proposal put forward by the Commission does not include any reference to an actual threshold for minimum wages, like those which are instead included in the explanatory memorandum,¹⁰⁷ would probably undermine this potential use.

Even when promoting this fairly basic level of enforcement of social rights through New Economic Governance one should keep in mind the caveats we put forward in opening our conclusions. Once absorbed by New Economic Governance, there is no guarantee that the social logic of minimum wages will survive, let alone prevail, in the encounter with economic logic. Indeed, during the last economic crisis, so-called ‘internal devaluation’¹⁰⁸—that is, the relative reduction of wages vis-à-vis trading partners—was the flagship strategy used to tackle macroeconomic imbalances in the absence of exchange rate flexibility (because of the euro).¹⁰⁹ What is more, the so-called Five Presidents Report of 2015,¹¹⁰ a blueprint for ‘better economic governance in the euro area’, included a proposal to establish so-called ‘Competitiveness Authorities’, that is, ‘independent entities with a mandate to assess whether wages are evolving

¹⁰⁴ Erne, ‘A supranational regime that nationalizes social conflict’, 353–355.

¹⁰⁵ See Section I.2.1.

¹⁰⁶ See A Cafelliello in this volume.

¹⁰⁷ Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, 10.

¹⁰⁸ P Pochet and C Degryse, “The programmed dismantling of the “European Social Model”” (2012) 47 *Intereconomics* 200, 216.

¹⁰⁹ N Roubini, ‘Eurozone Crisis: Here are the Options, Now Choose’ (2011), *EconoMonitor*, available at www.economonitor.com/nouriel/2011/11/09/eurozone-crisiswell-at-least-we-have-options/; R Janssen, ‘Internal Wage Devaluation – The IMF Admits It Does Not Work’ (2013) *Social Europe*, available at www.social-europe.eu/2013/12/internal-wage-devaluation/

¹¹⁰ JC Juncker, *Completing Europe's Economic and Monetary Union* (Brussels, European Commission, 2015).

in line with productivity and compare with developments in other euro area countries and in the main comparable trading partners'.¹¹¹ Any strategy aimed at repurposing the instruments of New Economic Governance to advance a 'social' agenda should thus be wary of playing into the hands of those who would like to see labour standards completely subsumed by the logic of competitiveness and budgetary rules.

¹¹¹ *ibid*, 8.